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

Received & Inspected

In the Matter of)
)
Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
GTE Pacifica, Inc. d/b/a Verizon Pacifica Request)
for Waiver)

CC Docket No. 94-102

APR 04 2006

FCC Mail Room

ORDER

Adopted: March 29, 2006

Released: March 29, 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 GTE Pacifica, Inc. d/b/a Verizon Pacifica (Pacifica),¹ a Tier III wireless service provider.² Specifically, Pacifica 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, 2005.³

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.⁴ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁵ We are also mindful of Congress' directive in the

¹ See GTE Pacifica, Inc. d/b/a Verizon Pacifica Request for Waiver, CC Docket No. 94-102, filed Dec. 19, 2005 (Pacifica Request).

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*).

³ See 47 C.F.R. § 20.18(g)(1)(v).

⁴ 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*).

⁵ 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.”⁶

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant Pacifica an extension, until June 30, 2007, to achieve 95% penetration, among its subscribers, of location-capable handsets.⁷

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.⁸ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁹ or Global Positioning System (GPS) or other location technology in subscribers’ handsets (a handset-based solution).¹⁰ The Commission’s rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹¹ 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.¹²

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.¹³ 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, 2005.¹⁴

⁶ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). *See also infra* ¶ 8.

⁷ Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Pacifica met the Commission’s waiver standard. Although demonstration of a “clear path to full compliance” is not required to warrant some relief under the ENHANCE 911 Act, this element of our waiver standard provides useful guidance in determining the extent to which such relief should be granted.

⁸ *See* 47 C.F.R. § 20.18(e).

⁹ 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*.

¹⁰ 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*.

¹¹ *See* 47 C.F.R. §§ 20.18(f), (g)(2).

¹² *See* 47 C.F.R. § 20.18(j)(1).

¹³ *See* 47 C.F.R. § 20.18(g)(1).

¹⁴ *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.¹⁵ 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. Further, 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.”¹⁶ 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.¹⁷ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁸ 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.¹⁹ 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.²⁰

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,

¹⁵ 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”).

¹⁶ 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*). See also 47 C.F.R. §§ 1.3, 1.925(b)(3); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁷ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁸ 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.*

¹⁹ See *id.*

²⁰ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

but are not location-capable.²¹ 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).²² 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."²³

C. Request for Waiver

9. Pacifica is a Tier III carrier providing cellular service to subscribers in the Commonwealth of the Northern Mariana Islands (CNMI), principally over a Code Division Multiple Access (CDMA) network while continuing to operate a legacy TDMA/analog network.²⁴ Specifically, Pacifica offers wireless service on the CNMI islands of Saipan, Tinian and Rota.²⁵ Pacifica "intends to employ a handset-based solution for its CDMA network."²⁶ Pacifica reports that in the approximately one-year time span since it deployed CDMA, 53% of its customers have converted to location-capable handsets.²⁷ According to Pacifica, the "vast majority of the remaining customers have legacy TDMA handsets, with a couple hundred subscribers owning analog handsets."²⁸ Pacifica intends to continue to actively migrate its customers to its CDMA network, and retire its TDMA network in mid-2007, after which all of its subscribers will have location-capable CDMA handsets with the "possible exception of a few remaining analog subscribers."²⁹ Pacifica adds that it has "substantial incentive" to expeditiously migrate its customers to its CDMA network.³⁰

10. Pacifica points to unique demographic factors that hinder migration of its customers from TDMA to CDMA.³¹ On Saipan, out of a population of approximately 60,000 people, more than half are non-U.S. citizens who constitute "over 77 percent of the labor force on Saipan and work predominantly in

²¹ See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²² National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²³ *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.

²⁴ Pacifica Request at 1-2.

²⁵ *Id.* at 2. The CNMI are located over 5,000 miles from the mainland United States in the Micronesia area of the eastern Pacific Ocean. *Id.*

²⁶ *Id.* at 2.

²⁷ *Id.* at 6.

²⁸ *Id.* at 3.

²⁹ *Id.*

³⁰ *Id.* (claiming that as a result of the migration of its customers to CDMA, it would avoid the costs of operating multiple technology platforms, enable it more effectively to compete, make its marketing efforts more effective, and allow more efficient use of its network).

³¹ See *id.* at 4-5.

low-wage occupations.”³² In addition, nearly one-half of its customers are prepaid subscribers who “replenish their accounts only periodically.”³³ Pacifica argues that advanced features of CDMA handsets that have served to encourage upgrades elsewhere in the U.S. cannot overcome the economic realities facing this low-wage population.³⁴

11. Pacifica states that it has not received a request for either Phase I or Phase II service from the CNMI’s PSAP, and that “local government authorities have indicated . . . that a number of higher priorities and threshold issues for deploying E911 remain to be addressed, including securing funding and taking care of basic safety-related infrastructure considerations such as designation of street numbers and installation of street signs on the islands.”³⁵ Further, “[b]ased on discussions with local government authorities, the PSAP’s initial request for E911 is anticipated no sooner than approximately 18 months.”³⁶ In light of this timeframe, Pacifica anticipates that it would be required to initiate Phase II service in late 2007, “roughly coinciding with [its] planned phase-out of TDMA technology and non-ALI-capable handsets in mid-2007.”³⁷ Thus, Pacifica argues that it has “established a compliance plan consistent with the PSAP’s expectation of Phase II-readiness no earlier than mid-2007.”³⁸ Addressing the potential that its customers may roam into areas where Phase II service may be available, Pacifica notes that in the case of its “remote and insular service area, . . . less than one percent of its subscribers roam” and that “[h]istorically, Pacifica has had no roaming traffic to the continental U.S. or Hawaii.”³⁹ In addition, although Pacifica adds that its system upgrade will facilitate additional roaming traffic to the mainland U.S. in the future, it states that “the number of roamers will be low because of the low-wage economy and fact that the CNMI’s foreign guest workers typically do not have visas to enter the U.S.”⁴⁰

12. Pacifica notes that its efforts to migrate customers to ALI-capable handsets “will continue through handset discounts and the company’s planned migration effort, which will include marketing activities already under way such as bill inserts with new handset offers, website announcements, telemarketing and direct mail.”⁴¹ Further, as the PSAP approaches Phase II readiness, Pacifica pledges to “initiate efforts to inform customers of the E911 benefits of handset upgrades.”⁴² Pacifica adds that “although [it] has worked to deploy CDMA coverage coextensively with its analog network, its analog subscribers might experience decreased access to emergency services insofar as that, even after analog subscribers upgrade to CDMA, their lower power digital handsets may work less effectively in the more

³² *Id.* at 5. Pacifica adds that, according to the 2000 Census, the median per capita income in CNMI was 42.4% of the U.S. average. *Id.* at n. 9.

³³ *Id.* at 5.

³⁴ *See id.*

³⁵ *Id.* at 4. Pacifica notes that it nevertheless already has built Phase I capability into its CDMA network. *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 9.

³⁹ *Id.*

⁴⁰ *Id.* at 9-10.

⁴¹ *Id.* at 7.

⁴² *Id.*

remote areas of the islands.”⁴³ In light of the circumstances, Pacifica requests an extension until June 30, 2007 to achieve 95% penetration of location-capable handsets among its subscribers.⁴⁴

III. DISCUSSION

13. We believe that it was critical for all handset-based carriers to have met 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 would be implemented and ensure that Phase II would be fully implemented as quickly as possible.⁴⁵ 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.⁴⁶ 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.⁴⁷

14. Consistent with that directive, we find that certain of Pacifica’s customers using higher-power analog phones would likely find it more difficult, and, at times, impossible to contact a PSAP in the most isolated parts of its service area if those customers were forced to convert to digital CDMA handsets. It thus appears likely that strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and “would result in consumers having decreased access to emergency services,” within the meaning of the ENHANCE 911 Act, at least in some cases.⁴⁸ We therefore conclude that relief from the December 31, 2005 deadline is warranted pursuant to the ENHANCE 911 Act. Accordingly, and as explained in more detail below, we grant the requested extension, subject to certain conditions and reporting requirements, so that the Commission effectively can monitor Pacifica’s progress in meeting the 95% handset penetration benchmark.⁴⁹

15. Our decision to grant the full relief requested is based on the particular circumstances faced by Pacifica. Pacifica operates in insular areas with unique demographics and very distant, over 5000 miles, from the mainland U.S. The isolation of its service area, and the relatively higher proportions of lower-wage and pre-paid subscribers, present especially challenging circumstances in Pacifica’s ability to achieve compliance with the 95% penetration requirement.

⁴³ *Id.* at 11.

⁴⁴ *Id.*

⁴⁵ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

⁴⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

⁴⁷ See *supra* ¶ 8.

⁴⁸ Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

⁴⁹ We note that the Commission has not received any objections from the public safety community specific to the instant request.

16. At the same time, we recognize that *Pacifica* has made some progress, by achieving a 53% penetration level during the first year of its CDMA service offering. Once *Pacifica* deactivates its TDMA system, all of its subscribers will have location-capable handsets, with the exception of some with analog handsets. *Pacifica* notes it has been coordinating with the PSAP so that its TDMA deactivation would occur by the earliest time by which it expects the PSAP to be Phase II-ready. As a result, we find that *Pacifica* sufficiently has demonstrated that it will achieve compliance within its requested timeframe, and thus established a "clear path to full compliance." However, *Pacifica* has not specified when it will discontinue TDMA service, except to state it will occur in mid-2007. Therefore, we emphasize that, in granting the full extension requested by *Pacifica*, we expect it to achieve 95% penetration among its subscribers of location-capable handsets within the requested period, *i.e.* by June 30, 2007.

17. In sum, taking into account the totality of the circumstances, including *Pacifica*'s Tier III status, the unique nature of *Pacifica*'s service areas and subscriber base, and consistent with the ENHANCE 911 Act, we conclude that an extension of the December 31, 2005 deadline, until June 30, 2007, is warranted, subject to certain conditions and reporting requirements so that the Commission effectively can monitor *Pacifica*'s progress in meeting the 95% handset penetration benchmark.⁵⁰

18. *Conditions of Grant.* As a condition of the relief granted herein, *Pacifica* has an ongoing obligation, until it achieves a 95% penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, when it reasonably expects its PSAP will make a valid request 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 PSAP to keep it informed of its progress in achieving higher location-capable handset penetration rates.

19. *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 *Pacifica* to file status reports every February 1, May 1, August 1, and November 1, beginning May 1, 2006, and until June 30, 2008.⁵¹ 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 will be available to PSAPs served by its network; (3) the status of its 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 *Pacifica* to achieve compliance as quickly as possible.

IV. CONCLUSION

20. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that *Pacifica* is entitled to an 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 *Pacifica* must achieve 95% penetration until June 30, 2007, and impose conditions and reporting requirements to ensure that *Pacifica* achieves full compliance with the Commission's E911 requirements. We reiterate that any party seeking a waiver from our E911 rules must demonstrate a clear path to full compliance.

⁵⁰ We note that the Commission has not received any objections from the public safety community with respect to the instant request.

⁵¹ We are requiring *Pacifica* 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 *Pacifica* for an additional year following its revised deadline.

V. ORDERING CLAUSES

21. 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.

22. IT IS FURTHER ORDERED, that the GTE Pacifica, Inc. d/b/a Verizon Pacifica Request for Waiver filed December 19, 2005 IS GRANTED 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 June 30, 2007.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary