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

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Petition for Temporary Waiver or Temporary Stay by North Dakota Network Company	)	
	)	
Petition for Temporary Waiver or Temporary Stay by South Central Utah Telephone Association, Inc.	)	

ORDER

Adopted: March 17, 2006 **Released: March 17, 2006**

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address requests for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by North Dakota Network Company (NDNC) and South Central Utah Telephone Association, Inc. (South Central),[1] two Tier III wireless service providers (collectively, Petitioners).[2] Specifically, NDNC and South Central seek extensions until September 30, 2006 and December 1, 2008, respectively, 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* Petition for Temporary Waiver or Temporary Stay by North Dakota Network Company, CC Docket No. 94-102, filed Dec. 8, 2005 (NDNC Petition); Petition for Temporary Waiver or Temporary Stay by South Central Utah Telephone Association, Inc., CC Docket No. 94-102, filed Dec. 29, 2005 (South Central Petition).

[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.[7] Specifically, we grant NDNC an extension until September 30, 2006 to achieve 95% penetration, among its subscribers, of location-capable handsets. In addition, we grant South Central an extension until one year following release of this *Order* to achieve 95% penetration, among its subscribers, of location-capable handsets.

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-

[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 NDNC and South Central have met the Commission's waiver standard. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Farmers Mutual Telephone Company Petition for Limited Waiver, CC Docket No. 94-102, *Order*, FCC 06-16 (rel. Feb. 22, 2006); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Virginia Cellular LLC, Inc. d/b/a Cellular One, CC Docket No. 94-102, *Order*, FCC 06-20 (rel. Feb. 22, 2006).

[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).

capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.[14]

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

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[14] *See* 47 C.F.R. § 20.18(g)(1)(v).

[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*).

[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, when applying its waiver standards, 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.

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, 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. Requests for Waiver

9. Petitioners are small Tier III carriers providing Personal Communications Services (PCS) in rural areas over Code Division Multiple Access (CDMA) networks.[24] Both carriers have deployed a handset-based E911 Phase II solution and state that they have met or exceeded all of the handset-based deployment benchmarks established for Tier III wireless carriers.[25] Both state, however, that they will be not have met the 95% penetration requirement by December 31, 2005.[26] In this regard, NDNC indicates that it achieved approximately an 85% penetration rate as of November 1, 2005, and South Central states that it achieved approximately an 77% penetration as of December 1, 2005.[27] The Petitioners nonetheless assert that they have been "diligent in [their] efforts" to comply with the 95% penetration deadline.[28]

10. *NDNC.* NDNC states that it has met or exceeded all of the handset-based deployment benchmarks for Tier III wireless carriers.[29] In addition, NDNC notes that it has coordinated its E911 implementation with each of the four PSAPs in NDNC's ten-county service area.[30] NDNC also reports

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[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. Although demonstration of a "clear path to full compliance" is not required to warrant some relief under the ENHANCE 911 Act, we continue to believe that this element of our waiver standard provides useful guidance in determining the extent to which such relief should be granted. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Farmers Mutual Telephone Company Petition for Limited Waiver, CC Docket No. 94-102, *Order*, FCC 06-16 (rel. Feb. 22, 2006); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Virginia Cellular LLC, Inc. d/b/a Cellular One, CC Docket No. 94-102, *Order*, FCC 06-20 (rel. Feb. 22, 2006).

[24] *See* NDNC Petition at 1; South Central Petition at 1.

[25] NDNC Petition at 2; South Central Petition at 2.

[26] NDNC Petition at 3; South Central Petition at 4.

[27] NDNC Petition at 3; South Central Petition at 3.

[28] NDNC Petition at 8; South Central Petition at 8.

[29] NDNC Petition at 2.

[30] *Id.* at 2.

that it provides E911 Phase II service to all of the PSAPs in its service area and has done so since October 25, 2005.[31] NDNC began selling and activating ALI-capable handsets in May 2003.[32] Further, NDNC has "advertised the need for its customers to replace non-ALI-capable handsets by displaying posters in retail stores," and advertising location-capable handsets on its website and through television and newspaper outlets.[33]

11. NDNC also submitted comments from the North Dakota Public Service Commission (NDPSC) supporting its request for relief.[34] In its comments, the NDPSC states that it "supports NDNC's belief that its limited resources would be better spent in continuing to extend the reach of its wireless network into rural and underserved areas than in tracking down existing customers that have elected to retain their non-ALI-capable handsets."[35] The NDPSC Commissioners "urge the FCC to support reasonable efforts at flexibility with regard to the [95% penetration] deadline."[36]

12. *South Central.* South Central states that it has met or exceeded all of the handset-based deployment benchmarks for Tier III wireless carriers.[37] In addition, South Central began selling and activating ALI-capable handsets in January 2003.[38] Further, South Central indicates that it "offered its subscribers financial incentives by allowing them to trade in their existing non-compliant handsets for ALI-capable models at a discount."[39] It states that subscribers were notified of these incentives by mail and individual telephone calls, and that South Central used these opportunities "to educate its subscribers as to the benefits of location-capable handsets over their older units."[40]

13. To achieve 95% penetration, Petitioners assert that they will continue to promote location-capable handsets through posters, bill inserts, and advertising.[41] However, they claim they "cannot compel [their] customers to change out their handsets until they are ready and willing to do so," and that their rural subscribers "historically have tended to hold onto their wireless handsets for much longer than customers in larger, metropolitan markets."[42]

14. Petitioners submit that they satisfy the Commission's waiver standards and are entitled to relief under the ENHANCE 911 Act.[43] Specifically, they argue that "[a]bsent grant of the requested relief, [they] would be forced to devote [their] limited capital resources to the task of tracking down those

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[31] *Id.*

[32] *Id.*

[33] *Id.* at 3, 4.

[34] *See* Supplement to Petition for Temporary Waiver or Temporary Stay by North Dakota Public Service Commission, CC Docket No. 94-102, filed Dec. 19, 2005, Attach. A (including NDPSC's comments) (NDNC Supplement).

[35] NDNC Supplement at Attach. A, p. 2.

[36] *Id.*

[37] South Central Petition at 2.

[38] *Id.*

[39] *Id.* at 3.

[40] *Id.* at 3.

[41] *See* NDNC Petition at 4; South Central Petition at 5. NDNC adds that it will continue to offer free upgrades to location-capable handsets upon subscriber request. *See* NDNC Petition at 4

[42] NDNC Petition at 3; South Central Petition at 3.

[43] NDNC Petition at 7, 9; South Central Petition at 7, 9.

pre-existing customers who (for whatever reason) have voluntarily elected to retain their non-ALI - capable handsets, and subsidizing 100% of the cost of a replacement handset . . . in order to achieve compliance with the ninety-five percent penetration requirement."[44] Petitioners assert that "these scarce resources would be better spent in continuing to extend the reach of [their] wireless network[s] into rural and unserved (or underserved) areas, where access to any type of wireless telephone service (and basic 911 service) would not otherwise be available."[45] They further opine that requiring strict compliance with the 95% penetration requirement could result in the termination of service to those subscribers who elect to retain their non-location-capable handsets.[46] According to the Petitioners, either of these scenarios would result in subscribers having decreased access to emergency services.[47]

III. DISCUSSION

15. 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. Such an outcome would have allowed all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have ensured that Phase II would be fully implemented as quickly as possible.[48] 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.[49] 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.[50]

16. Consistent with that directive and based on the record before us, we believe that some extension of the December 31, 2005 deadline for both Petitioners is warranted under the ENHANCE 911 Act. Both NDNC and South Central assert that certain of their subscribers are unwilling to relinquish their non-location-capable handsets. Under the circumstances presented, we find that Petitioners' compliance with the threshold requirement would likely result in these subscribers not having as much access to wireless services as they have with their current phones; and, thus, these subscribers would have decreased access to emergency services. Accordingly, we conclude that, at present, strict enforcement of the 95% penetration requirement for Petitioners "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act.[51] We therefore conclude that a waiver of the December 31, 2005 deadline is warranted under the circumstances presented, subject to

[44] NDNC Petition at 9; South Central Petition at 9.

[45] NDNC Petition at 9; South Central Petition at 9.

[46] NDNC Petition at 9-10; South Central Petition at 9.

[47] NDNC Petition at 9; South Central Petition at 9.

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

[49] *See Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

[50] *See supra* ¶ 8.

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

certain conditions and reporting requirements to permit effective monitoring of Petitioners' progress towards full compliance with the Commission's location-capable handset penetration requirement.

17. Next, we must determine the appropriate waiver relief for each of the Petitioners. Based on the record before us regarding NDNC's request, including that NDNC achieved approximately an 85% penetration rate as of November 1, 2005, and its request for extension is of limited duration, until September 30, 2006, and its status as a Tier III carrier, and consistent with the ENHANCE 911 Act, we grant NDNC its requested relief. However, we find that South Central has failed to provide sufficient information to warrant the full thirty-five month extension, until December 1, 2008, that it seeks. While South Central has described actions that it will take in an effort to delineate a "clear path to full compliance" with the 95% handset penetration requirement, it has not provided specific information justifying the lengthy duration of its requested extension – namely, almost three additional years. Rather, it only makes generalized assertions concerning the reluctance of its customers to obtain location-capable handsets. As we have stated previously, extensions of the handset penetration deadline should be limited to the shortest practicable time.[52] Based on the record before us, we are not persuaded that the requested thirty-five month extension is warranted. We fully expect South Central to engage in all necessary efforts to ensure that it meets the 95% handset penetration benchmark as quickly as possible. Absent it doing so on an ongoing basis, South Central should not assume that the Commission would act favorably on any future request for relief based on these same grounds. In sum, taking into account the totality of the circumstances affecting South Central, including its status as a Tier III carrier, and consistent with the ENHANCE 911 Act, we grant South Central a limited extension of one year from the release of this *Order* to achieve a 95% handset penetration level, among its subscribers, of location-capable handsets. Further, we are imposing certain conditions and reporting obligations so that we may monitor both Petitioners' compliance efforts.[53]

18. *Conditions*. As a condition of the relief granted herein, each Petitioner 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.

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 NDNC and South Central to file status reports. For NDNC, status reports will be due every February 1, May 1, August 1, and November 1, until September 30, 2007, and for South Central, status reports will be due every February 1, May 1, August 1, and November 1, until two years from the release date of this *Order*.[54] These reports shall include, for each Petitioner, 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

[52] *See Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶1.

[53] We note that the Commission has not received any objections from the public safety community with respect to the instant requests.

[54] We are requiring Petitioners to file status reports beyond the date on which we otherwise require them to achieve 95% penetration, among their subscribers, of location-capable handsets. We believe it is important to continue monitoring Petitioners' progress for an additional year following their respective revised deadlines. Moreover, this requirement is consistent with what has been imposed upon other entities receiving similar waiver relief. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Farmers Mutual Telephone Company Petition for Limited Waiver, CC Docket No. 94-102, *Order*, FCC 06-16 (rel. Feb. 22, 2006); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Virginia Cellular LLC, Inc. d/b/a Cellular One, CC Docket No. 94-102, *Order*, FCC 06-20 (rel. Feb. 22, 2006).

which Phase II service has been implemented or 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 (7) 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.

IV. CONCLUSION

20. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that Petitioners are entitled to extensions of the December 31, 2005 requirement that they achieve 95% penetration, among their subscribers, of location-capable handsets. Specifically, we extend the date that NDNC must achieve 95% penetration until September 30, 2006, and we extend the date that South Central must achieve 95% penetration until one year following release of this *Order*. We further impose conditions and reporting requirements to ensure that Petitioners achieve full compliance with the Commission's E911 requirements.

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 Petition for Temporary Waiver or Temporary Stay by North Dakota Network Company IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be September 30, 2006.

23. IT IS FURTHER ORDERED, that the Petition for Temporary Waiver or Temporary Stay by South Central Utah Telephone Association, Inc. IS GRANTED IN PART, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be one year from the release of this *Order*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary