

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

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

COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

The South Dakota Public Utilities Commission (“SDPUC”) submits these comments in support of the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline (“Joint Petition”) filed by the Rural Cellular Association (“RCA”) and CTIA. In their Joint Petition, RCA and CTIA request that the Commission suspend its December 31, 2005 deadline for 95 percent penetration of location-capable handsets used by a wireless carrier’s customers. Pursuant to section 1.3, the Commission may suspend this rule for good cause.¹ The SDPUC believes that good cause exists to suspend the rule.

I. BACKGROUND

The Commission’s rule requires that wireless carriers who employ handset-based location technology to phase in the deployment of Phase II enhanced 911 (“E911”) service must achieve 95 percent penetration of location-capable handsets among their subscribers by December 31, 2005.² Phase II requires wireless carriers to deliver latitude and longitude location information to

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 20.18(g)(1)(v). Section 20.18(g)(1) provides as follows:

g. *Phase-in for handset-based location technologies.* Licensees subject to this section who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

(i) Begin selling and activating location-capable handsets no later than October 1, 2001;

(ii) Ensure that at least 25 percent of all new handsets activated are location-capable no later than December 31, 2001;

(iii) Ensure that at least 50 percent of all new handsets activated are location-capable no later than June 30, 2002; and

a Public Safety Answering Point (“PSAP”).³ One of the ways to meet Phase II requirements is through handset-based location technologies as opposed to network-based technologies.⁴ Handset based technologies require carriers’ customers to obtain new or upgraded Automatic Location Identification (“ALI”)-capable handsets.⁵ In addition to the 95% penetration of location-capable handsets, the Commission requires that 100 percent of all new digital handsets that are activated by carriers must be location-capable no later than December 31, 2002.⁶

The Commission’s goal of increasing customer safety through the use of ALI-capable handsets is certainly laudable. However, the SDPUC is concerned that an unintended consequence for some customers will be the exact opposite of the Commission’s goal and result in the *decrease* of certain customers’ safety. The SDPUC believes this is especially true for those customers who reside in rural, sparsely populated areas such as South Dakota. As explained in more detail below, this is the SDPUC’s main reason for supporting the Joint Petition.

II. SUSPENSION OF THE DEADLINE IS IN THE PUBLIC INTEREST

The switch to ALI-capable digital handsets is resulting in the elimination of analog phones. However, the reality is that customers in rural areas continue to need higher-powered analog phones to complete calls. This is due to the fact that, for many customers, digital signal strength is not sufficient to allow the completion of a cell phone call. The SDPUC is particularly concerned about the ability of these customers to make emergency calls. The only way for these customers to reach emergency personnel may be through the use of a three watt analog phone.

(iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than December 31, 2002, and thereafter.

(v) By December 31, 2005, achieve 95 percent penetration of location-capable handsets among its subscribers.

(vi) Licensees that meet the enhanced 911 compliance obligations through GPS-enabled handsets and have commercial agreements with resellers will not be required to include the resellers’ handset counts in their compliance percentages.

³ In the Matter of 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*, FCC00-326, para. 7 (2000).

⁴ *Id.* at para. 8.

⁵ *Id.*

⁶ 47 C.F.R. § 20.18(g)(1)(iv).

The SDPUC recognizes that the Commission's goal was to increase public safety by mandating 95% compliance. Yet the Commission must also recognize that it does a customer little good to have a digital phone capable of pinpointing the customer's location if there is insufficient, or zero, digital signal strength to complete the emergency call.

The SDPUC is not only concerned about the ability to make calls to emergency personnel but also the capability of customers to place calls that promote their safety and general welfare. The SDPUC notes that employees of the state of South Dakota routinely rely on "bag phones" to do their jobs. Other examples include customers who make calls to service stations when they experience car trouble. In addition, as a rural state, many South Dakota farmers rely on their higher watt analog phones to make calls while in their fields. Moreover, the SDPUC has heard from numerous cellular customers who rely upon their higher-powered analog phones in order to make calls, which, while not emergency calls, are still very beneficial to the customers' business or personal lives.

The SDPUC further points out that the Commission has required carriers to continue to provide analog services until 2008.⁷ In an order issued in 2002, the Commission found that the requirement that carriers provide analog compatibility would be discontinued after a five year transition period.⁸ The Commission found that a transition period was necessary because not all customers would have alternatives to analog service.⁹ In its discussion regarding the ability of emergency-only customers to continue to receive service, the Commission noted that "in some geographic areas in which digital coverage is currently insufficient, a transition period will allow carriers time to enhance coverage."¹⁰

By requiring 95 percent of handsets to be location capable by this December, the Commission is forcing customers who live in areas where digital coverage is still insufficient to

⁷ *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 (2002).

⁸ *Id.* at para. 22.

⁹ *Id.*

¹⁰ *Id.* at para. 24.

switch to a less reliable way to communicate. For example, in order to meet the deadline, wireless carriers are refusing to enter into new contracts with customers who wish to continue to use their analog phones. Carriers might continue to provide service under old contracts, but the customer is then unable to take advantage of new offerings. Moreover, these customers are unable to switch providers, since by switching, customers will very likely be forced to give up their analog phones. This is at odds with the Commission's decision to continue to require the provisioning of analog services until at least 2008 -- a transition that was required, in part, to allow carriers time to enhance their digital coverage. For those areas in South Dakota where digital coverage remains insufficient, the analog phone user is relegated to "second-class customer" status who is unable to switch carriers or take advantage of new offerings. Or the customer makes the switch to a digital phone and must contend with a diminished ability to complete a call.

As the Petitioners have pointed out, the Commission has already acknowledged that customers' desires to continue to use their three watt analog phones affect the carriers' ability to meet the deadline.¹¹ The SDPUC agrees with the Petitioners that this concern should not be limited to small carriers. In South Dakota, a highly rural state, our two largest wireless carriers are Alltel and Verizon. Customers who use these carriers are just as likely to want to continue to use their analog phones as customers who use smaller carriers.

Another fact that weighs in favor of granting a suspension is the relative scarcity of PSAPS that are able to provide Phase II E911 service. The Petitioners noted that a recent report found that "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 in the state."¹²

¹¹ The Petitioners state that in the Commission's *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." Joint Petition at 6 (*citing 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, paras. 68, 70, 72 (rel. Apr 1, 2005)).

¹² Joint Petition at 3-4.

In April of 2005, only three South Dakota counties had some level of Phase II E911 service.¹³ Given this reality, it is understandable that a customer sees little advantage in switching to a location-capable handset that would currently provide the customer no increase in safety, and could very well result in a decrease in safety. The SDPUC notes that it is this type of information that demonstrates why *customers* should be allowed to decide when it is in their best interests to switch phones.

Finally, the SDPUC points out that if the Commission were to suspend or waive the December 2005 deadline, this waiver would not affect the carriers' current obligation to ensure that 100 percent of all new digital handset activations are equipped with location-capable technology. This requirement will result in the continued increase of location-capable handsets. This requirement, along with customers choosing to replace their handsets, will allow carriers to eventually meet the 95% penetration requirement, while permitting customers the ability to choose the right phone for them.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD ESTABLISH A WAIVER FRAMEWORK

The Petitioners' alternative request is that if the Commission declines to grant a general suspension of the handset penetration rule, the Commission should "adopt clear guidelines for carriers seeking waivers of the rule."¹⁴ The Petitioners propose the following framework:

- (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 of several established factors that would justify grant of the waiver; and

¹³ South Dakota Office of Emergency Management, South Dakota 9-1-1 Status Map (April 2005).

¹⁴ Joint Petition at 10.

(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.¹⁵

The SDPUC believes that this framework would be beneficial to carriers who need to seek waivers because they are unable to meet the December deadline. The SDPUC also notes with approval that one of the factors listed by the Petitioners that could justify a waiver is a carrier's customers' continued reliance on analog service in order to bridge coverage gaps.¹⁶ In addition, another factor could be that the carrier "has come to an agreement with the relevant PSAP for an alternative penetration deadline...."¹⁷ The adoption of a framework would not only assist the carriers, but would also assist the Commission when faced with the task of evaluating a waiver request.

IV. CONCLUSION

Based on the above comments, the SDPUC respectfully requests that the Commission suspend its December 31, 2005 deadline for 95 percent penetration of location-capable handsets used by a wireless carrier's customers. In the alternative, the SDPUC requests that the Commission establish a framework that will give carriers guidance on the requirements for obtaining individual waivers.

Respectfully submitted,

/s/

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¹⁵ *Id.* at 10-11.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 14.

CERTIFICATE OF SERVICE

I hereby certify that copies of the Comments of the South Dakota Public Utilities Commission were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 18th day of October, 2005.

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