

**STATEMENT OF
COMMISSIONER MICHAEL COPPS
Concurring in Part, Dissenting in Part**

Re: *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless LLC, Sprint Spectrum L.P. d/b/a Spring PCS, Verizon Wireless, AT&T Wireless Services, Inc., Nextel Communications, Inc.*

When dealing with life critical technology, especially in today's environment, we cannot conduct "business as usual." We must make extra effort, expend extra resources, and do a better job. None of us has done that in the context of E911. Many carriers have not met deadlines for deploying E911 systems and handsets. Many manufacturers have not made equipment and software upgrades available quickly enough. Many in the public safety community have not secured funding for upgrades or made adequate progress towards installing needed new equipment. Importantly, the Commission is only now dealing with dozens of pending waivers at the last possible moment and in a way that is not consistent with its stated waiver standard.

We can do better than this – we *must* do better than this. Enhanced 911 will save lives. We all therefore have a special responsibility to work hard to make certain our wireless networks are E911 compliant so they are better able to help Americans when there is an emergency. If there was ever any doubt about the value of wireless communications to public safety, recent events have completely erased them. Wireless communications save lives today. By making E911 a reality, we will improve our networks and equipment so that they will save far more lives in the future.

Yet today the Commission decides to grant waivers that excuse compliance with our October 1, 2001 deadline and push compliance benchmarks far into the future. I fear that because of this decision consumers will not have E911 services as quickly as they deserve, and in the coming months and years we will see more waiver requests, more finger pointing, and unacceptably slow progress. The country cannot afford to go down that road. I hope instead that carriers and manufacturers will not seek further extensions based on arguments of more vendor delay, technology failure, or the fact that the Commission today grants some carriers far more lenient compliance schedules than others. I hope that PSAPs move forward quickly to do their part and modernize their facilities. And, I hope that, when faced with compliance failures or waiver requests, the Commission holds fast and requires carriers to live up to the promises made in the waiver requests we dispose of today.

I respectfully dissent from the Nextel and Verizon Orders because the underlying requests do not satisfy our waiver requirements. These requests do not give us "a clear path to full compliance," and do not come "as close as possible to full compliance." I also would have preferred that the Commission include stronger compliance language in all of today's Orders that would have made it clear that carriers have the burden of proving that they have met each benchmark they have agreed to, that failure to meet a

benchmark will result in enforcement action and punitive measures, and that waivers that seek changes to these benchmarks will be received with suspicion.

For these reasons I concur in the result of the *AT&T*, *Cingular*, and *Sprint* Orders, agree with the *City of Richardson* Order, and respectfully dissent from the *Nextel*, and *Verizon* Orders.

Previous Commission Action on E911

In 1996 the Commission worked closely with the public safety community and the wireless communications industry to devise E911 rules.¹ In the *E911 First Report and Order*, the Commission and industry began the process of making our national wireless system able to report the location of an emergency call to public safety personnel. As part of this proceeding, the Cellular Telecommunications Industry Association and various members of the public safety community suggested that the Commission require “Phase II” compliance within five years in a “Consensus Agreement” filed on the record on February 12, 1996.² Recognizing the complexity of achieving Phase II compliance, the Commission agreed with CTIA and the public safety community and provided industry with a full five years to reach “Phase II” compliance.³ Thus, carriers knew on July 26, 1996 that their systems would have to achieve Phase II compliance on October 1, 2001, as they had proposed.

The Association of Public Safety Communications Officials (APCO), the National Emergency Number Association (NENA), and the National Association of State Nine One One Administrators (NASNA) therefore recently stated, “The Commission established its rules five years ago, and carriers and their suppliers have long known that deployment must begin on October 1, 2001. Thus, the Commission must stand firm on this and other deployment deadlines. Otherwise there will be little incentive for carriers and others to fulfill the promise of wireless E9-1-1.”⁴

In several subsequent Orders, the Commission relaxed the Phase II requirements, delayed compliance dates, and allowed more flexibility in the types of technologies that could be used to achieve Phase II compliance.⁵ As part of allowing the use of handset-based technologies, the Commission relaxed the five-year period for achieving Phase II compliance in order to achieve the greater location accuracy of GPS. Therefore, carriers were allowed to chose between network technologies that were required to be in place by October 1, 2001 and handset technologies on a delayed schedule. This delayed schedule required initial availability of Phase II compliant phones by March 1, 2001, compliance of 50% of new phones sold by October 1, 2001, and compliance of 100% of new phones sold within six months of a PSAP request received after October 1, 2001.⁶

¹ See *E911 First Report and Order*, 11 FCC Rcd 18676.

² *Id.* at ¶ 23.

³ *Id.*

⁴ *Additional Ex Parte Comments of APCO, NENA and NASNA* at 2.

⁵ See *E911 Reconsideration Order*, 12 FCC Rcd 22665 (1997); *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd 10954.

⁶ *E911 Third Report and Order*, 15 FCC Rcd 17388, at ¶ 9 (1999).

In the *E911 Fourth Memorandum Opinion and Order*, the Commission delayed compliance yet again. Responding to carrier and manufacturer arguments that handset technologies were behind schedule, the Commission extended compliance deadlines as follows: initial availability of compliant phones was delayed until October 1, 2001, 25% compliance of new phones was delayed until December 31, 2001, 50% compliance was delayed until June 30, 2002, and 100% compliance was delayed until December 31, 2002. Carriers were required to achieve 95% compliance of all phones in their network by December 31, 2005, a delay of one year.

The Commission found that adopting further delays would not be in the public interest. It stated that:

“We find that [additional proposed delay] would substantially reduce the public safety benefits of Phase II, leaving many wireless 911 callers without the benefits of ALI for a greatly extended period of time. Such delay also would compound the increasing burdens that rapidly growing numbers of wireless 911 calls impose on PSAPs. Emergency call takers now must devote critical time and resources to questioning wireless 911 callers to determine their location. Emergency response teams must often waste critical minutes – or longer – searching for those callers. Further, we determine that any wholesale deferral of the handset deployment schedule would be unfair to the many competitors who have been working to timely develop and market other ALI solutions A radical extension of the handset phase-in schedule . . . would amount to a decisive and unwarranted preference for handset-based technologies, substantially altering the terms of the competition between technologies . . . *In sum, we conclude that the public interest and the public safety do not support a substantial delay in the current handset deployment schedule.* Even if some major handset manufacturers prove unable or unwilling to produce ALI-capable handsets in the near future, we believe the public safety will be better served if carriers are required to deploy other available ALI solutions, including GPS handsets that may be available from other manufacturers, according to the timetable we set herein. To allow the lengthy delay requested by some parties, would, in our view, jeopardize the progress made to date in the development of ALI solutions.”⁷

Despite this finding, and despite a long history of delays of E911 implementation schedules, the majority has now granted waivers for Nextel and Verizon that allow a “radical extension of the handset phase-in schedule” after the Commission found such a delay to be against the public interest a mere 12 months ago. While the delay the Commission faced then was not identical to the one it faces now, it was similar in scale. Nearly doubling the time after our October 1, 2001 deadline in which Nextel may continue to sell non-compliant handsets, and accepting schedules that place our 2005 end date in grave danger, as we do today, can only be seen as a “radical extension.”

⁷ *E911 Fourth Memorandum Opinion and Order* ¶¶ 26-30 (emphasis added).

The Waivers Before the Commission

The Commission has created a special standard for E911 waiver requests. In the *E911 Fourth Memorandum Report and Order* the Commission stated that:

Waivers thus should not generally be warranted, especially in light of the vital public safety benefits of Phase II. In those particular cases where waivers may be justified, however . . . we expect waiver requests to be specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance⁸

Several carriers have met this standard in their waiver requests. Sprint, AT&T (GSM), and Cingular (GSM) make firm commitments to begin offering consumers Phase II compliant handsets on October 1 or, in the case of AT&T, as soon as the first GSM phone is available. They each have made enforceable promises to sell only Phase II handsets, and to have all switch upgrades complete, by the end of next year. The Commission will be able to monitor the progress of these carriers through quarterly reports, and will be able to bring enforcement actions if any of the carriers miss any of their benchmarks. These compliance plans thus give us “a clear path to full compliance,” and come “as close as possible to full compliance.”

The Nextel and Verizon waiver requests do not meet our waiver standard. Nextel will not make a single compliant phone available until December 2002 – by which time Sprint, AT&T, and Cingular have promised to sell only compliant phones. Nextel will continue to sell non-compliant phones far into the future, not reaching 100% compliance of new handsets until December 2004 – nearly two years behind Sprint, and two years and two months behind Cingular. In addition, Nextel’s request indicates that the company will be able to have 95% of its entire imbedded base of handsets compliant only one year after it stops selling non-compliant phones. This seems unlikely to me, even with the large number of corporate customers Nextel describes in its comments. Even the evidence Nextel proffers related to turnover of Internet-capable phones show that they required more time for handset turnover than allowed in this order. These extreme delays and unlikely benchmarks do not give us “a clear path to full compliance,” or come “as close as possible to full compliance.”

Similarly, Verizon will not sell a single compliant handset by the October 1 deadline. It will continue to sell non-compliant phones until December 2003 – a full year later than Sprint despite using similar technology and a year and three months later than Cingular. Additionally, Verizon depends on Motorola switches for a substantial portion of its network. Motorola has stated that it will not be able to make its switches compliant until March 2003. This will leave a substantial number of Verizon customers without even the possibility of Phase II E911 services, even if they purchase a compliant handset, for a year and six months after the October 1, 2001 deadline. Again, these extreme

⁸ *Id.* at ¶ 44 (emphasis added).

delays and manufacturer uncertainties do not give us “a clear path to full compliance,” or come “as close as possible to full compliance.”

Nextel’s asserts that its use of iDEN technology and reliance on Motorola for equipment availability puts it in a different position than other carriers. Verizon states that it was delayed because its original E911 technology failed, and because it also depends on delayed equipment availability from Motorola. I believe that carriers have significant control over their vendors and can speed equipment availability through financial and contractual pressure. In the end it is the carrier’s responsibility to meet E911 responsibilities. I recognize the need for flexibility because of equipment availability. I support such flexibility where delays are brief in the Sprint, AT&T, and Cingular waivers. Problems with suppliers should not, however, excuse radical departures from carriers’ responsibilities.

Enforcement Language

The majority grants all five E911 waiver requests because the carriers commit to deployment schedules. These schedules include dates of initial handset availability, dates when various interim benchmarks will be met, dates when switch upgrades will be complete, and the December 31, 2005 date by which all carriers must have 95% of their entire base of handsets Phase II compliant. In order for these schedules to move us towards “full compliance” carriers must understand that the benchmarks are not targets but commitments. If a carrier misses a benchmark it must expect that the Commission will begin an enforcement action, even if it missed the benchmark because its vendor fails to make equipment or software available on time. Carriers should also understand that waivers will not be granted merely because a technology fails to work as expected or because of delays by a vendor.

To make this perfectly clear, I would have preferred to include stronger enforcement language with each Order. This language would have made it explicit that the Carriers themselves offered the schedules and benchmarks and that therefore we would not expect to grant any future waiver based on an argument that these schedules and benchmarks are unreasonable or unobtainable. I also would have preferred language that made it clear that the carriers had the legal burden of proving that they had met each benchmark, and that mere assertions that they met these benchmarks would be insufficient.

The Orders, unfortunately, do not include this stronger enforcement language. However, the majority has made efforts to strengthen the language to the point that I can concur in the result of granting the Sprint, AT&T, and Cingular waivers. I believe, nonetheless, that the addition of stronger language would have made the Orders far more effective.

Smaller and Rural Carriers

The Commission also received a number of waiver requests from smaller carriers and rural carriers. Because we do not have an adequate record on how to treat smaller and rural carriers, and because hundreds of carriers have not filed waivers or indicated the status of their E911 deployment, the Commission will delay enforcement of its E911 rules for these carriers for a brief period.

I support this action because many small and rural carriers have unique situations and the Commission must carefully consider how to address these situations. However, the fact that we must delay on the very week when carriers are supposed to meet E911 requirements demonstrates why it was a bad idea to wait so long to deal with this issue. We should not have to be in this situation. When, after developing a record, we decide how to address the situations of small and rural carriers, I will seek reporting requirements and benchmarks that, while sensitive to these carriers' differences from the major carriers, nevertheless are strong, enforceable, and in concert with "a clear path to full compliance."

Conclusion

I am encouraged that the December 31, 2005 deadline by which 95% of all carriers handsets must be Phase II compliant is not postponed in any of these Orders. This date is critical, and now all six major carriers have stated that it is reasonable and that they will meet it. This date must not be allowed to slip.

We have a long way to go to meet this responsibility. Carriers, manufacturers, PSAPs and the Commission must all rally around the goal of making E911 fully available to the American people before the end of 2005. In every moment of national emergency our country has faced, American workers, American enterprise, and American leaders have come together not only to meet, but to exceed critical production and infrastructure needs. We are in such an emergency now. To me, and I think to a vast majority of my fellow citizens, our challenge is clear.