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

RECEIVED & INSPECTED
FEB 1 3 2007
FCC - MAILROOM

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
E911 Phase II Compliance Deadlines for Tier III Carriers	)	
	)	
Joint Petition for Reconsideration of the Commnet Carriers	)	

ORDER ON RECONSIDERATION

Adopted: February 8, 2007 **Released: February 9, 2007**

By the Commission:

I. INTRODUCTION

1. In the 2005 *Tier III Carriers Order*, the Commission addressed forty requests for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by or on behalf of Tier III wireless carriers.[1] The Commnet Carriers, a group of several Tier III carriers, have filed a Joint Petition for Reconsideration (Joint Petition)[2] seeking reconsideration of the Commission's decisions in the *Tier III Carriers Order* denying their requests that (1) the Commission grant a permanent or long-term waiver of the Phase II requirements, and (2) waive the Commission's demarcation point ruling in order to allow them to use the mobile switching center as the demarcation point for purposes of allocating E911 implementation costs.[3] The Commnet Carriers argue, as their sole basis for requesting reconsideration, that the Commission should review a December 2003 Supplement to their petition for waiver that was not addressed in the *Tier III Carriers Order*, and "issue an order on reconsideration

[1] *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 (2005) (*Tier III Carriers Order*). 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*).

[2] *See* Joint Petition for Reconsideration, CC Docket No. 94-102, filed May 2, 2005 at 1-2. The carriers jointly filing for reconsideration are: Commnet of Arizona, LLC; Commnet of Delaware, LLC; Elbert County Wireless, LLC; Chama Wireless, LLC.; Excomm, LLC; MoCelCo, LLC; Tennessee Cellular Telephone Company; Commnet Wireless, LLC (CWLLC); Commnet Four Corners, LLC (CFCLLC); and Commnet of Florida, LLC (CFLLC). Two other carriers, Commnet PCS, Inc. and Prairie Wireless, LLC, previously had been part of the Commnet Carriers, but assigned all of their FCC licenses to a third party carrier. *See id.* at 1 n.1.

[3] *See Tier III Carriers Order*, 20 FCC Rcd at 7749-50 ¶¶ 109-115.

addressing that document and either granting relief or explaining why relief is not justified."[4] For the reasons discussed below, we deny the Joint Petition.

II. BACKGROUND

2. In their original petition for waiver, the Commnet Carriers stated that they use TDMA or GSM technologies, and employ a "carriers' carrier" business model, under which each provides roaming-only service, and has no subscribers of its own.[5] They claimed that handset-based solutions were not available for any of their network technologies, and that network-based solutions were not feasible.[6] The Commnet Carriers requested that they be granted a permanent or long-term (at least five years) waiver of the Phase II requirements and a waiver of the demarcation point for allocating costs between a wireless carrier and a public safety answering point (PSAP),[7] and that they be declared in compliance with all E911 obligations by virtue of their status as carriers' carriers. In the December 2003 Supplement, the Commnet Carriers indicated they were providing "additional information and materials supporting the relief requested in the [Commnet Amendment]."[8] In the *Tier III Carriers Order*, the Commission denied all of the Commnet Carriers' requests.[9]

3. Since filing the Joint Petition, the Commnet Carriers have filed three more supplements. A filing made in February 2006 provided updated information on the identities of the Commnet Carriers.[10] In March 2006, the Commnet Carriers filed a "Fourth Supplement" in which they declared they "are now officially committing to using a network-based solution for Phase II E-911 in their respective markets," and that they "continue to add cells to their respective networks, not for the purpose of compliance with the Phase II E-911 requirements, but for the purpose of expanding their coverage in their markets."[11] In their March 2006 Supplement, the Commnet Carriers also provide additional information with respect to one licensee, Commnet Illinois, LLC (CILLC), which is a wholly-owned subsidiary of one of the Commnet Carriers, CWLLC.[12] CILLC received, on an unspecified date, Phase I and II requests for service by the Lewis County, Missouri PSAP, and the Commnet Carriers continue to

---

[4] *See* Joint Petition at 2-3 (citing to their Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911 and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Dec. 19, 2003 (December 2003 Supplement)).

[5] *See* Petition for Limited and Temporary Waiver of Deadlines for Implementation of Phase II E911 on the Same Basis as Other Tier III Wireless Carriers, and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Sept. 9, 2002 (Commnet Petition); Amendment and Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911 and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Aug. 15, 2003 at 1, 4 (Commnet Amendment); *Tier III Carriers Order*, 20 FCC Rcd at 7749 ¶ 109.

[6] *See Tier III Carriers Order*, 20 FCC Rcd at 7749 ¶ 109; Commnet Amendment at 3, 4-5, 6.

[7] The *King County Order* established the 911 selective router as the demarcation point for allocating E911 implementation costs between wireless carriers and PSAPs, in the absence of an agreement to the contrary between the parties. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 14789, 14792-93 ¶¶ 8, 10 (2002).

[8] December 2003 Supplement at i.

[9] *See Tier III Carriers Order*, 20 FCC Rcd at 7750 ¶ 110.

[10] *See* Further Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911 and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Feb. 13, 2006.

[11] Fourth Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911 and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Mar. 23, 2006, at 3 (March 2006 Supplement).

[12] *Id.*

argue that network-based Phase II solutions are not feasible, and request indefinite waiver relief.[13] In September 2006, the Commnet Carriers filed a Fifth Supplement in which they state that they "continue to evaluate" network-based Phase II solutions.[14] The Commnet Carriers also report in this supplement that CFCLLC received Phase I and Phase II requests, at an unspecified date since submission of their March Supplement, from the Los Alamos County, New Mexico PSAP.[15]

III. DISCUSSION

4. In their Joint Petition, the Commnet Carriers request we review the December 2003 Supplement in connection with the Commission's decisions reached in the *Tier III Carriers Order* denying their requests for a permanent or long-term waiver of the Phase II requirements and waiver of the demarcation point ruling. As more fully explained below, we find that nothing in the December 2003 Supplement, or in the later-filed March 2006 Supplement and September 2006 Supplement, provides a basis for granting the requested relief. Accordingly, we deny the Joint Petition.

5. *Election of Network-Based Solution.* In the March 2006 Supplement, the Commnet Carriers committed to employing a network-based Phase II solution. The Phase II service obligations of network-based carriers are triggered upon receipt of a valid PSAP request.[16] Thus, to the extent one or more of the Commnet Carriers are not in receipt of a valid Phase II request from a PSAP, no Phase II service obligation presently exists, rendering the need for waiver relief moot. As explained below, however, with respect to any valid PSAPs requests for Phase II service that the Commnet Carriers have received, including the requests of the Lewis County, Missouri PSAP and Los Alamos County, New Mexico PSAP, we continue to find that the Commnet Carriers have failed to sufficiently justify their request for indefinite relief of the Phase II requirements. We further note that, as network-based carriers, the provisions of the ENHANCE 911 Act are inapplicable to the Commnet Carriers.[17]

6. *Joint Petition for Reconsideration.* In denying the Commnet Carriers' request for a permanent or long-term waiver of the E911 requirements, the Commission emphasized that the Commnet Carriers would need to provide "substantial further justification, on a case-by-case basis, and in more focused requests for relief" in order to consider the Commnet Carriers' waiver requests.[18] Although the Commnet Carriers assert that the December 2003 Supplement "provided, on a case-by-case basis, very focused requests for relief and detailed information, including the Comment Group's efforts to cooperate with PSAPs requesting Phase II service,"[19] we disagree. On the contrary, for the reasons discussed

[13] *See id.* at 3-5.

[14] Fifth Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Sept. 5, 2006, at 2 (September 2006 Supplement).

[15] *Id.* at 5. The Commnet Carriers also report receiving Phase I/II requests from two Florida PSAPs and one New Mexico PSAP for counties where the Commnet Carriers have no cells and do not provide service. *Id.* at 4, 6.

[16] *See* 47 C.F.R. §§ 20.18(f), (j).

[17] The ENHANCE 911 Act applies only to waiver requests of "qualified Tier III carriers" of the requirement of Section 20.18 (g)(1)(v) that handset-based carriers achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005. *See* National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). 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.

[18] *See Tier III Carriers Order*, 20 FCC Rcd at 7751 ¶ 113. The Commission also noted that it has "insisted that carriers seeking relief must provide specific evidence in support of their requests, as well as a clear path to full compliance, and cannot rely on generalized assertions of technical infeasibility." *Id.* at 7750 ¶ 113.

[19] Joint Petition at 2.

more information, we do not understand why the Commnet Carriers could not, for example, employ "The Compass" solution, which they state would work within a five to six mile radius, at least as an interim step towards a path to full compliance.

10. Regarding a second vendor, True Position, the Commnet Carriers state only that "so far that solution appears to be even less accurate than The Compass."[26] The Commnet Carriers do not explain why the True Position product may not be a viable solution, and, by their own words, suggest they have not even completed their analysis of the True Position product.[27] Similarly, as to a third vendor, the Commnet Carriers state they "have entered into more extensive communication with Polaris Wireless, Inc. . . . and are beginning a thorough analysis of its network-based Phase II E-911 solution called Wireless Location Signatures," but provide no further information concerning the potential viability of this solution.[28] In addition, with respect to CFCLLC's response to the Los Alamos County PSAP request, the Commnet Carriers state only that they are "currently exploring whether the GBSD or the Polaris network-based Phase II E-911 solutions would be a viable option."[29]

11. We continue to hold that much more substantial justification, on an individualized basis, would have been required in connection with the requested relief of the Phase II service requirements. The Commnet Carriers introduce insufficient information in the December 2003 Supplement in support of their claims that there are no Phase II-compliant solutions available to them. The March 2006 Supplement and September 2006 Supplement similarly do not provide the information necessary to justify relief. The Commnet Carriers make only generalized statements that efforts to identify Phase II location solutions are in progress, offer no specific plans or timeframes for reaching determinations as to the viability of deploying any technologies, and otherwise provide very little technical analysis in support of their claims that no solutions presently are available to satisfy PSAP requests for Phase II service.

12. Concerning their request for reconsideration of the Commission's decision to deny their request for waiver of the demarcation point, the Commnet Carriers do not offer any additional support for this waiver request, including in their Joint Petition, December 2003 Supplement, March 2006 Supplement, or September 2006 Supplement. Accordingly, we also find no basis to grant reconsideration of the Commission's denial of the request for waiver of the demarcation point.

IV. CONCLUSION

13. Based on these considerations and our review of the record, including the December 2003 Supplement, we find that the Commnet Carriers have not presented an adequate basis for reconsidering the Commission's denial of their requested waivers of the E911 requirements in the *Tier III Carriers Order*. Our denial of the Joint Petition is without prejudice to the filing of a new, more limited and focused request for relief, consistent with the waiver standards set out in Section 1.925 of the Commission's rules, and the Commission's E911 Phase II waiver standards, including a demonstration of a clear path to full compliance.

---

[26] Fourth Supplement at 5.

[27] Although CFLCC reported last year that it had "begun implementation" of the True Position solution, we have not received any further updates. *See* Commnet of Florida, L.L.C. E911 Interim Report, CC Docket No. 94-102., filed Sept. 30, 2005 at 2. Indeed, the September 2006 Supplement states CFLLC "is currently working with GBSD" and no longer even mentions the True Position solution. September 2006 Supplement at 3, 5.

[28] *See* September 2006 Supplement at 3-4.

[29] *Id.* at 6.

below, we find that the December 2003 Supplement fails to provide the specific information outlined in the *Tier III Carriers Order* as necessary for seeking the requested relief.

7. While the December 2003 Supplement provides some information concerning the network configurations of each of the Commnet Carriers, it only briefly discusses, and then quickly dismisses, the feasibility of employing certain network-based location technologies. The December 2003 Supplement repeatedly states that the "only Phase II-compliant network-based solutions available are based on either triangulation or [angle-of-arrival] techniques" and that Phase II service therefore is "not technically feasible."[20] The December 2003 Supplement otherwise offers no technical analysis or specific cell site location data, information on local terrain features, etc., in support of the Commnet Carriers' generalized statements that they cannot, for an indefinite period of time, provide Phase II service. Each of the Commnet Carriers, at a minimum, should have more thoroughly addressed the particular facts and circumstances of each network and the technical feasibility of all available location technologies. The December 2003 Supplement also does not mention whether the Commnet Carriers have engaged in any efforts to explore potential solutions with technology vendors, and thereby fails to demonstrate that the Commnet Carriers are pursuing a plan to fulfill requests for Phase II service, *i.e.*, the Comment Carriers continue to fail to provide the requisite "clear path to full compliance." Further, although the December 2003 Supplement notes that the Commnet Carriers established a dialogue with the PSAPs in implementing Phase I service,[21] there is no mention of whether the Commnet Carriers have discussed Phase II requests in the context of this dialogue. In sum, we cannot conclude that the December 2003 Supplement overcomes any of the inadequacies of the underlying waiver request previously identified in the *Tier III Carriers Order*.

8. Even when taking into consideration the Commnet Carriers' supplements filed after the Joint Petition, we continue to find no basis for granting the requested relief. The Commnet Carriers report in the March 2006 Supplement and September 2006 Supplement that CILLC and CFCLLC, and other Commnet Carriers, have discussed potential Phase II solutions with three vendors.[22] The Commnet Carriers again fail, however, to provide additional, specific information justifying their continued request for a permanent or long-term waiver of the Phase II requirements.[23]

9. With respect to one of the vendors, GBSD, the Commnet Carriers report in their March 2006 Supplement only that one of its solutions, "The Compass," "is effective only within a 5 to 6 mile radius around the transmitter site," without any further discussion explaining why the GBSD solution would not provide a viable Phase II option. Six months later, in the September 2006 Supplement, the Commnet Carriers report no specific progress concerning their investigation of "The Compass." They state only that, with respect to CFLLC in Monroe County, Florida, they are "still in discussions with GBSD" and "currently working with GBSD to develop a solution," and continue to question whether the solution would reach the required accuracy standards on a system-wide basis.[24] While the Commnet Carriers also report in the September 2006 Supplement that, since April 2006, they have been analyzing a second GBSD Phase II product, a hybrid solution with network-based and handset-based elements called Assisted-GPRS, they offer only that they are "currently analyzing" this solution.[25] Without significantly

[20] December 2003 Supplement at 6, 7, 9, 10-11, 12, 13-15.

[21] *See id.* at 5.

[22] *See* March 2006 Supplement at 3-5; September 2006 Supplement at 2-4.

[23] We also note that, although the Commnet Carriers state they are adding cell sites that presumably would aid in a offering a network-based solution, they offer no details in terms of when and where such sites are being added, and the extent to which these new cell sites might eliminate their need for waiver.

[24] September 2006 Supplement at 3.

[25] *See id.*

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and Sections 1.3, 1.106, and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, and 1.925, that the foregoing *Order on Reconsideration* IS ADOPTED.

15. IT IS FURTHER ORDERED, that the Joint Petition for Reconsideration filed by the Commnet Carriers IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary