

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

In the Matter of)	File No. EB-04-SE-054
)	
Sprint Spectrum LP d/b/a Sprint PCS)	NAL/Acct. No. 200532100002
)	FRN No. 0007165210

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 19, 2004

Released: October 20, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint") has apparently failed to provide Enhanced 911 ("E911") Phase I service within six months of a request by Santa Cruz County, Arizona ("Santa Cruz") on behalf of two Public Safety Answering Points ("PSAPs") in willful and repeated violation of Section 20.18(d) of the Commission's Rules ("Rules").¹ For the reasons discussed below, we find Sprint apparently liable for a forfeiture in the amount of fifty thousand dollars (\$50,000).

II. BACKGROUND

2. Under Phase I of the E911 rules, wireless carriers are required to provide to the designated PSAP the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems by April 1, 1998, or within six months of a valid request by the designated PSAP, whichever is later.² A PSAP request for service is deemed valid if the PSAP can demonstrate that (1) a mechanism is in place for recovering the PSAP's costs; (2) the PSAP has ordered the equipment necessary to receive and use the E911 data to be installed no later than six months following the PSAP's request; and (3) the PSAP has made a timely request to the appropriate Local Exchange Carrier ("LEC") for the necessary trunking and other facilities, including any necessary Automatic Location Information ("ALI") database upgrades.³

3. On February 25, 2004, Santa Cruz filed an informal complaint against Sprint for failure to provide E911 Phase I wireless service. The Enforcement Bureau subsequently began an investigation and, on March 24, 2004, sent a letter of inquiry ("LOI") to Sprint seeking additional information

¹ 47 C.F.R. § 20.18(d).

² 47 C.F.R. § 20.18(d) and (j).

³ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order, 16 FCC Rcd 18982, 18986-87 (2001) ("*Richardson Order*"), *recon. granted in part, denied in part*; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order on Reconsideration, 17 FCC Rcd 24282 (2002) ("*City of Richardson Reconsideration Order*").

concerning Sprint's compliance with the E911 Phase I rule.⁴ On April 20, 2004,⁵ Sprint filed the LOI Response.⁶

4. In the informal complaint, Santa Cruz asserts that on August 28, 2003, it sent a letter to Sprint, 15 other wireless service providers and the local exchange carrier, Qwest Communications ("Qwest"), requesting Phase I service on behalf of two PSAPs, the Santa Cruz Sheriff's Office and the Nogales Police Department.⁷ In that letter, Santa Cruz stated that the PSAPs were ready to meet the requirements of Phase I wireless service and that the funds to support the project had been allocated in the State's 9-1-1 Revolving Fund. Santa Cruz states that on October 1, 2003, Sprint returned the "Business Activity" form included in the request for Phase I service, acknowledging that it does business in Santa Cruz County. On October 7, 2003, Sprint asked Santa Cruz to provide the information needed to make routing choices. On October 15, 2003, Santa Cruz sent Sprint the information it requested. Qwest completed all necessary modifications to the PSAPs' 911 networks and equipment in preparation for Phase I service on December 14, 2003. On January 21, 2004, Santa Cruz asked Sprint to schedule a test and turn-up and reminded Sprint that the Phase I six-month installation window would close on February 28, 2004. Sprint did not respond to the communication. On February 17 and 19, 2004, Santa Cruz contacted Sprint's 911 implementation vendor, Intrado, and asked if it could schedule Sprint's test and turn-up. On February 19, 2004, Intrado told Santa Cruz that Sprint did not appear ready to take that step. Also on February 19, 2004, Santa Cruz called Sprint to discuss why Sprint had not responded to its requests for a turn-up date and pricing and network design information. According to Santa Cruz, Sprint stated that it did not respond because it had not completed the necessary work required to deploy Phase I service. Sprint explained that it had not ordered either the Pseudo-ANIs ("p-ANIs")⁸ or the network, but promised to order the p-ANIs the next day (February 20, 2004), followed by a network request the next week (February 27, 2004). When asked about a possible turn-up date, Sprint stated that a network order normally takes six weeks, but that it would attempt to expedite the process.

5. On March 2, 2004, Santa Cruz reported to the Enforcement Bureau that the other six wireless carriers providing service in Santa Cruz had begun providing Phase I service to the two Santa Cruz PSAPs by February 28, 2004. On March 16, 2004, Santa Cruz reported to the Enforcement Bureau that on March 2, 2004, it had asked Sprint for a reply within 24 hours concerning the number of trunks that it intended to install (explaining that it had requested the information several times over the previous two months), so that Qwest could begin billing for the selective router portion of their Phase I service, but Sprint did not reply. Finally, Santa Cruz reported that on March 25, 2004, the day after the Enforcement Bureau issued its LOI to Sprint, a Sprint supervisor contacted Santa Cruz "to get the process rolling," and explained that the delay in deployment stemmed from a transition from Intrado's Mobile Positioning

⁴ Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Luisa L. Lancetti, Vice President, Wireless Regulatory Affairs, Sprint Corporation (March 24, 2004).

⁵ On April 13, 2004, Sprint requested and was granted a one-week extension – to April 20, 2004 – in which to file its response to the LOI. Letter from Charles W. McKee, General Attorney, Sprint Law & Regulatory Affairs, to Jennifer Burton, Senior Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau (April 13, 2004) ("LOI Response").

⁶ Letter from Luisa L. Lancetti, Vice President, Wireless Regulatory Affairs, Sprint Corporation, to Jennifer Burton, Senior Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau (April 20, 2004).

⁷ Letter from Penelope E. Meyers, 9-1-1 Project Manager, State of Arizona, to Greg Garrelts, Manager, 9-1-1, Sprint PCS (Aug. 28, 2003).

⁸ The automatic number identification ("ANI") is a caller's 10-digit phone number (including the 3-digit area code). The Pseudo ANI, or p-ANI, is the unique 10-digit number that identifies the cell sector location of the base station handling the call.

Center (“MPC”) to Sprint’s own MPC. According to Santa Cruz, the Sprint supervisor said that Sprint had hoped to put Santa Cruz on its own MPC and avoid a later migration.

6. In its LOI Response, Sprint asserts that it received Santa Cruz’s request for Phase I service on September 15, 2003. Sprint indicates that it did not attempt to make a determination as to whether Santa Cruz’s request for Phase I service was valid or request readiness documentation from Santa Cruz. In this regard, Sprint states that it does not screen PSAP requests as valid or invalid, but rather proactively attempts to process all E911 requests that it receives and establishes an ongoing communications process with every PSAP. Sprint further states that although Santa Cruz did not upgrade its equipment until December 14, 2003, Sprint did not attempt to assert that the PSAP request was invalid or otherwise attempt to delay deployment. Sprint asserts that it took the following actions in response to Santa Cruz’s Phase I request. On September 16, 2003, Sprint faxed the Santa Cruz Phase I request to Intrado. On September 22, 2003, Sprint delivered to Intrado a spread sheet identifying the cell sites serving the Santa Cruz area and the information required to develop network recommendations regarding necessary trunking, switch instructions and other necessary network modifications. On October 1, 2003, Sprint provided Santa Cruz contact information for the Sprint analyst who would work with Intrado to manage the Phase I deployment. On October 8 and 15, 2003, communications occurred regarding the default routing and other information. On November 13, 2003, Intrado ordered network recommendations from its internal network group, on December 22, 2003, Intrado notified Sprint that the recommendations needed to be reordered because the Phase I deployment was state-wide and required different processing, and on January 9, 2004, Intrado requested p-ANI assignments from Sprint.

7. Additionally, Sprint states that on January 21, 2004, Santa Cruz requested an update and a test and turn-up schedule. Although it asserts that some additional telephone conversations with Santa Cruz occurred in January and February, Sprint states that it is clear that its analyst “failed to appropriately explain why testing had been delayed.”⁹ Sprint explains that while the network recommendations had been ordered on December 22, 2003, they had not been received from Intrado, and the necessary trunk ordering and network design could not be completed until these network recommendations were received. Sprint states that “[b]ased on review of this matter, Sprint believes that its analyst should have more aggressively pursued Intrado to determine the reasons for the delay in receiving the [network recommendations] and communicated those facts to the PSAP.”¹⁰ Sprint acknowledges that “it is clear that this did not occur.”¹¹ Moreover, Sprint admits that on March 2, 2004, Santa Cruz again complained about the lack of information and again, the Sprint representative failed to provide appropriate feedback. Sprint states that on March 24, 2004 upon becoming aware of Santa Cruz’s informal complaint, the manager of Sprint’s E911 group immediately stepped into the process to identify the reasons for delay. The request for network recommendations was escalated and upon receipt, trunk orders were placed with Qwest and also expedited.¹² The deployment of Phase I service to Santa Cruz was completed by April 15, 2004.

III. DISCUSSION

8. Section 20.18(d) of the Rules requires wireless carriers to provide to the designated PSAP the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems by April 1, 1998, or within six months of a valid request by the designated PSAP, whichever is later. Sprint states that it received Santa Cruz’s request for Phase I service to the Santa Cruz Sheriff’s Office and the Nogales Police Department

⁹ LOI Response at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 4.

on September 15, 2003. Santa Cruz asserted in its request that the PSAPs were ready to meet the requirements for Phase I service and that the appropriate supporting funds had been allocated in the State's 9-1-1 Revolving Fund. Sprint indicates that it did not attempt to make a determination as to whether Santa Cruz's request for Phase I service was valid or request readiness documentation from Santa Cruz,¹³ but rather began processing the request. Thus, the six-month period for implementing Phase I service to the two PSAPs ended on March 15, 2004. However, Sprint did not complete deployment of Phase I service to the two PSAPs until April 15, 2004, after the Enforcement Bureau issued its letter of inquiry. Accordingly, we find that Sprint apparently willfully¹⁴ and repeatedly¹⁵ violated Section 20.18(d) of the Rules by failing to provide Phase I service for a period of a month to two PSAPs within six months of a request.

9. Although Sprint asserts that Santa Cruz did not complete the necessary equipment upgrades to receive Phase I information until December 14, 2003, the Commission has determined that there is no requirement that a PSAP must be fully capable of receiving and utilizing the Phase I data *at the time of its request for Phase I service*.¹⁶ Rather, the PSAP must be fully capable of receiving and utilizing the Phase I data no later than six months after making its request. Here, it is undisputed that the two PSAPs in Santa Cruz were not only capable, but were in fact, receiving and utilizing Phase I data from the six other wireless carriers serving Santa Cruz within six months of Santa Cruz's request for Phase I service.

10. Moreover, we conclude that Sprint has not established that its failure to complete deployment of Phase I service to the two PSAPs within the six-month implementation period was due to factors outside of its control. Sprint explains that a delay in receiving the network recommendations from Intrado in turn delayed the necessary trunk ordering and network design. However, the Commission has repeatedly cautioned carriers that "an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance" with the E911 requirements.¹⁷ A carrier's "concrete and timely actions" taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in an enforcement context,¹⁸ but we do not believe that Sprint has shown that it exercised the level of diligence expected of carriers in processing Santa Cruz's request for Phase I service to warrant mitigation. For example, Sprint concedes that its analyst "should have more aggressively pursued Intrado to determine the reasons for delay in receiving the Net Recs and communicated those

¹³ Under the tolling rules adopted in the *City of Richardson Reconsideration Order*, a wireless carrier may request readiness documentation from a PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II service. If the PSAP fails to provide the necessary documentation within 15 days after service of the carrier's request, the six-month implementation period will be tolled. If the carrier declines to seek documentation during the 15-day period, the six-month implementation period will continue to run uninterrupted. *See City of Richardson Reconsideration Order*, 17 FCC Rcd at 24284; *see also* 47 C.F.R. § 20.18(j)(3).

¹⁴ The term "willful," as used in Section 503(b) of the Act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Commission's Rules. 47 U.S.C. § 312(f)(2).

¹⁵ A violation is "repeated" within the meaning of Section 503(b) of the Act if a violation occurs more than once or it continues for more than one day. 47 U.S.C. § 312(f)(2).

¹⁶ *Richardson Order*, 16 FCC Rcd at 18992.

¹⁷ *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS*, Order, 16 FCC Rcd. 18330, 18340 (2001) ("*Sprint Waiver*"); *see also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems Request for Waiver by AT&T Wireless Services*, Order, 16 FCC Rcd 18253, 18261 (2001); *see also City of Richardson Reconsideration Order*, 17 FCC Rcd at 24287 (carrier's certification may not be based on circumstances attributable to its own vendors, manufacturers or third party service providers).

¹⁸ *Sprint Waiver*, 16 FCC Rcd at 18340.

facts to the PSAP.”¹⁹ Sprint also acknowledges that it repeatedly failed to provide appropriate feedback in response to requests for information from Santa Cruz.²⁰

11. In light of Sprint’s apparent willful and repeated violation of Section 20.18(d) of the Rules, we find that a forfeiture appears to be warranted. Section 503(b)(1)(B) of the Communications Act of 1934, as amended, (“Act”) states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable for a forfeiture penalty.²¹ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation by a common carrier, or each day of a continuing violation, up to a statutory maximum of \$1,200,000 for a single act or failure to act.²² In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³

12. The Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules do not establish a base forfeiture amount for violation of Section 20.18(d) of the Rules.²⁴ However, we think that a substantial proposed forfeiture for this violation is warranted. Violation of the E911 rules is extremely serious because these rules are intended to promote safety of life.²⁵ Further, the Phase I requirements set forth in Section 20.18(d) have been in effect for over six years.

¹⁹ LOI Response at 3.

²⁰ *Id.* at 4.

²¹ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

²² 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). On June 18, 2004, the Commission amended Section 1.80(b) of the Rules, 47 C.F.R. § 1.80(b), to increase the maximum penalties established in order to account for inflation since the last adjustment to those penalties. The new maximum penalties took effect on September 7, 2004. Violations which occur after that date will be subject to the increased forfeiture amounts. *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

²³ 47 U.S.C. § 503(b)(2)(D); *see also The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

²⁴ The fact that there is no established base forfeiture amount for this violation does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.” *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

²⁵ *See T-Mobile USA*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 3501 (2003) (proposed forfeiture of \$1.25 million for E911 violations).

13. In addition, in the *Forfeiture Policy Statement*, the Commission made clear that companies with higher revenues, such as Sprint,²⁶ could expect forfeitures higher than those reflected in the base amounts:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level.... For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.²⁷

14. We believe that the factors cited above, the fact that this was a continuing violation, the public safety nature of the violation, and the fact that Sprint is a large company with substantial revenues, justify a substantial proposed forfeiture. Considering all of the enumerated factors and the particular circumstances of this case, we conclude that Sprint is apparently liable for a forfeiture in the amount of \$50,000 for its apparent willful and repeated violation of Section 20.18(d) of the Rules.

IV. CONCLUSION

15. We find that Sprint apparently willfully and repeatedly violated Section 20.18(d) of the Rules by failing to fulfill a request for Phase I service to two PSAPs within six months of the date of the request. We also find that Sprint is apparently liable for a \$50,000 forfeiture for the violation.

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, the Sprint Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Fifty Thousand Dollars (\$50,000) for willful and repeated violation of Section 20.18(d) of the Rules.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, the Sprint Spectrum LP d/b/a Sprint PCS **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th

²⁶ In 2003, Sprint and its parent company, the Sprint Corporation, reported total revenues of \$12.7 billion and \$26.2 billion, respectively. United States Securities and Exchange Commission Form 10-K, Annual Report, Sprint Corporation (2004).

²⁷ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100. See also 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.²⁸

19. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

20. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁹

21. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Luisa L. Lancetti, Vice President, Wireless Regulatory Affairs, Sprint Corporation, 401 9th Street, N.W., Suite 400, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁸ 47 C.F.R. § 1.1914.

²⁹ *Id.*