

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

In the Matter of)	
)	
Joint Petition for Suspension)	CC Docket No. 94-102
or Waiver of the Location-Capable)	
Handset Penetration Deadline)	

**JOINT PETITION FOR SUSPENSION OR WAIVER OF THE
LOCATION-CAPABLE HANDSET PENETRATION DEADLINE**

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Pursuant to section 1.3 of the Commission’s rules,^{1/} CTIA - The Wireless AssociationTM (“CTIA”)^{2/} and the Rural Cellular Association (“RCA”)^{3/} (“Joint Petitioners”) hereby request that the Commission suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets to give wireless carriers meeting certain criteria additional time to satisfy the penetration threshold. This relief would be applicable solely to those carriers that have met the requirement in section 20.18(g)(1)(iv) that “100 percent of all new digital handsets activated are location capable,”^{4/} and the Commission would suspend the deadline only as to those carriers that continue to meet the 100 percent activation requirement. Under the CTIA-RCA proposal, the Commission would suspend the rule for a particular carrier until that carrier has reached the 95 percent penetration threshold through customers’ handset replacement and churn, as the Commission originally contemplated in creating this requirement. In the alternative, the Joint

^{1/} 47 C.F.R. § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown . . .”).

^{2/} CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

^{3/} RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services. Member companies offer service in more than 135 rural and small metropolitan markets where more than 14.6 million people reside in the United States.

^{4/} 47 C.F.R. § 20.18(g)(1)(iv).

Petitioners urge the Commission to establish a framework based on the criteria described below to guide its consideration of carriers' requests for waiver of the 95 percent penetration deadline.

INTRODUCTION AND SUMMARY

Good cause exists to suspend the 95 percent handset penetration deadline in section 20.18(g)(1)(v) or, in the alternative, to establish a reasonable set of criteria for wireless carriers seeking waivers of the rule. This limited relief is necessary to ensure that wireless customers who do not want to replace their non-location capable handsets are not needlessly burdened, and that wireless carriers that have made a good faith effort to comply with the Commission's rules are not penalized as a result of factors that the Commission and carriers could not have anticipated when the handset penetration deadline was established. For example, customer churn is considerably lower for many carriers than expected, which means that users are keeping their handsets for longer periods. Moreover, wireless carriers now have the benefit of their experience with consumers' actual behavior and have learned that a significant percentage of wireless customers, primarily the "peace of mind" customers who limit their wireless calls to just a few per month, are reluctant to obtain a new handset and familiarize themselves with its operation.

As discussed more fully below, many consumers do not see the point of replacing functioning handsets every year or two, even when wireless providers offer free phones. The process of learning new features, reformatting speed dials and other settings, and purchasing accessories often outweighs location capability. This reluctance is especially understandable given that Phase II E911 service is not available in the majority of U.S. counties -- due primarily to the lack of public funding that has prevented PSAPs from implementing Phase II E911 capabilities. The Commission should not force consumers to give up their handsets unwillingly. Instead, it should suspend the penetration deadline for all wireless carriers that have shown a

good faith effort to comply with the rules by satisfying the 100 percent digital activation requirement. Alternatively, the Joint Petitioners urge the Commission to establish a waiver framework that takes into account the multiple reasons that carriers may not be able to reach the 95 percent penetration threshold by December 31, 2005.

I. BACKGROUND

Implementation of the Commission's wireless E911 requirements has proven to be far more complex and costly than any of the stakeholders anticipated when the Commission first defined these requirements.^{5/} Indeed, the Commission itself has "recognized that the E911 deployment schedule was aggressive in light of the need for further technological advancement . . ."^{6/} Nevertheless, by investing significant resources in the deployment of E911, especially the Phase II location capabilities, the wireless industry has made enormous progress in meeting its obligations. Unfortunately, primarily because of funding deficiencies, many PSAPs have been unable to keep pace with the wireless carriers' Phase II E911 implementation. As reported in the Wall Street Journal last month, only six states and the District of Columbia have accomplished the upgrades necessary to receive and utilize location data sent by wireless callers

^{5/} See, e.g., *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services*, Dale N. Hatfield, at 18-20 (rel. October 16, 2002) ("*Hatfield Report*") ("Despite my long experience in the industry and my general familiarity with the issues surrounding the deployment of wireless E911, I did not fully appreciate the complexity of the task facing the Nation until I undertook this inquiry. There is complexity in every dimension.").

^{6/} *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14842 ¶ 5 (2002) ("*Non-Nationwide Stay Order*") (citing *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58 (2000)).

in most places in the state.^{7/} Sixteen states have upgraded less than ten percent of their counties and six of those have not finished a single county.^{8/}

Most wireless carriers using handset-based location technologies have been very diligent in meeting the Commission's benchmarks, and today are fully compliant with the requirement that all new digital handsets they activate are location capable.^{9/} Nevertheless, because consumer behavior has differed from the Commission's assumptions regarding churn and handset replacement, it has become clear that the majority of these carriers will not be able to satisfy the 95 percent penetration threshold by the end of this year. The simple fact is that, notwithstanding promotional campaigns and other carrier efforts, more than five percent of wireless consumers are reluctant to exchange their non-location capable handsets for GPS-equipped phones.

The primary hurdle to handset exchanges is that Phase II E911 service is not yet available in most U.S. communities. Wireless customers are reluctant to go to the trouble to acquire location-capable handsets when they know that the PSAP will not be able to use the data the handset generates. This is especially true for customers that rarely leave their home community. Absent that threshold incentive, many users are satisfied with their familiar older cell phones. As the Commission recognized in establishing the location-capable handset phase-in schedule, "the benefits of ALI [automatic location identification] to public safety will be realized only to

^{7/} Anne Marie Squeo, *Cellphone Hangup: When You Dial 911, Can Help Find You?*, WALL ST. J., May 12, 2005, at A1 ("Cellphone Hangup").

^{8/} *Id.*

^{9/} See, e.g., Verizon Wireless Quarterly Report, CC Docket No. 94-102, at 1 (filed April 29, 2005) ("As of December 31, 2003 all of the handset models Verizon Wireless sells are GPS-capable of transmitting location."); Sprint Corporation Quarterly Report, CC Docket No. 94-102, at 7 (filed May 2, 2005) ("Sprint set a new standard for the industry by becoming the first carrier to effectively meet the Commission's 100% new activation requirement during the third quarter of 2003."); ALLTEL Communications, Inc. Quarterly Report, CC Docket No. 94-102, at 2 (filed May 2, 2005) ("ALLTEL has substantially complied with the May 31, 2004 threshold requirement that 100% of all new digital handset activations must be ALI capable . . .").

the extent that PSAPs upgrade their systems to receive and use the additional information ALI provides for 911 calls.”^{10/}

Even when the PSAP has upgraded its equipment to receive location data, moreover, there are some consumers who do not want the hassle of transferring speed dial and contact lists and learning the new features that a new handset would entail. Although a carrier may offer a free phone, wireless subscribers often do not want to buy accessories, such as chargers, headsets, and ear buds, or replace a car kit. Indeed, carriers have reported to CTIA and RCA that 15 percent or more of their customer base may not replace handsets within the “industry average” period of 18 to 24 months.^{11/} Similarly, although the Commission expressly relied on customer churn in setting the penetration deadline,^{12/} customers are not leaving their wireless providers at nearly the rates anticipated. As the Commission had hoped, the implementation of wireless number portability on November 24, 2003 focused carriers’ attention on providing better service and greater customer satisfaction. It would be ironic, indeed, if the Commission were to punish carriers for their very success in pleasing their legacy base of customers.

Consumer resistance to swapping out handsets is especially acute in sparsely populated rural areas, where many wireless subscribers use three watt analog phones to overcome coverage obstructions and increase the range of service. Regardless of any incentives offered by the

^{10/} *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, CC Docket No. 94-102, ¶ 40 (1999) (“*E911 Third R&O*”).

^{11/} *Id.* ¶¶ 50-51.

^{12/} In 1999, the Commission found that with an admittedly optimistic churn estimate of 24 percent per year (*i.e.*, two percent per month), and with high projections of new sales and retrofits, 100 percent of handsets would be ALI-capable within three years, “without extraordinary measures being taken by carriers.” *E911 Third R&O* ¶ 50. The Commission also cited another report estimating 25.63 percent annual churn leading only to a 73 percent penetration level over four years. *Id.* As befits a competitive industry, the wireless industry has focused on increasing customer satisfaction (and lowering churn) below the rates estimated by the Commission. Moreover, as noted above, while churn *on average* may equal 100 percent of handsets over a three year period, there is a significant cohort of users who have not replaced their handsets three years later.

carrier, customers are often unwilling to trade in their powerful analog phones for a digital handset that, even with a car kit, will offer less coverage. Not surprisingly, the answer is a resounding “no” when these customers are asked to give up their analog phones even when it is explained that they will not be able to take advantage of the location technology available in the new handset.

The Commission already has acknowledged that the continued use of three watt analog phones is a factor affecting a carrier’s ability to meet the December 31, 2005, handset penetration benchmark.^{13/} Specifically, in its *Tier III Waiver Order*, the Commission indicated that it was “sympathetic” to this issue for carriers and relied on it as a basis for granting an extension of the December 31, 2005 deadline for Tier III carriers.^{14/} While the Commission has appropriately identified the problem and provided some necessary relief, its focus solely on small carriers is misplaced. Carriers of all sizes serve rural areas where the range of a 3 watt analog phone with an external antenna may provide superior service.^{15/}

Carriers can go to great lengths to market and discount new phones with Phase II location capabilities, but if wireless customers are satisfied with their handset and carrier, and their local PSAP is not capable of supporting Phase II E-911 service, customers have no reason to replace an existing handset with one that is substantially similar but for the addition of GPS capability.

^{13/} See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, FCC 05-79, ¶¶ 68, 70 (rel. Apr. 1, 2005) (“*Tier III Waiver Order*”); see also *id.* ¶ 79, n.203.

^{14/} *Id.* ¶ 72; see also *id.* ¶ 103.

^{15/} Notably, in 2002, the Commission decided to retain until February 2008 the requirement that cellular carriers provide analog service partially on the ground that “certain consumers may not have readily available and accessible economic or technological alternatives to analog service.” *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, 17 FCC Rcd 18401, ¶¶ 22, 24 (2002). The Commission, therefore, presumably is aware that many consumers in rural areas will continue to use analog service and analog handsets for at least two and a half more years.

Just as the Commission recognized several years ago that consumers should not have to suffer the inconvenience associated with giving up their wireless phone numbers when they switch carriers, it should understand that many consumers would be greatly inconvenienced were they forced to replace their perfectly functional handsets.^{16/}

In addition to customer reluctance to turn in older phones, wireless carriers have encountered a variety of technical and business obstacles in their efforts to satisfy the 95 percent handset penetration benchmark. For example, customers of wireless carriers that have near-term plans to switch from one network technology to another (*e.g.*, TDMA to CDMA) are extremely reluctant to “upgrade” to an ALI-capable handset that is compatible with the soon to be replaced network. Further, network technology changes are sometimes the result of a merger or acquisition, at which time the affected carriers have to concentrate on consolidating all systems and operations, as well as over-building existing facilities. In addition, some carriers have encountered unforeseen problems with handset technology, which has slowed their efforts to put location-capable phones in the hands of all their customers. As the Commission noted in 2003, circumstances may arise “where deployment of E911 might not be technically or economically feasible within the scheduled time periods.”^{17/}

^{16/} See *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation; Telephone Number Portability*, Memorandum Opinion and Order, WT Docket No.01-184, CC Docket No. 95-116, 17 FCC Rcd 14972, ¶¶ 15-18 (2002).

^{17/} *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Reconsideration of Phase II Waivers and Compliance Plans of Cingular Wireless, Nextel, and Verizon Wireless, Petitions for Reconsideration of Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers of Alltel and Dobson*, Order, CC Docket No. 94-102, 18 FCC Rcd 21838, ¶ 3 (2003) (“*Non-Nationwide Carrier E911 Order*”).

II. THE PUBLIC INTEREST WOULD BE SERVED BY GRANTING LIMITED RELIEF TO CERTAIN WIRELESS CARRIERS

A. The Commission Should Suspend the Handset Penetration Deadline for Carriers that Have Satisfied the 100 Percent Digital Activation Requirement

Most wireless carriers today employing a handset-based Phase II E911 solution are fully compliant with the benchmarks set forth in section 20.18(g), with the exception of the last requirement that they achieve a location-capable handset penetration rate of 95 percent by December 31, 2005.¹⁸ It is unlikely that many wireless carriers will be able to rectify this situation in the next six months. As described above, however, this inability to meet the penetration deadline does not stem from wireless carriers' failure to work conscientiously to roll out Phase II service. To the contrary, the vast majority of carriers have contended with overwhelming technology challenges and delays by other E911 stakeholders, and yet have managed with surprising success to achieve the regulatory objectives the Commission established well before location-based technology was commercially available. The main problem carriers are now encountering is that subscribers are more satisfied with their existing handsets -- and their carriers -- than the Commission expected when it set December 31, 2005, deadline. The Commission should not penalize carriers for their success in satisfying customers.^{19/}

¹⁸ Even though 100% of all wireless handsets provided by carriers for new activations may be location capable, there are some customers who insist on using a non-location-capable phone that they bring to the carrier for activation.

^{19/} See *Analysis of the E911 Challenge*, Prepared by Monitor Group and sponsored by the National Emergency Number Association (Dec. 2003) at 45 (“[T]hose providers with significantly lower churn relative to their competitors may be differentially penalized due to higher potential liabilities associated with forced handset replacement”). Dale Hatfield similarly reported that wireless carriers believed that “their lower churn rate was a sign of customer satisfaction and that, in order to meet handset deployment requirements, they would have to offer deeper discounts on handsets to meet their rollout targets. They claimed, in effect, that they were being penalized for their success.” Based in part on these concerns, Hatfield agreed with the notion that “additional flexibility – rather than rigid rules – may, in some cases at least, actually facilitate the rollout of wireless E911 services.” *Hatfield Report* at 44-45.

When it established its December 31, 2005 deadline, the Commission did not foresee that the 95 percent penetration rule would not comport with market realities or customer desires. Enforcing it now, against the backdrop of these realities, would put wireless carriers in the position of forcing their subscribers to take actions that they are not ready, and affirmatively do not want, to take. If a farmer in Nebraska likes the power and range of his three watt analog phone, and the local PSAP does not support Phase II E 911 service, why should a carrier wrest it from him solely to meet a federal benchmark? If a grandmother in Pennsylvania uses her wireless phone exclusively to save money on toll calls to her kids, does it make sense to require her to learn how to program their numbers into a fancy new state-of-the-art handset? Such a requirement is especially arbitrary when the PSAPs in the communities in which the farmer and grandmother live have not yet implemented location technology in their part of the E911 network.²⁰

The actions the U.S. government took in mandating the installation of seatbelts (like E911, a significant public safety initiative) in the 1960s provide an apt analogy. In that situation, the National Highway Traffic Safety Administration adopted a set of seatbelt implementation standards for passenger cars manufactured after the date of the requirement, but it did not ban all cars without seatbelts from the road or force consumers to purchase new vehicles. Rather, it merely required that all new automobiles sold satisfy the new standards. The Commission, likewise, should not require wireless subscribers to throw away handsets that they've had for only three to five years.

²⁰ For information on state-by-state deployment of Phase II capabilities, see the National Emergency Number Association website, <http://nena.ddti.net/Reports/report6.asp> (last visited June 21, 2005).

For these reasons, CTIA and RCA urge the Commission to give wireless carriers additional time to meet the 95 percent handset penetration deadline. To ensure that its requested relief excludes any wireless carrier that has willfully disregarded the Commission's E911 requirements, the Joint Petitioners propose that this relief be granted only to carriers that are in compliance as of December 31, 2005 with the requirement that 100 percent of all new digital handset activations are location-capable.^{21/}

CTIA and RCA further propose that the Commission's rule suspension last no longer than necessary to reflect the circumstances of a particular wireless carrier's customer base. Many carriers are very close to satisfying the 95 percent penetration benchmark, and require only a few additional months to swap out the requisite number of phones. Other carriers are further behind because they serve a larger analog customer base or are facing unique technology challenges. The requested suspension would apply on a narrowly tailored, carrier-by-carrier basis.

B. In the Alternative, the Commission Should Establish a Framework To Analyze Handset Penetration Waiver Requests from Individual Carriers

If the Commission declines to grant a general suspension of the handset penetration rule for wireless carriers who are unable to meet the deadline, the Joint Petitioners urge it to adopt clear guidelines for carriers seeking waivers of the rule. In particular, CTIA and RCA propose a three-part framework for streamlining the waiver request and review process: (1) the carrier would have to make an initial "threshold" showing that it has made a good-faith effort to comply with the Commission's E911 Phase II interim deployment requirements and other FCC E911 implementation rules; (2) the carrier would have to demonstrate that it has satisfied at least one

^{21/} Of course, carriers that can satisfy the Commission's standard for a waiver of its rules would still be able to obtain relief upon a sufficient showing.

of several established factors that would justify grant of the waiver;²² and (3) a carrier meeting the first two criteria would be granted additional time to achieve the 95 percent penetration benchmark, with the amount of time allowed depending on the individual carrier's circumstances.

Waiver Request Part I: Initial Showing

Most wireless carriers have exercised a good-faith effort to comply with the Commission's E911 Phase II requirements by meeting and often exceeding the interim benchmarks, and through these actions, they inextricably are on course toward meeting the 95 percent benchmark. Those carriers that have demonstrated a sincere effort to comply with the Commission's rules – such as by satisfying the following factors -- should be entitled to relief from the December 31, 2005 deadline.^{23/}

1. Interim deployment benchmarks. Carriers would be required to demonstrate that they have made a good faith effort to meet the Commission's interim handset deployment benchmarks, including the requirement that 100 percent of new digital handsets activated are ALI-capable for those carriers that have not obtained a waiver of this requirement.

2. Deadlines for implementing Phase II service. Carriers also would be required to demonstrate their progress in meeting PSAP deployment deadlines by submitting to the Commission their currently pending log of PSAP E911 Phase II deployment requests.

²² Carriers should not, however, be precluded from making their own showings that unique circumstances beyond their control justify an extension of time to satisfy the handset penetration requirement.

^{23/} On April 1, 2005, the FCC adopted an order granting ACS Wireless, Cellular Phone of Kentucky, Litchfield County Cellular, Inc. d/b/a Ramcell of Kentucky, Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc. (Sagebrush Carriers), South Canaan Cellular, Brazos Cellular, and Wilkes Cellular, extensions of the interim benchmark requirements, and correspondingly granted these carriers a limited extension of the December 31, 2005 deadline for ensuring that 95 percent of their subscribers have location-capable handsets. *See Tier III Waiver Order.*

Waiver Request Part 2: Factors Justifying Grant Of A Waiver

In addition to the initial showing, criteria that show legitimate reasons for grant of a waiver would include *any* of the following:

1. Lower-than-forecast churn

Carriers that can demonstrate that their churn rate is substantially less than the Commission anticipated should be expected to take longer to reach the 95 percent threshold. As noted above, the Commission relied on the existence of churn rates of almost 25 percent per year to establish its handset penetration deadline.^{24/} No carrier should be penalized for reducing churn.

2. Customer resistance to new handsets

Closely related to churn is the empirical evidence carriers have gathered that demonstrates there is a significant cohort of customers who are satisfied with their existing handsets and are not willing to exchange or “trade up” to a new device. The Commission should not put carriers in the position of forcing consumers to change handsets – especially when a new wireless device typically requires the customer to learn new functions and operating systems, transfer speed dial and other information stored in the device’s memory, change out car kits, and purchase new accessories such as chargers, cases, and ear buds. Specifically, in supporting a waiver request, carriers should be allowed to demonstrate to the Commission that, although they have had adequate supply of location-capable handsets for all customers requesting them, more than five percent of their legacy customers have not changed out handsets in over three years.

3. Substantial compliance

Notwithstanding considerable hurdles, wireless carriers have made significant efforts to provide ALI-capable handsets to their subscribers and most are moving steadily toward the 95 percent penetration threshold. Carriers who can demonstrate substantial compliance, defined as 85 penetration of ALI-capable handsets in their installed base on December 31, 2005, should be given additional time to meet the 95 percent threshold.

^{24/} E911 Third R&O ¶ 50.

4. *Technology change*

Carriers who are in the process of switching from one network technology to another (e.g., moving from TDMA to GSM or CDMA) should not be required to implement Phase II service in an old network, only to scrap that effort in favor of the migrated network. A carrier should not be put in the position of forcing customers to exchange their existing handsets for an ALI-capable handset when the carrier has near-term plans to replace its technology.^{25/} Likewise, carriers who have recently changed from one network technology to another should not be expected to have met the interim benchmarks that preceded the network conversion date.

5. *Technology glitch*

The Commission has recognized that there “could be circumstances where deployment of E911 might not be technically or economically feasible within the scheduled time periods, and stated that these cases could be dealt with through individual waivers.”^{26/} Technology failures are clearly beyond the scope of any good faith planning for E911 Phase II deployment. An unanticipated, demonstrated network or handset failure should therefore be a basis for the grant of a waiver.

6. *Analog coverage in very rural markets*

In many rural markets, three-watt analog service provides an important role in bridging coverage gaps. The 2004 *ENHANCE 911 Act*^{27/} establishes a special waiver standard for Tier III carriers, requiring the Commission to consider the impact of their rules on access to emergency services. As noted above, however, carriers of all sizes operate in rural markets and all of them are encountering customer resistance to replacing analog handsets. Accordingly, carriers in rural markets should be able to cite their customers’ continued reliance on analog service to qualify for a waiver of the handset penetration deadline.^{28/}

^{25/} The FCC also should provide waivers for technology changes as part of an acquisition/merger, particularly where the transaction comes late in the schedule of deployment thresholds, *i.e.*, within 18 months of the December 31, 2005 deadline.

^{26/} *Non-Nationwide Carrier E911 Order* ¶ 3.

^{27/} National Telecommunications and Information Administration Organization Act -- Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

^{28/} In this regard, the Commission recently noted that “[w]hile [it is] sympathetic to [small carriers’] explanation that their subscribers prefer the longer-range analog handsets, [it does] not think a permanent waiver is consistent with maximizing consumers’ access to emergency services.” The Commission stated, however, that it “remain[s] open . . . to a more limited waiver should [a carrier] demonstrate that one is warranted.” *Tier III Waiver Order* ¶ 72.

7. Coordination with PSAP deployment schedules

The Commission has encouraged wireless carriers to work cooperatively with PSAPs in deploying E911 service on a schedule that takes into account both parties' needs, and it has granted waivers in such situations.^{29/} To the extent a carrier using a handset-based location technology can demonstrate that it has come to an agreement with the relevant PSAP for an alternative penetration deadline, the Commission should consider that agreement when assessing the carrier's waiver request.

Waiver Request Part 3: Relief

The nation's PSAPs are still far away from providing ubiquitous E911 Phase II coverage. Based on the latest information provided on NENA's web site, E911 Phase II service is not available in the majority of U.S. counties.³⁰ As the Wall Street Journal noted recently, "[p]ublic safety officials estimate it would take \$8 billion and at least four more years to modernize the nation's 911 system for wireless calls."^{31/} That \$8 billion may not be forthcoming anytime soon considering that "cash strapped states have diverted funds earmarked for 911 to balance budgets and pay for unrelated items, including winter boots and dry cleaning for the New York State Police."^{32/} Although this state of affairs plainly is not the fault of the PSAPs, it helps explain the difficulty wireless carriers are encountering in attempting to convince their customers to trade their existing handsets for ALI-capable phones.

For the reasons set forth above, the Joint Petitioners propose that when a wireless carrier has satisfied the *Initial Showing*, and has demonstrated any of the *Factors Justifying Grant of a Waiver*, the Commission grant it sufficient additional time to comply with the 95 percent handset penetration benchmark. This proposed waiver framework would provide a rational, cooperative approach to continued Phase II rollout, and gives carriers some degree of certainty about the

^{29/} See *id.*

³⁰ See note 18, *supra*.

^{31/} See *Cellphone Hangup*, *supra*.

^{32/} *Id.*

Commission's expectations. Carriers should not, however, be precluded from making their own showings that unique circumstances beyond their control justify an extension of time to satisfy the handset penetration benchmark.^{33/}

^{33/} Carriers also should be able to seek alternative forms of relief, such as excluding from the penetration calculation any handset that is more than two years old.

CONCLUSION

For the foregoing reasons, CTIA and RCA respectfully request that the Commission suspend the 95 percent ALI-capable handset penetration deadline for any wireless carrier whose digital wireless activations are 100 percent location-capable as of December 31, 2005. In the alternative, the Joint Petitioners urge the Commission to establish a framework that sets forth clear criteria for assessing individual carrier waiver requests and allows carriers a meaningful opportunity to demonstrate that they are entitled to relief.

Respectfully submitted,

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