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

Primus Telecommunications, Inc. ("Primus"), 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. Primus requests that the Commission act expeditiously on its request.

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] Primus has an extremely small number of customers for its interconnected VoIP services, and most of them are Primus subscribers for long distance service only, such that provision of VoIP E911 service has no practical impact.[2] Primus has

[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] Primus is a wholly owned subsidiary of Primus Telecommunications Group, Incorporated. Its affiliate Lingo, Inc. ("Lingo") is another provider of a VoIP service. While each company and the services they

nevertheless worked diligently to comply with the Commission's aggressive deadline. Primus does not have its own nationwide footprint, and, while it holds certifications to provide local exchange service in a few states, it is not currently providing any local exchange service and thus does not have access to 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*, Primus 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, Primus indirectly contracted with Intrado,[3] a well-recognized leader in the E911 field, to provide its E911 solution.

Through Intrado, Primus is currently providing E911 service to the vast majority of Primus's customers. Intrado does not at this point, however, have a VoIP E911 solution that is available for all of Primus's existing and future customers. Accordingly, for reasons beyond Primus's control and despite its good faith efforts, Primus is unable to comply fully with the rules 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

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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.

[3] Primus's affiliate, Lingo, is the party to the contract with Intrado.

[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*").

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 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 Primus a limited waiver in these circumstances to allow Intrado additional time to complete implementation of an E911 solution for Primus's existing and new customers.

II. PRIMUS'S GOOD FAITH COMPLIANCE EFFORTS WITH THE VOIP E911 ORDER.

Primus provides two types of interconnected VoIP service. The first product, which has been in place longer and accounts for all but a handful of Primus VoIP customers, is a long distance bypass that involves technology in which both traditional landline and VoIP circuits attach to the same Customer Premise Equipment ("CPE") and is similar to the service that is the subject of a Petition for Reconsideration/Clarification and/or Waiver currently pending before the Commission (the "LD Bypass Service").[6] Due to the manner in which the VoIP CPE is configured, all 911 calls from subscribers using this service are handled exclusively through the subscriber's Plain Old Telephone Service ("POTS") line, not the Primus VoIP service. The second product is much like that of Primus's affiliate, Lingo. It is targeted at business customers only and allows the

[5] *Id.* at 7715 ¶ 10.

[6] *See* "Petition for Reconsideration/Clarification and/or Waiver by Comptel," filed July 29, 2005, in the above-referenced dockets.

customer to make all types of calls ("Robust VoIP Service"). Primus only recently began selling the Robust VoIP Service, and as of the date of this filing, has just made a handful of sales.

Despite the fact that, for the vast majority of Primus's customers, Primus's provision of E911 service will have no practical impact because these customers use VoIP only for long distance calls, Primus has worked diligently to comply with the Commission's VoIP E911 rules and has engaged in significant compliance efforts.

A. Notification & Registered Location Compliance, Despite Limited Practical Application.

Primus has obtained the Registered Location of all of its subscribers (*i.e.*, subscribers of LD Bypass Service and Robust VoIP Service) and obtains this information for new subscribers prior to initiation of either type of VoIP service, in compliance with section 9.5(d)(1) of the Rules. Consistent with section 9.5(d) of the Rules, it also has implemented a method for subscribers to update their Registered Location information by calling into their designated customer care center or to their sales representative, which generally permits subscribers to use the same equipment they use to access their interconnected VoIP service to change their Registered Location.[7] However, because Primus's base consists only of business customers, these customers do not typically use the VoIP services in a nomadic fashion. Furthermore, even if they did, it would have very limited effect because, for the majority of Primus customers which subscribe to the

[7] Most of Primus's VoIP customers at this point are customers of its Primus LD Bypass Service. Because this service provides only long distance service, if the call to the customer care center or sales representative is a local one, the customer will need to use whatever phone it regularly uses for local calls rather than its Primus VoIP long distance phone.

LD Bypass Service, as previously explained, all local and 911 calls are routed exclusively through the POTS line and not through Primus's VoIP service.

In addition, as documented in its prior compliance reports, Primus has complied or substantially complied with the subscriber notification/acknowledgment and labeling requirements of section 9.5(e) of the rules. While alerting customers to the VoIP 911 issue these advisories and warnings have little substantive effect on the customers using LD Bypass Service because 911 calls cannot be routed through the VoIP service.

B. Provision of E911 Service.

As noted above, Primus contracted indirectly 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 Primus 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.[8]

Based on information received from Intrado, Primus estimates that it is providing E911 service in compliance with the rules established in the *VoIP E911 Order* to approximately 80 percent of Primus's customers based on the Registered Locations provided by the customers.[9] Intrado has delivered written assurances that it is working on providing Primus with a nationwide VoIP E911 service in accordance with the *VoIP*

[8] More detail regarding Intrado's E911 solution as applied to Primus is contained in Primus's Compliance Report, filed November 28, 2005 ("November Compliance Report").

[9] This is dependent upon the successful migration of Registered Locations to Intrado. *See* Primus's November Compliance Report.

E911 Order and has advised Primus that the initial PSAP deployments of Intrado are targeted in major metropolitan areas, consistent with Primus's subscriber base priorities. Although Intrado continues to develop its nationwide E911 solution, it is not currently able to transmit all 911 callers' ANI and Registered Location to all PSAPs that are capable of receiving and processing this information.

Limited by Intrado's roll-out of the E911 solution, Primus believes, based on information provided by Intrado, that it will require approximately another nine months for it to be compliant with the VoIP E911 rules in substantially all areas in which Primus operates.[10]

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.[11] 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.[12]

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

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[10] We note that notwithstanding full technical compliance with the rules, this will have a practical effect on only those customers purchasing Robust VoIP Service from Primus.

[11] *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).

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

that "smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines" set forth in the E911 rules.[13] 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."[14]

Primus has a very small number of VoIP 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 Primus's control and despite its good faith efforts, Primus 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,[15] for existing customers.

In support of this request, Primus offers the following:

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

[14] *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).

[15] 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 Primus's November Compliance Report, Primus does not have the resources to create and deploy its own dedicated E911 solution in a timely manner;

- Primus 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, indirectly 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 information provided by Primus, 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, based on the information provided by Intrado, Primus has determined that Intrado will be able to provide E911 service to approximately 80 percent of Primus's customers based on the Registered Locations provided by the customers.[16]

- Intrado's ongoing efforts to achieve a nationwide solution are constrained by a variety of circumstances, some of which are beyond its control.[17]

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

Despite Primus'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 (notwithstanding the limited functional application due

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[16] This is dependent upon the successful migration of Registered Locations to Intrado. *See* Primus's November Compliance Report.

[17] Primus 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 Primus's November Compliance Report, Section III(A)(2), detailing issues with New Jersey, Ohio, Hawaii and Puerto Rico). On December 2, 2005, Intrado advised via letter than governmental entities in the following states are imposing additional testing requirements: Arizona, Connecticut, Delaware, Maine, Massachusetts, Tennessee, and Vermont, which will further delay E911 product roll-out. In addition, with respect to nomadic VoIP services, Intrado needs pseudo-ANI 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.

to the technology involved in the LD Bypass Service), circumstances beyond its control prevent the company from complying with the November 28 deadline. Waiver is thus warranted.

Further, given the circumstances here, grant of Primus's waiver request is in the public interest. Primus has obtained Registered Location information from 100 percent of its subscribers. Moreover, Primus has a specific path to compliance. Intrado has assured Primus that it is working on nationwide deployment and, based on discussions with Intrado, Primus believes it will require approximately another nine months for it to be compliant with the VoIP E911 rules in substantially all areas in which Primus operates. During this time, Primus customers will have access to Emergency Calling Services ("ECS"), which enables a customer to reach emergency personnel through an administrative line at the appropriate PSAP -- although this will only affect those few customers that purchase the Robust VoIP Services.

In the meantime, strict compliance with the rule would be inconsistent with the public interest. To the extent that VoIP service is viewed as beneficial to the public, especially when it is used as a long distance replacement service, requiring companies to make substantial investment to ensure compliance even though it has no practical effect, surely harms those customers looking for an alternative long distance only product. Further, if the Commission restricts Primus's ability to obtain new subscribers, it will severely limit the company's resources to ever support a nationwide, end-to-end E911 solution. Without a growing revenue base, Primus will not be able to invest further into its network to improve the features and functionality of its existing VoIP service offerings. As a result, the public (and Primus's business 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, Primus customers will continue to have access to ECS, which, although not a perfect solution, will allow that small handful of customers purchasing Robust VoIP Service to reach emergency personnel, which is better than no access to emergency personnel at all.

As explained earlier, for the vast majority of Primus customers that purchase the LD Bypass Service, public safety has already been addressed through the customer's POTS line, as 911 calls cannot be routed through the Primus VoIP line. Thus, Primus's compliance (or non-compliance) with the technical aspects of the Commission's VoIP E911 rules has minimal practical impact on the customer's ability to obtain E911 service. Notwithstanding the limited application of the E911 rules, Primus does not seek an exemption or an indefinite waiver of section 9.5(b), but instead seeks a limited nine-month extension of time in which to continue its demonstrated course toward full compliance.

Finally, we note that 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 the opportunity for the VoIP industry. This is especially the case for those small providers like Primus where technical application of the rules has little practical impact on a customer's ability to access 911 services. Thus, a similar balancing of policy objectives in this VoIP case further supports waiver relief.

IV. CONCLUSION

For the reasons set forth above, Primus requests that the Commission expeditiously grant Primus 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,

PRIMUS TELECOMMUNICATIONS, INC.

Walter L. Stone
Sr. Vice President & General Counsel
7901 Jones Branch Drive, #900
McLean, VA 22102

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