

**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)	
)	
Request for Further Waiver by SouthernLINC)	
Wireless)	

ORDER

Adopted: February 12, 2007

Released: February 12, 2007

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

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (SouthernLINC),¹ a Tier III wireless service provider.² SouthernLINC seeks an extension of time from its current November 3, 2006 deadline, until December 31, 2007, 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, 2005.³

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

¹ See Request for Further Waiver by SouthernLINC Wireless, CC Docket No. 94-102 (filed Nov. 2, 2006) (Request). In support of its Request, SouthernLINC submitted certain information under a request for confidential treatment pursuant to Section 0.459 of the Commission's rules. Because this Order discusses only that information already made public by SouthernLINC, we need not rule on SouthernLINC's request at this time. Until we so rule, we will honor SouthernLINC's request for confidential treatment. See 47 C.F.R. § 0.459(d)(1).

² 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*).

³ See 47 C.F.R. § 20.18(g)(1)(v). The Commission previously granted SouthernLINC waiver relief from the 95% handset penetration deadline until November 3, 2006. See 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*, 20 FCC Rcd 17786, 17794 ¶ 21 (2005) (*SouthernLINC Waiver Order*). SouthernLINC initially filed a request for further waiver in July 2006, but subsequently sought leave to withdraw that request. See Request for Further Waiver by SouthernLINC Wireless, CC Docket No. 94-102 (filed July 24, 2006); Letter from Jeffrey L. Sheldon, Counsel to SouthernLINC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 94-102, at 2 (filed Oct. 20, 2006). We hereby grant SouthernLINC's request to withdraw its July 24, 2006 waiver request without prejudice.

the requesting carrier has met the Commission's standard for waiver of the Commission's rules.⁴ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁵ 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."⁶

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that some relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant SouthernLINC a further extension, until November 12, 2007, to achieve 95% penetration among its subscribers of location-capable handsets.

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.⁷ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁸ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).⁹ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹⁰ 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.¹¹

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.¹² 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, 2005.¹³

⁴ 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*).

⁵ See *id.*

⁶ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

⁷ See 47 C.F.R. § 20.18(e).

⁸ 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.

⁹ 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.

¹⁰ See 47 C.F.R. §§ 20.18(f), (g)(2).

¹¹ See 47 C.F.R. § 20.18(j)(1).

¹² See 47 C.F.R. § 20.18(g)(1).

¹³ 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.¹⁴ 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.”¹⁵ 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.¹⁶ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

¹⁴ *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”).

¹⁵ *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).

¹⁶ *See Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁷ *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.*

¹⁸ *See id.*

¹⁹ *Id.* at 20997 ¶ 28.

²⁰ *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).²¹ 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."²²

C. SouthernLINC's Request for Further Waiver

9. SouthernLINC is a Tier III carrier that operates a digital 800 MHz ESMR system using Motorola's proprietary iDEN air interface, and has deployed an Assisted GPS (A-GPS) handset-based E911 location solution throughout its wireless network.²³ In July 2005, SouthernLINC requested that the Commission grant it an additional 24 months, until December 31, 2007, to achieve a 95% location-capable handset penetration rate.²⁴ The Commission granted SouthernLINC's request in part, subject to conditions and reporting requirements, and established a compliance deadline of November 3, 2006.²⁵ On November 2, 2006, SouthernLINC filed the instant Request, in which it states that the "unique and unusual circumstances that made it impossible for Southern LINC Wireless to meet its original E911 Phase II deadline continue to hamper its efforts to reach a ninety-five percent penetration level of A-GPS capable phones."²⁶ SouthernLINC cites four primary reasons for its failure to meet the compliance deadline: a software defect affecting the location capabilities of iDEN handsets; the need to comply with the Commission's *800 MHz Rebanding Order*; the prevalence of enterprise or government accounts among SouthernLINC subscribers; and the reliance of a percentage of SouthernLINC subscribers on higher-powered phones that are not location capable.²⁷

10. In its Request, SouthernLINC reported a handset penetration rate of 68.1%.²⁸ SouthernLINC has subsequently performed an audit designed to determine how many of the iDEN handsets in use by its customers were location capable. In its February 1, 2007 quarterly report, SouthernLINC reports that the audit process resulted in a "statistically valid sample" indicating that 95% of the handsets that SouthernLINC had believed were affected by the defect – and therefore not location capable – are, in fact, location capable.²⁹ As a result of this finding, SouthernLINC reports a handset penetration rate of 82.8% as of February 1, 2007.³⁰

²¹ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²² *Id.* at § 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.

²³ See *SouthernLINC Waiver Order*, 20 FCC Rcd at 17789 ¶ 9.

²⁴ See *Southern Communications Services, Inc. d/b/a SouthernLINC Wireless Request for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules*, CC Docket No. 94-102, at 9 (filed July 26, 2005).

²⁵ See *SouthernLINC Waiver Order*, 20 FCC Rcd at 17789 ¶ 9.

²⁶ Request at i.

²⁷ See Request at 10; see also July 2005 Request at 2-3 (describing the same four factors).

²⁸ Request at ii

²⁹ February 1, 2007 Quarterly Report at 11.

³⁰ *Id.*

11. In support of its Request, SouthernLINC states that a certain percentage of its subscribers who use higher-powered, non-location-capable handsets “could likely find themselves without access to any emergency services” in parts of SouthernLINC’s territory if they were required to switch to lower-powered, location-capable handsets.³¹ SouthernLINC argues that for this reason, its Request meets the standard for relief under the ENHANCE 911 Act as well as the Commission’s E911 waiver standards.³²

III. DISCUSSION

12. 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.³³ 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.³⁴ 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.³⁵

13. We remain concerned that SouthernLINC’s efforts continue to reflect a lack of sufficient commitment to taking specific and aggressive measures to achieve compliance. Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of SouthernLINC’s customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of SouthernLINC’s service area if those customers were forced to convert from analog bag phones to location-capable handsets. It thus appears likely that strict enforcement of SouthernLINC’s current November 3, 2006 deadline 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.³⁶ We therefore conclude that some relief from the deadline is warranted pursuant to the ENHANCE 911 Act.³⁷ Accordingly, we grant a nine-month extension from the date of release of this order, subject to certain conditions and reporting requirements, so that the Commission can continue to monitor SouthernLINC’s progress in meeting the 95% handset penetration benchmark.³⁸ Although we grant a limited extension to SouthernLINC, we

³¹ Request at 7.

³² *Id.*

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

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

³⁵ See *supra* ¶ 8.

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

³⁷ Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether SouthernLINC’s Request satisfies the Commission’s E911 waiver criteria.

³⁸ We note that the Commission has not received any objections from the public safety community specific to the instant Request.

emphasize that absent SouthernLINC undertaking all necessary efforts to ensure timely compliance, SouthernLINC should not assume that the Commission would act favorably on any future request for relief based on the same grounds.

14. We decline to grant the full relief requested because SouthernLINC continues to fail to demonstrate a “clear path to full compliance” with the 95% handset penetration requirement. Although SouthernLINC asserts that it is undertaking additional efforts to achieve compliance, it does not demonstrate with sufficient specificity that those efforts will achieve a 95% penetration rate by its requested deadline. Under these circumstances, we find that SouthernLINC has not justified the full relief it requested. As we have noted, SouthernLINC recently discovered that the bulk of its noncompliant handsets are unrelated to the iDEN handset defect.³⁹ We therefore expect that this discovery will enable SouthernLINC to direct its efforts in a manner that will achieve compliance more quickly than SouthernLINC anticipated when it filed the instant Request.

15. *Conditions.* As a condition of the relief granted herein, SouthernLINC has an ongoing obligation, until it achieves a 95% handset penetration rate, among its subscribers, of location-capable handsets, to (1) notify its 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.

16. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require SouthernLINC to file status reports every February 1, May 1, August 1, and November 1, but extend these reporting requirements until November 12, 2008.⁴⁰ 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 – SouthernLINC 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. It 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 orders⁴¹ – and an explanation of why SouthernLINC has chosen the compliance efforts it has chosen.⁴² We emphasize that irrespective of the relief we grant in this *Order*, we fully expect SouthernLINC to achieve compliance as quickly as possible.

³⁹ See *supra* para. 10.

⁴⁰ See *SouthernLINC Waiver Order*, 20 FCC Rcd at 17795 ¶ 23. We note that we are requiring SouthernLINC to file status reports beyond the date on which we otherwise require it to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring SouthernLINC’s progress for an additional year following its revised deadline.

⁴¹ 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).

⁴² For example, to the extent that SouthernLINC offers free location-capable handsets as an inducement to its subscribers to upgrade non-location-capable handsets, it should explain whether these free handsets were offered without requiring a renewed or extended service contract.

IV. CONCLUSION

17. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that SouthernLINC is entitled to a limited extension of the deadline by which it was required to achieve 95% penetration among its subscribers of location-capable handsets. Accordingly, we grant SouthernLINC's request for further waiver in part and extend the date by which SouthernLINC must achieve 95% penetration to November 12, 2007. We further impose the conditions and reporting requirements described herein to ensure that SouthernLINC achieves full compliance with the Commission's E911 requirements.

V. ORDERING CLAUSES

18. 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.

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 by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless IS GRANTED IN PART, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be November 12, 2007.

20. 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
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