

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)	
)	
Request for Extension/Waiver of Sagebrush)	
Cellular, Inc , Nemont Communications, Inc , and)	
Triangle Communication System, Inc)	

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 Sagebrush Cellular, Inc , Nemont Communications, Inc , and Triangle Communication System, Inc (Sagebrush Carriers),¹ Tier III wireless service providers.² Specifically, the Sagebrush Carriers seek a one-year extension of time from their current June 30, 2006 deadline, until June 30, 2007, 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 Request for Extension/Waiver of the 95% Penetration Compliance Deadline, CC Docket No. 94-102, filed Apr. 28, 2006 (Sagebrush Carriers 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). The Commission previously granted the Sagebrush Carriers waiver relief from the 95% handset penetration deadline until June 30, 2006. 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, 7735-37 ¶¶ 67-72 (2005) (*Tier III Carriers Order*).

⁴ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1.

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 a further extension of relief from the 95% penetration requirement is warranted subject to certain conditions described below⁷ Specifically, we grant the Sagebrush Carriers an extension until June 30, 2007 to achieve 95% penetration, among their 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 calls⁸ 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 service¹¹ 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 costs¹²

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 service¹³ 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, 2005¹⁴

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

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 the Sagebrush Carriers have 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)

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

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, 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,

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.

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).

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 The Sagebrush Carriers are Tier III carriers providing cellular service “in large, sparsely populated areas of rural Montana” over analog and Code Division Multiple Access (CDMA) networks²⁴ The counties served by the Sagebrush Carriers have a combined population density of 1.9 persons per square mile, and include “much wide-ranging farmland and ranch land”²⁵ The Commission previously granted the Sagebrush Carriers relief from the location-capable handset deployment benchmarks in the *Tier III Carriers Order*, including an extension of the requirement to ensure that 100% of all new digital handsets activated be location-capable, from November 30, 2004 to May 31, 2005²⁶ In addition, the Commission granted the Sagebrush Carriers a limited extension of the 95% location-capable handset penetration deadline until June 30, 2006²⁷ The Commission noted its actions did “not preclude the Sagebrush Carriers from seeking additional relief of the handset penetration deadline under the standard articulated in the ENHANCE 911 Act”²⁸

10 In their current request, the Sagebrush Carriers state that “[s]ince November 2004 [their] new activations are 100% GPS capable handsets”²⁹ They submit that from January 2005 to April 2006, the penetration rate of location-capable handsets among Sagebrush and Nemont subscribers increased from 52% to 80%, and, among Triangle subscribers, from 41% to 72%³⁰ They claim to “have implemented revenue losing programs to move customers to location capable phones” and “do not allow subscribers with non-GPS handsets to migrate to any new rate plans which could lower their monthly bills”³¹

11 In addition, the Sagebrush Carriers “are in the process of instituting system build-out plans to improve the digital coverage area so that the digital service area more closely matches the analog service area in real world applications”³² Sagebrush plans thirteen new cell sites and modifications at four sites to improve digital coverage within the coming year, “the first year of an aggressive three year service area expansion plan”³³ Triangle intends to add seven new sites over the next three years and “is

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 See Sagebrush Carriers Request at 2, *Tier III Carriers Order*, 20 FCC Rcd at 7735 ¶ 67. Sagebrush Cellular, Inc. (Sagebrush) and Nemont Communications, Inc. (Nemont) are affiliated companies, Sagebrush’s switch serves each of Sagebrush, Nemont, and Triangle Communication System, Inc. (Triangle). See Sagebrush Carriers Request at 1 n. 1.

²⁵ See Sagebrush Carriers Request at 3.

²⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7736 ¶ 69.

²⁷ See *id.* at 7737 ¶ 71. The Sagebrush Carriers had requested a permanent waiver of the 95% handset penetration requirement. See *id.* at 7736 ¶ 67.

²⁸ See *id.* at 7737 ¶ 72 n. 187.

²⁹ Sagebrush Carriers Request at 4 n. 6.

³⁰ See *id.* at 4.

³¹ See *id.*

³² *Id.*

³³ See *id.* at 4, n. 7.

pursuing ETC [eligible telecommunications carrier] funding at the state level which will make that aggressive expansion program possible”³⁴ Triangle’s “planned expansion will double the number of cell sites in the system”³⁵

12 The Sagebrush Carriers argue that “the unique circumstances of their very rural cellular systems” warrant further relief of the 95% penetration requirement³⁶ The Sagebrush Carriers submit that “[l]arge numbers of [their] 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 areas even if those phones have location capability”³⁷ They add they “have been unable to obtain quality handsets which are location capable and which satisfy existing subscribers’ demand for extended range”³⁸ Further, the Sagebrush Carriers assert that “location capable handsets which are on the market do not have the range of non-location capable handsets” and that “[c]onsequently, subscribers either return location capable phones or keep existing handsets”³⁹ The carriers submit that, due to these factors, the “rate of change” of location-capable handset penetration “is not very fast”⁴⁰

13 The Sagebrush Carriers contend they “are making a good faith effort to comply with the 95% benchmark requirement” and merit relief under the ENHANCE 911 Act⁴¹ They assert “location capable digital phones are unusable in portions of [their] service area, owing to their poorer coverage performance compared to non-location capable handsets”⁴² They argue that if they were “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,” and thereby satisfy the standard set forth in the ENHANCE 911 Act⁴³

III DISCUSSION

14 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 would have ensured that Phase II would be fully implemented as quickly as possible⁴⁴ 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 standards⁴⁵ Accordingly, when addressing requests for waiver of the 95%

³⁴ See *id.* at 5, n. 8

³⁵ *Id.* at 5 n. 8

³⁶ See *id.* at 2

³⁷ *Id.* at 4

³⁸ *Id.* at 2

³⁹ *Id.*

⁴⁰ See *id.* at 4

⁴¹ See *id.* at 5-6

⁴² *Id.* at 5

⁴³ See *id.* at 5-6

⁴⁴ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38

⁴⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1, *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6

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.⁴⁶

15 Consistent with that directive and based on the record before us, we find that, pursuant to the ENHANCE 911 Act, grant of the requested waiver of their current June 30, 2006 benchmark is warranted, subject to certain conditions and reporting requirements to permit effective monitoring of the Sagebrush Carriers' progress towards full compliance with the Commission's location-capable handset penetration requirement.⁴⁷ Specifically, we find that certain of the Sagebrush Carriers' customers using non-location-capable phones likely would find it more difficult, and, at times, impossible to contact a PSAP in portions of their service area if those customers were forced to convert to location-capable handsets. It thus appears likely that strict enforcement of the Sagebrush Carriers' current June 30, 2006 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and thus "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act,⁴⁸ at least in some cases. We therefore conclude that relief from the Sagebrush Carriers' current June 30, 2006 deadline is warranted pursuant to the ENHANCE 911 Act. We also note that their extension request is of limited duration. Accordingly, we grant the requested extension, subject to certain conditions and reporting requirements so that the Commission effectively can monitor the Sagebrush Carriers' progress in meeting the 95% handset penetration benchmark.⁴⁹

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

17 *Reporting Requirements* Finally, in order to monitor compliance in accordance with the extension of the 95% handset penetration requirement granted herein, we will require the Sagebrush Carriers to file status reports every February 1, May 1, August 1, and November 1, beginning August 1,

⁴⁶ See *supra* ¶ 8.

⁴⁷ We note that the Commission has not received any objections from the public safety community specific to the instant request.

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

⁴⁹ In an earlier, separate filing, the Sagebrush Carriers requested clarification with respect to the following issues: (1) "whether service terminations must be made, in the absence of a waiver, to meet the 95% penetration requirement if subscribers do not wish to switch to location capable handsets," and (2) "the format of the location information which is to be transmitted to a PSAP." See E911 Phase II Interim Report, Request for Leave to File a Second Interim Report to Determine Whether Waiver is Necessary, and Requests for Clarification, filed Sept. 1, 2005, at 5-6. Our grant herein of the requested further extension of time to comply with the 95% handset penetration requirement renders the first matter for clarification moot, and we therefore dismiss this portion of the request for clarification. As to the second issue presented for clarification, the Sagebrush Carriers present little explanation other than they intend to transmit location information using their "Nortel switching equipment format." *Id.* at 6. We deny this request for clarification because the Commission previously has stated its intention to "encourage PSAPs and carriers to reach agreement on an appropriate method for transmitting E911 information to the PSAP, given the circumstances of each situation." Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Systems, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, 20886 ¶ 90 (1999). Accordingly, the Sagebrush Carriers should work with the PSAP to determine a mutually agreeable format for the transmission of location information. In the event that a serious dispute cannot be worked out between the carrier and PSAP, the parties may petition the Commission for resolution. See *id.* at 20886 ¶¶ 91-92.

2006, until June 30, 2008⁵⁰ These reports shall include for each of the Sagebrush Carriers the following information (1) the number and status of Phase II requests from PSAPs (including those requests they may consider invalid), (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by their networks, (3) the status of their coordination efforts with PSAPs for alternative 95% handset penetration dates, (4) their efforts to encourage customers to upgrade to location-capable handsets, (5) the percentage of their customers with location-capable phones, (6) the status of their progress in adding new cell sites to improve digital coverage areas, and (7) until they satisfy the 95% penetration rate detailed information on their status in achieving compliance and whether they are on schedule to meet the revised deadline

IV CONCLUSION

18 For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that the Sagebrush Carriers are entitled to a limited extension of their current June 30, 2006 requirement that they achieve 95% penetration, among their subscribers, of location-capable handsets Specifically, we extend the date that the Sagebrush Carriers must achieve 95% penetration until June 30, 2007 We further impose conditions and reporting requirements to ensure that the Sagebrush Carriers achieve full compliance with the Commission's E911 requirements

V ORDERING CLAUSES

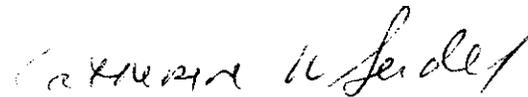
19 Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub L No 108-494, 118 Stat 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED

20 IT IS FURTHER ORDERED, that the Request for Extension/Waiver of the 95% Penetration Compliance Deadline IS GRANTED, 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

21 IT IS FURTHER ORDERED, that the request for clarification contained in the E911 Phase II Interim Report, Request for Leave to File a Second Interim Report to Determine Whether Waiver is Necessary, and Requests for Clarification IS DISMISSED IN PART AND DENIED IN PART

22 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

⁵⁰ We note that we are requiring the Sagebrush Carriers 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 the Sagebrush Carriers' progress for an additional year following their revised deadline