

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE NEBRASKA) Application No. 911-019/PI-118
PUBLIC SERVICE COMMISSION, ON)
ITS OWN MOTION, TO IMPLEMENT)
PROVISIONS OF LB 1222 [2006] AND)
TO ESTABLISH A PERMANENT FUNDING)
MECHANISM FOR WIRELESS ENHANCED)
911 SERVICE)



COMMENTS
OF
N.E. COLORADO CELLULAR, INC.
d/b/a VIAERO WIRELESS

N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero”), by counsel and pursuant to the Nebraska Public Service Commission’s (“Commission”) Order Releasing Amended Model and Application Process for Comment and Setting Hearing, dated December 15, 2009, (“**Amended Model Order**”), in the above-referenced Docket, is pleased to submit the following Comments. Viaero also submitted Comments on September 8, 2009, in response to the Commission’s Order Seeking Comment and Establishing Procedural Schedule, dated July 7, 2009, (“**Order Seeking Comment**”) and on October 30, 2009, in response to the Commission’s Order Releasing Proposed Application Process for Comment, dated September 22, 2009, (“**Process Order**”) and hereby incorporates those Comments herein by reference.

I. INTRODUCTION

Viaero is a “telecommunications carrier” as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5, and for the purposes of Part 54 of the FCC’s Rules (47 C.F.R. § 54.1, et seq.), Viaero is considered a common carrier. Viaero holds authorizations from the FCC to provide Personal Communications Services (“PCS”) in the Norfolk, Nebraska, Grand Island-Kearney, Nebraska, North Platte, Nebraska and Hastings, Nebraska Basic Trading Areas and is a commercial mobile radio service (“CMRS”) provider pursuant to the definition of “mobile service” provider in 47

U.S.C. § 153(27). Viaero provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5 and was designated an Eligible Telecommunications Carrier (“ETC”) by Commission Order entered on October 18, 2005, in Application C-3324. Viaero acquired its first FCC license in Colorado over fifteen years ago, and over the past several years Viaero has acquired spectrum to expand its network into Colorado, Wyoming, South Dakota and Kansas and has expanded its coverage area in Nebraska. Viaero is licensed to serve almost all of Nebraska, except for its more populated eastern markets. See Viaero’s coverage maps attached hereto **Exhibit A**.

II. AMENDED MODEL AND APPLICATION PROCESS

The Amended Model Order states that the Commission has determined that various changes should be made to the permanent funding mechanism for wireless enhanced 911 service outlined in the Order Seeking Comment and the Process Order and that the provisions set forth in the Amended Model Order are intended to “replace” the proposals set forth in the prior Orders. As to those features of the permanent funding mechanism proposal set forth in the Amended Model Order which are substantially identical to the proposals set forth in the Order Seeking Comment and the Process Order, Viaero stands on its prior Comments.

III. WIRELESS SERVICE PROVIDER FUNDING

1) Monthly Distributions from Enhanced Wireless 911 Fund (“911 Fund”)

Viaero supports the Commission’s new determination that funding amounts calculated by the Wireless 911 Support Allocation Model (“911 SAM”) and allocated to Wireless Service Providers (“WSPs”) will be paid directly to the WSPs on a monthly basis commencing July, 2010.

2) **Compliance with Federal Location Accuracy Standards**

WSPs are already required to comply with federally mandated Phase II location accuracy, reliability and testing standards at the PSAP service area level pursuant to 47 C.F.R. § 20.18(h). Compliance with the provisions of 47 C.F.R. § 20.18(h) must also incorporate all applicable rules and regulations pursuant thereto as well as applicable FCC reports, orders and bulletins, including, but not limited to, FCC Report and Order adopted September 11, 2007, in PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196 (“**Report and Order**”) as such rules, regulations and orders pertain to network-based technologies. It should be noted that the FCC has specifically provided that it does not intend to penalize carriers that are making good faith efforts to comply with its location accuracy requirements at the PSAP level and has established a deadline of September 11, 2012 for achieving compliance with Section 20.18(h) at the PSAP level. (See Report and Order at para. 16, 17, p. 8). This deadline is also specifically set forth at 47 C.F.R. § 20.18(h)(2)(v). A copy of the Report and Order is attached hereto at **Exhibit B**. Given this specific FCC compliance deadline, any Commission imposed prerequisites for funding by a WSP would necessarily be subject to the same deadline.

While complying with federal accuracy standards is a critical, Viaero is unsure what purpose would be served by adding the additional administrative burdens - on carriers and the Commission – related to “demonstrating” compliance at the state level as well. Viaero strongly suggests that, rather than requiring carriers to “demonstrate compliance,” the Commission should reserve the right to reduce or eliminate funding to carriers that violate the applicable FCC rules, regulations and orders through a show cause proceeding.

3) Eligible WSP Costs

a) Phase II Costs.

The Commission reiterates in the Amended Model Order that eligible costs with respect to WSPs “may include, but not be limited to,” those costs specifically authorized pursuant to § 86-465(2)(a) of the 911 Act. Further, the Commission proposes that eligible costs for WSP funding should also include “database management and upgrade costs necessary to provide enhanced 911 services and costs for transportation and facilities to carry wireless E-911 calls to the selective router regardless of whether these costs are Phase I or Phase II.” [See Amended Model Order, B(2), p. 9]. On the basis of the testimony delivered by Tyler Frost before the Commission on October 7, 2009, at the Hearing on the Order Seeking Comment, where Mr. Frost stated that the 911-SAM would include reimbursement for Phase II actual costs from the Grant Program, it appears that certain Phase II costs are now eligible for reimbursement from the general funding phase of the 911-SAM (“**General Funding**”) as well as from the WSP Grant Program (“**Grant Program**”). However, the Commission’s amended 911-SAM seems to stop short of including Phase II costs in all categories of WSP eligible costs, even though nearly the entire state of Nebraska is now Phase II capable according to the Commission’s 2009 Annual Report on Telecommunications (“**PSC Annual Report**”) (See PSC Annual Report, p. 58). All WSP eligible costs identified by the Commission in the Amended Model Order should be reimbursed from the 911 Fund, regardless of whether those costs are Phase I or Phase II.

b) **Capital Expenses**

The Commission also provides in the Amended Model Order, as it did in the Process Order, that “capital expenses” directly related to the provision of E-911 services would be eligible costs for reimbursement from the Grant Program. However, the Commission does not define the phrase “capital expenses” nor distinguish such expenses from those eligible for funding in the General Funding phase of the 911-SAM. In fact, the Amended Model Order states that “capital expenses” include “. . . new equipment and software and upgrades. . . ,” which items are either explicitly included (“new equipment”) or implicitly included (“other costs of establishing enhanced wireless 911 services”) in the eligible costs specifically identified under the 911 Act and incorporated by the Commission under the “eligible costs” for the General Funding phase of the 911-SAM. Under typical accounting definitions, “capital expenses” are expenses for assets which have a useful life of more than one (1) year (See <http://biztaxlaw.about.com/od/glossary/c/a/capitalexpenditure.htm>). Certainly most equipment and software used for providing E-911 service constitute “capital assets,” the purchase of which constitutes a “capital expense.” Therefore, Viaero requests that the Commission provide a definition or explanation for the phrase “capital expenses” which would serve to explain any distinction the Commission seeks to make between the character of assets which are included as “eligible costs” under the General Funding phase as opposed to those under the Grant Program.

IV. FUNDING APPLICATIONS FOR GENERAL FUNDING AND GRANT PROGRAM

The Commission should reconsider its application and processing deadline for both General Funding and Grant Program applications. As it stands, applications for General Funding must be filed by October 15th for the following funding year (i.e., July 1st – June 30th), and payments are made directly to WSPs on a monthly basis commencing on July 1st for each funding year. The nine (9) month lag between application and funding will make planning difficult, both in accurately identifying eligible costs for the following year and in budgeting the associated projects. WSPs typically plan on a much shorter horizon, and it is in the public interest that projects be identified, funded, and built quickly. A February 1st deadline would accomplish this. The resulting annual funding schedule would be more balanced and workable for all stakeholders.

As to the Grant Program, the Commission has specifically stated that support amounts which were allocated, but not actually paid, to individual WSPs would be set aside and made available through the Grant Program “**during that funding year**”. Therefore, if the Commission waits until May 31st to announce the level of funding available in the Grant Program, it leaves only one month for the Commission to evaluate and award grants before the end of that funding year on June 30th. This does not seem to be a realistic timeframe for WSPs to prepare, and the Commission to evaluate, Grant Program applications.

Alternatively, by July 1st, the first day of the “following” funding year, all General Funding allocation amounts will be known to the Commission. Consequently, the Commission could begin accepting Grant Program applications immediately after July 1st of each funding year for the **same funding year**, allowing everyone involved as much

time as possible to process Grant Program applications. A deadline for Grant Program applications could be established, and October 1st seems appropriate. This would allow applicants at least three full months to evaluate their General Funding expenditures, determine their needs from the Grant Program, and file a timely application.

A sample funding schedule incorporating these timing changes would look as follows:

Funding Year 2010-2011

February 1, 2010 – General Funding applications due for following funding year (2010-2011)

May-June, 2010 – General Funding funding decision(s) issued by Commission for following funding year (2010-2011)

July 1, 2010 – Funding year begins – General Funding monthly payments commence

July 1, 2010 – Grant Funding approved

October 1, 2010 – Grant Funding Applications due for 2010-2011

January 15, 2011 – Grant decision(s) issued by Commission for 2010-2011

February 1, 2011 – General Funding applications due for following funding year (2011-2012)

June 30, 2011 – Funding year ends

Viaero's proposed changes to the application and funding process for both phases of the 911-SAM, allowing for both to be processed in the same funding year, would greatly benefit applicants and would not place any significant burden on the Commission. Further, Viaero believes these changes would provide more timely and certain funding, which would drive greater network investment.

V. PROPOSED CAP ON 911 FUNDS ALLOCATED TO GRANT PROGRAM

The Commission's proposed 25% cap on WSP support should be eliminated. The Commission is under no statutory obligation to tie its own hands on how it allocates money from the 911 Fund, and even if it believes there is good cause to discriminate against WSPs in the funding process, it should do so in its discretion only after evaluating the available evidence and assessing current needs. An arbitrary cap is not supported by any record evidence and could prove counterproductive.

Indeed, the record in the Docket demonstrates that access to the State's 911 Fund by WSPs is essential to achieving the goal of the FCC, the State of Nebraska and the Commission to deploy a robust, reliable and accurate wireless 911 system throughout the State. The WSP industry has, to date, borne the entire economic burden of deploying a Phase II wireless E-911 system. Prior use of the E911 Fund has been focused on funding PSAP infrastructure for Phase II and reimbursing LECs for their costs. Having now largely implemented the technological capability of most of the state's PSAPs to receive and process Phase II calls, the focus of the Commission's objectives can and should now be directed toward enhancing the scope and accuracy of E-911 services throughout the State, an objective that is a direct function of the number of wireless cell towers deployed across the state which are Phase II capable

The FCC has acknowledged that while achieving PSAP-level accuracy standards is technologically feasible, it will require the "investment of significant resources by certain carriers" (See FCC Docket 07-166, p. 14). In evaluating the economic impact of achieving these aggressive accuracy standards on small entities, the FCC acknowledged that compliance with the FCC accuracy rules may impose "cost burdens on small entities." Nevertheless, the FCC concluded that the great public interest benefits of compliance with the accuracy standards "outweigh the economic burdens." (See Appendix C-Final Regulatory Flexibility Analysis, FCC

Docket 07-166, para. 42). While concluding that compliance with established 911 accuracy standards is technologically feasible today, “requiring only the investment of additional financial resources,” Commissioner Deborah Taylor Tate warned that the FCC must ensure that requiring compliance with the standards does “not provide disincentives for expanding service to rural Americans . . .” (See Statement of Commissioner Deborah Taylor Tate, FCC Docket 07-166).

Arbitrarily restricting funding to WSPs will have precisely the effect that Commissioner Tate fears. The more capital Viaero and other WSPs must devote to unreimbursed 911 expenses, the less is available to expand their networks and provide additional coverage, including E-911 service in remote areas of the state.

The Commission should embrace the concept of providing all available funding it can to WSPs, so that they can achieve the national priority of ubiquitous and accurate E-911 service. Arbitrary caps on funding should be discarded in favor of active engagement and decision making by the Commission.

In light of the foregoing, and in the absence of any evidence that a cap on the Grant Program Funding is necessary or in the public interest, Viaero encourages the Commission to remove the Grant Program cap from the 911-SAM and to monitor, on an annual basis, the demand from the WSP industry for funding to enhance the state 911 system. Should it be later determined that the WSP industry has no demand for additional funding, the Commission could amend the 911-SAM accordingly to better allocate the available support funding to other purposes.

VI. FUNDING FOR LEC COSTS

Significant concern has been recently voiced about the fact that as a distinct category of costs, the costs paid to LECs to transport calls to the PSAPs represents the largest single category of costs paid out of the 911 Fund. It has been alleged that the LECs’ tariffed rates billed to

PSAPs significantly exceed the LECs' annual cost of providing transportation services and also includes a profit factor to the LECs, unlike the payments to WSPs and PSAPs which are strictly cost-based and do not include a profit.

The Commission recently addressed this issue and has now modified the 911-SAM to reflect a different approach to dealing with LEC costs. First, the Commission has proposed that it would be more efficient for the Commission to pay LEC costs directly, on behalf of PSAPs, rather than paying PSAPs for such costs in order for the PSAPs to in turn pay the LECs. Viaero supports this proposal.

Second, the Commission has proposed to compensate LECs on a "per wireless subscriber rate" to be paid by the Commission based on the number of wireless subscribers reported to the Commission. Each LEC would be required to file a tariff setting forth the per-subscriber rate. Viaero generally supports this proposal.

However, the underlying issue concerning the amount of the per subscriber rate has not been specifically addressed. Ms. Vanicek testified at the Commission's most recent hearing on the matter on October 7, 2009, that the LECs proposed per subscriber rate "would recover their costs for providing wireless 911 services to the PSAPs" [emphasis added]. Ms. Vanicek went on to testify that the original 911-SAM allocated about \$4 million annually for the payment of LEC costs, however, the Commission is currently paying about \$2 million annually to the LECs. "Therefore, payment of LEC costs directly to the LECs by the Commission would result in about \$2 million additional support for the first support year to be allocated between the PSAP, GIS and wireless service provider funding categories." [See Testimony of Sue Vanicek, p. 10].

However, the revised and updated E-911 Fund Status Forecast, attached to the Amended Model Order as Exhibit A, shows the LEC fund allocation at \$4,026,610 for 2010, ultimately declining to \$3,242,664 by 2013, nothing near the \$2 million reduction projected by Ms. Vanicek

in her recent testimony. Therefore, while changing the process of paying LEC costs, the Commission has not effectuated the proposed reduction in LEC costs contemplated by Ms. Vanicek last October nor addressed the expectation that the new LEC surcharge tariff would be developed to recover only the LECs' "cost for providing wireless 911 service" [emphasis added], thereby resulting in an increase in the support levels provided to the PSAP, GIS and WSP funding categories. The Commission should implement Ms. Vanicek's proposals and more effectively address the concerns of Viaero and the E-911 Advisory Board regarding the inordinate amount of money recovered from the 911 fund by LECs.

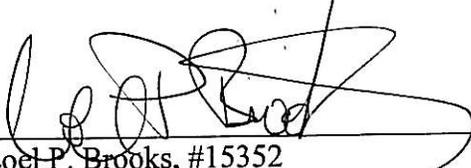
VII. CONCLUSION

Viaero supports the Commission's continuing efforts to develop a permanent funding mechanism for wireless enhanced 911 services which will be fair and responsive to Nebraska's WSPs as well as to PSAPs, LECs and wireless rate payers. Viaero urges the Commission to adopt its proposed amendments, including the revised application and funding schedule which would permit both General Funding and Grant Program applications to be processed in the same funding year, which would greatly benefit all WSP applicants and stimulate greater network investment. Most importantly, Viaero urges the Commission to eliminate the proposed cap on the funding of the Grant Program so that the Commission does not arbitrarily restrict its own discretion to allocate money from the 911 Fund or arbitrarily limit the amount of funding available to the WSPs to achieve the national priority of ubiquitous and accurate E-911 service throughout the State of Nebraska. Viaero looks forward to further participation in all subsequent proceedings of the Commission concerning this important undertaking.

Respectfully submitted this 22nd day of January, 2010.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of January, 2010, an original, eight copies and an electronic copy of the Comments of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, in Application No. 911-019/PI-118 were delivered to:

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The undersigned hereby certifies that on this 22nd day of January, 2010, one copy of the Comments of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, in Application No. 911-019/PI-118 was mailed via U.S. mail to:

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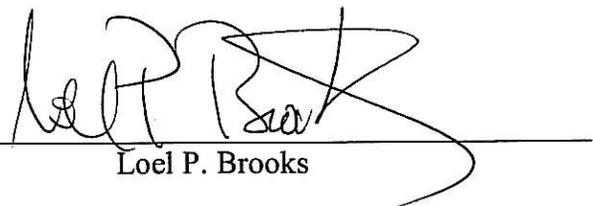
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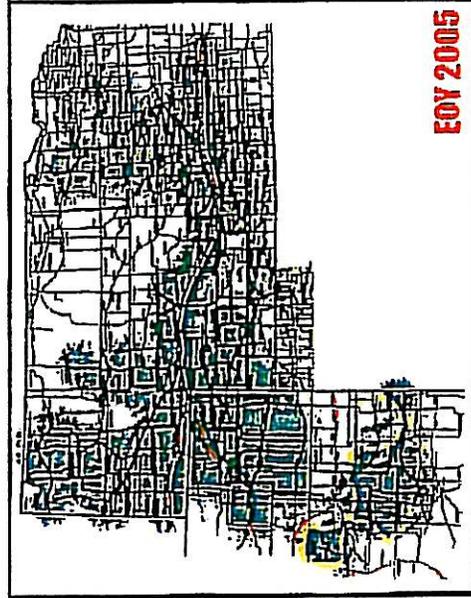
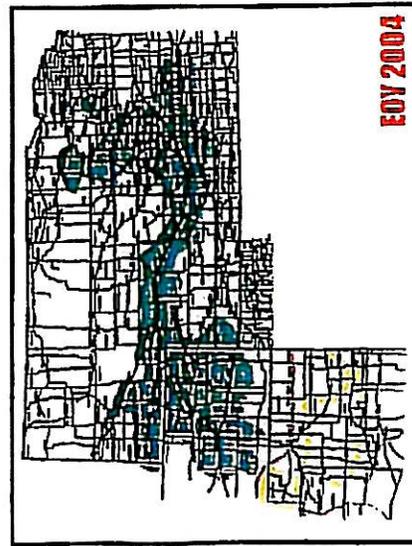
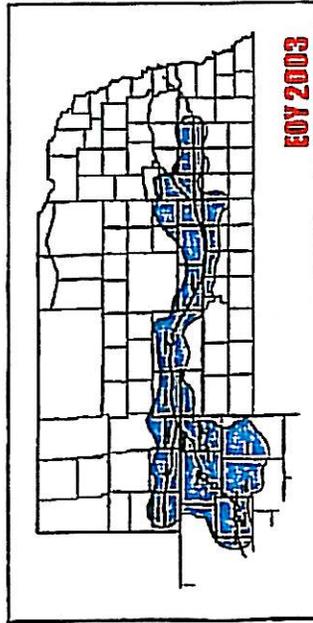
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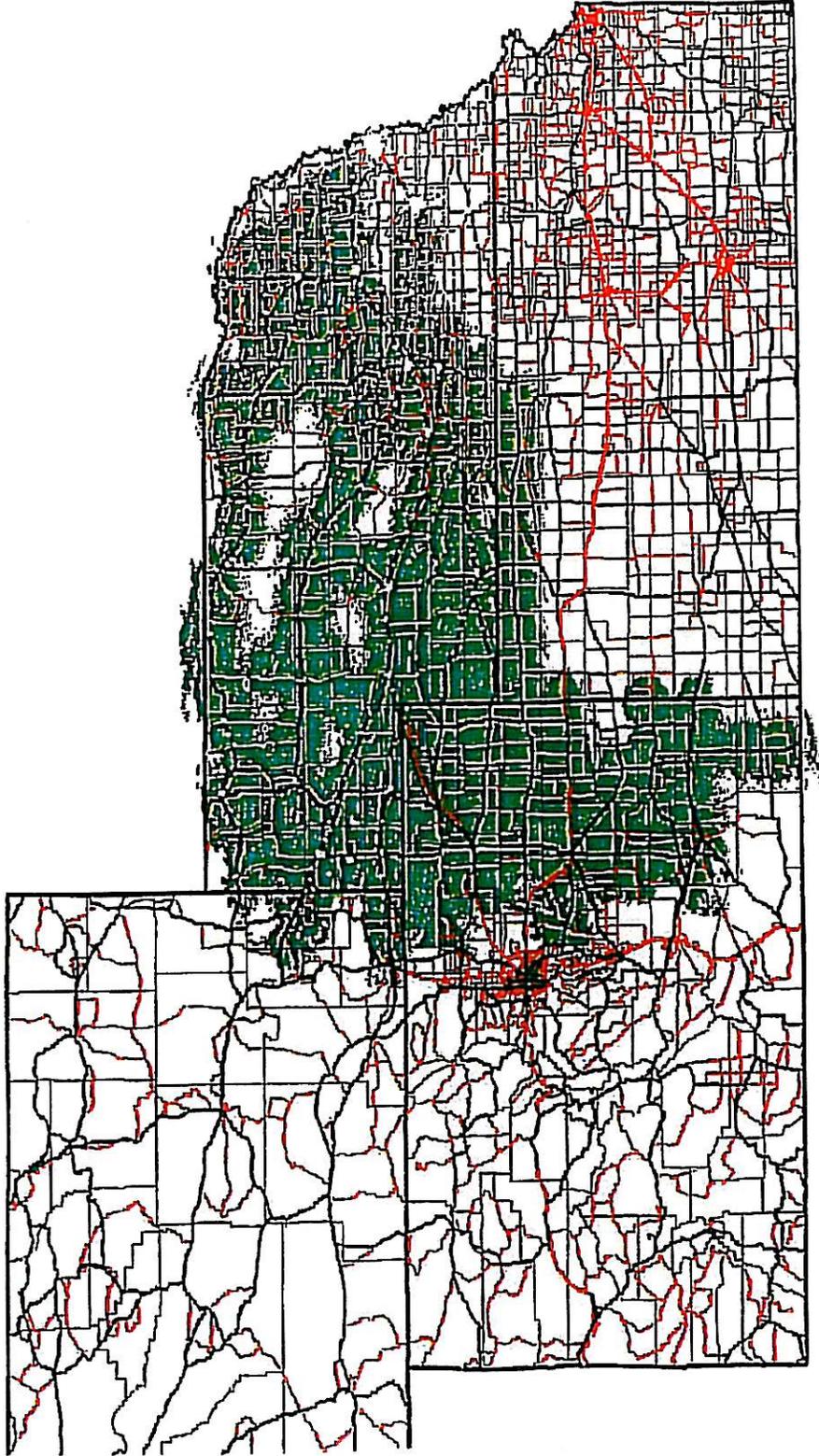
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EXHIBIT A

Evolution of Viaero Wireless Coverage



Viaero Wireless Coverage 2008



Viaero National Roaming Covera

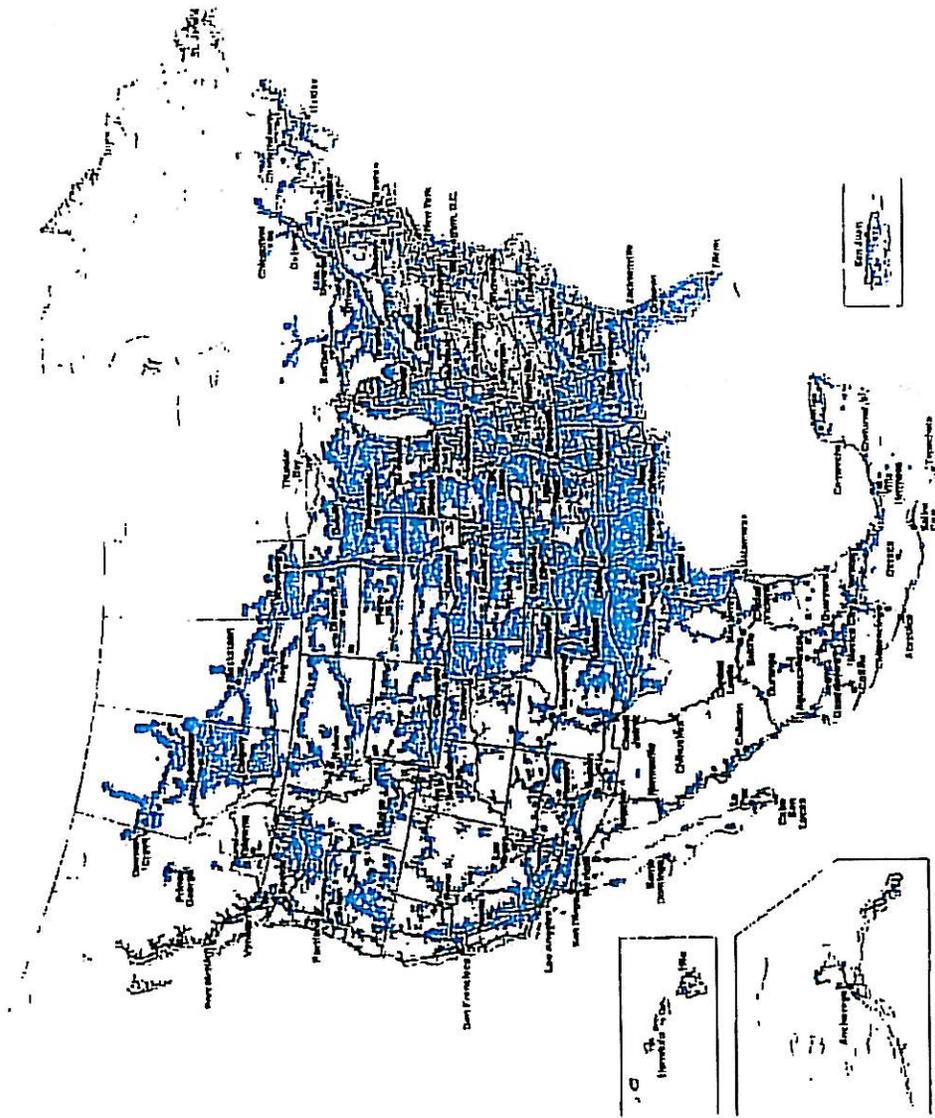


EXHIBIT B

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

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Wireless E911 Location Accuracy Requirements |) | PS Docket No. 07-114 |
| |) | |
| Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems |) | CC Docket No. 94-102 |
| |) | |
| Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling |) | |
| |) | |
| 911 Requirements for IP-Enabled Service Providers |) | WC Docket No. 05-196 |

REPORT AND ORDER

Adopted: September 11, 2007

Released: November 20, 2007

By the Commission: Chairman Martin and Commissioners Copps, Tate, and McDowell issuing separate statements; Commissioner Adelstein approving in part, dissenting in part, and issuing a statement.

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I. INTRODUCTION

1. In this Report and Order, we require wireless licensees subject to Section 20.18(h) of the Commission’s rules, which specifies the standards for wireless Enhanced 911 (E911) Phase II location accuracy and reliability, to satisfy these standards at a geographical level defined by the coverage area of a Public Safety Answering Point (PSAP). Our decision is supported by a diverse group of public safety entities whose comments emphasize the tragic results that inaccurate and unreliable location information can cause. Because we recognize that some carriers presently are measuring their compliance with Section 20.18(h) at broader geographic levels, we provide a reasonable amount of time to comply with Section 20.18(h) at the PSAP level. We therefore establish a deadline of September 11, 2012, by which

time all commercial mobile radio service (CMRS) carriers must measure compliance with Section 20.18(h) at the PSAP level. We also establish interim compliance benchmarks, in order to ensure that carriers are making progress toward compliance with Section 20.18(h) at the PSAP level.

2. This Order is the critical first step in a comprehensive examination of E911 location accuracy and reliability. We take this initial step in order to ensure that all stakeholders – including public safety entities, wireless carriers, and technology providers – are subject to an appropriate and consistent compliance methodology with respect to the location accuracy standards in Section 20.18(h).

3. In the coming months, we will continue our examination of 911 location accuracy issues, after which we will release another order that will address the remaining issues on which we sought comment in this proceeding. That continued examination will explore the questions we have raised regarding possible establishment of more stringent, uniform location accuracy requirements across technologies, and the continuing development of technologies that might enable carriers to provide public safety with better information for locating persons in the event of an emergency. Our action today is necessary to ensure that carriers' provision of location information in compliance with current requirements is meaningful to PSAPs and first responders. By making clear that compliance with Section 20.18(h) must be measured at the PSAP level, we effectively "set the stage" for the examination that lies ahead and ensure that all stakeholders are focused on achieving compliance with Section 20.18(h) at a common, PSAP-based geographic level.

II. BACKGROUND

4. Section 20.18(h) of the Commission's rules states that licensees subject to the wireless E911 requirements

shall comply with the following standards for Phase II location accuracy and reliability:

(1) For network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls; (2) For handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls. (3) For the remaining 5 percent of calls, location attempts must be made and a location estimate must be provided to the appropriate PSAP.¹

In the *First Report and Order*, in which the Commission first adopted accuracy requirements for the provision of E911 by wireless carriers, the Commission stated that "the level of accuracy achieved by [a] carrier shall be calculated based upon all 911 calls originated in a service area in which the carrier is required to supply Automatic Location Identification to PSAPs."² The *First Report and Order* required each covered carrier "to demonstrate, upon request made by the PSAP, that its ALI system performs in compliance with the requirements established in this Order."³

5. In April 2000, the Commission's Office of Engineering and Technology (OET) issued Bulletin No. 71 to provide guidance in determining whether wireless licensees required to supply location

¹ 47 C.F.R. § 20.18(h); see also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17417-23 ¶¶ 66-77 (1999) (adopting the current version of Section 20.18(h)).

² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *First Report and Order*, 11 FCC Rcd 18676, 18712 ¶ 71 (1996) (*First Report and Order*).

³ *Id.*

information to PSAPs comply with the Commission's accuracy requirements.⁴ OET's Bulletin did not establish mandatory procedures, but stated that compliance with the guidelines set forth therein would establish "a strong presumption that appropriate means have been applied to ensure that an ALI [Automatic Location Information] system complies with the Commission's Rules."⁵ The Bulletin described the Commission's expectations regarding location accuracy measurement and testing as follows:

Reports of compliance testing should clearly define the subject geographical areas. Accuracy tests may be based on the coverage areas of local PSAPs that request Phase II deployment. It may be appropriate to subject a wireless service provider's entire advertised coverage area within a metropolitan area or similar region to testing . . . but these are typically large areas and initial ALI deployment may proceed more gradually. Thus, testing may initially cover an urban core and later extend to the response area of a local PSAP. Compliance may be verified for these sub-areas separately or in combination. However, the areas delineated for compliance testing should not overlap. It is unacceptable to include the same geographic sub-area in two or more test areas, especially if the sub-area is relatively undemanding for the location technology.⁶

6. In October 2004, APCO filed a request for declaratory ruling seeking clarification of the geographic area over which wireless carriers must provide the levels of location accuracy required under the Commission's rules, as well as the degree to which carriers must provide confidence and uncertainty data on the level of location accuracy to PSAPs.⁷ In its request, APCO proposed that carriers should be required to meet the Commission's location accuracy requirements at the PSAP service area level.⁸

7. On June 1, 2007, we released a Notice of Proposed Rulemaking (*Notice*) seeking comment on APCO's proposal, as well as a variety of related questions about how to improve 911 location accuracy and reliability.⁹ In the *Notice*, we agreed with APCO that carriers should not be permitted to average their accuracy results over vast service areas because carriers could assert that they satisfy the requirements of

⁴ OET Bulletin No. 71, Guidelines for Testing and Verifying the Accuracy of Wireless E911 Location Systems (Apr. 12, 2000) at 2, available at http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet71/oet71.pdf.

⁵ *Id.*

⁶ *Id.*; see also, e.g., Cingular Consent Decree, File No. EB-02-TS-003, 18 FCC Rcd 11746, 11751 n.10 (2003) ("OET Bulletin No. 71 . . . states that accuracy testing may be based on, among other things, the coverage areas of local PSAPs that request Phase II deployment or the wireless carrier's entire advertised coverage area within a metropolitan area.").

⁷ See Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling, CC Docket No. 94-102, at 1 (filed Oct. 6, 2004) (APCO Request).

⁸ *Id.* On February 4, 2005, APCO supplemented its request to indicate that metropolitan statistical areas (MSAs) and rural service areas (RSAs) may also serve as appropriate boundaries within which to measure and test location accuracy. Association of Public-Safety Communications Officials-International, Inc. Supplement to Request for Declaratory Ruling, CC Docket No. 94-102, at 1 (filed Feb. 4, 2005) (APCO Supplement). In subsequent filings, however, APCO reiterated its support for measuring and testing location accuracy at the PSAP level. See, e.g., APCO Comments at 1-2; Letter from Robert M. Gurs, Director of Legal and Government Affairs, Association of Public-Safety Communications Officials-International, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 94-102, at 2 (filed Sept. 14, 2005).

⁹ Wireless E911 Location Accuracy Requirements; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; 911 Requirements for IP-Enabled Service Providers, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, *Notice of Proposed Rulemaking*, 22 FCC Rcd 10609 (2007) (*Notice*).

Section 20.18(h) yet not meet the Commission's accuracy requirements in substantial segments of their service areas.¹⁰ We found that although measuring location accuracy at the PSAP level may present challenges, the public interest demands that carriers and technology providers strive to ensure that when wireless callers dial 911, emergency responders are provided location information that enables them to reach the site of the emergency as quickly as possible.¹¹ In recognition of the fact that many carriers are not currently measuring and testing location accuracy at the PSAP service area level, we sought comment on whether we should defer enforcement of Section 20.18(h) if we adopted our tentative conclusion to require compliance at the PSAP level.¹²

III. DISCUSSION

A. Compliance with Section 20.18(h) at the PSAP Level

8. Consistent with the *Notice*, we find that carriers should be required to meet the Commission's Phase II accuracy requirements set forth in Section 20.18(h) at the PSAP service area level. Use of a PSAP-based geographic area for compliance purposes is most consistent with the purpose of the E911 rules, which, as we stated in the *Notice*, is to ensure that PSAPs receive accurate, meaningful location information in order to dispatch local emergency responders to the correct location. Although Section 20.18(h) does not explicitly state that accuracy must be measured and tested at the PSAP level, it is unreasonable to think that the Commission ever envisioned averaging of location accuracy on a large geographic basis, such as a carrier's entire national footprint.

9. As we stated in the *Notice*, measuring over large geographic areas such as a carrier's entire national footprint could allow a service provider to claim compliance with the Commission's accuracy requirements even though the carrier cannot meet them in individual PSAP areas, or even entire states.¹³ In those circumstances, certain PSAPs receive either meaningless location information or no location information. Even worse, PSAPs may receive location information yet not know that the information is not reliable. Any of these results could extend the amount of time necessary for a 911 call taker to obtain the location of the caller or the site of an emergency – including cases as serious as callers attempting to report criminal activity impacting homeland security – and thus result in longer dispatch times, and perhaps even no response by public safety officials who lack sufficient information to locate the caller.¹⁴

¹⁰ *Id.* at 10611-12 ¶ 5.

¹¹ *Id.* at 10612 ¶ 6.

¹² *Id.* The *Notice* established a bifurcated comment cycle; comments and replies on the issues raised in Section III.A of the *Notice*, which are addressed in this Order, were due on July 5 and July 11, 2007, respectively. See Comment and Reply Comment Dates Established for Notice of Proposed Rulemaking in the Matter of Wireless E911 Location Accuracy Requirements and E911 Requirements for IP-Enabled Service Providers, PS Docket No. 07-114, WC Docket No. 05-196, *Public Notice*, 22 FCC Rcd 11171 (Public Safety & Homeland Security Bur. 2007) (*E911 Location Accuracy Public Notice*). A list of the parties that filed comments in the first stage of this proceeding is attached as Appendix A. In Section III.B of the *Notice*, we sought comment on other possible ways to improve wireless E911 location accuracy and reliability. See *Notice*, 22 FCC Rcd at 10613-16 ¶¶ 8-18. The issues raised in Section III.B of the *Notice* are not addressed in this Order, but will be addressed in a future order. Comments on the issues raised in Section III.B were due on August 20, 2007; replies are due on September 18, 2007. See *E911 Location Accuracy Public Notice*, 22 FCC Rcd at 11171.

¹³ *Notice*, 22 FCC Rcd at 10611 ¶ 5.

¹⁴ See Syosset Fire District Comments at 3. Moreover, as pointed out by Syosset, inaccurate location information could put the public at even greater risk of harm while first responders rush to locate the emergency incident with poor information. *Id.*; see also *Phoning 911; Gaps despite new technologies*, ConsumerReports.Org, January 2007, at http://www.consumerreports.org/cro/electronics-computers/news-electronics-computers/phoning-911-1-07/overview/0107_911_ov.htm (last visited Sept. 11, 2007) (January 2007 Consumer Reports Article) (describing

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In fact, PSAPs often answer calls with: “911. What is the address of your emergency?” because they cannot rely on carriers to meet location accuracy requirements in their PSAP service area.¹⁵ A lack of meaningful data regarding a caller’s location would thus render the purpose of the rule – which is intended to ensure that carriers provide meaningful location information to emergency responders – a nullity.¹⁶ Measurement of compliance at the PSAP level is the most appropriate way to avoid this otherwise absurd result consistent with the purpose of the rule.

10. The record in this proceeding supports our conclusion that requiring PSAP-level accuracy is necessary to ensure that the goal of providing meaningful location information to emergency responders is met. The public safety organizations that filed comments in response to the *Notice* are nearly unanimous in their support for our tentative conclusion.¹⁷ These organizations represent a cross-section of the public safety community, ranging from nationwide associations such as APCO and NENA, to first responders in densely populated urban areas such as New York City, Chicago, and Orlando, to emergency response organizations in smaller communities such as Lufkin, Texas and San Juan County, New Mexico. The public safety commenters are uniquely qualified to attest to the importance of accurate and reliable location information. Their comments support our observation in the *Notice* that averaging location accuracy over large geographic areas is likely to produce inadequate and unreliable location information in some parts of a provider’s service area.¹⁸ The New York City Police Department, for example, emphasizes how difficult it is for PSAPs to ensure that the location information they receive from carriers is accurate and reliable.¹⁹ And *Consumer Reports* estimates that accurate location information is not delivered at the PSAP level in nearly half of the country.²⁰

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the inability of emergency responders to locate a young girl who had called 911 from her cell phone while clinging to her father, who could not swim, after their kayak tipped over in the Hudson River).

¹⁵ *Id.* (noting that every telephone call to the Department of Emergency Response in Dutchess County, New York, is answered this way because of the lack of accurate location information at the PSAP level).

¹⁶ We have never suggested that it is appropriate to average accuracy results over an entire state, much less over a multistate carrier’s entire service area. *See Notice*, 22 FCC Rcd at 10612 ¶ 6 & n.17. It would, therefore, have been appropriate for us to clarify that Section 20.18(h) requires compliance at the PSAP level; however, as we stated in the *Notice*, out of an abundance of caution, we have initiated a rulemaking in order to ensure full public input and development of a record on this issue. *Id.* Accordingly, our decision today is supported by the record developed in response to the *Notice*. We therefore find no merit in commenters’ procedural arguments regarding our action today. *See, e.g.*, T-Mobile Comments at 13-15; Verizon Wireless Comments at 7-10.

¹⁷ *See, e.g.*, APCO Comments at 2; Johnson County Comments at 2; Lufkin Police Department Comments at 1; NENA Comments at 1; New York City Police Comments at 2-3; Onandaga County Comments at 2; Orange County Comments at 2; San Juan County Comments at 2; Syosset Fire District Comments at 3; Texas 9-1-1 Alliance Comments at 2; Waukesha County Comments at 2; City of Wichita Falls Comments at 2; WSCDC Comments at 2 (all supporting PSAP-level compliance with Section 20.18(h)). Even public safety commenters that expressed some concern about the costs or the benefits of implementing PSAP-level compliance nonetheless supported PSAP-level accuracy as “the ideal approach.” NATOA Comments at 5.

¹⁸ *See, e.g.*, Orange County Comments at 3 (“Allowing [wireless carriers] to average location accuracy performance over large areas creates a public safety disadvantage to all, as under performing rural areas may not receive the level of service that public safety agencies need to rapidly locate callers, who may be imperiled in a remote area.”); Syosset Fire District Comments at 3 (“If a carrier’s coverage area is vast, it may average the more precise accuracy information in some areas with the relatively inaccurate location information it is able to provide in others. . . . [M]easuring accuracy of location information must occur at the PSAP level to be meaningful.”).

¹⁹ New York City Police Comments at 3-4; *see also* Waukesha County Comments at 2 (“[W]e need to be able to meet callers’ expectations and be able to locate them accurately and in a timely manner, and to be able to qualify that accuracy within [the boundaries of] ‘our’ system.”).

²⁰ *See* January 2007 Consumer Reports Article.

11. Some commenters support measuring and testing location accuracy on a statewide basis, rather than at the PSAP service area level.²¹ These commenters, however, fail to address how measurement at the state level furthers the goals of Section 20.18(h). State-level compliance would not solve the problem that APCO described in its 2004 request for declaratory ruling and that public safety commenters in this proceeding have also identified: state-level compliance would still allow service providers to average accuracy results over a geographic area large enough to render the location information provided to some PSAPs within the state “virtually useless.”²² As a result, carriers may achieve acceptable levels of location accuracy in urban areas of a given state, yet provide location information of limited or no use to first responders in rural areas. Indeed, this approach would particularly shortchange residents of larger states with a significant number of PSAPs as they would be more likely to reside in a PSAP where location information of limited or no use would be provided than would residents of smaller states. Moreover, if it is possible for carriers to comply with location accuracy requirements on a statewide basis in small states, this suggests that it would be feasible for carriers to comply with location accuracy requirements at the PSAP level across the nation were they willing to invest appropriate resources. These commenters also provide no persuasive reasons or evidence why the Commission should require compliance at any level other than the PSAP level.²³ In the absence of any such evidence, we reject this approach.

12. Commenters also argue that we should not require location accuracy compliance at the PSAP level before completing the second phase of this rulemaking, or that we should first convene an industry forum or advisory council to assess the possibilities for improving 911 location accuracy.²⁴ We reject this argument as without merit. The step we take today is necessary to ensure first responders receive meaningful location accuracy information as soon as possible, and should not be delayed while we explore additional issues regarding improving location accuracy. By making clear that compliance with Section 20.18(h) must be measured at the PSAP level, we also effectively “set the stage” for the examination that lies ahead, ensuring that all stakeholders are properly discussing location accuracy at the correct geographic level.

13. Our action today, however, does not depend on that examination, nor does it preclude a more comprehensive approach to our E911 location accuracy rules, as some commenters suggest,²⁵ or otherwise “plac[e] the cart before the horse.”²⁶ Although the *Notice* sought comment on whether hybrid location technologies can provide even *better* location accuracy results,²⁷ we do not resolve those questions in this Order.²⁸ We only require service providers to comply with Section 20.18(h) at what may be a smaller geographic area than they are currently using to measure their compliance, with whatever

²¹ See, e.g., State of Montana Comments at 1; Letter from Steve Marzolf, President, National Association of State 9-1-1 Administrators, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 94-102 (filed May 23, 2007) (NASNA May 23, 2007 *Ex Parte* Letter).

²² APCO Supplement at 1.

²³ Some carriers argue that PSAP-level compliance will be hindered by the variety of shapes, sizes, and topographical features that characterize different PSAPs. See, e.g., AT&T Comments at 9-10. We recognize that geographical variations in service areas can present challenges to the provision of E911 service, but in the interest of public safety, we cannot permit those challenges to justify diminished location accuracy.

²⁴ See, e.g., AT&T Comments at 3-6; CTIA Comments at 6-7.

²⁵ See, e.g., QUALCOMM Comments at 7.

²⁶ See, e.g., Sprint Nextel Comments at 3; Verizon Wireless Comments at 12.

²⁷ *Notice*, 22 FCC Rcd at 10614-15 ¶ 11.

²⁸ The *Notice* established a separate comment cycle for all questions relating to the use of hybrid location technologies. See *id.* at 10612 ¶ 7; see also *supra* note 12.

location technology they are now using to locate 911 callers. More specifically, we are not mandating any specific location technology or approach in this Order, nor are we requiring carriers to implement new location technologies. For example, carriers that currently employ a network-based location solution need not incorporate handset-based location technologies into their networks to comply with our ruling in this Order, or vice versa. And, as noted above, our determination here will serve to better inform the discussion going forward. For these reasons, we are not persuaded that the action we take today is premature.

14. We also reject as without merit commenters' assertions that we should not move forward because the location technologies that are currently available are not capable of satisfying the requirements of Section 20.18(h) at the PSAP service area level.²⁹ In the first instance, our decision to allow carriers five years to achieve compliance at the PSAP level substantially mitigates these concerns. Furthermore, the record indicates that in many cases, PSAP-level compliance is technologically feasible today and would require only the investment of additional financial resources.³⁰ In this regard, we note that while it is obviously in carriers' financial interests to argue that any meaningful requirement will not be possible to meet, carriers too often blur the distinction between that which is infeasible and that which simply requires the expenditure of additional resources. Finally, even though the record indicates that some service providers are not currently prepared to meet our current location accuracy requirements at the PSAP level, that fact alone should not prevent us from establishing the PSAP service areas as the geographic basis for compliance with the Section 20.18(h) location accuracy requirements. Indeed, the Commission has consistently found it appropriate to set aggressive benchmarks for carriers and providers when public safety is at stake,³¹ and it is our judgment based on the record as well as our experience regarding the implementation of similar public safety mandates that carriers will be able to meet the compliance deadline and interim benchmarks set forth in this Order. While we acknowledge that meeting the deadline and benchmarks may require the investment of significant resources by certain carriers, we believe that such expenditures are more than justified by the accompanying public safety benefits. Furthermore, we believe that our Order today will have a catalyzing effect on efforts to improve location accuracy measurement because it will create significant incentives for industry.

15. In short, the public interest demands that we no longer allow service providers to nullify our longstanding location accuracy requirements by measuring their compliance over unreasonably large geographic areas. While deployment of E911 Phase II service continues to expand, such service has no significance to local emergency responders if the location information so provided does not permit 911 call takers to locate the caller. In the interests of public safety and homeland security, our action today thus closes any "loopholes" that may allow service providers to avoid providing meaningful location accuracy information. It is clear based on the inability to date of wireless carriers and technology vendors

²⁹ See, e.g., QUALCOMM Comments at 4-7; T-Mobile Reply at 3-10; Verizon Wireless Reply at 4-7.

³⁰ See, e.g., TruePosition Comments at 2-3 (suggesting that TruePosition's U-TDOA location technology can achieve the location accuracy standards for network-based technologies today "in the majority of situations," and that "[w]here the technology as presently deployed does not meet the standard, it could do so with additional [financial] investments").

³¹ See, e.g., IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36, 05-196, *First Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 10245, 10266-67 ¶ 37 (2005), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006) ("While 120 days is an aggressively short amount of time in which to comply with [the Commission's VoIP 911 rules], the threat to public safety if we delay further is too great and demands near immediate action."); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17399 ¶ 21 (1999) ("The sooner [automatic location identification (ALI)] information is available and used by PSAPs[,] the more rapidly and efficiently emergency help can be sent. We have set an aggressive schedule in order to deploy ALI as soon as reasonably possible[,] and we seek to avoid and minimize any delay.").