

**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

**STATUS REPORT: THE 95% LOCATION CAPABLE
HANDSET PENETRATION REQUIREMENT**

Sagebrush Cellular, Inc. and Triangle Communication System, Inc. (“Carriers”),¹ by their attorney, pursuant to the July 10, 2006, *Order*, ¶ 17, DA 06-1419, hereby file a status report regarding their progress to meet the 95% location capable handset penetration requirement.² In support whereof, the following is respectfully submitted:

¹ The Carriers utilize Sagebrush Cellular, Inc.’s switch and concur in the report and supplements. Sagebrush Cellular, Inc. provides 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.

² 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. On April 28, 2006, the Carriers filed a request for an extension of the 95% penetration requirement to June 30, 2007, which was granted on July 10, 2006. *See* July 10, 2006, *Order*, ¶ 17, DA 06-1419.

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.³ In their February 7, 2005, *Second Supplement to E911 Phase II Interim Report and Request for Waiver of the*

³ 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

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:

	2000 Census Population	Area in Sq. Miles	Population per square mile
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:

	2000 Census Population	Area in Sq. Miles	Population per square mile
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

fewer than 500,000 subscribers individually and in the aggregate.

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.^{4 5}

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 31 sites to serve the counties discussed above. By way of contrast it is the

⁴ 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).*

⁵ 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.

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*:

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

The following percentage breakdown of the Carriers' subscribers by handset unit type, current as of April 13, 2006, was provided in the Carriers' April 28, 2006, *Request For Extension/Waiver of the 95% Penetration Compliance Deadline*:

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

As of June 30, 2006, the current penetration figures are as follows:

	Analog	Digital Non-GPS	GPS Capable
Sagebrush Cellular, Inc.	11%	3%	85%
Triangle Communication System, Inc.	19%	4%	76%

As of September 30, 2006, the current penetration figures are as follows:

	Analog	Digital Non-GPS	GPS Capable
Sagebrush Cellular, Inc.	10%	2%	88%
Triangle Communication System, Inc.	17%	3%	80%

Thus, during the 20 months since the *Second Supplement* was filed Sagebrush has improved its location capable penetration from 52% to 88% (a change of

approximately 1.8% per month) while Triangle has improved its location capable penetration from 41% to 80% (a change of approximately 2.0% per month).⁶

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

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, 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.⁷ Similarly, Triangle intends to add seven (7) new sites over the course of the next three years.⁸

⁷ The modifications discussed above are planned for the first year of an aggressive three year service area expansion plan. The Commission has now granted

the modification applications and Sagebrush is moving forward with its construction plans.

⁸ 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. On May 25, 2006, Triangle filed an application to add a new site to its cellular system (KNKQ433, File No. 0002627747). That application has been granted and Triangle is moving forward with its construction plans.

To the extent that location capable digital phones are unuseable 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 L.L.C.* FCC 06-9, released February 10, 2006. It is respectfully submitted that Carriers continue to make a good faith effort to comply with the 95% benchmark requirement.⁹

Responses to specific inquiries made in the July 10, 2006, *Order*, ¶ 17, DA 06-1419:

(1) The number and status of Phase II requests from PSAPs (including those requests they may consider invalid): *See* note 9 above, the PSAPs are not ready to implement location capability.

⁹ None of the Carriers has received a Phase I or a Phase II location service

(2) The dates on which Phase II service has been implemented or will be available to PSAPs served by their networks: The Carriers are currently capable of delivering location information in the format used by Carriers' switching equipment.

(3) The status of their coordination efforts with PSAPs for alternative 95% handset penetration dates: *See* note 9 above, the PSAPs are not ready to implement location capability.

(4) Their efforts to encourage customers to upgrade to location-capable handsets: *See* discussion above.

(5) The percentage of their customers with location-capable phones: *See* discussion above.

(6) The status of their progress in adding new cell sites to improve digital coverage areas: *See* discussion above.

(7) Detailed information on their status in achieving compliance and whether they are on schedule to meet the revised deadline: *See* discussion provided above.

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.

request from a PSAP.

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