

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

*In the Matter of* )  
 )  
*Joint Petition for Suspension* ) WT Docket No. 05-288  
*or Waiver of the Location-Capable* )  
*Handset Penetration Deadline* )

**INITIAL COMMENTS OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS  
SUPPORTING THE JOINT PETITION FOR SUSPENSION OR WAIVER OF  
THE LOCATION-CAPABLE HANDSET PENETRATION DEADLINE**

The National Association of Regulatory Utility Commissioners (“NARUC”), which represents the interests of those State officials charged with, *inter alia*, oversight of the operation of telecommunications service providers operating in their respective States, respectfully files these comments in support of the petition filed, pursuant to section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,<sup>1/</sup> by CTIA - The Wireless Association<sup>TM</sup> and the Rural Cellular Association. NARUC has been recognized by Congress<sup>2</sup> and the Courts<sup>3</sup> as an appropriate representative for State commission interests.

The petition asks the Commission to 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.

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

<sup>2</sup> See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; Cf., 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

<sup>3</sup> See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff’d* 672 F.2d 469 (5th Cir. 1982), *aff’d en banc on reh’g*, 702 F.2d 532 (5th Cir. 1983), *rev’d on other grounds*, 471 U.S. 48 (1985).

According to the petition, at pages 1-2, the FCC should:

- Waive the December deadline only for carriers that have met, and continue to meet, the §20.18(g)(1)(iv) requirement that 100 percent of all new digital handsets activated are location capable until that particular carrier<sup>4</sup> has reached the 95 percent penetration threshold through customers' handset replacement and churn;
- Alternatively, establish a framework based on specific criteria to guide consideration of requests for waiver of the 95 percent penetration deadline.
- Continue the requirement that 100 percent of all new digital handset activations be equipped with location-capable technology.

At NARUC's July Summer Committee Meetings in Austin, Texas, the Board of Directors approved a *Resolution Regarding the Suspension or Waiver of the December 31, 2005 Deadline for 95 Percent Penetration of Location-Capable Handsets*. A copy of that resolution is attached to these comments as Appendix A. According to the resolution:

- The FCC should "carefully consider the Joint Petition filed by the RCA and the CTIA;"
- "NARUC agrees that the FCC should suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets until the 2008 termination of the requirement to provide analog services;" *and*
- "[A]lternatively, NARUC supports establishing a waiver framework that reflects the reasons why a carrier may not be able to reach the 95 percent penetration requirements by the current deadline based upon carrier-specific justifications for granting of the waiver."

In support of these positions, NARUC states as follows:

### **DISCUSSION**

Good cause exists to suspend the 95 percent handset penetration deadline in section 20.18(g)(1)(v) or, alternatively, 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

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<sup>4</sup> The petition is clear that the 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.

who do not want to replace their non-location capable handsets for safety reasons are not needlessly burdened. The FCC established this deadline with the intent that carriers could reach 95% penetration through handset replacement and churn. However, customer churn has not occurred at the levels originally projected.

Both safety and convenience factors impede progress towards this deadline. Phase II E911 service is not available in the majority of U.S. counties. Only six states and the District of Columbia have accomplished the upgrades necessary to receive and utilize location data sent by wireless callers in most places within the state. Sixteen states have upgraded less than ten percent of their counties and six of those have not finished a single county.<sup>5</sup> Some customers are understandably reluctant to upgrade to location-capable handsets until the PSAP can use the data the handset generates.<sup>6</sup> Nor does it make sense to require such customers to do so. Requiring customers to change out their handsets in areas that do not yet have wireless E911 service available provides no benefit to the customer. Even in those areas where the PSAP upgrades have been completed, some consumers will not want to go through the hassle of replacing a functioning handset. The process of learning new features, reformatting speed dials and other settings, and purchasing accessories often outweighs location capability.

This is particularly true for customers in rural areas. Rural residents with three watt analog phones are unlikely to want to exchange them for digital phones that frequently offer less

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<sup>5</sup> Squeo, Anne Marie, *Cellphone Hangup: When You Dial 911, Can Help Find You?*, WALL ST. J., May 12, 2005, at A1.

<sup>6</sup> The Commission 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. *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, & 79, n.203. (rel. Apr. 1, 2005); This order note's that the FCC 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. *Id.* ¶ 72 and ¶ 103. Limiting this waiver to small carriers ignores the fact that carriers of all sizes serve rural areas where the range of a 3 watt analog phone with an external antenna may provide superior service.

coverage.<sup>7</sup> For many, the change to a digital location-capable handset will decrease, not increase, customer safety due to weak signal coverage in some rural areas.

Indeed, one reason the FCC required carriers to continue to provide analog services until 2008 was to allow sufficient time for carriers to enhance coverage in areas where digital coverage is currently insufficient. The December 31, 2005 replacement deadline all but eliminates the option of an analog phone for rural customers that prefer a handset that is much more likely to complete calls in areas where carriers have not yet enhanced digital coverage. While carriers are working to improve coverage for the new digital networks,<sup>8</sup> those efforts will not be complete by the December 2005 deadline. In the interim, customers should be allowed to choose which type of cellular handset provides them with the best safety features and accessibility to cellular phone service. With an appropriate waiver in place, these customers could choose to continue use of their analog handsets until at least 2008.

If the FCC chooses not to suspend the December 2005 deadline, it should, as the petition suggests, establish a waiver framework "...that reflects the reasons why a carrier may not be able to reach the 95 percent penetration requirements by the current deadline based upon carrier-specific justifications for granting of the waiver."

The petition proposes 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

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<sup>7</sup> As the petition points out at pages 7-8, "[c]onsumer 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 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."

<sup>8</sup> See, e.g., Cingular Invests \$225 Million to Enhance Service Quality and Expand Coverage in North, East and West Texas Tuesday August 16, 9:57 am ET PRESS RELEASE Company to Build 160 Cell Sites to Better Serve its ALLOVER(SM) Network Customers DALLAS, Aug. 16 /PRNewswire/ -- Cingular Wireless, the country's largest wireless provider, announced it will invest about \$225 million during 2005 to install 160 new cell sites throughout its North Texas market as part of a \$6.2 billion commitment to enhance and expand its ALLOVER(SM) network\* nationwide. URL: <http://biz.yahoo.com/prnews/050816/cltu027.html?v=21> (August 16, 2005)

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 of several established factors that would justify grant of the waiver; 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.

NARUC's resolution does not discuss the components of the petitions' proposed waiver framework directly. Rather it suggests that the commission, whether granting the generic suspension for compliant carriers or choosing to act via case specific waiver requests, consider the following facts as part of its deliberations:

- Many wireless customers in rural America will not immediately benefit by strictly adhering to the current E911 rules, which will require many to involuntarily surrender their otherwise safe, reliable and usable wireless handsets; *and*
- Strictly adhering to the current E911 rules might in fact decrease the level and availability of wireless E911 service to certain wireless customers in rural America.

Whatever process the Commission chooses to address this issue, it should not result in forcing consumers to give up their handsets unwillingly. As the petitioners point out at ??? – “... [t]he 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.”

NARUC supports suspension of 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.

## CONCLUSION

For the foregoing reasons, NARUC respectfully requests 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, NARUC urges the FCC to establish a waiver framework with criteria for assessing individual carrier waiver requests.

*Respectfully Submitted:*

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## APPENDIX A

### *Resolution Regarding the Suspension or Waiver of the December 31, 2005 Deadline for 95 Percent Penetration of Location-Capable Handsets*

**WHEREAS**, On June 30, 2005, the Rural Cellular Association (RCA) and CTIA petitioned the Federal Communications Commission (FCC) to suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets used by a wireless carrier's customers until the carrier can reach that penetration through handset replacement and churn; *and*

**WHEREAS**, Alternatively, the petition asks the FCC to establish a waiver framework that accounts for why carriers may not be able to comply by the current deadline and identifies several reasons, including (i) Phase II E911 service is not available in most communities; customers are understandably reluctant to upgrade to location-capable handsets until the PSAP can use the data the handset generates; (ii) customers in rural areas are reluctant to give up three watt analog phones for digital phones that will offer less coverage; and (iii) customer churn, which the FCC relied upon in setting the deadline, has not occurred at the levels originally projected; *and*

**WHEREAS**, One reason the FCC required carriers to continue to provide analog services until 2008 was to allow sufficient time for carriers to enhance coverage in areas where digital coverage is currently insufficient; *and*

**WHEREAS**, Customers in rural areas continue to need higher-powered analog phones to complete calls, and for many, the change to a digital location-capable handset will decrease, not increase, customer safety due to weak signal coverage in some rural areas; *and*

**WHEREAS**, The 95 percent penetration deadline of December 31, 2005 affects the ability of customers who prefer to use analog phones to continue to use them up until the 2008 deadline and beyond for the provisioning of analog services; *and*

**WHEREAS**, Customers should be allowed to choose which type of cellular phone provides them with the best safety features and accessibility to cellular phone service; *and*

**WHEREAS**, The FCC should take into consideration the many wireless customers in rural America who will not immediately benefit by strictly adhering to the current E911 rules, which will require many to involuntarily surrender their otherwise safe, reliable and usable wireless handsets; *and*

**WHEREAS**, Requiring customers to have location-capable handsets in areas of the country that do not yet have wireless E911 service available does not benefit the customer and does not warrant the cost of involuntarily replacing customers' handsets; *and*

**WHEREAS**, The FCC should take into consideration that strictly adhering to the current E911 rules might in fact decrease the level and availability of wireless E911 service to certain wireless customers in rural America; *and*

**WHEREAS**, Carriers should be required to continue to ensure that 100 percent of all new digital handset activations be equipped with location-capable technology, thus ensuring the continued increase of location- capable handsets; *now therefore be it*

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its July 2005 Summer Meetings in Austin, Texas, urges the FCC to carefully consider the Joint Petition filed by the RCA and the CTIA; *and be it further*

**RESOLVED**, That NARUC agrees that the FCC should suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets until the 2008 termination of the requirement to provide analog services; *and be it further*

**RESOLVED**, That alternatively, NARUC supports establishing a waiver framework that reflects the reasons why a carrier may not be able to reach the 95 percent penetration requirements by the current deadline based upon carrier-specific justifications for granting of the waiver; *and be it further*

**RESOLVED**, That the NARUC General Counsel shall file comments and take appropriate actions to further the intent of this resolution.

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*Sponsored by the Telecommunications Committee and Consumer Affairs Committee  
Adopted by the NARUC Board of Directors July 2005*