

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Joint Petition of CTIA – The Wireless) WT Docket No. 05-288
Association and the Rural Cellular)
Association for Suspension or Waiver of)
the Location-Capable Handset) CC Docket No. 94-102
Penetration Deadline)
)

To: The Commission

**COMMENTS OF
SOUTHERNLINC WIRELESS**

By:

Christine M. Gill
David D. Rines
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
T: 202.756.8000
F: 202.756.8087

Michael D. Rosenthal
Director of Legal and External Affairs
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Attorneys for SouthernLINC Wireless

Dated: October 21, 2005

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Joint Petition of CTIA – The Wireless Association and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline)	WT Docket No. 05-288
)	
)	CC Docket No. 94-102
)	

To: The Commission

COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits its comments in support of the above-captioned Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline.¹ As an initial matter, SouthernLINC Wireless notes that it submitted an individual request for a limited waiver of this deadline on July 26, 2005, which is still pending before the Commission. SouthernLINC Wireless therefore clarifies that its participation in this proceeding should not be construed as having any effect on the timing of the Commission’s review of SouthernLINC Wireless’s pending waiver request.²

¹ / Wireless Telecommunications Bureau Requests Comment on Joint Petition of CTIA and RCA Regarding the December 31, 2005 Deadline for Licensees Employing a Handset-based E911 Phase II Location Technology to Achieve Ninety-five Percent Penetration of Location-Capable Handsets Among Their Subscribers, WT Docket No. 05-288, *Public Notice*, DA 05-2678, released October 7, 2005 (“*Public Notice*”).

² / Similarly, SouthernLINC Wireless hereby reserves the right to request additional relief, as appropriate, in accordance with any Commission action resulting from this proceeding.

I. OVERVIEW OF SOUTHERNLINC WIRELESS

SouthernLINC Wireless is a wholly owned subsidiary of Southern Company, which is a registered holding company under the Public Utility Holding Company Act of 1935. As a CMRS provider, SouthernLINC Wireless operates a digital 800 MHz ESMR system using Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

SouthernLINC Wireless provides these services to approximately 298,000 subscribers in a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless service provider in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. SouthernLINC Wireless is a "qualified Tier III carrier" as that term is defined in Section 107 of the *ENHANCE 911 Act*.³

On July 26, 2005, SouthernLINC Wireless filed with the Commission an individual request for a limited waiver of the deadline for achieving ninety-five percent penetration of location-capable handsets among its subscriber base.

II. THE PUBLIC INTEREST WOULD BE SERVED BY GRANTING THE RELIEF REQUESTED IN THE JOINT PETITION

SouthernLINC Wireless agrees with CTIA, the Rural Cellular Association (RCA), and the National Association of Regulatory Utility Commissioners (NARUC) that good cause exists for the Commission to suspend the ninety-five percent handset penetration deadline for those

³ / National Telecommunications and Information Administration Organization Act – Amendment, Publ. L. No. 108-494, 118 Stat. 3986 (2004) ("*ENHANCE 911 Act*").

carriers that have met the requirement that “100 percent of all new digital handsets activated are location-capable”⁴ until such time as the carrier reaches the ninety-five percent threshold through customers’ handset replacement and churn – the method originally contemplated by the Commission when it established the handset deployment benchmarks.⁵

Adoption of these measures would serve the public interest by enabling wireless carriers who have consistently made a good faith effort to comply with the Commission’s rules to continue focusing their efforts on getting more location-capable handsets into the hands of consumers, while at the same time ensuring that wireless consumers are not needlessly burdened by being compelled to replace perfectly functional handsets with newer handsets that, depending on where the consumer is located, may not be able to deliver E911 Phase II service or may not even be capable of providing any service whatsoever.

A. Factors Affecting Handset Penetration Levels

When the Commission initially established its handset deployment and penetration benchmarks in 1999, it relied on the assumption that carriers would be able to meet the final penetration benchmark through the normal operations of the market; specifically, through customer churn.⁶ However, the final date for achieving near-total penetration of location-capable handsets was established on the basis of what the Commission itself admitted was an optimistic estimate of the projected impact of customer churn,⁷ and, as demonstrated in numerous carrier filings over the past year, it has since become clear that real-world consumer behavior has

⁴ / 47 C.F.R. § 20.18(g)(1)(iv).

⁵ / See CTIA/RCA Joint Petition at 2; NARUC Comments at 2.

⁶ / *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388 (1999) (“*Third Report and Order*”) at ¶¶ 50 – 52.

⁷ / *Id.*

differed from the Commission's assumptions of six years ago. Furthermore, the Commission's assumptions in the *Third Report and Order* failed to account for the fact that a significant percentage of each carrier's customer base remains with that same carrier for three years or more, and this segment is thus unaffected by churn.

Another significant impediment has been, and continues to be, consumer choice – a factor over which neither the carriers nor the Commission have much control. Unlike the Bell system telephones of fifty years ago, wireless handsets are the property of the consumer, and the decision of whether to replace a handset therefore lies solely with the consumer. It has been the experience of SouthernLINC Wireless that many consumers are very resistant to replacing their existing handsets with newer location-capable handsets, even when the newer handsets are made available at little or no cost to the consumer. Many of these consumers see no reason to undergo the burden of learning new functions, menus, and features, transferring stored information such as telephone numbers and speed dial settings, and changing out accessories such as chargers, car kits, etc., when their existing handsets remain fully functional and already satisfy their communications needs.

Many of SouthernLINC Wireless's subscribers also place a high value on certain characteristics of their existing handsets that are not yet available on the newer location-capable handsets, such as durability and higher transmit wattage. A number of SouthernLINC Wireless's subscribers currently use 1 watt handsets or 3 watt vehicle-mounted units that provide greater range and coverage than any of the available location-capable handsets, which operate at a transmit power of only 0.6 watts. Users of these higher-power handsets include utility, government, and public safety subscribers who place a high priority on the ability to communicate in rural and remote areas, often under harsh conditions. Such consumers have little

incentive to upgrade to a lower-power location-capable handset that, due to weaker signal coverage, could actually decrease their access to any communications services whatsoever, let alone their access to emergency services.⁸

Further, as NARUC and CTIA/RCA have pointed out, there is little incentive for consumers to replace functioning handsets in order to take advantage of the safety benefits of location capability when Phase II service is not even available in many parts of the country, even for those with location-capable handsets.⁹ For example, while SouthernLINC Wireless has timely responded to all PSAP Phase I and Phase II service requests it has received, fewer than twenty percent of the PSAPs in SouthernLINC Wireless's service area are capable of receiving its Phase II data (and fewer than half have even submitted requests for Phase I service). Such low PSAP deployment levels make it highly problematic for SouthernLINC Wireless to tout safety benefits as a reason for its customers to replace their existing handsets.

Finally, some wireless carriers have encountered serious and unexpected technical difficulties beyond their control that, in spite of these carriers' best efforts, have severely hampered their ability to achieve the requisite level of ninety-five percent penetration by the Commission's current December 31, 2005 deadline. For example, as the Commission is well aware, the nation's three iDEN carriers – SouthernLINC Wireless, Sprint Nextel, and Nextel Partners – have been forced to contend with a manufacturer's software glitch that instantly rendered hundreds of thousands of customers' A-GPS handsets incapable of delivering location

⁸ / As SouthernLINC Wireless noted in its July 26, 2005 Request for Waiver, its experience in this respect is similar to that of wireless carriers with customers who prefer to use higher-power analog equipment due to concerns over signal range and coverage. However, SouthernLINC Wireless's customers are using digital handsets that are not subject to any "phase out" requirements and which could remain operationally viable for years, particularly given the ruggedized nature of much of the equipment in question.

⁹ / See, e.g., NARUC Comments at 3; CTIA/RCA Joint Petition at 4.

information.¹⁰ In order to fix this problem, these carriers have had to undertake a tremendous effort that requires “touching” each affected handset in order to restore its location-capability, thus dealing these carriers a significant setback in their efforts to achieve maximum penetration of location-capable handsets among their subscribers.¹¹

B. The CTIA/RCA Proposal Provides an Appropriate Means for Achieving Handset Penetration While Protecting Consumer Interests

Overall, most, if not all, of the nation’s wireless carriers – including SouthernLINC Wireless – have been diligent in meeting the Commission’s Phase II E911 requirements and have expended substantial time and resources in their efforts to bring E911 Phase II capabilities to as many of their customers as possible. Nevertheless, for the reasons discussed above, many of these carriers will not be able to achieve ninety-five percent penetration of location-capable handsets among their subscribers by the Commission’s December 31, 2005 deadline.

By the same token, strict enforcement of the current deadline would be contrary to the public interest. Carriers who have been diligent in fulfilling their E911 responsibilities would be compelled to divert substantial time, money, and resources to contend with enforcement actions rather than focusing these resources on continuing to improve handset penetration levels and digital service coverage, thus depriving consumers of the very benefits that the Commission seeks to confer. Consumers would also be needlessly burdened by being compelled to replace functioning handsets that have served them well with new handsets that, given the current level of PSAP Phase II deployment, confer little if any additional benefit.

¹⁰ / See, e.g., SouthernLINC Wireless Request for Waiver (filed July 26, 2005); Sprint Nextel Request for Limited Waiver (filed September 29, 2005); Nextel Partners Petition for Limited Waiver (filed October 17, 2005).

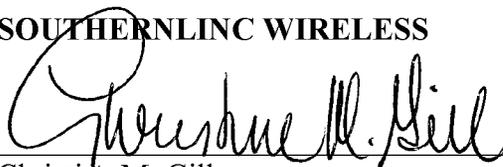
¹¹ / *Id.*

Therefore, the Commission must find a way to ensure the continued deployment of E911 Phase II location-capable handsets without needlessly burdening wireless consumers or depriving them of access to wireless communications services. SouthernLINC Wireless submits that the proposal set forth in the CTIA/RCA Joint Petition and supported by NARUC – namely, to suspend the ninety-five percent penetration deadline for carriers that have met the 100 percent new activation requirement until this level is achieved through customer handset replacement and churn – represents a rational and reasonable solution that will achieve these goals.

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

SOUTHERNLINC WIRELESS



Christine M. Gill

David D. Rines

McDERMOTT WILL & EMERY LLP

600 Thirteenth Street, N.W.

Washington, D.C. 20005-3096

T: 202.756.8000

F: 202.756.8087

Michael D. Rosenthal

Director of Legal and External Affairs

SouthernLINC Wireless

5555 Glenridge Connector, Suite 500

Atlanta, GA 30342

T: 687.443.1500

Its Attorneys

Dated: October 21, 2005