

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:	)	Sagebrush Cellular, Inc.
	)	P.O. Box 600
E911 Phase II Implementation Report	)	Scobey MT 59263-0600
	)	TRS Number: 805272
	)	
CC Docket No. 94-102	)	Nemont Communications, Inc.
	)	P.O. Box 600
	)	Scobey MT 59263-0600
	)	TRS Number: 801563
	)	
	)	Triangle Communication System, Inc.
	)	2121 Highway 2 NW
	)	P.O. Box 1230
	)	Havre, MT 59501-1230
	)	TRS Number: 818268

To: Wireless Telecommunications Bureau

**REQUEST FOR EXTENSION/WAIVER OF THE 95% PENETRATION  
COMPLIANCE DEADLINE**

Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc. ("Carriers"),<sup>1</sup> by their attorney, hereby request further extension of the 95% location capable handset penetration requirement.<sup>2</sup> In support whereof, the following is respectfully submitted:

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<sup>1</sup> The Carriers utilize Sagebrush Cellular, Inc.'s switch and concur in the report and supplements. Sagebrush Cellular, Inc. and Nemont Communications, Inc. (collectively Sagebrush) are affiliated companies and provide analog and digital subscriber services. Sagebrush provides switching, technical, and billing services to Triangle Communication System, Inc. Triangle Communication System, Inc. holds both cellular and PCS licenses and provides analog and digital services.

<sup>2</sup> 47 C.F.R. § 20.18(g)(1)(v) provides that the Carriers must "by December 31, 2005, achieve 95 percent penetration of location-capable handsets among its subscribers."

The Commission's *Order*, 20 FCC Rcd. 7709 ¶¶ 67-72 (FCC 2005) granted the Carriers an extension until June 30, 2006 to meet the 95% location capable handset penetration requirement and indicated that further relief could be obtained under appropriate circumstances. The Carriers respectfully submit that given the unique circumstances of their very rural cellular systems as discussed below, that a further one year extension of the 95% subscriber penetration benchmark is warranted.

As previously reported the Carriers have been unable to obtain quality handsets which are location capable and which satisfy existing subscribers' demand for extended range in the rural areas served by the Carriers. The Carriers' shared experience continues to be that the location capable handsets which are on the market do not have the range of non-location capable handsets. Consequently, subscribers either return location capable phones and demand handsets that work for making telephone calls even if the location capability is lacking or subscribers keep existing handsets without being willing to try a location capable handset given the reduced range of those handsets. The Carriers' understanding that handset manufacturers are not improving the coverage reliability of location capable handsets to account for service in large, sparsely populated rural areas.

The Carriers are Tier III carriers under the Commission's rules and operate in large, sparsely populated areas of rural Montana.<sup>3</sup> In their February 7, 2005, *Second Supplement to E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines and Request for Clarifications (Second Supplement)* the Carrier presented the following market area information: Sagebrush Cellular, Inc. is authorized to provide cellular service in the following Montana Counties:

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<sup>3</sup> 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). Carriers have fewer than 500,000 subscribers individually and in the aggregate.

	<b>2000 Census Population</b>	<b>Area in Sq. Miles</b>	<b>Population per square mile</b>
Daniels	2,017	1,427	1.4
Roosevelt	10,620	2,370	4.5
Sheridan	4,105	1,706	2.4
Valley	<u>7,675</u>	<u>5,062</u>	<u>1.6</u>
Totals	24,417	10,565	2.475

Triangle Communication System, Inc. is authorized to provide cellular service in the following Montana Counties:

	<b>2000 Census Population</b>	<b>Area in Sq. Miles</b>	<b>Population per square mile</b>
Blaine	7,009	4,239	1.7
Liberty	2,158	1,447	1.5
Phillips	<u>4,601</u>	<u>5,212</u>	<u>0.9</u>
Totals	13,768	10,898	1.36

The Counties served by the Carriers comprise a total of 21,463 sq. miles, have a combined 2000 Census population of 38,185 people, resulting in a combined population density of 1.9 people per square mile.<sup>4 5</sup>

Because the population in these large areas is very sparse the Carriers have constructed cellular systems with cell sites which are designed to cover the largest area possible. Unlike cellular systems in densely populated areas, frequency reuse and system congestion do not drive cell site construction. The Carriers have constructed a total of 29 sites (**this number is from the Feb '05 filing, is this a current number? I think Sagebrush might have 2 more sites operating since we**

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<sup>4</sup> The Commission considers a population density of 100 persons or fewer per square mile to be "rural areas" for purposes of wireless spectrum policies. *See Facilitating the Provision of Spectrum-Based Service to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services; Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation: Report and Order and Further Notice of Proposed Rulemaking, (Rural Spectrum Order), 19 FCC Rcd. 19078 ¶ 2 (FCC 2004).*

<sup>5</sup> There is much wide-ranging farmland and ranch land in the Carriers' service areas and many of those reluctant to switch handsets are farmers and ranchers who take their phones off road to remote work areas. Farmers and ranchers routinely take their cell phones with them into the field where they are far removed from other people in the event an emergency arises.

filed in Feb. 2005) to serve the counties discussed above. By way of contrast it is the Carriers' belief that the A Block cellular licensee in these counties has constructed a total of 5 cell sites. There is no PCS service available in these areas.

Large numbers of the Carriers' subscriber bases have not yet wanted to trade the larger service area currently provided by their analog phones for digital phones which have a smaller service area even if those phones have location capability. The following percentage breakdown of the Carriers' subscribers by handset unit type, current as of January 26, 2005, was provided in the February 7, 2005, *Second Supplement*:

	<b>Analog</b>	<b>Digital Non-GPS</b>	<b>GPS Capable</b>
Sagebrush Cellular, Inc.	30%	18%	52%
Triangle Communication System, Inc.	36%	23%	41%

As of April 13, 2006, the penetration figures are as follows:

	<b>Analog</b>	<b>Digital Non-GPS</b>	<b>GPS Capable</b>
Sagebrush Cellular, Inc.	15%	5%	80%
Triangle Communication System, Inc.	22%	6%	72%

Thus, during the 15 months since the *Second Supplement* was filed Sagebrush has improved its location capable penetration from 52% to 80% (a change of approximately 1.8% per month) while Triangle has improved its location capable penetration from 41% to 72% (a change of approximately 2.1% per month).<sup>6</sup>

The Carriers have implemented revenue losing programs to move customers to location capable phones. Moreover, the Carriers do not allow subscribers with non-GPS handsets to migrate to any new rate plans which could lower their monthly bills. These programs are having an impact, but the rate of change is not very fast as described above. However, the Carriers are in the process of implementing system buildout plans to improve the digital coverage area so that the digital service area more closely matches the analog service area in real world application. On April 24, 2006,

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<sup>6</sup> Since early November 2004 the Carriers' new activations are 100% GPS capable handsets.

Sagebrush filed two major modification applications with the Commission (File Nos. 0002580746 & 0002580746) proposing to add nine (9) new cell sites within the coming year in order to improve digital coverage for location capability purposes. Additionally, Sagebrush will add three new sites in the coming year which do not require prior Commission approval for a total of thirteen (13) new sites added within the coming year and Sagebrush is in the process of designing modifications at four (4) existing sites which are intended to improve digital coverage and these modifications are expected to be implemented within the next year.<sup>7</sup> Similarly, Triangle intends to add seven (7) new sites over the course of the next three years.<sup>8</sup>

To the extent that location capable digital phones are unusable in portions of the Carriers' service area, owing to their poorer coverage performance compared to non-location capable handsets, Carrier imposition of location capable handsets is inimical to the public interest because the location compliant phones do not work at all in portions of the Carriers' service areas. Were Carriers to force subscribers to use location capable digital phones subscribers would not be able to reach any type of emergency service in many places within Carriers' current service area. The Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act), Pub. L. No. 108-494, 118 Stat. 3986 (2004), "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.'" *Request for Waiver by Cellular Network Partnership, A Limited Partnership d/b/a Pioneer Cellular, Request for Waiver by Midwest Wireless Holdings*

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<sup>7</sup> The modifications discussed above are planned for the first year of an aggressive three year service area expansion plan.

<sup>8</sup> At this time Triangle is pursuing ETC funding at the state level which will make that aggressive expansion program possible. The planned expansion will double the number of cell sites in the system.

*L.L.C.*, FCC 06-9, released February 10, 2006. It is respectfully submitted that Carriers are making a good faith effort to comply with the 95% benchmark requirement and that relief under the ENHANCE Act standard is warranted.<sup>9</sup>

WHEREFORE, because location capable handsets lack the range of non-location capable handsets, because the Carriers operate in large, sparsely populated areas and are Tier III carriers, because Carriers continue to make progress toward the 95% benchmark, because Carriers are implementing service area improvement plans, and because Carriers have not received any requests for E911 service, it is respectfully submitted that grant of the waiver request would serve the public interest.

Contact person responsible for this request:

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April 28, 2006

  
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Timothy E. Welch

cc: Greg Guice, Acting Associate Division Chief, Public Safety and Critical Infrastructure Division,  
Wireless Telecommunications Bureau

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<sup>9</sup> None of the Carriers has received a Phase I or a Phase II location service request from a PSAP.

**CERTIFICATION**

I hereby certify under penalty of perjury that I am an authorized employee of Sagebrush Cellular, Inc. and that I have reviewed the forgoing REQUEST FOR EXTENSION/WAIVER OF THE 95% PENETRATION COMPLIANCE DEADLINE and that the statements made therein are true and accurate to the best of my knowledge, information, and belief.



Gary Dascher, System Manager  
Sagebrush Cellular, Inc.

April 27, 2006