

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Wireless E911 Location Accuracy Requirements)	PS Docket No. 07-114
)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling)	
)	

To: The Commission

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") hereby submits its reply comments in response to the Federal Communications Commission's November 6, 2009, *Public Notice* in the above-captioned proceeding regarding E911 location accuracy requirements for providers of commercial mobile radio services ("CMRS").¹

In its *Public Notice*, the Commission stated that it is seeking to refresh the record of this proceeding and is thus requesting comment "on whether subsequent developments in the industry and technology may have affected parties' positions on the issues raised."² In its initial comments, NENA likewise stated that it is interested in hearing from those carriers who did not

¹ / Public Safety and Homeland Security Bureau Seeks to Refresh the Record Regarding Service Rules for Wireless Enhanced 911 Phase II Location Accuracy and Reliability, PS Docket No. 07-114, Public Notice, DA 09-2397 (rel. Nov. 6, 2009) ("*Public Notice*").

² / *Id.*

support the Joint Proposals presented in 2008 by APCO, NENA, AT&T, and Verizon Wireless “to determine if the same concerns remain a year later.”³

In response to the Commission’s *Public Notice* – and also in response to NENA’s inquiry – SouthernLINC Wireless hereby submits that there have been no changes or developments in the industry or in technology that would in any way alleviate the concerns that SouthernLINC Wireless has previously expressed in this docket.

As set forth in detail in its October 14, 2008, filing in this proceeding⁴ – which is hereby incorporated by reference – SouthernLINC Wireless remains concerned that the Joint Proposals, if adopted as presented, could have a significant and disproportionate impact on smaller regional and rural wireless carriers, the majority of whom are considered “small entities” pursuant to the Regulatory Flexibility Act. SouthernLINC Wireless is also concerned over the continued lack of record evidence in this docket, such as studies or other data, showing that the Joint Proposals are even technically feasible.

Finally, SouthernLINC Wireless again joins other commenters in expressing its support for the establishment of an E911 Technical Advisory Group made up of representatives from public safety, manufacturers, and nationwide, regional and rural carriers to address E911 location accuracy issues.

I. THERE HAS BEEN NO SHOWING THAT THE JOINT PROPOSALS ARE TECHNICALLY FEASIBLE

As a threshold matter, SouthernLINC Wireless is concerned that the Joint Proposals do not appear to be based on any actual studies or data demonstrating technical feasibility, but instead they represent what is essentially a political agreement among APCO, NENA, and the

³ / Comments of NENA at 1.

⁴ / Reply Comments of SouthernLINC Wireless, PS Docket No. 07-114 (filed Oct. 14, 2008) (“SouthernLINC Wireless 2008 Reply Comments”) (hereby incorporated by reference).

nation's three largest wireless carriers. To the best of SouthernLINC Wireless' knowledge, no other carriers or entities participated in reaching these agreements, nor did the parties consult with any other carriers as they negotiated their plans. The rest of the wireless industry did not learn of these proposals until they were presented to the Commission as a *fait accompli* in late August 2008.

Although it has been more than a year since the Joint Proposals were unveiled, no party has yet presented any factual, data-based evidence demonstrating that these proposals are or will be technologically feasible.⁵ SouthernLINC Wireless itself has no information as to whether it can meet the Commission's accuracy requirements at the county level today, nor is it aware of any other carrier that has demonstrated or claimed such a capability other than the three largest nationwide carriers (who themselves admit that they cannot achieve this in every county they serve).

Given the continued lack of record evidence that the Joint Proposals are even technologically feasible, SouthernLINC Wireless is concerned that any rush by the Commission to adopt the Joint Proposals would violate Chairman Genachowski's pledge to "regulate through data-driven processes"⁶ and would raise significant legal and public policy concerns, including

⁵ / For example, the Joint Proposal for carriers using handset-based location solutions would allow such carriers to exclude up to 15% of the counties they serve from the 150-meter accuracy requirement on the basis of "heavy forestation." However, none of the parties involved in the Joint Proposals – APCO, NENA, Verizon Wireless, and Sprint Nextel – have provided any information as to how the determination was made that 15% is an appropriate cap. If this number is based on nothing more than the amount of counties that Verizon Wireless and/or Sprint Nextel themselves would need to exclude in order to be in compliance, it cannot serve as an adequate basis for an industry-wide mandate.

⁶ / Comments of CTIA at 3 (*citing* Statement of Julius Genachowski, Nominee to Serve as Chairman of the Federal Communications Commission, Before the U.S. Senate Committee on Commerce, Science, and Transportation, June 16, 2009).

the propriety of any such action under established administrative law and the Regulatory Flexibility Act.⁷

II. THE POTENTIAL IMPACT OF THE JOINT PROPOSALS ON REGIONAL AND RURAL CARRIERS

A. The Joint Proposals Would Have a Significant and Disproportionate Impact on Regional and Rural Carriers

Based on the record of this proceeding to date, the Joint Proposals prepared by APCO, NENA, AT&T, and Verizon Wireless are apparently based solely on what the largest nationwide carriers, with their vast resources and unmatched access to the newest and latest equipment and technologies, believe *might* be achievable on their own networks and systems. While laudable in their intent, these proposals nevertheless fail to give any consideration to the circumstances and operational realities faced by the nation's smaller regional and rural wireless carriers.

Significantly, as CTIA, T-Mobile, the Rural Cellular Association (RCA), and the Rural Telecommunications Group (RTG) pointed out in their initial comments, the record of this proceeding does not contain any cost-benefit analysis supporting the imposition of any new regulations such as those set forth in the Joint Proposals.⁸

If adopted, the Joint Proposals would place an enormous strain on Tier III carriers in particular. Despite their more limited resources, Tier III carriers are already expected by the Commission to meet the same performance standards as the largest nationwide carriers with respect to PSAP deployment and implementation, and the additional demands of having to meet new location accuracy standards – including demonstrating compliance at the county level for

⁷ / See Comments of T-Mobile, RCA, and RTG at 10 – 11 and 17 – 21; See also Comments of TeleCommunication Systems Inc. at 2 (“The Commission must only adopt rational, cost-effective, data-driven, and economically and technically feasible regulations.”).

⁸ / Comments of CTIA at 3 – 4; Comments of T-Mobile, RCA, and RTG at 20 – 21.

every county in their service area (with very limited exceptions) – could strain these carriers’ resources beyond what they can bear.

At the outset, the Joint Proposals would require carriers to undertake a costly, burdensome, and resource-intensive testing regime to determine whether, or to what extent, they are able to meet the Phase II location accuracy requirements at the county level in every county they serve.⁹ Sprint Nextel – which has voluntarily agreed to try to meet the proposed new requirements and which now seeks to impose them on the entire industry – conceded as much in its comments, stating, “Setting the accuracy standard at the county level will impose significant testing costs and require substantial time to complete.”¹⁰ In an earlier *ex parte* filing in this docket, Sprint Nextel referred to its development and deployment of an automated testing and data collection system as a “multi-year, multi-million dollar effort.”¹¹

While its substantial size and resources may make it possible for Sprint Nextel to bear the significant testing costs it describes (and Sprint Nextel should be commended for doing so), such extensive testing is simply beyond the resources of most non-nationwide carriers. Furthermore, SouthernLINC Wireless and other regional and rural carriers do not have the resources to begin testing in a vacuum – *i.e.*, without any guidance from the Commission – to determine whether compliance with the proposed new county-level standard is even possible.¹²

⁹ / As a regional carrier, SouthernLINC Wireless’ territory encompasses 257 counties, and it has deployed Phase II service within a large number of them (the remaining counties have not yet requested Phase II service from SouthernLINC Wireless). Thus, even for a small carrier, testing will not be a simple activity and it will be costly both to test all currently-deployed counties as well as to test newly-deployed counties on a going forward basis.

¹⁰ / Comments of Sprint Nextel at 3 – 4.

¹¹ / *Ex Parte* Letter of Sprint Nextel, PS Docket No. 07-114 (filed Sept. 24, 2008), at 2.

¹² / When SouthernLINC Wireless first deployed its Phase II solution, it conducted extensive accuracy testing based upon the Commission guidance available at that time, and this testing concluded that the Company’s technology meets the accuracy requirements. For all

If a carrier should determine that it is unable to meet the location accuracy requirements at the county level in every county it serves, it will then be compelled to identify, acquire, and deploy the technology, equipment, or other infrastructure necessary to achieve compliance. However, assuming a viable solution is even available in the first place, the cost of actually obtaining and deploying it is often prohibitive. Regional and rural carriers often have too few customers to allow these costs to be spread across their customer base in an economically feasible manner and simply do not have the economies of scale enjoyed by AT&T, Verizon Wireless, and Sprint Nextel that make the acquisition and deployment of the necessary technology and equipment economically or operationally possible, at least within the timeframes set forth in the Joint Proposals.

Thus, for regional and rural carriers, the impact of any new location accuracy requirements is an issue of both the cost of acquiring and deploying additional technology (if it were to exist) on their systems and the cost of conducting statistically valid testing on a county-by-county basis to determine accuracy at the county level.

B. The Commission Must Recognize the Unique Operational Needs and Circumstances of Smaller Regional and Rural Wireless Carriers

In its comments, as well as in a recent *ex parte* presentation to the Public Safety and Homeland Security Bureau, NENA stated that while it continues to support a “county-level compliance approach,” this approach must include “reasonable exceptions.”¹³ SouthernLINC Wireless agrees with NENA that reasonable exceptions to any new location accuracy

SouthernLINC Wireless knows, it thus may already be capable of meeting the accuracy requirement at the county level. However, without further guidance from the Commission, SouthernLINC Wireless has had no way of being able to conduct the testing that would be necessary to verify this.

¹³ / Comments of NENA at 1; *Ex Parte* Presentation of NENA, PS Docket No. 07-114 (filed Nov. 19, 2009).

requirements are essential. However, as explained in detail in its filing of October 14, 2008, SouthernLINC Wireless does not believe that the exceptions contained in the Joint Proposals are sufficiently “reasonable.”¹⁴ Therefore, to the extent the Commission should decide to adopt new location accuracy rules, the Commission must also establish a flexible waiver process with clear guidelines and procedures, particularly for regional and rural Tier III carriers.

Based on its own experience with the Commission’s waiver process for the E911 Phase II handset penetration deadline, SouthernLINC Wireless emphasizes the importance of making any such waiver guidelines and standards clear, consistent, understandable, and reasonable. In particular, it would not be sufficient for purposes of satisfying its obligations under the Regulatory Flexibility Act for the Commission to adopt the vague and ill-defined “clear path to full compliance” standard previously applied to Tier III carrier waiver requests – a standard that was simultaneously very strict, yet so vague that most, if not all, grants of Tier III carrier waiver requests occurred only through an act of Congress.¹⁵

Accordingly, SouthernLINC Wireless recommends that the Commission establish a straightforward process that enables Tier III carriers to obtain individual waivers based on a showing of one or more of the following factors:

- The carrier has deployed the latest technology and is operating its network and equipment as intended/designed, yet it is still unable to achieve full compliance;
- The carrier is facing impediments to obtaining and/or deploying the latest technology, including, but not limited to, unavailability, high costs, unforeseeable technical issues, system or network compatibility issues, problems with third party vendors or suppliers, delays or other problems with zoning/permitting for the deployment or construction of infrastructure, etc.;

¹⁴ / See SouthernLINC Wireless 2008 Reply Comments at 5 – 10 and 17 – 22.

¹⁵ / See National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004) (“*ENHANCE 911 Act*”), § 107(a).

- The carrier is experiencing customer resistance to upgrading or exchanging CPE (such as handsets);
- The carrier is unable to achieve full compliance by the applicable deadline due to financial hardship or financial burdens. In evaluating this question, the Commission should take into consideration a variety of factors, including, but not limited to:
 1. The overall cost and expense of compliance;
 2. The extent to which the carrier is able to spread its costs over its customer base in an economically feasible manner;
 3. The extent to which the carrier actually has or is actually able to receive cost recovery or reimbursement from the relevant state government(s) for the cost of deploying Phase II service to PSAPs (a substantial cost that many Tier III carriers have been compelled to bear despite numerous state laws to the contrary); and
 4. The carrier's access to the necessary capital, including through loans or credit, to achieve or otherwise demonstrate compliance (a significant concern in the current economic environment).
- Strict enforcement of the Commission's location accuracy rules will result in consumers having decreased access to emergency services.¹⁶

In addition to these factors, the Commission should also give careful consideration to the impact that a denial of a waiver request could have on a carrier's ability to ultimately achieve compliance with the location accuracy requirements. For example, a finding of non-compliance with the Commission's rules can threaten the financing and credit agreements on which many carriers rely, resulting in punitive increases in interest or even declarations of default for existing agreements and severe restrictions on carriers' ability to secure new funding.¹⁷ The perverse result could very well be that the denial of a waiver request could effectively cut a carrier off from access to the capital it needs continue its operations, let alone implement any programs or

¹⁶ / See *ENHANCE 911 Act*, § 107(a).

¹⁷ / See, e.g., Reply Comments of SouthernLINC Wireless, PS Docket No. 07-114, CC Docket No. 94-102 (filed July 11, 2007) at 13 – 14.

deployments necessary to achieve or demonstrate compliance with the Commission's location accuracy rules. Considering that regional and rural carriers are often the sole source of wireless E911 service in many parts of the country, the impact on consumers in these areas would be devastating.

III. ESTABLISHMENT OF AN E911 TECHNICAL ADVISORY GROUP

Finally, SouthernLINC Wireless reiterates its support for the establishment of an E911 Technical Advisory Group (ETAG) to investigate and develop recommendations regarding other E911 location accuracy issues.¹⁸ As other participants in this docket have noted, AT&T and Verizon Wireless do not represent the wireless industry as a whole, and the ETAG would allow for greater industry participation in developing and refining further improvements in wireless E911 location accuracy.¹⁹

SouthernLINC Wireless furthermore agrees with CTIA that the proposed ETAG must include all affected stakeholders such as public safety, large and small regional and rural wireless providers using various air interface technologies, and wireless equipment manufacturers.²⁰ Regional and rural carriers in particular have operational needs and circumstances that differ significantly from those of the larger nationwide carriers, and these unique needs and circumstances must be appropriately taken into consideration in the development of any new E911 standards or requirements.

For this reason, SouthernLINC Wireless also questions whether it would be appropriate to place the proposed ETAG under the supervision of the Communications Security, Reliability

¹⁸ / *See, e.g.*, Comments of CTIA at 4 – 7; Comments of AT&T at 1 – 2.

¹⁹ / *See, e.g.*, Comments of Motorola, PS Docket No. 07-114 (filed Oct. 6, 2008) at 4.

²⁰ / Comments of CTIA at 4.

and Interoperability Council (CSRIC), as suggested by CTIA.²¹ As CTIA itself concedes, the membership of CSRIC “does not currently include all stakeholders that would be affected by new E911 requirements.”²² SouthernLINC Wireless is therefore concerned that a working group operating under the aegis of CSRIC may not adequately represent or take into account the interests of all of the parties who would be directly affected by any changes to the Commission’s E911 rules, including smaller regional and rural wireless carriers.

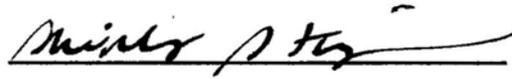
²¹ / *Id.* at 6 – 7.

²² / *Id.* at 6.

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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