

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
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Request for a Limited)
Waiver of United States) CC Docket No. 94-102
Cellular Corporation)
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To: The Commission

ERRATUM

United States Cellular Corporation (“USCC”), by its undersigned attorney, hereby submits this Erratum to the Petition for Reconsideration (“Petition”) it filed in the above-referenced proceeding on February 5, 2007. USCC filed a separate Exhibit in support of its Petition that was a combination word/pdf file. This Exhibit apparently did not convert properly when it was uploaded into the ECFS and, as a result, only the Exhibit cover page is posted with USCC’s Petition. To address this situation, USCC hereby submits a copy of the Petition as filed on February 5, 2006 with the actual Exhibit but without the cover page.

Respectfully Submitted,

UNITED STATES CELLULAR CORPORATION

/s/ Thomas Van Wazer

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Its Attorneys

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Request for a Limited
Waiver of United States
Cellular Corporation

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CC Docket No. 94-102

To: The Commission

PETITION FOR RECONSIDERATION

United States Cellular Corporation (“USCC”), by its undersigned attorneys, hereby submits this Petition for Reconsideration of the Commission’s decision to deny USCC’s request for a limited, six-month waiver of Section 20.18(g)(1)(v) of the Commission’s Rules (the “Rule”) and refer USCC’s violation of the Rule to the Enforcement Bureau “for appropriate enforcement actions.”¹ The Rule required that carriers providing handset-based Phase II service achieve 95 percent penetration of location-capable handsets among all subscribers by December 31, 2005. USCC specifically seeks reconsideration of the decision to refer its violation of the Rule to the Enforcement Bureau because the Commission virtually ignored the results of USCC’s efforts to reach the 95 percent penetration level within the six-month period covered by its waiver request. These efforts, which included multiple waves of a marketing campaign that offered two GPS-capable handsets for \$.01 with no new contract and no change in calling plan,

¹ See *United States Cellular Corporation*, CC Docket No. 94-102, FCC 06-66, ¶ 23, released January 5, 2007 (hereinafter the “Order”)

increased USCC's location-capable handset penetration to 94.88 percent by July 20, 2006, the end of the last marketing campaign.²

As demonstrated more fully below, the Commission should reconsider its decision to refer USCC to the Enforcement Bureau because USCC's handset penetration at the end of the six-month period was virtually identical to the handset penetration of two other wireless carriers with unexcused violations of the Rule that were not referred to the Enforcement Bureau. Like USCC, these carriers requested six-month waivers of the Rule that were denied by the Commission.³ Like USCC, these carriers increased GPS-capable penetration during the requested six-month waiver period and did not report compliance or substantial compliance with the Rule before the end of the waiver period requested.⁴ Also like USCC, these carriers came into compliance with the Rule in the period after the end of their requested waiver period, but before the release of the Commission's order on their waiver requests.⁵ Unlike USCC, however, these carriers were not referred to the Enforcement Bureau.

BACKGROUND

USCC filed a limited request for a six-month waiver of the Rule on December 29, 2005.⁶ In its waiver request, USCC reported that it could confirm the location determining capabilities of approximately 93 percent of the handsets in use on its network and that it expected

² USCC recently confirmed that the percentage of GPS capable handsets in use among all of its subscribers exceeded 95 percent no later than December 31, 2006. See USCC Handset Penetration Certification, CC Docket 94-102, filed January 19, 2007. The certification covered all of the handsets in use on USCC's network, including handsets from several recently-acquired markets.

³ See *Leap Wireless International, Inc.*, WT Docket No. 05-319, FCC 06-61, ¶ 17, 19, released January 5, 2007; *Qwest Wireless, LLC*, WT Docket No. 05-322, FCC 06-61, ¶ 17, 19, released January 5, 2007.

⁴ See Electronic *Ex Parte* Communication of Qwest Wireless, WT Docket No. 05-322, filed June 29, 2006 (reporting GPS-capable penetration of 94.3 percent as of June 18, 2006); Electronic *Ex Parte* Communication of Leap Wireless, WT Docket No. 05-319, filed May 1, 2006 (reporting GPS-capable penetration of 94.8 percent as of April 26, 2006).

⁵ See Electronic *Ex Parte* Communication of Qwest Wireless, WT Docket No. 05-322, filed August 3, 2006 (reporting penetration of 95.73 percent as of July 31, 2006); E911 Quarterly Report of Leap Wireless, CC Docket No. 94-102, filed August 1, 2006 (reporting penetration of 95.4 percent as of July 20, 2006).

⁶ See Request for a Limited Waiver of United States Cellular Corporation, CC Docket No. 94-102, filed December 29, 2005

91 percent of the handsets in this group would be GPS capable by the end of 2005.⁷ USCC also reported that it lacked sufficient information to confirm the GPS capabilities (hereafter “unconfirmed GPS handsets”) of approximately seven percent of the handsets in use on its network.⁸

In an abundance of caution, USCC reported that its baseline handset penetration level, which assumed that all seven percent of the unconfirmed GPS handsets were non-compliant, was expected to reach 85 percent by year-end 2005. Although it reported this statistic, USCC had no reason to believe that all seven percent of these handsets were non-compliant – a fact that was confirmed only three months later when USCC’s baseline compliance increased to 91.48 percent.⁹

To reach the 95 percent penetration level within the requested six months, USCC committed to undertake an aggressive notification and marketing campaign focused exclusively on its customers with handsets that were either non-compliant or had unconfirmed GPS capabilities.¹⁰ Unlike its earlier campaigns that emphasized new features, functionality and design in addition to GPS capabilities, USCC’s new campaign (launched in February 2006) was to focus on the benefits from the enhanced location accuracy of GPS capable phones. USCC’s waiver outlined its plan to notify its customers about the benefits of handsets with location

⁷ See Waiver at 1. USCC reported that 93 percent of its customers used handsets with identified GPS capabilities.

⁸ For convenience, USCC’s Waiver referred to the handsets with unidentified location determining capabilities with the short hand reference of “unidentified handsets.” Unfortunately, this reference created some unintended confusion because the Commission apparently interpreted this term to mean that USCC was “unable to determine either the number or identity of those subscribers.” See *Order* ¶ 3. This interpretation is not correct. Although these handsets were referred to as “unidentified,” USCC always knew the number of these handsets in use on its network as well as their owners. The only relevant information it lacked about these handsets was sufficient information to confirm their GPS capabilities. To avoid further confusion, USCC will refer to these handsets as “unconfirmed GPS handsets” in this Petition.

⁹ See *infra* at 4.

¹⁰ See Waiver at pp 9-10.

accuracy capabilities and indicated that the campaign would have an entirely separate pricing and promotional policy that would include at least one free handset to every customer.¹¹

USCC believed that this aggressive new marketing campaign, in conjunction with its continuing efforts to confirm the location determining capabilities of all the unconfirmed GPS handsets in its database, would help it come into compliance with the Rule within the requested six-month waiver period. In a footnote that accompanied the description of the new marketing campaign, however, USCC did not definitively guarantee that the campaign would reach 95 percent compliance within six months because it candidly acknowledged what every carrier that filed a handset penetration waiver already knew: that the “ultimate success” of such a campaign “depends on customer behavior that [a carrier] does not control.”¹² Among the reasons for USCC’s cautionary language was the fact that many of the customers in the target audience for this campaign had already turned down numerous handset upgrade offers.

April 2006 Supplement: On April 4, 2006, USCC filed a Supplement to its waiver request reporting that its baseline location-capable handset penetration had increased to 91.48 percent as of March 31, 2006.¹³ The April 2006 Supplement noted that the increase was the result of two factors that reduced the overall number of unconfirmed GPS handsets by over 200,000. First, USCC gained access to a newly available vendor database that confirmed the GPS capability of approximately 125,000 handsets previously categorized as unconfirmed GPS handsets.

¹¹ *Id.*

¹² See Waiver at 2 n.2. As detailed below, two separate campaigns like the one described in the Waiver did indeed contribute to a significant increase in USCC’s location-capable penetration percentage. As of July 20, 2006, USCC’s location-capable handset penetration was 94.88 percent.

¹³ See Supplement to Request for a Limited Waiver of United States Cellular Corporation, CC Docket No. 94-102, filed April 4, 2006 (“April 2006 Supplement”). The 91.48 percent statistic was USCC’s baseline because it again assumed that any handset with unconfirmed GPS capabilities was non-compliant even though USCC had no basis to believe this assumption was accurate.

Second, USCC had benefited from the results of its new marketing campaign – a campaign that offered eligible customers two different phones for \$.01 (with other phones available at deep discounts) with no new contract requirement and no required change in calling plan.¹⁴ This offer, which is estimated to have cost USCC approximately \$30 million by the middle of 2006, was even better than the Verizon Wireless Puerto Rico (“VzWPR”) offer cited by the Commission in the Alltel, Centennial, Leap and Qwest handset penetration waiver orders as the model offer demonstrating the extra efforts that carriers can undertake to enhance handset penetration.¹⁵

August 2006 Quarterly Report: In its August 1, 2006 Quarterly Report, USCC reported that at the close of the second wave of the marketing campaign referenced in its Waiver, its location-capable handset penetration was between 94.1 percent and 94.9 percent, depending on the percentage of handsets in the unconfirmed location-capable category that were in fact compliant.¹⁶ Upon further evaluation of the available information about the handsets with unconfirmed GPS capabilities, USCC has concluded that its penetration level as of July 20, 2006 was 94.88 percent.

Although the handset penetration statistics from the August Quarterly Report relied upon here were reported to the Commission after it adopted the Order in May 2006, all this information was available before the Order was released in January 2007. Under Section 1.106(c), USCC can properly rely on this information because it was clearly unknown to USCC

¹⁴ A copy of the bill insert designed for this campaign has been filed with this Petition as Exhibit 1.

¹⁵ See *Alltel Corporation*, WT Docket No. 05-287, FCC 06-64, ¶ 22, released January 5, 2007; *Centennial Communications Corp.*, WT Docket No. 05-314, FCC 06-45, ¶ 15, released January 5, 2007; *Leap Wireless International, Inc.*, WT Docket No. 05-319, FCC 06-61, ¶ 16, released January 5, 2007; *Qwest Wireless, LLC*, WT Docket No. 05-322, FCC 06-61, ¶ 16, released January 5, 2007. The VzWPR offer gave customers (i) one of two free GPS-compliant handsets with the renewal of the customer’s contract; (ii) a one-year contract term, rather than the normal two years; and (iii) 100 free minutes per month for three months. USCC’s offer did not require any contract term.

¹⁶ See United States Cellular Corporation Quarterly Implementation Report, CC Docket No. 94-102, filed August 1, 2006.

at the time it filed its Waiver and when the FCC acted upon it.¹⁷ Moreover, given the eight months between the date the Commission adopted its Order and the date the Commission released it, USCC submits that consideration of its actual handset statistics is required in the public interest. Rather than evaluate the cautionary language of its predictive pleading, given the delay between adoption and release, the Commission should evaluate the actual effects of USCC's effort to improve its handset penetration level.

The Commission's Decision: In the *Order*, which was adopted on May 4, 2006 but not released until eight months later on January 5, 2007, the Commission denied USCC's waiver request finding that it failed to satisfy its exacting requirements for relief from the E911 Rules. The Commission found that USCC's waiver was not "specific, focused and limited in scope" and did not demonstrate a "clear path to full compliance."¹⁸

The basis for these two determinations was essentially the same fact – USCC's unwillingness to promise that its proposed new handset campaign would bring it into compliance within six months. This unwillingness made the waiver request too "tentative and qualified" to be limited in scope and also prevented the waiver from establishing a clear path to compliance because there was no guarantee by USCC that it would be in compliance at the end of the requested six months.¹⁹ The Commission acknowledged USCC's April 2006 Supplement that reported a six percent improvement to 91.48 percent in USCC's baseline location-capable handset penetration but immediately dismissed its significance by noting that USCC "continues to argue that lack of 'customer compliance' could result, and would justify, USCC's continuing failure to reach 95 percent penetration even beyond its requested six-month extension."²⁰

¹⁷ See 47 C.F.R. §1.106(c).

¹⁸ See *Order* ¶¶ 15, 21.

¹⁹ *Id.*

²⁰ See *Order* ¶ 15.

ARGUMENT

The Commission's decision to refer USCC's violation of the Rule to the Enforcement Bureau should be reconsidered because the Commission dismissed the results of USCC's efforts to come into compliance within the requested six-month waiver period. Had the Commission properly credited these results, USCC submits that the Commission should have concluded that USCC had made sufficient progress toward the 95 percent benchmark, that its requested waiver was "specific, narrow and focused," and that no referral to the Enforcement Bureau was necessary.

The Handset Campaign: Unfortunately, the Commission misinterpreted USCC's statement that the success of its handset campaign depended on the behavior of its customers that it could not control. Contrary to the Commission's apparent assumption, USCC's recognition that the success of its offer depended on customer behavior did not mean that it was planning half-hearted offers followed by repeated handset penetration waiver requests. In fact, USCC did everything it could to make this promised campaign work in the six-month waiver period it requested. It created special marketing materials that were specifically designed to get the attention of its customers; it gave away handsets for \$.01 with no contract requirements and no change in calling plan.²¹ USCC submits that its experience with this targeted handset offer demonstrates just how difficult it is to guarantee a particular handset penetration level. Despite the fact that USCC made the best handset upgrade offer that it has ever made – two different phones for \$.01 with no new contract and no change in calling plans – the best take rate it achieved on this offer was slightly more than 40 percent, which means that more than half of the customers that received this offer still turned it down – even though it cost only one cent.

²¹ See n.13.

USCC's concern about customer behavior outside of its control was difficult to predict was borne out in several other Orders addressing handset penetration waivers. For example, Leap Wireless initially requested a three-month waiver to come into compliance with the Rule and predicted that its handset penetration would be 93 percent by December 31, 2005.²² In subsequent filings, however, Leap reported that its overall handset penetration was only 92 percent by January 23, 2006²³ and did not exceed 95 percent until July 20, 2006.²⁴ The obvious explanation for the slower increases in Leap's handset penetration is customer behavior – fewer customers converted to or acquired new GPS-capable handsets than Leap expected.

The Commission quite properly ignored these minor deviations because they were clearly beyond Leap's control and because Leap continued to make significant progress towards compliance. The Commission should take the same approach with USCC. The Commission should ignore USCC's failure to guarantee a specific penetration level waiver because, like Leap, USCC made substantial progress towards compliance over the requested six-month waiver period, ultimately achieving a 94.88 percent penetration level.

USCC's GPS-Compliant Handset Penetration: As noted above, USCC's interim handset penetration statistics are statistically indistinguishable from the percentages reported by Qwest Wireless and Leap – two carriers that also requested six month waivers of the Rule that were denied by the Commission. For example, USCC's GPS-compliant penetration level of 91.48 percent as of March 31, 2006 compares to the 92.8 percent GPS-compliant penetration reported by Qwest Wireless as of February 28, 2006 and the 92 percent GPS-

²² See *Leap Wireless International, Inc.*, WT Docket No. 05-319, FCC 06-61, ¶ 8, released January 5, 2007.

²³ *Id.*

²⁴ See E911 Quarterly Report of Leap Wireless, CC Docket No. 94-102, filed August 1, 2006 (reporting penetration of 95.4 percent as of July 20, 2006).

compliant penetration reported by Leap as of January 23, 2006.²⁵ Similarly, USCC's reported handset penetration of 94.88 percent as of July 20, 2006 is statistically indistinguishable from the 94.3 percent penetration reported by Qwest Wireless as of June 18, 2006 and the 95.73 percent penetration reported by Qwest as of July 31, 2006. Because the handset penetration statistics Leap and Qwest Wireless were deemed sufficient by the Commission to avoid an Enforcement Bureau referral, USCC urges the Commission to recognize its efforts to achieve compliance with Rule, efforts that produced similar compliance levels at the end of the requested six month waiver period, and reconsider its decision to refer USCC to the Enforcement Bureau.

CONCLUSION

For these reasons, USCC urges the Commission to focus on its substantial compliance efforts it has undertaken since filing the waiver. When USCC's actual progress toward the 95 percent benchmarks, and its actual compliance with that benchmark during 2006, is evaluated, the Commissioner should reconsider its decision to refer USCC's compliance efforts to the Enforcement Bureau.

Respectfully Submitted,

UNITED STATES CELLULAR CORPORATION

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²⁵ See *supra* nn. 2-3.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

CC Docket No. 94-102

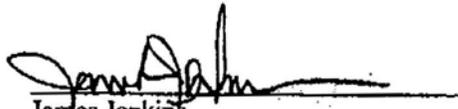
AFFIDAVIT OF JAMES JENKINS

I, James Jenkins, hereby declare as follows:

1. I am Vice President, Legal and External Affairs, for United States Cellular Corporation ("USCC"). In this capacity, I am familiar with USCC's E911 deployment efforts.
2. I have reviewed the foregoing Petition for Reconsideration and believe that the facts contained therein are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Dated this 5 day of February, 2007.


James Jenkins

CERTIFICATE OF SERVICE

I, Thomas Van Wazer, do hereby certify that on this 5th day of February 2007, copies of the foregoing "Petition for Reconsideration" were served by U.S. first-class mail, postage prepaid, to the following:

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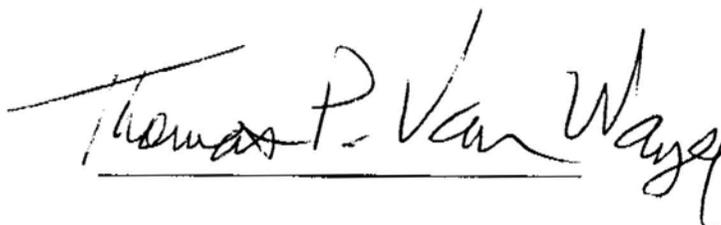
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