

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

In the Matter of	)	
	)	
Petition for Forbearance From E911 Accuracy	)	
Standards Imposed on Tier III Carriers For	)	WT Docket No. 02-377
Locating Wireless Subscribers Under Rule	)	CC Docket No. 94-102
Section 20.18(h); Petition for Limited Waiver	)	
and Forbearance by ACS Wireless, Inc.	)	

**ORDER**

**Adopted:** February 14, 2005

**Released:** February 14, 2005

By the Chief, Public Safety and Critical Infrastructure Division:

1. In this order, we deny a petition filed by ACS Wireless, Inc. (“ACS”)<sup>1</sup> requesting that the Commission forbear from enforcing the Phase II Enhanced 911 (E911) accuracy and reliability requirements contained in section 20.18(h) of the Commission’s Rules.<sup>2</sup> We find, as an initial matter, that ACS failed to comply with the Commission’s pleading requirements in filing its forbearance request and deny its request on that ground. Additionally, we conclude that forbearance from enforcement of Section 20.18(h) is inconsistent with the second and third prongs of the section 10 forbearance test.<sup>3</sup>

2. Section 20.18(h) requires that carriers utilizing handset-based technologies must ensure an accuracy of 50 meters for 67 percent of calls, and 150 meters for 95 percent of calls. ACS has chosen a handset-based technology and requested that the Commission forbear from enforcing its accuracy and reliability standards until December 31, 2005, during which time ACSW can conduct tests and gather data and determine what levels of accuracy and reliability are technically achievable.<sup>4</sup> ACSW argued that the

<sup>1</sup> See ACS Wireless Petition for Limited Waiver and Forbearance, CC Docket No. 94-102 (filed Nov. 14, 2003) (Forbearance Petition). The Commission must act on petitions for forbearance within one year, but it may extend this deadline by 90 days if it finds that an extension is necessary to meet the three criteria for forbearance listed in section 10(a). 47 U.S.C. § 160(c). The Public Safety and Critical Infrastructure Division, acting on delegated authority, extended the initial one year-period for review by 90 days to February 14, 2005. See *Petition for Forbearance From E911 Accuracy Standards Imposed on Tier III Carriers For Locating Wireless Subscribers Under Rule Section 20.18(h); Petition for Limited Forbearance and Waiver by ACS Wireless, Inc.*, WT Docket No. 02-377, CC Docket No. 94-102, Order, 19 FCC Rcd 22515 (PSCID 2004). The Commission will act on the Petition for Limited Waiver in a future order.

<sup>2</sup> 47 C.F.R. § 20.18(h).

<sup>3</sup> See 47 U.S.C. § 160(a)(2), (3).

<sup>4</sup> Forbearance Petition at 13-14. ACS subsequently filed a supplement to its Petition, requesting forbearance relief until December 31, 2008. See ACS Wireless Supplement to its Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Jan. 26, 2005 (Forbearance Petition Supplement).

needs of public safety in rural areas can be met by Phase I or less accurate Phase II information, and that relief is appropriate because rural carriers find it difficult to meet the accuracy requirements.<sup>5</sup>

3. Pursuant to section 10 of the Act, the Commission must forbear from applying “any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services” if the Commission determines that: (1) enforcement of the regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance from applying the regulation or provision is consistent with the public interest.<sup>6</sup> In analyzing the public interest prong, the Commission must consider whether forbearance “will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.”<sup>7</sup> Forbearance is warranted only when all three criteria listed in section 10 are satisfied.<sup>8</sup>

4. Initially, we note that ACS failed to comply with the Commission’s pleading rules in requesting forbearance, and we deny its request on that basis. Section 1.53 of the Commission’s rules states that, “[i]n order to be considered as a petition for forbearance subject to the one-year deadline set forth in 47 U.S.C. 160(c), an petition requesting that the Commission exercise its forbearance authority under 47 U.S.C. 160 shall be filed as a separate pleading and shall be identified in the caption of such pleading as a petition for forbearance under 47 U.S.C. 160(c).” ACS Wireless captioned its filing as a “Petition for Limited Waiver and Forbearance.” Both in the caption and in the body of the pleading, the forbearance request was secondary to ACS’ request for waiver of the Commission’s rules. This does not meet the separate pleading requirement of rule 1.53 and we therefore deny the request on that basis.<sup>9</sup>

5. In addition, ACS’ Petition essentially repeats the same claims and arguments made by other small carriers in the Tier III Coalition Forbearance Petition,<sup>10</sup> which the Commission denied.<sup>11</sup> In denying the Tier III Coalition Forbearance Petition, the Commission considered and rejected these arguments, concluding that the Coalition Petition had failed to demonstrate either that the accuracy standards are unnecessary for the protection of Tier III carriers’ subscribers or that forbearance would be

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<sup>5</sup> See *id.* at 17.

<sup>6</sup> 47 U.S.C. § 160(a).

<sup>7</sup> 47 U.S.C. § 160(b).

<sup>8</sup> See *Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003).

<sup>9</sup> See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCCR 16,987, 17,065 n.439 (2003), *reversed in part on other grounds, United States Telecom Ass’n v. F.C.C.*, 359 F.3d 554 (D.C. Cir. 2004) (additional subsequent history omitted).

<sup>10</sup> See *Petition Pursuant to 47 U.S.C. § 160(c) for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18(h)*, filed Nov. 20, 2002 (Coalition Petition).

<sup>11</sup> See *Petition for Forbearance From E911 Accuracy Standards Imposed On Tier III Carriers or Locating Wireless Subscribers Under Rule Section 20.18(h)*, *Order*, WT Docket No. 02-377, 18 FCC Rcd 24648 (2003) (Tier III Coalition Forbearance Order).

consistent with the public interest under Section 10(c) of the Communications Act.<sup>12</sup>

6. For the reasons set forth above, we find that enforcement of the accuracy and reliability requirements of Section 20.18(h) is necessary for the protection of consumers and that forbearance from applying this regulation would be inconsistent with the public interest.

7. Accordingly, IT IS ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and pursuant to Commission rule 1.53, 47 C.F.R. § 1.53, that the petition for forbearance of ACS Wireless, Inc.. IS DENIED.

8. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.4(b) of the Commission's rules, 47 C.F.R. §§ 1.103(a) and 1.4(b), that this order SHALL BE EFFECTIVE upon release.

9. IT IS FURTHER ORDERED, this action is taken under delegated authority pursuant to Section 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. Sections 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>12</sup> *Id.* at 24659 ¶ 28.