

**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
)	
ACN Digital Phone Service LLC)	
Petition for Extension of Time and Limited Waiver)	

PETITION FOR EXTENSION OF TIME AND LIMITED WAIVER

ACN Digital Phone Service LLC (“ACN”), pursuant to Section 1.3 of the Commission’s Rules,¹ requests that the Commission grant a limited waiver extending the time for it to comply with the obligations arising from Commission Rules 9.5(b) and 9.5(d) adopted in the *First Report and Order* in the above-captioned proceedings.² ACN began providing interconnected VoIP services on a limited basis after the November 28, 2005 compliance deadline and, therefore, did not file a compliance report with the Commission. However, like nearly every other provider of nomadic interconnected VoIP services, ACN is currently unable to fully meet the requirements of the *VoIP E911 Order* for all of its current customers, or for those it hopes to acquire after it begins offering its VoIP service on a wide-scale commercial basis. Accordingly, ACN requests a nine-month extension of time to comply fully with the Commission’s rules and, to the extent necessary, a waiver of the Commission’s prohibitions on the marketing of VoIP

¹ 47 C.F.R. § 1.3.

² *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.

services and acceptance of VoIP customers. ACN requests expedited consideration of this Petition.

I. DESCRIPTION OF ACN

ACN provides competitive local calling, long distance, DSL/Internet, mobile and VoIP services to consumers and small businesses in the United States, Canada, Europe and Asia. ACN's Digital Phone Service is a VoIP service that provides customers the ability to call anyone through the Internet. ACN provides numerous calling features, online account access, and "softphone" features that allow customers to use their computers for voice communications. ACN also provides customers with VoIP-based video communications. ACN's VoIP service is portable. If an ACN customer has access to broadband Internet access, the customer can use the service anywhere in the world. Customers may obtain their broadband Internet access from ACN, but they are not required to do so.³ ACN only provides telephone numbers from subscribers' local calling areas.

ACN began offering Digital Phone Service to its independent sales representatives on December 2, 2005, primarily for testing purposes. The company has not started marketing the service to the general public; however, any person may access ACN's website and subscribe to ACN's Digital Phone Service. Currently, service is limited to subscribers who provide a Registered Location that is located in the Company's E911 service area. ACN expects to begin marketing its product nationwide in January 2006. At that time, ACN will not be able to provide E911 service on a nationwide basis. Accordingly, the Company files this petition to ensure that

³ Pursuant to the definitions adopted in the *VoIP E911 Order*, ACN is a provider of inter-connected Voice over Internet Protocol ("VoIP") services. ACN's Digital Phone Service (i) enables real-time, two-way voice communications; (ii) requires a broadband connection from the user's location; (iii) requires Internet Protocol-compatible customer premises equipment; and (iv) permits users to call to and receive calls from the public switched telephone network.

it, like other providers currently offering VoIP service, can offer its Digital Phone Service to customers located in any area of the country while it completes its E911 rollout. In addition, because Digital Phone Service is nomadic, ACN's customers may move their customer premises equipment to locations that do not have E911 service.

In preparation for the commercial launch of Digital Phone Service, ACN has taken steps to ensure that it will be able to comply promptly with the Commission's new rules. ACN is in full compliance with the affirmative acknowledgment and Registered Location requirements set forth in 47 C.F.R. § 9.5(e)⁴ and ACN also has contracted with a vendor, iNuntius, to deploy a VoIP E911 solution that will comply with the requirements established in 47 C.F.R. § 9.5(b) and (c). iNuntius's E911 solution is discussed in detail below.

Despite these efforts, ACN will not be full compliance with the requirements of the *VoIP E911 Order* at the time it commercially launches its service. ACN therefore requires additional time to implement an E911 solution for all of its customers.

Based on its discussions with iNuntius, ACN believes that approximately 68% of the U.S. population will be covered by its E911 solution when it is launched commercially in January 2006. ACN further understands that it will be possible to provide basic 911 service to approximately 93% of the U.S. population at that time. ACN currently estimates that it will require an additional nine months to make E911 service available nationwide. Even that estimate, however, is predicated on statements by Intrado, the underlying VoIP E911 network provider on which most VoIP E911 vendors rely, that it will have E911 coverage will be in place by June 2006 for at least one Selective Router per county (in those counties where Selective Routers are utilized). Because there are some counties that are served by more than one Selective Router, it is impos-

⁴ At the time of customer signup, ACN obtains all required affirmative acknowledgements as well as Registered Location information, as described in more detail below.

sible for ACN to determine at this time whether full coverage will be reached by June 2006, or whether certain customers may still be without E911 service in counties with two or more Selective Routers. In addition, as discussed below, there are some areas of the country (for example, Hawaii, California and Dade County, Florida) where other problems exist that are hindering the rollout of E911 service nationwide. These problems could further delay the provision of E911 service by ACN and other VoIP providers that offer service nationwide.

II. SPECIFIC WAIVERS REQUESTED

ACN 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 Wire-line 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.⁵
- 2) The requirement to route all 911 through the use of ANI and, if necessary, pseudo-ANI.⁶
- 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.⁷
- 4) To the extent necessary, ACN seeks a limited waiver of Section 9.5(b)(1) of the rules to permit ACN to market Digital Phone Service and sign up new customers during the period that ACN needs to comply with Sections 9.5(b) and (c) of the rules.⁸

⁵ See 47 C.F.R § 9.5(b)(2).

⁶ See 47 C.F.R. § 9.5(b)(3).

⁷ See 47 C.F.R. § 9.5(b)(4).

⁸ The Enforcement Bureau's Public Notice states that it "expects that such providers will discontinue marketing VoIP service, and accepting new customers for their service" in areas where they are not 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 Nos. 04-36 & 05-196, DA 05-2945, at 5 (rel. Nov. 7, 2005).

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.⁹ To prevail, a petitioner must demonstrate that application of the challenged rule would be inequitable, unduly burdensome, or contrary to the public interest.¹⁰

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
- (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.¹¹

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.¹²

⁹ 47 C.F.R. § 1.3. See *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also *North-east Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁰ *Wait Radio*, 418 F.2d at 1159.

¹¹ 47 C.F.R. § 1.925(b)(3).

¹² *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.

IV. PETITIONER MEETS THE STANDARD FOR GRANTING A WAIVER

A. The Facts of This Case Justify the Requested Waivers

Since it began planning its Digital Phone Service, ACN has been in search of a way to provide E911 service to its VoIP customers. This search is complicated because ACN's service is offered over the public Internet and thus is available to customers located anywhere in the United States. This situation requires ACN to find a nationwide E911 solution.

ACN has determined that it would be logistically impossible for the Company to contact, negotiate, and contract with all with all the parties (ILECs, PSAPs, and other third-party vendors with access to the underlying Wireline E911 Network) necessary for it to implement and manage its own nationwide network-based E911 solution. For that reason, ACN began examining E911 solutions offered by various vendors prior to the Commission's release of the *VoIP E911 Order*. For various reasons, the E911 solutions offered by many vendors are inadequate for ACN. On September 16, 2005, however, ACN entered into an agreement with iNuntius, a vendor that relies on the E911 solution offered by Level 3 Communications, Inc., to provide E911 service to ACN's customers.

ACN currently uses the VoIP E911 solution provided by iNuntius in all areas where iNuntius provides coverage. As noted above, iNuntius uses Level 3's network to provide its VoIP E911 service. The service provides ACN with indirect access to all Selective Routers in iNuntius's E911 service area. All 911 calls made using the service are routed by the Selective Routers to the appropriate PSAP on dedicated trunk lines or are otherwise directly routed to the appropriate PSAP. ACN has been advised that iNuntius currently provides E911 service in areas covering approximately 68% of the U.S. population through connectivity to approximately 315

Selective Routers.¹³ As noted above, Level 3 provides the underlying solution and is continually increasing its coverage area. Level 3 plans to increase its E911 coverage to 70% by the end of 2006. In addition to its agreement with iNuntius, ACN is in discussions with other E911 vendors to enable ACN to provide E911 service in areas not covered by the iNuntius/Level 3 solution.

Customers that move locations are required to update ACN with new Registered Location information. Currently, ACN is not offering service to those customers registering a location outside of the Company's E911 footprint. However, the Company desires to market its services to those customers in "basic 911" areas of the country, and in doing so, will provide those customers with an interim 911 solution. Specifically, once the Company commercially launches its VoIP service nationwide, customers that dial "911" that are not covered by ACN's E911 solution will be provided basic 911 service within the vendor's 911 footprint. As noted above, ACN will transition these "basic 911" customers to an E911 solution as soon as one becomes available through an ACN vendor. The public interest in providing prompt emergency response will be protected by these interim measures until full E911 coverage can be achieved.

As noted above, ACN is in compliance with the requirement that it obtain Registered Location information from its VoIP customers, and it provides its customers with the ability to modify that information. New customers will be required to provide Registered Location information as part of their subscription process. Subscribers can then modify that information with the Company through an online account management feature or by calling a customer care representative.

Given the time and effort ACN has expended prior to and since the issuance of the obligations of the *VoIP E911 Order*, the Company has demonstrated its commitment to provid-

¹³ A diagram illustrating Level 3's connections with the E911 network is available at: http://www.e911direct.com/gfx/voip_psap.pdf.

ing its customers full E911 services. ACN, like nearly all VoIP providers, is not able to self-provision a complete E911 solution and must rely on third-party vendors for compliance. ACN has selected iNuntius as its primary E911 vendor because that Company provides a coverage footprint that is consistent with ACN's nationwide service offering. However, like all other E911 vendors, iNuntius does not yet provide a nationwide VoIP E911 service and still must arrange for interconnection with a significant number of PSAPs. ACN is in the process of negotiating with other vendors to increase its footprint to the widest extent practical.

Another complicating factor is that iNuntius (like other VoIP E911 vendors) is dependant on the efforts of third parties to deploy its E911 solution, including RBOCs and PSAPs. Circumstances beyond iNuntius's control impact ACN's ability to deploy an E911 solution. For example, in order to deploy a VoIP E911 solution for nomadic VoIP services, iNuntius and Level 3 require access to pseudo-ANI ("p-ANI"). As described in multiple *ex parte* filings in this docket, the lack of the appointment of an interim Routing Number Authority has made it impossible for these vendors to access p-ANI in certain areas of the country, impeding the deployment of a VoIP E911 solution.¹⁴ Also, iNuntius and other vendors are uniformly reporting that in certain areas, including Hawaii and Miami-Dade Country, 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

¹⁴ See, e.g., *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). See also *Ex Parte* Letter from Bennet L. Ross, General Counsel, BellSouth DC, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36 & 05-196 (filed Nov. 28, 2005); *Ex Parte* Letter from Gregory S. Ballentine, President, APCO International, to Kevin Martin, Chairman, FCC, WC Docket No. 05-196 (filed Nov. 30, 2005).

routing or handling of 911 calls. As the Commission is aware, wireline and wireless carriers enjoy legal protection that insulates them from liability should emergency calls be mishandled. Neither iNuntius nor ACN have the ability to resolve these issues.

The Commission has stated that the timeframe for requiring the deployment of an E-911 solution was “aggressive.”¹⁵ In fact, it is unprecedented. It has taken years for the wireless industry to roll out E911 nationwide. VoIP providers, third-party solution providers, VoIP positioning companies, state and local E-911 officials, and RBOCs are faced with unique issues to resolve. There is no standard in place for the delivery of VoIP E-911 calls.¹⁶ In addition, iNuntius has advised that the RBOCs, who control many of the facilities required to provide E911 service, have demonstrated different levels of cooperation in deploying VoIP E911 and have adopted different implementation procedures. In short, the 120-day timeline set by the Commission has been inadequate to allow the industry to resolve all of the issues necessary to implement a comprehensive solution.

The Commission has previously stated that 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 provides reason to grant a waiver.¹⁷ ACN has made good faith efforts to comply with the *VoIP E911 Order* but will not have a complete solution in place at the time it launches commercial operations. ACN respectfully submits that these circumstances justify the limited relief ACN seeks in this Petition.

¹⁵ *VoIP E911 Order*, ¶ 37.

¹⁶ *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).

¹⁷ *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.

B. Grant of an Extension of Time and Limited Waiver to ACN 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 ACN. ACN is making good faith efforts to comply with the requirements and will be in substantial compliance at the time it commercially launches Digital Phone Service. Moreover, it has made plans that will enable it to comply fully with the Commission's rules in a short period of time. However, for reasons that are largely beyond its control, ACN will not be able to provide full E911 service to all of its customers as of its launch date. Demanding strict compliance by ACN while allowing existing VoIP providers to continue providing their services will merely prevent ACN from entering the VoIP market. Such a result would be fundamentally unfair and would discriminate against providers like ACN merely because they were not providing service on November 28, 2005. This would not serve the public interest and would work against the Commission's mandate to foster competition. Accordingly, a limited waiver of the requirements of the *VoIP E911 Order* with respect to ACN is necessary and is in the public interest.

1. ACN'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*, ACN has taken steps to achieve full compliance within a reasonable period. Grant of this Petition will give ACN the time and resources to carry out its compliance plan. As previously discussed, ACN has contracted with iNuntius to provide an E911 solution to ACN. According to Level 3, the underlying service provider for iNuntius, it currently has access to 315 E911 Selective Routers. ACN attaches a map (Attachment A) of Level 3's current VoIP E911 deployment. All 911 calls made using Level 3's E911 services are routed by the Selective Routers to the appropriate PSAP on dedicated trunk lines or are otherwise directly routed to the

appropriate PSAP. Further, in accordance with the NENA Interim VoIP Architecture for Enhanced 911 Services (i2) to support nomadic E911, Level 3 is capable of transmitting, via Wireline E911 network connections, the Emergency Services Query Key (“ESQK”) that allows an answering point to query the ALI database for the 911 caller’s Registered Location.

ACN is also engaged in discussions with other VoIP E911 vendors, including Intrado and Intrado resellers, to provide additional coverage. Because ACN is likely to contract with Intrado or an Intrado reseller, it attaches the Intrado Major Market Deployment Map (Attachment B), which reflects Intrado’s E911 deployment schedule for the next seven months.¹⁸ ACN understands that, for Intrado to reach its deployment goal, that company must still arrange for interconnection with thousands of PSAPs that are currently not covered. As the scope of ACN’s E911 footprint expands, either through iNuntius or another E911 vendor, the Company will migrate customers to the E911 solution wherever available, including those nomadic customers that move locations, as well as customers the Company desires to signup outside its current E911 footprint, but where basic 911 services would be made available.

2. The Relief ACN Seeks is in the Public Interest

In light of the circumstances described above, grant of a limited waiver and extension of time to ACN is in the public interest. ACN has made good faith efforts to ensure that it will be in compliance with the requirements of the *VoIP E911 Order* for a substantial percentage of its customers as of its launch date. It will be in full compliance with the affirmative acknowledgment and Registered Location requirements and will meet the requirements of 9.5(b) and (c) for the initial Registered Location provided by its customers as well. In addition, ACN is working

¹⁸ The market deployment map represents major markets where Intrado has connectivity to at least one Selective Router, ALI steering and the ability to populate ALI.

closely with iNuntius, and is in discussions with additional vendors to ensure that all of its VoIP customers have full E911 access within a reasonable amount of time.

By demanding full compliance with the *VoIP E911 Order*, the Commission will make it more difficult for ACN to come into full compliance, and therefore enter the VoIP market. Strict adherence to the *VoIP E911 Order* will place ACN at a competitive disadvantage to those VoIP providers that have already signed up customers without access to E911 services, as well as those parties that continue to do so. Further, strict enforcement of the *VoIP E911 Order* could require ACN to discontinue its services to some of those customers that have already signed up for ACN's service, and to cease accepting new customers.¹⁹ These actions would place ACN at a significant competitive disadvantage, bar the Company from entering the market, deprive existing customers of access to ACN's VoIP services and destroy ACN's relationships with those customers. In addition, the ability of ACN to attract new customers would be severely hampered. Stopping the Company from entering the market, and forcing ACN to disconnect its few existing customers will deprive ACN of the ability to pay for the deployment of E911 service and make it less likely that ACN 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.

¹⁹ 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.

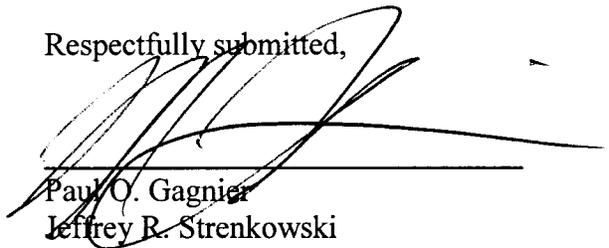
C. Grant of the Petition will not Undermine the Policy Objective of the *VoIP E911 Order*

As discussed above, ACN 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. ACN is not requesting an exemption from or indefinite waiver of the rules. Rather, ACN merely seeks additional time so that it can meet those requirements fully for all of its customers and compete on a level playing field with those VoIP providers who currently offer service. 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. ACN’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, ACN respectfully submits that grant of this Petition for extension of time and limited waiver serves the public interest.

Respectfully submitted,

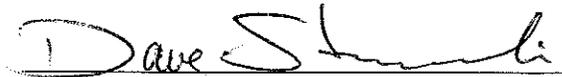


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Counsel for ACN Digital Phone Service LLC

Filed: December 19, 2005

I, Dave Stevanovski, state that I am President of ACN Digital Phone Service LLC, that I am authorized to submit the forgoing *Petition for Extension of Time and Limited Waiver* (“*Petition*”) on behalf of ACN Digital Phone Service LLC; 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 that reads "Dave Stevanovski". The signature is written in a cursive style and is positioned above a horizontal line.

ACN Digital Phone Service LLC

By: ACN Communication Services, Inc.,

a Michigan Corporation, its sole member

By: Dave Stevanovski, President

Attachment A

Level 3 VoIP E911 Coverage Map

[CEO MESSAGE](#)

[COMPLIANCE OVERVIEW](#)

[SOLUTION OVERVIEW](#)

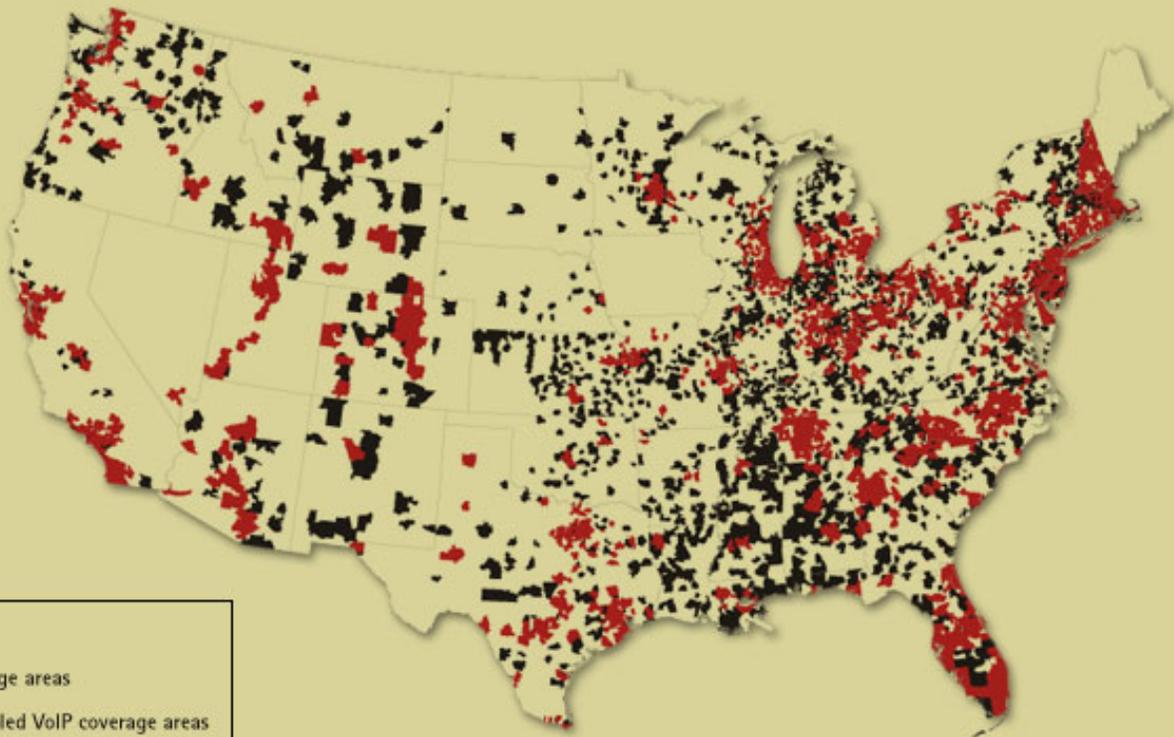
[FAQs](#)

[CONTACT US](#)

COVERAGE MAP

Coverage Map

[Click](#) for details on coverage in your area.



Legend

- VoIP coverage areas
- E-911-enabled VoIP coverage areas

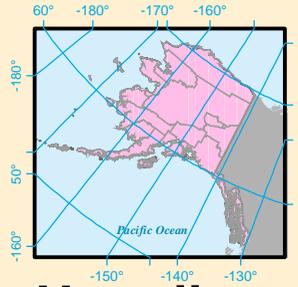
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Attachment B

Intrado Major Market Rollout Map

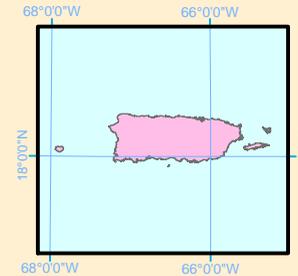
Alaska



Hawaii

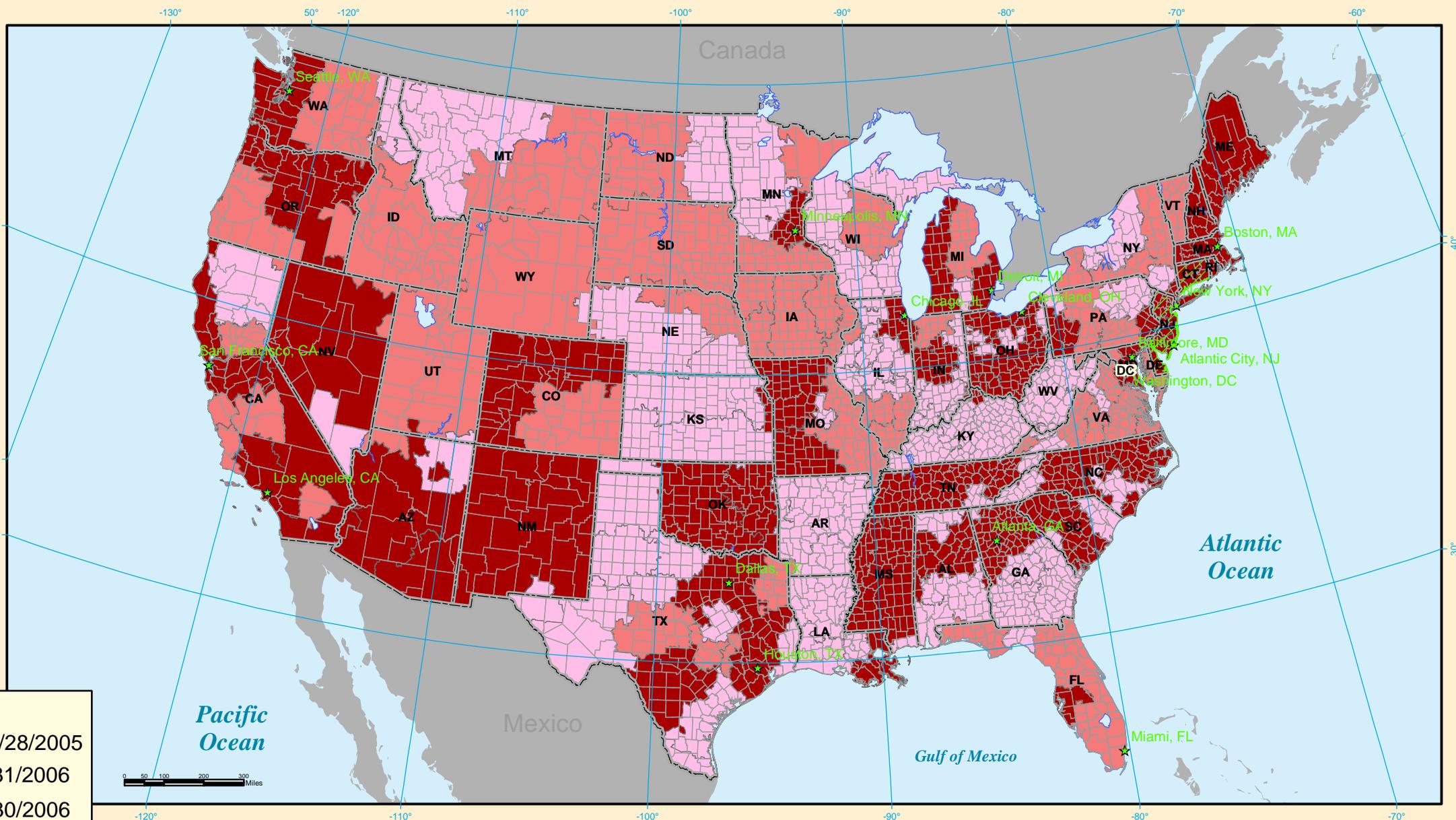


Puerto Rico



Legend

- Planned for 11/28/2005
- Planned for 3/31/2006
- Planned for 6/30/2006
- County Boundary
- or Top 20 MSAs
- Lakes



Intrado Major Market Rollout Schedule


Informed Response.™
 Intrado
 WOS GIS Operations Team
 Date: November 2005
 Data Source: Meridian, Geode, IPS, ESRI Data
 Created in ArcGIS 8 using ArcMap