

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	
Enhanced 911 Emergency Calling Systems)	
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**SPRINT REQUEST FOR
A LIMITED AND TEMPORARY RULE WAIVER**

Sprint Corporation, on behalf of its wireless operating division, Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint"), submits the following Request for Limited and Temporary Rule Waiver.¹

Sprint was the only wireless service provider that met the Commission's requirement that wireless carriers "[b]egin selling and activating location-capable handsets no later than October 1, 2001."² Since the launch of this first phone, Sprint has rapidly expanded its GPS enabled product line, and it now offers 12 different GPS enabled handset models – far more than any other carrier. Through December 1, 2002, Sprint had sold more than 4.4 million GPS-enabled handsets, and to its knowledge, it has sold more location-capable handsets than any other carrier. Nevertheless, Sprint is now compelled to seek a temporary waiver of Rule 20.18(g)(1)(iv), which specifies that a carrier "[e]nsure that 100 percent of all new digital handsets activated are location-capable no later than December 31, 2002."³ Specifically, Sprint seeks a six-month exten-

¹ Sprint Spectrum L.P. is the primary operating company for those licensees doing business as Sprint PCS. Attached as Appendix A is a list of those entities operating under the Sprint PCS brand.

² 47 C.F.R. § 20.18(g)(1)(i).

³ *Id.* at § 20.18(g)(1)(iv).

sion of Rule 20.18(g)(1)(iv).⁴ Sprint believes that its efforts to date, and the facts presented below, support the waiver requested, and notes that the relief it seeks is less than what the Commission has already granted to its competitors, including larger carriers.

I. SPRINT IS ON A CLEAR PATH TO COMPLIANCE WITH THE COMMISSION'S PHASE II RULES AND THE EXTENSION IT SEEKS IS JUSTIFIED BY THE CIRCUMSTANCES

A rule waiver is appropriate “for good cause shown.”⁵ In the context of Phase II E911 service, the Commission has specified that waiver requests should be “specific, focused and limited in scope,” contain “a clear path to full compliance,” and document “efforts aimed at compliance.”⁶

Sprint's request is “specific, focused and limited in scope,” in that it seeks an extension of only one E911 rule, Rule 20.18(g)(1)(iv), and the extension it seeks is for a limited period, six months: from December 31, 2002 to June 30, 2003. Sprint's request is also based upon “good cause.” As the Commission is well aware, the wireless marketplace weakened significantly in 2002, reflecting in part the softening of the economy,⁷ and the high penetration rates that the wireless industry rapidly achieved in recent years.⁸ Sprint, after achieving several years of re-

⁴ Sprint has regularly updated the Commission on the status of its handset sales and has previously advised the Commission that it was unlikely to reach the 100% benchmark by December 31, 2002. *See, e.g.*, Sprint's Second Quarterly Report, CC Docket No. 94-102, at 16 (April 29, 2002)(“It is difficult to predict . . . whether Sprint will be able to meet [this December 31, 2002] deadline. Sprint is confident, however that if an extension is required, only a brief extension will be needed.”); Sprint's Third Quarterly Report, CC Docket No. 94-102, at 17 (Aug. 1, 2002)(“[T]here appears to be a significant likelihood that [Sprint] will be unable to reach 100% penetration by the end of 2002.”); Sprint's Fourth Quarterly Report, CC Docket No. 94-102, at 5 (Nov. 1, 2002)(“Sprint now forecasts that it will not meet the FCC's December 31, 2002 benchmark of 100% GPS activations.”).

⁵ 47 C.F.R. § 1.3.

⁶ *Fourth E911 Reconsideration Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000).

⁷ For example, the Dow Jones Wireless Communications Stock Index has fallen by over 57% in the past year and by over 72% in the past two years. *See* WALL STREET JOURNAL.COM, Dow Jones Wireless Communications Index (Dec. 10, 2002).

⁸ According to the FCC's most recent data, as of June 2002, LECs served a total of 142.1 million residential and small business access lines, while CMRS carriers served a total of 128.8 million customers. *See*

cord-setting growth, suffered a net loss of 78,000 customers during the third quarter of 2002. GPS enabled handsets are more expensive than non-GPS handsets, and while Sprint provides additional subsidy to GPS phones to ensure competitive, attractive pricing, there is a base of consumers who still choose to purchase lower priced phones. Sprint is also at a disadvantage in promoting GPS handset sales because it cannot advertise that its handsets are location capable (because so few PSAPs are currently capable of using Phase II E911 data).⁹

Sprint notes that the six month extension of Rule 20.18(g)(1)(iv) that it seeks is less than the amount of time that the Commission has already extended to Sprint's largest competitor, which uses the same CDMA air interface and the same assisted-GPS solution as Sprint.¹⁰ In addition, the requested extension is expected to have little or no impact on public safety. While Sprint has and will continue to aggressively activate Phase II technology with those PSAPs that are capable of utilizing the technology, the reality is that relatively few of the over 5,000 PSAPs will convert to Phase II service during the period that is the subject of this waiver request.

Sprint is also on "a clear path to full compliance." Sprint respectfully submits that no one can question its commitment to Phase II service, given that:

Local Telephone Competition: Status as of June 30, 2002, Tables 2 and 11 (Dec. 2002). According to the U.S. Census Bureau, last year there were 221.1 million Americans aged 15 years or older. See U.S. Department of Commerce, Profiles of General Demographic Characteristics (May 2001). Thus, as of June 2002, over 58% of all Americans above the age of 14 are already mobile customers.

⁹ Sprint is not able to advertise the location capabilities of its handsets because it does not want to create unrealistic customer expectations or misreliance. Specifically, Sprint does not want customers to think that 911 location services are generally available – when they are not – or that the purchase of the handset means that they can be located at this time. The Commission understands the critical public safety problem which would result from a contrary approach.

¹⁰ See *Verizon Wireless Phase II Waiver Order*, 16 FCC Rcd 18364 (2001)(VZW given a one year extension of Rule 20.18(g)(1)(iv) to December 31, 2003). The FCC has granted even longer extensions to other carriers using the assisted GPS Phase II solution. See, e.g., *Nextel Phase II Waiver Order*, 16 FCC Rcd 18277 (2001)(Nextel given until December 1, 2004 before it must sell only location-capable handsets); *Phase II Stay Order for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, FCC 02-230

- ☒ Sprint was the only carrier that began selling location-capable handsets on the date specified in the Commission's rules (October 1, 2001);
- ☒ Sprint completed conversion of its national network to Phase II before any other carrier – with two of its larger competitors not being required to complete conversion of their networks before July 1, 2004;¹¹
- ☒ Sprint installed the nation's first operational Phase II system (Rhode Island);
- ☒ As of December 1, 2002, Sprint has deployed Phase II service in eight markets representing 74 PSAPs.
- ☒ Sprint currently sells 12 GPS handset models (compared to the five models sold by the largest wireless carrier using the same assisted GPS Phase II solution).¹²
- ☒ Sprint has sold more than 4.4 million location-capable handsets, which is likely more than any other carrier.¹³

Moreover, as the following table confirms, the number of GPS enabled handsets that Sprint has sold (both to customers and to third party distributors) has rapidly increased since the first phone was sold on October 1, 2001:

TOTAL SPRINT SALES OF GPS ENABLED HANDSETS

	<u>Sales During Period</u>	<u>Cumulative Sales</u>
Oct. - Dec. 2001	240,000	---
Jan. – March 2002	500,000	740,000
April – June 2002	860,000	1,600,000

(July 26, 2002)(Leap and Qwest given until May 31, 2004 before they must sell only location-capable handsets).

¹¹ See *Cingular Wireless Phase II Order*, 17 FCC Rcd 8529 (May 9, 2002); *AT&T Wireless Phase II TDMA Order*, 17 FCC Rcd 11510 (June 18, 2002); *AT&T Wireless Phase II GSM Order*, File No. EB-02-TS-018, FCC 02-283 (Oct. 9, 2002).

¹² See *Verizon Wireless Phase II Status Report*, CC Docket No. 94-102, at 2 (Nov. 1, 2002).

¹³ Compare *Leap Quarterly Report*, CC Docket No. 94-102, at 2 (Nov. 1, 2002)(Leap activated 18 GPS handsets between June and October 2002). Sprint also submits that regulatory requirements ought not to distort competition in the marketplace, and carriers that compete with each other should be subject to similar Phase II deadlines. Indeed, Congress has “directed” the FCC to “achieve regulatory parity among services that are substantially similar,” determining that “disparities in the current regulatory scheme could impede continued growth and development of commercial mobile services.” H.R. REP. NO. 103-111, 103d Cong., 1st Sess. 259-60 (1993). The FCC has similarly noted that regulatory symmetry “ensure[s] that consumer demand, not regulatory decree, dictates the course of the mobile services marketplace.” *Third CMRS Order*, 9 FCC Rcd 7988, 7992 ¶ 1 (1994).

July – Sept. 2002	1,600,000	3,200,000
Oct. – Nov. 2002	1,300,000	4,400,000

Sprint began a major shift in its inventory of wireless phones during the summer of 2002 as it launched its new 3G network. Sprint has been phasing out the purchase of non-GPS handsets as it converts to its new system and the percentage of GPS enabled handsets being sold has increased rapidly over the past several months.¹⁴ Sprint has ceased purchasing non-GPS enabled mobile telephones and the percentage of GPS enabled handsets sold to distributors are expected to reach 100% within the next few months.¹⁵ However, inventory of non-GPS enabled phones will continue to “sell through” for an additional period of time. Based on current projections, Sprint anticipates that 100% of phone sales to distribution outlets is likely to occur by March 31, 2002. When these distribution outlets will complete sale of their inventory is unknown. However, Sprint believes that handset activations could reach 100% as early as July 1, 2003.

When the FCC initially approved the implementation of handset based location systems, it acknowledged that handset sales would need to be phased in over time. Forcing carriers to convert handset models too quickly would only harm the consumer:

Any “crash” handset replacement program also would be extremely expensive, for at least two reasons. First, it would force rapid deployment of current ALI technology at current costs, though the technology is likely to improve and the costs are likely to decline. Second, such a schedule may be difficult for all manufacturers to meet, reducing competition, and, by artificially stimulating demand, inflating prices. Consumers would ultimately pay the price of such a handset-replacement program.¹⁶

¹⁴ As of December 1, 2002, over 60% of handset sales to distribution outlets were GPS enabled.

¹⁵ The FCC’s Phase II rules apply to voice capable “handsets”, not to mobile radios containing only a data application (e.g., laptop computers, personal digital assistants). Sprint notes that it has in inventory an extremely limited number of non-GPS enabled data-centric devices that offer voice capacity. The technology for these data-centric devices is continuing to develop and the timeline for development of GPS capability is less certain. For this reason, the timeline may differ from the standard handset product line. Sprint will advise the FCC of continuing developments regarding these devices, in its deployment reports and otherwise, as appropriate.

¹⁶ *In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, CC Docket 94-102, (October 6, 1999), ¶38.

The Commission further acknowledged that the timelines it was setting for handset penetration rates were based upon predictions regarding future events and that changing circumstances might adversely impact these timelines:

[S]uch predictions are not guarantees. For any of several reasons, (e.g., a recession, declining growth rates, or early deployment of non-ALI-capable digital phones that customers elect not to replace), the actual pace of ALI-capable handset deployment could lag and may take several years.¹⁷

During 2002, the general economy experienced a significant recession and the telecommunications industry in particular suffered one of the most severe market downturns in history, resulting in losses of billions of dollars. As a part of this overall market failure, wireless subscriber growth rates took a major downturn, with several carriers, including Sprint, reporting negative growth for the first time since entering the market. In light of these substantial intervening events, Sprint's request for an additional six months to meet the Commission's December 31, 2002 benchmark should be viewed as appropriate.

Sprint has worked closely with the representatives of public safety to develop and deploy Phase II technologies and has kept the Commission closely advised of its progress on all fronts. As recognized in Mr. Hatfield's recent report to the Commission, "Because of the total number of stakeholders involved, the complexity of the inter-relationships among the stakeholders, and the incentives and constraints on those stakeholders, I conclude that an unusually high degree of coordination and cooperation among public and private entities will be required if that vision [of seamless wireless E911 service] is to be realized." Sprint hopes these cooperative efforts can continue and respectfully requests that the Commission grant it a six-month extension of its December 31, 2002 benchmark.

¹⁷ *Id.* at ¶ 51

Lastly, Sprint advises the Commission that, based on the facts stated by Sprint, the National Emergency Number Association ("NENA") has authorized Sprint to state that NENA does not oppose the relief Sprint seeks but that it also reserves the option of commenting further should new information come to light.

II. CONCLUSION

Sprint remains committed to the deployment of Phase II E911 service, as its efforts to date confirm. For the reasons set forth above, Sprint respectfully requests that the Commission grant to it a six-month waiver of Rule 20.18(g)(1)(iv). Sprint will continue to report its sales of GPS-enabled handsets as part of its quarterly reports.

Respectfully submitted,

**SPRINT CORPORATION on behalf of
SPRINT SPECTRUM L.P., d/b/a Sprint PCS**



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APPENDIX A

List of Firms Covered by the Sprint PCS Waiver Request

Numerous entities provide commercial mobile radio service under the Sprint PCS brand. Most Sprint PCS service is provided pursuant to PCS licenses held by the following Sprint Corporation affiliate: WirelessCo., L.P., SprintCom, Inc., PhillieCo. L.P., Sprint Telephony PCS, L.P., and APC PCS, LLC. Service is provided by Sprint Spectrum L.P., as the operating company under the control and direction of each of the listed license holders.

In addition, in certain market, Sprint PCS service is provided by firms that manage networks on Sprint PCS' behalf using Sprint spectrum. These network managers include: AirGate PCS, Inc.; Alamosa Holdings Inc.; Enterprise Digital PCS, L.L.C. and Enterprise Wireless, L.L.C.; Gulf Coast Wireless Limited Partnership (formerly Meretel Limited Partnership); Horizon Personal Communications, Inc.; Louisiana Unwired, LLC; Texas Unwired; Georgia PCS Management, LLC; Independent Wireless One Corporation; Northern PCS Services, L.L.C.; Shenandoah Personal Communications Company; and UbiquiTel L.L.C.

Finally, in certain markets, Sprint PCS service is provided by firms holding their own radio licenses. The firms in this category include Louisiana Unwired, LLC and Brookings Municipal Utilities (d/b/a Swiftel Communications). All of the above identified entities are adopting Sprint PCS' waiver request.

CERTIFICATE OF SERVICE

I, JoAnn Monroe, certify that on December 20, 2002, I caused a copy of the foregoing Sprint Request for a Limited and Temporary Rule Waiver to be served on the following parties by first-class postage-prepaid mail:

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