

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

**Revision of the Commission's Rules To ) CC Docket No. 94-102**  
**Ensure Compatibility with Enhanced 911 )**  
**Emergency Calling Systems )**  
**)**  
**Request for Waiver of GPS Handset ) WT Docket No. 05-\_\_\_\_\_**  
**Penetration Rule by WUE, Inc. )**

**REQUEST FOR LIMITED WAIVER**

WUE, Inc. ("WUE"), by its attorney and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a limited waiver of Rule Section 20.18(g)(l)(v), which requires that carriers employing a handset-based Enhanced 911 ("E-911") Phase II solution convert 95% of their subscriber base to GPS-capable handsets by December 31, 2005. Currently, 92% of WUE's customers have GPS-capable handsets. WUE requests an additional six-months, through June 30, 2006, within which to meet the Commission's 95% GPS-capable handset penetration benchmark. In support hereof, the following is shown:

1. WUE is a "Tier III" Commercial Mobile Radio Services carrier, and is licensed to serve an area of 10,637 square miles within Lincoln County, Nevada. This area is rural, containing a population of 4,293 POPs (for an average population density of 0.4 POPs/Square Mile). WUE has not received any requests for E-911 Phase I or Phase II service from Public Safety Answering Points ("PSAPs") within its service territory. Once a PSAS request is received, WUE will work diligently in cooperation with the requesting PSAP(s) to roll-out E-911 service. Despite the lack of E-911 availability and its long-term efforts to sell GPS-capable handsets to its existing subscribers, to date 8% of WUE's subscribers have been unwilling to relinquish and upgrade non-GPS-capable

handsets. Therefore, achieving the 95% handset penetration rate by December 31, 2005 has proven difficult, thus necessitating the instant request for limited relief.

**I. WUE WILL CONTINUE ITS DILIGENT EFFORTS TO REACH THE 95% GPS CAPABLE HANDSET PENETRATION MILESTONE**

2. WUE has achieved 92% penetration of GPS-capable handsets among its subscriber base – underscoring its good faith compliance efforts. WUE will use its best efforts to deploy E-911 Phase I and II service to any requesting PSAP, and will continue to market and promote GPS-capable handsets to consumers.

3. Recognizing the challenges faced by Tier III carriers, in the past the Commission has revised Phase II handset deployment deadlines for many Tier III carriers seeking limited relief from handset compliance benchmarks.<sup>1</sup> The 95% GPS-capable handset penetration requirement, however, has proven especially difficult to meet due to customer resistance to handset upgrades.

4. WUE has retained the services of Verizon Wireless (“Verizon”) as its manager. Because of WUE management agreement and branding arrangement with Verizon, WUE has fully benefited from Verizon’s sustained and aggressive efforts to promote and sell GPS-capable handsets to reach the 95% penetration milestone nationally. For example, WUE’s customers were able to purchase GPS-capable handsets beginning in December 2001 and, since December 31, 2003, new digital handset sales

---

<sup>1</sup> See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, Order to Stay, CC Docket No. 94-102, 17 FCC Rcd. 14841, 14852-53, ¶¶ 32-33 (2002); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order to Stay, 18 RCC Rcd. 20987 (2003) (“Tier III Stay Order”); *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, 20 FCC Rcd. 7709, ¶¶ 13-91 (2005) (“Tier III Relief Order”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Enhanced 911 Phase II Requirements*, Order, CC Docket No. 94-102, FCC 05-182 (rel. Oct. 28, 2005) (“Mid-Missouri et al. Order”).

and activations have been exclusively GPS-capable handsets (well in advance of the November 30, 2004 deadline for 100% of new digital handset sales and activations applicable to Tier III carriers.)<sup>2</sup>

5. Through its arrangement with Verizon, WUE has taken numerous steps to sell GPS-capable handsets to customers with non-GPS-capable handsets, including introducing a wide variety of GPS-capable handsets, at all price ranges, and subsidizing and advertising compliant handsets. These efforts include: (1) dozens of GPS models across all price ranges; (2) discounted GPS handsets to offer customers competitive and affordable choices among those handsets; (3) targeted marketing programs to send text messages and direct mail to customers with non-GPS handsets, followed up with outbound telemarketing to those customers; (4) a program to urge non-GPS customers to upgrade their handsets when they call customer service; (5) a block on the reactivation of non-GPS handsets on its network; (6) through Verizon's website, detailed information to inform WUE customers about the benefits of upgrading to GPS-capable handsets, including the public safety benefits of E-911 service; and (7) again, through Verizon's website, a web-based look-up tool for customers to confirm their handset's E-911 Phase II capability and further educate customers of the E-911 public safety benefits of upgrading handsets.<sup>3</sup>

6. These measures will continue to be deployed on behalf of WUE, which should continue to drive GPS-capable handset activations. Importantly, through the various

---

<sup>2</sup> See *Mid-Missouri et al. Order* at ¶ 18 (“timely meeting applicable sale and activation deadlines” and “[i]n particular, ensuring that 100 percent of all new digital handsets activated are location-capable is an important step that should eventually lead ninety-five percent penetration of location-capable handsets.”)

<sup>3</sup> These efforts are described in detail in Verizon Wireless' pending waiver request. See Verizon Wireless Limited Request for Waiver, filed October 17, 2005, CC Docket No. 94—102, WT Docket No. 05-301, at ii and 4-11.

efforts described above, including website information and customer service communications, WUE has already taken measures “to actively inform and educate [its] customers concerning the advantages of having location-capable handsets.”<sup>4</sup>

## **II. WUE SATISFIES THE LEGAL STANDARDS FOR RECEIVING A LIMITED WAIVER OF THE HANDSET PENETRATION RULE**

### **A. A Limited Waiver Is Consistent With The Public Interest**

7. The Commission’s rules may be waived for good cause shown -- where special circumstances warrant a deviation from the general rule, and such deviation serves the public interest.<sup>5</sup> The Commission has acknowledged that waivers may be warranted for E-911 Phase II handset penetration milestones, and clarified how this standard would be applied in the E-911 context, finding that requests for waiver should be “specific, focused and limited in scope, and with a clear path to full compliance.”<sup>6</sup> The Commission added that “carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver requests.”<sup>7</sup>

8. Granting WUE an additional six months, through June 30, 2006, to achieve the 95% GPS-capable handset penetration milestone is consistent with the public interest.

---

<sup>4</sup> See *Mid-Missouri et al. Order* at ¶ 24.

<sup>5</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT RADIO V. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Section 1.925(b)(3) provides further that waiver may be warranted if “(i) [t]he 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) [I]n view of the 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.” 47 C.F.R. § 1.925(b)(3).

<sup>6</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442, ¶ 44 (2000) (“*E911 Fourth MO&O*”). The standard announced in the *E911 Fourth MO&O* was adapted to Tier III carriers in the *Tier III Stay Order* and the *Tier III Relief Order*.

WUE has achieved 92% penetration of GPS-capable handsets in its subscriber base and, therefore, has come very close to achieving full compliance with Rule Section 20.18(g)(1)(v)'s requirements. Through the measures described above, including efforts to inform customers of the E-911 benefits of handset upgrades, WUE has employed concrete steps to establish a clear path to full compliance consisting of sustained marketing efforts, promotions, and other customer-affecting measures, and will continue to do so. The limited scope of the relief sought in the instant request demonstrates both WUE's concrete efforts to fully comply and that its ongoing efforts will yield the desired result. Moreover, during the waiver period, WUE will continue to cooperate with the PSAPs in its service territory.

9. Finally, strict enforcement of the mandate is not in the public interest where, as here, PSAPs are not able to receive and utilize the location data provided by GPS-capable handsets. Area PSAPs have yet to upgrade their systems for E-911 Phase II service. Forcing a customer to purchase a GPS-capable handset in markets where the PSAP is not yet Phase II-capable would not promote the Commission's public safety objectives but would instead result in customer confusion and frustration. For this reason as well, grant of the instant waiver request is consistent with the public interest. In any event, WUE will continue to coordinate its Phase II deployment efforts with local PSAPs and keep them informed of progress toward meeting the 95% penetration milestone.

**B. The *ENHANCE 911 Act* Justifies Grant Of The Instant Request**

10. WUE's request for limited relief is warranted under the Commission's standards governing waivers of the E-911 Phase II rules, and in any case the requested

---

<sup>7</sup> *E911 Fourth MO&O*, ¶ 44.

relief is warranted under the *ENHANCE 911 Act*.<sup>8</sup> The *ENHANCE 911 Act* directs the Commission to grant qualified Tier III carriers' requests for relief from the 95% penetration requirement deadline if "strict enforcement of the requirements of that [rule] would result in consumers having decreased access to emergency services."<sup>9</sup>

11. WUE's request for a short, limited extension of the milestone will satisfy the *ENHANCE 911 Act* criteria without undermining the Commission's E-911 objectives. In the rural areas in which WUE operates, customers should not be forced to give up higher-powered analog handsets that might provide better coverage across a larger geographic area. Until these customers are convinced that digital GPS-capable handsets are at least as capable of completing a 911 call as their existing handsets during an emergency, carriers should not be required to force them to swap out their old handsets. If compelled to upgrade their handsets "it appears likely that strict enforcement ... would impair the ability of certain 911 callers to reach emergency assistance" thus implicating the *ENHANCE 911 Act*.<sup>10</sup>

---

<sup>8</sup> Indeed, as the Commission has found, relief may be warranted under the *ENHANCE 911 Act* irrespective of whether relief is warranted under the Commission's own standard. See *revision of the Commission's Rules to ensure Compatibility with enhanced 911 Emergency Calling Systems, Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC WIRELESS*, Order FCC 05-188, par. 19 n.58 (rel. Nov. 3, 2005) (relief granted "solely on the directive of the *ENHANCE 911 Act*").

<sup>9</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub.L.No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) ("*ENHANCE 911 Act*").

<sup>10</sup> See *Mid-Missouri et al. Order* at ¶ 20.

### III CONCLUSION

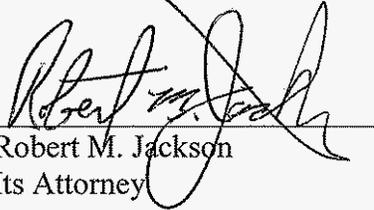
12. For the foregoing reasons, grant of WUE's request for a limited waiver of Section 20.18(g)(1)(v) of the Rules through June 30, 2006 is consistent with the public interest and the *ENHANCE 911 Act*. WUE commits to continue its diligent efforts to meet the 95% subscribership penetration mandate, and in all events will continue all of its efforts to meet that milestone as early as possible in 2006.

**WHEREFORE**, good cause shown, WUE requests that the instant request be granted.

Respectfully submitted,

**WUE, Inc.**

Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, N.W.  
Suite 300  
Washington, D.C. 20037  
Tel: 202-828-5515  
FAX: 202-828-5568  
E-mail: [rmj@bloostonlaw.com](mailto:rmj@bloostonlaw.com)

By:   
Robert M. Jackson  
Its Attorney

Filed: December 5, 2005

**DECLARATION UNDER PENALTY OF PERJURY**

I, John W. Christian, III, hereby state the following:

1. I am the President of WUE, Inc.
2. I have read the foregoing "Request for Limited Waiver." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 5<sup>th</sup> day of December, 2005.

  
John W. Christian, III