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

In the Matter of)
)
Revision of the Commission's Rules To) CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)
Emergency Calling Systems)
)
)

To: The Commission

**REQUEST FOR LIMITED WAIVER BY
SOUTHERNLINC WIRELESS**

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July 18, 2008

EXECUTIVE SUMMARY

Through this Request for a Limited Waiver, SouthernLINC Wireless seeks limited relief of its deadline of August 15, 2008, to achieve ninety-five percent penetration of location-capable handsets among its subscribers. Specifically, for the reasons set forth herein, SouthernLINC Wireless requests that, for the limited purpose of determining compliance with the ninety-five percent penetration benchmark, the Commission permit SouthernLINC Wireless to exclude from its compliance percentage calculation those high power handsets (*i.e.*, 1 watt or higher) utilized by its public safety and emergency first responder subscribers.

As of the date of this Request, approximately 94.65 percent of SouthernLINC Wireless' subscribers use location-capable handsets. Excluding just the small subset of public safety and emergency first responder subscribers from SouthernLINC Wireless' overall handset count would result in a penetration level for location-capable handsets that meets or exceeds ninety-five percent, thus bringing SouthernLINC Wireless into compliance with the Commission's handset penetration requirement. Moreover, the exclusion of this small subset of subscribers would be in the public interest, since these users rely on the increased range and coverage capabilities of their high-power handsets when performing critical public safety and emergency response services.

In the alternative, SouthernLINC Wireless requests that the Commission grant an extension until June 30, 2009, for SouthernLINC Wireless to achieve ninety-five percent penetration of location-capable handsets among its overall subscriber base. As described herein, SouthernLINC Wireless has a segment of subscribers (including, but not limited to, public safety and emergency first responders) who need a high power handset for

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which there is currently no A-GPS capable model on the market. SouthernLINC Wireless is currently working with Motorola on a new high power A-GPS-capable handset and currently anticipates that it will be able to offer this handset to its customers in early 2009. The requested extension would thus give SouthernLINC Wireless a reasonable amount of time to migrate these subscribers to a compliant handset that will still meet these subscribers' unique needs.

The unique and unusual circumstances surrounding SouthernLINC Wireless' efforts to comply with Section 20.18(g)(1)(v) of the Commission's Rules merit grant of the relief requested herein. SouthernLINC Wireless has made every effort to meet the Commission's Phase II penetration requirements in light of these circumstances and the resources available. The company has designed and implemented numerous programs and initiatives, spent millions of dollars, and dedicated thousands (if not tens of thousands) of personnel hours towards achieving ninety-five percent penetration of location-capable handsets among its overall subscriber base. It has also worked closely with the PSAPs in its service area to ensure that they are kept informed of the status of the company's E911 Phase II compliance efforts and its impact on subscribers. Furthermore, the limited relief requested will enable SouthernLINC Wireless to continue to provide services to subscribers using higher power phones who may experience decreased access to emergency services if compelled to switch to lower power location-capable phones as a result of strict enforcement of the current August 15, 2008, deadline. Apart from the Commission's own waiver standard, this circumstance alone warrants the grant of the requested relief pursuant to the standards established by Congress through the *ENHANCE 911 Act*.

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Pursuant to Section 1.925 of the Rules of the Federal Communications Commission (“FCC” or “Commission”), 47 C.F.R. § 1.925, Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) respectfully requests a limited waiver of Section 20.18(g)(1)(v) of the Commission’s Rules, 47 C.F.R. § 20.18(g)(1)(v), which requires commercial mobile radio service (CMRS) providers utilizing handset-based E911 Phase II solutions to achieve ninety-five percent penetration of automatic location identification (ALI)-capable handsets among their subscribers by December 31, 2005.

Specifically, SouthernLINC Wireless requests that, for the limited purpose of determining compliance with the ninety-five percent penetration benchmark, the Commission permit SouthernLINC Wireless to exclude from its compliance percentage

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calculation those high power handsets (*i.e.*, 1 watt or higher) utilized by its public safety and emergency first responder subscribers, as identified in Attachment A to this Request.¹

As discussed herein, exclusion of just this small subset of subscribers from SouthernLINC Wireless' overall handset count would result in a penetration level for location-capable handsets that meets or exceeds ninety-five percent, thus bringing SouthernLINC Wireless into compliance with the Commission's ninety-five percent penetration requirement.² Moreover, the exclusion of this small subset of subscribers would be in the public interest, since these users rely on the increased range and coverage capabilities of their high-power handsets when performing critical public safety and emergency response services.

In the alternative, SouthernLINC Wireless requests that the Commission grant an extension until June 30, 2009, for SouthernLINC Wireless to achieve ninety-five percent penetration of location-capable handsets among its overall subscriber base. As described herein, but for the segment of subscribers (including, but not limited to, public safety and emergency first responders) who need a high power handset for which there is currently

¹ / SouthernLINC Wireless has many government and enterprise subscribers who rely on the greater range and coverage capabilities of high power handsets for access to communications services, including emergency services. For purposes of this Request for Limited Waiver, SouthernLINC Wireless asks that only its public safety and emergency first responder subscribers be excluded from its compliance percentage calculation for the reasons discussed herein. Specific information regarding SouthernLINC Wireless' public safety and emergency first responder subscribers is provided in Attachment A to this Request for Limited Waiver, which has been filed under seal and redacted from the public version of this filing.

² / As of the date of this request, approximately 94.65 percent of SouthernLINC Wireless' customers use location-capable handsets. The exact impact that the exclusion of public safety and emergency first responder subscribers would have on SouthernLINC
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no A-GPS capable model on the market, SouthernLINC Wireless' overall penetration level would be approximately 98.5 percent. SouthernLINC Wireless is currently working with Motorola on a new high power A-GPS-capable handset and currently anticipates, if all proceeds according to schedule, that it will be able to offer this handset to its customers in early 2009. The requested extension would thus give SouthernLINC Wireless a reasonable amount of time to migrate these subscribers to a compliant handset that will still meet these subscribers' unique needs.

I. BACKGROUND

A. Procedural History

On July 26, 2005, SouthernLINC Wireless, a "qualified Tier III carrier" as that term is defined in Section 107 of the *ENHANCE 911 Act*,³ filed a Request for Waiver which sought a 24-month extension of the Commission's December 31, 2005, deadline to achieve ninety-five percent penetration of location-capable handsets among its subscriber base.⁴ As set forth in the Request for Waiver and in subsequent filings, SouthernLINC Wireless faced, and continues to face, numerous challenges in its efforts to achieve the required level of penetration of location-capable handsets, including: (i) a latent software defect in the Motorola A-GPS-equipped handsets used by SouthernLINC Wireless subscribers that rendered all A-GPS services in these handsets unusable for E911 location

Wireless' penetration level is described in Attachment A to this Request for Limited Waiver.

³ / National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004) ("*ENHANCE 911 Act*"), § 107(a).

⁴ / Request for Waiver by SouthernLINC Wireless, CC Docket No. 94-102, filed July 26, 2005 ("Request for Waiver").

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in July 2004; (ii) the substantial portion of handsets assigned to enterprise or government accounts that typically have long-term equipment replacement cycles and are both reluctant and resistant to upgrading from their current handsets to new location-capable handsets; and (iii) the number of SouthernLINC Wireless subscribers who utilize and rely on the range and coverage of high-power 1 watt and 3 watt phones and who are unwilling to upgrade to a lower-power (0.6 watt) location-capable handset, which could potentially decrease their ability to receive any communications services – including emergency services – in remote areas.⁵

In its *Order* released November 3, 2005, the Commission granted SouthernLINC Wireless a ten-month extension of the E911 Phase II deadline until November 3, 2006.⁶ The Commission also placed certain conditions on its grant of waiver in the *Order*, including quarterly reporting requirements and a requirement that SouthernLINC Wireless file a compliance plan with the Commission within six months of the effective date of the *Order*.⁷ On December 5, 2005, SouthernLINC Wireless filed a Petition for

⁵ / See, e.g., Request for Waiver at 2 – 3; see also SouthernLINC Wireless Notice of *Ex Parte* Presentation, CC Docket No. 94-102, filed Sept. 9, 2005; SouthernLINC Wireless Response to Request for Additional Information Supporting its Request for Waiver of the E911 Phase II handset Deployment Deadline, CC Docket No. 94-102, filed Oct. 26, 2005 (“Supplemental Filing”).

⁶ / *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless*, CC Docket No. 94-102, Order, FCC 05-188 (rel. Nov. 3, 2005) (“*Order*”).

⁷ / *Id.* at ¶ 22 – 23.

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Reconsideration and Clarification of the *Order*, which is still pending before the Commission.⁸

Since filing its Petition, SouthernLINC Wireless has, without prejudice to its pending Petition, submitted quarterly reports as required by the *Order*.⁹ On May 3, 2006, SouthernLINC Wireless filed its required Compliance Plan – a requirement that the Commission has not imposed on any other carrier requesting a waiver.¹⁰ As of the date of the instant filing, SouthernLINC Wireless has yet to receive any comment or communication from the Commission regarding any aspect of its Compliance Plan.

On November 2, 2006, SouthernLINC Wireless filed for a further extension of the penetration deadline which the Commission partially granted, giving SouthernLINC Wireless until November 12, 2007, to comply with the penetration requirement.¹¹

Although SouthernLINC Wireless made substantial progress towards achieving the ninety-five percent penetration benchmark, it nevertheless found it necessary to request a

⁸ / Petition for Reconsideration and Clarification of SouthernLINC Wireless, CC Docket No. 94-102, filed Dec. 5, 2005 (“Petition”). The Petition made clear that SouthernLINC Wireless had shown a “clear path to full compliance” and specifically addressed the points raised by the Commission as underlying its decision not to grant the full relief requested. *Id.* at 6 – 12.

⁹ / SouthernLINC Wireless hereby incorporates by reference all of the Quarterly Reports it has filed with the Commission pursuant to the Commission’s Orders.

¹⁰ / *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless*, CC Docket No. 94-102, SouthernLINC Wireless E911 Phase II “Compliance Plan”, filed May 3, 2006 (“Compliance Plan”). SouthernLINC Wireless hereby incorporates the Compliance Plan by reference.

¹¹ / Request for Further Waiver by SouthernLINC Wireless, CC Docket No. 94-102, filed Nov. 2, 2006 (“Request for Further Waiver”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Call Systems; Request for*

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further limited waiver on November 9, 2007.¹² The Commission granted a further limited extension until August 15, 2008, and required SouthernLINC Wireless to continue to file status reports on a quarterly basis.¹³

In granting SouthernLINC Wireless limited extensions of the ninety-five percent penetration deadline, the Commission has consistently found that it “appears likely that strict enforcement” of the deadline “would impair the ability of certain 911 callers [referring to customers using high power handsets] to reach emergency assistance...”¹⁴ The Commission has thus held that, because such action would result in consumers having decreased access to emergency services, relief should be granted pursuant to the *ENHANCE 911 Act*.¹⁵ In granting this relief, the Commission has imposed on SouthernLINC Wireless an ongoing obligation to continue to inform its customers and PSAPs of the status of its E-911 compliance and to provide the Commission detailed quarterly reports on its progress. SouthernLINC Wireless has complied fully with these requirements.¹⁶

Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, CC Docket No. 94-102, Order, DA 07-659 (rel. Feb. 12, 2007) (“February 2007 Order”).

¹² / Request for Further Waiver by SouthernLINC Wireless, CC Docket No. 94-102, filed Nov. 9, 2007 (“2007 Request for Further Waiver”).

¹³ / *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Call Systems; Request for Further Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, CC Docket No. 94-102, Order, DA 08-406 (rel. Feb. 15, 2008) (“2008 Order”).*

¹⁴ / *Id.* at ¶ 12; *See also February 2007 Order* at ¶ 13.

¹⁵ / *See, e.g., 2008 Order* at ¶ 12.

¹⁶ / *See, e.g., SouthernLINC Wireless E911 Phase II Quarterly Report: February 1, 2007, CC Docket No. 94-102, filed Feb. 1, 2007 (“1st Quarter 2007 Report”); SouthernLINC Wireless E911 Phase II Quarterly Report: May 1, 2007, CC Docket No. 94-102, filed May 1, 2007 (“2nd Quarter 2007 Report”); SouthernLINC Wireless E911*
(continued...)

B. Overview of SouthernLINC Wireless' Compliance Efforts

As described in its previous filings with the Commission, SouthernLINC Wireless has undertaken extraordinary efforts at significant expense to persuade subscribers to reflash their existing handsets or upgrade to location-capable phones, including multiple large-scale customer outreach campaigns, offers of free minutes and free services, and an aggressive program offering customers with non-location capable handsets a free replacement phone with no additional contract requirements.¹⁷ Many of SouthernLINC Wireless' compliance efforts are similar to – and in some cases even more aggressive than – efforts that have been taken by other carriers and cited to approvingly by the Commission.¹⁸

As a result of the aggressive programs it has undertaken, SouthernLINC Wireless has made substantial progress towards compliance with the ninety-five percent penetration requirement, and as of the date of this filing has achieved a handset penetration level of 94.65 percent of its overall subscriber base.

Phase II Quarterly Report: August 1, 2007, CC Docket No. 94-102, filed Aug. 1, 2007 (“3rd Quarter 2007 Report”); SouthernLINC Wireless E911 Phase II Quarterly Report: November 1, 2007, CC Docket No. 94-102, filed Nov. 1, 2007 (“4th Quarter 2007 Report”); SouthernLINC Wireless E911 Phase II Quarterly Report: February 1, 2008, CC Docket No. 94-102, filed Feb. 1, 2008 (“1st Quarter 2008 Report”); SouthernLINC Wireless E911 Phase II Quarterly Report: May 1, 2008, CC Docket No. 94-102, filed May 1, 2008 (“2nd Quarter 2008 Report”).

¹⁷ / See, e.g., 2007 Request for Further Waiver at 17 – 20 and Attachments E through I; See also 2nd Quarter 2008 Report at 7 – 14 (and the filings cited therein).

¹⁸ / See, e.g., *Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation*, WT Docket No. 05-286, Order, 22 FCC Rcd 400, 411-12 ¶ 32 (2007) (“*Sprint Nextel Waiver Order*”) (favorably citing examples of efforts by Tier III carriers, including free and discounted phones, free minutes, free service, customer calling campaigns, etc.).

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Nevertheless, while SouthernLINC Wireless is very close to achieving full compliance, the rate of increase in its overall penetration has leveled off significantly due to the unique circumstances related to the segment of its customer base which uses high power handsets for which there is currently no A-GPS capable replacement. Since users of high power handsets still represent approximately [] percent of SouthernLINC Wireless' customer base, SouthernLINC Wireless would need to persuade nearly every other remaining customer not currently using an A-GPS handset to switch in order to reach ninety-five percent penetration among its entire subscriber base. Put another way, but for customers using high power handsets, SouthernLINC Wireless would have already exceeded the ninety-five percent benchmark.¹⁹

By and large due to extraordinary efforts, SouthernLINC Wireless has overcome almost all of the formidable logistical, operational, and financial barriers it has faced in achieving the ninety-five percent penetration goal established by the Commission. Although a solution for the lack of an A-GPS high power handset is on the horizon (as discussed in Section II below), the obstacle presented by customers using high-power handsets continues to exist. SouthernLINC Wireless relies on a sole-source vendor for all of its iDEN handsets and equipment and, as a smaller Tier III carrier, is not in a position to drive the manufacturing decisions of the vendor. It also has more limited resources than those of the much larger Tier I and Tier II carriers. These realities underpin

¹⁹ / As discussed above, SouthernLINC Wireless estimates that, but for its high-power handset users, its penetration rate would be at approximately 98.5 percent.

Congress' decision to extend special relief to Tier III carriers under the *ENHANCE 911 Act*.²⁰

For these and other reasons discussed herein, SouthernLINC Wireless has satisfied the Commission's standards for grant of the requested limited waiver of Section 20.18(g)(1)(v) of the Rules.²¹ SouthernLINC Wireless also continues to meet the separate and distinct "decreased access to emergency services" standard established by the *ENHANCE 911 Act*, which was the sole stated basis for the Commission's partial grant of the company's initial and subsequent Requests for Waiver.²²

II. ENHANCE 911 ACT CONDITIONS STILL EXIST

Section 107(a) of the *ENHANCE 911 Act* requires the Commission to grant a request for waiver of Section 20.18(g)(1)(v) of the Commission's Rules if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²³

As the Commission found in its initial waiver *Order*, "certain of SouthernLINC Wireless' customers having high power handsets would likely find it more difficult and, at times, impossible, to contact a PSAP in some parts of its service area if they were forced to convert to lower-power A-GPS handsets."²⁴ Again in the subsequent *February 2007 Order* the Commission noted: "[C]onsistent with the directive of the *ENHANCE*

²⁰ / See H.R. REP. NO. 108-311, at 12 (2003).

²¹ / The Commission's Section 20.18(g)(1)(v) waiver standards recognize that unique and unusual circumstances may justify extension of Phase II deployment deadlines for Tier III carriers. See *Order* at ¶ 6, 7 (and cases cites therein)

²² / *Order* at ¶ 6; *February 2007 Order* at ¶ 13; *2008 Order* at ¶ 12.

²³ / *ENHANCE 911 Act*, § 107(a).

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911 Act, we find that certain of SouthernLINC Wireless’ customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of SouthernLINC Wireless’ service area if those customers were forced to convert from analog [*sic*] bagphones to location-capable handsets.”²⁵ As summarized below, these circumstances continue to exist today; thus, a decision denying a further waiver requested herein “would result in consumers having decreased access to emergency services.”²⁶

As SouthernLINC Wireless has previously explained, many of its subscribers place a high value on certain characteristics of their existing handsets that are currently not available in the newer location-capable handsets.²⁷ Although SouthernLINC Wireless is working to reduce these numbers and they have slowly come down, approximately [] percent of SouthernLINC Wireless’ subscribers still use handsets with 1 watt power capability which are designed to military specifications for ruggedness, durability, and the ability to operate in harsh and adverse conditions, or use vehicle-mounted units with a power capability of 3 watts. In contrast, all of the location-capable handsets available to SouthernLINC Wireless and its subscribers operate at 0.6 watts, meaning that their range is less extensive than that of a 1 watt handset or a 3 watt vehicle unit. While Motorola has developed – and SouthernLINC Wireless has offered since mid-2004 – a location-capable handset that offers the same ruggedness and

²⁴ / *Order* at ¶ 19

²⁵ / *February 2007 Order* at ¶13. SouthernLINC Wireless notes that all of its iDEN phones are digital, not analog, and thus are not subject to any “phase-out” requirements.

²⁶ / *See ENHANCE 911 Act* at § 107(a)

²⁷ / *See, e.g., 2007 Request for Further Waiver* at 9 – 15.

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durability features, the lower wattage makes this new handset an inadequate substitute in the eyes of customers, and they appear to regard it as a less attractive product.

The combined characteristics of a rugged handset with higher wattage has been the necessary choice among many of SouthernLINC Wireless' utility, government, industrial and public safety subscribers, who must often work in challenging environments and remote areas. While SouthernLINC Wireless has had some limited success in attempting to transition these subscribers to lower wattage location-capable handsets, it has encountered strong resistance from subscribers who do not want to trade in their higher power handsets no matter what incentives they are offered. In particular, there continues to be a concern among such subscribers that the lower power capability of the location-capable handsets could result in the inability to communicate from areas that can currently be reached by their existing 1 watt and 3 watt handsets.²⁸

State troopers in the Alabama Department of Public Safety are one example of customers who use the high power handset. They are required to travel throughout the state, covering both urban and rural and remote areas, and need instant access to communications with fellow troopers or dispatchers. Likewise, the Alabama Emergency Management Agency (Alabama EMA) personnel who provide emergency service in the

²⁸ / SouthernLINC Wireless' experience is similar to that of cellular carriers with customers who prefer to have analog equipment for use in the more challenging and remote areas of their footprints. However, there is a significant difference in that SouthernLINC Wireless' customers are already using digital handsets that are not subject to any "phase-out" requirements and which could potentially remain operationally viable for several years – particularly given the ruggedized nature of the equipment in question. In SouthernLINC Wireless' case, expanded network build-out does not change this situation, as it merely "pushes out" the area where higher power handsets can be used. *See, e.g.*, Petition at 8 – 10; Compliance Plan at 4 – 5 (providing additional detail about the company's cell site construction program).

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event of hurricanes or other natural disasters use these high power handsets. Alabama EMA personnel can be called upon to bring assistance to communities in any part of the state and require assurance that they have communications anywhere they travel. The high power handset allows them not only to effectively carry out their public responsibilities for others' safety but also to use their phones in areas of the state where a lower power unit would not have sufficient range to enable them to communicate.

Other customers who utilize the high power handset include participants in the Birmingham Regional Emergency Medical Service Systems (BREMSS), a regional organization responsible for coordinating emergency response, care, and services in the seven-county area around Birmingham, Alabama. The following excerpt from the BREMSS website (www.bremss.org) describes the BREMSS communications system:

A state-of-the-art communications system that ties all hospitals as well as all major EMS transport agencies is an example of regional cooperation, planning, and implementation. This EMS communications system, which was implemented at no initial cost to hospitals, is a unique partnership between a commercial provider (Southern LINC), local governments, commercial ambulance services, hospitals, 911 centers, emergency management agencies, and fire services. BREMSS was able to envision the system and through continual work implement a region-wide system and, ultimately, implementation of a statewide EMS Communication System is possible.²⁹

These customers represent just a few of the SouthernLINC Wireless public safety and emergency first responder subscribers who would have decreased access to communications services, including emergency services, if they were forced to change their handset to a low power model. Other examples include police, sheriff, and fire departments; local, state, and federal emergency management personnel; hospitals and

²⁹ / See http://www.bremss.org/index_files/Page1152.htm, last viewed July 16, 2008.

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emergency medical clinics; and ambulance and paramedic services. As requested by the Commission, SouthernLINC Wireless provides as confidential Attachment A to this Request for Limited Waiver additional information regarding its public safety and emergency first responder subscribers. This confidential Attachment A has been filed under seal and has been redacted from the public version of this filing.

Public safety and emergency first responders are not the only SouthernLINC Wireless subscribers who rely on the increased range and coverage capabilities of their high power handsets for access to communications services in remote areas and in challenging environments. Others include the crewmen who work for SouthernLINC Wireless' affiliated electric utility operating companies, who must be prepared to restore electricity anywhere in their company's network in the event of any emergency (such as the hurricanes that are frequent in this area of the country) and who must also work in remote and rural areas when performing routine maintenance of the electric grid. Additional customers who would have decreased access to emergency services if compelled to change their handset to a lower power model include logging and construction companies, trucking companies and school buses that operate in rural areas. These customers have all been advised of the availability of the 0.6 watt location-capable units. Nevertheless, they have made the decision that the high power unit more effectively meets their overall needs, including for emergency communications, in the important jobs that they have to carry out.³⁰

³⁰ / All of these individuals use their phones for job-related communications. They may also have handsets for personal use which would be, in all likelihood, A-GPS-capable.

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In order to address the needs of this important customer segment, SouthernLINC Wireless has had numerous discussions with Motorola over the past few years regarding the need for a new A-GPS capable high power handset and wants to emphasize to the Commission that it has been persistent and insistent in its quest for such a handset. SouthernLINC Wireless has been equally persistent in raising to the Commission's attention the obstacle that the lack of a high power replacement phone has presented to its Phase II compliance efforts, beginning with its filing in September 2001 of a waiver of the deadline to begin selling A-GPS capable handsets.³¹ Nevertheless, the company was advised on multiple occasions by Motorola that it did not intend to manufacture an A-GPS compliant 1 watt handset.³²

However, in late 2007, Motorola informed SouthernLINC Wireless that it now intends to produce an A-GPS compliant 1 watt handset.³³ SouthernLINC Wireless has since worked with Motorola on this new handset and is optimistic that it will be able to

³¹ / *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, SouthernLINC Petition for Limited Waiver of Section 20.18 of the Commission's Rules (filed Sept. 18, 2001) at 25 – 26 ("2001 Waiver Request"); *See also* Request for Waiver at 11-13, 27-28; Petition at 10-11 and Exhibit A; Request for Further Waiver at 5-6.

It is also important to note that while the A-GPS Phase II solution for iDEN has not covered this important segment of customers, the other choice, a network-based solution, would have failed to produce the level of location accuracy on SouthernLINC Wireless' network that is required by Commission regulations. *See* 2001 Waiver Request at 12 – 16.

³² / *See, e.g.*, 2007 Request for Further Waiver, Attachment B (Letter dated Dec. 2, 2005, from Julio Abdala, Motorola, to Michael D. Rosenthal, SouthernLINC Wireless, confirming that "Motorola has never offered and has no plans to develop" an A-GPS capable iDEN handset with a power level greater than 0.6 watts).

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offer the new handset to its customers in early 2009, if plans proceed according to the current schedule. SouthernLINC Wireless expects that this handset will be an acceptable substitute for the current 1 watt unit and that its customers will be willing to upgrade to this new A-GPS compliant equipment.

As stated above, these subscribers make up approximately [] percent of SouthernLINC Wireless' subscriber base. Strict enforcement, though, of the Commission's handset deployment deadlines would require that a significant portion of these subscribers be migrated to a lower power location-capable handset, even if this would result in a loss of coverage in certain areas where these subscribers operate and, accordingly, would result in decreased access to emergency services. As the Commission is well aware, this is exactly the sort of outcome that Congress sought to avoid in adopting Section 107 of the *ENHANCE 911 Act*.

SouthernLINC Wireless believes that users of its high power handsets fit squarely within the mandates of the *ENHANCE 911 Act*, and the Commission has previously cited this precise reason in granting relief to SouthernLINC Wireless on two previous occasions.³⁴ Since the lack of A-GPS compliant high power handsets will continue until a replacement model reaches the market in early 2009, it would be arbitrary and capricious for the Commission to now find that these same facts do not fit within the *ENHANCE 911 Act's* criteria for relief. SouthernLINC Wireless, however, remains

³³ / See Letter dated Nov. 7, 2007, from Greg Page, Motorola, to Marlene H. Dortch, Secretary, FCC (a copy of this letter was also included as Attachment C to SouthernLINC Wireless' 2007 Request for Further Waiver).

³⁴ / See Order at ¶19 and February 2007 Order at ¶13.

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committed to converting these customers to high power A-GPS capable handsets as soon as they are available.

Furthermore, while Congress has already determined through the adoption of Section 107(a) of the *ENHANCE 911 Act* that the public interest in maintaining consumer access to emergency services outweighs the benefits of E911 Phase II location capability, SouthernLINC Wireless submits that this public interest concern is even greater where the consumers in question are public safety or emergency first responder customers performing their critical functions in remote areas and/or in challenging environments or conditions. Their ability to communicate in such areas is vital not only to their own personal safety, but to the safety of those whose lives and property they are attempting to save. These customers recognize that the increased range and coverage of their current high power handsets also means forgoing Phase II location-capability, yet they have made the determination that greater access to communications service is more critical to their mission and to their ability to serve and protect the public.

SouthernLINC Wireless believes that its public safety and emergency first responder customers are in the best position to determine which features and capabilities are more critical to their mission and which thus best serve the public interest. SouthernLINC Wireless therefore submits that these customers' choice of equipment should thus be given deference both by SouthernLINC Wireless and by the Commission.

In order to ensure that public safety and emergency first responders continue to have access to vital communications services until such time as they are able to replace their current high power handsets with new, location-capable high power handsets, SouthernLINC Wireless requests limited relief that would permit it to exclude from its

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compliance percentage calculation those high power handsets utilized by the public safety and emergency first responder subscribers described in confidential Attachment A to this Request for Limited Waiver. Although the total number of such handsets is *de minimus*, the exclusion of just this small set of handsets from SouthernLINC Wireless' overall handset count would result in a penetration level for location-capable handsets that meets or exceeds ninety-five percent.³⁵ SouthernLINC Wireless would then be in compliance with the Commission's ninety-five percent penetration requirement, and thus it would be relieved of the need to take any action that could risk causing decreased access to communications services for its public safety customers in order to satisfy the Commission's rules. Should the Commission grant the relief requested, SouthernLINC Wireless will nevertheless continue to encourage all of its subscribers with non-location capable handsets to upgrade to location-capable handsets in order to continue increasing its overall penetration level to the greatest extent possible.

Accordingly, SouthernLINC Wireless submits that the relief requested is in the public interest and that the grant of this Request for Limited Waiver is thus warranted.³⁶

³⁵ / The exact impact that the exclusion of public safety and emergency first responder subscribers would have on SouthernLINC Wireless' penetration level is described in Attachment A to this Request for Limited Waiver.

³⁶ / In the alternative, SouthernLINC Wireless requests that the Commission grant an extension until June 30, 2009, for SouthernLINC Wireless to achieve ninety-five percent penetration of location-capable handsets among its entire subscriber base. This would provide SouthernLINC Wireless a reasonable amount of time to migrate subscribers using high power handsets to the new, location-capable high power handset that is

(continued...)

III. SOUTHERNLINC WIRELESS' HANDSET PENETRATION LEVELS

As a company, SouthernLINC Wireless has always taken its regulatory obligations very seriously and has always made every possible effort to ensure that it is in full compliance with the Commission's rules and regulations. To this end, SouthernLINC Wireless has expended – and continues to expend – considerable effort and resources to achieving ninety-five percent penetration of location-capable handsets among its subscriber base.³⁷

SouthernLINC Wireless estimates that, as of the date of the instant Request, approximately 94.65 percent of its customers currently use location-capable handsets. If SouthernLINC Wireless were to not count its customers using high power handsets, its penetration level would be approximately 98.5 percent.

Although short of the required ninety-five percent penetration level, this level of penetration demonstrates that SouthernLINC Wireless has made substantial progress. The fact that SouthernLINC Wireless has been able to make so much progress should be considered within the context of the unique and unusual circumstances that the company continues to face, as well as the costs of achieving ninety-five percent penetration and the resources available to the company for all of its compliance efforts.

presently undergoing testing and which is scheduled to be available on the market by early 2009.

³⁷ / SouthernLINC Wireless has previously provided to the Commission confidential financial information relevant to its compliance efforts. *See* Request for Further Waiver, Attachment A, filed November 2, 2006; *See also* Letter of Nov. 2, 2006, from Christine M. Gill, Counsel for SouthernLINC Wireless, to Kenneth Moran, Acting Bureau Chief, Public Safety and Homeland Security Bureau (requesting confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. § 0.457, 0.459).

IV. SOUTHERNLINC WIRELESS HAS SHOWN A CLEAR PATH TO FULL COMPLIANCE WITH THE E911 PHASE II REQUIREMENTS

SouthernLINC Wireless believes that it has demonstrated both a commitment to – and a “clear path to full compliance” with – achievement of the ninety-five percent E911 Phase II handset deployment requirement. In its filings with the Commission, SouthernLINC Wireless has described the variety of programs and initiatives it has undertaken in all areas that affect its Phase II compliance results, including: (1) reversing the substantial impact of the July 2004 software glitch; (2) educating consumers on the benefits of ALI E911 capabilities; and (3) providing generous incentives and inducements to subscribers – including users of higher-power handsets – to upgrade to A-GPS capable phones.

As described extensively in its waiver requests,³⁸ its May 3, 2006 Compliance Plan,³⁹ and in its quarterly status reports,⁴⁰ SouthernLINC Wireless has undertaken numerous aggressive efforts to increase customer adoption of location-capable handsets as rapidly as possible. SouthernLINC Wireless notes that many of these efforts – such as “Call the Customer” and direct-mail campaigns, direct customer outreach programs, numerous offers of free phones and heavily discounted phones without a required contract extension, rebates, free accessories, and offers of free services (including free

³⁸ / See Request for Further Waiver at 13 – 19; 2007 Request for Further Waiver at 17 – 20.

³⁹ / See Compliance Plan at 6 – 9.

⁴⁰ / See, e.g., 2008 Quarterly Report at 7 – 14 and the filings cited therein.

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minutes and a month of free location/navigation services) – have also been taken by other carriers and cited to approvingly by the Commission.⁴¹

The effectiveness of SouthernLINC Wireless' aggressive compliance efforts is demonstrated by the fact that these efforts have been successful in reaching nearly every SouthernLINC Wireless customer who is not operating with a high power handset, resulting in a penetration level among non-high power subscribers of 98.5 percent. However, as the Commission recognized in setting the compliance target at ninety-five percent, there are a certain number of customers who will be unwilling to change their handsets regardless of the incentives they are offered.⁴² While it will continue to be difficult to convince this very last segment to switch, SouthernLINC Wireless will nevertheless continue to try to reach this portion of its customer base.

With respect to its customers who use high power handsets, until being advised in late 2007 by Motorola that it intended to manufacture an A-GPS capable high power handset, SouthernLINC Wireless did not see a viable option to convince these customers to relinquish their current handsets for a lower power A-GPS capable handset. SouthernLINC Wireless strongly agrees with the policy enacted by Congress in the *ENHANCE 911 Act* that customers should not be forced to take an A-GPS capable

⁴¹ / See, e.g., *Sprint Nextel Waiver Order*, 22 FCC Rcd at 411-12 ¶ 32.

⁴² / See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17455-56 ¶ 36 (2000); See also *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388, 17412, 17413-14 ¶¶ 51, 54 (1999) ("We recognize that carriers do not have complete control over their customers' handset choices or over handset manufacturers and that it will
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handset in situations where doing so would result in them having decreased access to emergency services. For commercial and government customers that operate in remote and rugged conditions where the ability to communicate is extremely important, SouthernLINC Wireless does not believe it is prudent to force these customers to relinquish these valuable handsets when these customers have made an informed decision, after weighing all of the aspects of their work environment, that these handsets are a better option for them.

Moreover, with respect to its public safety and emergency first responder customers, SouthernLINC Wireless submits that the public interest is best served when these customers are able to communicate when performing their critical duties in remote areas and/or in challenging conditions. As discussed above, to the extent greater access to communications involves a trade-off over the location-capability of lower power handsets, SouthernLINC Wireless believes that these customers are in the best position to determine which of these features is more critical to their mission and in the public interest, and their choice of equipment should thus be given deference both by SouthernLINC Wireless and by the Commission.

With the introduction of an A-GPS capable high power handset, SouthernLINC Wireless will have a reasonable option to reach this customer segment that will provide them with all of the benefits of location-capability without requiring that they sacrifice the benefits of range and coverage that they depend on. As noted above, as a smaller regional carrier, SouthernLINC Wireless is not in a position to drive the manufacturing

likely be impossible to literally achieve 100 percent penetration of ALI-capable handsets, since some subscribers may simply choose to keep their non-ALI handsets.”).

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schedule of its handset vendor. However, based upon its recent communications with Motorola, the A-GPS equipped high power handset appears to be on track for SouthernLINC Wireless to offer to its customers in early 2009. The normal development, testing and manufacturing process does take time and, given that this handset differs from all others in the current iDEN portfolio, the delivery date is subject to change. SouthernLINC Wireless will nevertheless continue in its efforts to achieve compliance at the earliest possible date, even without the availability of this handset. It should not be penalized during the interim.

Until then, SouthernLINC Wireless believes that it will continue to make some progress in changing out the high power handsets used by some of these customers and that more of these customers will be amenable to changing out their handsets when the replacement location-capable high power handset becomes available. In conjunction with a grant of the relief requested herein, SouthernLINC Wireless will thus continue to pursue achievement of at least ninety-five percent penetration of location-capable handsets among its entire subscriber base as soon as possible.

V. SOUTHERNLINC WIRELESS CONTINUES TO HAVE A CLOSE WORKING RELATIONSHIP WITH PSAPS AND THE PUBLIC SAFETY COMMUNITY

A significant factor for the Commission in determining whether to grant a waiver of its E911 rules is the extent of the carrier's cooperation and communication with PSAPs and other public safety representatives.⁴³

⁴³ / See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102, Order to Stay, 18 FCC Rcd 20987, 20997 (2003) at ¶ 28.

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In its *Order*, the Commission found “a close working relationship between SouthernLINC Wireless and some of the affected PSAPs, and an understanding by the PSAPs of SouthernLINC Wireless’ status and efforts in achieving compliance with the ninety-five percent rate.”⁴⁴ SouthernLINC Wireless continues to work closely with the PSAPs in its service territory to ensure that community expectations are consistent with its projected compliance deadline. It remains in constant contact with all PSAPs in its service area regarding E911 services, its ability to provide Phase I and Phase II services, and any problems that might affect service availability. These communications, both written and verbal, include information on SouthernLINC Wireless’ ability to provide Phase II service to its customers and the degree to which its customers can benefit from Phase II capabilities.

SouthernLINC Wireless’ 911 services coordinator also interacts with the 911 community on a regular basis, including attending meetings where she provides updates on SouthernLINC Wireless’ Phase II deployment.⁴⁵ For example, this year alone, SouthernLINC Wireless’ 911 services coordinator has provided updates at the Alabama ECD Long Range Study Commission Meeting, the January 2008 Alabama NENA Quarterly Meeting, the Northwest Alabama E911 Directors Meeting, the Georgia APCO Spring Conference, a meeting with the Alabama 911/APCO Past-President, and the April 2008 Alabama NENA Quarterly Meeting.⁴⁶

⁴⁴ / *Order* at ¶ 18.

⁴⁵ / *See, e.g.*, 2nd Quarter 2008 Report at 6.

⁴⁶ / *See* 1st Quarter 2008 Report at 6; 2nd Quarter 2008 Report at 6.

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Further, as previously described to the Commission, SouthernLINC Wireless has undertaken a communications program for Phase II-capable PSAPs in its service territory focusing on the customer handset penetration issue.⁴⁷ Specifically, SouthernLINC Wireless is providing these PSAPs with regular updates every two months on the number of SouthernLINC Wireless customers using location-capable handsets and its progress towards the goal of ninety-five percent penetration of location-capable handsets.⁴⁸ These communications are in addition to the written confirmation to PSAPs of Phase II implementation once all activities, including testing, have been completed. As a result of the communications made with, and information provided to, the PSAPs, SouthernLINC Wireless enjoys exceptionally good relationships with its PSAPs as it pertains to E911 compliance.⁴⁹

A chart summarizing SouthernLINC Wireless' deployment of E911 Phase II services to PSAPs is provided as Attachment B hereto. It is noteworthy that only 172 PSAPs out of a total of 302 in SouthernLINC Wireless' service area currently have, or have requested, Phase II E911 capability.⁵⁰

⁴⁷ / See, e.g., 2nd Quarter 2008 Report at 6 – 7.

⁴⁸ / The most recent update regarding SouthernLINC Wireless' handset penetration status was mailed to Phase II-capable PSAPs on June 27, 2008.

⁴⁹ / In fact, several PSAPs submitted letters to the Commission explicitly supporting SouthernLINC Wireless' initial request for a waiver of the ninety-five percent penetration deadline. See, e.g., SouthernLINC Wireless Notices of *Ex Parte* Presentations, filed September 28 and October 4, 2005.

⁵⁰ / Of the 302 PSAPs in SouthernLINC Wireless' service area, 172 PSAPs have requested Phase II service, 165 PSAPs have had Phase II service deployed to date, and 7 PSAPs have requests pending.

VI. CONCLUSION

The unique and unusual circumstances surrounding SouthernLINC Wireless' efforts to comply with Section 20.18(g)(1)(v) of the Commission's Rules merit grant of the relief requested herein. SouthernLINC Wireless has made every effort to meet the Commission's Phase II penetration requirements in light of these circumstances and the resources available. The company has designed and implemented numerous programs and initiatives, spent millions of dollars, and dedicated thousands (if not tens of thousands) of personnel hours towards achieving ninety-five percent penetration of location-capable handsets among its overall subscriber base, and will continue to do so until this level is achieved. It has also worked closely with the PSAPs in its service area to ensure that they are kept informed of the status of the company's E911 Phase II compliance efforts and its impact on subscribers. Finally, SouthernLINC Wireless is currently working with Motorola on a new, A-GPS-equipped high power handset that is designed to provide E911 Phase II location capability while still meeting the unique coverage and service needs of those subscribers who currently rely on non-location capable high power handsets. All of this demonstrates that SouthernLINC Wireless has a clear path to full compliance and is fully committed to achieving the ninety-five percent penetration level as rapidly as possible.

Furthermore, the limited relief requested will enable SouthernLINC Wireless to continue to provide services to subscribers using higher power phones – including public safety and emergency first responders – who may experience decreased access to emergency services if compelled to switch to lower power location-capable phones as a result of strict enforcement of the current August 15, 2008, deadline. Apart from the

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Commission's own waiver standard, this circumstance alone warrants the grant of the requested relief pursuant to the mandates of the *ENHANCE 911 Act*.

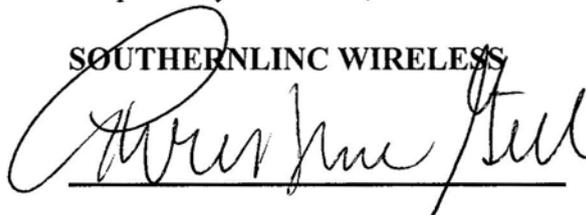
For all of the reasons set forth herein, SouthernLINC Wireless submits that its request that the Commission permit SouthernLINC Wireless to exclude from its compliance percentage calculation those high power handsets utilized by its public safety and emergency first responder subscribers, or, in the alternative, that the Commission grant SouthernLINC Wireless an extension of the ninety-five percent penetration deadline until June 30, 2009, is in the public interest under the Commission's Rules and consistent with the provisions of the *ENHANCE 911 Act*, and that grant of the requested limited relief is thus warranted.

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WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to grant the requested further waiver of Section 20.18(g)(1)(v) of the Commission's Rules.

Respectfully submitted,

SOUTHERNLINC WIRELESS

A handwritten signature in black ink, appearing to read "Christine M. Gill", is written over a horizontal line.

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July 18, 2008

ATTACHMENT A

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ATTACHMENT B

PSAP Deployment of E911 Phase I and Phase II Services

Legal External Affairs
Project Status Report

E911 Phase I and II Deployments



SouthernLINC Wireless External Affairs
Project Update

Last Reviewed: 7/18/2008

911 Deployments

Status as of July 18, 2008		Phase 1 Requests					Phase 2 Requests				
911 Implementation	Total PSAPs	Total Rec'd	Total Pending	Total Deployed	2008 Deployments	Total Past Deployment Deadline	Total Rec'd	Total Pending	Total Deployed	2008 Deployments	Total Past Deployment Deadline
AL	85	77	0	77	3	0	66	0	66	12	0
FL	12	11	0	11	0	0	10	0	10	0	0
GA	180	110	0	110	4	0	89	6	83	15	0
MS	25	11	0	11	0	0	7	1	6	0	0
Total	302	209	0	209	7	0	172	7	165	27	0