

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

In the Matter of)
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Wireless E911 Location Accuracy Requirements) PS Docket No. 07-114
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ORDER

Adopted: June 28, 2011

Released: June 28, 2011

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. Sections 20.18(h)(1)(vi) and (2)(iii) of the Commission’s rules state in relevant part that wireless carriers using either network-based or handset-based location technologies to measure location accuracy for 911 calls “must file a list of the specific counties or portions of counties where they are utilizing th[eir] exclusion[s] within 90 days following approval from the Office of Management and Budget [OMB] for the related information collection.”¹ OMB approved these reporting requirements on March 30, 2011, setting June 28, 2011, as the 90-day deadline for carriers to file the exclusion information (Exclusion Reports). In this order, for the reasons set forth herein, we clarify certain issues regarding the content of the Exclusion Reports, and we extend the 90-day period for filing Exclusion Reports by 30 days, until July 28, 2011. The extension will promote the public interest by providing public safety entities and the public with more accurate and informative Exclusion Reports while facilitating the Commission’s monitoring of carrier compliance with location accuracy benchmarks and timelines.

II. BACKGROUND

2. On September 23, 2011, the Commission adopted the *E911 Location Accuracy Second Report and Order* in PS Docket No. 07-114, amending Section 20.18(h) of its rules to require wireless licensees subject to standards for wireless Enhanced 911 (E911) Phase II location accuracy and reliability to satisfy these standards at either a county-based or Public Safety Answering Point (PSAP)-based geographic level.² The Commission took this step to ensure an appropriate and consistent compliance methodology for measuring the location accuracy of wireless calls to 911.

3. The *E911 Location Accuracy Second Report and Order* adopted timelines and benchmarks for network-based and handset-based wireless carriers to comply with the amended location

¹ See 47 C.F.R. § 20.18(h)(1)(vi) (applying to carriers using network-based technologies); 47 C.F.R. § 20.18(h)(2)(iii) (applying to carriers using network-based technologies).

² Wireless E911 Location Accuracy Requirements, PS Docket No. 07-114, *Second Report and Order*, 25 FCC Rcd 18909 (2010) (*E911 Location Accuracy Second Report and Order*) (amending 47 C.F.R. § 20.18(h)).

accuracy requirements.³ In addition, the order allowed wireless carriers to exclude certain areas from the Commission's requirements depending upon whether they use handset-based or network-based approaches. For carriers using network-based technologies, the order permitted exclusion of particular counties, or portions of counties,⁴ where triangulation of the geographical position of a 911 emergency call is not technically possible, such as locations where at least three cell sites are not sufficiently visible to a handset.⁵ For wireless carriers using handset-based technologies, the order permitted the exclusion of up to 15 percent of counties or PSAP service areas from the 150-meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties or PSAP service areas.⁶ The order required carriers to identify and report all excluded areas to the Commission, and also to submit such reports to the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials-International (APCO), and the National Association of State 9-1-1 Administrators (NASNA).⁷

4. On November 18, 2010, a summary of the *E911 Location Accuracy Second Report and Order* was published in the Federal Register.⁸ The Federal Register notice announced January 18, 2011, as the effective date of the amended location accuracy rules, except for the rules "contain[ing] information collection requirements that have not been approved by OMB."⁹ On March 30, 2011, OMB approved the rules for the information collection requirements. Based on the date of OMB's approval, the 90-day deadline for filing reports falls on June 28, 2011. On April 28, 2011, the Commission published a notice of OMB's approval in the Federal Register.¹⁰

5. Since OMB's approval of the information collection requirements, we have received informal inquiries from carriers regarding the reporting deadline, as well as questions seeking clarification on certain aspects of the content of the Exclusion Reports. First, some carriers have expressed uncertainty regarding whether the 90-day period for filing Exclusion Reports was triggered by the March 30, 2011 date of OMB's approval of the information collection or the April 28, 2011 publication of OMB's approval in the Federal Register. Second, some carriers have requested clarification regarding the recommended format and content of the Exclusion Reports and whether certain information must be included, *e.g.*, whether carriers are required to list counties, portions of counties, or PSAP service areas where they have not yet received a valid PSAP request for E911 Phase II service.

³ See 47 C.F.R. 20.18(h)(1)(i)-(v) (applying to carriers using network-based technologies); 47 C.F.R. 20.18(h)(2)(i)-(ii) (applying to carriers using handset-based technologies).

⁴ See *E911 Location Accuracy Second Report and Order*, 25 FCC Rcd at 18926 n.122 (explaining that "counties" also includes "boroughs, parishes, and similar political boundaries.").

⁵ See 47 C.F.R. § 20.18(h)(1)(vi).

⁶ See 47 C.F.R. § 20.18(h)(2)(i)-(ii). Under the two-year benchmark for carriers using handset-based technologies, 67 percent of Phase II calls must be accurate to within 50 meters, on a per-county or per-PSAP basis and 80 percent of Phase II calls must be accurate to within 150 meters. See 47 C.F.R. § 20.18(h)(2)(i). Under the eight-year benchmark for carriers using handset-based technologies, the location accuracy parameter for 150 meters changes to 90 percent of Phase II calls. See 47 C.F.R. § 20.18(h)(2)(ii). Under both benchmarks, the permitted 15 percent exclusion applies to the 150 meter location accuracy requirement. See 47 C.F.R. § 20.18(h)(2)(i)-(ii).

⁷ See *E911 Location Accuracy Second Report and Order*, 25 FCC Rcd at 18920, 18926 ¶¶ 28, 45.

⁸ 75 FR 70604.

⁹ See *id.* (referring to 47 C.F.R. §§ 20.18(h)(1)(vi), 20.18(h)(2)(iii), and 20.18(h)(3)).

¹⁰ See 76 FR 23713.

III. DISCUSSION

6. The Commission may, on its own motion, waive its rules for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest and grant of a waiver would not undermine the policy served by the rule.¹² Based on the particular circumstances and matters that have arisen subsequent to the Commission's adoption of the *E911 Location Accuracy Second Report and Order*, we conclude that a waiver of the 90 day period following OMB's approval of the information collection requirement for filing Exclusion Reports is appropriate until July 28, 2011. We find that this waiver is warranted to ensure efficient and thorough reporting of the exclusions that some carriers will be claiming and will enable the Commission's Public Safety and Homeland Security Bureau (Bureau) to commence monitoring location accuracy compliance consistent with objectives and requirements of the *E911 Location Accuracy Second Report and Order*.

A. Clarification of Exclusion Report Requirements

7. As noted above, we find that further clarifications for filing the Exclusion Reports will assist carriers in meeting the reporting requirements under Sections 20.18(h)(1)(vi) and (2)(iii) of the Commission's rules. First, we address whether carriers must include counties, portions of counties, or PSAP service areas where they have not yet received a valid PSAP request for E911 Phase II service. We note that under Section 20.18, a carrier's obligation to furnish E911 Phase II service rests on whether a PSAP first makes a valid request—that is, if the PSAP “is capable of receiving and utilizing the data elements associated with [Phase II service] and a mechanism for recovering the [PSAP's] costs . . . is in place.”¹³ If the underlying Phase II service has not been deployed to the PSAP, the carrier cannot deliver the required location information and therefore is not capable of testing and measuring Phase II location accuracy and reliability pursuant to the requirements of Section 20.18(h).¹⁴ We therefore clarify that if a wireless carrier has not received a valid PSAP request for E911 Phase II service and accordingly has not deployed E911 Phase II service pursuant to Section 20.18, the carrier should not list the county, or portion thereof, or the PSAP service area in its listing of exclusions in its Exclusion Report. However, once a PSAP makes a valid request for E911 Phase II service and a carrier deploys Phase II service but still determines that it cannot meet the applicable location accuracy requirements, the carrier must file an updated report, pursuant to either Section 20.18(h)(1)(vi) or Section 20.18(h)(2)(iii), within thirty days of the date of deployment to reflect such a change.¹⁵

8. With respect to carriers using handset-based location technologies, the *E911 Location Accuracy Second Report and Order* provides that carriers may exclude up to 15 percent of counties or PSAP service areas from the 150 meter location accuracy standard based upon heavy forestation.¹⁶ We

¹¹ 47 C.F.R. § 1.3. See also *ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (2005); *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*) (“FCC has authority to waive its rules if there is ‘good cause’ to do so.”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*Wait Radio*), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

¹² See *Wait Radio*, 418 F.2d at 1157 (holding that the FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

¹³ 47 C.F.R. § 20.18(j).

¹⁴ See 47 C.F.R. § 20.18(h).

¹⁵ See 47 C.F.R. §§ 20.18(h)(1)(vi) and (2)(iii) (requiring changes to the exclusion lists to be filed within thirty days of discovering such changes).

¹⁶ See 47 C.F.R. § 20.18(h)(2)(i)-(ii).

clarify that this exclusion does not apply to a 15 percent area of either a county or a PSAP service area. Instead, the 15 percent exclusion in Section 20.18(h)(2)(i)-(ii) permits carriers to exclude up to 15 percent of counties or PSAP service areas that are served by the carrier.¹⁷

9. Next, we note that the first location accuracy benchmark for network-based carriers is January 18, 2012.¹⁸ We clarify that network-based carriers that anticipate that they will not be able to meet the first benchmark may file a waiver request after the deadline for filing their Exclusion Reports, provided that they file the request in a timely manner to afford the Commission sufficient time to act on the request in advance of the first benchmark deadline. We find that the timely filing of a request for waiver relief is sufficient to meet the “expectat[ion] that carriers failing to meet any particular benchmark will promptly inform the Commission”¹⁹ without prematurely overburdening our administrative processes to handle such requests.

10. Further, to assist us in monitoring and evaluating carrier reporting of exclusions, we advise wireless carriers to file Exclusion Reports in a narrative format with a table or appendix that provides a detailed listing of the excluded areas. The narrative portion of the report should include the following information:²⁰

- A description of whether the wireless carrier is using network-based or handset-based technologies at the time of filing the Exclusion Report.
- A supporting affidavit from an officer or director of the wireless carrier, who serves as the official or contact person having chief oversight responsibility for monitoring the overall status of location accuracy compliance under Section 20.18(h). This affidavit should include the date of filing and the official’s title, business address, and phone number.

11. The table or appendix to the Exclusion Report should include the following information:

- A list of the counties or portions of counties, or PSAP service areas, as applicable, for which the wireless carrier is claiming an exclusion in accordance with the applicable rules.
- For each excluded area, a brief description of the reason for the exclusion, *e.g.*, insufficient number of cell sites in the area to support network-based triangulation; GPS-assisted location accuracy is limited due to heavy forestation.

12. In addition to the above, carriers may include other explanatory information in their Exclusion Reports to support their selection of excluded areas.

13. We further advise carriers that they must update their Exclusion Reports to report any changes to the list of counties, or portions of counties, and PSAP service areas being excluded. Such

¹⁷ The Rural Telecommunications Group, Inc. and the National Telecommunications Cooperative Association have submitted a Petition for Rulemaking (Petition) seeking modification to 20.18(h)(2) of the Commission’s rules to permit carriers serving six or fewer counties or PSAP service areas to exclude any or all of these counties from the 150 meter requirement based on heavy forestation. Petition at 3-4 (filed Jan. 20, 2011 with the Commission’s Office of the Secretary). Alternatively, the Petition requests that, if the Commission retains the 15 percent exclusion from the 150 meter requirement, the Commission should allow exclusion on a sliding scale for carriers serving six or fewer counties so that such carriers may exclude at least one county. *See id.* at 4 & n.6. This Petition is currently pending.

¹⁸ 47 C.F.R. §§ 20.18(h)(1).

¹⁹ *E911 Location Accuracy Second Report & Order*, 25 FCC Rcd at 18927 ¶ 48.

²⁰ *See E911 Location Accuracy Second Report & Order*, 25 FCC Rcd at 18919-20, 18926-27 ¶¶ 27-28, 44-46 (concerning the information that both handset-based and network-based carriers must include in the Exclusion Reports).

changes may include additions to or deletions from the initial list of excluded areas and must be submitted in PS Docket No. 07-114 within 30 days of such changes.²¹

B. Extension of Time to File Exclusion Reports

14. To provide carriers with time to conform their Exclusion Reports to the guidance provided above, we waive the rules on our own motion and extend the filing deadline from June 28, 2011 to July 28, 2011. This extension also addresses uncertainty that may have been caused by the April 28, 2011 notice in the Federal Register of OMB's approval of the information collection, by providing carriers with 90 days from that date to file their reports. We find that granting this limited waiver relief will allow carriers to submit more complete, responsive, and consistent information and will reduce the likelihood that the Commission will need to obtain supplemental information from carriers following the filing of the initial Exclusion Reports.

15. We also find that granting this limited extension will not undermine the policy underlying the requirement that carriers file timely Exclusion Reports. The purpose of the requirement is to "ensure that the public safety community and the general public are aware of instances where carriers cannot meet the Phase II location accuracy requirements, and prevent overuse of [the] exclusion."²² Extending the filing date for a brief period will improve the quality of the information provided to the public safety community and the public with minimal delay in their ability to access the information. Further, the extension will not adversely affect the Bureau's ability to monitor carriers' performance and progress in meeting the Commission's location accuracy requirements consistent with the established timelines and benchmarks and to "request status information, if necessary."²³ We therefore conclude that the public interest in providing wireless carriers with sufficient time to file accurate Exclusion Reports outweighs the need for strict adherence to the original deadline.

C. Exclusion Report Filing Procedures

16. As specified in Section 20.18(h) and subject to the waiver relief granted herein, carriers must file their Exclusion Reports as follows:

- **Electronic Filing:** Carriers must file their Exclusion Reports electronically in PS Docket No. 07-114 by accessing the Electronic Comment Filing System: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).
- **Copies of Exclusion Reports:** Carriers must send copies of their Exclusion Reports to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9-1-1 Administrators, at the contacts listed below:
 - The National Emergency Number Association (NENA): Trey Forgety, Director of Government Affairs, National Emergency Number Association, tforgety@nena.org.

²¹ See 47 C.F.R. §§ 20.18(h)(1)(vi), (2)(iii).

²² *E911 Location Accuracy Second Report and Order*, 25 FCC Rcd at 18920, 18926 ¶¶ 28, 45 (stating this purpose with regard to both handset-based and network-based location technologies).

²³ *Id.* at 18920, 18927 ¶¶ 28, 48.

- The Association of Public-Safety Communications Officials-International (APCO): Stephen J. Wisely, Director Comm Center & 9-1-1 Services Department, Wiselys@apcointl.org.
- The National Association of State 9-1-1 Administrators (NASNA): richard.taylor@nc.gov.

17. For further information contact Patrick Donovan, at (202) 418-2413 or Patrick.Donovan@fcc.gov.

IV. PROCEDURAL MATTERS

18. *Paperwork Reduction Act of 1995*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. On March 30, 2011, the reporting requirements for filing the lists of exclusions were approved as a new collection under **OMB Control No. 3060-1147**, as set forth in the Appendix to this Order. Also, on May 23, 2011, OMB approved the Commission’s request that an extension of the filing date for the Exclusion Reports was either not a material or was a nonsubstantive change to the approved collection, OMB Control Number: 3060-1147.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that pursuant to Section 4(i) the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, THIS ORDER in PS Docket No. 07-114 is ADOPTED.

23. IT IS FURTHER ORDERED that the 90 day period for filing Exclusion Reports as specified by Sections 20.18(h)(1)(vi) and (2)(iii) of the rules IS WAIVED and that the filing date IS EXTENDED to July 28, 2011, as set forth herein.

24. 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

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau

APPENDIX

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507), the FCC is notifying the public that it received OMB approval on March 30, 2011, for the collection of information described in this Public Notice. Public reporting burden for this collection of information is estimated to be 11.85 hours (average) per response, including the time for reviewing reporting instructions; searching existing data sources; gathering and maintaining the data needed; coordinating with the necessary third party entities, including state and local authorities and PSAPs; and completing and reviewing the collection of information. This collection of information is for the purpose of assisting the Commission in carrying out provisions of the *E911 Location Accuracy Second Report and Order*, PS Docket No. 07-114, FCC 10-176, released September 23, 2010, and published in the Federal Register on January 18, 2011, at 75 FR 7604. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to Federal Communications Commission, AMD-PERM, Washington, DC 20554, Paperwork Reduction Project (3060-1147), or via the Internet to PRA@fcc.gov. DO NOT SEND THE EXCLUSION REPORTS TO THIS ADDRESS.

Under 5 CFR § 1320, the Federal Communications Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB Control Number. **This collection has been assigned OMB Control Number 3060-1147, and its expiration date is March 31, 2014.**

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.