

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

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|---------------------------|---|----------------------------|
| In the Matter of |) | |
| |) | |
| Sprint Nextel Corporation |) | File No. EB-07-SE-006 |
| |) | NAL/Acct. No. 200732100045 |
| |) | FRN # 0014139349 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 29, 2007

Released: August 30, 2007

By the Commission: Chairman Martin issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Sprint Nextel Corporation (“Sprint Nextel”)¹ apparently liable for a forfeiture in the amount of one million three hundred twenty five thousand dollars (\$1,325,000) for the willful and repeated violation of Section 20.18(g)(1)(v) of the Commission’s Rules (“Rules”).² The apparent violation involves Sprint Nextel’s failure to comply with the Commission’s requirement that wireless carriers employing a handset-based Enhanced 911 (“E911”) Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.³

II. BACKGROUND

2. The Commission’s wireless E911 rules ensure that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. Under Phase II of the E911 rules, wireless licensees are required to provide Public Safety Answering Points (“PSAPs”) with Automatic Location Identification (“ALI”) information for 911 calls.⁴ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁵ or Global Positioning System (“GPS”) or other location technology in subscribers’ handsets (a handset-

¹ Sprint Nextel Corporation includes Nextel Partners, Inc. (“Nextel Partners”). See *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005) (“*Sprint Nextel Merger Order*”); *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 7358 (2006). The parties consummated this transaction on June 27, 2006. See File No. 0002444650.

² 47 C.F.R. § 20.18(g)(1)(v).

³ *Id.*

⁴ See 47 C.F.R. § 20.18(e).

⁵ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

based solution).⁶ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.⁷ However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.⁸

3. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request for Phase II service.⁹ After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration, among their subscribers, of location-capable handsets no later than December 31, 2005.¹⁰

4. On January 5, 2007, the Commission issued orders denying requests for waiver filed by Sprint Nextel Corporation and Nextel Partners, Inc. of the December 31, 2005 handset penetration deadline (collectively, "*Waiver Orders*").¹¹ In these *Waiver Orders*, the Commission found that Sprint Nextel and Nextel Partners failed to meet the Commission's standards for waiver of the 95% handset penetration requirement because their efforts to encourage subscribers to upgrade non-compliant handsets were insufficient and ineffective and their filings lacked a clear path to full compliance with the handset penetration requirement.¹² The Commission also found that Sprint Nextel and Nextel Partners' conceded failures to meet 95% handset penetration by the December 31, 2005 deadline should be addressed through the enforcement process and referred the matter of both carriers' non-compliance with Section 20.18(g)(1)(v) of the Rules to the Enforcement Bureau.¹³ Specifically, Sprint Nextel achieved a

⁶ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. *See* 47 C.F.R. § 20.3, *Location-Capable Handsets*.

⁷ *See* 47 C.F.R. § 20.18(f), (g)(2).

⁸ *See* 47 C.F.R. § 20.18(j)(1).

⁹ *See* 47 C.F.R. § 20.18(g)(1).

¹⁰ *See* 47 C.F.R. § 20.18(g)(1)(v).

¹¹ *See Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation*, Order, 22 FCC Rcd 400 (2007) ("*Sprint Nextel Waiver Order*"), *recon. pending*; *Request for Waiver of Location-Capable Handset Penetration Deadline by Nextel Partners, Inc.*, Order, 22 FCC Rcd 416 (2007) ("*Nextel Partners Waiver Order*"), *recon. pending*. The Commission addressed these waiver requests in separate decisions because Sprint Nextel and Nextel Partners were separate entities as of the relevant compliance deadline. *Sprint Nextel Waiver Order*, 22 FCC Rcd at 416, n. 1.

¹² *Sprint Nextel Waiver Order*, 22 FCC Rcd at 410 ¶ 28; *Nextel Partners Waiver Order*, 22 FCC Rcd at 426 ¶ 25.

¹³ *Sprint Nextel Waiver Order*, 22 FCC Rcd at 413-14 ¶¶ 35, 40; *Nextel Partners Waiver Order*, 22 FCC Rcd at 428-29 ¶¶ 31, 36. The Commission previously has placed carriers on notice that referrals may be made to the Enforcement Bureau for failure to comply with an applicable Phase II deadline, even when requests for relief are submitted in advance of deadlines set forth in the Commission's Rules or orders. *See Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, 18 FCC Rcd 21838, 21844 ¶ 12 (2003) ("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"). Both Sprint Nextel and Nextel Partners executed a Tolling Agreement on June 22, 2007. *See Tolling Agreement between Sprint Nextel and the Enforcement Bureau, Federal Communications Commission*, dated June 22, 2007. The Agreement tolls the one-year statute of limitations as it relates to the facts and issues surrounding Nextel Partners.

penetration rate of only 81.3% by the December 31, 2005 deadline¹⁴ and Nextel Partners achieved a penetration rate of only 74.2% by the December 31, 2005 deadline.¹⁵

5. On July 12, 2007, the Enforcement Bureau issued a letter of inquiry requesting that Sprint Nextel provide certain supplemental information related to its efforts to meet the E911 handset requirements.¹⁶ Specifically, the letter requested that Sprint Nextel provide, among other things, a timeline of all actions taken, both before and after the December 31, 2005 deadline, to encourage customers to upgrade to E911 compliant handsets, including any incentives and special promotions, information concerning the costs and expenditures of these actions and incentives, and information concerning the “take rate” or effect these actions and incentives had on Sprint Nextel’s overall compliance rate. Sprint Nextel submitted its response on July 23, 2007.¹⁷

III. DISCUSSION

A. Failure to Comply with E911 Handset Penetration Requirement

6. The Commission has determined based on the record established in the waiver proceedings that Sprint Nextel failed to comply with the handset penetration deadline.¹⁸ Sprint Nextel does not dispute that it achieved a penetration rate of only 81.3% by the December 31, 2005 deadline and that Nextel Partners achieved a penetration rate of only 74.2% by the December 31, 2005 deadline. Accordingly, we conclude that Sprint Nextel apparently willfully¹⁹ and repeatedly²⁰ failed to comply with the 95% handset penetration requirement by the December 31, 2005 deadline in violation of Section 20.18(g)(1)(v) of the Rules.²¹

B. Proposed Forfeiture

7. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or

¹⁴ *Sprint Nextel Waiver Order*, 22 FCC Rcd at 408 ¶ 22.

¹⁵ *Nextel Partners Waiver Order*, 22 FCC Rcd at 424 ¶ 19.

¹⁶ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Laura H. Carter, Vice President, Government Affairs, Sprint Nextel Corporation (July 12, 2007).

¹⁷ Letter from Laura H. Carter, Vice President, Government Affairs, Sprint Nextel Corporation to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (July 23, 2007) (“LOI Response”).

¹⁸ *See supra* ¶ 4.

¹⁹ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²⁰ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 9 (2001); *Southern California*, 6 FCC Rcd at 4388.

²¹ We note that, while Nextel Partners’ violation would have ceased when it ceased to have a separate existence upon transfer of control to Sprint Nextel, the termination of Nextel Partners’ violation does not negate that fact that a separate, continuing violation occurred. As the transferee of control, Sprint Nextel assumes Nextel Partners’ regulatory liabilities to the Commission. Given that Sprint Nextel’s acquisition of Nextel Partners has been completed, we believe that a consolidated NAL that addresses the separate and individual violations of both carriers is appropriate in the enforcement context. *See supra* n. 1.

order issued by the Commission shall be liable to the United States for a forfeiture penalty.²² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁴ We conclude under this standard that Sprint Nextel is apparently liable for forfeiture for its apparent willful and repeated violation of Section 20.18(g)(1)(v) of the Rules.

8. Under Section 503(b)(2)(B) of the Act,²⁵ we may assess a common carrier a forfeiture of up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁶

9. The Commission’s *Forfeiture Policy Statement*²⁷ and Section 1.80 of the Rules do not establish a base forfeiture for violation of Section 20.18(g)(1)(v). Nevertheless, the Commission has stated that the “omission of a specific rule violation from the list ... [establishing base forfeiture amounts] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee’s obligation, to know and comply with all of the Commission’s rules.”²⁸ Thus, the Commission retains its discretion to issue forfeitures on a case-by-case basis,²⁹ and has assessed forfeiture liability,³⁰ for rule violations irrespective of whether corresponding base forfeiture amounts have been established.

²² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

²⁵ 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); see also 47 C.F.R. § 1.80(c).

²⁶ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁷ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²⁸ 12 FCC Rcd at 17099 ¶ 22.

²⁹ *Id.*

³⁰ See *Callais Cablevision, Inc.*, Forfeiture Order, 17 FCC Rcd 22626, 22630 ¶¶ 19-20 (2002) (assessing an aggregate \$133,000 forfeiture irrespective of the absence of an established base forfeiture for violations of the cable signal leakage standards); *Midwest Television, Inc.*, 20 FCC Rcd 3959 (Enf. Bur. 2005) (assessing a \$20,000 proposed forfeiture irrespective of the absence of an established base forfeiture for failure to broadcast emergency information accessible to hearing impaired viewers); *A-O Broadcasting Corp.*, 31 Communications Reg. (P&F) 411 ¶ 22 (2003), *forfeiture ordered*, 20 FCC Rcd 756 (2005) (assessing a \$28,000 forfeiture, *inter alia*, irrespective of the absence of an established base forfeiture for violations of radio frequency exposure limits).

10. Having considered the statutory factors enumerated above, in conjunction with the entire record in this proceeding, including the supplemental information provided by Sprint Nextel,³¹ we conclude that a substantial proposed forfeiture is warranted. First, we find that the violations here are egregious. Violations of E911 requirements are extremely serious, given the critical function these requirements serve in promoting and safeguarding life and property.³² As the Commission has previously stated, it is critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase II would be fully implemented as quickly as possible.³³ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, searching for those callers when the callers cannot provide this information, or both.³⁴ In this regard, we take into account the substantial percentage of noncompliance at the deadline (13.7% for Sprint Nextel and 20.8% for Nextel Partners) and the significant number of customers affected by Sprint Nextel's noncompliance. We observe that Sprint Nextel had more than 51 million wireless customers at the end of 2005.³⁵

11. Moreover, our finding of an egregious violation is further buttressed by the length of time that carriers have been on notice of the final handset penetration deadline -- since at least 1999³⁶ -- and the fact that the Commission has repeatedly affirmed Sprint Nextel's obligation to meet the handset penetration deadline. For example, in October 2001, the Commission extended the deadlines for Nextel and Nextel Partners with respect to the sale and activation of location-capable handsets, but specifically did not extend the December 31, 2005 deadline for achieving 95% penetration of location-capable

³¹ Sprint Nextel requested confidential treatment of its July 23, 2007 LOI Response. *See* Letter from Laura H. Carter, Vice President, Government Affairs, Sprint Nextel Corporation, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (July 23, 2007). Although we do not rule on Sprint Nextel's request for confidentiality at this time, we will accord confidential treatment of the LOI Response for purposes of this NAL except where the information contained therein is otherwise publicly available. *See* 47 C.F.R. § 0.495(d).

³² *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20852 ¶ 2 (1999), *clarified*, 16 FCC Rcd 18982 (2001); *see also Dobson Cellular Systems, Inc. and American Cellular Corporation*, 21 FCC Rcd 4684, 4707 ¶ 59 (2006), *consent decree ordered*, 22 FCC Rcd 7968 (2007); *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 3501, 3504 ¶ 7 (2003); *Sprint Spectrum LP d/b/a Sprint PCS*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 19901, 19906 ¶ 12 (Enf. Bur. 2004), *consent decree ordered*, 20 FCC Rcd 12328 (Enf. Bur. 2005).

³³ *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers*, Order to Stay, 17 FCC Rcd 14841, 14853 ¶ 38 (2002) ("*Non-Nationwide Carriers Order*").

³⁴ Phase I E911 service provides a PSAP with data elements containing the telephone number of the originator of the 911 call and the location of the cell site or base station receiving the 911 call. *See* 47 C.F.R. § 20.18(d). Thus, the actual location of the caller can be miles distant from the location information provided to the PSAP, with consequent delay in providing the caller with emergency services, assuming that the caller actually can be located. Phase II service, by comparison, has a required location accuracy of 100 meters for 67% of calls and 300 meters for 95% of calls (for a network-based location solution) or 50 meters for 67% of calls and 150 meters for 95% of calls (for a handset-based location solution). *See* 47 C.F.R. § 20.18(h)(1)-(2).

³⁵ *See* Sprint Nextel Corporation 2005 Annual Report on Form 10-K (filed March 7, 2006) and Sprint Nextel Corporation 2006 Annual Report on Form 10-K (filed March 1, 2007), www.sprint.com.

³⁶ *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17388, 17408 ¶ 42 (1999), *modified*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17445 ¶ 36 (2000).

handsets.³⁷ Further, in granting consent to the merger of Sprint and Nextel, the Commission stated that it was “particularly concerned about the merged entity’s progress toward E911 compliance.”³⁸ It noted Nextel’s assertion that it “‘anticipate[d] that Sprint Nextel [would] likely not achieve the Commission’s 95 percent A-GPS handset penetration requirement until December 31, 2007,’” and deemed that result unacceptable.³⁹ The Commission “confirm[ed] [its] commitment to the E911 rules and remind[ed] the Applicants that they, like all carriers, are obligated to comply with [the] E911 rules, including the requirement that carriers electing a handset-based E911 solution achieve 95 percent penetration by the end of [2005].”⁴⁰ The Commission further stated that “[w]e will not hesitate to take enforcement action if this deadline is not met.”⁴¹

12. We also believe that a substantial proposed forfeiture is warranted based on the continuous and repeated nature of the violations. We note that Sprint Nextel still has not achieved 95% handset penetration, 20 months after the December 31, 2005 deadline, and is the only Tier I provider that is not in compliance.⁴² In this context, where every day of a continuing violation has the potential of threatening the delivery of critical, life-saving services, a 20-month delay in compliance compels a significant proposed forfeiture.

13. Further, we take into account Sprint Nextel’s size and ability to pay a forfeiture in determining the appropriate forfeiture amount. Sprint Nextel is a Tier I wireless service provider,⁴³ with a nationwide footprint serving 53.1 million subscribers as of the end of 2006.⁴⁴ Sprint Nextel generated more than \$41 billion in revenues in 2006.⁴⁵ As the Commission made clear in the *Forfeiture Policy Statement*, large or highly profitable communications entities, such as Sprint Nextel, could expect forfeitures significantly higher than those reflected in the base amounts.⁴⁶ In view of Sprint Nextel’s size

³⁷ See *Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc.*, Order, 16 FCC Rcd 18277, 18284 ¶ 20, 18285 ¶ 24, 18289 ¶ 37 (2001) (“*Nextel Phase II Waiver Order*”)(finding that Nextel was still subject to the same full deployment requirement as all other carriers, *i.e.*, that 95% of all customer handsets have location capability no later than December 31, 2005, despite a delay in the initial deployment of these handsets.).

³⁸ *Sprint Nextel Merger Order*, 20 FCC Rcd at 14019-20 ¶ 144.

³⁹ See *id.* at 14020 ¶ 144; see also Letter from Laura L. Holloway, Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 94-102, filed July 11, 2005, at 1 (“Nextel has placed the Federal Communications Commission (‘Commission’) on notice that it likely will not be able to comply with the 95% benchmark, primarily due to the GPS software glitch that affected millions of A-GPS-capable Nextel handsets last summer.”).

⁴⁰ *Sprint Nextel Merger Order*, 20 FCC Rcd at 14020 ¶ 144.

⁴¹ *Id.*

⁴² See Sprint Nextel Corporation E911 Quarterly Report, WT Docket Nos. 05-286 and 05-302 (filed August 1, 2007). Sprint Nextel indicates that, as of June 30, 2007, its subscriber records indicate that the handset penetration rate had reached 93.67%. Sprint further suggests that its records actually may understate the actual handset penetration rate, which may be as high as 94.79%. This figure includes combined handset numbers for Sprint Nextel and Nextel Partners.

⁴³ Tier I carriers are Commercial Mobile Radio Service providers with nationwide footprints. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14843 ¶ 7. In the *Non-Nationwide Carriers Order*, the Commission found that there were six carriers with national footprints, including Nextel.

⁴⁴ Sprint Nextel Corporation 2006 Annual Report on Form 10-K (filed March 1, 2007), www.sprint.com.

⁴⁵ *Id.*

⁴⁶ Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful (continued....)

and ability to pay, we believe that a substantial proposed forfeiture is appropriate to serve as an effective deterrent to future violations of the E911 requirements.

14. We recognize that Sprint Nextel identified a latent software defect that affected the location capability of its handsets and that upon discovery, took prompt and aggressive action to remedy the defect.⁴⁷ It is well established that “an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance” with E911 requirements.⁴⁸ On the other hand, a carrier’s “concrete and timely actions” taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in an enforcement context.⁴⁹ Toward that end, we acknowledge the substantial efforts Sprint Nextel made to remedy the software problem, including subscriber outreach and promotional initiatives, and find that mitigation of the proposed forfeiture is warranted on this basis.

15. We also recognize that Sprint Nextel expected to reach 95% penetration by December 31, 2005 among those customers served by the CDMA network inherited from Sprint and but for Sprint’s acquisition of Nextel, it would have been only major handset-based carrier to have timely achieved compliance with the December 31, 2005 deadline.⁵⁰ We stated in the *Sprint Nextel Waiver Order* that although this factor does not excuse Sprint Nextel’s non-compliance, it does merit consideration in the enforcement proceeding to follow.⁵¹ We find that mitigation is warranted on this basis.

16. On balance, however, we find that Sprint Nextel did not undertake the level of commitment we would expect from a Tier I carrier. Despite the aggressive efforts taken to address the software defect, we note that Sprint Nextel was less aggressive when it came to its underlying compliance obligations. We also note that Sprint Nextel spent less on compliance efforts relative to their customer and revenue bases as compared to the other companies before us.⁵² For these reasons, we find that a substantial forfeiture is warranted.

17. Accordingly, based on the egregious, continuous and repeated nature of the violations and Sprint Nextel’s ability to pay a forfeiture, we propose a forfeiture in the amount of \$1,325,000 for

(Continued from previous page)

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

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100.

⁴⁷ See *Sprint Nextel Waiver Order*, 22 FCC Rcd at 409-10, ¶¶ 26-28; *Nextel Partners Waiver Order*, 22 FCC Rcd at 425-26, ¶¶ 23-25.

⁴⁸ *Order to Stay*, 17 FCC Rcd at 14854 ¶ 37; *Revision of the Commission’s Rules to Ensure Compatibility of Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum LP d/b/a Sprint PCS*, 16 FCC Rcd 18330, 18340 ¶ 32 (2001); *Revision of the Commission’s Rules to Ensure Compatibility of Enhanced 911 Emergency Calling Systems, Request for Waiver by AT&T Wireless Services*, 16 FCC Rcd 18253, 18261 ¶ 26 (2001).

⁴⁹ *Id.*

⁵⁰ *Sprint Nextel Waiver Order*, 22 FCC Rcd at 413, ¶ 33.

⁵¹ *Id.*

⁵² Sprint Nextel described its compliance efforts and its expenditures in its July 23, 2007 LOI Response. See *supra* n. 31.

Sprint Nextel's willful and repeated failure to achieve 95% handset penetration among its subscribers by December 31, 2005 in violation of Section 20.18(g)(1)(v) of the Rules.

18. Finally, because Sprint Nextel apparently has still not achieved 95% handset penetration among its subscribers, we will continue to require that Sprint Nextel comply with the reporting requirements that were established in the *Waiver Orders*.⁵³

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Sprint Nextel Corporation is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one million three hundred twenty five thousand dollars (\$1,325,000) for willful and repeated violation of Section 20.18(g)(1)(v) of the Rules.

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

21. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

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

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

24. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁵⁴

⁵³ *Sprint Nextel Waiver Order*, 22 FCC Rcd at 412-13, ¶ 34; *Nextel Partners Waiver Order*, 22 FCC Rcd at 428, ¶ 30.

⁵⁴ See 47 C.F.R. § 1.1914.

25. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Laura H. Carter, Vice President, Government Affairs, Sprint Nextel Corporation, 2001 Edmund Halley Drive, Reston, VA 20191.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: In the Matter of Alltel Corporation, Notice of Apparent Liability for Forfeiture, EB-07-SE-008

Re: In the Matter of Sprint Nextel Corporation, Notice of Apparent Liability for Forfeiture, EB-07-SE-006

Re: In the Matter of US Cellular Corporation, Notice of Apparent Liability for Forfeiture, EB-07-SE-009

Ensuring that E911 service meets the needs of public safety and the expectations of the American people is a top priority of mine and of the Commission. I recognize that the public expects us to get these issues right. One of my first actions when I became Chairman was to ensure that all Americans could pick up the phone and dial 911 and connect to emergency services whether they were using a wireline, wireless or Internet phone. On the wireless side, Americans increasingly expect that dialing 911 also means first responders can pinpoint a caller's location, even when the caller is incapacitated or does not know where he or she is. To this end, the FCC required all carriers to ensure that 95% of their subscribers have handsets that are location capable by December 31, 2005.

Alltel, Sprint Nextel, and U.S. Cellular failed to meet this critical deadline by a significant margin, despite the clear requirements of the Commission and the needs of their consumers. While we recognize the efforts undertaken by the carriers, and encourage the continued efforts of all carriers to enhance these life-saving technologies and work with the public safety community, the fines issued today are significant and appropriate. Our actions today underscore the critical importance that 911 services play in the lives of the public. I continue to believe that one of the Commission's highest obligations is facilitating the ability of the public safety community to help those in need. Effective enforcement of our E911 rules is a valuable and necessary tool in achieving this mission.