

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

In the Matter of)
)
Petition for Waiver and Request for)
Temporary Limited Stay of Section)
20.18 of the Commission's Rules) **WT Docket No. _____**
)

To: Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND REQUEST FOR TEMPORARY LIMITED STAY
OF SECTION 20.18 OF THE COMMISSION'S RULES**

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SUMMARY

The Rural Telecommunications Group (“RTG”) requests a waiver and temporary limited stay of certain provisions of Section 20.18 of the Federal Communications Commission’s rules governing the provision of Phase II enhanced 911 (“E911”) service for certain categories of small rural wireless carriers.

The FCC’s Phase II accuracy requirements cannot be met by most rural carriers employing a network-based solution. Because of the typical separation of cell sites in rural areas, small rural wireless carriers cannot accomplish the triangulation necessary to meet Phase II accuracy requirements absent the costly and time consuming construction of additional cell sites. Accordingly, RTG requests a waiver of Section 20.18(g)(1) for certain small “Tier IV” (100,000 or fewer subscribers) carriers operating in rural markets with low cell site density. For Tier IV carriers operating in markets with less than three cell sites in a licensed service area, RTG requests that such carriers be allowed to meet the accuracy requirements within 24 months of a public safety answering point’s (“PSAP”) request for Phase II service. For Tier IV carriers with three or more cell sites with low tower density (defined based on the calculation of a “Tower Density Factor”), such carriers would also be given 24 months from a PSAP’s request to come into compliance with the accuracy standards, provided such carriers commit to deploying state-of-the-art network-based Phase II technology pursuant to a proposed schedule.

Due to the present unavailability of handsets necessary to meet the Commission’s handset deployment benchmarks, carriers relying on a handset solution to achieve Phase II accuracy require a temporary waiver of these benchmarks until the necessary handsets become available. Tier IV carriers relying on a CDMA handset solution who have been

unable to obtain competitive handsets seek a six month extension of the handset deployment benchmarks set forth in Section 20.18(g)(1)(i)-(iv) of the Commission's rules. For Tier IV CDMA carriers who formerly relied on a TDMA solution (which is no longer feasible due to manufacturer decisions to discontinue development of TDMA automatic location identification ("ALP") capable handsets), RTG requests a 12 month extension of the handset deployment benchmarks. For the many Tier IV carriers relying on a CDMA solution who have not yet received a PSAP request for Phase II service, RTG also requests a waiver of the Phase II delivery requirements of Section 20.18(g)(2), due again to the unavailability of necessary handsets. For Tier IV carriers relying on a GSM handset solution, additional time will be needed for compliance due to the projected unavailability of such handsets until late next year at the earliest. RTG requests that such carriers be given an additional 24 months to meet the handset deployment and penetration benchmarks in Section 20.18(g)(1), as well as additional time to meet the related service requirements in Section 20.18(g)(2).

As an alternative form of relief, RTG requests that the Commission tie the various handset deployment deadlines to receipt of a PSAP request. The current rules provide a disincentive to carriers to choose a more accurate handset-based solution based on the requirement to start selling and activating handsets before a PSAP request is received. RTG proposes a technologically neutral solution to this problem by keying the current benchmarks contained in Section 20.18(g)(1) to the receipt of a valid PSAP request.

Good cause is shown for waiver of the requested deadlines for carriers relying on network-based technologies. The unique and unusual factual circumstances related to the provision of Phase II service in certain rural settings make application of the network-

based deployment deadlines inequitable and unduly burdensome on affected carriers, and such carriers have no reasonable alternative but to seek a waiver. Grant of the requested waiver is consistent with the public interest and the Commission's recognition that "the Phase II rules are intended to be applied in a manner that takes into account practical and technical realities." Good cause is also shown for waiver of the requested handset deadlines. Handset availability is a factor outside of rural carriers' control, and enforcement of the benchmark deadlines would therefore be inequitable. Waiver is consistent with the underlying purpose of the Phase II requirements, as there will be no delay in service in most instances in areas served by Tier IV carriers, where PSAPs are unable to utilize Phase II data.

RTG requests a temporary limited stay of the deployment deadlines pending resolution of its request. Many rural carriers have financing arrangements which are contingent on compliance with FCC rules, and which would be jeopardized if a temporary stay of applicable Phase II deadlines is not granted. The requested stay is limited in duration, and meets the relevant criteria for grant of a limited stay.

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**Petition for Waiver and Request for Temporary Limited Stay
of Section 20.18 of the Commission’s Rules**

The Rural Telecommunications Group (“RTG”)¹, 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”),² hereby requests a waiver and temporary limited stay of certain provisions of Sections 20.18 of the Commission’s rules for certain categories of small rural wireless carriers, as set forth herein. Specifically, RTG seeks a temporary limited waiver of the deadlines for provision of Phase II enhanced 911 (“E911”) service utilizing network-based location technologies set forth in Section 20.18(f) of the Commission’s Rules, as applied to certain small rural carriers, and a temporary limited waiver of certain of the handset deployment and penetration benchmarks set forth in Section 20.18(g)(1)(i)-(v) and 20.18(g)(2) as applied to certain

¹ RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services such as cellular telephone service and Personal Communications Services (“PCS”) to their subscribers. RTG’s members are all affiliated with rural telephone companies or are small businesses serving secondary, tertiary, and rural markets.

² 47 C.F.R. §§ 1.3 and 1.925.

small carriers relying on specific handset technologies. RTG also seeks a temporary limited stay of these requirements while the instant request is pending before the Commission.

I. THE COMMISSION'S ACCURACY REQUIREMENTS CANNOT BE MET BY MOST RURAL CARRIERS

As discussed at length in the Forbearance Petition³ filed by the Tier III Coalition for Wireless E911, wireless carriers operating in rural areas face different technical impediments than carriers serving more densely populated areas, and these impediments prevent compliance with the network-based deployment deadlines absent extraordinary capital expenditures. These issues have also been recognized by the FCC⁴ and by Congress.⁵

The specific relief requested herein varies, depending on a carrier's specific technical, geographic, and network characteristics. In filing this Petition, RTG limits the relief requested to that essential for each specific type of carrier. The specific factual

³ See generally Petition Pursuant to 47 U.S.C. §160(c) for Forbearance from E911 Accuracy Standards Imposed On Tier III Carriers For Locating Wireless Subscribers Under Rule Section 20.18(h), filed November 20, 2002 ("Forbearance Petition").

⁴ *A Report on Technical and Operational Issues Impacting The Provision of Wireless Enhanced 911 Services*, prepared for the FCC by Dale N. Hatfield (October 15, 2002). The FCC retained the services of Dale Hatfield, former Chief of the FCC's Office of Engineering and Technology, to issue a report identifying the issues and challenges associated with implementation of E911. The "Hatfield Report", which according to FCC Chairman Michael Powell has become the Commission's "guidebook" in working through many of these issues, contains a lengthy discussion of the technical obstacles to full E911 implementation faced by carriers operating in rural areas. See "Remarks of Michael K. Powell, Chairman, Federal Communications Commission at the Association of Public Safety Communications Officials International 69th Annual Conference, Indianapolis, Indiana, August 11, 2003" at p. 2.

⁵ E-911 Implementation Act of 2003, H.R. 2898, 108th Cong. § 5 (2003). See also Letter to Chairman Michael Powell from Senator Max Baucus and Senator Sam Brownback, dated August 1, 2003.

categories of carriers requiring waivers of Section 20.18(f), and the relief requested for each, are discussed below.

A network-based E911 solution will not provide the requisite accuracy demanded by Section 20.18(h) in most rural areas.⁶ Many rural carriers have designed their networks with cells having the minimal measure of overlap needed to permit reliable cellular communications, but far from sufficient to permit the triangulation of a mobile subscriber's geographic position that a network-based E911 solution needs to achieve Section 20.18(h) accuracy. In such networks, an E911 caller is unlikely to be within the range of multiple cells. In many rural networks, cell sites are spaced in straight lines or a "string of pearls" (e.g., along-side highways), making triangulation a geometric impossibility.⁷

The only technical solution for most rural carriers to meet the Phase II accuracy requirements would be the construction of additional cell sites, which would allow for the necessary triangulation. However, such construction would require the expenditure of substantial resources beyond those which such carriers have been able to make a business case to support. Because the Tier III classification previously established by the Commission is relatively broad⁸, RTG recommends the establishment of a new "Tier IV"

⁶ In order for a carrier to meet the Phase II deployment requirements for network-based location technologies set forth in Section 20.18(f), it must meet the accuracy standards set forth in Section 20.18(h).

⁷ See generally *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388, par. 23 (1999) ("*Third R&O*").

⁸ Tier III carriers are generally defined as those non-nationwide CMRS carriers that had 500,000 or less subscribers as of December 31, 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841 (rel. July 26, 2002) at paragraphs 22-24 ("*Stay Order*").

classification which would cover wireless carriers with 100,000 or fewer subscribers as of December 31, 2003. Carriers with more than 100,000 subscribers should generally have sufficient resources to meet Phase II implementation requirements. RTG recommends that the relief requested below apply only to carriers qualifying for Tier IV status. The specific relief requested for Tier IV carriers with particular network configurations is discussed below.

A. Carriers with less than three cell sites

Carriers with one or two cell sites in a licensed service area are by definition unable to achieve the triangulation necessary to achieve Phase II accuracy. For such carriers, construction of an additional cell site may amount to duplicating their network. Even for a carrier with two cell sites, the cost of building an additional cell site solely to meet Phase II accuracy requirements amounts to a huge capital expenditure relative to its income and expenses. Even for carriers capable of making such expenditures, the construction of additional cell sites is extremely time consuming, and makes compliance with FCC deployment deadlines difficult, if not impossible. Once a PSAP request is received, the carrier must first run a business model to determine what modifications to its network are required to meet applicable Phase II requirements, and whether such modifications are technically and economically feasible. Next, a tower site needs to be acquired. The search process, negotiations with the land owner, and finalization of the purchase or lease arrangements typically takes twelve months to complete. Once a site is obtained, tower construction typically takes an additional three to six months.⁹

⁹ In rural areas, opportunities for collocation on existing towers are extremely rare. In the vast majority of cases, if a rural wireless carrier needs an additional cell site, it must construct a tower itself.

For Tier IV carriers with less than three cell sites in a licensed service area, RTG requests that the deadlines set forth in Section 20.18(f) for carriers employing network-based technologies be extended as follows. Such carriers shall provide Phase II enhanced service to 100 percent of their coverage area or 100 percent of their population within 24 months of a PSAP request, in the area covered by the PSAP's request. As explained above, the additional 24 months should give most such carriers sufficient time to come into full compliance. In addition, it is expected that Automatic Location Identification ("ALI") technology will continue to develop during this period, and there may be advancements that allow carriers to meet their Phase II obligations on an accelerated basis.

B. Carriers with three or more cell sites with low tower density

For carriers with three or more cell sites in a licensed service area, the degree of technical impediment to achievement of Phase II accuracy will depend on the configuration of the particular network, intervening terrain, specific antenna configurations and the density of cell sites serving a given area. The primary factor affecting a carrier's ability to comply is the density of its cell site configuration. RTG has developed a Tower Density Factor ("TDF"), which can be used as a proxy to determine the average density and distance between cell towers in order to approximate the ALI capabilities of a network-based Phase II E911 system.¹⁰ The TDF takes into

¹⁰ To calculate the TDF:

T = tower

T1 = tower 1, T2 = tower 2, etc.

? = distance between towers

- 1) Calculate ? between T1 and 2 closest Ts
(e.g., T2 and T3)
- 2) Calculate mean average ? for T1

account both “triangular” tower placements and “string-of-pearls” placements since, in a straight-line, string-of-pearls placement of T1, T2, and T3, T1 and T3 will be quite far apart, thus increasing the TDF. The higher the TDF, the lower the actual tower density, and the more difficult achievement of ALI will be. A TDF of 4 (miles) could require the construction of at least 30 percent additional cell sites per existing cell site in order to achieve Phase II accuracy levels. Accordingly, RTG requests that the following relief be extended to Tier IV carriers with three or more cell sites where the TDF is 4 or greater.¹¹

For low density (*i.e.*, high TDF) Tier IV carriers employing a network-based approach, Phase II accuracy standards (100 meters for 67 percent of calls, 300 meters for 95 percent of calls) will be met within 24 months of receipt of a PSAP request. The extension of this deadline would be made subject to the carriers meeting the following interim benchmarks. Within six months of receipt of a PSAP request, such carriers will deploy network-based E911 Phase II technology at 50% of their existing cell sites, utilizing each such cell site’s existing antenna configuration, which serve the area covered by a PSAP’s valid Phase II request. Within 18 months of receipt of a PSAP request, such carriers will deploy network-based E911 Phase II technology at 100% of their existing cell sites, utilizing each such cell site’s existing antenna configuration, which serve the area covered by a PSAP’s valid Phase II request. Accordingly, such

-
- (? between T1 and T2 + ? between T1 and T3) / 2
- 3) Repeat steps 1 and 2 for remainder of towers
 - 4) Add mean average ? for all Ts and divide by the total number of Ts for the TDF

¹¹ On perfectly flat terrain under ideal atmospheric conditions, an 8 mile distance between cell sites is generally the limit for a reasonable expectation of successful triangulation using a network-based ALI system. After distance between cell sites, terrain is the factor that most affects triangulation success. Accordingly, to account for terrain, a distance between cell sites of 4 miles is a rational proxy for the prediction of triangulation difficulties. In other words, any carrier with an average of 4 miles between cell sites is extremely unlikely to be able to meet the Commission’s ALI standards.

carriers would be making every technical effort to improve their ALI accuracy through deployment of state-of-the-art ALI technology as quickly as possible, while the additional 24 months allows them sufficient time to make the additional upgrades necessary to bring their ALI accuracy up to current standards for full compliance.¹²

II. THE UNAVAILABILITY OF THE NECESSARY HANDSETS TO SMALL RURAL CARRIERS MAKES COMPLIANCE WITH THE HANDSET DEPLOYMENT BENCHMARKS UNACHIEVABLE

Compliance with the Commission’s handset deployment benchmarks is obviously dependent on the availability of ALI-capable handsets to the carriers required to market them to their customers. Unfortunately, such handsets are largely unavailable to the many rural wireless carriers who have chosen a handset-based solution to the provision of Phase II E911.¹³

¹² As explained below, the current accuracy standards treat rural and urban carriers in an inequitable fashion. Members of Congress have expressed an interest in addressing this issue, and draft legislation which would require the FCC to examine this problem is currently pending in the U.S. House of Representatives. *See* footnote 5, *supra*. Accordingly, it is possible that the level of accuracy which Tier IV low density rural carriers are committing to in this petition will meet the accuracy requirements which the FCC ultimately adopts for rural carriers.

¹³ Carriers relying on a handset-based solution may also face the same issues as carriers employing network-based solutions with respect to impediments to meeting Phase II accuracy requirements. When a handset is unable to receive GPS satellite signals due to interruption of line-of-sight contact, the 911 caller’s location cannot be accurately conveyed. Such interruption of line-of-sight contact may occur in buildings, vehicles or under certain atmospheric conditions. Once the handset loses satellite contact, the carrier must rely on information from its network to provide caller location information to the PSAP. These “network-assisted” solutions then face the same limitations described above (*i.e.*, widely dispersed rural cell sites) that purely network-based solutions do in their ability to locate 911 callers. Because Tier IV carriers relying on a handset solution potentially face the same technical obstacles to providing Phase II accuracy that Tier IV carriers relying on a network-based solution do, they may require additional time to provide Phase II accuracy for 95% of their calls. While RTG is asking for specific relief from the handset implementation requirements based on the unavailability of ALI-capable handsets, it notes that technical hurdles related to inability to access satellite signals may require additional regulatory relief in the event technical solutions do not appear during the course of the requested phase-in period.

A. Carriers Relying on a TDMA Handset Solution

Many rural wireless carriers rely on a Time Division Multiple Access (“TDMA”) air interface. As a result of decisions at the end of 2001 by AT&T and Cingular, the two largest carriers then employing the TDMA air interface, to phase out use of the TDMA protocol in favor of a Global System for Mobile Communications (“GSM”) protocol, developers of handset-based solutions ceased development of TDMA-based ALI-capable handsets and announced a phase-out of overall support for the entire network protocol. To date, RTG is unaware of any equipment manufacturers still proceeding to develop ALI-capable TDMA handsets.

As a result of the apparent unavailability of ALI-capable TDMA handsets, TDMA carriers have been forced into the unenviable position of choosing between a network-based solution, with all its technical impediments discussed above, or upgrading their networks to an air interface compatible with existing or promised ALI-capable handset technology. As discussed below, both Code Division Multiple Access (“CDMA”) and GSM, the two remaining technologies expected to be capable of supporting ALI-capable handsets, have availability issues of their own which support a temporary waiver and extension of the benchmark deadlines for carriers relying on those technologies. However, for certain TDMA carriers, additional time will be needed for such carriers to upgrade their networks so that any ALI-capable handsets sold are capable of immediate activation and operation on the newly upgraded networks. The specific temporary relief requested for carriers who are in the process of converting their networks from TDMA to CDMA, is set forth in the section below dealing with carriers relying on a CDMA handset solution.

B. Carriers Relying on a CDMA Handset Solution

RTG members have been experiencing problems purchasing the type of ALI-compliant CDMA handsets demanded by their customers. Most vendors have arrangements with the large nationwide carriers whereby new handsets are provided to one or more of the major carriers on an exclusive basis for a given period time. In order to compete effectively in the marketplace, rural wireless carriers must offer their customers a range of handset choices. Manufacturers offer a range of styles, colors and designs, as well as technical features, that set their products apart from other handsets on the market. Customer demand is driven by the availability of a variety of choices. Absent such choices, it will be difficult if not impossible for such carriers to meet their deployment and penetration benchmarks.

Even where handsets are available, rural carriers do not purchase handsets in sufficient quantities to go “vendor direct” and must rely on distributors. The availability of ALI-capable handsets has varied widely between distributors. Indeed, the availability of handsets from the same distributor has varied widely between carriers.

Accordingly, RTG requests relief for Tier IV carriers who are unable to obtain competitive handsets.¹⁴ For Tier IV carriers relying on a CDMA handset solution, RTG requests a six month extension of the benchmark deadlines set forth in the *Stay Order*. Accordingly, such carriers will be required to: (i) begin selling and activating ALI-capable handsets no later than March 1, 2004; (ii) ensure that at least 25 percent of all new handsets activated are ALI-capable no later than May 31, 2004; (iii) ensure that at least 50 percent of all new handsets activated are ALI-capable no later than November

¹⁴ An example of such handsets are the popular CDMA handsets marketed by Sprint PCS and Verizon. These handsets are currently unavailable to Tier IV carriers.

30, 2004; and (iv) ensure that 100 percent of all new digital handsets activated are ALI-capable no later than May 31, 2005.¹⁵ Such relief is only requested to the extent necessary where carriers are unable to obtain competitive handsets.

For Tier IV carriers who previously notified the Commission that they were relying on a TDMA handset solution, and who have now decided to convert their networks to CDMA to accommodate ALI-capable CDMA handsets, additional time will be needed in order for such carriers to meet the benchmark deadlines. Such carriers will require an additional 12 months from those deadlines set forth in the *Stay Order* in order to convert their networks to CDMA so that CDMA handsets are capable of being sold and activated. Accordingly, such carriers will be required to: (i) begin selling and activating ALI-capable handsets no later than September 1, 2004; (ii) ensure that at least 25 percent of all new handsets activated are ALI-capable no later than November 30, 2004; (iii) ensure that at least 50 percent of all new handsets activated are ALI-capable no later than May 31, 2005; and (iv) ensure that 100 percent of all new digital handsets activated are ALI-capable no later than November 30, 2005.¹⁶ Again, such relief is only requested to the extent necessary where carriers are unable to obtain competitive handsets.

RTG estimates that less than ten percent of its members have received PSAP requests for Phase II service to date. For the reasons discussed above, those few rural carriers who have received PSAP requests for Phase II service will not be able to meet

¹⁵ RTG is not asking for relief from the ultimate “full compliance” deadline of December 31, 2005 for carriers to achieve 95 percent penetration of ALI-capable handsets among their subscribers. In its *Stay Order*, the Commission indicated that further extensions of Phase II interim benchmarks would be problematic *if* they undermined the entire E911 rollout. *Stay Order* at ¶ 16. (“The benefits of the delay described herein would be outweighed if further delay resulted in our 2005 date being missed.”).

¹⁶ Again, RTG notes that it is not asking for relief from the ultimate December 31, 2005 full compliance deadline. *See footnote 14, supra*.

the Phase II deadlines for hardware/software installation and delivery of Phase II service set forth in Section 20.18(g)(2) of the Commission's rules. Accordingly, RTG also requests that the Tier IV carriers relying on a CDMA solution discussed above, who have already received a PSAP request or who receive such request in the near future, be granted temporary relief from Section 20.18(g)(2) as follows. Tier IV carriers who originally notified the FCC that they were relying on a CDMA handset solution, and who have received a PSAP request on or before September 1, 2003, must meet Section 20.18(g)(2) requirements within six months of receipt of a PSAP request or by March 1, 2004, whichever is later. Tier IV CDMA carriers who were formerly relying on TDMA technology, and who receive a PSAP request on or before March 1, 2004, must meet these requirements within six months of a PSAP request or by September 1, 2004, whichever is later.

C. Carriers Relying on a GSM Handset Solution

Carriers relying on a GSM handset solution face even greater availability issues than those relying on a CDMA solution. ALI-capable GSM technology is still in its developmental state. GSM-based ALI handset technology is not expected to be available until potentially the end of 2004, at the earliest,¹⁷ and, as with the case of CDMA handsets, wide-scale deployment is expected to be somewhat further delayed. Based on the typical delay in new products making their way into the hands of small carriers, Tier IV carriers cannot expect to have such handsets available to them until September 2005 at the earliest.¹⁸

¹⁷ See Ex Parte Presentation from Dean R. Brenner, Counsel for QUALCOMM Incorporated, to Secretary, Federal Communications Commission, dated June 26, 2003.

¹⁸ Small carriers typically have little or no influence over the manufacturing decisions of equipment vendors. The record in this proceeding demonstrates the lack of vendor-

Because of this anticipated delay in the availability of ALI-capable GSM handsets, Tier IV carriers relying on such handsets to meet their Phase II obligations will require an additional 24 months in which to meet their handset deployment and penetration benchmarks adopted in the *Stay Order*. Specifically, RTG requests that such carriers be required to: (i) begin selling and activating ALI-capable handsets no later than September 1, 2005; (ii) ensure that at least 25 percent of all new handsets activated are ALI-capable no later than November 30, 2005; (iii) ensure that at least 50 percent of all new handsets activated are ALI-capable no later than May 31, 2006; (iv) ensure that 100 percent of all new digital handsets activated are ALI-capable no later than November 30, 2006; and (v) by December 31, 2007, achieve 95 percent penetration of ALI-capable handsets among their subscribers. Should ALI-capable GSM handsets become available to Tier IV carriers sooner, these carriers will accelerate their handset deployment to meet these benchmark requirements as soon as possible.

Because Tier IV carriers relying on a GSM handset solution who have already received a PSAP request will not be able to meet their Section 20.18(g)(2) obligations prior to September 1, 2005, RTG also requests that the Commission grant a temporary waiver of Section 20.18(g)(2) for all Tier IV carriers relying on a GSM solution who receive a PSAP request prior to March 1, 2005. Such carriers will meet the Section 20.18(g)(2) deadlines within six months of receipt of a PSAP request or by September 1, 2005, whichever is later.

related cloud of non-nationwide CMRS carriers. *See, e.g., Stay Order* at par. 10. Based on the historical rollout of handsets and other carrier technologies, Tier IV carriers will have to wait well beyond the date manufacturers first make their ALI-capable GSM handsets available, until the large volume orders of the nationwide carriers have been filled, before they will be able to make such handsets available to their customers. RTG is unaware of any manufacturers who expect to have ALI-capable GSM handsets available prior to the end of 2004.

D. Alternative Relief

Alternatively, RTG requests that the Commission tie the various handset deployment deadlines to the receipt of a PSAP request. The current rules provide a disincentive to carriers to choose a handset-based solution, thus violating the Commission's policy of technological neutrality.¹⁹ Because a carrier choosing a handset solution must comply with deployment benchmarks, *regardless* of whether it has received a PSAP request for Phase II service, a carrier otherwise predisposed to choosing a handset-based solution may instead choose to deploy a less accurate²⁰ network-based solution solely to avoid the expense of complying prematurely with Phase II implementation requirements.²¹

A technologically neutral solution to this problem would be to require carriers relying on a handset-based solution to meet the benchmarks set forth in Section 20.18(g)(1)(i)-(v) pursuant to the following schedule. Once a valid PSAP request is received, a carrier must begin selling and activating ALI-capable handsets no later than six months after receipt of the request; (ii) ensure that at least 25 percent of all new handsets activated are ALI-capable no later than nine months after receipt of a valid PSAP request; (iii) ensure that at least 50 percent of all new handsets activated are ALI-

¹⁹ See *Third R&O, supra*, 14 FCC Rcd 17388, 17395 (par. 14).

²⁰ In holding carriers employing handset-based solutions to a higher accuracy standard, Section 20.18(h) of the Commission's rules recognizes the greater accuracy achievable by handset-based technologies.

²¹ Unfortunately, the rules provide an incentive for carriers who intend to employ a handset-based solution to inform the Commission that they are relying on a network-based solution in order to avoid incurring Phase II implementation expenses prior to receipt of a PSAP request. Such carriers may then change to a handset-based solution after receipt of a PSAP request, providing them with a competitive advantage over carriers who had honestly declared their intent all along to rely on a handset-based solution.

capable no later than 15 months after receipt of a valid PSAP request; (iv) ensure that 100 percent of all new digital handsets activated are ALI-capable no later than 21 months after receipt of a valid PSAP request; and (v) achieve 95 percent penetration of ALI-capable handsets no later than 57 months after receipt of a valid PSAP request . These dates mirror the benchmarks currently contained in Section 20.18(g)(1).

III. THE REQUESTED RELIEF SATISFIES THE COMMISSION'S WAIVER STANDARDS

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.²² The Commission has consistently recognized that wireless carriers may face difficulties in meeting the FCC's E911 deadlines. In the FCC's *Fourth Memorandum Opinion and Order* ("Fourth MO&O"), the Commission recognized that there would be instances when "technology-related issues" or "exceptional circumstances" would cause a delay in a wireless carrier's ability to become Phase II compliant.²³ In its most recent *Stay Order*, the Commission recognized that there was good cause to extend its previous handset deployment deadlines.²⁴

As discussed below, there is good cause for grant of the requested waiver for each set of circumstances discussed above.

A. There is Good Cause for Waiver of the Network-Based Deployment Deadlines

Good cause exists for the temporary limited waiver of the Phase II deployment deadlines for network-based carriers requested herein. The unique and unusual factual

²² 47 C.F.R. § 1.3.

²³ *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 at ¶ 43 (2000) ("Fourth MO&O").

²⁴ See *Stay Order* at ¶¶ 11-13.

circumstances surrounding the provision of Phase II service in the rural settings discussed herein make application of the network-based deployment deadlines inequitable and unduly burdensome on rural Tier IV carriers. Enforcement of these deadlines against rural carriers effectively imposes a more exacting standard on rural carriers than carriers who serve both urban and rural areas. Urban carriers have the luxury of averaging their performance over both the urban and rural areas they serve, allowing them to meet the accuracy requirement by serving urban-only areas since the vast majority of their E911 calls are likely to be placed within urban areas where they have sufficient cell site density to achieve the requisite level of accuracy. Rural carriers typically have no urban areas to include in their average, and therefore must be capable of providing Phase II accuracy to *all* of their service territories. Enforcement of the current requirements against rural carriers without adjusting the deadlines to reflect rural realities is inequitable. As one current FCC Commissioner recently recognized, “[t]he best laid plans designed for urban parts of the lower 48 States do not always work out quite right for rural and remote areas.”²⁵

Because of the network configuration of the rural carriers for whom relief is requested herein, and the fact that rural markets are more costly to serve since rural carriers do not have sizable customer bases over which they can spread their E911 deployment costs, enforcement of the network-based deployment deadlines against such carriers imposes undue burdens on these carriers. The costs of constructing the additional cell sites needed to meet FCC accuracy requirements can be enormous for a small rural carrier. As a result of these costs, and the lack of a mandatory cost recovery

²⁵ Statement of Commissioner Michael J. Copps regarding *Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska*, issues August 6, 2003.

mechanism,²⁶ the Tier IV carriers for whom waiver is requested have no reasonable alternative but to obtain a waiver.

Grant of the requested waiver is consistent with the public interest. The FCC has recognized the “distinct challenges” that rural carriers face in implementing Phase II requirements.²⁷ Grant of the requested waiver is consistent with the Commission’s determination that “the Phase II rules are intended to be applied in a manner that takes into account practical and technical realities.”²⁸ Indeed, the Commission has previously extended the compliance deadlines of Section 20.18(f) based on the technical realities faced by rural wireless carriers in attempting to provide Phase II service.²⁹ These same realities, as further described herein, warrant a grant of these same deadlines for the affected groups of rural Tier IV carriers described herein.

B. Good Cause Exists for Waiver of the Handset Deployment and Penetration Benchmarks

Good cause exists for the temporary limited waiver of the handset deployment and penetration benchmarks requested herein. Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission’s Phase II deployment rules. The Commission has recognized that temporary extensions of its handset deployment benchmarks will not delay actual deployment of Phase II E911 because “PSAPs in smaller or rural areas served by these non-nationwide carriers may

²⁶ See *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced Emergency Calling Systems*, CC Docket No. 94-102, Second Memorandum Opinion and Order, 14 FCC Rcd 20850 (1999).

²⁷ See, e.g., *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fifth Memorandum Opinion and Order, 15 FCC Rcd 22810 (2000) at par. 21.

²⁸ *Fourth MO&O* at par. 22.

²⁹ See generally *Stay Order*.

well require additional time to become capable of receiving and utilizing Phase II information and may not initiate requests for Phase II service” during any stay period granted by the Commission.³⁰ As discussed above, RTG estimates that less than 10 percent of its members have received PSAP requests for Phase II service to date. Since the vast majority of Tier IV carriers have not received a Phase II request, the underlying purpose of the Phase II requirements, “to extend automatic location identification (ALI) to wireless callers,”³¹ will not be frustrated by grant of this request. In setting its benchmark deadlines, the FCC relied on the assumption that a choice of effective ALI solutions would be available to all wireless carriers.³² With the evaporation of this choice due to the manufacturers’ gradual abandonment of TDMA solutions, and in light of the continued difficulties in obtaining ALI-capable CDMA and GSM handsets, the underlying purpose of the September 1 deadline no longer exists.

Enforcement of the current deadlines on Tier IV carriers would be inequitable. With the gradual elimination of TDMA handsets as a viable option for meeting Phase II obligations, carriers relying on TDMA for their Phase II solution were put in the unfair position of having to choose a new technology at the eleventh hour, and make all necessary and expensive network modifications to accommodate such changes. Handset availability is clearly a factor outside of carriers’ control. Tier IV carriers, without access to TDMA, CDMA, *or* GSM ALI-capable handsets have no reasonable alternative but to seek a waiver.

³⁰ *Stay Order* at par. 15.

³¹ *Stay Order* at par. 14.

³² *Fourth MO&O* at par. 23.

Grant of the requested waiver is consistent with the public interest. As noted above, “the Phase II rules are intended to be applied in a manner that takes into account practical and technical realities.”³³ Taking into account the practical and technical realities that the handsets necessary to meet the Commission’s deployment deadlines are simply unavailable, a waiver is clearly warranted. In its *Stay Order*, the Commission extended the handset deployment benchmarks for precisely these same reasons (*i.e.*, the unavailability of handsets). The continued unavailability of the necessary handsets fully justifies a limited extension of the current handset deployment and penetration benchmarks for the affected groups of rural Tier IV carriers described herein.

IV. A TEMPORARY LIMITED STAY IS NECESSARY TO PROTECT RURAL CARRIERS’ EXISTING FINANCING ARRANGEMENTS

In addition to the relief requested above, RTG requests that the Commission grant a temporary limited stay of the network and handset deployment deadlines pending resolution of the instant request.³⁴ Many rural carriers have financing arrangements which are contingent on compliance with all Commission rules and regulations. Such carriers face the potential loss of financing, and consequently the ability to ultimately meet E911 and other Commission deadlines requiring the expenditure of resources, if a temporary stay of these deadlines is not granted. Accordingly, not only will such carriers suffer irreparable injury in connection with the loss of financing resulting from denial of a stay, the public interest will be served by grant of the requested stay. As discussed above, RTG has met all applicable standards for grant of the requested waivers so they

³³ *Fourth MO&O* at par. 22.

³⁴ RTG also requests that the FCC stay enforcement of these deadlines, as applicable, against carriers who have filed individualized requests for waiver of these deadlines, pending resolution of those requests.

are likely to prevail on the merits. The public interest will not be harmed by grant of a stay. The requested stay is limited in duration to the short period necessary for the FCC to rule on the waiver petition. Due to the limited number of PSAP requests received by RTG members, any adverse impact on the public resulting from grant of the stay will be extremely limited, and is outweighed by the other factors discussed above. Accordingly, RTG satisfies the relevant criteria for grant of a limited stay.³⁵

V. CONCLUSION

For the foregoing reasons, the requested waiver and limited stay requested for the various categories of rural CMRS carriers described herein is in the public interest and meets the relevant criteria for waiver and stay of the applicable rules. Good cause having been shown, the Commission should grant as expeditiously as possible the limited relief requested herein.

Respectfully submitted,

/s/

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³⁵ See *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metro Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). The Commission has declined to adopt a single evidentiary standard for stay requests, but rather considers the criteria set forth in *Virginia Petroleum Jobbers* to evaluate requests for interim relief. See *Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, 12 FCC Rcd 22497, 22565-66 (1997); see also *Biennial Regulatory Review – Amendment of Parts 0, 1, 12, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in Wireless Telecommunications Services*, 14 FCC Rcd 9305, 9307 (1999) (applying the *Virginia Petroleum Jobbers* standard).