

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	
E911 Requirements for IP-Enabled Service Providers	)	WC Docket No. 05-196
	)	
CoreComm Voyager, Inc.	)	
Petition for Extension and Limited Waiver	)	

**PETITION FOR EXTENSION OF TIME AND LIMITED WAIVER**

CoreComm Voyager, Inc. (“Voyager”), pursuant to Section 1.3 of the Commission’s Rules,<sup>1</sup> requests that the Commission grant a limited waiver extending the time for it to comply with the obligations imposed on Voyager pursuant to Commission Rules 9.5(b) and 9.5(d) adopted in the *First Report and Order* in the above-captioned proceedings.<sup>2</sup> As explained in detail below, despite having made progress toward meeting the requirements of the *VoIP E911 Order*, Voyager will be unable to comply fully for all of its customers by the November 28, 2005 deadline. Accordingly, Voyager requests a nine month extension of time, but may require additional time depending on the specifics of the VoIP E911 deployment as explained herein, to comply with those obligations. Voyager also requests expedited consideration of this Petition.

**I. DESCRIPTION OF THE PETITIONER**

Voyager is a regional provider of integrated traditional and “next gen” Internet and other mission-critical technologies. Voyager currently serves approximately 120,000 residential and

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 & 05-196, FCC 05-116 (released June 3, 2005) (“*VoIP E911 Order*”). Commission Rule 9.5 (b) and (c), 47 C.F.R. §§ 9.5(b) and (c), implementing the VoIP E911 Order are scheduled to take effect on November 28, 2005.

commercial dial-up and broadband Internet customers throughout the Company's Midwest region. Voyager is a new entrant into the interconnected VoIP provider services ("IVSP") market. Voyager began to provide service in September 2005. Currently, Voyager provides IVPS on a resold basis to approximately 160 customers which are primarily located in selected metropolitan areas within the Midwest United States.

Voyager's VoIP service is portable; so long as a Voyager customer has access to broadband Internet access, the customer can make use of the service anywhere in the United States or the world. Customers may obtain their broadband Internet access from Voyager, but they are not required to do so. Voyager also allows customers located in one geographic area to use telephone numbers that are associated with another area.

Voyager has provided a further description of its service offerings, with specific emphasis on its VoIP E911 deployment, in its compliance report submitted on the same date as this Petition.<sup>3</sup> Pursuant to the definitions adopted in the *VoIP E911 Order*, Voyager is a provider of interconnected Voice over Internet Protocol ("VoIP") services, as the company: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment ("CPE"); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.<sup>4</sup>

With respect to collection of data and customer interaction, Voyager has made substantial efforts to comply with the Commission's Rules. Specifically, although Voyager is a new entrant provider, Voyager has met all of the affirmative acknowledgment requirements set forth in 47

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<sup>3</sup> See Letter to Marlene H. Dortch, Secretary, FCC from Eric J. Branfman, Counsel for Voyager Voyager, Inc., WC Docket Nos. 04-36 and 05-196 (filed November 28, 2005) ("*Voyager Compliance Report*").

<sup>4</sup> See 47 C.F.R. § 9.3.

C.F.R. § 9.5(e). Furthermore, as part of the subscription process, Voyager currently requires all of its subscribers to submit Registered Location information. To the extent that a customer's registered location cannot be properly processed, Voyager takes the following steps:

- Emails the customer indicating that action needed, along with a required action date.
- Voice Mail is inserted into the customer's voice mail box
- Customers are called by live agents stating the action to be taken.
- Should no action be taken, service will be interrupted. An interruption message will be played on any inbound and outbound traffic
- Should the customer fail to take any action, service is interrupted until the 911 customer has submitted a registered location.

Currently, Voyager believes that it has accurate registered location information for all of its customers.

With respect to connectivity, however, Voyager is a reseller of interconnected VoIP services which must rely on Broadvox, Voyager's interconnected VoIP services provider for services, including the provision of E911. Like other resellers, Voyager does not directly control or have access to any of the network or facilities through which its services are provided. As a result, Voyager cannot directly provide E911 services. For that reason, Voyager continues to work closely with its underlying VoIP provider to provide E911.

Based upon inquiries to Broadvox, Voyager understands that since the release of the *VoIP E911 Order*, Broadvox, and its third party E911 provider HBF, have been working to comply with the Commission's new rules and the E911 service requirements established in 47 C.F.R. § 9.5 (b) and (c). Despite those efforts, however, Voyager understands that its E911 service will not be in full compliance with the requirements of the *VoIP E911 Order* by the Commission's November 28, 2005 deadline and that additional time is required to implement an E911 solution for all of its customers. Moreover, despite Voyager's best efforts to obtain

information from its upstream provider, Voyager has not yet been able to confirm with precision the full extent to which the 911 service being provided is in compliance with the Commission's rules. Voyager's VoIP provider has provided a rough estimate, subject to further confirmation from its E911 provider, that its services are approximately 30 percent in compliance and that full compliance should be achievable by the end of the year. However, Voyager, together with its vendor, is implementing an E911 solution that will comply with the *VoIP E911 Order*.

Based on its discussions with and commitments from its vendor, Voyager currently estimates that it will require an additional nine months to make E911 service available in all areas in which it operates. However, this estimate is predicated on the fact that HBF, the underlying VoIP E911 network provider on which Voyager's vendor relies, will have full E911 coverage in place. Given that Voyager must rely on the efforts of its upstream providers, deployment of E911 is beyond Voyager's ability to control.

## II. SPECIFIC WAIVERS REQUESTED

Voyager respectfully requests a limited waiver allowing it a nine month extension of time to implement the following requirements of the *VoIP E911 Order*:

- 1) The requirement to transmit all 911 calls, in all geographic regions served by the Wireline E911 Network, along with the ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority.<sup>5</sup>
- 2) The requirement to route all 911 through the use of ANI and, if necessary, pseudo-ANI.<sup>6</sup>
- 3) The requirement to provide the Registered Location to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.<sup>7</sup>

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<sup>5</sup> See 47 C.F.R. § 9.5(b)(2).

<sup>6</sup> See 47 C.F.R. § 9.5(b)(3).

<sup>7</sup> See 47 C.F.R. § 9.5(b)(4).

- 4) The requirement to obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized and provide end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service.<sup>8</sup>
- 5) To the extent necessary, Voyager seeks limited waiver of Section 9.5(b)(1) of the rules to permit Voyager to continue to market interconnected VoIP service and sign up new customers during the nine month period of additional time that Voyager needs to comply with the requirements of Sections 9.5(b) and (c) of the rules.<sup>9</sup>

### III. STANDARD OF REVIEW

Section 1.3 of the Commission's Rules states that the Commission may waive its rules for good cause, which has been interpreted to exist when the facts of a particular case make strict compliance inconsistent with the public interest and when the relief requested will not undermine the policy objective of the rule in question.<sup>10</sup> To prevail, a petitioner must demonstrate that application of the challenged rule would be inequitable, unduly burdensome, or contrary to the public interest.<sup>11</sup>

The Commission's approach to requests for waivers in the wireless area is illustrative. Section 1.925(b)(3) of the Commission's Rules is comparable to Section 1.3. It provides that the Commission may grant a request for waiver if:

- (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

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<sup>8</sup> See 47 C.F.R. § 9.5(d).

<sup>9</sup> The Enforcement Bureau's Public Notice explicitly provides that it expects "that such providers will discontinue marketing VoIP service, and accepting new customers for their service, in all areas where they are not transmitting 911 calls to the appropriate PSAP in full compliance with the Commission's rules." *Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters*, WC Docket No. 04-36, WC Docket No. 05-196, DA 05-2945, at 5 (rel. Nov. 7, 2005).

<sup>10</sup> 47 C.F.R. § 1.3. See *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>11</sup> *Wait Radio*, 418 F.2d at 1159.

(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.<sup>12</sup>

The Commission has also made clear in the wireless E911 context that technical infeasibility and delays beyond the control of the carrier, including the inability to obtain required products or services despite good faith efforts by a petitioner, is reason to grant a waiver.<sup>13</sup>

#### **IV. PETITIONER MEETS THE STANDARD FOR GRANTING A WAIVER**

##### **A. Unusual Factual Circumstances Justify the Requested Waivers**

Voyager's services can be used in a nomadic fashion. Because Voyager's services can be accessed from any active broadband connection, Voyager cannot practicably limit the geographic locations from which its customers might use the service; therefore, although Voyager markets services only in certain circumscribed areas, a complete nationwide solution is required for full E911 coverage. This poses a much greater challenge for Voyager than is faced by traditional telecommunications carriers whose networks have a more defined geographic footprint.

As a reseller, Voyager does not have access to the network and facilities through which its VoIP services are provisioned. As a result, Voyager cannot directly provision E911 services but must instead rely on third party suppliers to complete the difficult steps necessary to initiate the provision of E911 services. Voyager has made inquiries to its upstream provider and understands that that provider and its third-party E911 solution provider have undertaken significant efforts to meet the Commission's VoIP E911 requirements.

In addition, Voyager is a recent entrant into the VoIP arena and has only been working with its underlying provider to ensure the deployment of E911 services since September. Most

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<sup>12</sup> 47 C.F.R. § 1.925(b)(3).

<sup>13</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, FCC 05-79, released April 1, 2005 ("*Wireless E911 Tier III Second Waiver Order*") at P 10.

providers have had additional time to provision these services. In light of the fact that Voyager has just begun its services and only has 160 VoIP customers, Voyager requires additional time to comply.

Voyager has obtained Registered Location information from its customers and provides them with an option to modify that information. As Voyager's VoIP services were launched only after the *VoIP E911 Order*, Voyager's processes already include full E911 disclosures and the collection of affirmative acknowledgment of all of its customers. Voyager also allows customers to update their Registered Location information for example, the Company's a web-based system allows customers to provide Voyager with updated location information on a 24x7x365 basis. Voyager customers can also call a customer care representative to provide updated location information – using only the equipment they use to access their VoIP services.

One major complicating factor in deploying a VoIP E911 solution is that VoIP providers and solution providers, like HBF, are dependent upon the efforts of third parties, including RBOCs and PSAPs, to deploy an E911 solution. Circumstances beyond HBF's control impact Voyager's ability to deploy an E911 solution to its customers. For example, in order to deploy a VoIP E911 solution for nomadic VoIP services, HBF requires access to pseudo-ANI ("p-ANI"). As described by certain members of Congress as well as industry experts in multiple *ex parte* filings with the Commission,<sup>14</sup> the lack of the appointment of an interim Routing Number Authority has made it impossible for HBF to access p-ANI in certain areas of the country, impeding the deployment of a VoIP E911 solution. Also, HBF reports that in certain areas,

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<sup>14</sup> See, e.g., *Ex Parte* Letter from The Honorable Joe Barton, et al. to Chairman Kevin J. Martin, Chairman, Federal Communications Commission (dated Nov. 22, 2005); *Ex Parte* Letter from Robert C. Atkinson, NANC Chair to Thomas Navin, Chief Wireline Competition Bureau, FCC (filed Sept. 8, 2005); *Ex Parte* Letter from David F. Jones, President, National Emergency Number Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 & 05-196 (filed Nov. 4, 2005); *Ex Parte* Letter from Tom Goode, Associate General Counsel, Alliance for Telecommunications Solutions', to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 & 05-196 (filed Nov. 2, 2005).

PSAPs are either declining or being advised to decline entering into agreements with VoIP providers due to the lack of legislation protecting VoIP providers and PSAPs from any liability that may result from mistakes that may arise in the routing or handling of 911 calls. As the Commission is aware, wireline and wireless carrier enjoy legal protection that insulate them from liability should emergency calls be mishandled. Neither HBF nor Voyager have the ability to resolve these issues.

The Commission also recognized in the *VoIP E-911 Order* that the timeframe for requiring the deployment of an E-911 solution was “aggressive.”<sup>15</sup> In fact, deployment of an E-911 solution for a new technology within 120-days is without precedent. VoIP providers, third-party solution providers, VoIP positioning companies, state and local E-911 officials, and RBOCs are faced with unique issues to resolve. Additionally, there is no standard in place for the delivery of VoIP E-911 calls.<sup>16</sup> Further, each RBOC has demonstrated a different level of cooperation in deploying a VoIP E911 solution and has adopted different implementation procedures. The 120-day implementation timeframe has not allowed enough time for the industry to resolve all of these disparate issues in order to develop a comprehensive solution. Given the novel issues that arise in deploying a VoIP E911 solution, coupled with the 120-day timeframe, it was simply not possible for the industry to establish a comprehensive VoIP E911 solution.

As the Commission has found previously, delays that are beyond the control of a provider or the inability of a provider to obtain required products or services despite good faith efforts,

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<sup>15</sup> *VoIP E911 Order*, ¶ 37.

<sup>16</sup> See *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, Reply Comments of NENA, WC Docket Nos. 04-36 & 05-196 (filed Sept. 12, 2005) (stating that NENA was still in the process of developing the standard, and has sought industry comments on a preliminary proposal).

provides reason to grant a waiver.<sup>17</sup> In this case, Voyager has taken the steps that it can reasonably take and therefore made good faith efforts to obtain an E911 solution that complies fully with the *VoIP E911 Order*. Under these conditions, Voyager respectfully submits that the unusual factual circumstances associated with the deployment of a VoIP E911 solution justify the limited relief Voyager seeks in this Petition.

**B. Grant of an Extension of Time and Limited Waiver to Voyager is in the Public Interest; Strict Enforcement of the November 28 Deadline Will Thwart the Purposes of the Commission's Rules**

Strict adherence to the requirements of the *VoIP E911 Order* would be inconsistent with the public interest with respect to Voyager. Voyager has made good faith efforts to comply with the requirements and has made substantial progress toward compliance. Voyager understands that plans are in place that ultimately will enable HBF and therefore Voyager to comply fully with the Commission's rules. However, for reasons that are beyond its control, Voyager will not be able to provide full E911 service to all of its customers by the November 28 deadline. Demanding strict compliance with the *VoIP E911 Order* will not change that fact or further the Commission's goal of providing E911 to all consumers, but will only punish Voyager for its efforts to date. It could result in the suspension of service to Voyager's customers and prohibit Voyager from accepting new customers. The result very well could be that Voyager will be less able ultimately to comply with the *VoIP E911 Order*. Customers will remain without E911 service, as Voyager will not have adequate resources to deploy a ubiquitous E911 solution, and Voyager's ability to compete in the VoIP market will be weakened. Such a result would not serve the public interest and would thwart the goals of the *VoIP E911 Order* and the

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<sup>17</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, FCC 05-79, released April 1, 2005 ("*Wireless E911 Tier III Second Waiver Order*") at P 10.

Commission's mandate to foster competition. Accordingly, a limited waiver of the requirements of the *VoIP E911 Order* with respect to Voyager is necessary and is in the public interest.

**1. Voyager's Plan to Achieve Full Compliance**

In addition to the steps that it has already taken to implement the requirements of the *VoIP E911 Order*, Voyager has taken steps to achieve full compliance within a reasonable period. Grant of this Petition will give Voyager the time and resources to carry out its compliance plan. As previously discussed, Voyager understands that its VoIP services provider has contracted with HBF to provide an E911 solution to Voyager. To reach that goal, HBF must arrange for interconnection with thousands of PSAPs that are currently not covered. Voyager understands that in some of the areas in which Voyager operates, HBF may not yet have established connection with the ILEC selective router and that therefore E911 call termination through the Wireline E911 Network may not yet be available. As a reseller, Voyager is not itself directly or indirectly connected to any selective routers, and Voyager must rely on Broadvox and HBF for its E911 compliance. Accordingly, despite Voyager's best efforts, it has not yet been able to confirm the full deployment plan. However, Voyager is continuing to work with its third-party provider to complete that determination.

**2. The Relief Voyager Seeks is in the Public Interest**

In light of the circumstances described above, grant of a limited waiver and extension of time to Voyager is in the public interest. Voyager has made good faith efforts to comply with the requirements of the *VoIP E911 Order*. It has met the requirements of Rule 9.5(e) for all of its customers and will meet the requirements of 9.5(b) and (c). As previously stated, Voyager's VoIP provider has provided a rough estimate, subject to further confirmation from its E911 provider, that its services are approximately 30% in compliance. In addition, Voyager is working

closely with its vendors to ensure that all of its VoIP customers have full E911 access within a reasonable amount of time.

In the meantime, Voyager understands that as an interim measure HBF's current solution is able to deliver emergency calls to 100% of the PSAPs via a 10-digit number. This solution provide 100% coverage in the United States. In the event a call cannot be delivered directly to the PSAP, the caller is routed to a national call center with trained emergency operators which is operated on an around the clock basis.

By demanding full compliance with the *VoIP E911 Order* by November 28, the Commission will make it more difficult for Voyager to come into full compliance. Strict adherence to the *VoIP E911 Order* could require Voyager to discontinue its services to some customers and to cease accepting new customers.<sup>18</sup> These actions would deprive existing customers of access to Voyager's VoIP services and destroy Voyager's relationships with those customers. In addition, the ability of Voyager to attract new customers would be severely hampered. The loss of current customers and the inability to accept new customers will deprive Voyager of the ability to maintain or expand its user base and revenues. This would cause Voyager extreme economic hardship and could force Voyager to abandon its fledgling efforts to expand into the VoIP services market. More important for purposes of this Petition, the loss of those revenues would limit Voyager's ability to pay for the deployment of E911 service and make it less likely that Voyager will be able to comply in a timely manner with the requirements of the *VoIP E911 Order*. Such a result would not be not in the public interest.

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<sup>18</sup> While the Enforcement Bureau has indicated that it is not "requiring" providers to disconnect current customers, the full Commission has not addressed this issue, Commission Rule 9.5 remains fully in effect, and even the Bureau has made no commitment not to pursue enforcement actions against providers that continue to provide service. In particular, it is unclear whether VoIP providers can continue to serve existing customers who change their registered location after November 28. Thus, the fact remains that non-compliant VoIP providers are in the untenable position of courting an enforcement action if they do continue to provide service to existing customers.

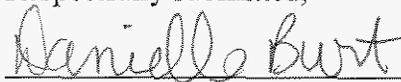
**C. Grant of the Petition Will Not Undermine the Policy Objective of the *VoIP E911 Order***

As discussed above, Voyager has worked, and is continuing to work, to implement an E911 solution that meets the requirements of the *VoIP E911 Order*. Grant of the Petition will not undermine the policy goal that customers of interconnected VoIP providers have access to emergency services. Voyager is not requesting an exemption from or indefinite waiver of the rules. Rather, Voyager merely seeks additional time so that it can meet those requirements fully for all of its customers. In other contexts—for example, wireless E911 and CALEA—the Commission has routinely issued limited waivers and extensions of time despite the significant public interests in the recognition that such limited waivers do not undermine the objectives of those rules. The situation here is no different. Voyager's limited request for relief does not impair the public safety goals that underlie the Commission's new rules. Accordingly, the Commission should grant the Petition.

**V. CONCLUSION**

For the reasons set forth above, Voyager respectfully submits that grant of this Petition for extension of time and limited waiver serves the public interest.

Respectfully submitted,



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Counsel for CoreComm Voyager, Inc.

Filed: November 28, 2005

I, Christopher Joslin, state that I am Vice President of Customer Care for CoreComm Voyager, Inc. ("Voyager"); that I am authorized to submit the forgoing *Petition for Extension of Time and Limited Waiver* ("*Petition*") on behalf of Voyager; that the *Petition* was prepared under my direction and supervision; and I declare under penalty of perjury that the *Petition* is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Christopher Joslin', written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Name: Christopher Joslin

Title: Vice President of Customer Care