



STATE OF WASHINGTON  
MILITARY DEPARTMENT  
EMERGENCY MANAGEMENT DIVISION

MS: TA-20 Building 20  
Camp Murray, Washington 98430-5122  
Phone: (253) 512-7000 • FAX: (253) 512-7200

August 30, 2004

**"PETITION FOR ANNUAL EXCISE TAX"**  
**ATTENTION: Lisa Lloyd**

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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

Ms. Carole Washburn, Secretary  
Washington State Utilities and Transportation Commission  
Chandler Plaza Building  
Post Office Box 47250  
Olympia, Washington 98504-7250

Dear Ms. Washburn:

The Enhanced 911 (E911) Program Office recommends that WAC 480-120-450 be amended to clearly set the cost recovery point for wireline carriers and Public Safety Answering Points (PSAPs) within Washing State. As the Washington State E911 Administrator, I feel it is important to bring wireline rules into compliance with the intent of the Federal Communications Commissioner (FCC). Enclosed are several documents, which provide the details for this request.

Thank you for the continuing support that the UTC provides to the state E911 Program. If you have any questions, please do not hesitate to contact this office at (253) 512-7011.

Sincerely,

Robert G. Oenning  
Washington State E911 Administrator

RGO:tdl

Enclosure

cc: Rebecca Beaton, Washington Utilities and Transportation Commission  
Bob Williamson, Washington Utilities and Transportation Commission





PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

The Office of Financial Management (OFM) has adopted this form for members of the public who wish to petition a state agency to adopt, amend, or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request.

Please complete the following:

PETITIONER'S NAME (PLEASE PRINT) Robert Oenning TELEPHONE NUMBER (INCLUDE AREA CODE) 253-512-7011
STREET ADDRESS Washington State 911 Program Building 20 PO BOX NUMBER Camp Murray CITY Washington STATE ZIP CODE 98430-5011
AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE WUTC (See attached material)

Please submit completed and signed form to the "Rules Coordinator" at the appropriate state agency. The agency will contact you within 60 days.

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages if needed.

1. NEW: I am requesting that a new WAC be developed.

I believe a new rule should be developed.

- The subject of this rule is:
The rule will affect the following people:
The need for the rule is:

2. AMEND: I am requesting a changing to existing WAC 480-120-450.

3. REPEAL: I am requesting existing WAC be removed.

I believe this rule should be changed or repealed because (check one or more):

- It does not do what it was intended to do.
It imposes unreasonable costs.
It is applied differently to public and private parties.
It is not clear.
It is no longer needed.
It is not authorized. The agency has no authority to make this rule.
It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known:
It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:

Other (please explain): See Attached

PETITIONER'S SIGNATURE Robert Oenning DATE 25 August 2004



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EMERGENCY MANAGEMENT DIVISION  
*MS: TA-20 Building 20*  
*Camp Murray, Washington 98430-5122*  
*Phone: (253) 512-7000 • FAX: (253) 512-7200*

July 22, 2004

Mr. Bob Williamson  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
Post Office Box 47250  
Olympia, Washington 98504-7250

Dear Mr. Williamson:

The Washington State E911 Program is requesting consideration by the Washington Utilities and Transportation Commission (WUTC) to standardize 911 network costs in accordance with the Federal Communications Commission (FCC) rules. Cost models in place within Washington State address telecommunications companies differently.

Public Safety Answering Points (PSAPs) currently pay Incumbent Local Exchange Carriers (ILECs) for connections between their end offices and the Selective Router (SR). PSAPs are not required to pay for connections between Competitive Local Exchange Carriers (CLECs) switches and the SR or between cellular switches and the SR. PSAPs are required to pay for all connections between the SR and the PSAPs.

In its King County order, the FCC stated, "We find that the cost allocation point for E911 implementation should be at that point at which the system identifies the appropriate PSAP and distributes the voice call and data location to that PSAP". The "point" or demarc line referred to by the FCC is the SR. **The Washington State E911 Program fully supports the FCC decision that the allocation point be the SR and requests that this be applied to all telecommunications companies doing business in the state.**

The FCC determined that CLECs and cellular communications companies could recover their costs from customers in any reasonable manner. ILECs can recover the cost before the SR as part of "basic" service cost. Rural carriers can access the Universal Service Fund for 911 cost reimbursement as part of the Basic Services requirement.

Technology has changed and new providers have entered the telecommunications market. These new providers may have switches in other states and ILECs have consolidated SRs




Mr. Williamson  
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July 22, 2004

to the point that only ten SRs serve Washington State. Therefore, the PSAPs should not have to pay for any connections on the telecommunications company side of the SR.

Please direct questions to Kurt Hardin, E911 Customer Support Supervisor, at [k.hardin@emd.wa.gov](mailto:k.hardin@emd.wa.gov) or (253) 512-7014.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Oenning", with a long, sweeping horizontal stroke extending to the right.

Robert G. Oenning  
Washington State 911 Coordinator

Cc: County Coordinators

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

In the matter of
Revision of the Commission's Rules To Ensure
Compatibility with Enhanced 911 Emergency
Calling Systems
Request of King County, Washington
CC Docket No. 94-102

ORDER ON RECONSIDERATION

Adopted: May 14, 2002

Released: July 24, 2002

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. In May 2001, the Wireless Telecommunications Bureau (Bureau) issued a decision identifying the 911 Selective Router as the demarcation point for allocating Enhanced 911 (E911) implementation costs between wireless carriers and Public Safety Answering Points (PSAPs), in those instances where the parties cannot agree on the appropriate demarcation point.

II. BACKGROUND

2. The Commission initially required that a cost recovery mechanism be in place for both the wireless carrier and the PSAP before the carrier would be obligated to deliver E911 service.

1 See Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington (May 7, 2001)(King County Letter).

2 See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18692-97, paras. 29-42, (1996)(E911 First Report and Order).

3 See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Second Memorandum Opinion and Order, 14 FCC Rcd 20850 (1999)(E911 Second Memorandum Opinion and Order). In consequence, a carrier's obligation to provide E911 service is presently contingent upon the carrier's receipt of a valid request from a PSAP that is capable of receiving and

(continued....)

Washington E911 Program Office filed a request with the Bureau for assistance in resolving a conflict related to the implementation of wireless E911 Phase I service in Washington State. Specifically, King County inquired whether the funding of Phase I network and database components, and the interface of these components with the existing E911 system, is the responsibility of the wireless carrier or the PSAP.<sup>4</sup>

3. In its response to King County's request, the Bureau determined that, in the absence of an agreement to the contrary between the parties, the 911 Selective Router serves as the demarcation point for allocating E911 implementation costs. However, the Bureau emphasized that "the Commission continues to favor negotiation between the parties as the most efficacious and efficient means for resolving disputes regarding cost allocations for implementing Phase I."<sup>5</sup> Noting that a variety of situations exists in approximately 6,000 PSAPs across the nation, including differences in state laws, the configuration and technical sophistication of existing network components used to provide E911 service, and agreements between carriers and PSAPs, the Bureau observed that the application of "a uniform federal mandate that prevents the relevant stakeholders from reaching other, mutually-acceptable arrangements" should be avoided unless, as ultimately proved to be the case in the Bureau's dealings with wireless carriers and PSAPs in King County,<sup>6</sup> the parties are unable to resolve the dispute.

4. The Bureau identified the 911 Selective Router as the demarcation point for allocating E911 costs based on the language of section 20.18(d) and the nature and configuration of the existing network components used to provide wireline E911 service. The Bureau explained that, in order for a wireless carrier to satisfy its obligation under section 20.18(d) to provide Phase I information to the PSAP, the carrier must deliver that information to the equipment in the existing 911 system that "analyzes and distributes it" – the 911 Selective Router.<sup>7</sup> The Bureau's conclusion on the cost allocation issue states as follows:<sup>8</sup>

[T]he proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). Thus, under section 20.18(d) of the Commission's regulations governing Enhanced 911

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utilizing the data elements associated with the service and for which a mechanism for the recovery of such PSAP's E911 costs is presently in place. See 47 C.F.R. 20.18(d); see also *City of Richardson*, in which the Commission established readiness criteria for determining the validity of a PSAP's request under section 20.18(j) of its rules, based on the parties' respective obligations for the implementation of Phase I as set forth in the *King County Letter*. See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, FCC 01-293, rel. Oct. 17, 2001, at n.28 (*City of Richardson*).

<sup>4</sup> Letter from Marlys Davis, E-911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, CC Docket No. 94-102 (filed May 25, 2000)(*King County Request*). On August 16, 2000, the Bureau put this request out for public comment. See Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues, *Public Notice*, CC Docket No. 94-102, DA 00-1875 (August 16, 2000)(*First Public Notice*). PSAPs and other public safety organizations asserted that the appropriate demarcation point for allocating responsibility and associated costs between wireless carriers and PSAPs should be the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). A majority of wireless service providers, on the other hand, contended that the appropriate demarcation point should be the carrier's Mobile Switching Center (MSC).

<sup>5</sup> *King County Letter* at 3.

<sup>6</sup> The Bureau noted in the *King County Letter* that it had "spent considerable time in discussions and multiple face-to-face meetings with the parties involved attempting to help them reach agreement." *Id.* at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 1.

Service (E911), wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's Mobile Switching Center (MSC) to the 911 Selective Router, and the particular databases, interface devices, and trunk lines that may be needed to implement the Non-Call Path Associated Signaling and Hybrid Call Path Associated Signaling methodologies for delivering E911 Phase I data to the PSAP. PSAPs, on the other hand, must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and the PSAP, the Automatic Location Identification (ALI) database, and the PSAP customer premises equipment (CPE).

5. On June 6, 2001, Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. (Petitioners or Joint Petitioners) jointly filed a Petition for Reconsideration requesting that the Bureau reconsider its determination that the cost-allocation demarcation point is the input to the 911 Selective Router and find, instead, that the proper demarcation point is the output of the wireless carrier's MSC.<sup>9</sup> The Joint Petitioners challenge the Bureau's decision on procedural, as well as substantive, grounds. With respect to the latter, they argue that the decision: (1) violates and renders superfluous the regulatory language of section 20.18(j);<sup>10</sup> (2) deviates from the cost allocation for Wireline E911 and discriminates unlawfully against wireless carriers *vis-a-vis* wireline carriers; (3) is based on an erroneous assumption that the network components used to provide wireline E911 service do not include the trunkline from the MSC to the 911 Selective Router; and (4) ignores long-standing cost causer principles and state law. Procedurally, the Joint Petitioners argue that (1) the decision exceeds the Bureau's delegated authority because it contravenes Commission rules, policy and precedent; (2) the scope of the inquiry and conclusion reached require a notice and comment rulemaking proceeding under the Administrative Procedure Act (APA);<sup>11</sup> (3) the decision ignores significant carrier comments contained in the record compiled in response to the *First Public Notice*;<sup>12</sup> and (4) King County's request should have been dismissed as an untimely request for reconsideration and an impermissible collateral attack on the Commission's decisions in earlier E911 orders.

### III. DISCUSSION

6. As indicated, the Joint Petitioners have raised both substantive and procedural challenges to the Bureau's decision on the E911 cost allocation issue. We will address first the substantive arguments, then the procedural arguments, identified above.

#### A. Substantive Arguments

7. *Section 20.18 and Related Commission Orders.* We reject Joint Petitioners' arguments that the Bureau's designation of the 911 Selective Router as the cost-allocation demarcation point contravenes the regulatory language of section 20.18(j) and portions of related Commission Orders and that it constitutes a new, Bureau-created policy at variance with the Commission's rules and previous orders.<sup>13</sup> Both sections 20.18(d) and 20.18(j) are ambiguous regarding the specific respective responsibilities of

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<sup>9</sup> Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Petition for Reconsideration, filed June 16, 2001. (*Petition for Reconsideration*).

<sup>10</sup> 47 C.F.R. 20.18(j).

<sup>11</sup> 5 U.S.C. section 553(b) and (c).

<sup>12</sup> See fn. 4, *supra*.

<sup>13</sup> Petition for Reconsideration at 8-15. See also Cal-One Comments at 8-9, CenturyTel Comments at 2-3, Dobson Comments at 3-4, Joint Petitioners' Reply Comments at 6-7.

the parties in implementing Wireless E911 service. Section 20.18(d), *Phase I enhanced 911 services*, states as follows in subparagraph (1):<sup>14</sup>

(1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in paragraph (j) of this section, whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

Section 20.18(j), *Conditions for enhanced 911 services*, states as follows with respect to PSAPs' responsibilities:<sup>15</sup>

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

We find that neither section 20.18(d) nor section 20.18(j) clearly specifies to what point in the 911 network the carrier must bring the required data or at what point in the 911 network the PSAP must be capable of receiving and utilizing that data.

8. We also find that the Bureau correctly interpreted these regulatory provisions, in light of the nature and configuration of the existing network components used to provide wireline E911 service, by determining that the analysis of the Phase I data to determine which PSAP should respond to the call and the distribution of that call to the proper PSAP are central to a wireless carrier's obligation to "provide" emergency wireless E911 services. Because it is the 911 Selective Router that performs these functions, the Bureau rightly determined that a wireless carrier must deliver the Phase I data to the 911 Selective Router in order to fulfill its obligations under section 20.18(d).<sup>16</sup> This is the case whether a Non-Call Associated Signaling (NCAS) technology, a Call Associated Signaling (CAS) technology, or a Hybrid CAS technology is employed for implementing Phase I.<sup>17</sup> Thus, we agree with the Bureau that a cost-

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<sup>14</sup> 47 C.F.R. 20.18(d)(1).

<sup>15</sup> 47 C.F.R. 20.18(j).

<sup>16</sup> We note that, although most wireless carriers disagree with this interpretation, Nextel appears, by its actions, to acknowledge that the wireless carrier's responsibilities under section 20.18 extend to the input to the 911 Selective Router and thus include the trunkline between the MSC and the 911 Selective Router. Nextel Reply Comments at 7-8.

<sup>17</sup> With an NCAS solution to Phase I, the caller's voice and the actual 20-digit Phase I data (10-digit phone number and 10-digit cell sector number) are transmitted to the PSAP on separate paths. At the time the wireless carrier's MSC receives the call from the base station, it sends the 20-digit information to the Service Control Point (SCP), where it is encoded under a 7-digit ESRK (code) that (1) tells the 911 Selective Router to which PSAP the voice call should be sent and (2) facilitates the PSAP's retrieval of the 20-digit Phase I information from the ALI database. The SCP sends the ESRK back to the MSC, where it is linked to the voice call and forwarded to the 911 Selective Router. Based on the ESRK provided, the 911 Selective Router forwards the call to the appropriate PSAP. Simultaneous with sending the ESRK to the MSC, the SCP sends the ESRK and encoded 20-digit Phase I information to the ALI database, where the cell sector number is used to identify the cell site/sector address. This address, as well as the caller's phone number, are stored until the PSAP retrieves them using the ESRK sent through the 911 Selective Router with the voice call. With Hybrid CAS, the functions performed by the SCP are performed by the Wireless Integration Device (WID), which is installed at, but precedes "the input to," the 911 Selective Router. CAS transmits all 20 digits of Phase I information with the voice call and requires that the trunkline

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allocation demarcation point at the input to the 911 Selective Router is most appropriate because, until the proper PSAP has been identified, no PSAP can “receive” and “utilize” the location data under section 20.18.

9. The Bureau’s letter is in the nature of a declaratory ruling concerning the respective responsibilities of the parties under the Commission’s regulations governing Phase I of E911 service. We affirm that guidance here. The Bureau did not specifically address the parties’ responsibilities with respect to the provision of Phase II information. However, we find that it is the interests of the parties and the public that we continue to anticipate those issues that may create stumbling blocks in the future to a smooth and efficient roll out of Phase II service. To that end, we find that the analysis applied by the Bureau with respect to Phase I logically extends to the obligations imposed on carriers by section 20.18(e).<sup>18</sup>

10. Section 20.18(e), *Phase II enhanced 911 services*, provides in pertinent part, “Licensees subject to this section must provide to the designated Public Safety Answering Point Phase II enhanced 911 service, *i.e.*, the location of all 911 calls by longitude and latitude . . . .” Like section 20.18(d), section 20.18(e) does not specify to what point in the network the carrier must bring the required Phase II data. We find it appropriate to interpret section 20.18(e) consistently with section 20.18(d), given that the same infrastructure is used to transmit Phase I and Phase II information from the wireless carrier to the appropriate PSAP. Thus, we hereby clarify that, in the absence of an agreement to the contrary between the parties, the input to the 911 Selective Router shall serve as the demarcation point for allocating costs between wireless carriers and PSAPs, both with respect to the delivery of Phase I information and with respect to the delivery of Phase II information. This clarification is consistent with our objectives in enacting section 20.18, namely, the rapid and ubiquitous deployment of wireless E911 capabilities.

11. We reject Petitioners’ argument that statements in various Commission orders support interpreting these regulations to locate the cost allocation demarcation point at the output from the carrier’s MSC.<sup>19</sup> The statements cited are inconclusive regarding which party bears what costs for implementing E911. Rather, we find that these statements, if anything, tend to support the interpretation adopted by the Bureau. For example, the Commission’s inventory of PSAP costs, in both the *E911 First Report and Order* and the *E911 Second Memorandum Opinion and Order*,<sup>20</sup> includes only network “upgrades” and omits: (1) the new trunkline between the MSC and the 911 Selective Router needed for all three Phase I technologies –CAS, NCAS, and Hybrid CAS; (2) network components such as the SCP

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installed between the MSC and the 911 Selective Router and the trunkline existing between the 911 Selective Router and the PSAP use signaling protocols that will support the transmission of 20 digits of Phase I data. Under a CAS technology, too, the PSAP-identification function is performed by the 911 Selective Router.

<sup>18</sup> As is discussed in further detail *infra* in Section III.B., a reasonable interpretation of existing Commission regulations does not require APA notice and comment.

<sup>19</sup> Petition for Reconsideration at 12-13. Specifically, Petitioners point to the Commission’s statement in the *E911 First Report and Order* that a carrier’s obligation does not arise until the “PSAP . . . has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service.” See *E911 First Report and Order*, 11 FCC Rcd at 18708-09, para. 63. They cite to the Commission’s observation that a PSAP’s anticipated investment includes “switches, protocols, and signaling systems that will allow them to obtain the calling party’s number from the transmission of ANI.” See *id.* at 18709 n.119. They also cite the Commission’s statement in the *E911 Second Memorandum Opinion and Order* that “the bulk of [the] selective routers . . . ALI databases, and 9-1-1 trunks, as well as the PSAP’s own equipment, will have to be upgraded at the PSAP’s own expense to handle the additional ANI and ALI information that will be provided by wireless carriers.” See *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20877-78, para. 66.

<sup>20</sup> See fn. 19, *supra*.

for an NCAS solution or the WID for a Hybrid CAS solution,<sup>21</sup> and (3) associated trunklines connecting these components to other parts of the network. All of these components “precede” the input to the 911 Selective Router in the sequencing of network components for handling a wireless 911 call. Their omission from the Commission’s inventory of PSAP costs suggests that they are the responsibility of the wireless carrier, not the PSAP. When they are coupled with other Commission statements concerning cost-sharing by the parties in implementing E911,<sup>22</sup> we conclude that the statements cited by the Petitioners tend to support, rather than contradict, a cost allocation point beyond the wireless carrier’s MSC and the Bureau’s determination that the most appropriate point is the input to the 911 Selective Router.

12. We also reject the argument made by some wireless carriers that the Bureau’s decision constitutes an unauthorized shift of responsibility to wireless carriers for network “add-ons,” such as the SCP or the WID.<sup>23</sup> These carriers contend that PSAPs must bear not only the cost of updating the 911 Selective Router but also, where an NCAS or Hybrid CAS Phase I solution is being used, the cost of the SCP or WID.<sup>24</sup> However, under Section 20.18(d), the carrier is responsible for providing Phase I information to the appropriate, or “designated,” PSAP. When a CAS technology is used, the carrier, in order to satisfy Section 20.18(d), simply provides the 10-digit ANI and 10-digit p-ANI to the input of the Selective Router – which, in turn, uses the p-ANI to determine the PSAP to which Phase I information, as well as the 911 call itself, should be sent (*i.e.*, the designated PSAP).<sup>25</sup> When an NCAS or Hybrid CAS technology is used, the carrier must deliver Phase I information to the 911 Selective Router in a form that the router can accept and process, and this can only be accomplished through the use of an SCP or a WID. Thus, in order to fulfill its Section 20.18(d) obligations, the carrier, if NCAS or Hybrid CAS is employed, must provide the SCP or WID. We thus do not agree with commenters that such devices are network “add-ons;” rather, they are devices that carriers must furnish in order to satisfy their E911 requirements under our rules.

13. Moreover, in the case of an NCAS solution, for example, the approach advocated by these wireless carriers could push the line of demarcation as far back as the output of the MSC, requiring that the PSAP bear the costs of the trunklines between the MSC and the SCP and, arguably, between the MSC and the 911 Selective Router, as well as the costs of the SCP itself. In addition, the cost allocation would vary depending on the type of Phase I technology chosen by the parties.<sup>26</sup> The Commission has strenuously avoided solutions that are other than technology-neutral in crafting regulatory requirements

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<sup>21</sup> Because it transmits the location data with the 911 voice call, a CAS methodology does not require the use of such components.

<sup>22</sup> Implicit in its discussions of E911 implementation costs, in general, and its elimination of the carrier cost-recovery prerequisite, in particular, is the Commission’s assumption that such costs will accrue to both wireless carriers and PSAPs. Although it did not state which costs would be attributable to, and thus recoverable by, carriers under the carrier cost-recovery prerequisite, the Commission noted this issue in observing that the parties’ “naturally competing interests” in determining which carrier costs are to be funded had become a major impediment to fulfillment of the prerequisite and to the rapid implementation of E911 service. *See E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20869-70, para. 47.

<sup>23</sup> Nextel Reply Comments at 8-10, Sprint Comments at 2-3; *see also* Nextel Comments to *First Public Notice* at 2, TX-CSEC Comments at 3-5, TX-CSEC Reply Comments at 5.

<sup>24</sup> The SCP and WID are devices that provide the information that enables the 911 Selective Router to direct the 911 call to the appropriate PSAP. *See* fn. 18 *supra*.

<sup>25</sup> Ordinarily, the 911 Selective Router can only accept 8 digits of data. If CAS technology is employed, the Selective Router must be updated so that can accept the 20 digits provided by the carrier.

<sup>26</sup> Were a CAS solution adopted, the cost allocation demarcation point would be the 911 Selective Router; were an NCAS or a Hybrid CAS solution adopted, the demarcation point would be further back in the network.

for E911 implementation.<sup>27</sup> The argument proffered by the Petitioners and others contradicts this important Commission policy.

14. *Wireless E911 Cost Allocation and Configuration of Wireline Network Components.* We reject Petitioners' argument that the Bureau erred in treating wireless carriers differently from wireline carriers for E911 cost-allocation purposes.<sup>28</sup> In the first place, the Bureau did not base its decision on the appropriate demarcation point for allocating costs for the provision of wireless E911 service on the configuration of the network components used to provide wireline E911 service. Nor was it constrained to adopt a wireline cost allocation methodology for the purpose of allocating E911 implementation costs in the wireless context. Thus, we reject Joint Petitioners' assertion that the Bureau's decision discriminates unlawfully against wireless carriers *vis-a-vis* wireline carriers. We agree with TX-CSEC that *US Cellular* provides judicial support for the Bureau's decision. That case, concerning cost recovery, and the case at hand, concerning the nature and extent of the costs themselves, are analogous. In *US Cellular* the court sanctioned the Commission's disparate treatment of wireless and wireline carriers, stating that "an important difference in the way [wireless and wireline] service is regulated," provides "more than sufficient reason" for eliminating the cost recovery prerequisite for wireless carriers, despite wireline carriers' ability to recover their costs through PSAP tariffs.<sup>29</sup> Thus, the Petitioners' arguments based on cost-allocation practices in the wireline industry are without merit.

15. Furthermore, we recognize, as did the Bureau, that no single E911 cost allocation paradigm exists for the wireline industry -- the PSAP bears the costs of funding the trunkline between the 911 Selective Router and the wireline carrier's end office in some instances, but not in all instances. In many jurisdictions, ILECs, whose rates are regulated, are treated differently from Competitive Local Exchange Carriers (CLECs), whose rates are not regulated. Specifically, the costs associated with the transmission of an E911 call from the ILEC's end office to the 911 Selective Router are generally borne by the PSAP, but this is not necessarily true for CLECs. The E911 cost allocation for CLECs varies by jurisdiction, and, in many cases, the CLEC is responsible for the costs of transmitting a customer's 911 call from its end office to the 911 Selective Router.<sup>30</sup> Had the Bureau viewed wireline E911 cost allocation practices as determinative, the more analogous cost allocation methodology would arguably have been that applicable to CLECs, because both CLECs and wireless carriers can recover their costs from customers in any reasonable manner.

16. Finally, we reject the Petitioners' argument that the Bureau mischaracterized the configuration of the network components used to provide wireline E911 service by failing to include the trunk between the carrier's MSC and the 911 Selective Router in its enumeration of network

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<sup>27</sup> In the *E911 Third Report and Order*, for example, the Commission expressed reluctance to mandate a handset solution for Phase II. See 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, 17398-405, paras. 19-34, (1999)(*E911 Third Report and Order*).

<sup>28</sup> Petition for Reconsideration at 7 citing *King County Letter* at 3-4; Joint Petitioners' Reply Comments at 7-9. See also Cal-One Comments at 4-7, CenturyTel Comments at 3, Dobson Comments at 4-5, Sprint Comments at 3-5, Nextel Reply Comments at 4-7. Nextel, in particular, contends that there is "nothing fundamentally different" in the functions performed by both that would justify their disparate treatment, and that TX-CSEC's reliance on *US Cellular* to support the Commission's disparate treatment is misplaced because *US Cellular* dealt with the "alteration of the cost recovery scheme," whereas the present proceeding concerns "imposing any particular E911 responsibilities." Nextel Reply Comments at 4-7 citing *United States Cellular Corporation v. Federal Communications Commission*, 254 F.3d 78 (D.C. Cir. 2001)(*US Cellular*); see also TX-CSEC Comments at 6-7, Joint Petitioners' Reply Comments at 9, Joint Commenters Opposition at 5-7.

<sup>29</sup> *US Cellular*, 254 F.3d at 87.

<sup>30</sup> See Joint Commenters Opposition at 3 n.6.

components.<sup>31</sup> The Bureau did not misunderstand the parameters of the network used to provide wireline E911 service. When read in context, the sentence at issue neither states nor implies that the trunkline between the wireline carrier's end office and the 911 Selective Router is not one of the network components used to provide wireline E911 service. In some instances, in fact, it is. However, as discussed above, this configuration is neither universal in the wireline context nor determinative as to the resolution of the cost allocation issue in the wireless context.

17. *Other Substantive Arguments.* We reject Joint Petitioners' unsubstantiated argument that several issues raised by commenters in their response to the *First Public Notice*, and allegedly ignored by the Bureau, provide potential bases for reversing the Bureau's decision on the cost allocation issue. Petitioners assert, without elaboration, that the Bureau's allocation of costs to wireless carriers is contrary to "long-standing cost causer principles."<sup>32</sup> This contention is without merit. As TX-CSEC notes,<sup>33</sup> the cost causer argument has been laid to rest by the court's decision in *US Cellular* that "on no plausible theory are the PSAPs the cost causers."<sup>34</sup> Petitioners also argue that the decision is incompatible with state law<sup>35</sup> and "historic practice."<sup>36</sup> They neither elaborate on, nor provide substantiation for, these arguments. We are unable to find support in the record for these arguments and therefore reject them.

18. We also reject arguments made by Cal-One and Dobson that the Bureau's decision ignores the disproportionate impact of E911 costs on small and rural wireless carriers.<sup>37</sup> The argument that E911 costs will have a disparate, negative effect on small and rural carriers because they have a substantially smaller customer base from which to recoup their costs has been raised and addressed previously by the Commission in the E911 context.<sup>38</sup> There, as here, the conclusion must be the same. Because the risk incurred where the dispatcher cannot locate a 911 wireless caller does not vary with the size of the wireless carrier that picks up the call, the Commission's E911 requirements should apply equally to small and rural wireless carriers and to larger carriers. Where our rules impose a disproportionate burden on a particular carrier, the carrier may work with the public safety entities involved to mitigate that burden and, if necessary, may seek individual relief from the Commission.

19. Finally, we reject Petitioners' contention that the Bureau's decision constitutes a "new [Bureau-created] policy" of assigning costs based on a wireless carrier's ability to recoup those costs from its customers.<sup>39</sup> The Bureau's observation that wireless carriers can recoup their costs from their

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<sup>31</sup> The language at issue reads, in pertinent part, as follows: "Thus, an interpretation of section 20.18(d) must account for the presence of the existing E911 Wireline Network, which is maintained by the ILEC and paid for by PSAPs through tariffs. . . . The E911 Wireline Network thus consists of: the 911 Selective Router; the trunk line between the 911 Selective Router and the PSAP; the ALI database; and the trunk line between the ALI database and the PSAP." See King County Letter at 3-4.

<sup>32</sup> See Petition for Reconsideration at 5 citing Verizon Comments to *First Public Notice* at 2-4, VoiceStream Comments to *First Public Notice* at 6-8, 10-11, Sprint Comments to *First Public Notice* at 7, 14-15; VoiceStream *ex parte* filing of February 6, 2001 at 4-6, 8-9 (VoiceStream *Ex Parte Filing*).

<sup>33</sup> See TX-CSEC Comments at 11.

<sup>34</sup> *US Cellular*, 254 F.3d at 84.

<sup>35</sup> Petition for Reconsideration at 5 citing Sprint Comments to *First Public Notice* at 9-11.

<sup>36</sup> Petition for Reconsideration at 5 citing Verizon Comments to *First Public Notice* at 3-5, VoiceStream Comments to *First Public Notice* at 6-11, Qwest Comments to *First Public Notice* at 10-14.

<sup>37</sup> See Cal-One Comments at 9, Dobson Comments at 2-3; *but see* TX-CSEC Reply Comments at 3-4.

<sup>38</sup> See *US Cellular*, 254 F.3d at 88-89. See also *City of Richardson* at paras. 28-29.

<sup>39</sup> Petition for Reconsideration at 8-10; see also Joint Petitioners' Reply Comments at 7-9.

customers is not, and was not, determinative of the cost allocation question. It did, however, track the Commission's comments in the *E911 Second Memorandum Opinion and Order* that removal of the carrier cost recovery requirement in section 20.18(j) would have no negative impact on carriers because they could recoup their costs from customers through surcharges or increased rates.<sup>40</sup> It also addresses a fundamental difference between wireline and wireless carrier cost recovery mechanisms that justifies any disparate treatment in allocating E911 costs between carriers and PSAPs.

## B. Procedural Arguments

20. *APA Notice and Comment Requirement and Delegated Authority.* Because the Bureau's decision is a reasonable interpretation of existing Commission rules, policy and precedent, we reject the Joint Petitioners' arguments that it violated the notice and comment requirement in section 553(b) and (c) of the APA.<sup>41</sup> Since 1994, when the Commission initiated the E911 proceeding, it has sought public comment on a variety of issues germane to the implementation of E911 service for wireless callers and has issued a series of orders and accompanying regulatory amendments in response to those comments.<sup>42</sup> Given the scope and evolving nature of this process, these regulations and orders have necessarily required additional interpretation as the wireless industry moves toward the implementation of E911, and location technologies are developed or modified in response to the Commission's requirements. As discussed previously, section 20.18 is ambiguous concerning the demarcation point for costs associated with the implementation of Wireless E911. Contrary to Petitioners' assertions, the Bureau's decision did not create new law but, instead, constituted a reasonable interpretation of the existing regulation, in view of the Commission's policy goals for the implementation of wireless E911.<sup>43</sup> Thus, the Petitioners'

<sup>40</sup> *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20867, para. 40.

<sup>41</sup> See Petition for Reconsideration at 8-14. See also, e.g., Cal-One Comments at 3-4, Nextel Reply Comments at 2-4. Section 553(b) and (c) of the APA provides, with exceptions not relevant here, that a "[g]eneral notice of proposed rule making shall be published in the *Federal Register*" and that, "[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through the submission of written data, views, or arguments."

<sup>42</sup> Those issues include the use of a handset as opposed to a network solution in implementing Phase II (see *E911 Third Report and Order*, 14 FCC Rcd at 17391-92, paras. 6-8); call validation and 911 calls from non-service-initialized phones (see *E911 First Report and Order*, 11 FCC Rcd at 18689-99, paras. 24-46; Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22673, paras. 13-14, (1997)(*E911 First Memorandum Opinion and Order*); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-10 2, *Second Report and Order*, 14 FCC Rcd 10954 (1999)(*E911 Second Report and Order*); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order*, rel. Apr. 17, 2002); measurement technologies and accuracy requirements for Phase II caller location requirements (see *E911 First Report and Order*, 11 FCC Rcd at 18711-12, paras. 70-72; *E911 Third Report and Order*, 14 FCC Rcd at 17417-23, paras. 66-77), and wireless carrier cost recovery (see *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20852-54, paras. 3-6).

<sup>43</sup> Petition for Reconsideration at 8-14. In *Martin*, for example, the Supreme Court stated that, "in situations in which 'the meaning of [regulatory] language is not free from doubt,' the reviewing court should give effect to the agency's interpretation so long as it is 'reasonable,' that is, so long as the interpretation 'sensibly conforms to the purpose and wording of the regulations.'" *Martin v. Occupational Safety and Health Rev. Comm'n*, 499 U.S. 144, 151 (1991)(*Martin*) citing *Ehlert v. United States*, 402 U.S. 99, 105 (1971) and *Northern Indiana Pub. Serv. Co. v. Porter County Chapter of Izaak Walton League of America, Inc.*, 423 U.S. 12, 15 (1975). Bracketed language in original. Petitioners' citation to *Caruso*, in which the court held that an "agency cannot adopt vague requirements 'and then give it concrete form only through subsequent less formal interpretations'" is also inapposite. *Caruso v. Blockbuster-Sony Music Entertainment*, 174 F.3d 166, 174-75 (3d Cir. 1999)(*Caruso*). See Petition for Reconsideration at 8 n.30.

citations to *Martin* and other cases, in support of its APA argument, are inapposite.<sup>44</sup>

21. With respect to Joint Petitioners' related argument on delegated authority, the Commission is unable to reach a majority on whether the Bureau exceeded its delegated authority in this matter. That issue is rendered moot, however, since the Commission is addressing the merits of the Joint Petitioners' substantive claims.<sup>45</sup>

22. *Other Procedural Issues.* We also reject the Joint Petitioners' argument that the decision is invalid because it fails to address significant carrier comments submitted in response to the *First Public Notice*.<sup>46</sup> First, except for the delegated authority issue, which is now moot, all of the comments cited by the Joint Petitioners have been addressed, either in the underlying *King County Letter*, or in this reconsideration decision.<sup>47</sup> Secondly, this argument is based on case law concerning decisions subject to the APA's notice and comment requirement. However, as previously indicated, the Bureau's decision was a reasonable interpretation of the Commission's existing regulation.<sup>48</sup> As such, it did not constitute an amendment of the regulation and did not require notice and the opportunity for comment prior to its implementation. The Bureau's decision is subject only to the more general requirement in section 706 of the APA that an agency provide a reasoned basis for its decision to facilitate judicial review thereof. The Bureau's decision complies with this requirement.<sup>49</sup>

23. Finally, we reject the Petitioners' argument that King County's request should have been dismissed as an untimely request for reconsideration of the Commission's earlier decisions regarding PSAP obligations or as an impermissible collateral attack on those decisions.<sup>50</sup> King County was neither seeking reconsideration of, nor mounting a collateral attack on, earlier Commission decisions regarding a PSAP's E911 obligations under section 20.18. It merely sought clarification of a Commission rule and associated orders that are acknowledged to be ambiguous. Its request was tantamount to a Petition for

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<sup>44</sup> See also *Trinity Broadcasting of Florida, Inc. v. Federal Communications Commission*, 211 F.3d 618 (D.C. Cir. 2000), *Cassell and Kelley Communications, Inc. v. Federal Communications Commission*, 154 F.3d 478 (D.C. Cir. 1998).

<sup>45</sup> See *Beehive Telephone, Inc. v. Bell Operating Cos.*, 12 FCC Rcd. 17930, 17938-39, para. 16, (1997), *petition for review dismissed in part and denied in part, Beehive Telephone Co., Inc. v. FCC*, 179 F.3d 941 (D.C. Cir. 1999).

<sup>46</sup> See Petition for Reconsideration at 4-6; see also CenturyTel Comments at 2, Dobson Comments at 3, Joint Petitioners' Reply Comments at 2-3.

<sup>47</sup> For example, in this order, we address arguments that: (1) King County's request is an impermissible collateral attack and an untimely petition for reconsideration (para. 23); (2) the Bureau's decision contravenes cost-causer principles, state law, and historic practice (para. 17); and (3) the Bureau's decision unreasonably discriminates among wireless and wireline carriers (para. 13-14).

<sup>48</sup> See para. 17 *supra*.

<sup>49</sup> The fact that the Bureau did, in fact, solicit comments on the cost allocation issue, in an attempt to promote a dialogue among the parties, does not alter this result.

<sup>50</sup> Petition for Reconsideration at 5 *citing* VoiceStream *Ex Parte Filing* at 2-3. Petitioners' assertion references an earlier argument made by VoiceStream in response to the *First Public Notice*. In its comments, VoiceStream contended that the King County request must be dismissed, "insofar as it seeks a redefinition of the PSAP E911 network to exclude the facilities and database components needed for wireless E911 calls." See VoiceStream *Ex Parte Filing* at 2-3. VoiceStream's argument is predicated on a misconstruction of the nature of King County's request.

Clarification.<sup>51</sup> Such petitions are a commonplace of regulatory practice and may be filed whenever a member of the public requires assistance regarding the proper construction of a Commission rule or order.

#### **IV. PROCEDURAL MATTERS AND ORDERING CLAUSES**

##### **A. Regulatory Flexibility Act**

24. The Commission is not required by the Regulatory Flexibility Act, 5 U.S.C. § 604 to prepare a Regulatory Flexibility Analysis of the possible economic impact of this Order on small entities.

##### **B. Paperwork Reduction Act of 1995 Analysis**

25. This order does not contain an information collection.

##### **C. Ordering Clauses**

26. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed jointly by Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>51</sup> See *King County Letter* at 1 n.2.

**Appendix A****Petition:**

Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, Nextel Communications, Inc. (Joint Petitioners)

**Comments:**

Cal-One Cellular, LP (Cal-One)

CenturyTel Wireless, Inc. (CenturyTel)

Dobson Communications Corporation (Dobson)

Joint Opposition of NENA, APCO and NASNA as Public Safety Communicators (Joint Commenters)

Sprint PCS

Texas 911 Agencies (TX-CSEX)

**Reply Comments:**

Joint Petitioners

Nextel Communications, Inc. (Nextel)

TX-CSEC