Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
	)	
	)	

PETITION FOR LIMITED WAIVER

Lingo, Inc. ("Lingo"), pursuant to section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, hereby submits this Petition for Limited Waiver of section 9.5(b) of the Commission's Rules, 47 C.F.R. § 9.5(b), in order to provide it with an additional nine months to complete its compliance efforts regarding deployment of E911 service to its Voice over Internet Protocol ("VoIP") customers.

I. INTRODUCTION AND SUMMARY

In setting a 120-day deadline for VoIP E911 compliance, the Commission recognized that it was establishing an "aggressively short amount of time in which to comply. . . ."[1] Lingo is a small, privately-held company that provides interconnected VoIP services to fewer than 100,000 business and residential customers.[2] It has worked

[1] *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10266 ¶ 37 (2005) (subsequent history omitted) ("*VoIP E911 Order*").

[2] Lingo is a wholly-owned, indirect subsidiary of Primus Telecommunications Group, Incorporated, which is publicly traded. Its affiliate Primus Telecommunications, Inc. is another provider of a VoIP service. While each company and the services they offer are distinct, the two companies share IT resources with respect to their VoIP offerings and both use Intrado, Inc. ("Intrado") as their E911 provider.

diligently to comply with the Commission's aggressive deadline. Lingo does not have its own nationwide footprint, and is not a certificated local telecommunications company with legal rights to access the appropriate selective routers that would enable it to provision E911 services on its own. In its efforts to comply with the Commission's *VoIP E911 Order*, Lingo quickly concluded that it lacked the resources to create and deploy its own dedicated E911 network within a reasonable period of time and thus decided to contract with a third party to provide the required E911 services by November 28, 2005. After meaningful discussions with various providers concerning their proposed E911 solutions, Lingo contracted with Intrado, a well-recognized leader in the E911 field, to provide its E911 solution. Through Intrado, Lingo is currently providing E911 service to numerous Lingo customers. Intrado does not at this point, however, have a VoIP E911 solution that is available for all of Lingo's existing and future customers.[3] Accordingly, for reasons beyond Lingo's control and despite its good faith efforts, Lingo is unable to comply fully with the rule as of the November 28, 2005 deadline.

The Commission has recognized in the wireless E911 context (where carriers had years rather than months to comply) that "smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment."[4] The Commission has also recognized in that context that E911 waivers are appropriate where, as here, a provider "bases it request for relief on delays that were beyond its control" and submits with its waiver request "specific evidence substantiating the claim, such as

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[3] *See* Exhibit 1 (confidential treatment previously requested) of Lingo's Compliance Report, filed November 28, 2005 ("November Compliance Report").

[4] *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, 20 FCC Rcd 7709, 7714 ¶ 9 (2005) ("*E911 Tier III Waiver Order*").

documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks."[5]

Consistent with the applicable Commission waiver standards, the public interest would be served by granting Lingo a limited waiver in these circumstances to allow Intrado additional time to complete implementation of an E911 solution for Lingo's existing and new customers.

II. LINGO'S GOOD FAITH COMPLIANCE EFFORTS WITH RESPECT TO THE VOIP E911 ORDER.

From the outset of its service offering, Lingo has been dedicated to the safety interests of its customers. It has worked diligently to comply with the Commission's VoIP E911 rules and has engaged in significant compliance efforts.

A. Obtaining a Customer's Registered Location.

Lingo has been offering Emergency Calling Services ("ECS") with its VoIP product and collecting from customers the Registered Location information (*i.e.*, the physical location where the service is being used as reported by the customer) since its launch in 2004. Even before the Commission issued the *VoIP E911 Order*, Lingo advised its customers as part of the sign-up process, among other things,[6] of the importance of updating their Registered Location, and cautioned them to update their Registered Location in the event they moved or traveled.[7] As part of Lingo's efforts to obtain 911 advisory acknowledgements as required by the *VoIP E911 Order*, Lingo

[5] *Id.* at 7715 ¶ 10 (citation omitted).

[6] Lingo notes that it was one of the few, if not the only, VoIP provider that first prominently highlighted the differences between the ECS service and traditional 911 service for its customers.

[7] *See* Exhibit B of Lingo's Subscriber Notification and Compliance Report filed on August 10, 2005 ("Initial Report").

further developed its sign-up process to highlight the importance of the customer's physical address, alerting customers that it was their obligation to keep this address current and advising them of the means by which they may update this address.[8] Lingo's 911 advisory acknowledgments again alerted customers to the importance of keeping this address current,[9] and the information packet sent to existing customers in July 2005 also highlighted this similar information.[10] As a result, notwithstanding the limitations of the Intrado E911 solution at the current time, Lingo has obtained Registered Location information from 100 percent of its subscribers, in compliance with section 9.5(d)(1) of the Rules.

Lingo has also implemented three methods for subscribers to update their Registered Location, all of which have been available since the launch of Lingo's service:

(i) The subscriber can log into his/her online Account Management and change the Registered Location;[11]
(ii) The subscriber can call Lingo's Customer Care department using a toll or toll free number and provide the new address; and
(iii) The subscriber can e-mail Lingo Customer Care and provide the new address.

Option (ii) above permits customers to use the same equipment they use to access their interconnected VoIP service to change their Registered Location. Lingo is thus in compliance with section 9.5(d)(2) of the Rules. In addition, as documented in its prior compliance reports, Lingo has complied or substantially complied with the subscriber

[8] *See* Exhibit D of Initial Report.

[9] *See* Exhibit E of Initial Report (on-line advisory); and Exhibit O (text of IVR advisory).

[10] *See* Exhibit F of Initial Report.

[11] This information appears on the Profile Page, and there are pages within account management that are dedicated to explaining 911 service, the importance of providing the correct address and links to the Profile page to update the address.

notification/acknowledgment and labeling requirements of section 9.5(e) of the Rules. It has also filed the compliance report required by section 9.5(f) of the Rules.

B. Provision of E911 Service.

As noted above, Lingo has contracted with Intrado to provide a full end-to-end E911 solution compliant with section 9.5(b) of the Commission's Rules. This solution consists of an interface that allows Lingo to submit the Registered Location, which Intrado verifies and geo-codes. Intrado then transmits the information that allows for an automatic display of the customer's telephone number ("ANI") and the address/location of the VoIP telephone ("ALI") to the public safety answering point ("PSAP") in the event of a 911 call.[12]

Intrado had advised Lingo that, as of November 28, 2005, it will be able to provide E911 service in compliance with the rules established in the *VoIP E911 Order* to approximately 32 percent of Lingo's customers based on the Registered Locations provided by the customers.[13] Intrado has delivered written assurances that it is working on providing Lingo with a nationwide VoIP E911 service in accordance with the *VoIP E911 Order*, and has advised Lingo that the initial PSAP deployments of Intrado are targeted in major metropolitan areas, consistent with Lingo's subscriber base priorities.

However, Lingo is limited by Intrado's roll-out of the E911 solution. Although Intrado continues to develop its nationwide E911 solution, it is not currently able to

[12] *See* Lingo's November Compliance Report (detailing Intrado's E911 solution as applied to Lingo).

[13] This is dependent upon the successful verifications of Registered Locations that have been sent to Intrado. *See* Lingo's November Compliance Report.

transmit all 911 callers' ANI and Registered Location to all PSAPs that are capable of receiving and processing this information.[14]

Based on information provided by Intrado,[15] Lingo believes it will require approximately another nine months for it to be compliant with the VoIP E911 rules in substantially all of the areas in which Lingo operates.

III. A LIMITED WAIVER IS IN THE PUBLIC INTEREST AND CONSISTENT WITH COMMISSION PRECEDENT.

Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, establishes that the Commission may grant relief from its rules for good cause shown. The Commission generally finds good cause where the particular facts presented make strict compliance inconsistent with the public interest and where relief would not undermine the policy objective of the rule in question.[16] A petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.[17]

For years, the Commission has confronted numerous requests for waiver of its E911 rules in the analogous wireless context and, as recently as April 2005, recognized that "smaller carriers may face extraordinary circumstances in meeting one or more of the

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[14] *See* Exhibit 2 of Lingo's November Compliance Report (detailing the status of Intrado's progress with each PSAP as of November 21, 2005).

[15] *See* Exhibit 1 of November Compliance Report (Intrado's planned roll-out).

[16] *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir.), *cert. denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*"); *see also Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

[17] *See WAIT Radio*, 418 F.2d at 1159.

deadlines" set forth in the E911 rules.[18] The Commission offered specific guidance on the types of factual showings that would provide sufficient support for a waiver request. In particular, "to the extent a carrier bases its request for relief on delays that were beyond its control," the Commission emphasized that "it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks."[19]

Lingo is a small VoIP provider with fewer than 100,000 customers, but it has worked diligently to meet the Commission's "aggressive" timetable and has engaged in good faith efforts to comply with the VoIP E911 rules. Nonetheless, for reasons beyond Lingo's control and despite its good faith efforts, Lingo (or for that matter, any other similarly situated VoIP provider) is unable fully to comply with section 9.5(b) of the Commission's rules, 47 C.F.R. § 9.5(b), as of the November 28, 2005 deadline. It therefore seeks the instant nine-month waiver for new customers and, to the extent necessary,[20] for existing customers.

In support of this request, Lingo offers the following:

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[18] *Tier III Waiver Order*, 20 FCC Rcd at 7714 ¶ 9.

[19] *Id.* at 7715 ¶ 10 (citations omitted). Similarly, in considering waiver requests in numerous other contexts, the Commission has traditionally afforded carriers relief where, as here, their compliance with a particular regulation is dependent on the availability of equipment from third-party vendors. *See, e.g., Policies and Rules Concerning Operator Service Providers*, CC Docket No. 90-313, Notice of Proposed Rulemaking, 5 FCC Rcd 4630, 4633 ¶ 22 (1990); *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase II*, 13 FCC Rcd 9564, 9568 ¶ 18, 9570 ¶ 25 (CCB 1998); *Roosevelt County Rural Tel. Coop., Inc.*, 13 FCC Rcd 22, 41-46 ¶¶ 28-36 (CCB 1997).

[20] The Enforcement Bureau has indicated that providers that have not achieved full compliance are not required to discontinue service to existing customers. *Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters*, Public Notice, DA 05-2945 (EB rel. Nov. 7, 2005).

- As described in Section I and Lingo's November Compliance Report, Lingo does not have the resources to create and deploy its own dedicated E911 solution in a timely manner;

- Lingo engaged in discussions with various third-party vendors to provide an E911 solution in compliance with the requirements of the *VoIP E911 Order* and after thoughtful consideration, contracted with Intrado, a well-recognized leader in the E911 field, to provide an end-to-end E911 solution;

- Under the Intrado solution, Intrado takes the steps necessary to verify the Registered Location information provided by Lingo, geo-code it and, in the event of a 911 call, transmit the ANI and ALI to the PSAP, which satisfies the requirements of the VoIP E911 Order.

- Intrado has stated that it can route information to 154 E911 Selective Routers and that, as of November 28, 2005, it will be able to provide E911 service to approximately 32 percent of Lingo's customers based on the Registered Locations provided by the customers.[21]

- Intrado's ongoing efforts to achieve a nationwide solution are constrained by a variety of circumstances, some of which are beyond its control.[22]

- Lingo relies upon Intrado for the E911 solution and is limited by Intrado's roll-out of the product.

Despite Lingo's success in obtaining Registered Location information from 100 percent of its subscribers and its good faith efforts to work with outside sources to meet the Commission's requirements, circumstances beyond its control prevent the company from complying with the November 28 deadline. Waiver is thus warranted.

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[21] This is dependent upon the successful migration of Registered Locations to Intrado.

[22] Lingo notes that a further impediment to compliance is the fact that full deployment of Intrado's solution, in turn, depends on additional parties, including Local Exchange Carriers, PSAPs, and the cooperation of certain states/territories (*see* Lingo's November Compliance Report Section III(A)(2) detailing issues with New Jersey, Ohio, Hawaii and Puerto Rico). On December 2, 2005, Lingo received a letter from Intrado indicating that governmental entities in the following states are imposing additional testing requirements: Arizona, Connecticut, Delaware, Maine, Massachusetts, Tennessee, and Vermont, which will further delay product roll-out. In addition, with respect to nomadic VoIP services, Intrado needs pseudo-ANIs and, without an interim Routing Number Authority, Intrado cannot access p-ANI nationwide. The effect of this is to force Intrado to try and obtain such information on an individual case basis, thus slowing the roll-out of the E911 solution for nomadic subscribers.

Further, given the circumstances here, grant of Lingo's waiver request is in the public interest. Lingo has a long-standing, strong and continuing commitment to public safety. For example, Lingo has been offering Emergency Calling Services with its VoIP product since its launch in 2004 and has obtained Registered Location information from 100 percent of its subscribers.

Moreover, Lingo has a specific path to compliance. Intrado's success, though measured, demonstrates that the solution can and does work in accordance with the *VoIP E911 Order*. Intrado has assured Lingo that it is working on nationwide deployment and, based on discussions with Intrado, Lingo believes it will require approximately another nine months for it to comply with the VoIP E911 rules in substantially all areas in which Lingo operates. During this time, customers will continue to have access to ECS, which enables them to reach emergency personnel through an administrative line at the appropriate PSAP. Once Lingo's back office systems are in place, it will be able to advise customers of the level of 911 service available to them at their Registered Location.

In the meantime, strict compliance with the rule would be inconsistent with the public interest. Lingo is a privately-held company that relies only upon the revenues from its customer base and funding from its affiliates for financial stability. If the Commission restricts Lingo's ability to obtain new subscribers, it will severely limit the company's resources to support a nationwide, end-to-end E911 solution. Furthermore, without a growing revenue base, Lingo will not be able to invest further into its network to improve the features and functionality of its existing service offerings. As a result, the public (and Lingo's customers) will certainly suffer.

Grant of the instant waiver, moreover, would not undermine the Commission's E911 policy goal – that of public safety. During the waiver period, customers will continue to have access to ECS, which, although not a perfect solution, is better than no access to emergency personnel at all.

Finally, the Commission has previously allowed the wireless industry to continue to flourish as a competitive industry during the E911 deployment process, and strict adherence to the rules will eliminate that opportunity for the VoIP industry. Thus, a similar balancing of policy objectives in the VoIP case further supports waiver relief.

IV. CONCLUSION

For the reasons set forth above, Lingo requests that the Commission expeditiously grant Lingo a limited, nine-month waiver of section 9.5(b) of the Commission's Rules to provide it with additional time to continue its path to full compliance.

Respectfully Submitted,

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