

**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)	CC Docket No. 94-102
Calling Systems)	
)	
Petition of City of Richardson, Texas)	
)	
)	

SECOND ORDER ON RECONSIDERATION

Adopted: December 2, 2003

Released: December 11, 2003

By the Commission: Commissioner Martin issuing a separate statement.

I. INTRODUCTION

1. In this order, we deny petitions for reconsideration of the *Richardson Reconsideration Order* in which the Commission, *inter alia*, further clarified the Enhanced 911 (E911) rules by adding two tolling procedures to section 20.18(j), involving the definition of a valid request by a Public Safety Answering Point (PSAP) for E911 service from a wireless carrier adopted in the *Richardson Order*.¹

2. Specifically, we find that the amendments added at section 20.18(j) of the Commission’s rules did not substantively modify carriers’ obligations under that rule.² We find that adequate notice and opportunity for comment were provided before the adoption of these rules in the *Richardson Reconsideration Order*, as well as in the *Richardson Order*, and the Commission complied with the requirements of the Administrative Procedure Act (APA), as interpreted in *Sprint v. F.C.C.*, in both orders.³

3. We also decline to eliminate entirely or, alternatively, modify these tolling rules contained in sections 20.18(j)(3) and (4) of the Commission’s rules. We find that the rules are rationally based to achieve their intended goal to provide carriers with the opportunities they requested to toll their

¹ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas, CC Docket No. 94-102, Order on Reconsideration, 17 FCC Rcd 24282 (2002) (*Richardson Reconsideration Order*) (amending 47 C.F.R. § 20.18(j) by inserting numbers (1) and (2) before the two existing rules and adopting new rules in subsections (j)(3)-(5)); *affirming* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas, CC Docket No. 94-102, Order, 16 FCC Rcd 18982 (2001) (*Richardson Order*) (amending 47 C.F.R. § 20.18(j)).

² 47 C.F.R. § 20.18(j), revised to add (1) before the original rule and to include rule amendments at (2) through (5).

³ *Sprint v. F.C.C.*, 315 F.3d 369 (D.C. Cir. 2003), *see also* 5 U.S.C. §§ 553(b)-(c).

implementation obligation based on PSAP capability issues. These rules adhere to the requirements of the existing service rules, and they ensure carriers do not use them to delay or avoid the carriers' service obligations to the public safety community. Moreover, we find that there are no changed circumstances or other reasons warranting elimination or modification of these rules.

4. We continue to believe that these rules establish appropriate procedures to facilitate implementation of E911 services by encouraging PSAPs and wireless carriers to communicate at the beginning of the implementation period. Further, they aim to maintain a constructive dialog throughout the process among parties to resolve practical implementation issues, including compatibility of the network configurations and the location technology to be used.

II. BACKGROUND

5. The E911 rules, enacted in 1996 in the *E911 First Report and Order*, imposed a timetable on wireless carriers to transmit location and other information associated with 911 calls to a PSAP.⁴ Under sections 20.18(d)-(h) of the Commission's rules, carriers were to provide Phase I service by April 1, 1998, or within six months of the PSAP's request for Phase I, whichever is later.⁵ Phase II implementation was similarly scheduled to begin on October 1, 2001, or within six months of a PSAP request, whichever is later. For the PSAP request to be valid, the rules also imposed conditions to be met by PSAPs, now set out in section 20.18(j) of our rules, as follows:

(j) Conditions for enhanced 911 services. (1) Generally. The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated [PSAP] has requested the services required under those paragraphs and the [PSAP] is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the [PSAP]'s costs of the enhanced 911 service is in place.⁶

6. *Richardson Order.* On April 5, 2001, the City of Richardson, Texas (Richardson) filed a petition for clarification of the rule and the process by which a PSAP requests Phase II service from a wireless carrier.⁷ Richardson requested confirmation that a PSAP makes a valid request for Phase II service when the PSAP informs the carrier that its equipment upgrades will be finalized prior to the

⁴ 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) (*E911 First Report and Order*) (adopting new section 20.18 in the Commission's Rules, 47 C.F.R. § 20.18); *aff'd*, 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 First Reconsideration Order*).

⁵ 47 C.F.R. §§ 20.18(d)-(g).

⁶ 47 C.F.R. § 20.18(j), formerly 47 C.F.R. § 20.18(f). The rule as enacted was modified slightly in the *E911 Second Reconsideration Order* to insert "PSAP" before "costs" to reflect the decision that the cost recovery condition applies only to the PSAP's costs. 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 20850 (1999) (*E911 Second Reconsideration Order*) (amending Sections 20.18(d) and (j) of the Commission's Rules, 47 C.F.R. §§ 20.18(d), (j)); *recon denied*, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Fifth Memorandum Opinion and Order, 15 FCC 22810 (2000) (*E911 Fifth Reconsideration Order*); *affirmed sub nom. United States Cellular Corp. v. FCC*, 254 F.3d 78 (DC Cir. 2001), *rehg and reh en banc denied*, Sept. 7, 2001, No. 00-1072 (DC Cir. 2001).

⁷ City of Richardson, Texas, Petition for Clarification and/or Declaratory Ruling, CC Docket No. 94-102, filed April 5, 2001 (Richardson Petition).

delivery date of the service by the carrier and the PSAP has an adequate cost recovery mechanism in place to bring its equipment to the necessary level.⁸ The Wireless Telecommunications Bureau (Bureau) released a Public Notice requesting comment on the petition.⁹ The Bureau noted Richardson's concerns that VoiceStream Wireless Corporation, now T-Mobile USA, Inc. (T-Mobile), had denied that such a request was valid because Richardson was not currently capable of receiving and using the Phase II data and that, if other carriers shared this interpretation of our rules, the initiation of Phase II services would be delayed needlessly.¹⁰

7. On July 10, 2001, the Bureau released a second Public Notice on the petition to seek further comment.¹¹ The Bureau stated that the rule as written may be capable of more than one interpretation and requested comment on whether the rule should be amended to clarify its meaning.¹² The Bureau also requested comment on whether to adopt some objective criteria, such as funding availability and necessary equipment purchase orders, to show that the PSAP has taken sufficient steps to be ready within six months of its request.¹³

8. In the *Richardson Order*, released on October 17, 2001, the Commission rejected T-Mobile's interpretation of the rule. The Commission held that a PSAP is not required to be fully capable of receiving and utilizing the E911 data on the date it makes the request, but it has to demonstrate that it has taken sufficient steps to assure it would be ready to receive and use the E911 service in the appropriate time frame.¹⁴ Thus, the Commission clarified section 20.18(j) by adding subsection (j)(2), setting forth criteria to demonstrate that the PSAP will be "capable of receiving and utilizing" the carrier's data within the six-month time frame following the request.¹⁵

⁸ Richardson Petition at 1.

⁹ Public Notice, Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911, CC Docket No. 94-102, DA 01-886 (April 5, 2001), 16 FCC Rcd 7875 (2001); 66 Fed. Reg. 19781 (April 17, 2001) (*April 5 Notice*).

¹⁰ *April 5 Notice*, 16 FCC Rcd at 7875.

¹¹ Public Notice, Wireless Telecommunications Bureau Seeks Further Comments on the Commission's Rules Concerning Public Safety Answering Point Requests for Phase II Enhanced 911, CC Docket No. 94-102, DA 01-1623 (July 10, 2001), 16 FCC Rcd 13670 (2001); 66 Fed. Reg. 36989 (July 16, 2001) (*July 10 Notice*).

¹² *July 10 Notice*, 16 FCC Rcd at 13670.

¹³ *Id.* at 13671.

¹⁴ *Richardson Order*, 16 FCC Rcd at 18985-86, paras. 11-13, 18992, para. 29.

¹⁵ *Id.* at 18982, para. 1, 18996, App. B (amending 47 C.F.R. § 20.18(j)); *Richardson Reconsideration Order*, 17 FCC Rcd at 24295, App. B (adopting minor conforming and formatting amendments at 47 C.F.R. § 20.18(j)(2); in final form as follows:

(2) Commencement of six-month period. (i) Except as provided in subparagraph (ii) of this subsection, for purposes of commencing the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a PSAP will be deemed capable of receiving and utilizing the data elements associated with the service requested, if it can demonstrate that it has: (A) ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period; and (B) made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities.

(ii) For purposes of commencing the six-month period for carrier implementation specified in paragraphs (f) and (g) of this section, a PSAP that is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology will be deemed capable of receiving and utilizing the data elements associated with

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9. In the same order, the Commission rejected Cingular Wireless's (Cingular's) arguments that the amendments to section 20.18(j) were not in compliance with the notice and comment requirements of the APA because, according to Cingular, they changed the interpretation of the underlying rule that required full PSAP readiness before requesting service.¹⁶ The Commission concluded, among other findings, that the amendments were clarifications that represented a "logical outgrowth" of the record in the proceeding.¹⁷

10. *Richardson Reconsideration Order*. In response to the *Richardson Order*, petitions for reconsideration were filed by Cingular and Sprint PCS (Sprint), expressing carriers' concerns about their obligations if the PSAP readiness documentation is delayed or unmet.¹⁸ In the *Richardson Reconsideration Order*, the Commission denied reconsideration of its prior decision not to adopt additional or more stringent criteria to substantiate a PSAP's service request, but granted requests to include tolling procedures into section 20.18(j) based on PSAP readiness.¹⁹ The Commission included time frames and procedures clarifying the respective obligations of the parties and encouraging their communication throughout the process.²⁰

11. Specifically, the Commission adopted the following three procedures. First, the Commission adopted a tolling procedure that (1) established a 15-day period upon receipt of a PSAP's service request during which a carrier may request the documentation; (2) established a 15-day period for PSAPs to respond; and (3) permitted the carrier to toll the six-month implementation period if the PSAP does not respond.²¹ Second, the Commission adopted a certification procedure that provides for the tolling of the implementation deadline at the end of the six months if carriers file a certification to show they cannot implement due to a PSAP's lack of readiness and they have completed all necessary steps toward implementation that are not dependent on PSAP readiness.²² Third, the Commission adopted a rule

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Phase II service if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the ALI database upgrade necessary to receive the Phase II information.).

¹⁶ *Richardson Order*, 16 FCC Rcd at 18989, para. 22.

¹⁷ *Id.* at 18989-91, paras. 22-29.

¹⁸ Public Notice, Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Regarding Public Safety Answering Point Requests for Phase II Enhanced 911, CC Docket No. 94-102, 16 FCC Rcd 22025, 67 Fed. Reg. 1903 (Jan. 15, 2002) (*Dec. 12 Notice*).

¹⁹ *Richardson Reconsideration Order*, 17 FCC Rcd at 24282-90, paras. 1-29.

²⁰ *Id.* at 24282, paras. 1-3.

²¹ *Id.* at 24284-85, paras. 9-13 (amending 47 C.F.R. § 20.18(j) to add subsection (3) as follows:

(3) Tolling of six-month period. Where a wireless carrier has served a written request for documentation on the PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II enhanced 911 service, and the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section will be tolled until the PSAP provides the carrier with such documentation.).

²² *Id.* at 24285-87, paras. 14-21 (amending 47 C.F.R. § 20.18(j) to add subsection (4), as follows:

(4) Carrier certification regarding PSAP readiness issues. At the end of the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section, a wireless carrier that believes that the PSAP is not capable of receiving and utilizing the data elements associated with the service request may file a certification with the Commission. Upon filing and service of such certification, the carrier may suspend further implementation efforts, except as provided in paragraph (j)(4)(x) of this section.

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permitting parties to work out their own schedules and encouraged negotiation in order to achieve a suitable implementation process among the parties.²³ Finally, the Commission denied Cingular's request for reconsideration, reaffirmed its earlier findings, and held that the amendments in the *Richardson Order* were adopted in compliance with the requirements of the APA.²⁴

12. *Current Petitions for Reconsideration.* In response to the *Richardson Reconsideration Order*, Cingular, Nextel Communications, Inc. (Nextel), and T-Mobile filed petitions for reconsideration.²⁵ On March 3, 2003, the Bureau sought comment on these petitions.²⁶ In response to this Public Notice, opposing comments were filed jointly by the Association of Public Safety Communications Officials-International, Inc. and the National Emergency Number Association (APCO and NENA) and supporting comments were filed by AT&T Wireless Services, Inc. (AWS) and T-Mobile.²⁷ Replies were filed by

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(i) As a prerequisite to filing such certification, no later than 21 days prior to such filing, the wireless carrier must notify the affected PSAP, in writing, of its intent to file such certification. Any response that the carrier receives from the PSAP must be included with the carrier's certification filing. (ii) The certification process shall be subject to the procedural requirements set forth in sections 1.45 and 1.47 of this chapter. (iii) The certification must be in the form of an affidavit signed by a director or officer of the carrier, documenting: (A) the basis for the carrier's determination that the PSAP will not be ready; (B) each of the specific steps the carrier has taken to provide the E911 service requested; (C) the reasons why further implementation efforts cannot be made until the PSAP becomes capable of receiving and utilizing the data elements associated with the E911 service requested; and (D) the specific steps that remain to be completed by the wireless carrier and, to the extent known, the PSAP or other parties before the carrier can provide the E911 service requested. (iv) All affidavits must be correct. The carrier must ensure that its affidavit is correct, and the certifying director or officer has the duty to personally determine that the affidavit is correct. (v) A carrier may not engage in a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities. (vi) To be eligible to make a certification, the wireless carrier must have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness. (vii) A copy of the certification must be served on the PSAP in accordance with section 1.47 of this chapter. The PSAP may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. See sections 1.45 and 1.47 and sections 1.720-1.735 of this chapter. (viii) If a wireless carrier's certification is facially inadequate, the six-month implementation period specified in paragraphs (d), (f) and (g) of this section will not be suspended as provided for in paragraph (j)(4) of this section. (ix) If a wireless carrier's certification is inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed. (x) A carrier that files a certification under paragraph (j)(4) of this section shall have 90 days from receipt of the PSAP's written notice that it is capable of receiving and utilizing the data elements associated with the service requested to provide such service in accordance with the requirements of paragraphs (d) through (h) of this section.).

²³ *Id.* at 24289-90, para. 29 (amending 47 C.F.R. 20.18(j) to add subsection (5) as follows:

(5) Modification of deadlines by agreement. Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f) and (g)(2) of this section.).

²⁴ *Id.* at 24290-91, paras. 30-33.

²⁵ Cingular, Petition for Reconsideration, CC Docket No. 94-102 (Feb. 21, 2003) (Cingular Petition); Nextel, Petition for Reconsideration of Nextel Communications, Inc., CC Docket No. 94-102 (Feb. 21, 2003) (Nextel Petition); T-Mobile USA, Inc., Petition for Clarification and Reconsideration, CC Docket No. 94-102 (Feb. 24, 2003) (T-Mobile Petition).

²⁶ Public Notice, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Report No. 2596 (March 3, 2003); 68 Fed. Reg. 11107 (March 7, 2003).

Cingular, Nextel, and T-Mobile.²⁸

13. As discussed below, petitioners reiterate certain arguments that the Commission failed to comply with the requirements of the APA. Petitioners also seek reconsideration, *inter alia*, of the two tolling procedures and they request the rules be entirely or partly vacated, or in the alternative be modified.

III. DISCUSSION

A. Notice was adequate pursuant to the Administrative Procedure Act and *Sprint v. FCC*.

14. *Background.* Cingular argues that we must vacate the rule adopted in the *Richardson Order* establishing the criteria for a valid PSAP request (subsection (j)(2)), as well as the tolling rules (subsections (j)(3) and (4)) adopted in the *Richardson Reconsideration Order*, because they are substantive changes and not clarifications of the requirement in section 20.18(j)(1) that the PSAP “is capable.”²⁹ Cingular asserts that the Commission failed to address fully whether subsection (j)(2) is inconsistent with the meaning of section 20.18(j)(1).³⁰

15. Cingular argues that before the addition of subsections (j)(2), (3), and (4), section 20.18(j)(1) required carriers to deploy E911 service to any PSAP requesting service only if the PSAP “is capable” of using the service at the time the PSAP makes the request.³¹ Cingular argues that its interpretation is supported by the plain language of the rule and the Commission’s previous orders addressing the rule.³² Cingular contends that, by adding subsection (j)(2), the Commission substantively modified the “is capable” requirement by requiring carriers to deploy E911 service if a PSAP demonstrates only that it “may be capable” of using the E911 information by the end of the carrier’s six-month implementation period.³³ Cingular asserts that adoption of the tolling rules in subsections (3) and (4) eroded further the original premise of section 20.18(j)(1).³⁴

16. APCO and NENA disagree with Cingular and argue that section 20.18(j)(1) simply provides that carriers need only provide E911 service and Phase II data if requested by a PSAP, and only if the

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²⁷ The Association of Public-Safety Communications Officials-International, Inc. and the National Emergency Number Association, Opposition to Petitions for Reconsideration (March 24, 2003) (APCO and NENA Opposition); AT&T Wireless Services, Inc., Comments of AT&T Wireless Services, Inc. (March 24, 2003) (AWS Comments); T-Mobile, Comments of T-Mobile USA, Inc. in Support of Petitions for Reconsideration by Cingular Wireless LLC and Nextel Communications, Inc. (March 24, 2003) (T-Mobile Comments).

²⁸ Cingular, Reply Comments (April 3, 2003) (Cingular Reply), Nextel, Reply Comments of Nextel Communications, Inc. (April 3, 2003) (Nextel Reply), and T-Mobile, T-Mobile USA, Inc. Reply to Opposition to Petitions for Reconsideration (April 8, 2003) (T-Mobile Reply).

²⁹ Cingular Petition at 1-2.

³⁰ *Id.* at 5 n. 20.

³¹ *Id.* at i.

³² *Id.* at 1-3.

³³ *Id.* at i.

³⁴ *Id.*

PSAP is or will be prepared to receive and utilize that data.³⁵ APCO and NENA assert that Cingular reflects a misguided view of the rule that carrier and PSAP deployment responsibilities should be sequential, requiring that PSAPs complete their capabilities to use Phase II data before carriers are obligated to fulfill their responsibilities, rather than simultaneous, which is the premise of the underlying rule amendments.³⁶ They argue that the tolling procedures provide additional clarification of what triggers a carrier's obligation to provide E911 service by adding specificity and balance to ensure that carriers and PSAPs move forward together to implement Phase II at the earliest possible date.³⁷ APCO and NENA argue that carriers should put aside disputes over abstract generalities of readiness and begin the concrete work of installing and testing to make E911 a reality.³⁸

17. *The Readiness Criteria of Section 20.18(j)(2)*. When the Commission added subsection (j)(2) to section 20.18, it simply clarified an ambiguity in the "is capable" language of subsection (j)(1); the clarification did not change any party's rights or obligations, and it is fully consistent with subsection (j)(1). Neither the rule itself nor the orders relied on by Cingular support a reading of subsection (j)(1) that would mandate that the PSAP be "ready to use the [carrier's] information on the date of the request" for service -- as opposed to the date when the carrier is obligated to provide this service -- or that would bestow upon the carrier "absolute protection" from expending any preparatory resources until a PSAP is able to use the requested E911 information.³⁹

18. We disagree with Cingular that the Commission "cloaked" its decisions as a clarification where none was needed and "conjured up an ambiguity even though none existed."⁴⁰ Rather, the Commission's action was required to overcome the impasse that ensued when T-Mobile denied Richardson's service request as invalid because Richardson was not fully capable of receiving and using the data at the time of its request, even though Richardson assured T-Mobile that it took all necessary steps to be fully capable by the time the carrier provided service. Richardson requested that the Commission clarify whether its E911 service request was valid under our rules.⁴¹

19. The Richardson request and the ensuing comments made clear that the rule as written was capable of more than one interpretation. In the *Richardson Order*, based on the comments in the record, the Commission clarified that the appropriate temporal frame of reference for a PSAP's capability to receive and utilize E911 information provided by the carrier is when the carrier is obligated to provide such information, and that it is reasonable to expect a carrier to begin preparations for providing this information within the six-month time frame under the following circumstances:

[A] PSAP will be deemed capable of receiving and utilizing the data elements associated with the service requested, if it can demonstrate that it has: (A) ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period; and (B) made a timely request to the appropriate local exchange carrier for necessary trunking

³⁵ APCO and NENA Opposition at 1-2.

³⁶ *Id.* at 2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Cingular Petition at 8-9.

⁴⁰ *Id.* at 7.

⁴¹ *April 5 Notice*, 16 FCC Rcd at 7875; *Richardson Order*, 16 FCC Rcd at 18983-85, paras. 5-10.

upgrades, and other facilities.⁴²

This language reasonably clarifies section 20.18(j)(1), and it does not change its meaning. On its face, section 20.18(j) sets out the “PSAP capability” requirement as one of three “conditions” that a PSAP must meet before the carrier’s E911 service requirements (*e.g.*, Phase II accuracy requirements) would be applicable. Specifically, the carrier’s E911 service requirements apply if the PSAP “has requested the services” and “is capable of receiving and utilizing the data elements associated with the service” and “a mechanism for recovering” the PSAP’s costs of the carrier’s service “is in place.”⁴³ Subsection (j)(1) does not, however, specify that the PSAP be capable of receiving and utilizing the carrier’s service as of the date of its request, nor does it otherwise specify a time by which the capability must be achieved.

20. The criteria of subsection (j)(2) remove any remaining doubt regarding the application of section 20.18(j)(1) and are fully consistent with the Commission’s E911 rules and principles.⁴⁴ As the Commission stated in the *Richardson Order*, the criteria in subsection (j)(2) “substantiate that the PSAP will be capable of receiving and utilizing that data at the time the carrier’s obligation becomes due” and properly balance the parties’ respective obligations so that PSAPs can be assured of timely service and carriers do not commit resources needlessly.⁴⁵ Thus, the PSAP’s obligation to be fully capable to receive, and the carrier’s obligation to deliver, E911 service six months after the carrier receives the PSAP’s request for service is unchanged by subsection (j)(2).

21. Similar to T-Mobile’s interpretation when it refused Richardson’s service request as invalid, Cingular interprets section 20.18(j)(1) to mean that a PSAP must be completely ready to receive and use the E911 service at the time of its request so that it is not the PSAP request, but the PSAP’s full readiness, that triggers carriers’ six-month deployment deadline. Because under Cingular’s interpretation the carrier’s implementation clock starts only when the PSAP is completely ready, the public and the PSAP would have to wait for another six months before benefiting from this vital service. Such an interpretation is not only unreasonable, it is contrary to the public interest.⁴⁶

22. Cingular argues that in the *E911 First Report and Order*, the Commission stated that the purpose of the “PSAP capability” condition of section 20.18(j) was to ensure that a carrier’s E911 obligations were not triggered until “a PSAP . . . has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service.”⁴⁷ Cingular misconstrues this statement. The statement focuses on a PSAP’s readiness from the perspective of necessary PSAP “investment” to allow a PSAP to receive and utilize the service when provided, and does not require that all of the PSAP’s implementation actions must be fully completed at the time of its request for E911 service.⁴⁸ Accordingly, we find that this statement is consistent with our interpretation of the rule and subsection (j)(2). The *E911 First Report and Order* emphasizes that the rapid deployment of E911 service depends on good faith efforts of the parties to work cooperatively to resolve all implementation

⁴² *Richardson Order*, 16 FCC Rcd at 18982, para. 1, 18996, App. B (adopting current subsection (2) of 47 C.F.R. § 20.18(j)).

⁴³ 47 C.F.R. § 20.18(j)(1).

⁴⁴ *Richardson Order*, 16 FCC Rcd at 18982-83, paras. 1-4, 18985-86, paras. 11-13, 18992, para. 29.

⁴⁵ *Id.* at 18986, para. 13.

⁴⁶ *Id.* at 18992, para. 29.

⁴⁷ Cingular Petition at 2, citing *E911 First Report and Order*, 11 FCC Rcd at 18711. We note that the sentence quoted by Cingular is actually on pages 18708-09 in paragraph 63.

⁴⁸ *E911 First Report and Order*, 11 FCC Rcd at 18708-09, para. 63.

issues.⁴⁹ The general performance criteria and implementation schedules adopted in that order ensure a time frame by which such efforts “must be established or resolved by the various parties involved.”⁵⁰ Cingular’s interpretation allows the parties to proceed according to a longer, sequential or staggered schedule, rather than simultaneously to implement E911 service. As APCO and NENA state, Cingular’s interpretation is inconsistent with the *E911 First Report and Order*’s purpose, *i.e.*, implementing E911 service without undue delay and resolving certain implementation issues (*e.g.*, technical compatibility) through dialog between PSAPs and the carriers.

23. We also disagree with Cingular that the *E911 Second Reconsideration Order* supports its interpretation. Cingular argues that the “PSAP capability” requirement in section 20.18(j) was designed to allow carriers to avoid unnecessary expenditure or investments in their networks “until the actual time at which the PSAP can take advantage of the E911 information.”⁵¹ In that passage of the *E911 Second Reconsideration Order*, the Commission was not addressing the “PSAP capability” requirement or deciding when and how it must be met, but addressing the “cost recovery” requirement.⁵² Even if we interpret that language as applicable to the readiness issue, nothing in the record indicates that the Commission’s interpretation of the PSAP capability rule will result in unnecessary investments by carriers to deploy E911. Moreover, the *E911 Second Reconsideration Order* stands for the Commission’s determination to remove obstacles impeding E911 implementation.⁵³ In the *Richardson Order* and the *Richardson Reconsideration Order*, consistent with the public interest and wireless carriers’ obligations, the Commission clarified the meaning of the PSAP capability part of section 20.18(j)(1) to foster rapid deployment of E911 service.

24. *The Tolling Provisions of Subsections (j)(3) and (j)(4)*. We disagree with Cingular, as well as AWS and T-Mobile, that the tolling provisions adopted in the *Richardson Reconsideration Order* are inconsistent with section 20.18 (j)(1) and (2).⁵⁴ As mentioned above, the first provision (1) establishes a 15-day period upon receipt of a PSAP’s service request for a carrier to request that the PSAP provide documentation of readiness, (2) establishes a 15-day period for the PSAP to respond, and (3) permits the carrier to toll the six-month implementation period if the PSAP does not respond; and the second provision permits the carrier to toll the six-month deadline at the end if a carrier can certify that it cannot implement due to a PSAP’s lack of readiness.

25. When it adopted the PSAP readiness criteria, the Commission recognized that it did not address the possibility that in certain cases a PSAP may not be fully ready to receive the E911 data at the end of the six-month period.⁵⁵ The tolling procedures rely on the premise that carriers must implement

⁴⁹ *Id.* at 18711, para. 61, 18717, paras. 74-76.

⁵⁰ *Id.* at 18717, para. 76.

⁵¹ Cingular Petition at 2-3 n. 8 (citing *E911 Second Reconsideration Order*, 14 FCC Rcd at 20879, para. 69). Cingular notes another passage in which the capability requirement was also stated, but these statements also were incidental to the overall cost recovery discussion, not focusing on the meaning or the timing of the PSAP capability requirement. *Id.* at 2 n. 7 (citing *E911 Second Reconsideration Order*, 14 FCC Rcd at 20909, App. C).

⁵² *E911 Second Reconsideration Order*, 14 FCC Rcd at 20852-54, paras. 3-6, 20877-80, paras. 65-72.

⁵³ When the court denied carriers’ appeals of the *E911 Second Reconsideration Order* on all counts, it recognized and affirmed that the Commission had taken the actions and made the decisions because “the Commission has imposed upon wireless carriers an obligation to implement a service in the public interest” and “found that carrier cost recovery was impeding wireless E911.” *United States Cellular Corp. v. FCC*, 254 F.3d at 84-85.

⁵⁴ Cingular Petition at 7-8; T-Mobile Petition at 22-23; AWS Comments at 2-4.

⁵⁵ *Richardson Reconsideration Order*, 17 FCC Rcd at 24285, para. 14.

E911 service six months after receiving a valid PSAP request. Because a PSAP request triggers the carrier's deadline for fulfilling its obligation, carriers are expected to take all necessary steps within six months to achieve delivery.⁵⁶ The carrier's obligation to provide the requisite E911 service, however, would not ripen if the PSAP is not, in fact, capable of using this service within the six-month time frame. Cingular therefore argued in its petition for reconsideration of the *Richardson Order* that the Commission should adopt a tolling process to allow carriers to prioritize PSAP requests for service based on the PSAP's readiness. Specifically, carriers would be permitted to request documentation from a PSAP demonstrating that the PSAP was ready to use the information prior to requesting Phase II service. If the PSAP provided adequate documentation, the carrier would proceed with deployment of service. If the carrier found the documentation lacking or if there was a dispute over PSAP readiness, the carrier would be permitted to cease deployment.⁵⁷ The tolling procedures the Commission adopted serve the same goals as Cingular's proposal, *i.e.*, to provide the parties with a bright-line determination of when the six-month period begins and to further refine the notion of PSAP readiness, but were drafted to more fairly balance the needs of both PSAPs and carriers.⁵⁸

26. Other parties suggested tolling procedures as well. The Commission relied on numerous comments when it adopted the 15-day tolling rule for documentation at subsection (j)(3), in particular Sprint's request that carriers be able to toll the six-month period pending receipt of the documentation the carrier can request from the PSAP.⁵⁹ The Commission further noted that several commenters, including Cingular and T-Mobile, specifically agreed to APCO's request that the tolling opportunity be limited to a 15-day time frame following the PSAP's service request.⁶⁰ Similarly, the record reflects that the Commission also relied on the record when it adopted subsection (j)(4), in particular certain carriers' request for temporarily tolling their six-month deadline at the end in cases where the PSAPs were demonstrated to be not capable due to circumstances beyond the carriers' control.⁶¹

27. While our goal in adopting these tolling procedures was to further clarify when a PSAP would be deemed ready to receive and utilize the data provided by the carrier so as to start the clock on the carrier's six-month deadline to provide service, when the agency sought comment on such further refinements, we anticipated that some changes might require full APA prior notice and comment. Accordingly, the Bureau issued the *July 10 Notice* in accordance with these requirements, so that all parties were given notice that the Commission was considering adopting rules to better define the parameters of section 20.18(j). As the Commission found in the *Richardson Order*, the *July 10 Notice* not only stated that the Commission might amend section 20.18(j) to clarify what constitutes a valid

⁵⁶ *Id.*

⁵⁷ Cingular Petition at 4-5.

⁵⁸ We note that these tolling procedures are optional, and carriers and PSAPs could establish different deadlines by mutual consent anytime. *See* 47 C.F.R. § 20.18(j)(5).

⁵⁹ *Richardson Reconsideration Order*, 17 FCC Rcd at 24284, paras. 9-10 nn. 11,12.

⁶⁰ *Id.* at 24284, para. 9 n. 12. We note that Cingular and Sprint, in response to comments to their petitions, modified their petitions in agreement with APCO's proposal and stated, respectively, that all parties appeared to support this approach and that it is reasonable, practical, and workable. *Id.* (citing Cingular Reply Comments, filed Jan. 28, 2002, at 13 and Sprint Reply Comments, filed Jan. 28, 2002, at 2). *See also id.* (citing VoiceStream Reply Comments, filed Jan. 28, 2002, at 1).

⁶¹ *Id.* at 24286, para. 15 nn. 16-17. After noting the competing arguments, the Commission concluded that it would adopt the tolling rule proposed by Verizon Wireless and a certification approach to ensure the most appropriate balance between the competing positions of the parties, as well as the timely and effective roll out of E911 service. *Id.* at 24286, para. 15 n. 17.

PSAP request, but the *Notice* also proposed and invited comment on a range of criteria that included those that we ultimately adopted.⁶² Moreover, the agency published the *July 10 Notice* in the “Proposed Rules” section of the Federal Register and included an Initial Regulatory Flexibility Analysis that referred to the issues raised in the *Notice* as “Proposed Rules,” thus providing unambiguous notice that the Commission was considering amendments to the rules and that the *July 10 Notice* was the APA vehicle for interested parties to comment on the matter discussed therein. The comments filed in this proceeding demonstrate that the parties fully appreciated that the Commission was contemplating such amendments to section 20.18(j). The tolling procedures are a logical outgrowth of the proposals in the *July 10 Notice*, as they represent a mechanism for implementing the readiness criteria.⁶³ Given the completeness of the record, it does not appear that parties have been denied an opportunity to comment on any aspect of the readiness criteria or tolling procedures.⁶⁴

28. *Impact of Sprint v. F.C.C.* After the release of the *Richardson Reconsideration Order*, but before the deadline for filing petitions for reconsideration had passed, the Court of Appeals for the District of Columbia Circuit released *Sprint v. F.C.C.*⁶⁵ In that case, the court found that proper APA notice had not been provided by a Bureau-level Public Notice seeking comment on a petition for clarification. Significantly, that Public Notice was never published in the Federal Register, and the rules ultimately adopted by the Commission were different from those proposed in the underlying petition.

29. Cingular and T-Mobile assert that *Sprint v. F.C.C.* supports their position by finding that similar Bureau-level action was not adequate notice of a proposed substantive rule change.⁶⁶ Cingular and T-Mobile assert that they were prejudiced by the Commission’s failure to provide proper notice, which would have allowed them to supply more information on the burdens associated with the amendments to section 20.18(j) adopted in the *Richardson Order* and the *Richardson Reconsideration Order*.⁶⁷ APCO and NENA argue that Cingular’s arguments regarding APA notice issues are redundant because they were previously addressed in this proceeding.⁶⁸

30. While *Sprint v. F.C.C.* has some ostensible similarities to the case at hand, the process the Commission followed in clarifying the readiness criteria and adopting the tolling procedures differs significantly from the approach that the *Sprint* court held failed to comply with APA notice requirements. We find that the Commission correctly determined that all necessary APA requirements were met when the rule was adopted.⁶⁹ It is true that this proceeding was initiated by a Bureau-level Public Notice rather than by a Commission-level document that bore a “Notice of Proposed Rule Making” heading. However, the *July 10 Notice* itself stated the agency’s intent to amend its rules along the lines it ultimately did, the

⁶² *Richardson Order*, 16 FCC Rcd at 18989, para. 24.

⁶³ In response to the *Richardson Order*, petitions for reconsideration were filed by Cingular and Sprint, expressing carriers’ concerns about their obligations if the PSAP readiness documentation is delayed or unmet. *Dec. 12 Notice*, 16 FCC Rcd at 22025.

⁶⁴ *Richardson Order*, 16 FCC Rcd at 18989, para. 24. See also *Richardson Reconsideration Order*, 17 FCC Rcd at 24284-87, paras. 9-21.

⁶⁵ *Sprint v. F.C.C.*, 315 F.3d 369 (D.C.Cir. Jan. 21, 2003).

⁶⁶ Cingular Petition at 11-14; T-Mobile Petition at 22-25. See also AWS Comments at 2-4.

⁶⁷ Cingular Petition at 13; T-Mobile Petition at 25.

⁶⁸ APCO and NENA Opposition at 7.

⁶⁹ *Richardson Order*, 16 FCC Rcd at 18989-92, paras. 22-27, *Richardson Reconsideration Order*, 17 FCC Rcd at 24290-91, paras. 30-33.

Notice was published in the section of the Federal Register that is reserved for such proposals and the *Notice* contained the typical indicia of an APA-compliant request for comment on such rule changes (e.g., detailed proposals for amending the rule at issue; an Initial Regulatory Flexibility Analysis). In contrast, the public notice in the *Sprint* case was not published in the Federal Register, and it had none of these significant earmarks of a rulemaking initiative on which the Commission was prepared to act. Here, we discern no lack of adequate notice and opportunity for comment in the procedures employed in amending section 20.18(j), and consequently no prejudice to any interested party.

B. Reconsideration of tolling rule in 47 C.F.R. § 20.18(j)(3)

1. 15-day time frame for tolling based on documentation request

31. *Background.* In the *Richardson Reconsideration Order*, the Commission agreed to adopt a tolling opportunity for carriers in instances when the PSAP does not provide the documentation with its request for E911 service.⁷⁰ The Commission intended the rule to promote early communication between the carriers and PSAPs and thereby expedite the E911 implementation process.⁷¹ The rule provides that the carrier may serve the PSAP with a “written request for documentation” within 15 days of receiving a request for service from the PSAP and that, if “the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation [in the service rules] will be tolled until the PSAP provides the carrier with such documentation.”⁷²

32. T-Mobile argues that the Commission’s decision to limit the availability of tolling in response to a lack of PSAP documentation to within 15 days of receiving the PSAP’s service request is arbitrary, punitive, and serves no function.⁷³ T-Mobile requests we modify the rule to permit tolling regardless of when the carrier requests documentation under the PSAP readiness criteria or the PSAP responds.⁷⁴ T-Mobile claims that it is inconsistent with the documentation rule to cut off the carrier’s ability to request the documentation and require the carrier to continue with implementation efforts if PSAP documentation is received after 15 days to reveal an invalid request.⁷⁵ AWS supports T-Mobile’s claims.⁷⁶ APCO and NENA oppose the request and argue there is no rational basis for such a rule change, arguing that it would give the carriers the ability to tack additional time onto the six months at any time.⁷⁷

33. *Discussion.* We deny T-Mobile’s request to remove the 15-day time frame in which a carrier is entitled to toll its six-month implementation period if the PSAP fails to respond to the carrier’s request for readiness documentation. We note that T-Mobile requested the Commission adopt this rule exactly as it appears and expressly endorsed the changes it contains to the original proposals of Cingular and Sprint, including the 15-day time frame, which they also endorsed.⁷⁸ T-Mobile does not indicate there are

⁷⁰ *Richardson Reconsideration Order*, 17 FCC Rcd at 24284, paras. 9-10.

⁷¹ *Id.* at 24285, para. 11.

⁷² 47 C.F.R. § 20.18(j)(3).

⁷³ T-Mobile Petition at 18-19.

⁷⁴ *Id.* at 18.

⁷⁵ *Id.*

⁷⁶ AWS Comments at 4.

⁷⁷ APCO and NENA Opposition at 6.

⁷⁸ *Richardson Reconsideration Order*, 17 FCC Rcd at 24284, para. 9 n. 12 (citing VoiceStream Reply Comments, filed January 28, 2002, at 1).

changed circumstances or otherwise explain why it is now seeking changes to this rule, particularly when it had urged adoption of this same “fifteen-day proposal” as “sensible.”⁷⁹

34. In the *Richardson Reconsideration Order*, the Commission fully discussed the reasons for adopting the 15-day time frame, finding that: 1) the corresponding 15-day windows allow an appropriate amount of time for both carriers and PSAPs to assess the facts of a service request, and to gather and submit necessary information, without impinging substantially on the six-month deadline, 2) the 15-day time frames should reduce a carrier’s ability to use a documentation request as a delaying tactic, as well as minimizing a carrier’s unnecessary expenditures by allowing tolling when the PSAP fails to demonstrate its request is valid within 15 days, and 3) despite encouraging PSAPs to submit the readiness documentation with a service request, the 15-day period recognizes that it may not always be possible.⁸⁰ Accordingly, we find that the 15-day rule is reasonable and reject T-Mobile’s argument that this rule is arbitrary, punitive, or serves no function.

35. Moreover, the Commission did not cut off the carrier’s ability to request documentation after 15 days, but only its ability to use the tolling opportunity indefinitely as a means of securing such documentation as T-Mobile requests. Nothing in our rules could be construed as preventing a carrier from requesting documentation from a PSAP at any time. Indeed, the Commission clearly stated that a carrier is free to request readiness documentation from a PSAP more than 15 days after receipt of the service request and, as APCO and NENA assert, carriers have ample opportunity upon receipt of a request to seek documentation at any time.⁸¹

2. Section 20.18(j)(3) should not apply to pending requests

36. *Background.* T-Mobile requests that we permit application of section 20.18(j)(3) to pending PSAP requests that did not provide documentation, not just to new requests filed after the Commission adopted the tolling rule.⁸² T-Mobile argues that the Commission failed to provide a rational basis for not providing for tolling for pending requests.⁸³ APCO and NENA state that the Commission made clear that the certification process (subsection (j)(4)) applies to all PSAP requests, but not the initial documentation and tolling rule (subsection(j)(3)).⁸⁴

37. *Discussion.* We disagree with T-Mobile that the Commission’s decision to limit application of subsection (j)(3) has no rational basis. The purpose of section 20.18(j)(3) is to permit a tolling at the start of the six-month period and to obtain information incidental to a request to resolve a carrier’s initial disagreement on the validity of the request. Applying initial tolling to pending requests would serve no such purpose because such a rule would amount to requiring a PSAP to provide documentation to reassure the carrier that the PSAP’s request was valid long after the six-month period had started. We find that the Commission’s action not to extend the application of subsection(j)(3) to pending requests

⁷⁹ *Id.*

⁸⁰ *Id.* at 24285, paras. 11-12.

⁸¹ *Id.* 24284, para. 10.

⁸² T-Mobile Petition at 16-18.

⁸³ *Id.*

⁸⁴ APCO and NENA Opposition at 6.

was appropriate and consistent with the rule's purpose.⁸⁵

38. As discussed below, for the tolling of pending PSAP requests, the certification process is a more appropriate mechanism, since it achieves the same end by tolling the carrier's deadline and avoids enforcement proceedings, if the PSAP fails to be ready at the end of six months. We also note that T-Mobile's request to allow application of subsection (j)(3) to pending requests may be moot, inasmuch as any pending PSAP service requests now must be older than six months since the rule became effective and at this point only the certification tolling rule would be useful to such of those requests that are not expired or in enforcement proceedings.

3. Sufficiency of documentation response from PSAP

39. *Background.* T-Mobile requests we clarify how a carrier should treat partial or insufficient responses from a PSAP. T-Mobile argues that a partial response that does not address all of the criteria should warrant tolling as a failure to respond, while a complete response that the carrier deems inadequate should also permit tolling pending the PSAP's clarification of validity.⁸⁶ APCO and NENA are concerned that carriers should not be given the unilateral ability to determine that PSAP documentation is "partial" or "insufficient" and then toll the six-month period.⁸⁷

40. *Discussion.* We clarify that the Commission intended that tolling applies only if the PSAP failed to provide the necessary documentation.⁸⁸ Thus, the documentation must be complete to the extent it addresses all of the criteria in order for the request to be deemed valid, but whether the carrier considers this information sufficient and can toll regardless of it being complete is another matter. We agree with APCO and NENA that allowing carriers to judge the sufficiency of the documentation unilaterally may result in arbitrary rejections of PSAP requests.⁸⁹ Such an approach would be inconsistent with the Commission's objectives to implement E911 service rapidly. We find that the Commission provided sufficient guidance to establish what constitutes adequate documentation, identifying information it considered sufficient to demonstrate compliance with the rule's criteria, and we expect the parties to use this guidance and work together in good faith to rapidly implement E911 service in the public interest that could save lives.⁹⁰

41. Cingular also seeks to provide for carriers to challenge the sufficiency of a PSAP's documentation by allowing for readiness disputes and requiring the Commission to establish a dispute resolution process.⁹¹ As Cingular admits, it is renewing the tolling proposal it requested on reconsideration of the *Richardson Order*.⁹² Yet in its reply to comments on that petition, Cingular

⁸⁵ *Richardson Reconsideration Order*, 17 FCC Rcd at 24287, para. 20 (stating that certifications may not be based on a PSAP's failure to comply with the PSAP capability rule regarding the commencement of the six-month period that was not in place at the time of the original PSAP service request).

⁸⁶ T-Mobile Petition at 20.

⁸⁷ APCO and NENA Opposition at 6-7.

⁸⁸ *Richardson Reconsideration Order*, 17 FCC Rcd at 24284, para. 10 n. 15.

⁸⁹ APCO and NENA Opposition at 7.

⁹⁰ *Richardson Order*, 16 FCC Rcd at 18986-87, paras. 14-18; *Richardson Reconsideration Order*, 17 FCC Rcd at 24285, para. 13.

⁹¹ Cingular Petition at 17-18.

⁹² *Id.* at 17 n. 57 (citing Cingular Petition for Reconsideration, filed Dec. 3, 2001, at 14).

requested that the Commission adopt the modified proposal, and that is the rule here on reconsideration that the Commission agreed to adopt.⁹³ Cingular does not indicate any changed circumstances or reasons to reverse its prior position, and therefore, the request is denied.

C. Reconsideration of the certification, deadline-tolling rule in 47 C.F.R. § 20.18(j)(4)

1. Requests to eliminate the rule

42. *Background.* In the *Richardson Reconsideration Order*, the Commission adopted the certification tolling rule and provided carriers with the opportunity to toll their delivery deadline at the end of the six-month implementation period if the PSAP had not achieved the necessary capabilities by that time.⁹⁴ The certification requirement includes several measures to enable the carrier to establish the legitimacy and fairness of its action and permit the carrier to act unilaterally.⁹⁵ Upon filing of the certification, the carrier may suspend its implementation efforts until it is notified by the PSAP that the necessary capabilities are achieved, whereupon the carrier has 90 days to deliver the service.⁹⁶

43. To be eligible to file the certification, the rule requires the carrier to have completed all necessary steps toward implementation that are not dependent on PSAP readiness and to submit an affidavit signed by a director or officer of the carrier documenting four criteria establishing the reasons for tolling the deadline.⁹⁷ These include the basis for the PSAP not being ready, the steps taken by the carrier, the reasons why further steps cannot be made, and the steps that remain to be completed by the carrier, the PSAP, or other parties before the carrier can provide the service. To ensure the affidavit is complete and accurate, the rule prohibits a carrier from filing an incomplete certification to delay its responsibilities and from tolling its deadline if the certification is facially inadequate.⁹⁸ The rule imposes a duty on the carrier, as well as the certifying director or officer, to determine that the affidavit is correct, and holds a carrier liable for noncompliance if the carrier's certification is inaccurate.⁹⁹ Finally, the rule provides for notice of the certification to the PSAP with an opportunity to comment and requires notice of the intended certification 21 days prior to the filing, a copy of the certification when it is filed with the Commission, and adherence to the procedural requirements of our general rules at 47 C.F.R. §§ 1.45 and 1.47.¹⁰⁰ The certification must not be based on a carrier's own failures to comply with its implementation requirements.¹⁰¹

44. On reconsideration, petitioners request that we eliminate the rule and the certification requirements. Specifically, Cingular argues that the certification process exacerbates PSAP readiness issues and prescribes a difficult course of conduct for carriers.¹⁰² Nextel argues that the rules create a

⁹³ *Richardson Reconsideration Order*, 17 FCC Rcd at 24284, para. 9 n. 12 (citing Cingular Reply Comments, filed Jan. 28, 2002, at 13).

⁹⁴ *Id.* at 24285-87, paras. 14-21 (adopting 47 C.F.R. § 20.18(j)(4)).

⁹⁵ 47 C.F.R. § 20.18(j)(4)(i)-(ix).

⁹⁶ *Id.* at subsection (x).

⁹⁷ *Id.* at subsections (vi) and (iii).

⁹⁸ *Id.* at subsections (v) and (viii).

⁹⁹ *Id.* at subsections (ix) and (iv).

¹⁰⁰ *Id.* at subsections (i), (ii), and (vii).

¹⁰¹ *Richardson Reconsideration Order*, 17 FCC Rcd at 24287, para. 21.

¹⁰² Cingular Petition at 14-17.

labyrinth of new requirements that establish an even more complex and adversarial process, and requests we adopt a replacement procedure that more accurately reflects the realities and complexities of Phase II or, alternatively, a rule modification.¹⁰³ T-Mobile argues that the Commission's creation of the certification rule establishes a procedure with several ambiguities that could seriously hamper expedited delivery of E911 service, and requests we fundamentally rewrite the rules.¹⁰⁴ AWS supports petitioners and agrees that the procedural rules have added unnecessary complexity to the E911 deployment process that will frustrate our objectives.¹⁰⁵

45. APCO and NENA oppose the petitions, arguing that some carriers have adopted a strategy of challenging the rules to delay deployment, diverting critical resources to regulatory and legal wrangling.¹⁰⁶ They assert that the public safety community has moved past these disputes and is focusing on making E911 a reality, and request that carriers also accept the rules and move on to implementing E911.¹⁰⁷ They argue that implementation has demonstrated that unanticipated issues and problems do arise as the parties attempt to fit solutions to the specific carrier/LEC/PSAP configurations of hardware and software to achieve transmission capabilities, and request that carriers put aside these disputes to address the practical implementation problems of installation and testing. APCO and NENA address many of the specific rule changes and clarifications sought by each of the petitioners, and request they be denied except for certain clarifications, as discussed more fully below.

46. *Discussion.* We deny Cingular's request that we should eliminate the certification tolling rule as unnecessary. Cingular argues that the Commission stated, when it adopted the rule, that the carrier will not be held in violation of its service rules for failing to deliver timely service because the PSAP is in fact not capable of receiving and utilizing the information.¹⁰⁸ Cingular asserts that, since carriers already are immune from liability in these circumstances, they should be allowed to simply stop implementation efforts on the good faith belief a PSAP will not be ready unless the PSAP demonstrates otherwise. AWS agrees.¹⁰⁹

47. We disagree and find that the rule is necessary and useful. When the Commission adopted the E911 rules, it stated then that the carrier's obligation to provide a requested service at the deadline date does not arise if the PSAP has not achieved the necessary capabilities, while nevertheless determining to hold carriers to a schedule to ensure a more rapid pace of implementation.¹¹⁰ Thus, regardless of the legal immunity that is provided if the PSAP is incapable to use the service at the deadline date, the clock does not stop as Cingular suggests. Rather than an unnecessary rule, it tolls the deadline at the end of the six-month period to afford carriers the means of preserving the PSAP's place for service within 90 days of becoming capable.¹¹¹ This facilitates more rapid implementation of 911 by avoiding the repetition of steps and procedures in which the parties resolved many of the technical and operational issues pertinent to the PSAP's service needs, thereby assuring prompt delivery of service

¹⁰³ Nextel Petition at Summary; Nextel Reply at 1-2.

¹⁰⁴ T-Mobile Petition at 3, 8-9; T-Mobile Reply at 1-3.

¹⁰⁵ AWS Comments at 1-3.

¹⁰⁶ APCO and NENA Opposition at 2.

¹⁰⁷ *Id.*

¹⁰⁸ Cingular Petition at 17 (citing *Richardson Reconsideration Order*, 17 FCC Rcd at 24285, para. 14).

¹⁰⁹ AWS Comments at 3.

¹¹⁰ *E911 First Report and Order*, 14 FCC Rcd at 18707, para. 61, 18710, para. 66.

¹¹¹ *Richardson Reconsideration Order*, 17 FCC Rcd at 24287, para. 19.

within 90 days of the PSAP's readiness showing. Moreover, this tolling rule, with its certification requirements, meets the needs expressed by both carriers and PSAPs by ensuring that the parties are held to their service obligations under subsection (j)(1) without providing carriers an incentive to avoid service delivery or file inaccurate, incomplete, or invalid certifications.¹¹²

48. The tolling rule also is necessary because it provides carriers the opportunity to demonstrate their implementation efforts and the status of the PSAP's efforts so they can prove they have tried to comply with the rules and thus avoid enforcement measures. Indeed, the Commission specifically provided that carriers could use the certification process in dealing with all deadlines imposed on them, whether established in Commission rules or orders that include the terms of consent decrees negotiated between the Commission and particular carriers.¹¹³ The Commission assisted carriers further when it permitted carriers to file certifications regarding requests that have been pending for longer than six months, if the certifications were filed within 60 days of publication of the order.¹¹⁴ Several certifications were filed by various carriers.¹¹⁵

49. We also find that the Commission's reliance on a certification filing and the related criteria are reasonable requirements that are consistent with the Commission's use of certifications in other service rules.¹¹⁶ As with similar certifications in our rules, the certification process in subsection (j)(4) consists of (1) requirements to establish eligibility for certification; (2) requirements to notify the affected party, the PSAP; and (3) requirements for truthfulness, accuracy and completeness of the certification.¹¹⁷ These are not unusual or unduly burdensome measures, as petitioners suggest, but common to any administrative processes that allow parties to suspend their obligations or preserve their rights unilaterally.

50. Section 20.18(j)(4) permits carriers to suspend their E911 service delivery deadlines based on clear procedures ensuring that carriers check the state of PSAP capability to receive and utilize E911 Phase II data before tolling the deadline unilaterally, instead of merely based on self-serving assertions about PSAP readiness.¹¹⁸ As the Commission concluded, the certification approach was adopted as the

¹¹² *Id.* at 24287, paras. 18-21.

¹¹³ *Id.* at 24287, para. 20. [We note that the rule has proven useful in this regard in recent enforcement orders involving AWS and Cingular. *See* AT&T Wireless Services, Inc., Order, 18 FCC Rcd 10636 (2003); Cingular Wireless LLC, Order, 18 FCC Rcd 11746 (2003). We also note that, in the recent filing of quarterly reports, T-Mobile relies on the rule to establish the status of pending PSAP requests and compliance with its implementation schedule. *See*, T-Mobile USA, Inc. E911-Quarterly Report, CC Docket No. 94-102 (filed Nov. 3, 2003). *Also see* Cingular Wireless LLC Quarterly E911 Implementation Report for GSM, TDMA, AMPS, and TDMA/AMPS Networks, CC Docket No. 94-102 (filed Oct. 31, 2003); Nextel Partners, Inc., Phase I and Phase II E911 Quarterly Report, CC Docket No. 94-102 (filed Nov. 3, 2003).]

¹¹⁴ *Id.* The Commission subsequently established the new docket in WT 03-76 for the filing of such certifications.

¹¹⁵ Public Notice, Wireless Telecommunications Bureau Establishes a New Docket for the Filing of E911 Richardson Certifications by Wireless Carriers, WT Docket No. 03-76, DA 03-797 (March 14, 2003).

¹¹⁶ For example, the service rules for Multipoint Distribution Service at Subpart K of Part 21 of our rules rely on several lengthy certification requirements that include the service of the certification, a demonstration of various eligibility requirements, and compliance with other Commission procedural rules, among other aspects, that result in the carrier obtaining a requested license without Commission review of the filing. 47 C.F.R. § 21.909, 913. *See also* the auction rules at section 1.2108, among other rules.

¹¹⁷ 47 C.F.R. 20.18(j)(4).

¹¹⁸ APCO and NENA Opposition at 8.

most appropriate balance of the competing concerns of the PSAP organizations, which were concerned that carriers not misuse tolling to avoid service obligations, and the carriers, which wanted the option to deliver service at a later date due to circumstances beyond their control without violating our rules.¹¹⁹ We affirm that such a balanced approach best serves the public interest and ensures the timely and effective roll-out of E911 service.

51. We also deny the requests of AWS, Cingular, Nextel, and T-Mobile to replace the certification tolling rule with a collaborative and flexible process.¹²⁰ We agree with APCO and NENA that reliance on good faith efforts alone is no longer sufficient as the only means for E911 to become a reality.¹²¹ As they suggest, the E911 rules relied on the cooperation and coordination of the parties to resolve the many technical and operational issues that arise during deployment, but the Commission found it necessary to clarify the conditions of service to overcome delays created by disputes over the timing of the deployment obligations. We affirm that the tolling rules are further clarification of the obligations and provide mechanisms that encourage the parties to communicate and resolve the issues. We disagree with the petitioners that the rules are not flexible or inhibit collaboration. Indeed, the certification tolling rule provides carriers with the flexibility to suspend their deadline, consistent with our rules, if negotiation fails. Contrary to Nextel's claim, the rule amendments are entirely consistent with the Hatfield Report, which encouraged the Commission to consider methods to overcome any obstacles and accelerate deployment by coordination and cooperation.¹²² Moreover, the tolling rule is optional and, if carriers do not wish to be subjected to its certification requirements, they are free to negotiate with PSAPs to mutually change the implementation schedule.¹²³ The Commission specifically adopted the rule at section 20.18(j)(5) that codifies the Commission's reliance on negotiation as an ongoing matter and reminds parties that the service deadlines are flexible if they choose to mutually agree to another deadline.¹²⁴

2. Requests to modify specific provisions of the rule

52. *Background.* Petitioners request that, if we decline to eliminate the certification rule altogether, we should address their alternative requests to adopt certain modifications to the rules as discussed below.

53. *Discussion.* First, T-Mobile requests we modify the 90-day period in subsection (x) of section 20.18(j)(4) to no longer tie it to the certification process and to the PSAP's subsequent written notice, but rather to allow the carrier to complete delivery in all cases within a full 90 days.¹²⁵ The six-month period in the rules would be extended any time PSAP readiness occurs more than 90 days through

¹¹⁹ *Richardson Reconsideration Order*, 17 FCC Rcd at 24286, para. 15 n. 17.

¹²⁰ AWS Comments at 5-6; Cingular Petition at 17-18; Nextel Petition at 12; Nextel Reply at 6; T-Mobile Reply Comments at 3.

¹²¹ APCO and NENA Opposition at 9.

¹²² Nextel Petition at 3 n. 9 (citing "A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services," Prepared for the Federal Communications Commission by Dale N. Hatfield, October 16, 2002 (Hatfield Report); Public Notice, Wireless Telecommunications Bureau Seeks Comment on Report on Technical and Operational Wireless E911 Issues, WT Docket No. 02-46, DA 02-2666, released October 16, 2002); *see also* Nextel Petition at 6-9.

¹²³ 47 C.F.R. § 20.18(j)(5).

¹²⁴ *Richardson Reconsideration Order*, 17 FCC Rcd at 24289-90, para. 29 (adopting 47 C.F.R. § 20.18(j)(5)).

¹²⁵ T-Mobile Petition at 9-11.

that period to ensure every carrier has at least 90 days to implement. AWS agrees with T-Mobile.¹²⁶ APCO and NENA oppose the request, arguing that the Commission never suggested that carriers have an additional 90 days after PSAP readiness, whenever that occurs, to complete delivery of a requested service.¹²⁷ We agree that a valid PSAP request starts the six-month clock for the carrier to deliver Phase II service and that the 90-day period must be solely for the situation where the PSAP is not in fact ready on the deadline; otherwise, there is no six-month deadline and the 90-day extension would result in varying dates contrary to our rules.

54. Second, T-Mobile requests we add an additional basis at the introduction of subsection (j)(4) that permits a carrier to file a tolling certification for the PSAP's failure to provide information the carrier argues is essential, such as selective routing information.¹²⁸ As APCO and NENA argue, PSAPs are strongly encouraged to provide all such useful information, but the rule should not be modified to specifically identify such information as an element of the PSAP's capability requirement.¹²⁹ We find this unnecessarily complicates the underlying rule and is not needed, since subsection (iii) already provides for the carrier to identify the reasons it cannot provide the service and the steps the PSAP needs to take as the basis for its certification of the PSAP's incapability.

55. Additionally, T-Mobile also requests we add third party implementation issues as a basis for a carrier filing a certification to toll the deadline, arguing that delays in the deployment process can also be caused by LECs or an ALI database provider that the carrier cannot control.¹³⁰ APCO and NENA oppose modifying the rules to provide for these circumstances separately, arguing that they are unnecessary.¹³¹ We find that APCO and NENA are correct that, in providing the reasons for the certification, the carrier is to indicate the specific steps that remain to be completed by the carrier and, to the extent known, by the PSAP or other parties before the carrier can provide the requested service. Thus, a carrier is able to file a certification to the extent a delay is caused by a LEC or database provider, but only to a limited extent. We emphasized that a carrier's certification cannot be based, either directly or indirectly, on circumstances attributable to its own failure to comply with our rules, and specifically stated that this includes nonperformance or delays attributable to its own vendors, manufacturers, or third-party service providers.¹³²

56. Third, T-Mobile requests we modify the requirement that carriers complete all steps necessary to implementation not dependent on PSAP readiness before being eligible to file a certification, and, instead, allow carriers to defer those steps that might be redone when deployment resumes, rather than force carriers to engage in unnecessary actions.¹³³ APCO and NENA argue that the rule is clear that certification is contingent upon the carrier fulfilling its deployment obligations, and this change would add unnecessary complications.¹³⁴ We agree that, absent an explicit statement from the PSAP that it will not be ready, a carrier should proceed with all such necessary steps and assume that it will indeed need to

¹²⁶ AWS Comments at 7.

¹²⁷ APCO and NENA Opposition at 3-4.

¹²⁸ T-Mobile Petition at 11-12.

¹²⁹ APCO and NENA Opposition at 4.

¹³⁰ T-Mobile Petition at 20-21.

¹³¹ APCO and NENA Opposition at 7.

¹³² *Richardson Reconsideration Order*, 17 FCC Rcd at 24287, para. 21.

¹³³ See 47 C.F.R. § 20.18(j)(4)(vi); T-Mobile Petition at 12-13.

¹³⁴ APCO and NENA Opposition at 4.

deliver E911 data at the end of the six-month period. This is consistent with our service rules and carriers' underlying service obligations that have been in place since 1996.

57. Fourth, T-Mobile requests we clarify the rule that requires the carrier to “notify the affected PSAP” of its intent to file a certification and allow notification to the entity actually making the request, which may not be the affected PSAP but rather a coordinating agency or administration.¹³⁵ AWS supports the request.¹³⁶ APCO and NENA agree, noting that in some cases a 911 district or statewide 911 administrator may submit a single Phase II request on behalf of multiple PSAPs within its jurisdiction and that it is reasonable that the carrier would notify that entity.¹³⁷ We clarify that under subsection (4)(i), the carrier is required to serve notice of its intent to file a certification on the entity that made the original request for E911 service on behalf of the relevant PSAP. This is consistent with our existing rule at section 20.18(j)(1) that expects a PSAP's service request to come from the administrator of the PSAP. The purpose of subsection (i) is to ensure notification of the carrier's intention to cease its implementation efforts and provide it with useful information on the PSAP's readiness status before certification. Thus, we emphasize that the carrier would ensure that the notified entity clearly is acting on behalf of and with the concurrence of the affected PSAPs.

58. Fifth, T-Mobile requests we eliminate the requirement that the carrier notify the PSAP of its intent to file a certification 21 days prior to the filing, because the carrier also is required to give a copy of the certification to the PSAP when it is filed by the carrier.¹³⁸ As T-Mobile notes, both provisions provide for PSAPs to respond and object, and it argues that there is no need for both pre-and post-objection periods and the additional paperwork, which unnecessarily interfere with established and cooperative working relationships between carriers and the PSAPs.¹³⁹ AWS supports the request and argues the 21-day period is meaningless, because the factual situation could easily change during that period.¹⁴⁰ Cingular also argues that the 21-day prior notification requirement is unworkable, because carriers need the full six months to complete their deployment obligations and should be able to take advantage of the certification process after that time.¹⁴¹ APCO and NENA oppose the request, asserting that the pre-filing and post-filing opportunities are different and that eliminating the 21-day period is unreasonable.¹⁴²

59. We agree with APCO and NENA that the 21-day period is reasonable. APCO and NENA are correct that the two notifications are different and provide for different opportunities to respond to the carrier. In the *Richardson Reconsideration Order*, the Commission discussed the differences between the two notifications, and how the procedures would be used. The 21-day notice period was adopted in subsection (j)(4)(i) as a prerequisite to the certification to provide the PSAP with an opportunity to respond with useful information.¹⁴³ The rule requires the carrier to include any such response that it

¹³⁵ See 47 C.F.R. § 20.18(j)(4)(i); T-Mobile Petition at 14.

¹³⁶ AWS Comments at 7.

¹³⁷ APCO and NENA Opposition at 4-5.

¹³⁸ See 47 C.F.R. § 20.18(j)(4)(i). See also 47 C.F.R. § 20.18(j)(4)(vii).

¹³⁹ T-Mobile Petition at 15-16.

¹⁴⁰ AWS Comments at 5-6.

¹⁴¹ Cingular Petition at 16.

¹⁴² APCO and NENA Opposition at 5.

¹⁴³ *Richardson Reconsideration Order*, 17 FCC Rcd at 24286, para. 16.

receives from the PSAP with its certification filing.¹⁴⁴

60. On the other hand, the notice requirements in subsection (vii) provide the PSAP with the opportunity to respond to the affidavit prepared by the carrier and its necessary information that makes up the certification filing 21 days later. In this case, the Commission provided for the PSAP to challenge the accuracy of the certification in writing pursuant to our procedural rules.¹⁴⁵ Unlike the pre-filing 21-day provision, this ensures that the PSAP receives the certification in its final form, which would include its responses to the prior notification, and that the PSAP, as well as any interested party and the Commission on its own motion, has the opportunity to challenge the accuracy of the affidavit that may result in enforcement action.

61. T-Mobile requests that we clarify a discrepancy between the carrier's notice obligations in subsection (i) and the Commission's discussion in the *Richardson Reconsideration Order*, noting the rule requires written notification of the carrier's intent to file a certification, while the order directs the carrier to provide the text of the certification to be filed.¹⁴⁶ APCO and NENA argue that we should modify the rule to require carriers to include in the notice the text of their proposed certification.¹⁴⁷ We disagree and clarify that the rule accurately reflects the purpose of the pre-filing notification requirement. We find that, in these circumstances, the rule could not require notice of the text of the certification, since it would not be complete at that time and could change based on the response provided by the PSAP. We agree, however, that, as the Commission suggested, carriers that have the text of the certification should provide it to the PSAP with their notification of their intent to file a final certification 21 days later, which ensures a complete and full response from the PSAP.

62. T-Mobile also requests we clarify that the Commission did not intend that, if the carrier receives an objection from the PSAP within the 21-day period, the carrier is unable to avail itself of the certification process.¹⁴⁸ It requests we clarify that the objection by the PSAP does not nullify the certification. Rather, in that case, the certification and tolling of the deadline is not automatically granted, and the Commission must rule on the legitimacy of any contested certification.¹⁴⁹ Cingular agrees and argues that the Commission should not have provided PSAPs with veto power over the carrier's use of the certification process.¹⁵⁰ We deny the clarification as inconsistent with the purpose of the certification process, which allows the carrier unilaterally to suspend further implementation efforts in the absence of the PSAP's satisfying the prerequisites of the carrier's service obligations. Clearly, if a PSAP objects in response to the carrier's notice, the carrier has no basis for preparing the affidavit and must continue with the deployment efforts to provide service on the deadline date. It is inherent that the certification process would not include provisions for the Commission to resolve a carrier's dispute with the PSAP's response, but instead relies on the carrier to provide the necessary information in an affidavit, or else, as the Commission stated, the six-month period will not be suspended.¹⁵¹ On the other hand, by requiring the

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 24286, paras. 17-18 nn. 19-20.

¹⁴⁶ T-Mobile Petition at 15-16 (citing 47 C.F.R. § 20.18(j)(4)(i) and *Richardson Reconsideration Order*, 17 FCC Rcd at 24286, para. 16).

¹⁴⁷ APCO and NENA Opposition at 5.

¹⁴⁸ T-Mobile Petition at 16 (citing *Richardson Reconsideration Order*, 17 FCC Rcd at 24286, para. 16).

¹⁴⁹ T-Mobile Petition at 16; T-Mobile Reply at 13-14.

¹⁵⁰ Cingular Reply at 6.

¹⁵¹ *Richardson Reconsideration Order*, 17 FCC Rcd at 24287, para. 18.

carrier to nevertheless file such an objection with the certification, the Commission provided the opportunity to review a contested certification in the rare case that the PSAP's objection was not clear.¹⁵²

63. Sixth, Nextel requests we reconsider the rule at subsection (iv) that imposes a duty on a corporate certifying director or officer to determine that the affidavit is correct, arguing that it is wholly unnecessary and potentially unfair.¹⁵³ AWS agrees, arguing that the director or officer would not have control or firsthand knowledge of such information.¹⁵⁴ We disagree and find that such provisions are inherent in a certification process to ensure the legitimacy of the carrier's reasons for delaying E911 deployment. That is particularly necessary here, where the Commission emphasized the importance of ensuring the accuracy and adequacy of the certification by requiring an affidavit and by expressing its intention to take immediate action if a carrier files an inadequate or inaccurate certification.¹⁵⁵ The Commission was concerned that carriers would file inadequate or incomplete certifications for the purpose of delaying their responsibilities or abuse the tolling period to avoid implementation efforts.¹⁵⁶ It clearly promotes such goals for the Commission to have determined that the certifying director or officer has the duty to personally determine that the affidavit is correct.¹⁵⁷ It is our overriding goal that obstacles to E911 implementation be removed and that carriers achieve implementation as rapidly as possible, and only by being absolutely assured of the legitimacy of a carrier's filing to suspend its service obligation can our goal be met. Therefore, we deny petitioners' requests for modification of the rule.

III. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

64. A Regulatory Flexibility Act analysis or certification, *see generally* 5 U.S.C. §§ 604-605, is not required because this order does not promulgate or revise any rules.

B. Authority

65. This action is taken pursuant to Sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 201, 303, 309, 332.

¹⁵² *Id.* at 24286, para. 16.

¹⁵³ Nextel Petition at 11-12.

¹⁵⁴ AWS Comments at 8-9.

¹⁵⁵ *Richardson Reconsideration Order*, 17 FCC Rcd at 24287, para. 18.

¹⁵⁶ *Id.* at 24287, paras. 18, 21.

¹⁵⁷ *Id.* at 24286, para. 17.

IV. ORDERING CLAUSES

66. Accordingly, IT IS ORDERED that the Petitions for Reconsideration filed by Cingular Wireless LLC, and Nextel Communications, Inc., and the Petition for Clarification and Reconsideration filed by T-Mobile USA ARE DENIED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J . MARTIN**

Re: Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas, Second Order on Reconsideration, CC Docket No. 94-102

I am pleased to support this Order. I write separately, however, to express my concern with its analysis of the Commission's compliance with the court's decision in *Sprint v. FCC*, 315 F.3d 369 (D.C. Cir. 2003). *Sprint* held that the Commission failed to provide proper notice for a rule clarification under the Administrative Procedure Act when the only notice provided was a Bureau-level public notice. In this Order, we conclude that a Bureau-level public notice did provide adequate notice, because, unlike in *Sprint*, the notice was published in the Federal Register and contained an Initial Regulatory Flexibility Analysis. While I think this analysis is not unreasonable, we should avoid these issues. Ultimately, the Commission itself is responsible for the actions taken by the agency. The better course in the future is to issue Commission-level notices. A full Commission-level notice is the vehicle explicitly called for by *Sprint* and would plainly satisfy the court's concerns.