

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

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| In the Matter of |) | PS Docket No. 07-287 |
| |) | |
| The Commercial Mobile Alert System |) | PS Docket No. 08-146 |

REQUEST FOR WAIVER¹

The Law Offices of Hill & Welch, on behalf of Sagebrush Cellular, Inc., its affiliated company Nemont Communications, Inc., (“SCI/NCI”), and Triangle Communication System, Inc. (“TCSI”) (collectively “Carriers”), pursuant to 47 C.F.R. § 1.925, hereby requests waiver of 47 C.F.R. §10.11 which requires that carriers who voluntarily elected to provide CMAS service have that service in place as of April 7, 2012.^{2 3} In support whereof, the following is respectfully submitted:

¹ The instant waiver request was prompted by the Commission’s language in its August 3, 2012 *Order*, DA 12-1267, n. 40, which states that “individual carriers may continue to file requests for waiver which we will consider on a case-by-case basis.”

² SCI/NCI provides cellular switching services for TCSI and it is through that switching arrangement that TCSI connects to the public switched telephone network. TCSI similarly voluntarily elected to provide CMAS service and because it relies upon SCI/NCI for the necessary network access, and relied upon SCI/NCI for CMAS network capability, the factual background surrounding TCSI’s CMAS efforts substantially parallels that of SCI/NCI. Therefore, TCSI supports and joins in the instant *Request for Waiver* and also seeks waiver of § 10.11.

³ On July 20, 2012 SCI/NCI and TCSI responded to staff letters dated July 5, 2012 concerning their progress toward implementing CMAS service. Because the underlying facts are the same for the Carriers, their July 5, 2012 responses to the July 5, 2012 staff inquiries are substantially similar. The factual information contained in the instant *Request for Waiver* is substantially drawn from those submissions which were filed under penalty of perjury.

1) Carriers began their efforts to support the development and deployment of the CMAS by executing a Statement of Work (SOW) agreement with Intrado to provide intermediary FEMA CMAS connectivity on May 15, 2011 and Intrado executed the agreement on May 31, 2011. The SOW is an attachment to the preexisting December 20, 2005 Agreement for Services which exists between Intrado and SCI/NCI. Intrado has been SCI/NCI's long time provider of E911 services. As noted in footnote 4 of the Commission's July 5, 2012 letter, it is the TPP which enters into the Interconnection Security Agreement (ISA) with FEMA and the Department of Homeland Security (DHS). It is Carriers' understanding that Intrado received a draft of the ISA from FEMA on March 14, 2012, that Intrado executed the ISA and forwarded it to FEMA on or about April 2, 2012, and that the ISA was fully executed by FEMA as of June 11, 2012.

2) SCI/NCI had installed all necessary equipment and software to receive CMAS alerts and to transmit CMAS alerts to subscribers and that such equipment was installed and operational as of April 18, 2012, in time for the April monthly FEMA CMAS test.⁴ However, while the CMAS equipment was installed and operational, because Intrado had not established its connection with FEMA, Carriers were not connected to the FEMA CMAS portal.⁵

⁴ Carriers' undersigned attorney's recent understanding is that FEMA canceled the March and April 2012 CMAS tests and that the first FEMA CMAS test did not occur until Wednesday May 16, 2012.

⁵ 47 C.F.R. § 10.11 provides:

Notwithstanding anything in this part to the contrary, a participating CMS provider shall begin an 18 month period of development, testing and deployment of the CMAS in a manner consistent with the rules in this part no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.

While the Commission announced that the Interface Design specifications were available as of

3) SCI/NCI executed FEMA's Memorandum of Agreement (MOA) on April 3, 2012 and pursuant to directions from Intrado, SCI/NCI forwarded SCI/NCI's executed MOA to Intrado for delivery to FEMA. On April 27, 2012 FEMA rejected the MOA and SCI/NCI had been waiting since that time for direction about next steps. In the process of preparing the July 20, 2012 responses to the staff's July 5, 2012 CMAS inquiry letters, SCI/NCI contacted FEMA on July 16, 2012 for a status check on the MOA and forwarded to FEMA a copy of the MOA which had been executed on April 3, 2012; FEMA promptly responded that it will begin processing SCI/NCI's MOA "immediately." On July 18, 2012 FEMA forwarded a series of questions regarding the CMAS operation and SCI/NCI has responded to FEMA and is awaiting further information. Carriers and FEMA continue to work toward signing the MOA.⁶

4) All network and other required hardware and software additions and upgrades were in place on SCI/NCI's side which would allow for the reception of CMAS alerts from FEMA and transmission of any such CMAS alerts to CMAS capable subscribers as of April 18, 2012. However, because the TPP and FEMA were still working out the details of their connection, SCI's facility was not connected to FEMA's CMAS alert system at that time. It is Carrier's understanding that Intrado's connection to FEMA was completed as of July 16, 2012 and that CMAS alerts became

December 7, 2009, *see Public Notice*, DA 09-2556, released December 7, 2009, it is Carriers' understanding that refinement, or at least interpretation, of those specifications occurs before interconnection to the FEMA CMAS gateway can occur. Accordingly, it could be reasonably argued that the necessary Interface Design specifications were not in place prior to receipt of FEMA CMAS gateway interconnection approval; carriers cannot connect to the CMAS portal at will.

⁶ On August 9, 2012 Carriers received an e-mail from FEMA regarding clarification of the carrier names which would be covered by the MOA. Carriers have promptly responded.

available to the public at that time. Intrado has informed SCI/NCI that the monthly FEMA test conducted on Wednesday July 18, 2012 was successful at SCI/NCI's facility.

5) Carriers are small, rural carriers located in, and serving, sparsely populated areas in North-East Montana (SCI/NCI) and North-Central Montana (TCSI). Carriers do not have the market clout to order handsets directly from handset manufacturers. To obtain handsets Carriers belong to the Associated Carrier Group (ACG). ACG is a group of small carriers which acts as a bigger market player than any one of the carriers standing alone for the purpose of acquiring handsets. But even then, ACG cannot get handsets until the expiration of the exclusivity which handset manufacturers provide to large carriers such as AT&T, Verizon, and Sprint.

6) New cell handsets are not delivered to Carriers in working condition "out of the box." In a process which applies to all handsets, because all handsets are received with a generic software load which will not work on the carrier's network, Carriers must "debug" the handset before it can be made available for sale to subscribers. The process involves testing the handset, logging problems, sending the handset back to the manufacturer for reprogramming. The test, literally begins with seeing if the handset is capable of being turned on. This is an iterative process which can last months, as one problem is solved a new one is discovered and must be corrected before the next problem can be located. In the very best case the handset workout process can be expected to last 8-9 weeks; SCI/NCI has had a case in which it spent 40 weeks trying to get a simple \$50 feature handset to work (it never did).

7) In early March 2012 Carriers were able to obtain their first CMAS capable handset through ACG, the LG AS695 Optimus. SCI/NCI's testing procedure on this handset lasted through July 13, 2012 when SCI/NCI's lab was satisfied that the handset would work for Carriers'

subscribers' and technical approval was given to the device. The handsets now must be ordered, manufactured, and delivered to SCI/NCI. It is anticipated that the LG AS695 Optimus will be available for distribution and sale on or before September 1, 2012.

8) Carriers respectfully submit that they made a good faith effort to implement CMAS transmission capability in a timely manner. Carriers had many months earlier signed up with their TPP to provide access to FEMA's CMAS gateway and Carriers had their CMAS equipment and software in place as of the time the equipment could be tested in conjunction with FEMA's regularly scheduled Wednesday April 18, 2012 CMAS test.⁷ However, there was some unanticipated delay with the TPP's connection to FEMA and as explained above there was some administrative delay with finalization of Carriers' FEMA agreement.⁸

WHEREFORE, in view of the information presented herein, it is respectfully submitted that Carriers have demonstrated that they made a good faith, diligent effort to implement the voluntary CMAS service, that delay was due to third party actions beyond their control, that the CMAS service is operational at this time, and that under the unique circumstances attendant with institution of a

⁷ It is Carriers' understanding that FEMA CMAS tests are conducted monthly on the third Wednesday of the month at 1 PM Eastern. Because FEMA's monthly April CMAS test could not be completed until after the Commission's April 7, 2012 CMAS implementation deadline, it is respectfully submitted that Carriers substantially complied with the April 7, 2012 deadline by having their necessary network equipment and software in place in time for the monthly April FEMA CMAS test. Carriers' undersigned counsel has subsequently learned that FEMA canceled the April CMAS test and that the first CMAS testing did not occur until May 16, 2012.

⁸ Because TCSI does not operate or have access to the CMAS equipment or FEMA transmitted tests and information, it is TCSI's understanding that it does not require its own MOA with FEMA. It is noted that FEMA connectivity exists notwithstanding the delay associated with final execution of the MOA.

new emergency alert service in conjunction with two Federal agencies and a TPP, and the delay encountered in obtaining a CMAS capable handset, that good cause has been shown for waiver of the April 7, 2012 CMAS implementation deadline.

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Respectfully submitted,
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