

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

In the Matter of)	
)	
Revision of the Commission's Rules)	
To Ensure Compatibility with)	CC Docket No. 94-102
Enhanced 911 Emergency Calling Systems)	
)	
FocuSystems, Inc. Petition for Reconsideration)	
)	
)	

ORDER ON RECONSIDERATION

Adopted: February 15, 2001

Released: February 20, 2001

By the Commission:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration of the *Fourth Memorandum Opinion and Order* in this docket filed by FocuSystems, Inc. FocuSystems contends that the interim benchmarks for activating new Automatic Location Identification (ALI)-capable handsets are unduly burdensome and should not apply to carriers not yet subject to a Public Safety Answering Point (PSAP) request for E911 Phase II service. We deny the petition because we find that it does not provide a basis for reopening the issues in this proceeding or for delaying the implementation of wireless E911, an important public safety measure.

II. BACKGROUND

2. In a series of orders since 1996, the Commission has adopted a set of E911 requirements, whereby wireless carriers must provide to PSAPs information regarding the location of an emergency call. These requirements are divided into two phases. Phase I requires the carrier to provide to the PSAP the telephone number of the handset originating the 911 call, and the location of the cell site or base station that received the call. Phase II requires carriers to deliver more specific latitude and longitude information to the PSAP.

3. In the *E911 Third Report and Order*, we revised our E911 rules to better allow emerging handset-based location technologies to compete with network-based technologies.¹ Recognizing that carriers using handset-based solutions would need to upgrade or replace older handsets in use, we established a separate set of accuracy and deployment requirements applicable to handset-based solutions. Handset-based solutions were held to tighter accuracy requirements, but were allowed to be phased in over time. Specifically, carriers were required to reach certain benchmarks for selling and activating ALI-capable handsets without respect to any PSAP request for Phase II deployment. We also established a more accelerated schedule for handset deployment in areas where a carrier received a request for Phase II deployment from a PSAP. We further required carriers to file E911 Phase II implementation reports specifying their choice of technology by October 1, 2000.

¹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388 (1999) (*E911 Third Report and Order*).

4. In response to several petitions for reconsideration of the *E911 Third Report and Order*, in the *E911 Fourth MO&O*, we adopted certain adjustments to the deployment schedule for carriers deploying handset-based ALI solutions.² Specifically, we extended until October 1, 2001, the date by which carriers must begin selling and activating ALI-capable handsets. In addition, we revised the phase-in schedule to provide that by December 31, 2001, at least 25 percent of all new handsets activated are to be ALI-capable; by June 30, 2002, 50 percent of all new handsets activated are to be ALI-capable; and by December 31, 2002 and thereafter, 100 percent of all new digital handsets activated are to be ALI-capable. We also eliminated the separate phase-in schedule that was to have been triggered by a PSAP request. We extended the date for carriers to file E911 Phase II implementation reports from October 1, 2000 to November 9, 2000.

5. The FocuSystems petition raises two issues. First, the petition requests that the Commission modify its rules or otherwise clarify that it will grant waivers of its handset activation benchmarks to carriers not yet subject to a valid PSAP request for Phase II service.³ In support of this request, the petition argues that the interim benchmarks for activating new ALI-capable handsets will force many carriers that select a handset-based approach to make substantial investments in equipment and switch upgrades long before any PSAP in their operating territory is prepared to utilize the location data and will effectively prevent carriers from considering newer handset-based technologies that are currently under development and likely to provide superior performance and other benefits.⁴

6. Second, the petition requests that the Commission reconsider the *E911 Fourth MO&O* "insofar as it compels wireless carriers to declare what type of technology they plan to use to meet the Phase II Automatic Location Identification (ALI) requirements ... before a feasible and affordable technology solution is available."⁵ This statement appears to refer to the reports wireless carriers are required to file under Section 20.18(i) of the Commission's rules.⁶

7. The Association of Public-Safety Communications Officials-International, Inc. (APCO) submitted an *ex parte* filing opposing FocuSystems' petition.⁷ APCO contends that the Commission cannot afford to delay E911 deployment merely because a technology vendor claims that improvements are on the horizon.⁸ APCO argues that FocuSystems' specific proposal to condition implementation of handset

² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442 (released September 8, 2000) (*E911 Fourth MO&O*).

³ FocuSystem Petition for Reconsideration, filed November 1, 2000, at 4 (*Petition*).

⁴ *Id.* at 1.

⁵ *Id.*

⁶ 47 C.F.R. §20.18(i). Under this rule, the Phase II reports were required to be filed by November 9, 2000. For copies of these reports, see <http://www.fcc.gov/wtb/e911>. In its petition, filed November 1, 2000, FocuSystems did not seek a stay of the reporting requirement in this rule.

⁷ *Ex Parte* Comments of The Association of Public-Safety Communications Officials-International, Inc. (APCO) in Opposition to Petition for Reconsideration of FocuSystems, Inc. (filed Dec. 5, 2000) at 3. (APCO *ex parte*) As APCO notes, these comments were not submitted by the deadline for filing a formal opposition to the FocuSystems Petition. However, APCO did submit its comments prior to the deadline for filing replies to oppositions. *Id.* at n.1. Within our discretion, we choose to consider the arguments APCO presents in this filing.

⁸ *Id.* at 3.

solutions on PSAP requests is unworkable and counterproductive, and that the Commission has already recognized the need to move forward on handset deployment even in the absence of PSAP Phase II readiness.⁹

III. DISCUSSION

8. We deny FocuSystems' petition as untimely, directed to the wrong decision, and without merit. The E911 Phase II implementation reporting requirements and the schedule for deployment of handset-based location solutions, including interim benchmarks for activation of ALI-capable handsets, were adopted in the *E911 Third Report and Order* in this proceeding, released on October 6, 1999.¹⁰ Petitions seeking reconsideration of that Order, including both the Phase II report schedule and the handset deployment schedule, were addressed in the *E911 Fourth MO&O*. The only rule changes adopted in the *E911 Fourth MO&O* were a short extension of the implementation report date,¹¹ a date which has now passed; relaxation of the handset deployment schedule for several months,¹² a change that FocuSystems says it supports;¹³ and elimination of a separate, more stringent deployment schedule in cases where PSAPs have requested Phase II,¹⁴ a change which FocuSystems does not mention. Thus, to the extent that FocuSystems suggests that wireless carriers should not be required to begin activating ALI-capable handsets until they have received a Phase II request from the PSAP serving the area, it appears to be seeking an untimely reconsideration of the decisions and rule changes adopted in the *E911 Third Report and Order*, not of any decisions or actions taken in the *E911 Fourth MO&O*.¹⁵

9. Moreover, in response to Focusystems' first argument that the interim handset activation benchmarks should be waived for carriers not yet subject to a PSAP request for Phase II service, we find that the petition provides no basis for reopening the issues in this proceeding or for delaying implementation of wireless E911 Phase II, an important public safety measure. As we discussed in the *E911 Third Report and Order*, it is important to require carriers to begin handset deployment even in advance of PSAP Phase II readiness to promote the rapid rollout of handset-based solutions.¹⁶ Handset-based solutions are deployed on a phased-in basis, to allow time for new ALI-capable handsets to be produced and existing handsets to be upgraded or replaced.¹⁷ Any delay in the initial deployment of ALI-capable handsets will result in a corresponding delay to their full penetration into the market. It is in the public interest to prevent any such additional delay. Also, requiring carriers to deploy handset solutions in advance of a PSAP request will ensure that customers who might use their handsets while roaming in

⁹ *Id.*

¹⁰ *E911 Third Report and Order*, 14 FCC Rcd at 17408, 17427.

¹¹ *E911 Fourth MO&O*, 15 FCC Rcd at 17467.

¹² *Id.* at 17454-55.

¹³ *Petition* at 1.

¹⁴ *E911 Fourth MO&O*, 15 FCC Rcd at 17453-54.

¹⁵ Under Section 405 of the Communications Act, "[a] petition for reconsideration must be filed within 30 days from the date upon which public notice is given of the order, decision, report, or action complained of." 47 U.S.C. §405.

¹⁶ *E911 Third Report and Order*, 14 FCC Rcd at 17408, para. 41.

¹⁷ *Id.* at 17406, para. 37.

areas served by carriers and PSAPs that have upgraded to Phase II will benefit from location capability.¹⁸

10. For these reasons, we believe that any further delay in the handset deployment schedule is not justified. Even if new location technologies will be developed in the near future, we believe that the public safety will be better served if carriers are required to deploy existing ALI technologies in accordance with the deployment schedule we have adopted.

11. We also find FocuSystems' second argument that the E911 Phase II implementation reporting requirement should be reconsidered to be without merit. We disagree with FocuSystems' assertion that this requirement forces carriers to select technology prematurely, as less than a year remains before wireless carriers must begin deploying E911 Phase II. Moreover, as we have repeatedly stated, carriers may make good-faith changes to their implementation plans, if necessary, after the initial reports have been filed.¹⁹ We note also that FocuSystems' request for reconsideration of the Phase II implementation reporting requirement is largely moot, as these reports were due November 9, 2000.

12. Accordingly, IT IS ORDERED that the Petition for Reconsideration of FocuSystems, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹⁸ *Id.* at 17409, para. 44.

¹⁹ *See, E911 Third Report and Order*, 14 FCC Rcd at 17428; *E911 Fourth MO&O*, 15 FCC Rcd at 17467; and *Wireless Telecommunications Bureau Provides Guidance on Carrier Reports on Implementation of Wireless E911 Phase II Automatic Location Identification*, Public Notice, CC Docket No. 94-102, DA 00-2099 (2000).