

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Cingular Wireless LLC

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File No. EB-02-TS-003

ORDER

Adopted: May 23, 2003**Released: May 23, 2003**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order*, we address a request filed by Cingular Wireless LLC (“Cingular”) to clarify the terms of the consent decree under which it agreed to deploy an enhanced 911 (“E911”) Phase II compliant technology at a minimum of 2,000 cell sites and provide Phase II service by December 31, 2002 at all of these sites, on its Time Division Multiple Access (“TDMA”), Advanced Mobile Phone Service (“AMPS”), and TDMA/AMPS networks.¹ Cingular also requests that we modify the December 31, 2002 and June 30, 2003 benchmarks set forth in the consent decree. For the reasons that follow, we conclude that Cingular satisfied the December 31, 2002 benchmark.

II. BACKGROUND

2. Under Phase II of the FCC’s wireless E911 rules, wireless carriers are required to provide to the designated Public Safety Answering Point (“PSAP”) the location of wireless 911 callers, a capability known as Automatic Location Identification (“ALI”), using handset-based or network-based location technologies.² The rules provide that handset-based location technologies must provide the location of wireless 911 calls with an accuracy of 50 meters for 67 percent of calls and 150 meters for 95 percent of calls.³ Carriers using a handset-based solution must meet certain interim benchmarks for activating handsets with location capability,⁴ and must ensure that 95 percent of their customers have location-capable handsets no later than December 31, 2005.⁵ For carriers choosing a network-based solution, the rules provide that the technology must report the location of wireless 911 calls with an

¹ *Cingular Wireless LLC*, 16 FCC Rcd 8529, 8532 (2002) (“*TDMA Consent Decree*”).

² *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996).

³ 47 C.F.R. § 20.18(h)(2).

⁴ *See, e.g., Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Request for Waiver by Verizon Wireless, 16 FCC Rcd 18364 (2001) (“*Verizon Phase II Waiver Order*”); *Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc.*, 16 FCC Rcd 18277 (2002) (“*Nextel Phase II Waiver Order*”); *Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS*, 16 FCC Rcd 18330 (2001) (“*Sprint Phase II Waiver Order*”).

⁵ 47 C.F.R. § 20.18(g)(1).

accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.⁶ A carrier using a network-based solution must provide ALI to 50 percent of its coverage area, or 50 percent of its population, beginning on October 1, 2001 or within six months of a PSAP request, whichever is later, and to 100 percent of callers within 18 months of that request or by October 1, 2002, whichever is later.

3. On May 9, 2002, the Commission adopted a consent decree terminating the Enforcement Bureau's investigation into possible violations by Cingular of the E911 Phase II rules.⁷ Pursuant to the consent decree, Cingular agreed to a specific timeline for deployment of a network-based location technology on its TDMA, AMPS, and TDMA/AMPS networks. Paragraph 8(a)(2) of the consent decree required Cingular to deploy a Phase II compliant technology at a minimum of 2,000 cell sites and provide Phase II service at all these sites by December 31, 2002.⁸ Cingular is subject to a \$300,000 automatic penalty if it fails to meet the benchmark.⁹

4. On December 23, 2002, Cingular filed a request to clarify the December 31, 2002 benchmark and to modify the December 31, 2002 and June 30, 2003 benchmarks.¹⁰ In this request, Cingular indicated that, as of December 23, 2002, it had deployed a Phase II compliant technology at more than 2,400 cell sites. Cingular claimed that, due to PSAP readiness issues, it was possible that "a number of PSAPs" associated with those sites would be unable to receive Phase II location information. Cingular stated that these PSAPs were unable to engage in end-to-end testing of the Phase II solution because of readiness problems including a lack of upgraded PSAP customer premises equipment ("CPE") and improper connectivity between the PSAP's ALI database and CPE. Thus, Cingular claimed that although it was capable of supplying Phase II location information within the coverage area of commissioned sites, these PSAPs would be unable to receive the information. Cingular stated that it anticipated that it would be providing Phase II data to PSAPs that are able to receive and utilize the location information for 1,000 more commissioned sites by December 31, 2002. Cingular requested clarification that, under its consent decree and the *City of Richardson Reconsideration Order*,¹¹ it would not be deemed in violation of its consent decree because it was capable of providing location information to the ALI database and it had "completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness" for more than 2,000 cell sites prior to December 31, 2002.¹² Cingular also requested modification of paragraph 8(a)(2) of its consent decree to require it deploy a Phase II compliant technology at a minimum of 2,000 cell sites and provide Phase II service at 1,000 of these sites by December 31, 2002.

5. On January 15, 2003, in response to the Enforcement Bureau's request, Cingular submitted certifications substantially consistent with the new rules adopted in the *City of Richardson Reconsideration Order*.¹³ Cingular certified that it deployed a Phase II compliant technology at 2,467 cell

⁶ 47 C.F.R. § 20.18(h)(1).

⁷ *TDMA Consent Decree* 17 FCC Rcd at 8529.

⁸ *Id.* at 8532.

⁹ *Id.* at 8533.

¹⁰ Cingular Wireless LLC Second Supplement to Second Quarterly E911 Implementation Report for TDMA, AMPS and TDMA/AMPS Networks and Request for Clarification and Modification of Consent Decree (December 23, 2002) ("*Request for Clarification*").

¹¹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas, Order on Reconsideration*, CC Docket No. 94-102, 17 FCC Rcd 24282 (2002) ("*City of Richardson Reconsideration Order*"), *petitions for recon. pending*.

¹² *Id.* at 24285.

¹³ *Id.* at 24286. Although the new rules adopted in the *City of Richardson Reconsideration Order* had not yet taken effect, the Enforcement Bureau requested that Cingular submit these certifications in order to evaluate fully its

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sites prior to December 31, 2002. Cingular also stated that it had completed end-to-end testing and begun providing location information to PSAPs from 1,683 of these cell sites. With respect to the remaining 784 cell sites, Cingular indicated that it had completed all steps necessary, independent of PSAP readiness, to begin providing service. Cingular contended that 175 PSAPs served by the 784 sites were unable to engage in end-to-end testing of the Phase II solution prior to the December 31, 2002 deadline.

6. In response to a request for additional information from the Enforcement Bureau,¹⁴ Cingular supplemented its certification filing.¹⁵ Cingular's certification filing included six letters from PSAPs. In these letters, the PSAPs acknowledge that they are not yet ready to receive Phase II service for various reasons and that Cingular completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness. With respect to the 169 additional PSAPs, Cingular certified that it had taken all necessary steps towards E911 implementation that are not dependent on PSAP readiness and documented the basis for its conclusion that the PSAPs are not yet ready to receive and utilize Phase II service. These 175 PSAPs account for all of the 784 commissioned sites for which it was not supplying Phase II data on December 31, 2002.

III. DISCUSSION

7. In its request to clarify the December 31, 2002 benchmark, Cingular seeks clarification that it will not be deemed in violation of the consent decree because it is capable of providing location information to the ALI database and it has completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness for more than 2,000 cell sites prior to December 31, 2002. We deny this clarification request. We think that it is clear that the requirement in the consent decree that Cingular "provide Phase II service" means that the carrier must fully integrate its Phase II location system with the PSAP and begin delivering Phase II location information to the PSAP, which is capable of, and actually is, receiving Phase II data.

8. Nevertheless, after reviewing the certification filing submitted by Cingular, we conclude that Cingular satisfied the December 31, 2002 benchmark, as modified by the rules adopted in the *City of Richardson Reconsideration Order*. Under the new certification process adopted in the *City of Richardson Reconsideration Order*, a wireless carrier that has completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness may have its E911 obligation temporarily tolled if the PSAP is not ready to receive the E911 information at the end of the six-month implementation period and the carrier files a certification to that effect with the Commission.¹⁶ The *City of Richardson Order* explicitly states that deadlines to complete PSAP requests for E911 service established in consent decrees negotiated between the Commission and particular carriers are subject to the certification process.¹⁷

9. Paragraph 8(a)(2) of the consent decree required Cingular to deploy a Phase II compliant technology at a minimum of 2,000 cell sites on its TDMA, AMPS, or TDMA/AMPS network and provide Phase II service at all these sites by December 31, 2002. As of December 31, 2002, Cingular had

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assertion that "a number of PSAPs" are not ready to receive and utilize Phase II data. Because the rules were not yet in effect, certain procedural aspects of the rules were not relevant here.

¹⁴ Letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, to Brian F. Fontes, Vice President, Federal Relations, Cingular Wireless LLC (February 3, 2003).

¹⁵ Supplement to Cingular Wireless LLC's Third Quarterly E911 Implementation Report for TDMA, AMPS and TDMA/AMPS Networks (February 19, 2003).

¹⁶ *City of Richardson Reconsideration Order*, 17 FCC Rcd at 24286-7.

¹⁷ *Id.* at 24287.

deployed Phase II technology at 2,467 cell sites and provided Phase II service at 1,683 of these cell sites. Cingular asserts that the PSAPs associated with the remaining 784 cell sites at which it had deployed Phase II technology were not ready to receive and utilize Phase II location information by December 31, 2002. The certification filing submitted by Cingular supports this assertion. Cingular provided six letters from PSAPs. These PSAPs acknowledge that they are not ready to receive and utilize Phase II service and that Cingular completed all necessary steps towards E911 implementation that are independent of PSAP readiness. Moreover, with respect to the other 169 PSAPs, Cingular certified that it had taken all necessary steps towards E911 implementation that are not dependent on PSAP readiness and documented the basis for its conclusion that the PSAPs are not yet ready to receive and utilize Phase II service. We find that Cingular's certification filing substantially complies with the certification process adopted in the *City of Richardson Reconsideration Order*. Accordingly, we conclude that Cingular satisfied the December 31, 2002 benchmark, as modified by the rules adopted in the *City of Richardson Reconsideration Order*.¹⁸

10. In light of our conclusion that Cingular satisfied the December 31, 2002 benchmark, as modified by the new certification rules, we need not address its request to clarify and modify the December 31, 2002 benchmark. We therefore dismiss this modification request as moot. Cingular makes similar requests for clarification and modification with respect to its June 30, 2003 benchmark. Because we find that Cingular's request to modify this benchmark is premature, we dismiss this modification request.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, that Cingular's request to clarify and modify the December 31, 2002 benchmark in the *TDMA Consent Decree* **IS DENIED** to the extent indicated herein and **IS** otherwise **DISMISSED** as moot.

12. **IT IS FURTHER ORDERED**, that Cingular's request to clarify and modify the June 30, 2003 benchmark in the *TDMA Consent Decree* **IS DISMISSED** as premature.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Brian F. Fontes, Vice President, Federal Relations, Cingular Wireless LLC, 1818 N Street, N.W., Suite 800, Washington, DC 20036, and to Robert G. Kirk, Esq., Wilkinson Barker Knauer LLP, 2300 N Street, NW, Suite 700, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁸ As set forth in the *City of Richardson Reconsideration Order*, Cingular's certification filing temporarily tolls its obligation to implement Phase II service with respect to these PSAPs. Cingular must begin delivering Phase II service to each of these PSAPs within 90 days after the PSAP provides the carrier with written notice that the PSAP is capable of receiving and utilizing Phase II location data. *Id.* at 26287.