

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission’s Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	
Enhanced 911 Emergency Calling Systems)	
)	
Petition for Enhanced 911 Phase II Waiver)	
by Zefcom LLC d/b/a Telispire PCS)	
)	

**Zefcom LLC d/b/a Telispire PCS Petition for Temporary Waiver of Section 20.18(m)(1)
of the Commission’s Rules**

Zefcom LLC d/b/a Telispire PCS (“Telispire”), by its attorneys and to the extent necessary, hereby requests a temporary waiver of Section 20.18(m)(1) of the Federal Communication Commission’s (“FCC” or “Commission”) Phase II enhanced 911 (“Phase II E911”) rules.¹ Specifically, Telispire requests an extension of time in order to comply with the Commission’s Section 20.18(g)(1)(v) 95 percent location-capable handset customer penetration requirement² as applied to resellers pursuant to Section 20.18(m)(1),³ if indeed Section 20.18(m)(1) actually requires resellers to achieve the 95 percent penetration benchmark. It is Telispire’s contention that Section 20.18(m) does not require resellers to meet the 95 percent benchmark due to the plain language of the rule and the FCC’s *Reseller Order* implementing the rule.⁴

¹ 47 C.F.R. § 20.18(m)(1).

² 47 C.F.R. § 20.18(g)(1)(v)

³ 47 C.F.R. §§ 20.18(m)(1).

⁴ See *in re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Second Further

Section 20.18(m)(1) requires resellers to “provide *access* to basic and enhanced 911 service” to the extent that the underlying licensee complies with Section 20.18(d)-(g).⁵ By selling only location capable handsets in compliance with Section 20.18(m)(2),⁶ Telispire is providing such “access” to its underlying licensee’s basic and enhanced E911 capabilities. There is no language in Section 20.18(m)(1) applying the 95 percent penetration requirement to resellers. Compliance with Sections 20.18(d)-(g) by the licensee simply triggers the reseller’s obligation to provide “access” to the underlying licensee’s basic and enhanced capabilities. Telispire is providing such access.

The Commission’s *Reseller Order* also supports Telispire’s interpretation of its E911 obligations. The *Reseller Order* states that the requirement imposed on resellers “will only apply to new handsets, *not* replacement of existing handsets.”⁷ Further, recognizing “the reality that customers of resellers may be reluctant to replace their handsets,” the Commission concluded that “the rule will only apply to handsets sold after [December 31, 2006].”⁸ Thus, Telispire is not obligated to replace existing handsets purchased by customers prior to December 31, 2006, making the 95 percent penetration rule impossible to apply to resellers.

In spite of its belief that Section 20.18(m)(1) does not require Telispire to meet the 95 percent threshold, in the interest of public safety, Telispire is determined to meet the FCC’s 95 percent threshold.⁹ As discussed *infra*, due to circumstances beyond its control concerning

Notice of Proposed Rulemaking, FCC 03-290 at ¶¶ 99 and 100 (December 1, 2003) (“*Reseller Order*”).

⁵ 47 C.F.R. § 20.18(m)(1) (emphasis added).

⁶ 47 C.F.R. § 20.18(m)(2).

⁷ See *Reseller Order* at ¶ 100 (emphasis added).

⁸ See *Reseller Order* at ¶ 99.

⁹ Telispire is also aware that the Commission may have a different interpretation of a reseller’s obligations pursuant to Section 20.18(m)(1) and is filing the instant request out of an abundance of caution.

Telispire's unique, prepaid customer base, Telispire may need an additional six months from the December 31, 2006 deadline until June 30, 2007 to ensure that 95 percent of its customers are using handsets with GPS-based automatic location identification ("ALI") features, and is therefore seeking a waiver of this requirement to the extent necessary.

I. Background and Handset Penetration Status

Telispire provides national Commercial Mobile Radio Service ("CMRS") coverage to its customers by partnering with nationwide carriers to resell wireless service. Telispire provides code division multiple access ("CDMA") service through the resale of both Verizon and Sprint services. Telispire uses telecommunications carrier agents throughout the country who sell Telispire's service under their own respective brand names. Many of Telispire's customers are prepaid, and oftentimes transient, customers.

As of December 26, 2006, Telispire has been able to confirm that 86 percent of its customers have location capable handsets. Of the remaining 14 percent of its customers, all of whom are prepaid, Telispire is working with its agents to determine the number of those customers' handsets that are location capable. Since these customers are prepaid customers, Telispire's contact through its agents with these customers is minimal to nonexistent, and it is difficult, and in certain cases (where customers supply their own handsets) impossible, for Telispire to confirm whether the prepaid customer is using a location capable handset. Telispire believes that the vast majority of these remaining customers are using GPS handsets and that Telispire's penetration level may in fact be over 95 percent, but Telispire cannot confirm this at this time. Telispire is working with its agents to determine whether these customers are using location capable handsets and will supplement this filing when it can provide the Commission with confirmable data regarding its penetration rate.

II. Telispire Has a Clear Plan to Achieve 95 Percent Handset Penetration

Telispire is pursuing an in-store marketing plan to encourage its customers to upgrade to location-capable CDMA handsets in as timely a manner as possible. Telispire, as is the FCC, is “mindful of the fact that the typical user of resold service is someone that may use the phone only occasionally and therefore may be reluctant to purchase a new handset.”¹⁰ Therefore, Telispire is encouraging its agents to aggressively market the E911 safety features and other additional features of GPS handsets in their retail locations. Telispire believes an additional six months of in-store promotions of E911 safety benefits combined with promotions on new handsets, will allow it to convince a sufficient number of any remaining customers without GPS handsets to purchase new handsets to bring Telispire’s penetration rate up to 95 percent.

III. Telispire Satisfies the Commission’s Relevant Waiver Standards

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.¹¹ As discussed *supra*, Telispire’s unique, prepaid customer base makes it difficult for Telispire to confirm that 95 percent of its customers are, in fact, using location capable handsets. The transient nature of Telispire’s prepaid customer base and minimal contact with these customers makes confirming that these customers are using GPS handsets difficult and complicated. The FCC has recognized “that the ability of resellers to comply may be complicated” and, therefore, has granted resellers more time to comply with its E911 rules.¹²

Section 1.925(b)(3) of the Commission’s rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

¹⁰ *Reseller Order* at ¶ 99.

¹¹ 47 U.S.C. § 1.3.

¹² *Reseller Order* at ¶ 91.

The Commission may grant a request for waiver if it is shown that:

- (i) The 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) In 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.¹³

Grant of the requested waiver is consistent with these waiver standards. The underlying purpose of the Commission's application of its E911 rules to resellers is to promote the public safety and to "minimize the possibility for confusion by consumers, who expect all of the benefits of wireless service, whether provided by a licensee or a reseller."¹⁴ Further, Section 20.18(m)(1)'s purpose is "to provide access to basic and enhanced 911 service."¹⁵ With the promotion and sale of exclusively location-capable GPS handsets, Telispire is providing its prepaid customer base with the opportunity to reap all of the public safety benefits of GPS handsets. Telispire's request for an additional six months is consistent with the underlying purpose of promoting public safety and providing customers with the same access to enhanced 911 services as if they were being served by a licensee. Finally, given the unique nature of Telispire's prepaid and transient customer base, Telispire has no reasonable alternative but to request an additional six months to continue its efforts to sell GPS handsets to its customers who may not be using or who are not aware of location capable handsets. Locating its prepaid customers who have left Telispire no contact information is not only unduly burdensome, it may in many cases prove to be impossible.

¹³ 47 C.F.R. § 1.925(b)(3).

¹⁴ *Reseller Order* at ¶ 96.

¹⁵ 47. C.F.R. § 20.18(m)(1).

IV. Conclusion

Based on the foregoing, and to the extent necessary, Telispire respectfully requests that the Commission grant Telispire a temporary waiver of Section 20.18(m)(1) of the Commission's rules as requested herein.

Respectfully submitted,
Zefcom LLC d/b/a Telispire PCS

_____/s/_____

Michael R. Bennet
Kenneth C. Johnson

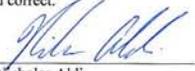
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Dated: December 28, 2006

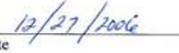
DECLARATION OF NICHOLAS ALDI

I, Nicholas Aldi, do hereby declare under penalty of perjury the following:

1. I am the Chief Financial/Operating Officer of Zefcom LLC d/b/a Telispire PCS.
2. I have read the foregoing "Petition for Temporary Waiver of Section 20.18(m)(1) of the Commission's Rules." I have personal knowledge of the facts set forth herein, and believe them to be true and correct.



Nicholas Aldi



Date

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