

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
The NTELOS Companies Petition For Limited)	
Waiver)	

ORDER

Adopted: January 26, 2006

Released: January 27, 2006

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by NTELOS Inc., a Tier III wireless service provider, on behalf of itself and its affiliates, the Virginia PCS Alliance L.C., Richmond 20 MHz LLC, and the West Virginia PCS Alliance L.C. (collectively, NTELOS).¹ Specifically, NTELOS seeks an eighteen-month extension of time to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.²

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.³ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁴ We are also mindful of Congress' directive in the

¹ See The NTELOS Companies Petition for Limited Waiver, CC Docket No. 94-102, filed Oct. 21, 2005 (NTELOS Petition) at 1-2. Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

² See 47 C.F.R. § 20.18(g)(1)(v).

³ See 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, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*).

⁴ See *id.*

ENHANCE 911 Act to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services."⁵

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that some relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant NTELOS an extension until November 1, 2006 to achieve 95% penetration among its subscribers of location-capable handsets.⁶

II. BACKGROUND

A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁷ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁸ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).⁹ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹⁰ However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.¹¹

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request for Phase II service.¹² After ensuring that 100% of all new digital handsets activated are location-capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹³

⁵ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). *See also infra* ¶ 8.

⁶ Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether NTELOS met the Commission's waiver standard.

⁷ *See* 47 C.F.R. § 20.18(e).

⁸ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. *See* 47 C.F.R. § 20.3, *Network-based Location Technology*.

⁹ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. *See* 47 C.F.R. § 20.3, *Location-Capable Handsets*.

¹⁰ *See* 47 C.F.R. §§ 20.18(f), (g)(2).

¹¹ *See* 47 C.F.R. § 20.18(j)(1).

¹² *See* 47 C.F.R. § 20.18(g)(1).

¹³ *See* 47 C.F.R. § 20.18(g)(1)(v).

B. Waiver Standards

6. The Commission has recognized that smaller carriers may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.¹⁴ The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance. . . . and should document their efforts aimed at compliance in support of any waiver requests.”¹⁵ To the extent that a carrier bases its request for relief on delays that were beyond its control, 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.¹⁶ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁷ A carrier’s justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.¹⁸ The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier’s projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.¹⁹

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range,

¹⁴ See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (“wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations”); Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003)(*Order to Stay*) (“under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted”).

¹⁵ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000) (*Fourth MO&O*).

¹⁶ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁷ See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

¹⁸ See *id.*

¹⁹ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

but are not location-capable.²⁰ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

8. Finally, distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).²¹ The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²²

C. Request for Waiver

9. NTELOS is a regional Tier III carrier providing Personal Communications Services (PCS) over a Code Division Multiple Access (CDMA) network.²³ Serving approximately 325,000 subscribers in largely rural areas in Virginia, West Virginia, and small portions of North Carolina, Kentucky, and Ohio, NTELOS has implemented a handset-based E911 Phase II solution.²⁴ NTELOS asserts that it has met or exceeded all of the Commission's handset sales and activation deadlines established for Tier III carriers in the *Non-Nationwide Carriers Order*.²⁵ NTELOS adds that it has fulfilled each PSAP Phase I and Phase II request in a timely manner.²⁶

10. NTELOS states that it has "vigorously marketed location-capable handsets to its customers."²⁷ Specifically, it began promoting location-capable handsets in its advertising in June 2003 and, in December 2004, offered its most favorable pricing on such handsets in exchange for a one-year contractual commitment, rather than the two-year commitment required previously.²⁸ Prices for these location-capable handsets ranged as low as 99 cents.²⁹ Beginning in January 2005, NTELOS extended its December 2004 offer to both new and existing customers.³⁰ Starting in December 2004, NTELOS sent approximately 60,400 letters to existing customers offering a low price location-capable handset.³¹

²⁰ See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²¹ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²² *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* at § 107(b), 118 Stat. 3986, 3991.

²³ NTELOS Petition at 2.

²⁴ *Id.* at 2, 7.

²⁵ *Id.* at 2. See also *Non-Nationwide Carriers Order*, 17 FCC Rcd at App. A (listing NTELOS as one of the Tier III carriers granted relief).

²⁶ NTELOS Petition at 7.

²⁷ *Id.* at 4.

²⁸ *Id.*

²⁹ *Id.* at 5.

³⁰ *Id.* at 4.

³¹ *Id.* at 5.

NTELOS estimates, however, that it will have achieved only 84% penetration, among its subscribers, of location-capable handsets by December 31, 2005.³²

11. NTELOS asserts that it has not been able to meet the 95% benchmark because, despite the efforts described above, many subscribers “are simply hesitant to upgrade their handsets.”³³ In addition, NTELOS argues that its difficulty is partly attributable to a slowing of customer churn.³⁴ In light of these factors, it requests an eighteen-month extension to give it time to convert the remaining subscribers with non-location-capable handsets.³⁵ NTELOS states that, although it “fully expects to achieve 95% penetration of location-capable handsets by November 1, 2006,” it decided to seek an eighteen-month extension, until July 1, 2007, to avoid “having to request an additional extension later in the event it encounters unforeseen difficulties.”³⁶

III. DISCUSSION

12. We believe that it is critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II will be implemented and ensure that Phase II is fully implemented as quickly as possible.³⁷ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.³⁸ Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress’ directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.³⁹

13. Consistent with that directive, we believe that, pursuant to the ENHANCE 911 Act, a limited grant of the requested waiver of the December 31, 2005 benchmark is warranted, subject to certain conditions and reporting requirements to permit effective monitoring of NTELOS’ progress towards full compliance with the Commission’s location-capable handset penetration requirement.⁴⁰

³² *Id.* at 3.

³³ *Id.* NTELOS notes that “some customers do not want the aggravation of changing speed dial and contact lists stored in the older model phones,” “[a] new phone entails learning new features,” and that despite discounted phones, “subscribers may have to purchase new accessories.” *Id.* at 5.

³⁴ *Id.* at 5.

³⁵ *Id.*

³⁶ *Id.* at 6.

³⁷ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

³⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

³⁹ See *supra* ¶ 8.

⁴⁰ Although NTELOS has not expressly argued that the requested relief should be granted pursuant to the ENHANCE 911 Act, we find it appropriate to apply the ENHANCE 911 Act standard *sua sponte*. The ENHANCE 911 Act does not require a qualified Tier III carrier to specifically invoke the ENHANCE 911 Act in order to obtain relief under the Act from the 95% penetration requirement. Rather, the Act states that the Commission shall grant relief from the 95% penetration requirement if “[the Commission] determines that strict enforcement of that section

(continued...)

Specifically, we find that NTELOS is entitled to some relief under the ENHANCE 911 Act because strict compliance with the handset penetration requirement “would result in consumers having decreased access to emergency services.”

14. We are limiting the relief we are providing, however, because NTELOS’ request is not sufficiently “limited in scope.”⁴¹ Although NTELOS requests an eighteen-month extension, it concedes that it should be able to attain 95% penetration by November 1, 2006, and requests the greater extension only to account for any “unforeseen circumstances.”⁴² NTELOS describes its efforts aimed at encouraging its customers to adopt location-capable phones, and, on this basis, estimates it will achieve 95% penetration by November 1, 2006. NTELOS otherwise provides no justification for why it would require relief beyond the date it projects to achieve the requisite 95% penetration rate. While we appreciate the efforts NTELOS is undertaking to achieve compliance, there is no basis in the record to justify a further extension of the 95% penetration requirement. As noted above, where we have granted relief, we required compliance with the Commission’s rules and policies within the shortest practicable time.⁴³ NTELOS states that it can achieve compliance, absent “unforeseen circumstances,” by November 1, 2006. Therefore, we will not grant an extension beyond that date at this time.

15. In sum, taking into account the totality of the circumstances, including NTELOS’ Tier III status, the rural nature of much of NTELOS’ service area, the marketing efforts NTELOS has made toward increasing the location-capable handset penetration rate among its subscribers, the limited duration of the extension that NTELOS indicates is necessary to achieve full compliance, and consistent with the ENHANCE 911 Act, we conclude that an extension of the December 31, 2005 deadline, until November 1, 2006, is warranted, subject to certain conditions and reporting requirements so that the Commission can effectively monitor NTELOS’ progress in meeting the 95% handset penetration benchmark.⁴⁴ In granting this relief, we fully expect NTELOS to engage in all necessary efforts to ensure that it meets the 95% handset penetration benchmark as quickly as possible, including any additional efforts that might be required if new developments arise that are not currently foreseen. In the event NTELOS finds that it must request further relief, such request must demonstrate that NTELOS is taking all necessary efforts to ensure that it meets the 95% benchmark as soon as possible, and be limited in scope with a clear path to full compliance. Further, such efforts should ensure that NTELOS would not need to resort to service deactivations to achieve compliance. Absent NTELOS’ undertaking all necessary efforts on an ongoing basis, NTELOS should not assume that the Commission would act favorably on any future request for relief.

16. *Conditions.* As a condition of the relief granted herein, NTELOS has an ongoing obligation, until it achieves a 95% handset penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

(...continued from previous page)

would result in consumers having decreased access to emergency services.” See Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

⁴¹ See *supra* ¶ 6.

⁴² NTELOS Petition at 6.

⁴³ See *supra* ¶ 2.

⁴⁴ We note that the Commission has not received any objections from the public safety community with respect to the instant request.

17. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief of the December 31, 2005 95% handset penetration requirement granted herein, we will require NTELOS to file status reports every February 1, May 1, August 1, and November 1, beginning on May 1, 2006, and until November 1, 2007.⁴⁵ These reports shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of NTELOS' coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect NTELOS to achieve compliance as quickly as possible.

IV. CONCLUSION

18. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that NTELOS is entitled to a limited extension of the December 31, 2005 requirement that it achieve 95% penetration, among its subscribers, of location-capable handsets. Specifically, we extend the date that NTELOS must achieve 95% penetration until November 1, 2006, and impose conditions and reporting requirements to ensure that NTELOS achieves full compliance with the Commission's E911 requirements.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

20. IT IS FURTHER ORDERED, that The NTELOS Companies Petition for Limited Waiver filed October 21, 2005 IS GRANTED IN PART to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be November 1, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁵ We note that we are requiring NTELOS to file status reports beyond the date on which we otherwise require it to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring the progress of NTELOS for an additional year following its revised deadline.