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

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	
Compatibility with Enhanced 911 Emergency	)	CC Docket No. 94-102
Calling Systems	)	

FIFTH MEMORANDUM OPINION AND ORDER

Adopted: November 9, 2000 **Released:** November 22, 2000

By the Commission:

I. INTRODUCTION

1. In this Fifth Memorandum Opinion and Order, we deny two petitions for reconsideration of the *E911 Second Reconsideration Order*,[1] in which we, *inter alia*, modified our Enhanced 911 (E911) rules to eliminate the prerequisite that carrier cost recovery mechanisms be in place before the wireless carrier's obligation to provide E911 service is triggered. We affirm that: (1) adequate notice and opportunity for comment was provided, (2) a complete record supports our conclusion that the rule resulted in a significant impediment to Phase I implementation that was inconsistent with our rules and the statute, and (3) we fully considered the impact of removing the carrier cost recovery requirement on all carriers, including rural carriers. We continue to believe that removing the carrier cost recovery prerequisite is necessary to overcome delays in the implementation of Phase I and, potentially, Phase II of our E911 service. This will accelerate implementation of this important service, which will enable callers of 911 using a wireless telephone to obtain emergency assistance more rapidly and efficiently through the transmission of certain enhanced information that assists in locating the caller.

II. BACKGROUND

2. In the E911 proceeding, the Commission imposed E911 rules on certain Commercial Mobile Radio Service (CMRS) licensees, based largely upon a framework developed by representatives of the wireless industry and public safety organizations in a Consensus Agreement.[2] The purpose of the

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[1] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Second Memorandum Opinion and Order, 14 FCC Rcd 20850 (1999), amending Sections 20.18(d) and (j) of the Commission's Rules, 47 C.F.R. §§ 20.18(d), (j) (*E911 Second Reconsideration Order*); *appeal pending sub nom.* United States Cellular Corp. v. FCC, No. 00-1072 (D.C. Cir., filed Feb. 28, 2000).

[2] 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 and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18687-89 (paras. 21-23, noting the Consensus Agreement filed by CTIA, APCO, NENA, and NASNA) (1996), adopting new Section 20.18 of the Commission's Rules, 47 C.F.R. §§ 20.18, *et seq*. (*E911 First Report and Order*); Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997); Second Report and Order, 14 FCC Rcd 10954 (1999); Third Report and Order, 14 FCC Rcd 17388 (1999); Second Memorandum Opinion and Order, 14 FCC Rcd 20850 (continued….)

rules is to promote an improved wireless 911 service by requiring these carriers to transmit certain enhanced data with 911 calls and thereby help emergency service providers locate the wireless 911 caller. If certain conditions are met, Phase I requires a covered carrier, as of April 1, 1998, to transmit the 911 caller's callback number and cell site location, while Phase II requires a carrier, as of a schedule beginning October 1, 2001, to transmit Automatic Location Information (ALI).[3] The carrier's obligation to transmit this information initially was conditioned upon (1) the carrier receiving a request for service from a Public Safety Answering Point (PSAP) that is capable of receiving and utilizing the data and (2) "a mechanism for recovering the costs of the service [being] in place."[4]

3. In the *E911 Second Reconsideration Order*, in response to a petition for further reconsideration, we clarified and modified the condition that provided for a cost recovery mechanism.[5] We concluded that this condition was unnecessary and a potentially significant impediment to Phase I, and potentially to Phase II, if implementation were to remain contingent upon a cost recovery mechanism being in place for the recovery of a carrier's E911 costs.[6] In deciding to eliminate the prerequisite for a carrier cost recovery mechanism, we did not intend to disturb existing mechanisms or discourage states from establishing such mechanisms at any time, but rather to remove the need to satisfy such a requirement before E911 service could be implemented. The cost recovery rule was not eliminated entirely, but was modified to retain the limited provision that a mechanism be in place for the recovery of the PSAP's costs of implementing E911.[7] The purpose of this modification was to accelerate implementation of this important service to ensure that wireless callers of 911 obtain emergency assistance more rapidly and efficiently.

4. In January of this year, two petitions for reconsideration of the E911 *Second Reconsideration Order* were filed.[8] Two comments in support of, and one comment opposing, the

(Continued from previous page)
(1999) (*E911 Second Reconsideration Order*); Third Memorandum Opinion and Order, 15 FCC Rcd 1144 (2000); Fourth Memorandum Opinion and Order, FCC 00-326, released Sept. 8, 2000 (*E911 Fourth Reconsideration Order*).

[3] 47 C.F.R. §§ 20.18(d)-(i).

[4] 47 C.F.R. § 20.18(j) (1998).

[5] 47 C.F.R. § 20.18(d).

[6] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20852-54 (paras. 3-6).

[7] *Id*., at 20877-80 (paras. 65-72), amending 47 C.F.R. § 20.18(j), as follows: (j) Conditions for Enhanced 911 Services. The requirements set forth in paragraphs (d)-(h) 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.

[8] Rural Cellular Association, Petition for Reconsideration, filed January 28, 2000 (RCA Petition); and CorrComm, L.L.C., Petition for Reconsideration filed January 28, 2000 (Corr Petition). Corr subsequently changed its name to Corr Wireless Communications, L.L.C. We note that Corr is filing comments for the first time in this proceeding and is not a party that has participated at any prior stage. Corr states that it is a small wireless carrier that serves rural areas and thereby is an interested person that may petition for reconsideration of a final action under our rules. 47 C.F.R. § 1.429(a).

petitions were filed.[9] Petitioners filed comments in reply to the opposition comments.[10]

5. On April 21, 2000, RCA filed a petition for stay of the implementation of the amended cost recovery rule, which became effective on April 27, 2000.[11] Comments opposing the petition for stay were filed by APCO and by NENA.[12] RCA filed a reply and requests that we dismiss APCO's opposition as late-filed.[13] Inasmuch as we deny the petitions for reconsideration of that Order, the petition for stay is denied as moot.

III. DISCUSSION

A. Notice of Carrier Cost Recovery Rule Change

6. **Background**. Corr asserts that we failed to provide adequate notice of our intent to eliminate the carrier cost recovery rule and, accordingly, Corr did not submit comments in opposition for our consideration at that time.[14] It argues that CTIA's petition for further reconsideration of the cost recovery rule and the responsive pleadings request only that the cost recovery mechanism be more clearly defined and not that it be deleted, particularly for Phase II.

7. CTIA, in support, agrees with Corr and argues that the Commission failed to provide adequate notice and opportunity for comment on the proposed deletion as required by the Administrative Procedures Act (APA).[15] It asserts that no commenter interpreted its petition as a request to fundamentally restructure the rule to eliminate the carrier cost recovery mechanism and that, contrary to our finding in the *E911 Second Reconsideration Order*, the rule change is not a logical outgrowth of its petition or any other record evidence.

8. **Discussion**. We find there was adequate notice and opportunity for comment on the cost recovery rule change we adopted and that the rule change was a logical outgrowth of this rulemaking proceeding. In the *E911 Second Reconsideration Order*, we denied similar arguments by CTIA and carriers when we determined that, under the circumstances in the record, our rule change was a logical

[9] Cellular Telecommunications Industry Association, Comments, filed March 22, 2000 (CTIA Comments), and DiGiPh PCS, Comments In Support of Petitions, filed March 22, 2000 (DiGiPH Comments). Association of Public-Safety Communications Officials-International, Inc., Opposition of APCO to Petitions, filed March 22, 2000 (APCO Opposition).

[10] Corr, Reply, filed April 5, 2000 (Corr Reply); RCA, Reply, filed April 5, 2000 (RCA Reply).

[11] RCA, Petition for Stay, filed April 21, 2000 (RCA Stay Petition).

[12] APCO, Opposition to Petition for Stay, filed May 4, 2000 (APCO Stay Opposition); National Emergency Number Association, Opposition to Petition for Stay, filed May 2, 2000 (NENA Stay Opposition).

[13] RCA, *ex parte* filing of May 11, 2000.

[14] Corr Petition at 1-2.

[15] CTIA Comments at 3-4, *citing* Administrative Procedures Act, 5 U.S.C. § 553(b).

outgrowth of the rulemaking proceeding and the notice requirement was satisfied.[16] More specifically, we found that: (1) CTIA's petition for further reconsideration raised the issue of modifying the cost recovery rule on behalf of carriers;[17] (2) the record on CTIA's petition was supplemented as a result of the Public Notices we issued requesting an Implementation Report and comments on alternative solutions to the delays caused by the rule;[18] and (3) the modification we adopted addressed the issues of record.[19] Corr and CTIA do not submit new or persuasive evidence that our conclusions were in error. We therefore reaffirm our conclusions in the *E911 Second Reconsideration Order* for the reasons stated there.

B. Absence of Record Evidence

9. **Background**. RCA argues that our decision to drop carrier cost recovery as a precondition of E911 service is not based on the record and instead adopts only the opinion of APCO.[20] RCA asserts that APCO is the lone public safety organization in favor of carrier self-recovery approaches, such as "bill and keep," as appropriate cost recovery mechanisms.[21] RCA argues that we ignored the recommendations of the Implementation Report and the majority of the individual proposals of the Consensus Agreement parties, including NENA's opposition to APCO.[22] RCA contends that we chose the administratively easier option as the means of addressing the delays in Phase I implementation and ignored the record, as well as our earlier proceedings in which we considered and rejected "bill and keep" by carriers as a cost recovery method.[23]

10. **Discussion**. We reject RCA's argument that our rule modification has no basis in the record and has no support in either law or fact. First, in the *E911 Second Reconsideration Order*, we found that Phase I was virtually nonexistent and that the record, as supplemented by the Implementation Report and the responsive comments, demonstrated that the cost recovery rule was a significant impediment.[24] This was because of disputes in establishing formal, adequate funding mechanisms for

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[16] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20875 (para. 60 n. 86), *citing, e.g.,* Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 547-49 (D.C. Cir. 1983); International Harvester v. Ruckelshaus, 478 F.2d 615 n. 51 (D.C. Cir. 1973); Reeder v. FCC, 865 F.2d 1298, 1305 (D.C. Cir. 1989).

[17] *Id*., at 20860-62 (paras. 24-27), discussing the rule modifications requested by CTIA and the responsive comments opposing the modifications as a fundamental change.

[18] *Id*., at 20858-59 (paras. 16 n. 18, 17-18), 20862-64 (paras. 28-32 n. 39), 20867 (para. 39), discussing the Public Notices requesting an Implementation Report and responsive comments to augment the record on CTIA's petition.

[19] *Id*., at 20867-68 (para. 42), 20870-71 (para. 50), 20878-79 (para. 67 n. 98, para. 68), noting the request of APCO to delete the carrier cost recovery rule and the requests of NENA, as well as APCO and other public safety groups, to retain the rule as modified to provide for PSAP cost recovery.

[20] RCA Petition at 5-8.

[21] RCA Petition at 5-6.

[22] RCA Petition at 5-6.

[23] RCA Petition at 7.

[24] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20864-70 (paras. 33-48).

carriers.[25]

11. In the *E911 Second Reconsideration Order*, we reviewed the proposed solutions of CTIA, RCA, and the carriers, which requested that we modify the rule to impose specific and detailed obligations on the states to adopt the uniform mechanisms currently being pursued under our rule.[26] Although RCA renews arguments that such proposals would provide guidance to states that would increase the pace of state approval of such carrier cost recovery mechanisms, we affirm our conclusion that such detailed and varied requirements would only increase the delays caused by these same issues and involve us in resolving these ongoing disputes.[27] We decided that eliminating the precondition for a carrier cost recovery mechanism was the better course, not only because it addressed the proposed solutions of APCO and the subsequent filings of NENA, but also the initial comments of the States of Hawaii and Washington, the Public Safety Associations, and Wireless Consumers Alliance, Inc. (WCA) that sought to avoid any specific requirement that prevents a carrier from implementing service promptly.[28]

12. Next, the *E911 Second Reconsideration Order* fully considered how elimination of the carrier cost recovery precondition was consistent with the law and our rules. As we discussed, CMRS carriers covered by our E911 rules are not subject to rate regulation and may adjust their prices to recover their costs.[29] Contrary to RCA's contentions, we had not prescribed cost recovery mechanisms in previous Orders or rejected carrier self-recovery as an alternative method, but rather had left the rule sufficiently broad to encourage prompt and effective solutions for different situations consistent with our schedule and service requirements.[30]

13. We also reject RCA's claim that our decision ignored the recommendations of CTIA and the responsive filings of the carriers and the recommendations of the two other public safety organizations, NENA and NASNA, that are Consensus Agreement parties. We addressed these concerns in the *E911 Second Reconsideration Order* when we eliminated the carrier cost recovery rule, but retained the rule to continue to provide for mechanisms that recover the PSAP's E911 costs.[31] In providing for PSAP cost recovery, we agreed with a subsequent filing of NENA and NASNA that adequate funding of PSAPs is a critical element in ensuring timely E911 implementation and that States and localities should be encouraged to provide such funding.[32] As NENA states, RCA's reliance on NENA's original concerns is out-of-date.[33]

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[25] *Id*., at 20863-70 (paras. 32-48).

[26] *Id*., at 20870-72 (paras. 48-52).

[27] *Id*., at 20871-72 (paras. 51-52).

[28] *Id*., at 20867 (para. 39), 20870 (paras. 49-50).

[29] *Id*., at 20872 (para. 52).

[30] *Id*., at 20861 (para. 24), 20862 (para. 28), 20866 (para. 38).

[31] *Id*., at 20877-80 (paras. 65-72).

[32] *Id*., at 20877-79 (para. 67 n. 98, paras. 66-69).

[33] NENA Opposition to Stay, at 2, attaching NENA's press release in support of the *E911 Second Reconsideration Order*, November 18, 1999.

C. Impact on Small, Rural CMRS Carriers

14. **Background**. Corr and RCA argue that we failed to consider the severe and unfair cost burden on small and rural carriers that will result from eliminating the carrier cost recovery mechanism as a precondition to E911 service.[34] Specifically, Corr argues that, because it failed to receive notice of the proposed rule change, we should now consider the significant costs it expects to incur to implement Phase II's ALI requirement and the intolerable burden of recovering the costs from its small customer base.[35] Corr requests that we not only restore the carrier recovery rule, but modify it to require that states adopt a pooling mechanism to ensure that cost recovery is accomplished without the harmful effects to small carriers that would be the result of non-pooling approaches.[36] Corr raises several other arguments in support of its request to reverse and revise our decision, which we consider separately below.

15. RCA contends that we erred in dismissing as insignificant the higher costs of rural carriers and their lower customer base, and that we ignored the adverse impact of eliminating State pooling mechanisms on rural carriers' customers and operations.[37] RCA argues that we left no incentive for states to implement pooling mechanisms or for expediting E911 implementation. RCA requests, alternatively, that we establish criteria under which small, rural carriers could apply for an expedited waiver of the E911 rules in cases where individual cost recovery through self-recovery will be an enormous burden and hardship[38]

16. CTIA and DiGiPH agree with petitioners and request that we reinstate the precondition for a carrier cost recovery mechanism to avoid the harmful results to small, rural carriers.[39] APCO disagrees with petitioners and opposes the request for waiver.[40]

17. **Discussion**. We are not persuaded that small, rural carriers are unfairly disadvantaged by the rule change or that we should adopt a carrier cost recovery rule requiring that cost recovery mechanisms with pooling provisions be implemented by states to overcome any adverse impacts on such carriers. The *E911 Second Reconsideration Order* found that eliminating the precondition for a carrier cost recovery mechanism did not unfairly discriminate against rural carriers, but rather that rural areas would benefit from more prompt service when the resolution of carrier funding issues is removed from E911 implementation.[41] In addition, our rule change did not preclude states from continuing, or adopting, formal cost recovery mechanisms when preferable or necessary in their judgment. We find on reconsideration that our conclusions were amply supported by the record.

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[34] Corr Petition at 1-6.

[35] Corr Petition at 1-3.

[36] Corr Reply at 1-2.

[37] RCA Petition at 2-4.

[38] RCA Petition at 8, RCA Reply at 6.

[39] CTIA Comments at 1-5, DiGiPH Comments at 4-7.

[40] APCO Opposition at 2-4.

[41] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20873-74 (paras. 56-58).

18. First, we disagree with RCA that we dismissed as insignificant the claims of rural carriers that they will experience higher costs to implement E911. Instead, we found that the record, as reflected in the general claims of RCA and others, was not clear that such costs would be significantly higher.[42] We observed that, even if the costs of operating in rural areas generally were higher, there are other reasons that justify the rule change, such as lower costs for infrastructure needs, the benefits of competitive pricing, and carriers' ability to pursue with states any formal mechanisms they may prefer.[43]

19. Corr has submitted specific cost information that CTIA and RCA argue will demonstrate the magnitude of the cost increase to rural carriers of E911 implementation and the negative impact of relying on their customers to recover these costs.[44] According to Corr, the hardware costs of upgrading each cell site for the ALI requirement of Phase II will increase its investment by 100 percent with no corresponding increase in productivity or revenue.[45] Corr's projections for Phase II costs, however, appear to rely solely on a network-based solution and ignore the new flexibility we granted rural and other carriers in the *E911 Third Report and Order*.[46] There, we provided carriers with the flexibility of using handset-based technology solutions in providing ALI, in part to address the comments of RCA in that proceeding that network-based solutions may not be feasible in many rural wireless markets and that handset-based solutions seem well-suited to rural areas.[47] As APCO notes, handset-based technologies involve relatively few changes to a carrier's infrastructure, whereas network-based technologies require the modifications to every cell site as described by Corr.[48] As a result, a rural carrier that relies on handset-based technologies may well have the same per-subscriber cost of Phase II compliance as an urban carrier.

20. Corr counters that the handset-based solution is not yet available because none of the equipment manufacturers will have marketplace penetration to enable rural carriers to meet our Phase II deadlines for handset-based compliance.[49] We recently addressed these same concerns in the *E911 Fourth Reconsideration Order*, which adopted extensions of the handset deployment schedule and clarified the accuracy guidelines for Phase II to accommodate the realities of each carrier's system.[50] In denying the request of a rural carrier for a rolling six-month waiver of the Phase II requirements, we found that claims of handset unavailability should be alleviated by the schedule adjustments and by

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[42] *Id*., at 20874 (para. 56 n. 80, para. 57).

[43] *Id*., at 20874 (paras. 57-58).

[44] CTIA Comments at 3, RCA Reply at 1-2.

[45] Corr Petition at 2-3.

[46] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20874 (para. 57 n. 81), citing the *E911 Third Report and Order*, 14 FCC Rcd at 17390-91 (paras. 23-24).

[47] *E911 Third Report and Order*, 14 FCC Rcd at 17390-91 (paras. 23 n. 37, 24 n. 38).

[48] APCO Opposition at 3.

[49] Corr Reply at 1-2.

[50] *E911 Fourth Reconsideration Order*, FCC 00-326, released Sept. 8, 2000, modifying 47 C.F.R. §§ 20.18(g)(1)-(2), (i).

evidence that other handset manufacturers may be ready.[51]

21. Additionally, we found that similar projections by a rural carrier of cell-site costs did not adequately substantiate that network-based solutions were prohibitively expensive for rural CMRS carriers.[52] Carriers now have several network-based solutions being offered by vendors, including offers with terms that do not require an up-front investment by carriers, and should not incur the expenses all at once in view of the deployment schedule and the need for the numerous PSAPs to be ready to request Phase II service.[53] Although we recognize, as we did in that decision, that rural CMRS providers may face distinct challenges in implementing Phase II, we conclude that Corr and RCA do not demonstrate on reconsideration that we need to reinstate our rule and, further, adopt the specific carrier cost recovery mechanism they seek. We have provided for carriers, including rural carriers, to file requests for waiver of the Phase II requirements under specific guidelines that request they document their efforts to comply and the reasons for delay.[54]

22. Next, we do not find that our modification of the rule imposed an undue burden on the ability of rural carriers to recover their costs in the absence of a carrier cost recovery rule, or is unjust or unfair to these carriers. As discussed above, it is not clear that rural carriers will have the costs that they project. Moreover, as we emphasized in the *E911 Second Reconsideration Order*, we did not prohibit the use of any formal or other type of carrier recovery mechanism when we eliminated the carrier cost recovery precondition.[55] We did not intend to disturb existing state-adopted mechanisms or the ongoing efforts of carriers and states to develop mutually acceptable mechanisms for state adoption, but only to remove the prerequisite for a mechanism to be in place before the carrier is required to initiate service.[56] Furthermore, we retained the prerequisite for a PSAP cost recovery mechanism. We recognized that PSAPs generally obtain the public funding they need from state legislatures in collaboration with carriers' efforts for cost recovery mechanisms and retained the rule to encourage states in the funding of 911 emergency services.[57] In so doing, we signaled to states that we did not object to state-adopted funding mechanisms or to state funding of E911 in any manner. Thus, petitioners do not substantiate claims that our modified rule has had the negative impact on funding that they claim.

23. We do not agree with Corr and RCA that rural carriers' reliance on self-recovery of E911 implementation costs is unjust and unfair. As we noted in the *E911 Second Reconsideration Order*, Congress and the Commission have determined that the public generally benefits from the promotion of competition among CMRS carriers that results from market-based pricing for their

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[51] *Id*., at 23-24 (para. 70 n. 124). We note that the request was filed by United States Cellular Corporation (USCC), a rural carrier that filed comments that we considered in the *E911 Second Reconsideration Order* and that subsequently filed the petition for review of our cost recovery rule change that is pending court review.

[52] *Id*., at 24 (para. 71 n. 126), discussing similar projections by USCC of overall costs to upgrade its system's cell sites to employ a specific network-based solution.

[53] *Id*., at 24 (paras. 71 n. 127 and 72).

[54] *Id*., at 16-17 (paras. 44-45).

[55] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20874-75 (paras. 58-59).

[56] *Id*., at 20872-73 (paras. 53-54).

[57] *Id*., at 20877-80 (paras. 65-72).

services.[58]

24. Further, we are not persuaded that the lack of a carrier cost recovery rule that provides for state-adopted pooling or similar mechanisms for small and rural carriers will further delay the implementation of E911. As the public safety community makes clear in opposing the petitions, we should not reconsider our decision and prolong the uncertainties that delayed E911 under our prior rule.[59] Indeed, according to data recently compiled by APCO on the effect of our decision, the number of PSAPs seeking Phase I service has risen from 10 percent to more than 60 percent.[60] As we concluded, by removing the cost recovery issues that were obstacles to such implementation, carriers and the states or PSAPs could better resolve these and related differences, such as technology choice, to accelerate implementation.[61]

25. Next, we reject Corr's assertion that the Supplemental Final Regulatory Flexibility Analysis (FRFA) in Appendix C of the *E911 Second Reconsideration Order* failed to properly analyze the adverse impact on small entities of our elimination of the carrier cost recovery rule and failed to describe the steps we have taken to minimize the impact of this action on small entities.[62] In the Supplemental FRFA, we fully discussed the possible economic impact on small and rural carriers and any significant alternatives to minimize any impact. Specifically, we concluded that the alternative proposal to eliminate the carrier cost recovery rule would not adversely affect such carriers.[63] We found that small and rural carriers had not demonstrated that their E911 costs would be higher than those of larger carriers or that a state-adopted pooling mechanism was necessary or appropriate, since wireless carriers may recover their own costs.[64] We also found that the states remained free to decide what mechanism, if any, to adopt for carriers.[65] Moreover, we concluded that the proposal to remove the carrier cost recovery condition would most benefit rural areas and small carriers, because it would remove the need to resolve carrier cost recovery issues before the carrier's service obligation is triggered, thereby speeding

[58] *Id*. at 20872 (para. 52), citing Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1478-1481, 1504, 1510-1511 (paras. 173-182, 250, 272) (1994) (*CMRS Second Report and Order*). Forbearance from tariffing and its filing requirements promotes competitive market conditions by enabling CMRS providers to make rapid, efficient responses to changes in demand or cost and by reducing the administrative costs and burdens necessary to ensure that charges, practices, and classifications are reasonable. *Id*., at 1479 (para. 177).

[59] APCO Opposition at 3, NENA Opposition to Stay at 2.

[60] One Phase At a Time, Caron Carlson, Wireless Week, Aug. 14, 2000, at 34. The article indicates that Texas, which the *E911 Second Reconsideration Order* found had no implementation, has gone to almost 100 percent implementation. We also note that, in a related article in the same issue, Rural Cellular Corporation reports that it has achieved such significant increases in new customers, earning, and revenue to allow this "rural carrier to concentrate on providing customers with city slicker features such as wireless Internet and prepaid calling plans." Rural Cellular Producing Wireless Crops, Wireless Week, Aug. 14, 2000, at 24.

[61] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20876-77 (paras. 63-64).

[62] Corr Petition at 9-12, CTIA Comments at 5.

[63] *E911 Second Reconsideration Order*, 14 FCC Rcd at 20908-10.

[64] *Id*., at 20909.

[65] *Id*.

deployment of E911 and ensuring more efficient and effective service.[66] Inasmuch as the reasons and findings in support of our conclusions in the Supplemental FRFA are affirmed on reconsideration above, we therefore see Corr's argument on this point as redundant.

26. For the same reasons, we also find no merit in Corr's additional argument that we violated the prohibition of the Fifth Amendment of the U.S. Constitution against the public taking of private property without just compensation, because our rule change requires carriers to provide E911 service without publicly-funded cost recovery.[67] We affirm on reconsideration that our rule change did not impose an undue burden on carriers and did not preclude them from recovering their E911 costs, inasmuch as they may continue to do so through self-recovery and state-adopted mechanisms. Finally, Corr argues that we should change the definition of universal service to include our CMRS E911 service and thereby permit cost support to be supplied to CMRS carriers in the normal course of providing universal support funding mechanisms.[68] That request is outside the scope of a petition for reconsideration of our cost recovery decision in the *E911 Second Reconsideration Order* and is denied without further discussion.[69]

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

27. The Commission has not prepared an additional Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible economic impact on small entities of the Commission's decisions, *see generally* the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, because this Order does not promulgate or revise any rules, and our previous RFA analyses in this proceeding remain unchanged.[70]

B. Authority

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

C. Further Information

29. For further information, contact the Policy Division, Wireless Telecommunications Bureau, at 202-418-1310 (voice) or 202-418-1169 (TTY) or 202-418-7247 (fax).

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that the Petitions for Reconsideration filed by Corr Wireless Communications, L.L.C. (formerly CorrComm, L.L.C.) and Rural Cellular Association ARE

[66] *Id*.

[67] Corr Petition at 14-15.

[68] Corr Petition at 6-9.

[69] 47 C.F.R. § 1.429(i).

[70] *See also* para. 25, *supra*; *see generally* Supplemental FRFA, *E911 Second Reconsideration Order*, 14 FCC Rcd at 20908-10.

DENIED.

31. IT IS FURTHER ORDERED that the Petition for Stay filed by Rural Cellular Association IS DENIED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary