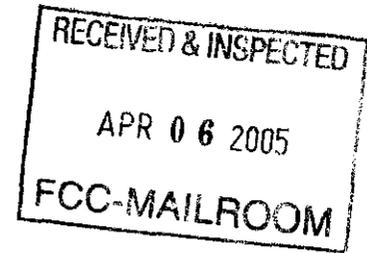


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of )  
)  
Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency ) CC Docket No. 94-102  
Calling Systems )  
)  
E911 Phase II Compliance Deadlines for Tier )  
III Carriers )

**ORDER**

Adopted: March 22, 2005

Released: April 1, 2005

By the Commission:

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**I. INTRODUCTION**

1. In this *Order*, we address forty requests for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by or on behalf of small wireless carriers. We reaffirm the Commission's commitment to ensure that the Nation's wireless telephone users have timely access to emergency services using E911 technology. Accordingly, as discussed in detail below, we have analyzed requests for extensions of the Commission's E911 deadlines and afford relief from such deadlines only

when the requesting carrier has met the standard for seeking a waiver of the Commission's rules.<sup>1</sup> Where carriers have met the standard, the relief we have afforded requires compliance with the Commission's rules and policies within the shortest practicable time.

2. We take the following actions in this *Order*:

- For carriers in the process of upgrading to CDMA technology<sup>2</sup> (CDMA carriers) and deploying a handset-based location solution, we grant requests for additional time to deploy location-capable digital handsets to those carriers that have filed sufficient information to allow us to conclude they have met the waiver standards. We also afford additional time to allow the necessary network upgrades to these CDMA systems, to the extent the carriers have presented reasonable, specific schedules for such upgrades.<sup>3</sup> In addition, we grant relief in cases where carriers requested and adequately supported a request for extension of the December 31, 2005 deadline to ensure ninety-five percent penetration among their subscribers of location-capable handsets.
- For carriers electing network-based location solutions, we grant limited relief where justified in individual cases.<sup>4</sup>
- We deny a request for long-term relief from the Phase II rules for carriers operating roaming-only networks and serving as a "carrier's carrier."<sup>5</sup> We similarly deny these carriers' requests for waiver of the requirements set forth in the Commission's *King County* decision.<sup>6</sup>

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<sup>1</sup> Where we grant relief for deadlines that have occurred in the past, we grant such relief *nunc pro tunc*. *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done.

<sup>2</sup> Code Division Multiple Access (CDMA) is a digital wireless telephone standard that, though mainly used in the United States, has been deployed around the world.

<sup>3</sup> The carriers in this group are: ACS Wireless, Inc.; Alaska DigiTel, LLC; Cellular Mobile Systems of St. Cloud, LLC; Cellular Phone of Kentucky; Cellular South Licenses, Inc.; Custer Telephone Cooperative, Inc.; Iowa RSA 2 Limited Partnership dba Lyrinx Wireless; Leaco Rural Telephone Cooperative, Inc.; Litchfield County Cellular, Inc. dba Ramcell of Kentucky; Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular; North Carolina RSA 3 dba Carolina West; Northwest Missouri Cellular Limited Partnership; Sagebrush Cellular, Nemont Communications, Inc., and Triangle Communications Systems, Inc.; South Canaan Cellular Communications Company, L.P.; South No. 5 RSA LP dba Brazos Cellular Communications, LLC; Wilkes Cellular, Inc.; and Wireless Communications Venture. Unless otherwise noted, all carrier petitions and reports are filed in CC Docket No. 94-102 and may be viewed in the Commission's Electronic Comment Filing System at: [http://gullfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi).

<sup>4</sup> The carriers in this category include: Highland Cellular, LLC; N.E. Colorado Cellular, Inc.; and Southern Illinois RSA Partnership dba First Cellular of Illinois.

<sup>5</sup> These carriers jointly filed and include Commnet Wireless, Inc., Commnet of Arizona, LLC, Commnet of Delaware, LLC, Elbert County Wireless, LLC, Chama Wireless, LLC, Excomm, LLC, Commnet PCS, Inc., MoCelCo, LLC, Tennessee Cellular Telephone Company, Commnet Capital, LLC, Comment of Florida, LLC, and Prairie Wireless, LLC.

<sup>6</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 14789 (2002) (*King County Order on Reconsideration*).

- We deny requests from carriers electing handset-based location solutions and seeking indefinite or long-term relief, or presenting no specific schedules or plans for deployment, and which are (1) using or migrating to GSM technology<sup>7</sup> (GSM carriers)<sup>8</sup> or (2) using AMPS or TDMA/AMPS technology<sup>9</sup> (TDMA/AMPS carriers) and not proposing to deploy a CDMA or GSM digital air interface.<sup>10</sup>
- We deny a request for general relaxation of the Phase II requirements for smaller wireless carriers filed by the Rural Telecommunications Group (RTG).<sup>11</sup>
- We require each Tier III carrier<sup>12</sup> that has been granted individual relief in this *Order* to file an interim status report with the Commission on September 1, 2005, containing the following information: (1) the number of Phase I and Phase II requests received from Public Safety Answering Points (PSAPs) (including those the carrier may consider invalid) and the status of those requests, including whether the carrier and the PSAP have reached an alternative deployment date; (2) the carrier's specific technology choice; (3) status on ordering and/or installing necessary network equipment; (4) the date on which Phase II service was/will first be available in the carrier's network; and (5) if the carrier is pursuing a handset-based solution, (a) whether ALI-capable handsets are available, and whether the carrier has obtained ALI-capable handsets or has agreements in place to obtain these handsets; and (b) information on the carrier's progress towards satisfying the requirement that ninety-five percent of its subscriber base have location-capable handsets.

## II. BACKGROUND

### A. PHASE II REQUIREMENTS

3. The Commission's E911 Phase II rules require wireless carriers to provide PSAPs the Automatic Location Identification (ALI) information for 911 calls that satisfies specified accuracy

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<sup>7</sup> The Global Systems for Mobile (GSM) digital wireless telephone standard is used in the United States, as well as in Europe.

<sup>8</sup> The carriers in this group are: Arctic Slope Telephone Association Cooperative, Inc.; Edge Wireless Licenses, LLC; Key Communication, LLC and Keystone Wireless, LLC; and Enterprise Wireless PCS, L.L.C.

<sup>9</sup> Compared with CDMA and GSM, Time Division Multiple Access (TDMA) is an earlier-generation digital wireless telephone standard used in the United States. The Analog Mobile Phone System (AMPS) standard was the initial wireless telephone standard used in the United States.

<sup>10</sup> These carriers include Copper Valley Wireless, Inc.; Cordova Wireless Communications, Inc.; and OTZ Telecommunications, Inc.

<sup>11</sup> See RTG Petition for Waiver and Request for Temporary Limited Stay of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 29, 2003.

<sup>12</sup> Tier III carriers are defined as non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*). By comparison, Tier II carriers are those not among the five carriers with national footprints (the Tier I carriers) and that had over 500,000 subscribers as of the end of 2001. See *id.* at 14843, 14847 ¶¶ 7, 22.

requirements. Carriers can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>13</sup> Global Positioning System (GPS) technology in the subscribers' handsets (a handset-based solution),<sup>14</sup> or a combination of location technology in both the network and handsets (a hybrid solution).<sup>15</sup> Depending on the technology employed, the carrier must identify the location of the caller within certain accuracy and reliability standards.<sup>16</sup> The Commission's rules contain phased-in approaches for both network-based and handset-based location technologies, requiring carriers to deploy Phase II service commencing October 1, 2001, or within six months of receiving a PSAP request, whichever is later.<sup>17</sup>

4. In addition to the requirement to deploy the facilities necessary to deliver location information, a wireless carrier that elects to employ a handset or hybrid solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules.<sup>18</sup> Carriers must comply with the handset deployment benchmarks independent of any PSAP request for Phase II service. Specifically, the Commission's rules establish the following deadlines, some of which already have passed, for carriers electing a handset or hybrid-based solution:

- Begin selling and activating location-capable handsets no later than October 1, 2001;
- Ensure that at least twenty-five percent of all new handsets activated are location-capable no later than December 31, 2001;
- Ensure that at least fifty percent of all new handsets activated are location-capable no later than June 30, 2002;

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<sup>13</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3(c), *Network-based Location Technology*.

<sup>14</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3(c), *Location-Capable Handsets*.

<sup>15</sup> Hybrid solutions combine network-based equipment with handset-based location technologies to provide more robust methods of determining the location of a caller through the use of multiple inputs. For example, Verizon Wireless has deployed an assisted-GPS (A-GPS) system combined with an advanced forward link trilateration (A-FLT) system. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18366, 18370 ¶¶ 8, 17 (2001).

<sup>16</sup> The standards for Phase II location accuracy and reliability are as follows: (1) for network-based technologies, 100 meters for 67 percent of calls, and 300 meters for 95 percent of calls, and (2) for handset-based technologies, 50 meters for 67 percent of calls, and 150 meters for 95 percent of calls. See 47 C.F.R. § 20.18(h).

<sup>17</sup> See 47 C.F.R. §§ 20.18(f), (g)(2). Specifically, licensees who employ a network-based location technology must provide Phase II E911 service to at least fifty percent of their coverage area or fifty percent of their population beginning October 1, 2001, or within six months of a PSAP request, whichever is later; and to one-hundred percent of their coverage area or one-hundred percent of their population within eighteen months of such a request or by October 1, 2002, whichever is later. Licensees who employ a handset-based location technology must install any hardware and/or software in their networks to enable the provision of Phase II service beginning October 1, 2001, or within six months of a PSAP request, whichever is later.

<sup>18</sup> See 47 C.F.R. § 20.18(g)(1).

- Ensure that one-hundred percent of all new handsets activated are location-capable no later than December 31, 2002; and
- Ensure that penetration of location-capable handsets among their subscribers reaches ninety-five percent no later than December 31, 2005.<sup>19</sup>

5. In its wireless E911 *Non-Nationwide Carriers Order*, the Commission granted a temporary stay of Phase II deadlines for Tier III carriers that had filed petitions for relief.<sup>20</sup> Specifically, the Commission required Tier III carriers that employ a network-based location technology to provide:

- Phase II E911 service to at least fifty percent of the PSAP's coverage area or population beginning September 1, 2003 or within six months of a PSAP request, whichever is later; and
- Phase II E911 service to one-hundred percent of the PSAP's coverage area or population by September 1, 2004 or within eighteen months of a PSAP request, whichever is later.<sup>21</sup>

6. The *Non-Nationwide Carriers Order* required Tier III carriers that employ a handset-based location technology to:

- Begin selling and activating location-capable handsets no later than September 1, 2003;
- Ensure that at least twenty-five percent of all new handsets activated are location-capable no later than November 30, 2003;
- Ensure that at least fifty percent of all new handsets activated are location-capable no later than May 31, 2004;
- Ensure that one-hundred percent of all new handsets activated are location-capable no later than November 30, 2004; and
- Ensure that penetration of location-capable handsets among their subscribers reaches ninety-five percent no later than December 31, 2005.<sup>22</sup>

7. Furthermore, the *Non-Nationwide Carriers Order* provided that, once a PSAP request is received, that Tier III carriers shall, within six months or by September 1, 2003, whichever is later, install any hardware and/or software in their networks to enable the provision of Phase II service.<sup>23</sup>

8. Following adoption of the *Non-Nationwide Carriers Order*, a number of Tier III carriers which had not previously requested extensions, and thus were not covered by that *Order*, filed petitions for relief.<sup>24</sup> Other Tier III carriers, which already had been granted relief, sought additional relief.<sup>25</sup> In

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<sup>19</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>20</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-14853 ¶¶ 32-33. The Commission also granted relief for Tier II carriers. See *id.* at 14849 ¶¶ 26-27.

<sup>21</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852 ¶ 32.

<sup>22</sup> See *id.* at 14852-53 ¶ 33.

<sup>23</sup> *Id.*

<sup>24</sup> Carriers which filed later requests for extensions are: Amarillo License, L.P. and High Plains Wireless, L.P. (jointly); ComScape Telecommunications of Wilmington License, Inc.; Duluth PCS, Inc.; Elkhart Telephone Co. (continued....)

response, in the *Order to Stay*, the Commission described the types of showings required to justify waiver of the wireless E911 rules, opened a window for those Tier III carriers to file supplemental information to support their requests for relief, and required the filing of status reports detailing the carriers' efforts to deploy Phase II E911 services.<sup>26</sup> The Commission also stayed the application of the wireless E911 rules for those Tier III carriers seeking relief, pending a ruling on their waiver petitions.<sup>27</sup> The stay permitted additional time for the Tier III carriers to supplement the record and for the Commission to address the issues presented in the requests for relief.<sup>28</sup>

## B. APPLICABLE WAIVER STANDARDS

9. The Commission has recognized that smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment.<sup>29</sup> Section 1.3 of the Commission's Rules establishes that the Commission may grant relief from its rules for good cause shown.<sup>30</sup> The Commission generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the

(Continued from previous page)

dba Epic Touch Co.; Litchfield County Cellular, Inc. dba Rameell of Oregon; North Carolina RSA 1 Partnership; NSP LC; and Texas RSA 15B2 Limited Partnership dba Five Star Wireless.

<sup>25</sup> Carriers that requested additional relief from that granted in the *Non-Nationwide Carriers Order* are: Arctic Slope Telephone Association Cooperative, Inc.; Bachow Coastal, L.L.C.; Blanca Telephone Company; Cellular Mobile Systems of St. Cloud, LLC; Copper Valley Wireless; Cordova Wireless; Corr Wireless Communications, LLC; Edge Wireless; Highland Cellular, LLC; Iowa RAS 2 Limited Partnership dba Lyrix Wireless; Leaco Rural Telephone Cooperative, Inc.; Minnesota Southern Wireless Company dba HickoryTech; Missouri RSA No. 5 Partnership dba Chariton Valley; Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular; N.E. Colorado Cellular, Inc., NECO PCS, Inc., and Wireless II, L.L.C.; OTZ Telecommunications, Inc.; Public Service Cellular, Inc. and Enterprise Wireless PCS, L.L.C.; RSA 1 Limited Partnership dba Cellular 29 Plus; Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication Systems, Inc.; South Canaan Cellular Communications Company, L.P.; South No. 5 RSA LP dba Brazos Cellular Communications, LLC; Sussex Cellular, Inc.; Wilkes Cellular, Inc.; and Wireless Communications Venture.

<sup>26</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 (2003) (*Order to Stay*). Tier III carriers granted relief under the *Non-Nationwide Carriers Order* or the *Order to Stay* must file annual reports detailing: (1) the number of Phase I and Phase II requests from PSAPs (including those the carrier may consider invalid); (2) the carrier's specific technology choice (*i.e.*, network-based or handset-based solution, as well as the type of technology used); (3) the status on ordering and/or installing necessary network equipment; (4) 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 (if the carrier is pursuing a handset-based solution); (5) the estimated date on which Phase II service will first be available in the carrier's network; and (6) information on whether the carrier is on schedule to meet the ultimate implementation date of December 31, 2005 (if the carrier is pursuing a handset-based solution). *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14843 ¶ 35; *Order to Stay*, 18 FCC Rcd at 20997-98 ¶ 30.

<sup>27</sup> See *Order to Stay*, 18 FCC Rcd at 20989 ¶ 3.

<sup>28</sup> See *id.* at 20994-96 ¶¶ 17-21.

<sup>29</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20; *Order to Stay*, 18 FCC Rcd at 20987 ¶ 2.

<sup>30</sup> 47 C.F.R. § 1.3. See also Section 1.925 of the rules, 47 C.F.R. § 1.925(b)(3).

relief requested would not undermine the policy objective of the rule in question.<sup>31</sup> A petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.<sup>32</sup>

10. In the *Order to Stay*, the Commission provided specific guidance on the types of factual showings that would provide sufficient support for a waiver request.<sup>33</sup> The Commission emphasized that carriers must provide clear evidence supporting the grounds they rely upon in seeking relief. For example, to the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.<sup>34</sup> If a carrier claims that it is technically infeasible to meet the Commission's accuracy standards, it must provide "concrete, specific plans to address the accuracy standards and . . . [its] testing data and other evidence to demonstrate [its] inability to meet the accuracy requirements."<sup>35</sup> As the Commission repeatedly has cautioned, carriers may not rely only on generalized statements about technical infeasibility. Instead, they must provide detailed technical data on the particular portions of their network or items of equipment that prevent them from complying with E911 requirements. To the extent that a carrier is requesting a waiver in order to accommodate its transition from one air interface to another, it must demonstrate "a clear path to full compliance" by, for example, providing concrete evidence of its documented commitment to a date certain for that transition to be accomplished.<sup>36</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.<sup>37</sup> A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades available from federal, state, or local funding sources.<sup>38</sup> In addition, carriers seeking relief are expected to work with state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with the carriers' projected compliance deadlines.<sup>39</sup>

11. Finally, distinct from the Commission's rules and established precedent regarding waivers of our E911 requirements, we note that in December 2004, Congress enacted the Ensuring

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<sup>31</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>32</sup> See *WAIT Radio*, 418 F.2d 1159.

<sup>33</sup> See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶¶ 22-29.

<sup>34</sup> See *id.* at 20996-97 ¶ 25.

<sup>35</sup> *Id.* at 20997 ¶ 26 (citing *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 41).

<sup>36</sup> *Id.* at 20997 ¶ 27.

<sup>37</sup> See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

<sup>38</sup> See *id.*

<sup>39</sup> See *id.* at 20997 ¶ 28. The Commission advised carriers that they should provide supporting documentation of their efforts to coordinate with the PSAPs or E911 coordinators as evidence of their good faith efforts. *Id.*

Needed Help Arrives Near Callers Employing 911 Act of 2004 (*ENHANCE 911 Act*).<sup>40</sup> The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers' requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission's Rules, if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."<sup>41</sup> While we apply the *ENHANCE 911 Act* standard in this *Order*, we recognize that the *ENHANCE 911 Act* was enacted after many of the waiver requests had been filed, and thus those waiver requests did not explicitly address application of the Act's waiver standard. Nothing in this *Order* precludes a qualified Tier III carrier<sup>42</sup> from seeking further relief under the *ENHANCE 911 Act*'s standard.

### III. DISCUSSION

12. We have reviewed the forty Tier III petitions for relief from our E911 requirements, together with their supplemental filings. They fall into six categories: (1) carriers deploying a handset-based solution in conjunction with a CDMA upgrade; (2) carriers electing a network-based solution; (3) carriers operating roaming-only networks ("carriers' carriers"); (4) carriers electing a handset-based solution in conjunction with a GSM upgrade; (5) AMPS/TDMA carriers electing a handset-based solution; and (6) other requests. We address each category below.

#### A. Category 1: Carriers Electing a Handset-Based Solution in Conjunction with a CDMA Upgrade

13. The first category is comprised of carriers that have already upgraded or are in the process of upgrading their networks to the CDMA air interface, and deploying a handset-based Assisted GPS (A-GPS) location technology.<sup>43</sup> These carriers have requested waivers of the Tier III location-capable handset deployment benchmarks. We note at the outset that A-GPS technology is now a standard feature of a wide range of CDMA handsets. The two largest CDMA carriers, Sprint and Verizon Wireless, currently sell only A-GPS-enabled handsets.<sup>44</sup> The success of these and other CDMA carriers<sup>45</sup> in deploying location-capable handsets in accordance with the timeframes established in the

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<sup>40</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>41</sup> *Id.* at § 107, 118 Stat. 3986, 3991.

<sup>42</sup> The *ENHANCE 911 Act* defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act or 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* at § 107(b), 118 Stat. 3986, 3991.

<sup>43</sup> A-GPS location technologies have two components: the handset, which contains a GPS chip, and network equipment, which assists the GPS chip in locating the caller and delivering that location information to the PSAP.

<sup>44</sup> Sprint began activating only location-capable handsets in June 2003. As of August 2, 2004, it offered more than twenty different GPS-enabled handset models, and sold over twenty-six million GPS-enabled handsets. *See* Sprint Eleventh Quarterly E911 Implementation Report, CC Docket No. 94-102, filed Aug. 2, 2004, at 6. As of December 31, 2003, Verizon Wireless offered only A-GPS-capable handsets. On February 1, 2005, the company stated that these handsets included all thirty-one handset models then currently sold, and that it planned to continue to add more A-GPS capable phones. *See* Verizon Wireless Enhanced 911 Status Report, CC Docket No. 94-102, filed Feb. 1, 2005, at 2.

<sup>45</sup> ALLTEL Communications reported that as of November 1, 2003, ninety-eight percent of new handset activations were A-GPS-equipped and that it was offering twelve A-GPS handset models. ALLTEL believed it (continued...)

Commission's rules and the *Non-Nationwide Carriers Order* indicates that location-capable handsets are readily available. Additionally, carriers have begun deploying the network equipment necessary to calculate and deliver A-GPS-derived location information to large numbers of PSAPs across the country.<sup>46</sup> Because location-capable handsets and network equipment using A-GPS technology are now available to CDMA carriers, it is reasonable to expect that availability will increase as manufacturers continue to adjust their product lines to meet the demands of CDMA carriers, including Tier III carriers.

14. Some Tier III CDMA carriers using a handset-based solution seek relief from the interim benchmarks adopted in the *Non-Nationwide Carriers Order* as well as temporary exclusions for legacy networks where CDMA upgrades are under way. In addition, some of the Tier III CDMA carriers request relief from the December 31, 2005 ninety-five percent handset penetration deadline. We discuss these requests below.

15. **ACS Wireless, Inc. (ACSW):** ACSW currently serves the state of Alaska through a TDMA and AMPS network that it is upgrading to CDMA.<sup>47</sup> ACSW requested an extension from

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met the May 31, 2004 Tier II threshold requirements that one-hundred percent of all new digital handsets must be location-capable. See ALLTEL Communications, Inc. E-911 Eighth Quarterly Report, CC Docket No. 94-102, filed Aug. 3, 2004, at 2. As of November 30, 2003, Leap Wireless reported that eighty-six percent of handsets it sold were location-capable and that 99.44 percent of handsets were location-capable as of May 30, 2004. Leap further indicated that Phase II was deployed to eighty-one PSAPs in five states as of July 30, 2004. See Leap Wireless Eighth E911 Quarterly Report, CC Docket No. 94-102, filed Aug. 1, 2004, at 1-2. As of April 2004, Qwest Wireless reported that all handsets sold and activated were location-capable. See Qwest Wireless LLC Implementation Status Report, CC Docket No. 94-102, filed Aug. 2, 2004, at 3. As of May 2004, United States Cellular reported that over ninety-five percent of the total handsets it sold were location-capable and that Phase II was deployed to 185 PSAPs. See United States Cellular Corporation Quarterly E911 Implementation Report, CC Docket No. 94-102, filed Aug. 2, 2004, at 5-6. As of June 2004, Western Wireless reported that nineteen models it sold have A-GPS capability and that all but "a few" handsets were GPS-capable as of June 2004. See Quarterly Report of Western Wireless Corporation on its Enhanced 911 Phase II Deployment, CC Docket No. 94-102, filed Aug. 2, 2004, at 2-3.

<sup>46</sup> As of the close of the 2nd Quarter of 2004, Sprint reported that it had deployed Phase II capability to a total of 1041 PSAPs in thirty-two states and the District of Columbia. See Sprint Eleventh Quarterly E911 Implementation Report, CC Docket No. 94-102, filed Aug. 2, 2004 at i. Verizon Wireless reported that, as of April 15, 2004, it provided Phase II service to 1,285 PSAPs in thirty-three states. See Verizon Wireless Enhanced 911 Status Report, CC Docket No. 94-102, filed July 30, 2004 at 1.

<sup>47</sup> See ACS Wireless Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Nov. 14, 2003 (ACSW Waiver Petition). ACSW submitted that its CDMA deployment will proceed in three stages: (1) December 31, 2003 for completion of coverage of Anchorage and Matanuska Valley (fifty percent of Alaska's population and over fifty percent of ACSW's subscriber base); (2) December 31, 2004 for coverage of all other major population centers including Fairbanks, Juneau, and the Kenai Peninsula (seventy-five percent of Alaska's population and over eighty-five percent of ACSW's subscriber base); and (3) December 31, 2005 for remaining coverage areas, including remote locations and smaller-populated communities. In an update filed on January 14, 2005, ACSW indicated that it had substantially completed Stages I and II. ACSW reported, however, that it will need to revise its Stage III deployment to push out the construction of the twenty-nine remaining sites until December 31, 2006 due to budgetary constraints and the short construction season in Alaska, specifically in the very remote and rural areas. See Update to ACS Wireless Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Jan. 14, 2005 (ACSW Waiver Petition Update).

September 1, 2003 to January 31, 2004 to begin selling and activating location-capable handsets.<sup>48</sup> ACSW also sought modification of the one-hundred percent benchmark for activated handsets: *i.e.*, rather than have one-hundred percent of new activations location-capable by November 30, 2004, ACSW requested that it be permitted to ensure that ninety percent of all new handset activations in Anchorage and Fairbanks be location-capable by May 30, 2005 and that ninety percent of all new handset activations in the remaining portion of its service area in Alaska be location-capable by December 31, 2005.<sup>49</sup> ACSW also sought an extension from December 31, 2005 to December 31, 2007 to ensure that penetration of location-capable handsets reaches ninety-five percent.<sup>50</sup> It also requested forbearance from the Phase II accuracy and reliability standards until December 31, 2008.<sup>51</sup>

16. *Benchmark relief.* We find that good cause exists to grant ACSW relief from the interim benchmarks for location-capable handsets. As the upgrade to CDMA progresses, ACSW has committed to selling and activating only location-capable handsets.<sup>52</sup> The Commission has recognized that such upgrades present deployment challenges and may be a basis for an extension. Carriers, however, must provide concrete evidence of their planned deployment.<sup>53</sup> ACSW, through its waiver request and supplement, has provided both a path to compliance and evidence of its progress down that path. We are particularly encouraged by the fact that ACSW has completed the CDMA upgrade at 121 of its 150 sites.<sup>54</sup> Additionally, ACSW is working with the local PSAPs in its area to keep them informed of ACSW's deployment schedule,<sup>55</sup> consistent with the Commission's expectations set forth in the *Order to Stay*.

17. We recognize that granting ACSW relief to allow its handset deployment to coincide with its CDMA upgrade could mean that analog and TDMA customers will, in some cases, not receive Phase II service until ACSW finishes its transition to CDMA. We believe, however, that requiring ACSW to invest its resources to upgrade analog and TDMA networks with location technologies, despite the fact they soon will be replaced, could unnecessarily delay expansion and improvement of ACSW's services, and could even threaten its financial viability. We are persuaded by the fact that ACSW faces no pending PSAP requests for Phase II service in the areas that remain to be upgraded to CDMA.<sup>56</sup> We

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<sup>48</sup> See ACSW Waiver Petition at 12. In earlier filings, ACSW requested relief from the interim benchmarks so that it could deploy its CDMA network. See ACS Wireless Petition for Limited Waiver, CC Docket No. 94-102, filed Dec. 3, 2001. ACSW was granted a stay consistent with the dates set forth in the *Non-Nationwide Carriers Order*.

<sup>49</sup> See ACS Wireless' Supplement to its Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Jan. 26, 2005 at 7-8 (ACSW 2005 Supplement).

<sup>50</sup> *Id.* at 8.

<sup>51</sup> *Id.* at 11-13. ACSW's forbearance request, as made in the ACSW Waiver Petition and ACSW Waiver Petition Update, was addressed separately and denied. See Petition for Forbearance From E911 Accuracy Standards Imposed on Tier III Carriers For Locating Wireless Subscribers Under Rule Section 20.18(h); Petition for Limited Waiver and Forbearance by ACS Wireless, Inc., *Order*, DA 05-420 (PSCID rel. Feb. 14, 2005).

<sup>52</sup> See ACSW Waiver Petition at 12; ACSW Waiver Petition Update at 4.

<sup>53</sup> See *supra* ¶ 10.

<sup>54</sup> See ACSW 2005 Supplement at 4.

<sup>55</sup> See *id.* at 13; ACSW Waiver Petition Update at 4.

<sup>56</sup> See ACSW 2005 Supplement at 2. ACSW did report that it received a request for Phase II service from the Anchorage PSAP. The Anchorage PSAP has requested that ACSW begin delivering Phase I and Phase II (continued....)

also find that it is reasonable to allow ACSW to continue to sell and activate non-CDMA handsets without location capability to its customers in areas where its CDMA upgrade has not been completed. However, once the upgrade to CDMA is completed, ACSW must comply with the requirement of the E911 rules that all digital handsets activated be location-capable.<sup>57</sup>

18. We grant ACSW relief with respect to the interim benchmarks.<sup>58</sup> Specifically, we grant ACSW's request for a waiver to provide and activate location-capable handsets by January 31, 2004 instead of by September 1, 2003. We also grant ACSW relief from the deadline for requiring that one-hundred percent of all new handsets activated are location capable. We grant ACSW an extension until May 30, 2005 to ensure that one-hundred percent of all new handset activations in Anchorage and Fairbanks, Alaska are location-capable and until December 31, 2005 to ensure that one-hundred percent of all new handset activations statewide are location-capable.<sup>59</sup> This waiver will allow ACSW to continue selling and activating non-location-capable analog and TDMA handsets in areas where its CDMA rollout has not been completed. We require, however, that as ACSW upgrades its network, it must begin selling and activating only location-capable CDMA handsets in the upgraded areas, consistent with the plan set out in its January 26, 2005 filing.<sup>60</sup>

19. *Handset Penetration.* In light of our decision to grant ACSW an extension of the interim benchmark requirements, we correspondingly grant ACSW a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location capable handsets. We recognize that ACSW will require a sufficient period of time to ensure that the location-capable handsets that it sells and activates are sufficiently integrated into its customer base. Further, we are persuaded by ACSW's assertion that it faces unique challenges during the final stages of its CDMA construction program due to the small population it serves and the cost of deploying CDMA sites in rural and remote areas.<sup>61</sup> ACSW explained that it has made progress in deploying its CDMA network in the major population centers, but cannot achieve the ninety-five percent penetration deadline broadly throughout its customer base until it is able to complete its CDMA build-out.<sup>62</sup> ACSW also noted that it would be able

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information by February 14, 2005. ACSW reported that it will comply with that request. *See* ACSW Waiver Petition Update at 4.

<sup>57</sup> 47 C.F.R. § 20.18(g)(1)(iv).

<sup>58</sup> We note that where we grant relief of the interim location-capable handset deployment benchmarks, we do not negate the independent obligation to install any necessary hardware or software into the network to respond to a valid PSAP request for Phase II service.

<sup>59</sup> We note that ACSW requests that it be allowed until May 30, 2005 to ensure that *ninety* percent of all new handset activations in Anchorage and Fairbanks, Alaska are location-capable and until December 31, 2005 to ensure that *ninety* percent of all new handset activations statewide are location-capable. Our rules do not set forth a benchmark to ensure that ninety percent of new handset activations are location-capable; rather, our rules contemplate that, ultimately, one-hundred percent of new handset activations are location-capable. We require that ACSW adhere to this one-hundred percent benchmark.

<sup>60</sup> *See* ACSW 2005 Supplement at 2.

<sup>61</sup> *See id.* at 4. For example, ACSW pointed to the lack of highways that cannot accommodate large trucks delivering CDMA equipment and the corresponding need to barge the equipment to the communities and use helicopters to transport the completed site to the designated locations. ACSW added that poor weather conditions common to the area and the short construction season further hamper its efforts to complete its CDMA build-out to remote areas. *See id.* at 4-5, 8-9.

<sup>62</sup> *See id.* at 8.

to provide E911 Phase II location data for its Anchorage CDMA subscribers by February 2005, and will be prepared to provide such services to the Fairbanks Northstar Borough, but was unaware of any other PSAP in Alaska that has the means to receive E911 Phase II location data.<sup>63</sup>

20. For the foregoing reasons, we provide ACSW with a limited extension of the location-capable handset penetration deadline. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>64</sup> We believe that a thirteen-month timeframe should provide ACSW with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend ACSW's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to May 30, 2005 (for Anchorage and Fairbanks) and December 31, 2005 (for other areas within Alaska), we afford ACSW an additional thirteen months from these dates to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, ACSW must ensure that ninety-five percent of its subscriber base has location-capable handsets by June 30, 2006 (for Anchorage and Fairbanks) and by January 31, 2007 (for all other areas in Alaska).

21. We note that this relief from the ninety-five percent handset penetration requirement is more limited than ACSW requested. ACSW sought relief from the ninety-five percent handset penetration deadline from December 31, 2005 until December 31, 2007. We do not believe that such an extended period of time is adequately supported or necessary. Further, we believe that our countervailing public policy interest in ensuring that carriers comply with the location-capable handset penetration requirement as quickly as possibly overrides ACSW's request for more protracted relief.<sup>65</sup>

22. **Alaska DigiTel, LLC (Alaska DigiTel):** Alaska DigiTel operates both a CDMA network and a roaming-only GSM network in parts of Alaska, and describes itself as a small carrier (16,000 subscribers) with limited financial resources. In an August 29, 2003 filing, Alaska DigiTel requested a limited waiver and extension of time to comply with both the Phase I and Phase II E911 rules.<sup>66</sup> Alaska DigiTel requested a waiver and extension of the E911 requirement concerning the installation of the network equipment necessary to deliver Phase I or Phase II service to the PSAP to June 30, 2005 for both Phase I and Phase II.<sup>67</sup> Additionally, Alaska DigiTel sought relief from the interim location-capable handset activation benchmarks in the Commission's E911 rules.<sup>68</sup> Alaska DigiTel requested that the Commission grant it an extension of the September 1, 2003 deadline to commence

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<sup>63</sup> See *id.* at 9. ACSW added that there are no local PSAPs for many of the smaller communities in its service area. *Id.*

<sup>64</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

<sup>65</sup> Our decision does not preclude ACSW from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>66</sup> See Alaska DigiTel, LLC Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Aug. 29, 2003 (Alaska DigiTel Waiver Petition).

<sup>67</sup> *Id.* at 2-3.

<sup>68</sup> *Id.*

selling and activating location-capable handsets until June 30, 2005.<sup>69</sup> Alaska DigiTel subsequently reported that location-capable handsets for CDMA are available and anticipated that one-hundred percent of its new handset sales will be location-capable by December 31, 2005, instead of by November 30, 2004 as required under the Commission's rules.<sup>70</sup> Although Alaska DigiTel noted that it would not be able to meet the December 31, 2005 deadline that ninety-five percent of handsets among its subscribers be location-capable, it has not sought relief from this requirement.<sup>71</sup>

23. *Deployment of Network Equipment.* Alaska DigiTel claimed that, although its CDMA network is Phase I capable, the costs of delivering Phase I service to the PSAPs would be substantial.<sup>72</sup> It further claimed that the need to upgrade its existing CDMA network to allow a handset-based technology to transmit Phase II location information would result in such a severe financial strain that it would jeopardize the company as an on-going concern.<sup>73</sup> Sections 20.18(d) and (g)(2) of the Commission's Rules condition the requirement to deploy network equipment for delivery of location information to the PSAPs upon a PSAP making a valid request for service.<sup>74</sup> Absent a request, the carrier is not required to deploy any equipment into its network for the delivery of this information. Because no valid PSAP request is currently pending, according to the carrier,<sup>75</sup> it has no current obligation to deploy Phase I and it is uncertain when it will face such an obligation. Hence, no waiver is needed at this point for Phase I or Phase II compliance. We therefore dismiss as premature Alaska DigiTel's request for waiver of sections 20.18(d), (f), and (g)(2) of the Commission's rules.

24. In any event, we note that Alaska DigiTel has not sufficiently substantiated its request for waiver of the Commission's Phase I and Phase II E911 requirements based on financial hardship. Specifically, Alaska DigiTel did not provide specific documentation supporting its claim of financial hardship, including any efforts to obtain financing, as required under the Commission's waiver standards.<sup>76</sup> Indeed, under Alaska statutes, municipalities can set surcharges to recover wireless 911 costs, and a wireless carrier is entitled to recovery of Phase I costs.<sup>77</sup> Alaska DigiTel would need to explain why such sources of support are inadequate.

25. *Benchmark relief.* We deny Alaska DigiTel's request for waiver of the interim benchmarks, *i.e.*, its proposal to begin selling and activating location-capable handsets on June 30, 2005 instead of September 1, 2003, and to satisfy the one-hundred percent sale and activation benchmark on

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<sup>69</sup> *Id.*

<sup>70</sup> See Alaska DigiTel, LLC Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 3 (Alaska DigiTel 2004 Interim Report).

<sup>71</sup> *Id.*

<sup>72</sup> See *id.* at 4.

<sup>73</sup> *Id.*

<sup>74</sup> See 47 C.F.R. §§ 20.18(d), (g)(2).

<sup>75</sup> Alaska DigiTel states that it received a combined Phase I and Phase II request from the Anchorage, Alaska PSAP on May 15, 2003, but was later informed that the city was not prepared to implement E911 and would issue a revised notice once it could process E911 calls. See Alaska DigiTel Waiver Petition at 3-4.

<sup>76</sup> See *supra* ¶ 10.

<sup>77</sup> Alaska Statutes 29.35.131, 911 Surcharge.

December 31, 2005 instead of November 30, 2004. As explained above, Alaska DigiTel did not provide sufficient evidence to demonstrate financial hardship, and did not otherwise show that it is technically infeasible to meet the accuracy standards.<sup>78</sup> Absent such showings, Alaska DigiTel's waiver request does not persuade us that it cannot satisfy the applicable benchmarks. As Alaska DigiTel acknowledged, location-capable handsets are now readily available for CDMA carriers.<sup>79</sup> Accordingly, the Commission's rules require Alaska DigiTel to sell and activate location-capable handsets according to the scheduled benchmarks in the Commission's rules, independent of whether it has pending PSAP requests for Phase II service.<sup>80</sup> While Alaska DigiTel may be facing challenging circumstances, we cannot afford the relief it seeks without the submission of a waiver request that complies with our requirements. We therefore encourage Alaska DigiTel to file a renewed request for waiver of our rules in accordance with the guidance we provide above for meeting our waiver standard.<sup>81</sup>

26. **Cellular Mobile Systems of St. Cloud, LLC (CMS):** CMS provides AMPS and TDMA service in Minnesota and is migrating to CDMA.<sup>82</sup> CMS requested limited relief from the requirement that it install network equipment for the delivery of Phase II service to its PSAPs, as required by section 20.18(g)(2) of the Commission's Rules.<sup>83</sup> CMS also requested an extension of the interim benchmarks for handset deployment. Specifically, CMS requested that the following deadlines all be extended until September 27, 2004: (1) the September 1, 2003 deadline to begin selling and activating location-capable handsets, (2) the November 30, 2003 deadline to ensure that at least twenty-five percent of all handsets sold and activated are location-capable, and (3) the May 31, 2004 deadline to ensure that fifty percent of all handsets sold and activated are location-capable. Further, CMS requested that the November 30, 2004 deadline to ensure that one-hundred percent of all new handsets sold and activated are location-capable be extended until December 31, 2004.<sup>84</sup> CMS did not request an extension of the December 31, 2005 ninety-five percent handset penetration requirement.<sup>85</sup>

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<sup>78</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 29. Alaska DigiTel only stated that it would be premature to enter into any agreements with handset vendors until it has upgraded its CDMA network. See *Alaska DigiTel Waiver Petition* at 4; *Alaska DigiTel 2004 Interim Report* at 2.

<sup>79</sup> See *Alaska DigiTel 2004 Interim Report* at 1.

<sup>80</sup> See 47 C.F.R. § 20.18(g). See *supra* ¶ 5 (discussing the modified deployment schedule for Tier III carriers).

<sup>81</sup> We further advise Alaska DigiTel that if it anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, it should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>82</sup> See *Cellular Mobile Systems of St. Cloud, LLC Petition for Waiver of Section 20.18(g) of the Commission's Rules*, CC Docket No. 94-102, filed Aug. 28, 2003 (CMS Waiver Petition).

<sup>83</sup> See *id.* at 7 n.16.

<sup>84</sup> See CMS Waiver Petition at 9; Amendment to Cellular Mobile Systems of St. Cloud, LLC Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed June 30, 2004 at 1-2 (CMS Amendment).

<sup>85</sup> See CMS Waiver Petition at 9 n.24. However, CMS noted that it is possible that it might not meet the December 31, 2005 handset penetration deadline. See *Second Interim Report Regarding E911 Phase II Deployment: Cellular Mobile Systems of St. Cloud, LLC*, CC Docket No. 94-102, filed Jan. 14, 2004 at 2-3 (CMS Second Interim Report). In the event that CMS anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, CMS must file an appropriate and timely request for relief.

27. *Deployment of Network Equipment.* CMS indicated that it had not received a valid PSAP request for Phase II service.<sup>86</sup> CMS also stated that it is working with the State of Minnesota on a revised deployment plan.<sup>87</sup> We find CMS's request for relief premature as it relates to installing the necessary hardware and software in its network to enable Phase II E911 service within six months of a valid PSAP request. The requirements in Section 20.18(g)(2) are contingent upon a PSAP making a valid request for service, which requires that the PSAP be capable of receiving and utilizing the data elements associated with Phase II service.<sup>88</sup> Absent a valid request, the carrier is not required to deploy equipment into its network for the delivery of this information.<sup>89</sup> We thus find that because CMS has no current obligation to deploy Phase II service, and because it has worked out a coordinated plan for deployment of E911 Phase II with the State of Minnesota,<sup>90</sup> no waiver is needed at this time. We therefore dismiss CMS's request for a waiver of section 20.18(g)(2) concerning the installation of network equipment for the delivery of Phase II service.

28. *Benchmark relief.* We find that good cause exists to grant the relief sought by CMS concerning the interim benchmarks for handset deployments. As CMS noted in its waiver request, the intent of the Commission's E911 rules is to "meet important public safety needs as quickly as reasonably possible."<sup>91</sup> As a TDMA carrier relying on a handset-based solution, CMS was hampered by the unexpected unavailability of location-capable handsets for the TDMA air interface. As CMS noted in its petition, the two largest carriers then using TDMA, AT&T and Cingular, announced they were migrating to a GSM protocol.<sup>92</sup> As a result, CMS maintained that handset manufacturers abandoned plans to introduce TDMA handsets capable of determining and transmitting location information.<sup>93</sup> Although CMS subsequently decided to transition its network to the CDMA air interface, for which location-capable handsets are readily available, this process necessarily will take some time to implement.<sup>94</sup>

29. Moreover, we are persuaded that CMS is acting in good faith in requesting additional relief based on its coordination of its deployment schedule with the administrator of the Minnesota E-911 Statewide Program.<sup>95</sup> In the *Order to Stay*, the Commission explained that carriers seeking additional time would be expected to coordinate their efforts with the state and local E911 coordinators and all

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<sup>86</sup> See CMS Second Interim Report at 1. CMS reported that it received a "blanket request" from the State of Minnesota for both Phase I and Phase II service, but that the Phase II component is not a valid request because the PSAPs in its service area are not capable of receiving Phase II information. *See id.*

<sup>87</sup> *See id.* at 2.

<sup>88</sup> 47 C.F.R. § 20.18(j).

<sup>89</sup> *See* 47 C.F.R. § 20.18(g)(2).

<sup>90</sup> Minnesota coordinates its E911 deployment efforts through a central state administrator.

<sup>91</sup> CMS Waiver Petition at 7 (*citing* 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, 17449 ¶ 17 (2000)).

<sup>92</sup> *See id.* at 3.

<sup>93</sup> *See id.*

<sup>94</sup> *See* CMS Amendment at 2-3.

<sup>95</sup> *See* CMS Second Interim Report at 2.

affected local PSAPs.<sup>96</sup> The Commission also indicated that it would take notice of such efforts as a sign of a carrier's good faith in requesting additional relief.<sup>97</sup> As CMS indicated in its petition and its amendment, the plan it proposed has been coordinated with and agreed to by the administrator of the Minnesota E-911 Statewide Program.<sup>98</sup>

30. In addition, CMS's petition sets forth a plan for achieving full compliance.<sup>99</sup> As the Commission stated in the *Order to Stay*, in order for a carrier to receive a grant of additional time, it must set out a plan showing a clear path to full compliance.<sup>100</sup> The schedule CMS set forth in its petition will allow it to meet the final location-capable handset benchmark of December 31, 2005, when it also must achieve a ninety-five percent penetration rate for location-capable handsets among its subscribers. We thus find that allowing this carrier to focus its efforts on achieving full compliance will better serve the objective of promoting ubiquitous access to E911.

31. For the foregoing reasons, we grant CMS's waiver request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we grant CMS relief, from September 1, 2003 until September 27, 2004 to begin selling and activating location-capable handsets, and from November 30, 2003 and May 31, 2004, respectively, until September 27, 2004, to ensure that twenty-five percent and fifty percent of all new handset activations are location-capable. We also grant CMS's request for extension from November 30, 2004 until December 31, 2004, for the date on which one-hundred percent of all new handsets sold and activated must be location-capable. We note that we continue to require CMS to comply with the December 31, 2005 deadline to ensure ninety-five percent penetration of location-capable handsets among its subscribers.

32. **Cellular Phone of Kentucky, Inc. (CPK):** CPK operates a TDMA network in Kentucky that it is upgrading to CDMA. CPK sought the following extensions: (1) from September 1, 2003 to October 4, 2004 to begin selling location-capable handsets; (2) from November 30, 2003 to October 31, 2005 to ensure that twenty-five percent of all new handset activations are location-capable; (3) from May 31, 2004 to February 28, 2006 to ensure that fifty percent of all new handset activations are location-capable; (4) from November 30, 2004 to June 30, 2006 to ensure that one-hundred percent of all new digital handset activations are location-capable; and (5) from December 31, 2005 to January 31, 2007 to ensure that penetration of location-capable handsets among its subscribers reaches ninety-five percent.<sup>101</sup>

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<sup>96</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

<sup>97</sup> See *id.*

<sup>98</sup> See CMS Amendment at 3.

<sup>99</sup> See CMS Waiver Petition at 9.

<sup>100</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>101</sup> See Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Apr. 14, 2004 at 2 (CPK April 2004 Supplement); Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Dec. 22, 2004 at 1 (CPK December 2004 Supplement). See Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Apr. 14, 2004 at 2 (CPK April 2004 Supplement); Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Dec. 22, 2004 at 1 (CPK December 2004 Supplement). CPK reports that it met the October 4, 2004 date to begin selling location-capable handsets. See (continued....)

33. CPK maintained that the migration away from TDMA technology by the larger carriers has resulted in reluctance on the part of equipment manufacturers to develop location-capable handsets for the TDMA air-interface.<sup>102</sup> As a result, CPK is transitioning its network to the CDMA air interface, for which location-capable handsets are readily available. CPK claimed that the process will take some time to implement and seeks relief from the Commission's E911 handset requirements as described above.

34. *Benchmark Relief.* We find that good cause exists to grant CPK a limited extension of the interim benchmarks. As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements.<sup>103</sup> The Commission, however, also recognized the need for such carriers to have a plan to achieving full compliance as a factor to be considered in granting additional relief.<sup>104</sup> CPK has such a plan to complete its CDMA upgrade. We also take note of CPK's coordination efforts with its local PSAPs.<sup>105</sup> As CPK states, it routinely meets with the local PSAPs in its area to set and monitor deployment goals for Phase II E911 service.<sup>106</sup>

35. We are concerned, however, by the protracted rollout of location-capable handsets proposed by CPK. While the deployment plan set out by CPK achieves full compliance, it does so eighteen months later than the Commission's Rules require. As we have noted, location-capable CDMA handsets are readily available.<sup>107</sup> Accordingly, we do not believe the extended timeframes proposed by CPK are warranted. While we understand that CPK will need time to deploy its CDMA upgrade, we believe that a more aggressive approach to handset deployment should accompany that rollout. We therefore require that CPK begin activating only location-capable handsets as it completes its CDMA upgrade. This should ensure that consumers in CPK's service area will have access to location-capable handsets as CPK enables the CDMA air interface.

36. We therefore grant in part CPK's request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we extend the date to begin selling and activating location-capable handsets from September 1, 2003 to October 4, 2004; extend the date to ensure that twenty-five percent of all new handsets sold and activated are location-capable from November 30, 2003 to October 31, 2005; extend the date to ensure that fifty percent of all new handsets sold and activated are location-capable from May 31, 2004 to November 30, 2005; and extend the date to ensure that one-hundred percent of all new handset activations are location-capable from November 30, 2004 to December 31, 2005. We believe that these limited extensions are appropriate because, by CPK's estimate, its CDMA upgrade should be substantially complete by the date it is required to ensure that

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CPK December 2004 Supplement at 2. CPK initially filed its request in August 2003. See Cellular Phone of Kentucky, Inc., Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Aug. 29, 2003 (CPK Waiver Petition).

<sup>102</sup> See CPK April 2004 Supplement at 4.

<sup>103</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>104</sup> *Id.*

<sup>105</sup> See CPK April 2004 Supplement at 6.

<sup>106</sup> *Id.*

<sup>107</sup> See *supra* ¶ 13.

one-hundred percent of all new handset activations are location-capable.<sup>108</sup> If the estimated completion date has changed, such that additional relief is necessary,<sup>109</sup> CPK should file an appropriate waiver request.

37. *Handset Penetration.* In light of our decision to grant CPK an extension of the interim benchmark requirements, we correspondingly grant CPK a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base has location-capable handsets. We recognize that CPK will require a sufficient period of time to ensure that the location-capable handsets that it sells and activates are sufficiently integrated into its customer base. Further, CPK stated that its rural non-prepaid subscribers historically have tended to hold onto their cellular handsets for much longer than customers in larger, metropolitan markets.<sup>110</sup> We acknowledge that CPK faces unique challenges in satisfying the ninety-five percent handset penetration requirement.

38. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>111</sup> We believe that a thirteen-month timeframe should provide CPK with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend CPK's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford CPK an additional thirteen months from these dates to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, CPK must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2007.<sup>112</sup>

39. **Cellular South Licenses, Inc. (Cellular South):** Cellular South operates in portions of Mississippi, Tennessee, Florida, and Alabama, using AMPS and TDMA air interfaces in some areas and CDMA in others.<sup>113</sup> In its waiver request, Cellular South stated that it is upgrading its AMPS and TDMA

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<sup>108</sup> Specifically, CPK expects the final work to be completed by the second quarter of 2006. See CPK April 2004 Supplement at 5.

<sup>109</sup> We note that CPK originally stated that work would commence in the third or fourth quarter of 2004. See *id.*; CPK Waiver Petition at 3. Subsequently, it stated that work would begin in the first quarter of 2005, but did not state whether the delay in commencing construction affected the estimated completion date. See CPK December 2004 Supplement at 2.

<sup>110</sup> See CPK December 2004 Supplement at 2.

<sup>111</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

<sup>112</sup> Because we grant CPK the relief it requested of the handset penetration deadline under our established rules and precedent, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>113</sup> See Cellular South Licenses, Inc. Petition for Extension of the Implementation Deadline for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Dec. 17, 2002, at 3 (Cellular South Waiver Petition).

networks to CDMA.<sup>114</sup> It requested additional time equal to that granted other Tier III carriers in the *Non-Nationwide Carriers Order*.<sup>115</sup>

40. In December 2004, Cellular South informed the Commission that its CDMA network was fully deployed across its service area in the first quarter of 2004.<sup>116</sup> Cellular South also reported that it is selling location-capable handsets in all markets and that it is Phase II compliant. Cellular South further stated that it has successfully deployed Phase II service where it had PSAP requests.<sup>117</sup> Cellular South has not requested relief from the December 31, 2005 ninety-five percent handset penetration requirement, but expressed concerns about its ability to ensure that its customers adopt location-capable handsets in sufficient numbers to meet this requirement.<sup>118</sup>

41. *Benchmark Relief.* We find that good cause exists to grant the relief sought by Cellular South. As a TDMA carrier, Cellular South originally intended to deploy a network-based solution.<sup>119</sup> Subsequently, however, it determined that it would be more prudent to deploy a handset-based location technology, and decided to do so in conjunction with a CDMA upgrade to its network.<sup>120</sup> As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements.<sup>121</sup> The Commission, however, also recognized the need for such carriers to have a plan to achieving full compliance as a factor to be considered in granting additional relief.<sup>122</sup> Cellular South has such a plan to complete its CDMA upgrade. The schedule Cellular South set forth will allow it to meet the deadlines previously established in the *Non-Nationwide Carriers Order*. We also take note of Cellular South's coordination efforts with its local PSAPs. Cellular South indicated in its interim report that it was coordinating with the PSAP administrators in Mississippi, Alabama, Florida, and Tennessee to ensure that Cellular South and the PSAPs have a coordinated plan to bring E911 to those states.<sup>123</sup> A waiver proponent's consultation with its PSAPs is an important factor in determining whether a waiver is warranted.<sup>124</sup>

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<sup>114</sup> See *id.* at 3.

<sup>115</sup> See *supra* ¶ 5. The relief requested by Cellular South would require it to: (a) begin activating location-capable handsets no later than September 1, 2003; (b) ensure that at least twenty-five percent of all new handsets activated are location-capable no later than November 30, 2003; (c) ensure that at least fifty percent of all new handsets activated are location-capable no later than May 31, 2004; and (d) ensure that one-hundred percent of all new digital handsets activated are location-capable no later than November 30, 2004.

<sup>116</sup> Staff contacted counsel for Cellular South on December 16, 2004 for this update.

<sup>117</sup> See Cellular South Licenses, Inc. Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Aug. 1, 2003, at 3 (Cellular South Interim Report).

<sup>118</sup> See *id.* at 4.

<sup>119</sup> See Cellular South Waiver Petition at 2.

<sup>120</sup> *Id.*

<sup>121</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>122</sup> *Id.*

<sup>123</sup> See Cellular South Interim Report at 1-2.

<sup>124</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

42. For the foregoing reasons, we grant Cellular South's waiver request for relief from the interim deadlines for the sale and activation of location-capable handsets. Therefore, Cellular South is granted relief to: (a) begin selling and activating location-capable handsets no later than September 1, 2003; (b) ensure that at least twenty-five percent of all new handsets activated are location-capable no later than November 30, 2003; (c) ensure that at least fifty percent of all new handsets activated are location-capable no later than May 31, 2004; and (d) ensure that one-hundred percent of all new digital handsets activated are location-capable no later than November 30, 2004. We note that we continue to require Cellular South to comply with the December 31, 2005 deadline to ensure ninety-five percent penetration of location-capable handsets among its subscribers.

43. **Custer Telephone Cooperative, Inc. (Custer):** Custer operates an analog and TDMA network in Idaho and is converting to CDMA.<sup>125</sup> Custer stated that it was deploying a handset-based location solution in conjunction with its conversion to CDMA, scheduled for July 1, 2004.<sup>126</sup> Custer requested that the following deadlines be extended until November 1, 2004: the September 1, 2003 deadline to begin selling and activating location-capable handsets; the November 30, 2003 deadline to ensure that at least twenty-five percent of all handsets sold and activated are location-capable; and the May 31, 2004 deadline to ensure that fifty percent of all handsets sold and activated are location-capable.<sup>127</sup> Custer noted that as of November 1, 2004, all handsets sold will be location-capable,<sup>128</sup> which is ahead of the Commission's November 30, 2004 deadline for ensuring that one-hundred percent of all phones activated are location-capable. Custer further explained that by beginning to sell and activate only capable handsets by its requested date, it will be able to meet the December 31, 2005 deadline to achieve ninety-five percent penetration of location-capable handsets.<sup>129</sup>

44. *Benchmark Relief.* We believe that relief from the interim benchmarks is warranted. While Custer initially requested an additional year to come into compliance, it now requests only minimal benchmark relief. Additionally, we are encouraged by Custer's efforts in working with local PSAPs to ensure a coordinated deployment.<sup>130</sup>

45. We therefore grant Custer's requests to extend the date for initiating the sale and activation of location-capable CDMA handsets from September 30, 2003 until November 1, 2004, the date for ensuring that at least twenty-five percent of handsets activated are location-capable from November 30, 2003 until November 1, 2004, and the date for ensuring that at least fifty percent of

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<sup>125</sup> See Phase II Interim Report and Request for Waiver, CC Docket No. 94-102, filed Oct. 23, 2003, at 3 (Custer Waiver Petition).

<sup>126</sup> See *id.* at 2.

<sup>127</sup> See Supplement to Phase II Interim Report and Request for Waiver, CC Docket No. 94-102 at 1, filed Sept. 10, 2004 (Custer Supplement).

<sup>128</sup> See *id.*

<sup>129</sup> See *id.* Custer originally requested the following relief: (1) to begin selling and activating location-capable handsets by September 30, 2004; (2) ensure that at least twenty-five percent of all new CDMA handsets activated are location-capable by January 1, 2005; (3) ensure that at least fifty percent of all new CDMA handsets activated are location-capable by June 30, 2005; (4) ensure that one-hundred percent of all new CDMA handsets activations are location-capable by December 31, 2005; and (5) ensure that ninety-five percent of all CDMA subscribers have location-capable handsets by December 31, 2006. See Custer Waiver Petition at 4.

<sup>130</sup> See Custer Supplement at 1-2.

handsets activated are location-capable from May 31, 2004 until November 1, 2004. Custer will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

46. **Iowa RSA 2 Limited Partnership dba Lyrix Wireless (Lyrix):** Lyrix operates an analog and CDMA network in Iowa.<sup>131</sup> Lyrix sought a waiver only of the September 1, 2003 deadline for beginning to sell and activate location-capable handsets until November 30, 2003.<sup>132</sup>

47. *Benchmark Relief.* We find that good cause exists to grant Lyrix's request for waiver of the initial benchmark. Lyrix's request for relief is minimal, and Lyrix has shown a plan to achieve full compliance that is within the parameters established by the *Non-Nationwide Carriers Order*, with the exception of this initial benchmark to begin selling and activating location-capable handsets. For these reasons, we find that Lyrix's request would not undermine the overall policy objectives of ensuring access to E911. Accordingly, we grant Lyrix's request for an extension of the deadline to begin selling and activating location-capable handsets from September 1, 2003 until November 30, 2003.

48. **Leaco Rural Telephone Cooperative, Inc. (Leaco):** Leaco provides analog and TDMA-based service in rural New Mexico.<sup>133</sup> Leaco sought the following extensions: (1) from September 1, 2003 to March 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 to March 1, 2005 to ensure that twenty-five percent of all new activations are location-capable; (3) from May 31, 2004 to June 1, 2005 to ensure that fifty percent of all new handset activations are location-capable; and (4) from November 30, 2004 to September 1, 2005 to ensure that one-hundred percent of all new handset activations are location-capable.<sup>134</sup>

49. Leaco decided to transition its TDMA network to CDMA.<sup>135</sup> Leaco selected a handset-based solution, but claimed that the unexpected industry abandonment of TDMA, the unavailability of TDMA handsets, and the need to overhaul its entire network, combined with the technical incompatibility of a network-based solution in its rural service area, left it with no reasonable alternative but to seek a waiver.<sup>136</sup>

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<sup>131</sup> See Petition of Iowa RSA 2 Limited Partnership Petition for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (Lyrix 2003 Waiver Petition).

<sup>132</sup> See Supplement to Petition of Iowa RSA 2 Limited Partnership Petition for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2003 (Lyrix Supplemented Waiver Request). In its initial petition, Lyrix had also requested relief from the November 30, 2003 deadline to ensure that at least twenty-five percent of handsets activated are location-capable, citing concern about the availability of location-capable handsets. See Lyrix 2003 Waiver Petition at 2. Lyrix withdrew that request when it supplemented its waiver filing. See Lyrix Supplemented Waiver Request at 2.

<sup>133</sup> See Interim Report Regarding E911 Phase II Deployment Leaco Cellular, Inc., CC Docket No. 94-102, filed July 31, 2003, at 2 (Leaco July 2003 Interim Report); Leaco Rural Telephone Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 11, 2003, at 2 (Leaco Waiver Petition).

<sup>134</sup> See Amendment to Leaco Rural Telephone Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 31, 2004 at 2 (Leaco Amended Petition).

<sup>135</sup> See *id.* at 2.

<sup>136</sup> See *id.* at iv, 3-5.

50. *Benchmark Relief.* We find that good cause exists to grant the relief requested by Leaco. Leaco has made substantial progress from an initial request that was highly speculative to laying out a clear path to compliance that needs only minimal benchmark relief.<sup>137</sup> We find sufficient evidence that Leaco is making significant effort to achieve full compliance with the Commission's E911 requirements. Additionally, we find that Leaco's diligence in keeping the state and PSAPs in its area informed of its deployment plans warrant this grant of relief.<sup>138</sup>

51. We therefore grant Leaco's requests to: (1) extend the date for initiating the sale and activation of location-capable CDMA handsets from September 1, 2003 until March 1, 2005; (2) extend the date to ensure that twenty-five percent of all new handset activations are location-capable from November 30, 2003 to March 1, 2005; (3) extend the date to ensure that fifty percent of all handset activations are location-capable from May 31, 2004 until June 1, 2005; (4) extend the date to ensure that one-hundred percent of all new handset activations are location capable from November 30, 2004 until September 1, 2005. Leaco will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.<sup>139</sup>

52. **Litchfield County Cellular, Inc. dba Ramcell of Kentucky, LLC (LCC):** LCC provides service in six rural counties in Kentucky, and is upgrading its current TDMA network to CDMA.<sup>140</sup> LCC requested the following extensions: (1) from November 30, 2003 to October 31, 2005 to ensure that twenty-five percent of all new handset activations are location-capable; (2) from May 31, 2004 to February 28, 2006 to ensure that fifty percent of all new handset activations are location-capable; (3) from November 30, 2004 to June 30, 2006 to ensure that one-hundred percent of all new digital handset activations are location-capable; and (4) from December 31, 2005 to January 31, 2007 to ensure that penetration of location-capable handsets among its subscribers reaches ninety-five percent.<sup>141</sup>

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<sup>137</sup> In filings as recent as January 2004, Leaco had not determined to which air interface it planned to migrate. See Second Interim Report Regarding E911 Phase II Deployment, Leaco Rural Telephone Cooperative, Inc., CC Docket No. 94-102, filed Jan. 4, 2004.

<sup>138</sup> See Leaco Amended Petition at 3.

<sup>139</sup> Leaco did not request a waiver of the December 31, 2005 deadline for achieving ninety-five percent handset penetration. However, Leaco expressed concerns about its ability to meet this deadline given its timeframe for its transition to CDMA and the reluctance of its customers to adopt new location-capable handsets. See Second Interim Report Regarding E911 Phase II Deployment, CC Docket No. 94-102, filed Nov. 11, 2003, at 2. In the event that Leaco anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, Leaco should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>140</sup> See Litchfield County Cellular, Inc. Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Aug. 29, 2003 at 1-3 (LCC Waiver Petition). LCC subsequently filed supplemental information and modified its initial waiver request. See Litchfield County Cellular, Inc. Supplement and Request for Further Waiver, CC Docket No. 94-102, filed April 14, 2004 (LCC April 2004 Supplement); Litchfield County Cellular Inc. Interim Report, CC Docket No. 94-102, filed April 19, 2004; Litchfield County Cellular, Inc. Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Dec. 22, 2004 (LCC December 2004 Supplement).

<sup>141</sup> See LCC Waiver Petition at 2; Litchfield December Supplement at 1. LCC reports that it met the October 4, 2004 date to begin selling location-capable handsets. See LCC December 2004 Supplement at 2.

53. LCC maintained that the migration away from TDMA technology by the larger carriers has resulted in reluctance on the part of equipment manufacturers to develop location-capable handsets for the TDMA air-interface.<sup>142</sup> As a result, LCC is transitioning its network to the CDMA air interface, for which location-capable handsets are readily available. LCC claimed that the process will take some time to implement and seeks relief from the Commission's E911 handset requirements as described above.

54. *Benchmark Relief.* We find that good cause exists to grant LCC a limited extension of the interim benchmarks. As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements.<sup>143</sup> The Commission, however, also recognized the need for such carriers to have a plan to achieving full compliance as a factor to be considered in granting additional relief.<sup>144</sup> LCC has such a plan to complete its CDMA upgrade. We also take note of LCC's coordination efforts with its local PSAPs.<sup>145</sup> As LCC states, it routinely meets with the local PSAPs in its area to set and monitor deployment goals for Phase II E911 service.<sup>146</sup>

55. We are concerned, however, by the protracted rollout of location-capable handsets proposed by LCC. While the deployment plan set out by LCC achieves full compliance, it does so eighteen months later than the Commission's Rules require. As we have noted, location-capable CDMA handsets are readily available.<sup>147</sup> Accordingly, we do not believe the extended timeframes proposed by LCC are warranted. While we understand that LCC will need time to deploy its CDMA upgrade, we believe that a more aggressive approach to handset deployment should accompany that rollout. We therefore require that LCC begin activating only location-capable handsets as it completes its CDMA upgrade. This should ensure that consumers in LCC's service area will have access to location-capable handsets as LCC enables the CDMA air interface.

56. We therefore grant in part LCC's request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we extend the date to begin selling and activation location-capable handsets from September 1, 2003 to October 4, 2004; extend the date to ensure that twenty-five percent of all new handsets sold and activated are location-capable from November 30, 2003 to October 31, 2005; extend the date to ensure that fifty percent of all new handsets sold and activated are location-capable from May 31, 2004 to November 30, 2005; and extend the date to ensure that one-hundred percent of all new handset activations are location-capable from November 30, 2004 to December 31, 2005. We believe that these limited extensions are appropriate because, by LCC's estimate, its CDMA upgrade should be substantially complete by the date it is required to ensure that one-hundred percent of all new handset activations are location-capable.<sup>148</sup> If the estimated completion

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<sup>142</sup> See LCC April 2004 Supplement at 4.

<sup>143</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>144</sup> *Id.*

<sup>145</sup> See LCC April 2004 Supplement at 6.

<sup>146</sup> *Id.*

<sup>147</sup> See *supra* ¶ 13.

<sup>148</sup> Specifically, LCC expects the final work to be completed by the second quarter of 2006. See LCC April 2004 Supplement at 5.

date has changed, such that additional relief is necessary,<sup>149</sup> LCC should file an appropriate waiver request.

57. *Handset Penetration.* In light of our decision to grant LCC an extension of the interim benchmark requirements, we correspondingly grant LCC a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location capable handsets. We recognize that LCC will require a sufficient period of time to ensure that the location-capable handsets that it sells and activates are sufficiently integrated into its customer base. Further, LCC notes that the majority of its existing customer base currently has non-location-capable TDMA handsets, and it states that its rural non-prepaid subscribers have historically tended to hold onto their cellular handsets for much longer than customers in larger, metropolitan markets.<sup>150</sup> We acknowledge that LCC faces unique challenges in satisfying the ninety-five percent handset penetration requirement.

58. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>151</sup> We believe that a thirteen-month timeframe should provide LCC with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend LCC's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford LCC an additional thirteen months from these dates to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, LCC must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2007.<sup>152</sup>

59. **Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular (MMC):** MMC operates an analog and TDMA network and is in the process of upgrading to CDMA.<sup>153</sup> MMC requested a waiver to extend both the September 1, 2003 deadline for beginning the sale and activation of location-capable handsets, and the November 30, 2003 deadline for ensuring that at least twenty-five percent of all new handsets activated are location-capable, until the first quarter of 2004.<sup>154</sup> MMC

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<sup>149</sup> We note that LCC originally stated that work would commence in the third or fourth quarter of 2004. *See id.*; LCC Waiver Petition at 3-4. Subsequently, it stated that work would begin in the first quarter of 2005, but did not state whether the delay in commencing construction affected the estimated completion date. *See* LCC December 2004 Supplement at 2.

<sup>150</sup> *See* LCC December 2004 Supplement at 2.

<sup>151</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. *See Non-Nationwide Carriers Order*, 17 FCC Red at 14852-53 ¶ 33.

<sup>152</sup> Because we grant LCC the relief it requested of the handset penetration deadline under our established rules and precedent, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. *See supra* ¶ 11.

<sup>153</sup> *See* Petition of Missouri RSA No. 7 Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (MMC 2003 Waiver Petition).

<sup>154</sup> *See id.* at 1. MMC did not provide a specific date other than stating that it requested relief until the "first quarter" of 2004. We thus assume that it requested relief until March 31, 2004. We caution petitioners to provide specific dates when requesting relief. MMC did not request relief from the May 31, 2004 benchmark to ensure that at least fifty percent of handsets activated are location-capable, or from the November 30, 2004 benchmark to ensure that one-hundred percent of handsets activated are location-capable.