

**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 RSA 7 Limited)	
Partnership)	

REQUEST FOR LIMITED WAIVER

RSA 7 Limited Partnership, (“Iowa RSA 7” or “the Partnership”), pursuant to Sections 1.3 and 1.925 of the Commission’s rules, requests a limited waiver of section 20.18(g)(1)(v) of the rules, which requires that carriers employing a handset-based Enhanced 911 (“E911”) Phase II technology convert 95% of their subscriber base to GPS-capable handsets by December 31, 2005. Currently, 89% of Iowa RSA 7’s customers have GPS-capable handsets. The Partnership requests an additional six months, through June 30, 2006, to meet the Commission’s 95% handset penetration milestone.

Iowa RSA 7 is a “Tier III” carrier and is licensed to serve 2,734 square miles within the counties of Adair, Audubon, Cass, Guthrie and Madison counties in Iowa. This area is rural, containing a population of 54,603 POPs (20 POPs/Square Mile).¹ Iowa RSA 7 has

¹ Iowa RSA 7 is controlled by Cellular 80 Ltd. The Partnership is managed by Verizon Wireless pursuant to the terms of a management agreement.

received requests for and deployed E911 service with the six PSAPs in its service territory.² Of these six PSAPs for whom Iowa RSA 7 has deployed E911 service, three have requested and currently receive Phase I service and three have requested and currently receive both Phase I and II service. Iowa RSA 7 has worked diligently in cooperating with those PSAPs to roll out E911 service. Despite these efforts, and its long-term efforts to sell upgraded handsets to existing subscribers, to date 11% of the Partnership's subscribers have been unwilling to relinquish and upgrade non-GPS handsets. As such, achieving the 95% handset penetration rate by December 31, 2005 has proven difficult, thus necessitating the instant request for limited relief.

I. IOWA RSA 7 WILL CONTINUE ITS DILIGENT EFFORTS TO REACH THE 95% GPS CAPABLE HANDSET PENETRATION MILESTONE.

Iowa RSA 7 has achieved 89% penetration of GPS-capable handsets among its subscriber base –underscoring the Partnership's good faith compliance efforts. The Partnership will continue its efforts to deploy E911 Phase I and II service with any requesting PSAPs and to market and promote GPS-capable handsets to consumers.

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.³ Unlike many Tier III carriers, Iowa

² The following PSAPs have E911 service with Iowa RSA 7: Adair County Sheriffs Office (Phases I, II); Audubon County Dispatch Center (Phase I); Atlantic Comm Center (Phase I); Cass County Public Safety Communications Center (Phase I); Guthrie County Sheriffs Office (Phases I, II); Madison County Sheriffs Office (Phases I, II).

³ 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 FCC 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.

RSA 7 has not sought waivers of the Phase II milestones in the past. The 95% GPS capable handset penetration requirement, however, has proven especially difficult to meet due to customer resistance to handset upgrades.

Iowa RSA 7 has retained the services of Verizon Wireless as its manager and the Partnership brands its service as Verizon Wireless. Because of Iowa RSA 7's management agreement and branding arrangement with Verizon Wireless, the Partnership has fully benefited from Verizon Wireless' sustained and aggressive efforts to promote and sell GPS handsets to reach the 95% penetration milestone nationally. For example, Iowa RSA 7 customers were able to purchase GPS-capable handsets beginning in December 2001 and, since December 31, 2003, new digital handset sales 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 other Tier III carriers).⁴

Through its arrangement with Verizon Wireless, the Partnership has taken numerous steps to sell GPS handsets to customers with non-GPS 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

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”).

⁴ 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.”).

their handsets when they call customer service; (5) a block on the reactivation of non-GPS handsets on its network; (6) through Verizon Wireless' website, detailed information to inform the Partnership's customers about the benefits of upgrading to GPS-capable handsets, including the public safety benefits of E911 service; and (7) again, through Verizon Wireless'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 E911 public safety benefits of upgrading handsets.⁵

These measures will continue to be deployed on behalf of the Partnership, which should continue to drive GPS-capable handset sales. Importantly, through the various efforts described above, including website information and customer service communications, the Partnership has already taken measures "to actively inform and educate [its] customers concerning the advantages of having location-capable handsets."⁶

II. IOWA RSA 7 SATISFIES THE LEGAL STANDARDS FOR RECEIVING A WAIVER OF THE HANDSET PENETRATION RULE.

A. A Limited Waiver Is Consistent with the Public Interest

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.⁷ The Commission has acknowledged that waivers may be warranted for

⁵ These efforts are described in detail in Verizon Wireless's 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.

⁶ See *Mid-Missouri et al. Order* at ¶ 24.

⁷ 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 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).

E911 Phase II handset 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.”⁸ 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.”⁹

Granting Iowa RSA 7 an additional six months, through June 30, 2006, to achieve the 95% GPS handset penetration milestone is consistent with the public interest. The Partnership has achieved 89% penetration of GPS-capable handsets in its subscriber base and has therefore has come very close to full compliance. Through the measures described above, including efforts to inform customers of the E911 benefits of handset upgrades, the Partnership 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 relief sought in the instant request demonstrates both the Partnership’s concrete efforts to fully comply and that its ongoing efforts will yield the desired result. Moreover, during the waiver period, the Partnership will continue to cooperate with the PSAPs in its service territory, and any capable PSAPs not presently receiving Phase II service can request and deploy such service with the Partnership.

Finally, strict enforcement of the mandate is not in the public interest when PSAPs are not able to receive and utilize the location data provided by GPS handsets. Some area PSAPs have yet to upgrade their systems for E911 Phase II service. Forcing a customer to

⁸ *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*.

⁹ *E911 Fourth MO&O*, ¶ 44.

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, the Partnership 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

The Partnership's request for limited relief is warranted under the Commission's standards governing waivers of the E911 Phase II rules, and in any case the requested relief is warranted under the *ENHANCE 911 Act*.¹⁰ 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."¹¹

The Partnership's request for a short, limited extension of the milestone will satisfy the *ENHANCE 911 Act* criteria without undermining the Commission's E911 objectives. In the rural areas in which Iowa RSA 7 operates, customers should not be forced to give up higher-powered analog handsets that might provide better coverage across larger terrain. 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

¹⁰ 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*")

¹¹ National Telecommunications and Information Administration Organization Act – Amendment, Pub.L.No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) ("*ENHANCE 911 Act*").

should not force them to swap out 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*.¹²

III. CONCLUSION

For the foregoing reasons, grant of the Partnership'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*. Iowa RSA 7 commits to continue 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.

Respectfully submitted,

RSA 7 Limited Partnership

Bruce Heyne



Title: PARTNER (CELLULAR) LTD
GENERAL PARTNER

510 Highland Street
Walnut, IA 51577
(712) 784-3000

Dated: December 2, 2005

¹² See *Mid-Missouri et al. Order* at ¶ 20.