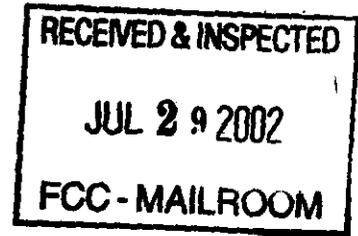


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the matter of )  
)  
Revision of the Commission's Rules To Ensure )  
Compatibility with Enhanced 911 Emergency ) CC Docket No. 94-102  
Calling Systems )  
)  
Phase II Compliance Deadlines for Non- )  
Nationwide CMRS Carriers )  
)

Adopted: July 11, 2002

Released: July 26, 2002

By the Commission:

ORDER TO STAY

I. INTRODUCTION

1. In this Order, we reluctantly, and temporarily stay, pursuant to section 1.3 of the Commission's rules,<sup>1</sup> the application of certain specific E911 Phase II deadlines set forth in section 20.18(f) and (g) of the Commission's rules to two classes of non-nationwide Commercial Mobile Radio Service (CMRS) providers who have filed requests relating to those deadlines.<sup>2</sup> Specifically, we extend our E911 Phase II interim handset and network upgrade compliance deadlines by seven months from the date of this Order for "Tier II carriers" and by thirteen months from the date of this Order for "Tier III" carriers.<sup>3</sup> We will continue to insist on the ultimate implementation date of December 31, 2005, however, which will remain in place for all CMRS carriers. As discussed in more detail below, we find that this approach will best facilitate the rollout of Phase II services throughout the nation as rapidly as possible.

II. BACKGROUND

A. E911 Phase II Legal Framework

2. Under Phase II of the Commission's wireless E911 rules, wireless carriers are required to provide the location of wireless 911 callers, a capability known as Automatic Location Identification (ALI).<sup>4</sup> In establishing those rules, the Commission sought to be technologically and competitively neutral, allowing any location technology to be used that can comply with specified accuracy, reliability,

<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. §§ 20.18(f)-(g).

<sup>3</sup> In order to provide regulatory clarity, the precise implementation dates are listed in paragraphs 26-27 and 32-33 of the Order, which are approximately seven and thirteen months, respectively, from the date of the Order.

<sup>4</sup> 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 (1996). For additional information regarding the Commission's wireless E911 program, see <[www.fcc.gov/911/enhanced](http://www.fcc.gov/911/enhanced)>.

and deployment schedule requirements. For example, the rules provide that handset-based location solutions must provide the location of wireless 911 calls with an accuracy of 50 meters for 67 percent of calls and 150 meters for 95 percent of calls.<sup>5</sup> Carriers using a handset-based solution also must begin to offer one entry-level model with location capability no later than October 1, 2001 and must ensure that 95 percent of their customers have location-capable handsets no later than December 31, 2005.<sup>6</sup>

3. For carriers choosing a network-based solution, the rules provide that the technology must report the location of wireless 911 calls with an accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.<sup>7</sup> A carrier using a network-based solution must provide ALI to 50 percent of its coverage area, or 50 percent of its population, beginning on October 1, 2001 or within 6 months of a Public Safety Answering Point (PSAP) request, whichever is later, and to 100 percent of callers within 18 months of that request or by October 1, 2002, whichever is later. Wireless carriers subject to the rules were directed to report their Phase II plans, including the technologies they plan to use, by November 9, 2000.<sup>8</sup>

4. Wireless E911 is a vital step toward applying wireless technology to improving public safety. For many Americans, the ability to call for help in an emergency is the principal reason they own a wireless phone. A significant percentage of all 911 calls nationwide are made from wireless phones, and this percentage is growing. E911 will save lives and property by helping emergency services personnel do their jobs more quickly and efficiently. Automatic Location Identification (ALI) capability will permit rapid response in situations where callers are disoriented, disabled, unable to speak, or do not know their location by allowing for the immediate dispatch of emergency assistance to the location of the emergency. Wireless E911 provides a critical safety-of-life feature, and it should be deployed as quickly and ubiquitously as possible.

#### **B. E911 Phase II Implementation**

5. During the course of the E911 proceeding, the Commission recognized that the E911 deployment schedule was aggressive in light of the need for further technological advancement, but necessary and justified given the critical safety-of-life nature of E911 services. Nonetheless, the Commission predicted that ALI technologies would generally be available in sufficient time for carriers to comply.<sup>9</sup>

6. The Commission also recognized, however, that requests for waiver may be justified based on specific showings and discussed standards for such requests in the *E911 Fourth Memorandum Opinion and Order*.<sup>10</sup> In the *E911 Fourth Memorandum Opinion and Order*, we explained that we would expect requests for waiver to be specific, focused, and limited in scope, with a clear path to full compliance.<sup>11</sup> We also stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts, including the solutions they considered and why none

<sup>5</sup> 47 C.F.R. § 20.18(h)(2).

<sup>6</sup> 47 C.F.R. § 20.18(g).

<sup>7</sup> 47 C.F.R. § 20.18(h)(1).

<sup>8</sup> 47 C.F.R. § 20.18(i). See <[www.fcc.gov/911/enhanced](http://www.fcc.gov/911/enhanced)>, Wireless E-911 Phase II Automatic Location Identification Implementation, Reports From Wireless Carriers.

<sup>9</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58 (2000) (*E911 Fourth Memorandum Opinion and Order*).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 17457, para. 44.

could be employed in a way that complies with our Phase II rules. Finally, we stated that carriers should not expect to defer implementing a location solution if one is available and feasible.<sup>12</sup>

7. As directed by the Commission in the *Fourth Memorandum and Order*, wireless carriers filed their Phase II implementation plans in November 2000. Subsequently, the six CMRS carriers with national footprints<sup>13</sup> – AT&T Wireless, Cingular Wireless, Nextel Communications,<sup>14</sup> Sprint PCS, Verizon Wireless, and VoiceStream Communications (collectively, Tier I carriers) – filed specific Phase II compliance plans requiring certain relief from specific provisions of the Phase II rules.<sup>15</sup> Together these carriers serve over 78 percent of nation's mobile telephony subscribers, or nearly 100 million subscribers.<sup>16</sup>

8. On October 1, 2001, the Commission adopted orders approving, in part, detailed compliance plans for five of the six nationwide CMRS carriers,<sup>17</sup> granting each nationwide carrier limited additional time to come into compliance with the Commission's rules. Because of their size and geographic scope, these carriers were able to elicit commitments from their location technology, network component, and handset vendors. These nationwide carriers have committed on the record to meet or exceed the accuracy and reliability standards set by our rules for Phase II location information. Moreover, all of these carriers have committed that their plans for handset-based solutions will be fully implemented by the deadline set by our current rules, no later than the end of the year 2005, and if they do not meet this deadline without an additional Commission waiver, they will be in violation of our rules and subject to sanction.

9. Pursuant to a Public Notice released on October 12, 2001,<sup>18</sup> the Commission also has received numerous requests for relief from other, non-nationwide CMRS providers seeking additional time to comply with the Commission's E911 Phase II rules.<sup>19</sup> In this Order, we address these requests

<sup>12</sup> *Id.* at 17457-58, paras. 44-45.

<sup>13</sup> Generally, "footprint" is an industry term of art referring to the total geographic area in which a wireless provider offers service or is licensed to offer service. See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Seventh Report, \_\_ FCC Rcd \_\_ (rel. Jul. 3, 2001) ("*Seventh CMRS Competition Report*") at n.13.

<sup>14</sup> At Nextel Communications' request, we considered Nextel Communications and Nextel Partners as a joint entity for purpose of its waiver request because of the unique characteristics of the iDEN technology. See Nextel Communications, Inc. and Nextel Partners, Inc. Joint Report on Phase II Location Technology Implementation and Request for Waiver, CC Docket No. 94-102 (filed Nov. 9, 2000).

<sup>15</sup> On May 31, 2001, Deutsche Telekom AG completed its acquisition of VoiceStream and Powertel, Inc. We refer to this combined entity as VoiceStream. See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, 13364 (2001) ("*Sixth CMRS Competition Report*").

<sup>16</sup> According to statistics compiled by the Wireless Bureau using publicly available information, these carriers reported the following number of subscribers for the end of 2001: Verizon Wireless (29,398,000); Cingular (21,596,000); AT&T Wireless/Telecorp (19,065,000); Sprint PCS (13,555,000); Nextel/Nextel Partners (9,183,000); and VoiceStream/Powertel (6,993,000), totaling approximately 99.8 million subscribers. Using the Commission's estimate of 128.5 million for the total number of subscribers as for the same time period, the nationwide carriers serve approximately 78% of total U.S. subscribers. See *Seventh CMRS Competition Report* at Appendix C, Table 4.

<sup>17</sup> The sixth nationwide carrier, VoiceStream, was granted a limited waiver in September 2000. See *E911 Fourth Memorandum Opinion and Order*.

<sup>18</sup> Commission Establishes Schedule for E911 Phase II Requests by Small and Mid-Sized Wireless Carriers, Public Notice, FCC 01-302 (rel. Oct. 12, 2001).

<sup>19</sup> See Appendix A for a list of all non-nationwide carriers that filed waivers in this proceeding and are covered under this Order.

and provide limited relief on a two-tiered basis to non-nationwide CMRS carriers that have filed requests for relief.<sup>20</sup>

### III. DISCUSSION

10. Because the record demonstrates that non-nationwide CMRS carriers have much less ability than the nationwide CMRS carriers to obtain the specific vendor commitments necessary to deploy E911 immediately, we grant these carriers temporary, limited relief from the E911 Phase II implementation rules.<sup>21</sup> This relief is similar to the relief afforded the six nationwide carriers through adoption of their individual compliance plans. We distinguish between the larger, mid-sized regional carriers and the small carriers, defining them as Tier II and Tier III carriers, respectively.<sup>22</sup> For the reasons below, we grant a 7-month stay from the date of this order to Tier II carriers and a 13-month stay from the date of this order to Tier III carriers. In addition, we require Tier II carriers to report quarterly and Tier III carriers to provide an interim report on their E911 deployment.

#### A. Good Cause Exists to Grant A Temporary Stay of the E911 Implementation Rules to Small and Mid-Sized CMRS Carriers

11. We find that small and mid-sized carriers have a legitimate need for a stay of the initial Phase II implementation deadlines. Based on this record, we conclude that handset vendors and network-based location technology vendors give priority to the larger, nationwide carriers. Nationwide carriers' deployment schedules have created downstream delays for Tier II and III carriers. We find that there are temporary and special circumstances applicable to the carriers identified herein that constitute a sufficient basis to grant a stay on a limited and temporary basis from our Phase II deadlines. These carriers must, however, meet our alternative deadlines to ensure that Phase II service is provided across-the-board by all covered CMRS providers in areas where PSAPs have requested it pursuant to the requirements of our rules.<sup>23</sup>

12. Numerous small and mid-sized carriers have sought relief from the Commission's E911 Phase II deadlines due to equipment delays, including the unavailability of network components and handsets.<sup>25</sup> Indeed, they claim that they have been unable to focus vendors altogether on the individual

<sup>20</sup> As discussed in detail below, we refer to the six nationwide CMRS carriers as Tier I carriers and to all other CMRS carriers as the Tier II and Tier III carriers. *See, infra*, Discussion § IIIB.

<sup>21</sup> Only carriers who have filed requests for relief are covered under the stay. *See* Appendix A for a list of these entities. On our own motion, we choose to grant relief to all carriers filing a waiver request, including late-filed waivers.

<sup>22</sup> *See* paras. 22-23, *infra*, for precise definitions of Tier II and Tier III carriers.

<sup>23</sup> 47 CFR 20.18(f) and (g); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Petition of City of Richardson, Texas, RM-8143, Order, FCC 01-293 (rel. Oct. 17, 2001)(*City of Richardson Order*).

<sup>25</sup> *See, e.g.*, Inland Cellular Telephone Co., Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules, CC Docket No. 94-102 (filed Jul. 30, 2001)(*Inland Cellular Request*) at 2 (asserting that Inland Cellular "has been stymied in its planning by the inability to receive reliable availability and pricing information from its vendors" because Inland, "as a smaller carrier, is given short shrift from vendors who are understandably more concerned with their largest customers"); Dobson Cellular Systems, Inc. Petition for Waiver of Section 20.18(e),(f),and (h) of the Commission's Rules, CC Docket No. 94-102 (filed Sept. 4, 2001) at 12-13 (asserting that vendors are focusing on designing systems for the larger nationwide carriers only and will not design systems specifically to serve carriers of Dobson's size and unique characteristics).

needs of their respective networks, particularly in light of the vendors' principal focus on filling orders from nationwide carriers. For example, Inland Cellular noted that "Inland's lack of bargaining power translates into more than an informational void. Smaller carriers in smaller markets are at the 'end of the line' for product distribution."<sup>26</sup> Similarly, Leap Wireless noted that two manufacturers who are producing 3300 chipsets for a handset-based solution could not make them available to Leap.<sup>27</sup>

13. We do not pass judgment on any particular manufacturer's relationships with any particular smaller carrier. However, we find that the delays in overall nationwide carriers' E911 rollout plans have resulted in an overall delay that has affected Tier II and III carriers. Given these facts and circumstances, we find that a limited, temporary stay of the E911 Phase II requirements is warranted.

**1. A Temporary Stay Will Not Unduly Delay E911 Phase II Implementation**

14. The Commission established the E911 Phase II rules to improve public safety and extend automatic location identification (ALI) to wireless callers. Wireless phones can be a vital, life-saving way to call for assistance in emergency situations but, unlike most wireline phones, the dispatcher at the 911 Public Safety Answering Point (PSAP) does not know where the caller is. Thus, to improve public safety and extend ALI to wireless consumers, the Commission has established a schedule, subject to certain conditions, for deployment of E911 features by wireless carriers.

15. We have designed this temporary stay of the Phase II implementation rules for small and mid-sized carriers to minimize delay of deployment of E911. Although our rules require carriers using a handset-based location solution to begin to phase-in deployment of ALI-capable handsets beginning on October 1, 2001, actual deployment of Phase II service is not triggered until a PSAP request is received.<sup>28</sup> Similarly, carriers using a network-based location solution are not required to take any action to deploy Phase II service until they receive a PSAP request.<sup>29</sup> In addition, before the carrier's Phase II obligation is triggered, the PSAP must demonstrate that a mechanism for recovering the PSAP's costs of the E911 service is in place and that it is capable of receiving and utilizing the data elements associated with the service.<sup>30</sup> Given these conditions, many PSAPs in smaller or rural areas served by these non-nationwide carriers may well require additional time to become capable of receiving and utilizing Phase II information and may not initiate requests for Phase II service during the stay period. In fact, a number of the non-nationwide carriers reported that they had not yet received any valid PSAP requests for Phase II service.<sup>31</sup> However, since Tier II and III carriers, unlike Tier I carriers, were not required to supply information on Phase II PSAP requests, we do not have specific information on the number of Phase II PSAP requests presented to Tier II and III carriers. We will receive such information once the Tier II and III carriers are subject to the reporting requirements imposed in this Order.

16. We conclude that this temporary stay of the initial and interim Phase II deadlines is consistent with the public interest because it allows for a more efficient rollout of E911. We note, however, that a

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<sup>26</sup> *Inland Cellular Request* at 6.

<sup>27</sup> See Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II Implementation Milestones, CC Docket No. 94-102 (filed Aug. 23, 2001) at 13-15.

<sup>28</sup> 47 C.F.R. § 20.18(g)(2).

<sup>29</sup> 47 C.F.R. § 20.18(f).

<sup>30</sup> *City of Richardson Order*.

<sup>31</sup> See, e.g., Contingent Amendment to ALLTEL Communications, Inc. Petition for Waiver, CC Docket 94-102 (filed May 10, 2002) at 4 (noting that CenturyTel has not yet received any Phase II requests); Petition for Waiver of Mid-Maine Wireless and Mid-Maine Communications, Inc., CC Docket 94-102 (filed Nov. 30, 2001) at 2.

continuing set of delays could seriously delay E911 deployment and therefore could reduce safety-of-life services for all Americans. While we are allowing a delay here, further delays could undermine the entire E911 rollout. The benefits of the delay described herein would be outweighed if further delay resulted in our 2005 date being missed. Non-nationwide carriers must make investments and accomplish needed technical work expeditiously including during this delay so that they can meet our 2005 deadline. We understand the short time between the interim and final benchmarks created by this Order, but after reviewing the record we believe full compliance by 2005 is achievable.

17. As explained above, there are technical and equipment availability problems that prevent small and mid-sized carriers from implementing E911 Phase II pursuant to the current deadlines. By permitting each set of wireless carriers to begin Phase II rollout at different times, the Commission may help to alleviate carriers' deployment problems attributable to third party vendors. By focusing first on nationwide carriers, followed by Tier II carriers and then Tier III carriers, equipment manufacturers and location technology providers will be able to prioritize their responsibilities to serve carriers with the most immediate need first. In addition, this approach will help ensure that major technical and implementation issues are worked out initially by the nationwide carriers. The small and mid-sized carriers, along with their necessary partners in their service areas, such as the PSAPs, can learn from the deployment experiences of the nationwide carriers, which should make Phase II nationwide deployment run more efficiently. A stay enables the Commission to provide an impetus to compliance by enabling these non-nationwide carriers to focus upon and adjust their implementation schedules in order to provide a more efficient Phase II rollout.

18. Furthermore, the stay we grant is limited in nature and is not intended to interrupt carriers' ongoing implementation of Phase I and their Phase II implementation efforts. During the stay period, small and mid-sized carriers will be expected to continue to focus on Phase I implementation and Phase II testing to ensure that they will be ready to implement Phase II at the end of the stay period. Giving these carriers additional lead-time to prepare for Phase II implementation should allow for a more efficient rollout of E911, thereby serving the public interest.

**B. Creating a Three-Tiered Approach to Phase II Implementation is Necessary to Balance the Need for Swift Phase II Deployment with Limitations on Certain CMRS Carriers' Access to Phase II Equipment**

19. Among the non-nationwide carriers, there is a wide range of small, rural, and mid-sized carriers. Because the larger non-nationwide carriers have greater resources and can obtain location technologies in a shorter time frame than the very small carriers, we find it appropriate to distinguish between mid-sized and small carriers (creating "Tier II" and "Tier III" carriers, respectively) in granting relief from our Phase II rules. This tiered approach allows us to distinguish between different classes of carriers in order to tailor the relief based on each carrier's resources.

20. In structuring our approach to address the petitions for waiver of our Phase II deadlines in sections 20.18(f) and (g), we conclude that a three-tiered approach will ensure the widest availability of Phase II location services for CMRS customers in the shortest period of time. This approach recognizes that wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations. All non-nationwide carriers are not similarly situated when it comes to E911 Phase II compliance. The waivers filed and the records developed in response to the waiver requests filed by the various carriers suggest that size matters when it comes to negotiations with location technology, switch, and handset vendors for the technology necessary to comply with E911 Phase II.<sup>32</sup>

<sup>32</sup> See, e.g., Mid-Tex Cellular, Ltd. Petition for Limited Waiver of Sections 20.18(e) and (g), CC Docket No. 94-102 (filed Sept. 19, 2001) at 4; Western Wireless Corporation Petition for Waiver of Section 20.18(g), CC Docket No.

44. Emery Telecommunications and Video, Inc.
45. Enterprise Wireless PCS, L.L.C.
46. Farmers Mutual Cooperative Telephone Company
47. Glenn W. Ishihara
48. Hawaiian Wireless, Inc.
49. Highland Cellular, Inc.
50. Illinois Valley Cellular RSA 2-I Partnership dba Illinois Valley Cellular, Illinois Valley Cellular RSA 2-II Partnership dba Illinois Valley Cellular, Illinois Valley Cellular RSA 2-III Partnership dba Illinois Valley Cellular
51. Inland Cellular Telephone Co.
52. Iowa RSA 2 Limited Partnership (filed 6/27/02)
53. Iowa Wireless Services, L.P.
54. Kankakee Cellular L.L.C.
55. Kodiak Wireless, LLC
56. Leaco Rural Telephone Cooperative, Inc.
57. Leap Wireless International, Inc.
58. MetroPCS, Inc.
59. Mid-Maine Wireless and Mid-Maine Communications, Inc.
60. Mid-Tex Cellular Limited
61. Midwest Wireless Communications L.L.C.
62. Minnesota Southern Cellular Telephone Company d/b/a HickoryTech Wireless and Minnesota Southern Wireless Company d/b/a HickoryTech Wireless
63. Missouri RSA #5 Partnership d.b.a. Chariton Valley Wireless Services
64. Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular
65. Montana Wireless, Inc.
66. MP Communications Partners, L.P. (filed 2/11/02)
67. N. E. Colorado Cellular, Inc.
68. North Carolina RSA 3 Cellular Telephone Company dba Carolina West Wireless
69. North Dakota Network Co.
70. Northcoast Communications, L.L.C.
71. Northern New Mexico Telecom, Inc. (filed 1/17/02)
72. NOW Licenses, LLC
73. NTELOS, Inc., f/k/a/ CFW Communications Company
74. OTZ Telecommunications, Inc.
75. Pacific Wireless Technologies, Inc.
76. PetroCom License Corporation
77. Price Communications Wireless, Inc.
78. PrimeCo Spectrum Holdings LLC/ Chicago 20 MHz LLC
79. Public Service Cellular, Inc.
80. PVT Wireless Limited Partnership
81. Quantum Communications Group, Inc.
82. Qwest Wireless Corporation, LLC and TW Wireless, LLC (Qwest Wireless)
83. Rural Cellular Corporation
84. RSA 1 Limited Partnership d/b/a/ Cellular 29 Plus
85. Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc. (The Carriers)
86. San Isabel Telecom, Inc.
87. Smith Bagley, Inc.
88. SNC Telecommunications, LLC
89. South Canaan Cellular Communications Company, L.P.
90. South Central Utah Telephone Association, Inc.

**Appendix A: List of Waivers Filed by Non-Nationwide Carriers\***

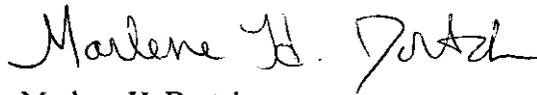
1. 3 Rivers PCS, Inc. d/b/a 3 Rivers Wireless
2. ACS Wireless, Inc.
3. Advantage Cellular Systems, Inc.
4. Airadigm Communications, Inc.
5. Airtel Wireless LLC
6. Alabama Wireless, Inc.
7. AllCom, LLC
8. ALLTEL Communications, Inc.
9. Alpine PCS, Inc. and RFB Cellular, Inc.
10. American Cellular Corporation
11. American Samoa License, Inc.
12. American Samoa Telecommunications Authority
13. Arctic Slope Telecommunications and Cellular, Inc.
14. Bachow/Coastel, L.L.C.
15. Blanca Telephone Company
16. BRK Wireless, Inc. d/b/a Amica Wireless Phone Service, Inc. (filed 12/5/01)
17. Brookings Municipal Utilities d/b/a Swiftel Communications
18. California RSA # 3 Limited Partnership, A California Limited Partnership, d/b/a Golden State Cellular
19. Cal-One Cellular, Limited Partnership
20. Carolina PCS I Limited Partnership
21. CC Communications
22. Cellular Mobile Systems of St. Cloud, LLC
23. Celulares Telefonica, Inc.
24. Centennial Communications Corp.
25. CenturyTel Wireless, Inc.
26. CGKC&H No. 2 Rural Cellular Limited Partnership
27. Cincinnati Bell Wireless
28. Coleman County Telecommunications d/b/a TransTexas PCS
29. Communications Venture PCS, LP
30. Conestoga Wireless Company, Inc.
31. Consolidated Telcom
32. Cook Inlet/VS GSM IV PCS, LLC ("CIVS IV"), CIVS IV PCS Sub I, LLC ("CIVS IV Sub I") and BCN Communications, L.L.C. ("BCN and, together with CIVS IV and CIVS IV Sub I, the "CIVS Entities")
33. Copper Valley Wireless, Inc.
34. Cordova Telephone Cooperative, Inc.
35. Corr Wireless Communications, L.L.C.
36. CT Cube, Inc. d/b/a West Central Wireless
37. D&E/Omnipoint Wireless Joint Venture, L.P. d/b/a PCS One
38. Devon Mobile Communications L.P.
39. Dobson Cellular Systems, Inc.
40. Eagle Telephone System, Inc. (filed 5/31/02)
41. Edge Wireless Licenses, LLC
42. El Dorado Cellular, a California Corporation d/b/a Mountain Cellular
43. Eliska Wireless Ventures License Subsidiary I, L.L.C.

\* The waivers for the carriers listed cover the self-identified affiliates of these carriers. All waivers were filed by the November 30, 2001 deadline except where indicated.



50. IT IS FURTHER ORDERED that all pending petitions filed by Tier II and Tier III carriers are DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

("OMB") comment on the information collections contained in this Order as required by the Paperwork Reduction Act of 1995.<sup>52</sup> The notice opening this comment period may be found at 67 FR 22082, May 2, 2002. Public and agency comments were due on July 1, 2002, and OMB comments are due September 1, 2002. Comments should address:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

43. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, S.W., Washington, D.C. 20554, or via the Internet to [JBoley@fcc.gov](mailto:JBoley@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 - 17<sup>th</sup> Street, N.W., Washington, D.C. 20503 or via the Internet to [Jeanette\\_I.Thornton@omb.eop.gov](mailto:Jeanette_I.Thornton@omb.eop.gov).

#### B. Ordering Clauses

44. Accordingly, IT IS ORDERED that ALLTEL, US Cellular, Western Wireless, Qwest Wireless, Centennial Cellular, CenturyTel, Dobson Communications, Leap Wireless, American Cellular, Triton PCS, Rural Cellular, and Price Wireless and comply with the modified deadlines for Phase II compliance under section 20.18(f) and (g) and related conditions set forth herein for Tier II carriers, pursuant to the Commission's exercise of its authority to stay these rules under section 1.3 of the Commission's rules; and

45. IT IS FURTHER ORDERED that those carriers identified as Tier II carriers in paragraph 44, *supra*, must file Quarterly Reports, on their progress and compliance with the terms and conditions of the implementation plan and the wireless E911 rules, as set forth in paragraphs 28-31, *supra*; and

46. IT IS FURTHER ORDERED that all CMRS carriers that filed a request for relief other than the Tier I and Tier II carriers listed above comply with the modified deadlines for Phase II compliance under section 20.18(f) and (g) set forth herein for Tier III carriers, pursuant to the Commission's exercise of its authority to stay these rules under section 1.3 of the Commission's rules; and

47. IT IS FURTHER ORDERED that those carriers identified as Tier III carriers in paragraph 46, *supra*, must file an Interim Report, on their progress and anticipated compliance with the terms and conditions of the implementation plan and the wireless E911 rules; and

48. IT IS FURTHER ORDERED that all pending petitions filed by Tier II and Tier III carriers to use E-OTD technology and comply with the network-based accuracy standards initially and comply the handset-based accuracy standards by October 1, 2003 are GRANTED; and

49. IT IS FURTHER ORDERED that all other pending petitions filed by Tier II and Tier III are DENIED with respect to requests for revised accuracy standards, with the exception of the request by Edge Wireless, which remains pending.

<sup>52</sup> See Pub. L. No. 104-13.

milestone, and any other condition as set forth below, and, if not, the reasons for its failure to comply. As noted above, the report must be supported with an affidavit. To the extent that the Commission receives a complaint or otherwise has questions regarding the information in the report, or more generally a carrier's compliance, that carrier may be required to provide additional documentation to refute the complaint or respond to the Commission's questions. In the event that a carrier's Phase II solution unexpectedly fails to comply with the Phase II accuracy requirements, that carrier shall, as a condition, propose to deploy a solution that does comply with those requirements, as well as the other conditions of the Order and applicable Phase II rules.<sup>50</sup>

#### **D. This Limited Stay Does Not Affect All E911 Phase II Rules**

38. Although the initial and interim benchmarks have been stayed for Tier II and Tier III carriers, the ultimate implementation deadline of December 31, 2005 in the Commission's rules remains the final deadline for 95% ALI-capable handset penetration for all CMRS carriers. Although we recognize that the Tier II and Tier III carriers may need additional time initially to implement their solutions, we believe it is critical for all carriers to meet the final implementation date. This allows all stakeholders – carriers, technology vendors, public safety, and consumers – to have greater certainty about when Phase II will be implemented and ensures that Phase II is fully implemented as quickly as possible.

39. Similarly, although the initial Phase II deadlines for implementation of a network solution have been stayed, carriers must still fulfill PSAP requests under the 6-month and 18-month timeframes, beginning on **March 1, 2003** for Tier II carriers.

40. Finally, we grant no relief for the accuracy standards other than allowing those carriers employing Enhanced Observed Time Difference of Arrival (E-OTD) technology to meet the same accuracy standards as the nationwide carriers: 100 meters for 67 percent of calls and 300 meters for 95 percent of calls initially, and 50 meters for 67 percent of calls and 150 meters for 95 percent of calls by October 1, 2003.

41. Although we recognize that non-nationwide carriers employing other solutions also requested relief from the accuracy standards,<sup>51</sup> we believe that with the additional time we are granting to all Tier II and Tier III carriers, the location technology – including accuracy levels – will continue to progress and improve. Therefore, we find that it is premature at this time to grant any additional relief from the accuracy requirements, and deny all petitions for waiver of the accuracy standard with the exception of Edge Wireless (Edge). Edge has presented a specific plan regarding its needs for a revised accuracy standard, which we propose to address in a separate order. To the extent that other carriers that filed for accuracy relief are unable to meet the accuracy standards in the future, we expect to determine whether relief is warranted on a case-by-case basis, once the carriers have filed concrete, specific plans to address the accuracy standards and have presented their testing data and other evidence to demonstrate their inability to meet the accuracy requirements.

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

#### **A. Paperwork Reduction Analysis**

42. This Order contains a revised information collection. As part of our continuing effort to reduce paperwork burdens, we opened a period for general public and Office of Management and Budget

<sup>50</sup> As stated above, seeking relief will not, in and of itself, insulate a carrier from possible enforcement in cases where that carrier has violated a condition of this Order.

<sup>51</sup> See, e.g., Dobson Cellular Systems, Inc. Petition for Waiver of Sections 20.18(e), (f), and (h) of the Commission's Rules, CC Docket No. 94-102 (filed Nov. 30, 2001).

one year from the date of adoption of this Order. This report is intended to provide specific, verifiable information to allow us to monitor Tier III carriers' progress closely and determine whether Tier III carriers are on track for compliance with each of the benchmarks of this Order and with other applicable provisions of the E911 rules.

35. The Interim Report will include the following information:<sup>48</sup>

- The number of Phase I and Phase II requests from PSAPs (including those the carrier may consider invalid);
- The carrier's specific technology choice (*i.e.*, network-based or handset-based solution, as well as the type of technology used);
- Status on ordering and/or installing necessary network equipment;
- If the carrier is pursuing a handset-based solution, the Report must also include information on whether ALI-capable handsets are now available, and whether the carrier has obtained ALI-capable handsets or has agreements in place to obtain these handsets;
- The estimated date on which Phase II service will first be available in the carrier's network;
- Information on whether the carrier is on schedule to meet the ultimate implementation date of December 31, 2005.

### 3. General Conditions

36. Each carrier is required to comply with each individual condition of this Order, including the reporting requirements set forth above. Consistent with the *E911 Fourth Memorandum Opinion and Order*, we note that the conditions imposed herein as part of the grant of Phase II relief have the same force and effect as a Commission rule itself. Each specific benchmark and Quarterly Report or Interim Report, where applicable, is a separate condition of the plan as approved. In addition, each carrier remains subject to all other requirements of the Commission's wireless E911 rules apart from those specifically modified in this Order. To the extent that a carrier fails to satisfy any condition or Commission rule, it will be subject to possible enforcement action, including but not limited to revocation of the relief, a requirement to deploy an alternative ALI technology, letters of admonishment or forfeitures. We will not entertain requests for additional relief that seek changes in the requirements, schedules, and benchmarks imposed herein absent extraordinary circumstances.

37. Moreover, granting this stay does not alter each carrier's ultimate obligation to comply with the Phase II rules and the conditions of this relief. Each carrier remains ultimately responsible for providing timely compliant Phase II service. If any carrier does not have compliant Phase II service available on the dates set forth herein, it will be deemed noncompliant and referred to the Commission's Enforcement Bureau for possible action. At that time, an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance. However, a carrier's "concrete and timely" actions taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in such an enforcement context.<sup>49</sup> As set forth above, each Tier II carrier is required to include in its Quarterly Reports a statement regarding whether it has met each accuracy

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<sup>48</sup> We delegate authority to the Chief of the Wireless Telecommunications Bureau to require each Tier III carrier to provide additional information in its Interim Report, if necessary to evaluate compliance with the relief granted, and its progress in deploying Phase I and Phase II E911 services.

<sup>49</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458.

- To the extent a carrier anticipates that it will fail to satisfy any one of the conditions, it must advise the Commission of the problem. Seeking relief from that condition will not, in and of itself, insulate that carrier from possible enforcement in cases where the carrier has violated the terms of this Order.

30. The Quarterly Reports to the Commission should be the principal vehicle for providing the Commission with notice of anticipated problems but, to the extent unexpected problems arise affecting a carrier's ability to perform in the period between reports, that carrier should notify the Commission through a supplementary filing. This supplemental filing must include specific details regarding the problems the carrier has encountered affecting its ability to comply.

31. These Quarterly Reports will assist the Commission and the PSAPs in monitoring a carrier's compliance not only with Phase II implementation, but also with the Phase I deployment requirements of the rules. Information on Phase I deployment will allow us to assess whether this aspect of E911 deployment – itself a critical public safety benefit – is being achieved. The reports on Phase II deployment will assist in monitoring Tier II carriers' compliance with the Phase II rules.

## 2. Tier III Carriers

32. *Phase-in for network-based location technologies.* Licensees who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of the PSAP's coverage area or population beginning **September 1, 2003** (approximately thirteen months from the date of this Order), or within 6 months of a PSAP request, whichever is later; and to 100 percent of the PSAP's coverage area or population by **September 1, 2004** or within 18 months of such a request, whichever is later.

33. *Phase-in for handset-based location technologies.* Licensees who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

- (i) Begin selling and activating location-capable handsets no later than **September 1, 2003**;
- (ii) Ensure that at least 25 percent of all new handsets activated are location-capable no later than **November 30, 2003**;
- (iii) Ensure that at least 50 percent of all new handsets are location-capable no later than **May 31, 2004**; and
- (iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than **November 30, 2004**.
- (v) Ensure that penetration of location-capable handsets among its subscribers reaches 95 percent no later than December 31, 2005.

(2) Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by **September 1, 2003**, whichever is later:

- (i) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and
- (ii) Begin delivering Phase II enhanced 911 service to the PSAP.

34. *Reporting Requirements for Tier III Carriers.* To assist in monitoring Tier III carriers' E911 deployment progress, we also require that Tier III carriers file an Interim Report. Specific details regarding how to file the Interim Report and what specifically will be contained in the Report will be released in a separate Public Notice. The Interim Report will be due on **August 1, 2003**, approximately

considers it valid, and its status. To the extent any request has been pending for more than six months, the carrier must identify the specific reasons underlying the failure to provide the requested service, the steps it has taken to resolve the problems, and the anticipated date of full completion of the work necessary to deliver the requested information to the PSAP in question. If the carrier believes there are questions concerning a PSAP's compliance with the conditions necessary for a valid Phase I or II request, such as its readiness to receive and utilize Phase I or Phase II information, it should identify specifically the question and the efforts it has undertaken, including the communications it has had with the PSAP, to resolve the question. Further, to help keep PSAPs informed, we direct each Tier II carrier to serve this report on APCO, NENA and NASNA.<sup>44</sup> In addition, the Commission will post this information on its web site.<sup>45</sup> Because it is important for each individual PSAP with a pending Phase I or Phase II request to have access to this information, we authorize the Wireless Telecommunications Bureau to require any additional steps necessary to ensure PSAP access to this information.

- If the carrier is pursuing a handset-based solution, the Report must also include information on: current handset models being activated or sold that are ALI-capable; and important events affecting location-capable handset penetration levels, such as introduction of new handset models.
- Each Quarterly Report also must contain statements regarding whether the carrier has met each deployment benchmark falling due in the period immediately preceding the Quarterly Report,<sup>46</sup> and, if not, the reasons for its failure to comply. Specifically, for carriers pursuing a network-based solution, each Quarterly Report must contain statements regarding whether the carrier has met the deployment benchmarks for upgrading its network. These carriers must report, in the Quarterly Report immediately following the benchmark dates for completion, whether it completed deployment of its network-based solution. Alternatively, carriers pursuing a handset-based solution must report, in the Report immediately following the benchmark dates for completion, a statement of whether the carrier has met the percentage benchmark of new handsets activated nationwide during the respective period that were ALI-capable, as well as the total number of new handsets activated during that period that were ALI-capable.<sup>47</sup> Each Quarterly Report for these carriers must contain a statement of whether the carrier has begun selling and activating ALI-capable handsets and, if so, on what date it began selling and activating ALI-capable handsets and whether the ALI-capable handsets sold and activated meet the Commission's accuracy requirements. In the event any carrier fails to meet the deployment benchmarks, the Report must also include information on events affecting deployment, such as the status of vendor negotiations.
- Each Tier II carrier must support each Quarterly Report with an affidavit, from an officer or director of the carrier, attesting to the truth and accuracy of the report.

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<sup>44</sup> Tier II carriers should serve the Executive Director of each organization as well as its counsel, to the extent such counsel has been identified.

<sup>45</sup> See <[www.fcc.gov/911/enhanced](http://www.fcc.gov/911/enhanced)>.

<sup>46</sup> To the extent a carrier cannot provide the information required under this paragraph in its next Quarterly Report following the respective benchmark, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information. Such request must be filed as early as possible before the Quarterly Report filing date, but generally no later than 10 business days prior to the Quarterly Report filing date. The request must specify the specific reasons for the request.

<sup>47</sup> Tier II carriers' Quarterly Reports are due February 1, May 1, August 1 and November 1 of each year, beginning November 1, 2002 and continuing through August 1, 2004. To the extent a carrier cannot provide any of the information required in its final report, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information in accordance with the procedures set forth in n.46, *supra*.

## 1. Tier II Carriers

26. *Phase-in for network-based location technologies.* Licensees who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of the PSAP's coverage area or population beginning **March 1, 2003** (approximately seven months from the date of this Order), or within 6 months of a PSAP request, whichever is later; and to 100 percent of the PSAP's coverage area or population by **March 1, 2004** or within 18 months of such a request, whichever is later.

27. *Phase-in for handset-based location technologies.* Licensees who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

- (i) Begin selling and activating location-capable handsets no later than **March 1, 2003**;
- (ii) Ensure that at least 25 percent of all new handsets activated are location-capable no later than **May 31, 2003**;
- (iii) Ensure that at least 50 percent of all new handsets are location-capable no later than **November 30, 2003**; and
- (iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than **May 31, 2004**.
- (v) Ensure that penetration of location-capable handsets among its subscribers reaches 95 percent no later than December 31, 2005.

(2) Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by **March 1, 2003**, whichever is later:

- (i) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and
- (ii) Begin delivering Phase II enhanced 911 service to the PSAP.

28. *Reporting Requirements for Tier II Carriers.* To assist in monitoring Tier II carriers, as set forth in summary form below, we also require that Tier II carriers file Quarterly Reports with the Chief of the Enforcement Bureau and the Chief of the Wireless Telecommunications Bureau.<sup>41</sup> Because mere assertions of compliance with the revised benchmarks and with our rules are not sufficient to show compliance, these reports are intended to provide specific, verifiable information to allow us to monitor Tier II carriers' progress closely and determine whether Tier II carriers are in compliance with each of the benchmarks of this Order and with other applicable provisions of the E911 rules, permitting prompt enforcement action if necessary.<sup>42</sup>

29. Specifically, the Quarterly Reports must include the following information:<sup>43</sup>

- The Report must include information on all pending Phase I and Phase II requests, including the name of the PSAP, the date the request was received by the carrier, whether or not the Tier II carrier

<sup>41</sup> Carriers may file Quarterly Reports electronically at [E911compliance@fcc.gov](mailto:E911compliance@fcc.gov).

<sup>42</sup> To the extent any Tier II carrier believes any of the required information is proprietary, it may file a request for confidential treatment pursuant to 47 C.F.R. § 0.459.

<sup>43</sup> We delegate authority to the Chiefs of the Wireless Telecommunications Bureau and the Enforcement Bureau to require each Tier II carrier to provide additional information in its Quarterly Reports, if necessary to evaluate compliance with the relief granted, and its progress in deploying Phase I and Phase II E911 services.

the Tier II carrier deadlines set forth in this order: ALLTEL,<sup>37</sup> US Cellular,<sup>38</sup> Western Wireless, Leap Wireless, Qwest, Centennial Cellular, CenturyTel, Dobson, Triton PCS, American Cellular, Rural Cellular Corporation, and Price Wireless.<sup>40</sup> Any CMRS provider that does not fall within Tiers I or II that has filed a request for relief will be subject to the deadlines established for Tier III carriers. To promote certainty about the scope of a carrier's obligations, each carrier will retain its classification throughout the E911 Phase II deployment process, absent a merger or acquisition of some or all of its customer base and operations. If a merger or acquisition occurs, a carrier will be classified according to its acquiring carrier's classification, absent special circumstances.

24. The Tier III classification set forth in this Order is a small business size standard, subject to approval by the Small Business Administration (SBA). Following adoption of this Order, we will solicit public comment on this proposed size standard, in accordance with Section 121.902(b) of the SBA's small business size regulations. In addition, we have included a Discussion of Small Business Implications in Appendix B.

### C. Summary of Relief and Conditions

25. Below we set forth the revised implementation dates and conditions for Tier II and Tier III carriers. These timeframes of seven additional months for Tier II carriers and thirteen additional months for Tier III carriers should allow carriers sufficient time to meet the E911 deployment benchmarks, while recognizing the importance of Phase II deployment and the need to minimize delays in deployment. The deadlines listed below are the maximum amount of time carriers may take to implement Phase II; they are not the goal. Carriers should do their utmost to deploy E911 Phase II implementation as rapidly as possible. We encourage carriers to deploy E911 prior to these benchmarks and applaud carriers that achieve deployment in advance of these deadlines.

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<sup>37</sup> The Wireless Telecommunications Bureau has granted consent for the transfer of control of wireless licenses from CenturyTel to ALLTEL. See Wireless Telecommunications Bureau Grants Consent for the Transfer of Control of Licenses from CenturyTel, Inc. to ALLTEL Communications, Inc., *Public Notice*, WT Docket No. 02-85 (rel. Jun. 12, 2002). As a result, ALLTEL has filed a supplement to its request for relief from the E911 Phase II rules. See Contingent Amendment to ALLTEL Communications, Inc. Petition for Waiver, CC Docket 94-102 (filed May 10, 2002). Because both ALLTEL and CenturyTel are subject to the requirements set forth for Tier II carriers, the transfer of control, if carried out, should have no effect on their E911 Phase II deployment obligations.

<sup>38</sup> We note that US Cellular, in its waiver request filed on November 30, 2001, withdrew its initial proposal to implement Mobile-Assisted Network Location System (MNLS) for its TDMA network (filed on September 10, 2001). Instead, US Cellular plans to implement CDMA 2000 technology as an overlay on its TDMA network, and implement a handset-based solution for its new CDMA network. See United States Cellular Corporation Supplement to Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules, CC Docket 94-102 (filed Nov. 30, 2001).

<sup>40</sup> See n.34. Self-identified affiliates of nationwide carriers, as identified by those nationwide carriers in the reports filed on November 9, 2000, indicating an E911 Phase II technology choice (November 9 Reports) or in their waiver requests, are subject to the schedules of the nationwide carriers with which they are affiliated. Similarly, self-identified affiliates of Tier II or Tier III carriers, as identified by the Tier II or Tier III carriers in their November 9 Reports or waiver requests, are subject to those carriers' deployment schedules.

Indeed, the record indicates that the nationwide carriers have received the vast majority of attention from E911 Phase II network and handset technology vendors.<sup>33</sup>

21. Furthermore, this approach of generalized relief allows for carriers, public safety, location technology vendors, and the general public to know definitively when E911 implementation will begin. This approach is less burdensome administratively and makes it easier for the public and other interested parties to monitor E911 deployment as compared with putting hundreds of carriers on separate implementation schedules. Finally, granting a tiered stay to small and mid-sized carriers that have filed waivers will allow us to give these carriers guidance more quickly so that they may focus their efforts on compliance.

#### 1. Definitions of Tier II and Tier III Carriers

22. In this light, we define Tier II carriers to include CMRS carriers that had over 500,000 subscribers as of the end of 2001.<sup>34</sup> We find this to be the appropriate level to distinguish between Tier II and Tier III carriers, noting that each of the Tier II carriers reported over \$85 million in annual revenues for 2001,<sup>35</sup> and thus should have sufficient resources to pursue an E911 Phase II solution more quickly than the very smallest of carriers. These Tier II carriers' subscribers, when added to the six nationwide carriers' subscribers, cover an estimated 95% of the nation's mobile telephony subscribers.<sup>36</sup> These relatively larger carriers should also have a greater ability to obtain location technologies in a shorter period of time as compared with the smallest carriers. This tiered approach furthers our goal of ensuring that CMRS customers receive E911 Phase II service in the shortest period of time possible, given the limitations that wireless carriers with smaller customer bases have faced in acquiring the location technology equipment, network components, and handsets needed to comply with our regulations.

23. Based upon this criterion, using year-end 2001 data, the following carriers will be subject to

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94-102 (filed Aug. 31, 2001) at 12-13 ("Western does not have the clout to dictate the production schedule of new handsets with GPS capability. The Company traditionally receives new handset models after the larger carriers, who are able to exert greater influence over vendor production schedules than smaller carriers").

<sup>33</sup> See, e.g., Qwest Wireless, LLC and TW Wireless, LLC Petition for Extension of Time or Waiver of Section 20.18 of the Rules, CC Docket No. 94-102 (filed Jul. 23, 2001) at 6 (Qwest Request) ("Perhaps due to Qwest Wireless' regional presence and smaller purchasing power, it has not been able to persuade a single network-based solution vendor of interest to the company to do live testing on the Qwest Wireless network. This was not an experience shared by larger and national carriers").

<sup>34</sup> The carriers that fall into Tier II are those carriers that had over 500,000 subscribers as of year-end 2001. According to statistics compiled by the Wireless Bureau using publicly available information, these carriers reported more than 500,000 subscribers as of year-end 2001: ALLTEL (6,683,000); US Cellular (3,461,000); Western Wireless (1,177,000); Leap Wireless (1,119,000); Qwest (1,114,000); Centennial Cellular (827,000); CenturyTel (797,000); Dobson Communications (700,000); Triton PCS (686,000); American Cellular (657,000); Rural Cellular (647,000); and Price Wireless (570,000). See *Seventh CMRS Competition Report* at Appendix C, Table 4.

<sup>35</sup> According to statistics compiled by the Wireless Bureau using publicly available information, these carriers reported the following annual revenues for 2001: ALLTEL (\$3,832,000,000); US Cellular Corp. (\$1,894,830,000); Western Wireless (\$913,471,000); Leap Wireless (\$255,164,000); Qwest (\$660,000,000); Centennial Cellular (\$85,140,000); CenturyTel (\$437,965,000); Dobson Communications (\$655,659,000); Triton PCS (\$549,989,000); American Cellular (\$440,928,000); Rural Cellular (\$441,156,000); and Price Wireless (\$263,548,000).

<sup>36</sup> Using the subscribership figures listed in footnotes 16 and 34, *supra*, Tier I and Tier II carriers served approximately 118 million subscribers at year-end 2001. Using the Commission's estimate of 128.5 million total U.S. subscribers for the same time period, these Tier I and Tier II carriers serve approximately 92% of total U.S. subscribers. Including self-defined affiliates, we estimate that the total number of subscribers served by Tier I and Tier II carriers could be as much as 95%.

91. Southern Communications Services, Inc. d/b/a Southern LINC
92. South No. 5 RSA LP d/b/a Brazos Cellular Communications, LLC
93. SpectraCom, Inc. d/b/a PYXIS Communications
94. Sussex Cellular, Inc.
95. TeleCorp PCS, Inc.
96. Telephone Service Company
97. Texas RSA 20 B2 Limited Partnership
98. TMP Corp.
99. Triton PCS License Company, L.L.C.
100. Unicom, Inc.
101. United States Cellular Corporation
102. Verizon Wireless of Puerto Rico, Inc.
103. Virginia 10 RSA Limited Partnership
104. West Coast PCS, LLC dba SureWest Wireless
105. Western Wireless Corporation
106. Whidbey Telephone Company
107. Wilkes Cellular, Inc.
108. Wireless Alliance, L.L.C.
109. Wireless Communications Venture
110. WUE, Inc.



## Appendix B

### DISCUSSION OF SMALL BUSINESS IMPLICATIONS

Because of acute public interest in this proceeding and its impact on the national public safety, and because the petitioners affected by this Order to Stay (Order) are mid-sized and small carriers, the Commission provides this discussion.<sup>53</sup> The actions taken in the Order respond to requests for relief from certain provisions of the Phase II Enhanced 911 (E911) regulations filed by several non-nationwide commercial wireless carriers. In granting a temporary stay from the application of the interim handset and network upgrade compliance deadlines for these mid-sized and small carriers, the Commission hopes to provide them with some relief from the disadvantages they face in competing with nationwide carriers for technology necessary to implement E911. The extension of time granted to these carriers is likely to positively impact not only the carriers, but public safety answering points and equipment manufacturers as well, as discussed more fully below.

Tier II carriers will file quarterly reports with the Commission to assist us in determining whether these carriers are in compliance with each of the benchmarks in this Order and with other applicable provisions of the E911 rules. Paragraph 28 of the Order details what must be included in the quarterly reports. Tier III carriers will be required to file one interim report with the Commission to assist us in determining whether these carriers are on track for E911 deployment.

The non-nationwide carriers asked the Commission for relief from the pending deadlines for E911 Phase II interim handset and network upgrade deployment. In October 2001, the Commission granted similar relief to five of the six nationwide CMRS carriers, which are larger entities. In the present Order, the Commission determines that the remaining non-nationwide carriers appear to have much less ability than the nationwide CMRS carriers to obtain the specific vendor commitments necessary to deploy E911 immediately. The technological difficulties faced by non-nationwide carriers are detailed in paragraphs 10-12 of the Order. The Commission believes that the extension granted in the Order will not only benefit the affected carriers, but will also provide equipment manufacturers with more time to satisfy all of their customers' needs, regardless of size. Most importantly, the Commission grants this relief without delaying the ultimate E911 implementation date of December 31, 2005.

Finally, the tiered approach taken by the Commission provides different dates and conditions for carriers based on the number of subscribers each company has. Tier II carriers will be allowed seven additional months to comply with pertinent E911 Phase II deadlines and Tier III, the smallest carriers, will be allowed an additional thirteen months. Conditions for Tier II carriers are set forth in paragraphs 26-31 of the Order, and in paragraphs 32-36 for Tier III carriers. Paragraphs 36-37 address general conditions facing all non-nationwide CMRS carriers that have filed requests for relief.

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<sup>53</sup> This Order is not a rulemaking decision, and therefore does not fall within the provisions of the Regulatory Flexibility Act of 1980, as amended. See 5 U.S.C. § 604.

