

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

In the Matter of )  
Revision of the Commission's Rules )  
To Ensure Compatibility with )  
Enhanced 911 Emergency Calling Systems ) CC Docket No. 94-102  
)  
Petitions for Reconsideration of Phase II Waivers )  
and Compliance Plans of Cingular Wireless, )  
Nextel, and Verizon Wireless )  
)  
Petitions for Reconsideration of Phase II )  
Compliance Deadlines for Non-Nationwide )  
CMRS Carriers of Alltel and Dobson )

**ORDER**

**Adopted:** October 15, 2003

**Released:** October 21, 2003

By the Commission:

**I. INTRODUCTION**

1. In this Order we deny petitions for reconsideration of orders approving waivers and compliance schedules for wireless Enhanced 911 (E911) Phase II.<sup>1</sup> We find that the Commission did not adopt a "strict liability" standard for future waiver requests or an overly strict regimen to enforce Phase II compliance plans or deployment schedules. We reiterate our intent to enforce the compliance plans and schedules, and to grant further waivers only in extraordinary circumstances. We expect that carriers will take their Phase II responsibilities seriously and meet the revised schedules as approved. We also address

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<sup>1</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Request for Waiver by Cingular Wireless LLC, 16 FCC Rcd 18305 (2001) (*Cingular Phase II Waiver Order*); 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*). Two other orders approving Phase II waiver requests and compliance plans were adopted at the same time for AT&T Wireless (Request for Waiver by AT&T Wireless Services, Inc., 16 FCC Rcd 18253 (2001)) and Sprint (Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, 16 FCC Rcd 18330 (2001)). AT&T Wireless and Sprint did not seek reconsideration of their waiver orders. For brevity, we refer to the five orders collectively as the *E911 Phase II Waiver Orders*. For the order staying E911 Phase II deployment deadlines for certain non-nationwide carriers, see Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841 (2002) (*Non-Nationwide Carriers Order*). The petitions and other pleadings are listed in the Appendix.

several other issues raised by the petitions and, where justified, provide clarification of our Phase II rules and policies. Overall, we reaffirm the commitment of this Commission to the most rapid possible deployment of wireless E911 location technology and the obligations of wireless carriers to comply with the Phase II rules and compliance schedules.<sup>2</sup>

## II. BACKGROUND

2. The goal of this proceeding, initiated in 1994, has been to improve emergency communications and public safety by extending basic and enhanced 911 capabilities to wireless callers.<sup>3</sup> Most significantly, we have adopted rules requiring wireless carriers to provide to Public Safety Answering Points (PSAPs) information that identifies the location of wireless 911 calls, a capability called Automatic Location Identification (ALI). Accurate location information reduces the time needed for emergency personnel to respond to 911 calls and assists public safety organizations in operating more effectively and efficiently. Under E911 Phase I, carriers report the location of the cell site that received the 911 call.<sup>4</sup> Under Phase II, wireless carriers were required to begin deploying the far more accurate Phase II ALI by October 1, 2001, upon valid requests from public safety organizations.<sup>5</sup> Carriers may employ a range of Phase II location technologies, provided they comply with our rules for accuracy, reliability, and timeliness, including network-based, handset-based, and hybrid technologies.<sup>6</sup>

3. The Commission recognized early on that there could be circumstances where deployment of E911 might not be technically or economically feasible within the scheduled time periods, and stated that these cases could be dealt with through individual waivers.<sup>7</sup> In the *E911 Fourth Memorandum*

<sup>2</sup> We do not address in this Order the petitions for revision of waivers for their GSM networks filed by T-Mobile, AT&T Wireless and Cingular Wireless. T-Mobile, AT&T Wireless, and Cingular Wireless have now each negotiated consent decrees with the Commission which include revised schedules for the deployment of Phase II for their GSM networks. AT&T Wireless Services, Inc., *Order*, File No. EB-02-TS-018, 16 FCC Rcd 19938, (2002); Cingular Wireless LLC, *Order*, File No. EB-02-TS-003, FCC 03-129 (rel. June 12, 2003); T-Mobile USA, Inc., *Order*, File No. EB-02-TS-012, FCC 03-172 (rel. July 17, 2003). Their petitions for revision of their earlier Phase II plans and waivers are accordingly moot.

<sup>3</sup> 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, 18682 (1996) (*E911 First Report and Order*); Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 FCC Rcd 22665 (1997) (*E911 Reconsideration Order*); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd 10954 (1999) (*E911 Second MO&O*); 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*); 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 (2000) (*E911 Fourth Memorandum Opinion and Order*). For further information, see the Commission's E911 web page, [www.fcc.gov/911/enhanced](http://www.fcc.gov/911/enhanced).

<sup>4</sup> 47 C.F.R. § 20.18(d) (2002). The carrier also must report a callback number for the caller, if possible.

<sup>5</sup> 47 C.F.R. §§ 20.18(f), (g).

<sup>6</sup> See, e.g., *E911 Third Report and Order*, 14 FCC Rcd 17388 (1999); *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000).

<sup>7</sup> *E911 First Report and Order*, 11 FCC Rcd at 18718 (para. 84).

*Opinion and Order*, we specifically addressed E911 waiver issues and set out guidelines and standards for Phase II waiver requests.<sup>8</sup> Based on these guidelines, the Commission denied two Phase II waiver requests but granted T-Mobile USA, Inc. (T-Mobile)<sup>9</sup> a limited, temporary, conditional waiver of the Phase II accuracy requirements to permit deployment of E-OTD/NSS, an emerging hybrid location technology for networks using the GSM air interface.<sup>10</sup>

4. As the October 1, 2001 date for beginning deployment approached, other wireless carriers also sought waivers of the Phase II rules. In the separate but similar *E911 Phase II Waiver Orders*, the Commission addressed requests from five major national wireless carriers, granting waivers subject to conditions for monitoring and enforcing the carriers' individual compliance plans.<sup>11</sup> The Commission also referred two carriers, AT&T Wireless Services, Inc. (AT&T Wireless) and Cingular Wireless LLC (Cingular), to the Commission's Enforcement Bureau to consider possible violation of the Phase II rules.<sup>12</sup> Cingular,<sup>13</sup> Nextel, Inc. and Nextel Partners (Nextel), and Verizon Wireless (Verizon)<sup>14</sup> each filed

<sup>8</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17457-58 (paras. 42-45).

<sup>9</sup> When the waiver was granted, the company now known as T-Mobile called itself VoiceStream Wireless Corporation. In this order, we generally refer to this company as T-Mobile except in citing Commission decisions or filings using the VoiceStream name, or where reference to VoiceStream is helpful for clarity.

<sup>10</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17445 (para. 5). A public safety organization, the Association of Public-Safety Communications Officials-International, Inc. (APCO), sought reconsideration of the T-Mobile waiver, claiming that the Commission should allow further comment on the waiver and that the waiver could undermine progress in promoting wireless E911 solutions. APCO Petition at 3. This petition is pending and will be addressed separately.

<sup>11</sup> *E911 Phase II Waiver Orders*.

<sup>12</sup> FCC Acts on Wireless Carrier and Public Safety Requests Regarding Enhanced Wireless 911 Services, *News Release* (rel. Oct. 5, 2001). The Commission subsequently entered into consent decrees with Cingular Wireless and AT&T Wireless concerning the deployment of Phase II technology for their TDMA networks, including voluntary contributions to the U.S. Treasury and possible further payments for failure to meet agreed-on timetables for deployment of a network-based technology. Cingular Wireless LLC, *Order and Consent Decree*, 17 FCC Rcd 8529 (2002); AT&T Wireless Services, Inc., *Order and Consent Decree*, 17 FCC Rcd 19938 (2002).

<sup>13</sup> The Wireless Telecommunications Bureau has already addressed one issue in Cingular's petition, its request for additional time for the deployment of handsets employing the E-OTD location technology in its GSM network. Cingular subsequently informed the Commission that it had decided not to implement E-OTD and the Bureau accordingly dismissed this request in Cingular's petition for reconsideration as moot. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Cingular Wireless LLC's Petition for Reconsideration, Order*, 17 FCC Rcd 24910 (2002). See also Cingular Wireless LLC, *Order*, File No. EB-02-TS-003, FCC 03-129 (rel. June 12, 2003).

<sup>14</sup> In its petition and a later supplement, Verizon sought reconsideration of requirements in paragraph 44 of its waiver order concerning the deployment schedule and accuracy requirements for an interim location solution known as Enhanced Forward Link Trilateration (EFLT). See *Verizon Phase II Waiver Order*, 16 FCC Rcd at 18380 (para. 44). In a July 18, 2003 letter, however, Verizon states that it has completed deployment of EFLT in relevant markets (those served by Lucent and Nortel switches) and after testing, determined that EFLT could provide location information that was more accurate than Phase I. Verizon states that its request that paragraph 44's requirements be removed or at a minimum be modified as to the accuracy requirement and deployment schedule for EFLT no longer needs Commission action. Letter from John T. Scott, III to Marlene H. Dortch, CC Docket No. 94-102 (filed July 18, 2003). We accordingly do not address these issues.

petitions for reconsideration of the separate orders addressing their waiver requests.<sup>15</sup>

5. On July 26, 2002, the Commission adopted the *Non-Nationwide Carrier Order*, which temporarily stayed certain Phase II deadlines for smaller, non-nationwide wireless carriers.<sup>16</sup> Alltel Communications, Inc (Alltel), Dobson Cellular Systems, Inc., and American Cellular Corporation (joint petition, collectively referred to hereafter as "Dobson") sought reconsideration of that order.<sup>17</sup>

### III. DISCUSSION

#### A. Future Phase II Waivers and Enforcement

6. Petitions. Even though the Commission approved the nationwide carriers' requests for waivers in the *E911 Phase II Waiver Order* and granted additional time for deployment to non-nationwide carriers, the petitioners object to the following language in both the waiver orders and the *Non-Nationwide Carrier Order* concerning further waivers and enforcement:<sup>18</sup>

[The carrier] is required to comply with each individual condition of this Order, including the reporting requirements set forth above. Consistent with the *E911 Fourth Memorandum Opinion and Order*, we note that the conditions imposed herein as part of the grant of Phase II relief have the same force and effect as a Commission rule itself. Each specific benchmark and Quarterly Report is a separate condition of the plan as approved. In addition, [the carrier] remains subject to all other requirements of the Commission's wireless E911 rules apart from those specifically modified in this Order. To the extent that [the carrier] fails to satisfy any condition or Commission rule, it will be subject to possible enforcement action, including but not limited to revocation of the relief, a requirement to deploy an alternative ALI technology, letters of admonishment or forfeitures. We will not entertain requests for additional relief that seek changes in the requirements, schedules, and benchmarks imposed herein absent extraordinary circumstances.

Moreover, the approval of [the carrier's] compliance plan does not alter [the carrier's] ultimate obligation to comply with the Phase II rules and the conditions of this relief. [The carrier] remains ultimately responsible for providing timely compliant Phase

<sup>15</sup> See Cingular, Nextel, and Verizon File Petitions for Reconsideration of Commission Orders on Wireless E911 Phase II Waiver Requests, *Public Notice*, 16 FCC Rcd 20438 (2001). Oppositions, comments and reply comments are listed in the Appendix to this Order. Unless otherwise indicated references to "Petitions" in this Order are to the carriers' reconsideration petitions.

<sup>16</sup> *Non-Nationwide Carriers Order*, 17 FCC Rcd 14841. The Order set separate deadlines of March 1, 2003 for beginning Phase II deployment for Tier II carriers and September 1, 2003 for Tier III carriers. Tier II carriers are non-national carriers with over 500,000 subscribers as of the end of 2001. Tier III carriers are all smaller carriers subject to the Phase II rules. Alltel, Dobson, and American Cellular are all Tier II carriers.

<sup>17</sup> Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Regarding Order to Stay E911 Phase II Rules for Small Carriers, *Public Notice*, 17 FCC Rcd 17175 (2002).

<sup>18</sup> *Cingular Phase II Waiver Order*, 16 FCC Rcd at 18313-14 (paras.26-27); *Nextel Phase II Waiver Order*, 16 FCC Rcd at 18288-89 (paras. 35-36); *Verizon Phase II Waiver Order*, 16 FCC Rcd at 18377-78 (paras. 34-35); *Non-Nationwide Carriers Order* at 14852-53 (paras. 36-37).

II service. If [the carrier] does not have compliant Phase II service on the dates set forth herein, it will be deemed noncompliant and referred to the Commission's Enforcement Bureau for possible action. At that time, an assertion that a vendor, manufacturer or other entity was unable to supply compliant products will not excuse noncompliance. However, a carrier's "concrete and timely" actions taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in such an enforcement context. As set forth above, [the carrier] is required to include in its Quarterly Reports a statement regarding whether it has met each deployment benchmark, activation rate, accuracy milestone, and any other condition as set forth below, and, if not, the reasons for its failure to comply. As noted above, the report must be supported with an affidavit. To the extent that the Commission receives a complaint or otherwise has questions regarding the information in the report, or more generally [the carrier's] compliance, [the carrier] may be required to provide additional documentation to refute the complaint or respond to the Commission's questions. In the event that [the carrier's] Phase II solution unexpectedly fails to comply with the Phase II accuracy requirements, [the carrier] shall, as a condition, propose to deploy a solution that does comply with those requirements, as well as the other conditions of the Order and applicable Phase II rules (footnotes omitted).

7. Petitioners argue that the above language improperly imposes "strict liability" on the carriers for future compliance,<sup>19</sup> prejudges future waiver requests,<sup>20</sup> and denies due process by perhaps not allowing a meaningful opportunity to be heard.<sup>21</sup> Petitioners express concern that they will be considered in violation for missing a Phase II compliance plan deadline regardless of the reason, even if that reason is outside the carrier's control, such as delay in delivery by an equipment vendor, and without being given notice and an opportunity to be heard prior to a finding of a violation.<sup>22</sup> Petitioners also claim that when an agency's rulemaking decisions are based on its "predictive judgment" it must afford its regulatees meaningful "safety valve" procedures in the event its predictions prove inaccurate.<sup>23</sup> One petitioner also argues that the language represents a substantive revision to the E911 waiver rule adopted in violation of the Administrative Procedure Act's requirement of notice and comment.<sup>24</sup>

8. Analysis. We find that the waiver orders applied the Phase II waiver standards previously set out by the Commission and reaffirmed these standards in a manner reasonably calculated both to promote public safety and to recognize the procedural and substantive rights of wireless carriers.<sup>25</sup> Further, the Commission appropriately explained for carriers how Phase II compliance plans, once granted, could be modified and would be enforced. The additional discussion of our waiver policies and

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<sup>19</sup> Cingular Petition at 22-24; Verizon Petition at 2-5; Dobson Petition at 3.

<sup>20</sup> Nextel Petition at 14-16.

<sup>21</sup> Cingular Petition at 23; Verizon Petition at 5-7; Alltel Petition at 4; Dobson Petition at 4-5.

<sup>22</sup> Nextel Petition at 10-14; Verizon Petition at 7-11; Alltel Petition at 4-5; Dobson Petition at 5-6.

<sup>23</sup> Verizon Petition at 7-11; Alltel Petition at 4-5; Dobson Petition at 6-8.

<sup>24</sup> Nextel Petition at 15-16.

<sup>25</sup> See, *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17457-58 (paras. 42-45). See also, fn. 3, *supra*.

enforcement plans in this order should further clarify these matters for carriers and other interested parties.

9. In the waiver order language objected to by the carriers seeking reconsideration, the Commission did not state or imply, as the petitioners contend, that it would not grant future waiver requests<sup>26</sup> or otherwise impose "strict liability" on the carriers. Further, the Commission did not alter either its overall waiver standards or the specific standards for Phase II waivers described in the *E911 Fourth Memorandum Opinion and Order*. In the *E911 Waiver Orders*, we made clear to these carriers that we would examine any waiver requests closely and would not expect to grant further waivers absent extraordinary circumstances. This approach is wholly consistent with the general standards for waivers and those specific to Phase II waivers.<sup>27</sup> Those standards anticipate that carriers will work aggressively with technology vendors and equipment suppliers to implement Phase II.

10. In the case of any further waiver petitions from the nationwide carriers seeking reconsideration, we would, properly, also take into account additional facts and circumstances. Logically, however, these carriers should have a diminishing need to seek additional waivers. Although previously it was not possible to predict with complete accuracy when location technology would be available, that technology is now in fact available and in use.<sup>28</sup> Many systems have now been deployed and others are on the way to completion.<sup>29</sup> Further, the carriers have significant ability to influence the actual Phase II deployment schedule. As a whole, the six nationwide carriers provide more than 75 percent of all cellular-type service to U.S. subscribers.<sup>30</sup> These carriers do rely on manufacturers and vendors of their chosen location technologies, but suppliers also compete to provide the equipment to these large and important

<sup>26</sup> For example, the Commission granted a limited Phase II waiver to Sprint, allowing it additional time to meet an interim benchmark for deployment of location-capable handsets. In its decision, the Commission took into account the limited, specific nature of Sprint's request, the concrete, diligent steps it had taken to meet the benchmark, and the difficulties it nonetheless encountered in fully meeting the benchmark. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Request for a Limited and Temporary Rule Waiver by Sprint Corporation*, FCC 03-133 (rel. June 16, 2003) (*Sprint Waiver Order*).

<sup>27</sup> See *E911 Fourth Memorandum and Order*, 15 FCC Rcd at 17457 (para. 43); *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

<sup>28</sup> For example, location capable handsets are now being sold to wireless customers in large numbers. See, e.g., Sprint PCS Seventh Quarterly E911 Implementation Report, CC Docket No. 94-102 (filed August 1, 2003). The first handset-based location system was deployed in the State of Rhode Island by Sprint PCS in Fall of 2001 along with network-based systems in counties in Illinois and Indiana by Verizon Wireless. Verizon E911 Status Quarterly Report, CC Docket No. 94-102, at 3 (filed Feb. 1, 2002). For additional information on Verizon's Phase II deployment in St. Clair County, Illinois, see <http://www.geometrix911.com/newsrm/011025.html> and <http://www.911.co.st-clair.il.us>. Location solutions have been adapted to additional air interfaces. Report on GSM Capabilities Submitted by TruePosition, Inc., *Ex parte* submission, CC Docket No. 94-102 (filed Feb. 27, 2002); Grayson Wireless Adds GSM Compatibility to its Geometrix® Wireless 911 Caller Location System, Press Release, Aug. 30, 2001.

<sup>29</sup> See, e.g. Enhanced 911 Phase II Waiver Compliance Plans, <http://www.fcc.gov/911/enhanced/reports/phase2-waiver.html>.

<sup>30</sup> Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Sixth Report*, 16 FCC Rcd 13350, 13464, App. C, Table 3 (2001). See also, The FCC Acts on Wireless Carrier and Public Safety Requests Regarding Enhanced Wireless 911 Services, *News Release* (rel. Oct. 5, 2001).

customers. To the extent that these carriers are active and aggressive in ordering, purchasing, testing and deploying location technology equipment and services, and actively market and promote this capability to their customers, they increase their ability to meet the deadlines in their compliance plans.

11. In addition, the three nationwide carriers seeking reconsideration have already been granted waivers, based on specific compliance plans each proposed, based upon their own evaluation and testing of location technologies and discussions and negotiations with location technology suppliers and equipment manufacturers. It is within this context that we expect that further waivers will be granted only in extraordinary circumstances. Once a carrier has been granted a Phase II waiver, the carrier is of course expected to meet the terms of its compliance plan. The carriers represented that they could meet their proposed schedules, including obtaining the necessary equipment. They also defended the plans as representing a clear path toward full compliance and as justification for waiver of the schedules and other obligations that would otherwise apply. In sum, if carriers do in fact work aggressively with their suppliers and give the necessary priority to Phase II implementation, we expect that they should be able to meet the requirements of the compliance plans which they submitted and for which they sought approval.

12. Moreover, contrary to petitioners' assertions, the waiver orders do not prejudge the outcome of any Phase II compliance plan enforcement proceeding. The petitioners express concern about the language in the waiver orders that says that if a carrier does not comply with the Phase II rules or its compliance plan "it will be deemed noncompliant and referred to the Commission's Enforcement Bureau for possible action."<sup>31</sup> They suggest that this could mean the Commission is improperly changing its substantive rules or procedures to find a carrier in violation, and assess a penalty, without notice or an opportunity to be heard. That is not the case. A carrier may seek a waiver in advance of a deadline in the Phase II rules or its compliance plan. However, the carrier always becomes liable for possible enforcement action if it fails to comply with an applicable Phase II deadline. Referral to the Enforcement Bureau when such an apparent violation is reported, or otherwise appears likely, is a normal and familiar exercise of the Commission's authority and discretion. Especially in cases such as this, where public safety is directly at issue, automatic referral of the matter for investigation is plainly reasonable and appropriate to ensure that public safety is not compromised.

13. Such automatic referral, however, does not constitute a final judgment that a carrier has violated a rule or its compliance plan, nor does it result automatically in a penalty if a violation is ultimately found. Once the referral is made, carriers are afforded all the rights to which they are entitled by statute and under the Commission's rules. The referral may trigger an investigation, but does not determine or prejudge the result.

14. Likewise, referral to the Enforcement Bureau does not deprive a carrier of a fair opportunity to be heard. Petitioners cite language in the orders indicating that assertions that a carrier's location technology provider was unable to supply compliant products "will not excuse noncompliance."<sup>32</sup> As discussed above, the nationwide carrier compliance orders are based on the carriers' own representations about the availability of location technology equipment and are not subject to conditions regarding such availability. Carriers that fail to meet their compliance plans will have the opportunity to present evidence that, despite the carrier's aggressive and documented efforts, vendors were unable to supply necessary equipment. For example, should the Enforcement Bureau decide to issue a letter of inquiry, a carrier would have the opportunity to present evidence as to why enforcement action should not

<sup>31</sup> See para. 6, *supra*, quoting from *E911 Phase II Waiver Orders*.

<sup>32</sup> See, e.g., Verizon Petition at 4.

be taken. Similarly, if the Commission or the Enforcement Bureau issues a Notice of Apparent Liability, whether or not preceded by a letter of inquiry, Section 503(b) of the Communications Act provides carriers an opportunity to demonstrate why a monetary forfeiture should not be assessed. Carriers will also, of course, retain the right to seek reconsideration or review of any penalty in any specific case.<sup>33</sup>

15. While the same principles apply, the non-nationwide Tier II and Tier III carriers may present different factual circumstances that may warrant some differences in their treatment. On the one hand, we have already granted these carriers additional time to comply with the Phase II rules, based on the reasonable expectation that those carriers will be able to employ the same location technologies as the larger, nationwide carriers.<sup>34</sup> If the smaller carriers work actively and effectively during this additional time, we expect that they will be able to comply with the deadlines, except perhaps in extraordinary circumstances. On the other hand, the schedules for those carriers were not specifically tailored for them or embodied in individual compliance plans. We expect to take these factors into account in assessing any waiver requests or enforcement actions concerning smaller carriers. If a Tier II or Tier III carrier believes that it cannot meet its Phase II deadline, it may seek a waiver, as we indicated in the *Non-Nationwide Carrier Order*. Any such waiver requests will be expected to comply with the Phase II waiver standards.<sup>35</sup> We also expect that any such requests must be timely filed, before the carrier's deadline. In the event that the carrier fails to comply with its Phase II deadline, we will, as we indicated in the *Non-Nationwide Carrier Order*, refer the carrier to the Enforcement Bureau. As discussed above, we find that this approach will afford carriers their rights to fair procedures and due process while promoting public safety.

## B. Differences in Treatment among Wireless Carriers

16. Petitions. Cingular and Nextel contend that the Commission failed to apply a consistent waiver standard. Nextel claims that our decision granting its waiver inappropriately treated it in a manner substantially different from T-Mobile with respect to future waiver requests and enforcement.<sup>36</sup> Nextel states, for example, that the Commission did not espouse a specific position on enforcement action in T-Mobile's case and imposed less frequent and detailed reporting requirements on T-Mobile than on the other five nationwide carriers.<sup>37</sup> Nextel also contends that the Commission's decision to grant smaller carriers additional time to file waivers improperly and without explanation established two separate classes of carriers.<sup>38</sup> Cingular claims that denial of its GSM waiver and referral to enforcement was inconsistent

<sup>33</sup> These processes have now been applied in several cases. Where wireless carriers have failed to comply with the terms of their Phase II compliance plans and sought revisions to those plans, we have followed through on our announced policy of referring those carriers to the Enforcement Bureau for investigation and consideration of appropriate remedies. See, e.g., AT&T Wireless Services, Inc., *Notice of Apparent Liability*, 17 FCC Rcd 9903 (2002); Cingular Wireless LLC, *Order and Consent Decree*, 17 FCC Rcd 8529 (2002); T-Mobile USA, Inc., *Notice of Apparent Liability*, 18 FCC Rcd 3501 (2003). Where a carrier has demonstrated extraordinary circumstances justifying relief, we have granted a Phase II waiver. See, *Sprint Waiver Order* fn. 26, *supra*. For further information, see <http://www.fcc.gov/eb/E911/Violations.html>

<sup>34</sup> *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14844 (para. 10); E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, FCC 03-241 (rel. Oct. 10, 2003).

<sup>35</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17457-58 (paras. 44-45).

<sup>36</sup> Nextel Petition at 16.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 6-10.

both with the waivers granted to Verizon and Nextel and the grant of additional time for waiver requests to small and mid-sized carriers, including those carriers who had not even filed waiver requests. It also claims that the Commission failed to provide an explanation for the different treatment.<sup>39</sup>

17. Analysis. Unquestionably, the *E911 Phase II Waiver Orders* do permit differences in relief from the E911 Phase II requirements among the six nationwide carriers, as well as between these and smaller carriers. These differences in treatment are justified by the varying circumstances of the individual carriers, the orderly and efficient implementation of Phase II, and the appropriate exercise of Commission discretion to manage the E911 proceeding. In particular, we find that our treatment of the Phase II waiver requests of Cingular and Nextel, as well as those of small and mid-sized carriers, was reasonable and appropriate.

18. In general, waiver decisions involve highly case-specific analysis – the applicant must demonstrate special circumstances that justify deviations from the applicable rules.<sup>40</sup> Of course, this type of case-by-case review may lead to different results based on particular facts and circumstances. In the case of the Phase II waivers, for example, the Commission granted relief based upon individual compliance plans proposed by each of the major national carriers containing specific deployment schedules, based on what each carrier claimed it could meet and what best served public safety needs. The goal was to ensure that E911 Phase II is deployed as soon as possible, recognizing that each carrier might face its own set of limitations and opportunities.

19. T-Mobile's waiver preceded the other waivers by more than a year, and while we did not discuss future waivers or enforcement with the same level of detail in the case of T-Mobile, we made clear that Phase II waivers could be withdrawn if the carrier fails to comply with its terms and that carriers should expect enforcement measures would be taken and appropriate penalties assessed.<sup>41</sup> These are the same policies the Commission described in all five of the other nationwide carrier waiver orders. We also made clear in the *E911 Fourth Memorandum Opinion and Order*, as well as in the subsequent waiver orders, that we would take into account a carrier's concrete and timely efforts to comply and a carrier's claims that its failure to comply was the result of factors outside its control.<sup>42</sup> The discussion in the later waiver orders provides more detail and reflects our evolving understanding of Phase II deployment issues, but does not in our view change our Phase II waiver policies or treat T-Mobile differently from other major national wireless carriers.<sup>43</sup> With respect to alleged differences in treatment between T-Mobile and the other five nationwide carriers, we clarify that T-Mobile is now subject to the same standards regarding future waivers and enforcement as are the other carriers.<sup>44</sup>

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<sup>39</sup> Cingular Petition at 19-20.

<sup>40</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>41</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458 (para. 45), 17463 (para. 60), and 17464 (para. 68).

<sup>42</sup> Compare *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458 (para. 45), 17463 (para. 60), and 17464 (para. 68) with e.g., *Cingular Phase II Order* 16 FCC Rcd at 18807-08 (para. 26-27).

<sup>43</sup> See paras. 8-14, *supra*.

<sup>44</sup> See T-Mobile USA, Inc., *Order and Consent Decree*, File No. EB-02-TS-012, FCC 03-172 (rel. July 17, 2003). (*T-Mobile Consent Decree*).

20. In the *E911 Fourth Memorandum Opinion and Order*, we did adopt less frequent and detailed reporting requirements for T-Mobile than were later set for the other national wireless carriers.<sup>45</sup> These reporting requirements were reasonable in view of the facts and circumstances before us at the time we issued that order. For example, T-Mobile's waiver request did not contemplate any delay in Phase II deployment, but rather sought relief from the immediate application of the stricter handset accuracy requirement. Because T-Mobile's waiver request did not involve any delay in Phase II deployment, the Commission reasonably concluded at the time that relatively simple, semiannual reporting requirements would be sufficient. Subsequent national carrier Phase II waiver requests and compliance plans differed significantly from T-Mobile's and warranted correspondingly different reporting requirements. These later requests sought more varied and complex waiver requests and compliance plans, and more serious and lengthy delays.<sup>46</sup> These plans involve delays not simply in the accuracy of the information delivered to the PSAPs, but in deployment itself. This situation, in our view, clearly warranted closer scrutiny and more extensive information, both for this Commission and for PSAPs, to ensure that any harm to public safety was minimized so far as possible and to permit prompt remedial action.

21. Further, when T-Mobile later indicated that it planned to shift to a different, network-based location technology,<sup>47</sup> we referred the carrier to the Enforcement Bureau and subsequently negotiated a consent decree and compliance plan with T-Mobile.<sup>48</sup> Just as is the case with the other major nationwide carrier compliance plans, this compliance plan sets an explicit, enforceable schedule to deploy Phase II as soon as possible in light of the carrier's specific circumstances. Both the procedures followed in T-Mobile's case and the terms and conditions set by its consent decree are consistent with those set for comparable carriers. For example, the consent decree commits T-Mobile to the same types of automatic penalties for failure to comply with its Phase II deadlines and the same reporting requirements and schedule.<sup>49</sup>

22. Similarly, we continue to believe that it was a reasonable and appropriate exercise of the Commission's discretion to allow small and mid-sized carriers additional time in which to file for E911 Phase II waivers without being subject to enforcement action. As the reports and waiver requests filed by the small and mid-sized carriers indicate, the largest nationwide carriers have the greatest ability to influence location technology vendors and equipment manufacturers to move quickly to provide necessary hardware and software.<sup>50</sup> Because the nationwide carriers have large subscriber bases, they are likely to place the largest orders for the necessary equipment, making them the priority customers for vendors of the necessary equipment and technology. The initial, limited supplies of location-capable handsets and

<sup>45</sup> See, generally, *E911 Phase II Waiver Orders*.

<sup>46</sup> This includes Nextel's own waiver request, under which it would delay any provision of Phase II location information to PSAPs for at least a year, and delay introduction of ALI-capable handsets for much longer than permitted under the Phase II rules or the T-Mobile compliance plan.

<sup>47</sup> Letter from Robert A. Calaff to John B. Muleta and David Solomon, CC Docket No. 94-102 (filed March 21, 2003); T-Mobile USA, Inc. Sixth Semi-Annual Report on E911 Phase II Implementation Plan (filed April 1, 2003).

<sup>48</sup> *T-Mobile Consent Decree*.

<sup>49</sup> *Id.*

<sup>50</sup> See, generally Phase II Automatic Location Identification (ALI) Reports at <http://www.fcc.gov/911/enhanced/reports/phase2-ali.html> and *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14844-45 (para. 12).

network equipment are made available to nationwide carriers first.<sup>51</sup> These carriers also have the greatest resources to evaluate and test location solutions.<sup>52</sup> Smaller and regional carriers use the same air interfaces as the larger nationwide carriers, *e.g.*, Time Division Multiple Access (TDMA), Code Division Multiple Access (CDMA), and Global System for Mobile telecommunications (GSM). The decisions that nationwide carriers make regarding E911 deployment substantially affect the choice of location technologies available to smaller carriers as well as the time frame for availability.<sup>53</sup> For example, according to these smaller carriers, when AT&T Wireless and Cingular announced they were transitioning away from TDMA, handset manufacturers decided not to produce TDMA handsets with location capabilities such as A-GPS for other, smaller carriers, even if those carriers were planning to apply this location technology.<sup>54</sup> Some of the smaller carriers also have joint operating agreements, roaming agreements, or other arrangements with the nationwide carriers that constrain them to follow the lead of those carriers in areas such as location technology.<sup>55</sup>

23. Under these circumstances, allowing the smaller carriers an additional opportunity to examine the major nationwide carrier requests and the compliance plans as the Commission approved them was a reasonable and realistic recognition of the situation faced by these carriers. These considerations also justify the Commission's decision to extend some Phase II deadlines for the small and mid-sized wireless carriers, while continuing to impose the same ultimate handset implementation date of December 31, 2005 and requiring the mid-sized carriers to submit quarterly reports.<sup>56</sup> In this decision, the Commission reasonably took into account both the public interest and the realities faced by small and mid-sized carriers.<sup>57</sup>

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<sup>51</sup> *Non-Nationwide Carrier Order*, 17 FCC Rcd at 14844-45 (para. 10-13).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> United States Cellular (USCC), for one, initially planned to employ A-GPS-capable handsets to provide Phase II for its largely rural TDMA network, based on representations from four handset manufacturers that they planned to produce TDMA handsets with A-GPS capability. United States Cellular Corporation's Implementation Report at 5 (filed November 9, 2000). However, after AT&T Wireless and Cingular announced their plans to transition from TDMA in their networks, USCC sought a waiver based in part on the fact that handset manufacturers no longer planned to develop location-capable handsets for TDMA. United States Cellular Corporation Petition for Waiver, CC Docket No. 94-102, at 14 (filed September 10, 2001). USCC is currently replacing its TDMA network with a CDMA technology and plans to employ A-GPS to provide Phase II, but only for its CDMA network. United States Cellular Corporation Quarterly E911 Implementation Report at 4 (filed July 25, 2003).

<sup>55</sup> *E.g.*, by agreement, AT&T Wireless provided network operations services to Cincinnati Bell Wireless, including the implementation of Phase II. Cincinnati Bell Wireless LLC E911 Phase II Implementation Report (filed November 9, 2000). *See also*, Cincinnati Bell Wireless Petition for Waiver (filed November 30, 2001)

<sup>56</sup> *Non-Nationwide Carriers Order*, 17 FCC Rcd 14841.

<sup>57</sup> Nextel's related claim that it was arbitrarily denied the opportunity that was afforded to smaller carriers to refresh the record is similarly groundless because Nextel does not present any specific additional information that it wished to file but somehow could not. *See* Nextel Petition for Reconsideration.

**C. Paperwork Reduction Act (PRA)**

24. In the *E911 Phase II Waiver Orders*, the Commission imposed quarterly reporting requirements on the five carriers granted waivers as part of the conditional relief granted. The Commission concluded that the Paperwork Reduction Act (PRA) did not apply to these requirements because the information collection did not apply to ten or more entities.<sup>58</sup> Verizon argued in its reconsideration petition that the reporting requirement does impose an information collection applicable to 10 or more entities because it applies to Verizon's affiliates as well as the parent company. Therefore, Verizon argues that the reporting requirement must be approved by the Office of Management and Budget (OMB).<sup>59</sup>

25. On February 1, 2002, the Wireless Telecommunications Bureau requested clearance under the PRA for new PRA burdens adopted in the *E911 Fourth Memorandum Opinion and Order* and other decisions responding to waiver requests from six wireless entities seeking relief from implementing various aspects of the E911 Phase II program. Approval was granted by OMB on February 14, 2002 and the issue presented by Verizon is thus moot.

**IV. ORDERING CLAUSES**

26. Accordingly, the Petitions for Reconsideration of the *E911 Phase II Waiver Orders* filed by Cingular Wireless, Nextel and Nextel Partners, and Verizon Wireless ARE DENIED.

27. IT IS FURTHER ORDERED that the Petitions for Reconsideration of the *Non-Nationwide Carrier Order* filed by Alltel Communications, Inc, Dobson Cellular Systems, Inc., and American Cellular Corporation ARE DENIED.

28. IT IS FURTHER ORDERED that a copy of this Order be served on Cingular Wireless, Nextel and Nextel Partners, Verizon Wireless, Alltel Communications, Inc, Dobson Cellular Systems, Inc., and American Cellular Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Secretary

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<sup>58</sup> See, e.g., *Verizon Phase II Waiver Order*, 16 FCC Rcd at 18380 (para. 46).

<sup>59</sup> Verizon Petition for Reconsideration at 14.

## Appendix

### Petitions for Reconsideration and/or Clarification of October 2001 E911 Phase II Waiver Orders

- Cingular Wireless LLC (Cingular)
- Nextel Communications, Inc. and Nextel Partners, Inc. (Nextel)
- Verizon Wireless (Verizon)

### Oppositions

- National Emergency Number Association (NENA, the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Association of State Nine One One Administrators (NASNA)

### Comments

- Cellular Mobile Systems of St. Cloud, LLV (CMS), Wireless Communications Venture (WCV), and South No. 5 RSA LP d/b/a Brazos Cellular Communications, LLC (Brazos)
- Cellular Telecommunications and Internet Association (CTIA)
- Copper Valley Wireless, Inc. (Copper Valley)
- Nokia Inc. (Nokia) and Motorola, Inc. (Motorola)
- Rural Cellular Association (RCA)
- Rural Telecommunications Group (RTG) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
- Southern Illinois RSA Partnership d/b/a First Cellular of Southern Illinois (First Cellular)
- Sprint PCS (Sprint)

### Replies

- Cingular
- NENA, APCO, NASNA and Tarrant County 9-1-1 District (Public Safety Organizations)
- Nextel
- Verizon (also filed Supplement)

### Petitions for Reconsideration and/or Clarification of the Non-Nationwide Carrier Order

- Alltel Communications, Inc. (Alltel)
- Dobson Cellular Systems, Inc. and American Cellular Corporation (joint petition) (Dobson)