

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

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Petitions for Waiver of Enhanced 911 Phase II	)	
Requirements	)	

**ORDER**

**Adopted: March 9, 2007**

**Released: March 9, 2007**

By the Deputy Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. In this *Order*, we address requests for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by five Tier III wireless service providers (collectively, Petitioners).<sup>1</sup> Petitioners seek extensions of time from their current deadlines to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's rules that carriers employing a handset-based E911 Phase II location technology were to have achieved 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.<sup>2</sup>

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when

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<sup>1</sup> See Request of South #5 RSA Limited Partnership d/b/a Brazos Cellular Communications, Ltd. for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102 (filed Jan. 24, 2007) (Brazos Request); Request of LL License Holdings, Inc. for Extension of Time to Meet Handset Penetration Rate, CC Docket No. 94-102 (filed Dec. 22, 2006) (LL License Request); Request of South Canaan Cellular Communications Company, L.P. for Extension of Time Within Which to Comply with Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102 (filed Dec. 15, 2006) (South Canaan Request); Petition of Leaco Rural Telephone Cooperative, Inc. for Temporary Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102 (filed Dec. 12, 2006) (Leaco Request); Request of California RSA No. 3 Limited Partnership d/b/a Golden State Cellular for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102 (filed Nov. 29, 2006) (Golden State Request). 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*).

<sup>2</sup> See 47 C.F.R. § 20.18(g)(1)(v).

the requesting carrier has met the Commission's standard for waiver of the Commission's rules.<sup>3</sup> Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.<sup>4</sup> We are also mindful of Congress' directive in the ENHANCE 911 Act to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services."<sup>5</sup>

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant each Petitioner the relief it has requested.

## II. BACKGROUND

### A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.<sup>6</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>7</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>8</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>9</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>10</sup>

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.<sup>11</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.<sup>12</sup>

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<sup>3</sup> 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, 7709-10 ¶ 1 (2005) (*Tier III Carriers Order*).

<sup>4</sup> See *id.*

<sup>5</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>6</sup> See 47 C.F.R. § 20.18(e).

<sup>7</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3.

<sup>8</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3.

<sup>9</sup> See 47 C.F.R. §§ 20.18(f), (g)(2).

<sup>10</sup> See 47 C.F.R. § 20.18(j)(1).

<sup>11</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>12</sup> See 47 C.F.R. § 20.18(g)(1)(v).

## B. Waiver Standards

6. The Commission has recognized that smaller carriers may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.<sup>13</sup> The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance. . . . and should document their efforts aimed at compliance in support of any waiver requests.”<sup>14</sup> To the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier’s good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks.<sup>15</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.<sup>16</sup> A carrier’s justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available federal, state, or local funding sources.<sup>17</sup> The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier’s projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>18</sup>

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.<sup>19</sup> In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

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<sup>13</sup> *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *see also Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that “wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations”); *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, 20994 ¶ 17 (2003) (*Order to Stay*) (stating that “under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and . . . relief may therefore be warranted”).

<sup>14</sup> *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, 17458 ¶ 44 (2000).

<sup>15</sup> *See Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

<sup>16</sup> *See id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

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

<sup>18</sup> *Id.* at 20997 ¶ 28.

<sup>19</sup> *See Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-37 ¶¶ 17, 19, 37, 57, 70.

8. Finally, we note that distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).<sup>20</sup> The ENHANCE 911 Act, *inter alia*, directed the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and to grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."<sup>21</sup>

### C. Petitioners' Requests for Further Waiver

9. The Commission previously granted each Petitioner relief from the December 31, 2005 deadline for achieving a 95% location-capable handset penetration rate. Petitioners' revised deadlines ranged from December 12, 2006 through January 31, 2007.<sup>22</sup> Petitioners report varying location-capable handset penetration rates.<sup>23</sup> In the instant requests, Brazos seeks a further extension until February 28, 2007;<sup>24</sup> LL License seeks a further extension until April 30, 2007;<sup>25</sup> Golden State seeks a further extension until June 15, 2007;<sup>26</sup> Leaco seeks a further extension until September 12, 2007;<sup>27</sup> and South Canaan seeks a further extension until September 30, 2007.<sup>28</sup>

<sup>20</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>21</sup> *Id.* § 107(a), 118 Stat. 3986, 3991. 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.* § 107(b), 118 Stat. 3986, 3991.

<sup>22</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 2833, 2841 ¶ 31 (2006) (granting South Canaan an extension until December 31, 2006); Revision of the Commission Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 1774, 1790 ¶ 17 (2006) (granting LL License an extension until December 31, 2006); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by California RSA No. 3 Limited Partnership d/b/a Golden State Cellular, CC Docket No. 94-102, *Order*, 20 FCC Rcd 20569, 20576 ¶ 22 (2005) (granting Golden State an extension until December 15, 2006); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition for Enhanced 911 Phase II Waiver by Leaco Rural Telephone Cooperative, Inc., CC Docket No. 94-102, *Order*, 20 FCC Rcd 20600, 20610 ¶ 27 (2005) (granting Leaco an extension until December 12, 2006); *Tier III Carriers Order*, 20 FCC Rcd at 7741 ¶ 83 (granting Brazos an extension until January 31, 2007).

<sup>23</sup> See Supplement to Request of South #5 RSA Limited Partnership d/b/a Brazos Cellular Communications, Ltd. for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102, at 2 (filed Mar. 1, 2007) (reporting a handset penetration rate of 96.87% as of February 28, 2007); LL License Holdings, Inc. – Handset Penetration Compliance Report, CC Docket No. 94-102 (filed Mar. 1, 2007) (reporting a handset penetration rate of 93.55% as of January 31, 2007); California RSA No. 3 Limited Partnership d/b/a Golden State Cellular E911 Report, CC Docket No. 94-102 (filed Feb. 1, 2007) (reporting a handset penetration rate of 93% as of February 1, 2007); South Canaan Cellular Communications Company, LP – Report Due February 1, 2007, CC Docket No. 94-102 (filed Feb. 1, 2007) (reporting a handset penetration rate of 89% as of February 1, 2007); Leaco Rural Telephone Cooperative, Inc. 2007 First Quarterly Handset Penetration Status Report, CC Docket No. 94-102 (filed Jan. 31, 2007) (reporting a handset penetration rate of 35% as of January 31, 2007). Leaco reports that it only recently converted its network from TDMA to CDMA, with the most heavily used parts of the network converted on November 1, 2006 and the remainder scheduled to be converted by January 2007. Leaco Request at 2.

<sup>24</sup> See Brazos Request at 2.

<sup>25</sup> See LL License Request at 10.

<sup>26</sup> See Golden State Request at 2.

10. In their requests, Petitioners describe various efforts toward achieving compliance with the handset penetration deadline, including mailing free location-capable handsets to customers;<sup>29</sup> offering trade-ins for free location-capable handsets before the expiration of contract terms;<sup>30</sup> and constructing new CDMA facilities in order to extend digital coverage.<sup>31</sup> In support of the instant requests, each Petitioner asserts that its request satisfies the Commission's E911 waiver criteria as well as the ENHANCE 911 Act standard.<sup>32</sup>

### III. DISCUSSION

11. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have ensured that Phase II would be fully implemented as quickly as possible.<sup>33</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.<sup>34</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.<sup>35</sup>

12. We are concerned that Petitioners were unable to achieve compliance by the deadlines the Commission previously established for them. Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of Petitioners' customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of Petitioners' service areas if those customers were forced to convert to location-capable handsets. It thus appears likely that strict enforcement of Petitioners' current compliance deadlines under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.<sup>36</sup> We therefore conclude

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<sup>27</sup> See Leaco Request at 1.

<sup>28</sup> See South Canaan Request at 1.

<sup>29</sup> See Golden State Request at 7-8.

<sup>30</sup> See Brazos Request at 3; LL License Request at 4.

<sup>31</sup> See South Canaan Request at 3; Golden State Request at 8.

<sup>32</sup> See Brazos Request at 5-7; LL License Request at 1, 8-9; South Canaan Request at 3-4; Leaco Request at 7-10; Golden State Request at 4-6.

<sup>33</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>34</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

<sup>35</sup> See *supra* ¶ 8.

<sup>36</sup> Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

that relief from the deadline is warranted pursuant to the ENHANCE 911 Act.<sup>37</sup> Accordingly, we grant each Petitioner's requested relief, subject to certain conditions and reporting requirements, so that the Commission can continue to monitor Petitioners' progress in meeting the 95% handset penetration benchmark.<sup>38</sup> Brazos is granted its requested extension, *nunc pro tunc*, through February 28, 2007. LL License must achieve 95% location-capable handset penetration among its subscribers by April 30, 2007; Golden State by June 15, 2007; Leaco by September 12, 2007; and South Canaan by September 30, 2007. We emphasize that, in granting the full extensions requested, we expect Petitioners to achieve 95% penetration among their subscribers of location-capable handsets within the extended timeframes granted herein.

13. *Conditions.* As a condition of the relief granted herein, Petitioners have an ongoing obligation, until they achieve a 95% handset penetration rate among their subscribers of location-capable handsets, to (1) notify their customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.<sup>39</sup>

14. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require Petitioners to file status reports every February 1, May 1, August 1, and November 1, for one year after the compliance deadline established in this *Order* for each Petitioner.<sup>40</sup> These reports shall include the following information, as previously required: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. To comply with the sixth reporting requirement – status in achieving compliance – each Petitioner must include a detailed, specific explanation of how it arrived at its estimate of whether it is on track to meet the compliance deadline, including an explanation of any assumptions it has made. Each Petitioner must also include a discussion of how its compliance efforts compare with the efforts of other Tier III carriers – particularly efforts the Commission has cited in previous orders<sup>41</sup> – and an explanation of why the Petitioner has chosen the compliance efforts it has chosen.<sup>42</sup> We emphasize that irrespective

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<sup>37</sup> Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Petitioners' requests satisfy the Commission's E911 waiver criteria.

<sup>38</sup> We note that the Commission has not received any objections from the public safety community specific to the instant Requests.

<sup>39</sup> This condition does not apply to Brazos, which has already reached a 95% location-capable handset penetration rate. *See supra* n.23.

<sup>40</sup> Brazos must therefore file quarterly reports through February 28, 2008; LL License through April 30, 2008; Golden State through June 15, 2008; Leaco through September 12, 2008; and South Canaan through September 30, 2008. We believe it is important to continue monitoring Petitioners' progress for an additional year following their revised deadlines.

<sup>41</sup> *See, e.g.,* Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation, WT Docket No. 05-286, *Order*, FCC 06-183, ¶ 32 (rel. Jan. 5, 2007) (describing compliance efforts undertaken by Tier III carriers).

<sup>42</sup> For example, to the extent that Petitioners offer free location-capable handsets as an inducement to their subscribers to upgrade non-location-capable handsets, they should explain whether these free handsets were offered without requiring a renewed or extended service contract.

of the relief we grant in this *Order*, we fully expect Petitioners to achieve compliance as quickly as possible.

#### IV. CONCLUSION

15. For the foregoing reasons, we conclude that Petitioners are entitled to a limited extension of the deadlines by which they were required to achieve 95% penetration among their subscribers of location-capable handsets. We therefore grant Petitioners' requests for further waiver, subject to the conditions and reporting requirements described herein.

#### V. ORDERING CLAUSES

16. IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

17. IT IS FURTHER ORDERED that the Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules filed by South #5 RSA Limited Partnership d/b/a Brazos Cellular Communications, Ltd. IS GRANTED, *nunc pro tunc*, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is February 28, 2007.

18. IT IS FURTHER ORDERED that the Request for Extension of Time to Meet Handset Penetration Rate filed by LL License Holdings, Inc. IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is April 30, 2007.

19. IT IS FURTHER ORDERED that the Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules filed by California RSA No. 3 Limited Partnership d/b/a Golden State Cellular IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is June 15, 2007.

20. IT IS FURTHER ORDERED that the Petition for Temporary Waiver of Section 20.18(g)(1)(v) of the Commission's Rules filed by Leaco Rural Telephone Cooperative, Inc. IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is September 12, 2007.

21. IT IS FURTHER ORDERED that the Request for Extension of Time Within Which to Comply with Section 20.18(g)(1)(v) of the Commission's Rules filed by South Canaan Cellular Communications Company, L.P. IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be September 30, 2007.

22. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer  
Deputy Chief  
Public Safety and Homeland Security Bureau