

REDACTED VERSION – FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, DC 20554

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 Limited Waiver of Washington)
RSA No. 8 Limited Partnership)

To: The Commission

**REQUEST FOR LIMITED WAIVER OF
WASHINGTON RSA NO. 8 LIMITED PARTNERSHIP**

Washington RSA No. 8 Limited Partnership (“WA8LP”), by its attorneys, and pursuant to Sections 1.3 and 1.925 of the Commission’s rules and the *ENHANCE 911 Act*,¹ hereby requests a further extension of time of WA8LP’s current October 31, 2006 deadline 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 ensure that 95 percent of their subscribers have automatic location information-capable (“ALI-capable”) handsets (the “95 percent milestone”).² WA8LP respectfully requests a one year extension through October 31, 2007 to achieve the 95 percent milestone to enable WA8LP to continue its good faith efforts toward achieving full compliance. Grant of WA8LP’s request is consistent with the public interest, convenience and necessity and is required by the *ENHANCE 911 Act*.

¹ 47 C.F.R. §§ 1.3, 1.925; National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) (“*ENHANCE 911 Act*”).

² See 47 C.F.R. § 20.18(g)(1)(v); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Order*, FCC 06-25 (rel. Mar. 8, 2006) (“*WA8LP Waiver Order*”).

I. BACKGROUND

WA8LP is a Tier III carrier that provides Part 22 cellular service on the Block B frequencies in the Washington 8 – Whitman, Idaho 1 – Boundary, and Idaho 2 – Idaho RSAs (call signs KNKN489, KNKQ400 and KNKR305). WA8LP takes its E911 responsibilities seriously and is fully compliant with its obligation to deploy Phase I and Phase II E911 service to capable Public Safety Answering Points (“PSAPs”). WA8LP also met each of the interim deadlines applicable to the activation of ALI-capable handsets and, as discussed in detail below, WA8LP has devoted substantial resources in attempting to achieve the meet the current October 31, 2006 deadline for the 95 percent milestone.

As explained in its original Waiver Petition, WA8LP serves a large, sparsely populated area characterized by rugged and variable terrain.³ As a rural cellular system WA8LP expected that a significant percentage of its subscribers would utilize analog bag phones, particularly in comparison with larger Tier I and Tier II carriers. WA8LP was nevertheless surprised that ■■■ percent of its subscribers continue to have analog phones and, of those, analog bag phones (approximately ■■■ in total) still account for ■■■ percent of all of WA8LP’s subscribers’ handsets. The remaining, ■■■ percent of WA8LP’s subscribers with non-ALI-capable handsets continue to utilize non-ALI-capable digital phones. As a result of WA8LP’s numerous discussions with subscribers and their reactions to other WA8LP outreach efforts (which are described in detail below), it has become clear that a material percentage of WA8LP’s subscribers believe (with reason) that analog bag phones provide them with significantly greater range than would a digital ALI-capable phone.

WA8LP has conducted an aggressive, multi-pronged campaign targeting all of its subscribers without ALI-capable handsets. Underscoring its good faith efforts, WA8LP’s

REDACTED VERSION – FOR PUBLIC INSPECTION

affiliate, Eastern Sub-RSA Limited Partnership (“ESRLP”), was able to meet the 95 percent milestone this year.⁴ As of October 1, 2006, approximately 83.2 percent of WA8LP’s customers have ALI-capable handsets – an increase of 9.3 percent since the Commission granted WA8LP’s waiver request. Unfortunately, and despite WA8LP’s aggressive campaign to promote to its customers ALI-capable handsets, nearly 10 percent of WA8LP’s customers remain unwilling to upgrade their analog phones to ALI-capable digital handsets. Consequently, based on current trends it is not possible for WA8LP to achieve the 95 percent milestone by October 31, 2006.

WA8LP is disappointed and frustrated with these results given its significant efforts to educate and encourage its subscribers with analog and digital non-ALI capable handsets to switch to ALI-capable handsets. WA8LP implemented a following comprehensive, multi-pronged approach that included:

- Multiple promotional rate plans to motivate subscribers to upgrade handsets, including *free* ALI-capable handsets with a two-year contract, up to 500 free additional minutes with a handset upgrade and two year contract, a significant handset discount (up to \$120) for feature-rich models, and a \$35 discount for any handset upgrade *with no contract required*, which effectively makes a new handset available for any new and existing customer for as low as \$24.95;
- Bill inserts describing the public safety benefits of having E911 ALI capability;
- Direct mailers explaining the public safety benefits of E911-related ALI capability;
- Calling *every* analog and digital non-ALI subscriber to offer new upgraded handsets and explain the public safety benefits of having E911 ALI capability;
- Educational ALI materials on WA8LP’s website explaining the public safety benefits of having E911 ALI capability;
- Newsletters on the public safety benefits of ALI-capable handsets;
- Point-of-purchase informational pamphlets explaining the public safety benefits of having E911 ALI capability; and

³ See Request for Limited Waiver of Washington RSA No. 8 Limited Partnership, CC Docket No. 94-102, filed Dec. 9, 2005, at 3 (“Waiver Petition”); *WA8LP Waiver Order* at ¶ 11.

⁴ See Eastern Sub-RSA Limited Partnership Quarterly E911 Status Report, CC Docket No. 94-102 (filed Aug. 1, 2006).

REDACTED VERSION – FOR PUBLIC INSPECTION

- Introduction of a digital bag phone into WA8LP's handset offerings.⁵

In addition to these efforts, WA8LP embarked on a significant facilities buildout campaign to construct additional CDMA base stations that will enhance its digital coverage and thus further diminish any subscriber perception that currently, analog coverage exceeds digital coverage. By the end of the year, WA8LP expects to have constructed an additional 11 digital sites during 2006. WA8LP expects to have its digital overlay complete in 2007. WA8LP's digital overlay now covers over 98 percent of the POPs in its CGSA and 99 percent of its existing subscribers. Given the extent of WA8LP's digital coverage, WA8LP believes that the absence of digital coverage in the limited remaining areas contributes to analog customers' resistance to upgrading their handsets in only a very limited way. Given the extent of WA8LP's digital coverage, WA8LP believes that the absence of digital coverage in the limited remaining areas contributes to analog customers' resistance to upgrading their handsets in only a very limited way because of the continued limitations of low power digital handsets in remote areas.

II. DUE TO CIRCUMSTANCES UNIQUE TO ITS SERVICE AREA, WA8LP WILL BE UNABLE TO MEET THE OCTOBER 31, 2006 DEADLINE

Strict enforcement of the 95 percent milestone would be inequitable, unduly burdensome, and contrary to the public interest because it would disrupt WA8LP's analog customers by forcing them to trade-in handsets before they would otherwise do so.⁶ WA8LP has evaluated the effectiveness of its marketing campaign, and determined that many of its subscribers are reluctant to switch handsets, in a significant number of cases because they prefer the coverage capabilities of the analog bag phone. Others, such as those subscribers residing in WA8LP's

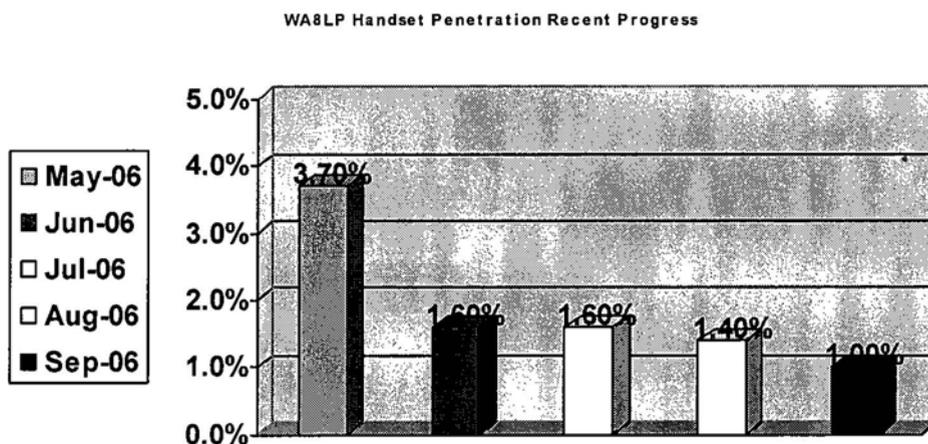
⁵ The digital bag phone has been a disappointment, both in terms of its range and consumer interest. While its range is somewhat better than a digital handheld phone, the digital bag phone does not provide nearly the equivalent coverage of an analog bag phone. WA8LP expects that these limitations have contributed to the fact that the company has sold only six digital bag phones to date.

⁶ The Commission has recognized customers' unwillingness to forgo existing handsets that may provide expanded range, but are not ALI-capable. *See Revision of the Commission's Rules to Ensure Compatibility with* (continued on next page)

REDACTED VERSION – FOR PUBLIC INSPECTION

service areas in Idaho, also appear to be reluctant to switch to an ALI-capable handset in part because E911 Phase II has not been implemented by the PSAPs in most of those markets. And still many others simply do not want to switch their handsets. Moreover, WA8LP’s subscribers are increasingly expressing aggravation toward WA8LP’s multiple calls and mailings to them.

At the time of the WA8LP’s waiver request it had achieved 73 percent penetration, and as of the end of September the company had reached 83.2 percent.⁷ Thus, since WA8LP began its campaign, WA8LP has increased ALI penetration by a little over 1 percent per month. Moreover, as illustrated in the chart below, after a period of significant improvement earlier this year the rate of penetration the trend has again “flattened out,” notwithstanding WA8LP’s ongoing efforts. Based on these current trends, WA8LP estimates that it will take until October 2007 to reach the 95 percent milestone.



Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, Order, 20 FCC Rcd 7709, 7736-7737 (2005) (“Tier III Carriers Order”).

⁷ In its May 1, 2006 report, WALP notified the Commission that it had initially incorrectly calculated its handset penetration as 92.8 percent. On March 31, 2006 WA8LP, by its attorneys, informed Commission by telephone of the error and offered to immediately file a letter with the Commission explaining the source of the discrepancy but was instead instructed to fully disclose the circumstances surrounding the calculation error in the May 1st report. As explained therein, the miscalculation resulted from two misunderstandings by the employee in charge of calculating total handset penetration: (1) the employee incorrectly assumed that all of WA8LP’s digital phones were ALI-capable, and (2) the employee incorrectly interpreted data concerning the number of ALI handsets used by WA8LP’s prepaid customers. Upon discovery of the error, WA8LP immediately implemented steps to educate staff on which handsets are ALI-capable, and to correct its database to ensure the accuracy of these calculations going forward. See Washington RSA No. 8 Limited Partnership Quarterly E911 Status Report, CC Docket No. 94-102, filed May 1, 2006, at 4 n.4.

REDACTED VERSION – FOR PUBLIC INSPECTION

WA8LP is concerned, however, that there is a structural impediment that may effectively preclude WA8LP from reaching the 95 percent milestone by that October 31, 2007 target date irrespective of the extent of its efforts. Given the results of its marketing campaign, WA8LP has determined that it has a substantial number of customers with two overlapping characteristics: (1) analog phone bag phone users in Washington and Idaho; and (2) customers in Idaho who live in areas in which the PSAP does not provide Phase II service. Specifically:

- Over [REDACTED] percent of WA8LP's subscribers have an analog bag phone and bag phones account for [REDACTED] percent of all analog phones currently used by WA8LP's subscribers. Thus, even if all WA8LP subscribers with analog handsets (rather than bag phones) and non-ALI-capable digital handsets upgraded to an ALI-capable handset, there is a core percentage of analog bag phone customers who must also purchase upgrades or discontinue service if WA8LP is to comply.
- [REDACTED] percent of all WA8LP subscribers with non-ALI-capable handsets live in areas of Idaho that have no Phase II service. Because [REDACTED] percent of WA8LP's total subscribers with non-ALI-capable handsets live in areas in which Phase II cannot be accessed, an ALI-capable handset's ability to support Phase II service provides only limited incentive for a non-ALI capable handset user to "trade up" to a digital ALI-capable mode.

A comparison between WA8LP and its affiliated neighbor, ESRLP, which operates in the adjacent WA 5 RSA, underscores the validity of WA8LP's concern over the nexus between the absence of Phase II service in a market and subscribers' unwillingness to part with their non-ALI-capable handsets. ESRLP was able to attain 95 percent penetration using the same campaign which was unsuccessful for WA8LP.⁸ A significant difference appears to be that ESRLP's entire service area has had Phase II service for some time. Based on WA8LP's customers' reluctance to upgrade their handsets, WA8LP believes that there is a strong

⁸ We note that ESRLP's penetration level was at a higher level than WA8LP's at the end of 2005 (90 percent versus 73 percent). Unlike WA8LP's markets, in ESRLP's market the PSAPs were Phase II-capable by the spring of 2005, and the exact same marketing efforts, which began well in advance of the December 31, 2005 deadline, enabled ESRLP to exceed the 95 percent milestone by July of 2006. In fact, ESRLP's experience underscores the difficult task facing WA8LP. In 2006 ESRLP experienced an improvement of just over 5 percent in 7 months – *i.e.*, less than 1 percent improvement per month as ESRLP's 95 percent milestone approached. This experience is consistent with the "flattening out" in customer uptake of ALI-capable handsets that WA8LP has (continued on next page)

REDACTED VERSION – FOR PUBLIC INSPECTION

correlation between customer unwillingness to transition to new ALI-capable handsets and areas where Phase II service is unavailable. While WA8LP is hopeful that it will be able to reach 95 percent by October 2007, WA8LP is concerned it will not be able to do so unless it can convince the remaining “die hard” analog contingent to switch handsets.

III. GRANT OF A LIMITED WAIVER IS CONSISTENT WITH THE ENHANCE 911 ACT AND THE PUBLIC INTEREST

A. Waiver Is Required Under the ENHANCE 911 Act

WA8LP’s request for limited relief is warranted under the *ENHANCE 911 Act*.⁹ The *ENHANCE 911 Act* directs the Commission to grant qualified Tier III carriers’ requests for relief from the 95 percent penetration requirement deadline if “strict enforcement of the requirements of that [rule] would result in consumers having decreased access to emergency services.”¹⁰ There is no question WA8LP continues to meet this standard, even as it continues to improve the penetration of ALI-capable handsets in its subscriber base. Further, the extent of the relief requested is warranted given the circumstances facing WA8LP in its markets.

WA8LP has analyzed the coverage of 5 of its busiest sites in terms of analog traffic and it appears that the predicted coverage area for an analog 3-watt bag phone can extend up to [REDACTED] miles beyond the core coverage area for a standard digital CDMA handset. While it is difficult to quantify the total number of affected subscribers, WA8LP’s sales personnel conservatively estimate that at least [REDACTED] percent of its subscribers using 3-watt analog bag phones will, at certain times, use those phones in areas that could not be served via a digital handset, and expects that 100 percent of those subscribers would want the *ability* to use those handsets in those

experienced in its markets. Finally, ESRLP’s digital overbuild is not yet complete, thus underscoring that digital coverage is only a very limited factor in customers’ willingness to upgrade handsets.

⁹ Indeed, as the Commission has found, relief may be warranted under the *ENHANCE 911 Act* irrespective of whether relief is warranted under the Commission’s own standard. See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Southern* (continued on next page)

circumstances.¹¹ The desirability for a bag phone subscriber to utilize the cellular phone with the greatest range is underscored by the markets' sparse population density, geography, agricultural nature, and numerous remote outdoor recreational areas.¹² It is thus beyond question that, as the Commission stated in the *WA8LP Waiver Order*, "certain of [WA8LP's] customers using analog phones would likely find it more difficult to contact a PSAP in certain parts of their respective service areas if those customers were forced to convert to digital CDMA handsets."¹³ Accordingly, "it appears likely that strict enforcement ... would impair the ability of certain 911 callers to reach emergency assistance" thus implicating the *ENHANCE 911 Act*.¹⁴

B. WA8LP Has Taken Extraordinary Steps In Its Attempt to Comply and has Provided a Clear Path Toward Full Compliance by October 31, 2007

The Commission's rules may be waived for good cause shown -- where special circumstances warrant a deviation from the general rule, and such deviation serves the public

Communications Services, inc. d/b/a SouthernLINC Wireless, Order, FCC 05-188, ¶ 19 n.58 (rel. Nov. 3, 2005) (relief granted "solely on the directive of the ENHANCE 911 Act").

¹⁰ *ENHANCE 911 Act* § 107, 118 Stat. 3986, 3991.

¹¹ Unlike other Tier III carriers, WA8LP has thus "provided [the Commission] with specific information concerning the number of subscribers that would be unable to make wireless calls in certain areas if required to upgrade a location-capable handset." See, e.g., *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*, Order, FCC 06-20, ¶ 16 (rel. Feb. 22, 2006).

¹² WA8LP has previously described the demographics of its service territory. See Waiver Request at 3. In the Washington 8 RSA, two of the five counties have population densities of less than 10 people per square mile, and the other three have population densities ranging of 18.9, 32.3 and 43.4 people per square mile. In the Idaho 1 RSA, two of the four counties have population densities of 3.6 and 7.8 people per square mile, and in the county WA8LP serves in Idaho 2 RSA, the population density is only 1.8 people per square mile. WA8LP has also quantified the core group of customers that are resistant to targeted and extensive marketing efforts. See *supra* at 2-3. Given the nature of the company's demographics and geography, WA8LP's particular circumstances warrant the full extent of the requested relief. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, GTE Pacifica, Inc. d/b/a Verizon Pacifica Request for Waiver*, FCC 06-40, ¶ 15 (rel. Mar. 29, 2006) ("*Pacifica Waiver Order*") (granting relief through June 30, 2007 based on "especially challenging circumstances" resulting from demographic and geographic characteristics of market).

¹³ See *WA8LP Waiver Order* at ¶ 14.

¹⁴ The Commission has recently granted waiver through mid-late 2007 where a Tier III carrier's "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." See *Request for Extension/Waiver of Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc.*, Order, DA 06-1419, ¶ 15 (WTB rel. July 10, 2006) (granting extension through June 30, 2007); *Cable & Communications Corporation Petition for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules*, Order, CC Docket No. 94-102, FCC 06-39, ¶¶ 16, 20 (granting extension through September 23, 2007).

REDACTED VERSION – FOR PUBLIC INSPECTION

interest.¹⁵ Since 2002 the Commission has publicly recognized that smaller carriers may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.¹⁶ Further, the Commission has determined that waivers may be warranted for E911 Phase II handset milestones, and clarified how this standard would be applied in the E911 context, finding that requests for waiver should be “specific, focused and limited in scope, and with a clear path to full compliance.”¹⁷ Further, carriers must “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.”¹⁸

Granting WA8LP a waiver through October 31, 2007 to achieve the 95 percent handset penetration milestone is consistent with the public interest. Through the continued measures described above, including the provision of free ALI-capable handsets, focused efforts to inform customers of the E911 benefits of handset upgrades, and continued build-out of its CDMA system, WA8LP has documented its concrete steps “to come as close as possible to full compliance.” Further WA8LP has provided an empirical analysis of predicted future penetration rates based on both its and its affiliate’s experience. WA8LP also demonstrated that additional factors may further slow these anticipated penetration rates. Lastly, WA8LP has reviewed its outreach efforts to determine what outreach methods were most effective so that WA8LP can

¹⁵ See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Further, waiver may be warranted if “(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” 47 C.F.R. § 1.925(b)(3).

¹⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7714; *Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, Order to Stay*, 17 FCC Rcd 14841, 14846 (2002) (“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”); *E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, Order to Stay*, 18 FCC Rcd 20987, 20994 (2003) (“*Tier III Stay Order*”) (“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”).

¹⁷ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442 (2000) (“*E911 Fourth MO&O*”).

REDACTED VERSION – FOR PUBLIC INSPECTION

refocus its efforts to maximize future penetration rates. In this manner, WA8LP has demonstrated a clear path to full compliance.¹⁹ WA8LP will continue to hone its outreach efforts and, given its plan to achieve compliance with the 95 percent milestone, grant of the request will not frustrate the Commission's objective of making ALI-capable handsets widely held throughout a carrier's subscriber base. In contrast, denial of waiver would result in analog bag phone subscribers losing access to emergency services, contrary to the public interest.

CONCLUSION

Based on the foregoing, grant of WA8LP's request for a limited and temporary waiver of the October 31, 2006 deadline for achieving a 95 percent penetration rate for ALI-capable handsets is consistent with the public interest and is required by the *ENHANCE 911 Act*. As discussed herein, WA8LP commits to continue its aggressive efforts to meet the 95 percent ALI-capable handset penetration mandate by October 31, 2007, or such earlier date as possible.

Respectfully submitted,

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¹⁸ *E911 Fourth MO&O* at ¶ 44.

¹⁹ *See Pacifica Waiver Order* at ¶ 16 (granting full extent of waiver for reasons under the *E911 Fourth MO&O* in addition to the *ENHANCE 911 Act*).