

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

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

**Farmers Mutual Cooperative Telephone Company Petition for Temporary and Limited Waiver
of Section 20.18(g)(1)(v) of the Commission's Rules**

Farmers Mutual Cooperative Telephone Company ("Farmers"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby requests a temporary and limited waiver of the deadline for achieving a 95 percent penetration rate for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission's Phase II E911 ("Phase II") rules.² Farmers is fully compliant with its Phase II E911 obligations and continues to devote substantial resources and personnel to its attempts to meet the December 31, 2005 deadline for achieving 95 percent penetration of location-capable handsets. However, deployment of Phase II capability to all of its customers has been particularly difficult for Farmers as it works to reach the Commission's 95 percent location-capable handset benchmark due to customer unwillingness to switch to location-capable phones. As outlined below, Farmers is pursuing an aggressive deployment plan in order to convince its remaining customers to switch their handsets in as timely a manner as possible, but Farmers must respectfully request an extension of the Commission's December 31, 2005 95 percent penetration deadline until December 31, 2007.

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. § 20.18(g)(1)(v).

I. Background

Farmers is a small, Tier III³ commercial mobile radio service (“CMRS”) provider offering service in remote portions of rural Idaho and small portions of Oregon on the Idaho border. Specifically, Farmers holds the FCC authorization to offer broadband Personal Communications Services (“PCS”) “E Block” service in BTA050 (Boise, Idaho) under call signs WPQN986 and WPYS683. Farmers is implementing Phase II E911 using a handset-based solution that utilizes handsets with automatic Global Positioning System (“A-GPS”) capabilities. In order to comply with the FCC’s Phase II E911 requirements, Farmers has pursued a new software load in its Nortel switch, hardware upgrades, and automatic location information (“ALI”)-capable handsets. In the second quarter of 2005, Farmers had finished the needed Phase II upgrades to its code division multiple access (“CDMA”) network and began selling and activating handsets with A-GPS-based automatic location identification (“ALI”) capabilities. In Farmers’ rural service area, this solution has proven to be quite effective and Farmers has met all of the Commission’s handset sale and activation benchmarks to date. Farmers provides Phase II service to one Public Safety Answering Point (“PSAP”) in its service area that is capable of utilizing the Phase II data sent by Farmers’ CDMA system. Farmers serves three other PSAPs, none of which has requested either Phase I or Phase II service. Farmers has been working with these three PSAPs in order to encourage them to upgrade to Phase II functionality, but does not expect them to upgrade anytime soon.

As of October 20, 2005, 61 percent of Farmers’ customers had converted to ALI-capable handsets. Based on its past experience promoting location-capable handsets (discussed *infra*), Farmers anticipates that over 70 percent of its customers will have upgraded to ALI-capable handsets by December 31, 2005. As discussed in more detail *infra*, Farmers has gone to great lengths to encourage

³ See *in re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, FCC 05-79 at n. 12 (April 1, 2005) (“*Tier III Relief Order*”) (defining Tier III carriers as non-nationwide CMRS providers with no more than 500,000 subscribers as of the end of 2001).

its customers to upgrade to location-capable phones. However, a large number of Farmers' 2157 customers have demonstrated an unwillingness to upgrade their handsets and use the Phase II features available on Farmers' CDMA network. Accordingly, Farmers must request a waiver of the FCC's Phase II 95 percent penetration deadline.

II. Despite Farmers' Efforts, Customer Unwillingness to Switch Handsets Necessitates a Request for Relief

In the *Tier III Relief Order*, the Commission established revised Phase II handset deployment deadlines for many Tier III Carriers.⁴ Most of these carriers, many of them rural, received extensions of most Phase II handset sale and activation deadlines.⁵ Farmers, a Tier III carrier that operates under similar circumstances as many of the Tier III carriers who were granted waiver relief by the *Tier III Relief Order*, had not planned on needing a waiver of the 95 percent penetration deadline. However, Farmers recently determined that it will not be able to convert 95 percent of its customers to ALI-capable handsets by the Commission's December 31, 2005 deadline. Farmers did not expect so many of its customers to be so reluctant about trading in their old handsets for new handsets with more features.

As stated *supra*, Farmers encouraged many of its customers to migrate to the new digital network beginning in the second quarter of 2005. In the Spring of 2005, Farmers sent 500 of its customers who had yet to upgrade a letter offering them a free location-capable handset if they would choose to upgrade their old handset. 200 out of these 500 customers upgraded their phones. Farmers has since talked to many of these customers who insist on keeping their old phones regardless of the public safety benefits of new, location-capable phones. In fact, 57 of Farmers' customers still use their

⁴ See generally *Tier III Relief Order*.

⁵ *Id.*

original Qualcomm 2700 handsets that were offered five years ago when Farmers began providing service in rural Idaho.⁶

Converting the remaining customer “holdouts” has proven to be extremely difficult. A customer that does not respond to free phones with vital public safety benefits is particularly burdensome to convert. These customers state that they are happy with their phones and their features and, in many cases, do not want to take the time to learn how to operate a new phone. For example, one customer with a malfunctioning version of the outdated Qualcomm 2700 handset asked to replace it with the very same model even when offered a new, lighter, and ALI-capable handset.⁷ While Farmers is confident that it can eventually convince most, if not almost all, of its holdout customers to upgrade their phones, it simply cannot convince these holdouts by the end of the year and needs additional time to persuade these customers to switch.

Farmers has a concrete plan to achieve the 95 percent benchmark. Farmers plans to vigorously lobby the remaining holdout customers. Farmers will send a new promotional letter to its remaining holdout customers in the next two or three weeks that will emphasize the emergency benefits of upgraded handsets and again offer a free phone. Farmers also plans to contact, by phone if necessary, each and every holdout that does not respond to the planned letter in order to explain the need to upgrade to ALI-capable handsets.⁸ Farmers is prepared to offer one month of free service to the final holdouts if that is what it takes to convince them to change over to a new, location-capable handset.

As has been Farmers’ experience so far with over 60 percent of its customer base willingly switching to new handsets, time and continued education regarding the public safety and other features

⁶ The Qualcomm 2700 handset is a bulky phone that is about three times the size and weight of today’s mobile phones.

⁷ In this particular case, Farmers was eventually able to convince this customer not to keep the malfunctioning Qualcomm 2700 handset and to accept a new, location-capable handset.

⁸ Farmers believes that individualized phone conversations will be necessary in order to convince many of these customers of the safety benefits of location-capable phones, especially customers that live in areas that do not have PSAPs with Phase II capabilities. Farmers will have to explain that the location capabilities of ALI-capable mobile handsets will be available in many areas outside of such customers’ immediate residential area.

available on new handsets will eventually convince the remaining customers to switch to an ALI-capable handset. While normal churn accounted for most of Farmers' customers upgrading to location-capable handsets in a timely manner, Farmers has found that it has had to expend considerable effort in working to convert the remaining customers who will not upgrade their handsets in spite of their public safety benefits. When the Commission developed the 95 percent benchmark, it noted that there were "consumers that may wish to continue to use their non-ALI capable handsets, even if newer handsets provide location as well as other advanced features."⁹ As discussed *supra*, Farmers has a significant number of such customers and has had to develop a concrete plan to convert them. Based on Farmers' experience so far in converting customers, Farmers expects that it could take up to two years to convert the significant number of holdouts who have not responded to the generous offer of a free handset. Accordingly, Farmers requests a limited extension of two years until December 31, 2007 to convince its remaining holdout customers to upgrade to location-capable handsets and meet the 95 percent penetration benchmark set forth in Section 20.18(g)(1)(v) of the Commission's rules.

III. Farmers' Phase II Schedule Is Consistent with Community Expectations and Demonstrates a Clear Path to Full Compliance

In its *Tier III Relief Order*, the Commission strongly encouraged carriers to coordinate their Phase II implementation efforts with affected public safety agencies "to ensure that the expectations of the public safety agencies are aligned with the carriers' deployment plans."¹⁰ The Commission has granted requests for waiver when there is an indication "of a close working relationship" between the carrier and affected PSAPs.¹¹ There are four PSAPs in Farmers' service area and Farmers has been in continuous contact with each of them as well as the Oregon and Idaho state E911 managers throughout

⁹ *In re 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, FCC 00-326 (September 8, 2000).

¹⁰ *Tier III Relief Order* at ¶ 173.

¹¹ *In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless*, Order, FCC 05-188 at ¶ 18 (November 3, 2005) ("*SouthernLINC Order*").

Farmers' Phase II implementation process. As stated above, Farmers has been working to get the three, non-Phase II ready PSAPs up to Phase II speed.

Farmers has contacted all of its affected PSAPs concerning its need for additional time to meet the 95 percent penetration benchmark and intent to file this request for waiver. Further, Farmers has contacted its state E911 coordinators to make them aware of Farmers need to file the instant waiver and they are sympathetic to Farmers' situation. Farmers will continue to keep the PSAPs up to date about Farmers' progress in meeting the 95 percent benchmark.

Farmers has been able to meet all its handset sale and activation benchmarks established in the FCC's July 26, 2002 *Non-Nationwide Carriers Order*¹² and did not, like many other Tier III carriers, seek extensions beyond that. The FCC recently found that meeting its location-capable handset sale and activation benchmarks demonstrates effort on the part of the carrier to comply with the ultimate ninety-five percent penetration mark.¹³ The FCC also stated that ensuring that 100 percent of all new digital handsets activated are location-capable is an "important step."¹⁴ Farmers has met all of its important Phase II steps so far and continues to work with its state and local E911 authorities to keep them informed of Farmers' Phase II progress.

In its *Tier III Stay Order*, the Commission also requested "substantial evidence that the relief is as narrowly tailored as possible or that the petitioner has put in place a clear path to compliance."¹⁵ In the *Tier III Relief Order*, the Commission granted relief where carriers were able to provide the

¹² See *in re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, FCC 02-210 (July 26, 2005) ("*Non-Nationwide Carriers Order*").

¹³ *In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Petitions for Waiver of Enhanced 911 Phase II Requirements*, Order, FCC 05-182 at ¶ 17 ("*Five Petitioners Order*").

¹⁴ *Id.*

¹⁵ *In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102, Order to Stay, FCC 03-241 at ¶ 17 (October 10, 2003) ("*Tier III Stay Order*").

Commission with a “concrete, specific plan.”¹⁶ As discussed *supra*, Farmers has demonstrated a clear path to full compliance that includes 1) offering free location-capable handsets; 2) a new letter campaign highlighting the safety benefits of location-capable handsets; and 3) individualized contacting of the remaining holdouts that do not respond to the free phone offer and letter campaign. This concrete and aggressive plan should enable Farmers to achieve 95 percent penetration by December 31, 2007.

IV. Farmers Satisfies the “ENHANCE 911 Act” Waiver Standard

The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers’ requests for relief from the 95 percent penetration deadline for location-capable handsets if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”¹⁷ Farmers’ situation meets this *ENHANCE 911 Act* standard. Specifically, in order to meet the Commission’s 95 percent benchmark by the end of the year, Farmers would essentially have to cut off service to many of those customers who have refused so far to upgrade their handsets. Denying service to a portion of these customers to meet the 95 percent benchmark would be ludicrous, denying these customers access to basic emergency mobile communications.¹⁸

V. Farmers Satisfies Other Relevant Standards for Waiver of the Commission’s Rules

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.¹⁹ The Commission has already recognized that wireless carriers may face difficulties in meeting the FCC’s E911 deadlines. In the FCC’s *Fourth Memorandum Opinion and Order* (“*Fourth MO&O*”), the Commission recognized that there would be instances when “exceptional

¹⁶ *Tier III Relief Order* at ¶ 169.

¹⁷ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) (“*ENHANCE 911 Act*”).

¹⁸ In many areas served by Farmers, Farmers is the only mobile carrier that provides coverage.

¹⁹ 47 C.F.R. § 1.3.

circumstances” would cause a delay in a wireless carrier’s ability to become Phase II compliant.²⁰ In its most recent *Tier III Relief Order*, the Commission granted general relief in cases where carriers provided the Commission with “sufficient and specific factual information.”²¹ Farmers’ waiver petition, as illustrated by the discussion *supra*, demonstrates exceptional and unexpected circumstances encountered by a small, rural carrier with customers unwilling to upgrade their handsets despite the incentives that Farmers has provided. As set forth below, the instant petition satisfies the applicable waiver standards.

Section 1.925(b)(3) of the Commission’s rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²²

Under these standards, grant of the requested waiver is warranted.

The Commission enacted Section 20.18(g) for the underlying purpose of ensuring that wireless E911 will meet fundamental public safety needs “as quickly as reasonably possible.”²³ Farmers, as a small, rural carrier, has been successful in upgrading its network to an ALI-capable CDMA network as quickly and as reasonably as can be expected for a Tier III carrier. As discussed *supra*, Farmers has met its location-capable handset deadlines to date. Farmers’ request for additional time to convert the remaining laggards is reasonable in light of the tremendous efforts Farmers has made to so far to

²⁰ *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 at ¶ 43 (2000) (“*Fourth MO&O*”).

²¹ *Tier III Relief Order* at ¶ 169.

²² 47 C.F.R. § 1.925(b)(3).

²³ *Fourth MO&O* at ¶ 17.

persuade these customers to exchange their outdated handsets for *free*, location-capable handsets. It would be inequitable and unduly burdensome for the Commission to require Farmers to go beyond its plan to achieve full compliance outlined above, which includes free handsets, potential offers of free service, and individualized lobbying, in order to almost immediately convert its remaining holdouts who refuse to give up using their beloved handsets. Because these remaining customers have not yet responded to Farmers' generous upgrade offer, Farmers has no reasonable alternative but to seek a temporary and limited waiver.

The underlying purpose of the Commission's Phase II rules to "ensure that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible"²⁴ will be frustrated by strict enforcement of the December 31, 2005 deadline. Specifically, if Farmers is forced to stop service to customers that refuse to upgrade in spite of free phones, these customers will not be able to reach *any* emergency services. Thus, it is in the public interest for the Commission to grant Farmers additional time to convert these remaining customers pursuant to Farmers' concrete plan discussed *supra*.

²⁴ *SouthernLINC Order* at ¶ 2.

VI. Conclusion

Based on the foregoing, Farmers respectfully requests that the Commission grant Farmers a temporary and limited waiver of Section 20.18(g)(1)(v) of its rules as requested herein.

Respectfully submitted,

**FARMERS MUTUAL
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DECLARATION OF J. JAY GARRETT

I, J. Jay Garrett, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Farmers Mutual Cooperative Telephone Company.
2. I have read the foregoing "Petition for Temporary and Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules." I have personal knowledge of the facts set forth herein, and believe them to be true and correct.


J. Jay Garrett

Nov. 14, 2005
Date