

**Before the  
Federal Communications Commission  
Washington, DC 20554**

|                                 |   |                      |
|---------------------------------|---|----------------------|
| In the Matter of                | ) |                      |
|                                 | ) |                      |
| Wireless E911 Location Accuracy | ) | PS Docket No. 07-114 |
| Requirements                    | ) |                      |

**CHOICE WIRELESS, LLC PETITION FOR TEMPORARY WAIVER**

Choice Wireless, LLC (“Choice”), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby seeks a temporary waiver of Section 20.18(i) of the FCC’s rules. The public safety answering point (“PSAP”) serving Choice’s service area is not capable of utilizing indoor location data and has not requested that Choice provide such location data. Until its PSAP is capable of receiving and utilizing indoor location data and requests such data and Choice fully implements its enhanced 911 (“E911”) solution, Choice seeks a waiver of the indoor location accuracy and associated reporting requirements of Section 20.18(i).

**I. BACKGROUND**

Choice is a small wireless telecommunications carrier providing service to retail customers in Archer County, Texas. Choice provides service to a geographic area with low population density. Choice is served by one PSAP – the Archer County Sheriff’s Department (“ACSD”). Choice currently provides Phase I E911 service. Choice previously operated multiple cell sites but in May of this year deactivated all but one cell site.<sup>1</sup> Because Choice is

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<sup>1</sup> Although Choice deactivated its cell sites in December 2016, it did not determine that it was unable to comply with the indoor location accuracy requirements until May 19 when it was told

unable to triangulate signals from its single cell site in Archer County, it has filed an exclusion report with the FCC pursuant to Section 20.18(h)(1)(vi) of the FCC's rules, and is therefore not required to provide Phase II E911 service. The ACSD has informed Choice that it is currently unable to utilize indoor location data and does not oppose this waiver request.

In 2015, the Commission adopted amendments to its E911 rules which established new indoor location accuracy requirements.<sup>2</sup> Although the requirements as originally adopted conditioned a wireless carrier's obligation to meet certain indoor location accuracy benchmarks on the receipt of a valid PSAP request for indoor location accuracy data, the Commission subsequently issued, without explanation, an Erratum that removed this condition.<sup>3</sup>

For the same reasons Choice is unable to provide Phase II E911 service, it is unable to provide location data capable of meeting the indoor location accuracy requirement. Although Choice is in the process of upgrading its network and building out additional sites that will allow it to triangulate and provide the location data required by Section 20.18(i), it requires a waiver of the requirements of that section at least until such time as its network upgrade is complete, and its E911 solution fully implemented.<sup>4</sup>

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by its E911 solution vendor, Polaris Wireless ("Polaris"), that the Polaris solution would not work with a network with a single cell site. At that time, Polaris promised to provide Choice with documentation that would support a waiver request. When such information was finally received from Polaris on July 24, Choice directed its counsel to prepare and file the instant request.

<sup>2</sup> *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fourth Report and Order, rel. Feb. 3, 2015 ("*Fourth Report and Order*"); 47 C.F.R. §20.18(i).

<sup>3</sup> *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Erratum, rel. March 3, 2015 (Erratum), at par. 6.

<sup>4</sup> Because Choice was unable to generate live call data or certify to compliance with the current indoor location accuracy benchmark, it did not file such data or certification, and a request for waiver of those reporting deadlines is subsumed within Choice's request for waiver of Section 20.18(i).

## II. CHOICE Satisfies the FCC's Waiver Standard

The Commission has authority to grant a waiver under Section 1.3 of the rules if the petitioner demonstrates good cause for such action.<sup>5</sup> Good cause, in turn, may be found, and a waiver granted, “where particular facts would make strict compliance inconsistent with the public interest.”<sup>6</sup>

In addition, Section 1.925 of the FCC's Rules permits the Commission to grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

Good cause exists for grant of the requested waiver. Because the PSAP in Choice's service area is not prepared to receive or utilize indoor location data, and has not requested such data, there is no public interest benefit to requiring Choice to provide such data at this time, and there is public interest harm in requiring Choice to incur the unnecessary expense of complying with Section 20.18(i) now when doing so will result in no benefit to 911 callers yet will prevent

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<sup>5</sup> 47 C.F.R. § 1.3. See also *ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166; see also *ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

Choice from using those resources to upgrade its network and provide its customers with both improved service and enhanced 911 service.

The underlying purpose of the FCC's E911 rules and its indoor location accuracy rule is to enhance public safety by ensuring that PSAPs are able to rapidly locate and respond to individuals who place calls for emergency assistance by dialing 9-1-1 on a mobile wireless device. This purpose would not be served by requiring Choice to expend the resources that would allow it to provide indoor location accuracy data at this time because such data provides no assistance to its PSAP which is currently incapable of receiving or utilizing such data. Although the Commission did not explain why its Erratum removed the precondition of PSAP readiness from Section 20.18(i), that same rule section will only allow a PSAP to request FCC enforcement of the indoor location requirements if it has "implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP."<sup>7</sup> Here, because the PSAP in Choice's service area has not implemented policies to obtain indoor location data, the FCC's rules preclude the PSAP from even requesting FCC enforcement of Section 20.18(i). Clearly, a temporary waiver until such PSAP is capable of receiving and utilizing indoor location data and formally requests it is consistent with the underlying purpose of Section 20.18(i).

Requiring Choice to provide location data to a PSAP that can't use it is inequitable, unduly burdensome, and contrary to the public interest. Choice has initiated a network upgrade that will allow it to meet the accuracy requirements of Section 20.18(i). The upgrade is scheduled to be complete by the end of the first quarter of 2018. To complete the upgrade sooner than scheduled would require significant capital expenditures to build "E-911-only sites."

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<sup>7</sup> 47 C.F.R. §20.18(i)(2)(iv).

The resources that Choice would be required to expend in order to become immediately capable of providing its PSAP with information that would be meaningless to it could instead be spent to upgrade Choice's network. A waiver will therefore serve the public interest by allowing Choice to more rapidly build out its 4G LTE network and at the same time implement its solution that will be capable of satisfying the accuracy benchmarks of Section 20.18. No PSAPs will be harmed by a grant of the instant waiver request. The ACSD is not ready to utilize the data required by Section 20.18 and does not oppose this waiver request. When the ACSD has developed the capability to receive and utilize location data and requested that Choice provide it, Choice will then devote its scarce resources to providing such data. In the meantime, the interest of the public that the PSAPs were established to serve is best served by allowing Choice to utilize those resources to upgrade its network and enhance the services provided to its customers.

Grant of the requested waiver is consistent with Commission precedent. The Commission has granted a waiver of Section 20.18(i) where the PSAP was incapable of receiving and processing location data, concluding that "the underlying purpose of the rule would not be served by requiring [the carrier] to implement the technical capability to supply enhanced 911 location information to a PSAP that is incapable of receiving and processing the information." *Wireless E911 Location Accuracy Requirements*, Order, PS Docket No. 07-114, DA 17-660, rel. July 10, 2017.

In addition, the FCC has recognized that "special circumstances particular to smaller carriers may warrant relief from 911 requirements."<sup>8</sup> Some examples of such circumstances cited by the Commission – small, rural, and widely dispersed customer bases – apply to Choice.

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<sup>8</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petitions for Waiver of Enhanced 911 Phase II Requirements*, Order, CC Docket No. 94-102, rel. March 9, 2007, at par. 7.

These factors further support a finding of unique or unusual factual circumstances that justify a waiver in this case.

For the foregoing reasons, Choice requests a temporary waiver of Section 20.18(i) with respect to each PSAP until: (1) six months after such PSAP is able to receive and utilize indoor location accuracy data and makes a bona fide request for such data, or (2) Choice both completes its network upgrade and implements its E911 solution, whichever is later.

Respectfully submitted,

CHOICE WIRELESS, LLC

*/s/ Michael R. Bennet*

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