

Before the
Federal Communications Commission
Washington, D C 20554

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JUL 13 2006

FCC Mail Room

In the Matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket No 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
Petition of ACS Wireless for Limited Waiver)

ORDER**Adopted: July 10, 2006****Released: July 10, 2006**

By the Acting Chief, Wireless Telecommunications Bureau

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 ACS Wireless, Inc (ACSW),¹ a Tier III wireless service provider.² Specifically, ACSW seeks an extension of time, until January 31, 2007, for its Anchorage and Fairbanks subscribers 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 of ACS Wireless for Limited Waiver of 95% Handset Penetration Deadline for Anchorage and Fairbanks, CC Docket No. 94-102, filed May 1, 2006 (ACSW 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, 7709-10 ¶ 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. Specifically, we grant ACSW an extension, until January 31, 2007, to achieve 95% penetration of location-capable handsets among its Anchorage and Fairbanks subscribers.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 Before a wireless licensee’s obligation to provide E911 service is triggered, however, 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 ACSW has met the Commission’s waiver standard.

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 deployment¹⁵ 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 benchmarks¹⁷ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information¹⁸ 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 sources¹⁹ 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 relief²⁰

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*)

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 *Id.*, 18 FCC Rcd at 20997 ¶ 28

but are not location-capable²¹ 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

9 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 ACSW an extension, until January 31, 2007, to achieve 95% penetration of location-capable handsets among its Anchorage and Fairbanks subscribers

C Request for Waiver

10 ACSW is a Tier III carrier providing cellular service in a large area of Alaska and has deployed a handset-based E911 Phase II solution²⁴ The Commission previously granted ACSW relief from the location-capable handset deployment benchmarks in the *Tier III Carriers Order*²⁵ Specifically, the Commission permitted ACSW to continue selling and activating non-location-capable analog and TDMA handsets in areas where ACSW has not completed a planned CDMA rollout, but required ACSW to begin selling and activating only location-capable CDMA handsets in areas upgraded to CDMA²⁶ In addition, the Commission granted ACSW an extension of the 95% location-capable handset penetration deadline until June 30, 2006 for Anchorage and Fairbanks and until January 31, 2007 for all other areas in Alaska²⁷ The Commission noted its actions did "not preclude ACSW from seeking additional relief of the handset penetration deadline under the standard articulated in the ENHANCE 911 Act"²⁸

11 In its current request, ACSW states that it has met all of the Commission's prior location-capable handset sale and activation benchmarks²⁹ ACSW "ensured that 100% of all new activations after May 30, 2005 (for Anchorage and Fairbanks) and December 31, 2005 (for other areas in Alaska) were location-capable"³⁰ ACSW also fulfilled all PSAP requests for E911 service, including a Phase II request from the Anchorage PSAP, the only Alaska PSAP that can receive Phase II data³¹ Further, ACSW

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 ACSW Petition at 2-3

²⁵ See *Tier III Carriers Order* 20 FCC Rcd at 7717-20 ¶¶ 15-21

²⁶ See *id* at 7719 ¶ 18

²⁷ See *id*

²⁸ *Id* at ¶ 21 n 65

²⁹ ACSW Petition at 3

³⁰ *Id*

³¹ See *id* at 3-4, 12

reports “substantial progress toward meeting the 95% location-capable handset penetration deadline”³² Specifically, as of March 31, 2006, 76% of its subscribers statewide, and 78% of its Anchorage and Fairbanks subscribers, had location-capable handsets³³

12 ACSW asserts that it has “undertaken a number of aggressive and creative steps to achieve compliance with the 95% ALI-capable handset penetration deadline in Anchorage and Fairbanks,” including establishing a “senior-level Task Force dedicated to reaching the benchmark as soon as possible.” “expend[ing] substantial resources, including significant amounts of funds, to convince subscribers to upgrade their handsets through advertising E911 features and ALI-capable phones,” “aggressively target[ing] multiple marketing initiatives” to subscribers who are not yet using ALI-capable phones, and offering “numerous financial incentives for customers to upgrade their handsets”³⁴ ACSW adds that it developed a number of promotions, held focus groups, conducted drive tests with business customers, and purchased machines enabling, for free, the transfer of contact and speed dial information to new handsets³⁵

13 ACSW intends to continue its consumer education and marketing efforts and “increase the volume of communication over time, through bill inserts and other marketing strategies”³⁶ ACSW also plans to “increase its network size by almost another 30% before year-end, significantly expanding coverage beyond the footprint of the ‘old’ AMPS/TDMA facilities and adding a number of sites in areas to which Anchorage and Fairbanks customers often travel”³⁷ As a result, “ACSW will encourage more of its Anchorage and Fairbanks customers to convert to CDMA, since they may no longer need to rely on their older TDMA or analog phones for adequate coverage outside the urban areas”³⁸ In addition, ACSW will continue efforts to work with manufacturers to obtain and market “higher-power phones with a location-capable component”³⁹ Further, ACSW “intends to work with PSAPs and E911 coordinators in Anchorage and Fairbanks” and “plans to inform the PSAPs about its progress in converting subscribers to ALI-capable phones”⁴⁰

14 Despite these efforts, ACSW does not expect to reach a 95% handset penetration level in Anchorage and Fairbanks by its current June 30, 2006 deadline⁴¹ Although ACSW originally proposed an earlier deadline for Anchorage and Fairbanks due to its CDMA buildout schedule for those areas, ACSW acknowledges it “failed to appreciate that a number of its Anchorage and Fairbanks customers would still want to retain their older phones for better coverage when they traveled to more remote areas,

³² *Id.* at 4

³³ *See id.* at 4-5 ACSW subsequently reported that, as of June 20, 2006, it had achieved an overall handset penetration level of 86% in Anchorage and Fairbanks *See* Update to Petition for Limited Waiver, CC Docket No 94-102, filed June 26, 2006, at 1 (ACSW Update)

³⁴ ACSW Petition at 7-8 In one of its mailings, ACSW “offered a \$19 phone, a free car charger, and a year of free text messaging” *Id.* at 9

³⁵ *See id.* at 9

³⁶ *Id.* at 13 As part of its more recent efforts, ACSW has engaged in targeting marketing activities with respect to its pre-paid customers *See* ACWS Update at 2

³⁷ ACSW Petition at 14 ACSW reports that it has made progress on its network expansion efforts since the filing of its Petition Specifically, ACSW turned up eighteen new CDMA sites since the beginning of this year, and expects to turn up “at least” fifteen more CDMA sites by the end of July 2006 *See* ACWS Update at 2

³⁸ ACSW Petition at 14

³⁹ *Id.*

⁴⁰ *Id.* at 15

⁴¹ *See id.* at 10

including off-highway recreation areas, that had not been fully built out”⁴² According to ACSW, some of its subscribers are keeping “older analog and TDMA phones because they perceive these phones to provide better coverage and service quality than the ALI-capable CDMA phones”⁴³ In addition, some subscribers are “simply content with their existing handsets and service agreements,” and others are “hesitant to replace a working phone when their local PSAP does not support E911 Phase II service”⁴⁴ ACSW also cites budget cycles and bid processes as delaying some business and government customers’ ability to commit to a conversion schedule to match the June 30, 2006 deadline⁴⁵

15 ACSW submits that it satisfies the Commission’s waiver standards and is entitled to relief under the ENHANCE 911 Act⁴⁶ Concerning the standard for waiver under the ENHANCE 911 Act, it asserts that “[s]ome of ACSW’s subscribers in Anchorage and Fairbanks still rely on certain older analog phones that have a greater reach than ACSW’s CDMA phones”⁴⁷ According to ACSW, when Anchorage and Fairbanks subscribers travel to rural areas outside the CDMA network, including recreation and scenic areas, “the older, higher power analog phones may be the only phones that can connect them to emergency services”⁴⁸ ACSW adds that, unless the Commission grants its waiver request, the carrier “could be required to terminate service to its Anchorage and Fairbanks customers that have chosen not to upgrade to an ALI-capable phone” in order to comply with its June 30, 2006 deadline⁴⁹ As a result, customers using analog and TDMA handsets who currently can access emergency services by dialing 911 “would be unable to make *any* emergency calls with mobile phones”⁵⁰

III DISCUSSION

16 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 possible⁵¹ 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 standards⁵² 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,

⁴² *Id.* at 2

⁴³ *Id.* at 11

⁴⁴ *Id.*

⁴⁵ *See id.* at 12

⁴⁶ *See id.* at 15-19

⁴⁷ *Id.* at 15

⁴⁸ *See id.* at 15-16

⁴⁹ *See id.* at 16

⁵⁰ *Id.* (emphasis in original)

⁵¹ *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38

⁵² *See Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1, *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6

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 services⁵³

17 Consistent with that directive and based on the record before us, we believe that, pursuant to the ENHANCE 911 Act, grant of the requested waiver of its current June 30, 2006 benchmark is warranted, subject to certain conditions and reporting requirements to permit effective monitoring of ACSW's progress towards full compliance with the Commission's location-capable handset penetration requirement. Specifically, we find that certain of its customers who use TDMA or analog phones, particularly higher-power analog phones affording extended range, would likely find it more difficult, and, at times, impossible to contact a PSAP in portions of ACSW's service area if those customers were forced to convert to CDMA handsets. It thus appears likely that strict enforcement of ACSW's current June 30, 2006 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,⁵⁴ at least in some cases. We therefore conclude that relief from ACSW's current June 30, 2006 deadline is warranted pursuant to the ENHANCE 911 Act. We also note that ACSW's extension request is of limited duration and matches its current deadline for achieving 95% penetration among its subscribers in its remaining service areas in Alaska. Accordingly, we grant the requested extension subject to certain conditions and reporting requirements so that the Commission effectively can monitor ACSW's progress in meeting the 95% handset penetration benchmark.⁵⁵

18 *Conditions* As a condition of the relief granted herein, ACSW 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 95% handset penetration requirement granted herein, we will require ACSW to file status reports every February 1, May 1, August 1, and November 1, beginning August 1, 2006, until January 31, 2008.⁵⁶ 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 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, (6) the status of its progress in increasing its network coverage beyond the footprint of its AMPS/TDMA facilities, and (7) until it satisfies the 95% penetration rate, detailed information on its progress 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 ACSW is entitled to a limited extension of its current June 30, 2006 requirement that it achieve 95%

⁵³ See *supra* ¶ 8.

⁵⁴ Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

⁵⁵ We note that the Commission has not received any objections from the public safety community specific to the instant request.

⁵⁶ We note that we are requiring ACSW 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 ACSW's progress for an additional year following the revised deadline.

penetration, among its Anchorage and Fairbanks subscribers, of location-capable handsets. Specifically, we extend the date that ACSW must achieve 95% penetration for Anchorage and Fairbanks until January 31, 2007, consistent with ACSW's deadline for the remainder of its Alaska service area. We further impose the conditions and reporting requirements described above to ensure that ACSW achieves full compliance with the Commission's E911 requirements.

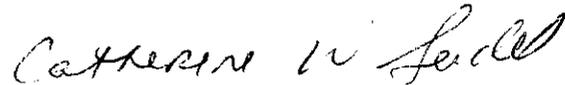
V ORDERING CLAUSES

21 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 of ACS Wireless for Limited Waiver of 95% Handset Penetration Deadline for Anchorage and Fairbanks IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be January 31, 2007 for Anchorage and Fairbanks, as well as for all other areas in Alaska.

23 These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Catherine W. Seidel
Acting Chief, Wireless Telecommunications Bureau