

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

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| In the Matter of |) | |
| |) | |
| Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems |) | CC Docket No. 94-102 |
| |) | |
| Request for Waiver By Southern Communications Services, Inc. d/b/a SouthernLINC Wireless |) | |
| |) | |

ORDER

Adopted: November 3, 2005

Released: November 3, 2005

By the Commission:

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 Southern LINC Wireless (SouthernLINC), a Tier III wireless service provider¹ in Georgia, Alabama, southeastern Mississippi and the Florida panhandle.² Specifically, SouthernLINC seeks an extension of time 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 must achieve ninety-five percent 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 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*).

² *See* Request for Waiver By SouthernLINC Wireless, CC Docket No. 94-102, filed July 26, 2005 at 9 (SouthernLINC Request). Subsequent to submitting its Request, SouthernLINC supplemented the record. *See* SouthernLINC Wireless Response to Request for Additional Information Supporting its Request for Waiver of the E911 Phase II Handset Deployment Deadline, CC Docket No. 94-102, filed Oct. 26, 2005 (SouthernLINC Supplement). In support of its Request, SouthernLINC submitted certain information under a request for confidential treatment pursuant to § 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).

³ *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.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 ninety-five percent 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 ninety-five percent handset penetration requirement, until November 3, 2006, is warranted subject to certain conditions described below. These conditions are particularly important because SouthernLINC has failed to demonstrate a "clear path to full compliance" with the Commission's December 31, 2005, handset penetration requirement consistent with the Commission's E911 waiver standards.⁷

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.⁸ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁹ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).¹⁰ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹¹ However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP

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, 7709-7710 ¶ 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). See also *infra* ¶ 8.

⁷ Because we find that some relief from the ninety-five percent handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether SouthernLINC met the Commission's waiver standard. Although demonstration of a "clear path to full compliance" is not required to warrant some relief under the ENHANCE 911 Act, this element of our waiver standard provides useful guidance in determining the extent to which such relief should be granted.

⁸ See 47 C.F.R. § 20.18(e).

⁹ 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, *Network-based Location Technology*.

¹⁰ 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, *Location-Capable Handsets*.

¹¹ See 47 C.F.R. §§ 20.18(f), (g)(2).

must make a valid request for 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.¹²

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.¹³ After ensuring that 100 percent of all new digital handsets activated are location-capable, licensees must achieve ninety-five percent penetration among their subscribers of location-capable handsets among their subscribers no later than December 31, 2005.¹⁴

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.¹⁵ 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. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."¹⁶ 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.¹⁷

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 the E911 requirements. For

¹² See 47 C.F.R. § 20.18(j)(1).

¹³ See 47 C.F.R. § 20.18(g)(1).

¹⁴ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 ("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*)("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").

¹⁶ 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) (*Fourth MO&O*). See also 47 C.F.R. §§ 1.3, 1.925(b)(3); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁷ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

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.¹⁸ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

8. Finally, 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).¹⁹ The ENHANCE 911 Act, *inter alia*, directs 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 grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²⁰

C. Request for Waiver

9. SouthernLINC is a Tier III carrier providing services to approximately 293,000 subscribers.²¹ SouthernLINC operates a digital 800 MHz ESMR system using Motorola's proprietary Integrated Digital Enhanced Network (iDEN) air interface, and has deployed an Assisted-GPS (A-GPS) handset-based E911 Phase II location solution throughout its wireless network.²² SouthernLINC states that it met all of the Commission's location-capable handset sale and activation benchmarks.²³ SouthernLINC requests an extension until December 31, 2007 of the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets.²⁴

10. In support of its request, SouthernLINC points to a number of factors. It relies on a latent software defect in its A-GPS handsets that rendered all of these handsets unusable for E911 location in July 2004.²⁵ SouthernLINC also cites to the fact that a substantial number of handsets are assigned to enterprise or government accounts, which typically have long-term equipment replacement cycles, and are reluctant to upgrade to A-GPS phones.²⁶ In addition, SouthernLINC explains that many of its

¹⁸ See Tier III Carriers Order, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

¹⁹ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²⁰ *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.* at § 107(b), 118 Stat. 3986, 3991.

²¹ See SouthernLINC Request at 9.

²² See *id.* A-GPS location technologies have two components: the handset, which contains a GPS chip, and network equipment, which assists the GPS chip in locating the caller and delivering that location information to the PSAP.

²³ See *id.* at 17.

²⁴ See *id.* at 1.

²⁵ See *id.* at 2.

²⁶ See *id.*

subscribers utilize high-power handsets and are reluctant to replace them with location-capable models that presently are available only with lower power.²⁷ SouthernLINC further notes that fewer than twenty percent of PSAPs in its service area have requested Phase II service.²⁸ For these reasons, SouthernLINC submits that the requested waiver is in the public interest and should be granted under the Commission's waiver standards, as well as under the ENHANCE 911 Act.²⁹

III. DISCUSSION

11. We believe that it is critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for ninety-five percent 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 will be implemented and ensure that Phase II is fully implemented as quickly as possible.³⁰ 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.³¹ Accordingly, when addressing requests for waiver of the ninety-five percent 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 also must 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.³²

12. Consistent with that directive, we believe that SouthernLINC has shown under the ENHANCE 911 Act that a limited grant of the requested waiver of the December 31, 2005 benchmark is warranted, subject to certain conditions and reporting requirements to permit effective monitoring of its progress towards full compliance with the Commission's location-capable handset penetration requirement.

13. *A-GPS Handset Defect.* SouthernLINC explains that, subsequent to achieving compliance with the location-capable sale and activation benchmarks, it was advised in July 2004 "of a latent software defect in the A-GPS-equipped handsets manufactured by Motorola and used by SouthernLINC Wireless's subscribers that rendered all A-GPS service in these handsets unusable, thus essentially setting SouthernLINC Wireless's handset penetration figures back to zero until this software

²⁷ See *id.*

²⁸ See *id.* at 3.

²⁹ See *id.* at iii.

³⁰ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

³¹ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

³² See *supra* ¶ 8.

problem could be resolved.”³³ While SouthernLINC completed network upgrades necessary to enable delivery of ALI data by August 6, 2004,³⁴ every affected handset required updated software.³⁵

14. In its Request, SouthernLINC outlines the steps it has been taking to restore its base of location-capable handsets and increase the level of subscriber penetration of location-capable handsets.³⁶ Specifically, SouthernLINC reports that, working with Motorola, it has provided its customers with alternative means of restoring location-capability into their handsets, including (1) sending self-install kits to all its affected customer accounts, containing software on a CD-ROM and a special interface cable to connect the handset with a personal computer, with instructions on how to update the handset themselves, (2) offering handset reprogramming free of charge at any sales office, and (3) offering government customers new or refurbished handsets directly from Motorola.³⁷ SouthernLINC also offered inducements to its customers for installing the updated software,³⁸ and ensured that its own inventory of handsets and that of its dealers were reprogrammed.³⁹ However, despite these efforts, SouthernLINC states that “substantial work remains . . . in overcoming customer resistance to installing the necessary software upgrades.”⁴⁰

15. *Factors Affecting Customer Acceptance.* SouthernLINC advances a number of reasons why its customers have been reluctant to upgrade their handsets to A-GPS models. According to SouthernLINC, its churn rate is “consistent with overall industry levels” and as a result has not led to “an influx of new, location-capable handsets onto its network.”⁴¹ SouthernLINC also cites to the fact that a

³³ SouthernLINC Request at 18. SouthernLINC noted that the software defect “directly or indirectly affected all of the location-capable handsets available to SouthernLINC Wireless customers at that time.” SouthernLINC Supplement at 2.

³⁴ SouthernLINC added that “it was not the first carrier to receive the necessary network software patch.” SouthernLINC Supplement at 2.

³⁵ See SouthernLINC Request at 19. A unique software patch was required for each version of each individual handset model, which became available on a rolling basis starting July 28, 2004 and ending September 17, 2004. See SouthernLINC Supplement at 3.

³⁶ As SouthernLINC points out, prior to encountering its a-GPS handset problems, it met all of the Commission’s location-capable handset sale and activation benchmarks in advance of the deadlines established for Tier III carriers. See SouthernLINC Request at 17. SouthernLINC added that it “succeeded in ensuring that all affected handsets within its control were reflashed and capable of providing location information by November 12, 2004, ahead of the one-hundred percent new activation benchmark applicable to Tier III Carriers.” SouthernLINC Supplement at 4.

³⁷ See SouthernLINC Request at 21-23.

³⁸ According to SouthernLINC, customers confirming that they have installed the updated software are entered into a sweepstakes for various prizes. See SouthernLINC Request at 22.

³⁹ See SouthernLINC Request at 22-23. SouthernLINC reported that it reflashed each handset in its inventory as each software patch specific to a version of a handset model became available, and completed this process on November 12, 2004. See SouthernLINC Supplement at 3. SouthernLINC also “strongly encouraged its dealers to reflash as many handsets as possible, whether they were in dealer stock or were brought in by customers for any reason.” *Id.*

⁴⁰ SouthernLINC Request at 23-24.

⁴¹ *Id.* at 10. According to the Commission’s most recent CMRS Competition Report, “[m]onthly churn rates average about 1.5 to 3.0 percent per month, a slight decline from the previous year.” Implementation of Section (continued....)

“significant percentage” of its customers is comprised of “enterprise, utility, or government agency subscribers” having “long-term equipment upgrade cycles” and “stringent budgetary considerations or other restrictions when making any changes to their services of equipment.”⁴² As a result, SouthernLINC states that it faces challenges in persuading these customers to upgrade to A-GPS handsets.⁴³ Furthermore, SouthernLINC states that many of its subscribers “place a high value on certain characteristics of their existing handsets that are not yet available – and may never be available – in the newer location-capable handsets.”⁴⁴ Specifically, these customers use handsets with a transmit power of one watt and “designed to military specifications for ruggedness, durability, and the ability to operate in harsh and adverse conditions,” or use vehicle-mounted, three-watt phones.⁴⁵ However, according to SouthernLINC, the only location-capable phones currently available, including a handset model designed for ruggedness and durability, operate at lower-power (0.6 watt). As a result, “few of these customers have been willing to upgrade to a lower wattage, location-capable handset model” given “the high priority these subscribers place on the ability to communicate in rural and remote areas,” “the greater range and enhanced durability of the equipment in question[,] and the lack of a full substitute.”⁴⁶

16. With respect to encouraging subscriber adoption of A-GPS handsets, SouthernLINC states that it “has undertaken numerous marketing, promotional, outreach, and other efforts to encourage subscriber adoption of A-GPS handsets and will continue such efforts in order to achieve [the ninety-five percent] level of penetration as quickly as possible.”⁴⁷ Specifically, SouthernLINC has “offered multiple tiers of A-GPS phones at a variety of price points . . . with various combinations and levels of functions and features intended to appeal to different customer segments” and “offered various handset upgrade programs that target its existing customers.”⁴⁸ Despite these efforts, however, SouthernLINC contends that “certain customer segments have been resistant to change.”⁴⁹

17. Since submitting its Request, SouthernLINC supplemented the record to report on additional efforts it has been undertaking to address handsets impacted by the software defect and not yet restored to location-capability. Specifically, SouthernLINC states that it has engaged in the following efforts to encourage customers to restore location-capability in handsets with the software defect and upgrade to new location-capable handsets: (1) offering rebates “making some handset models free or nearly free,” (2) linking its A-GPS reflash/upgrade efforts with its 800 MHz rebanding program, by notifying customers requiring a new bandmap of the need for, and methods to accomplish, handset reflashing, or offering such customers upgraded handsets, (3) inviting customers during conferences, trade shows, fairs, and other community events, to visit with SouthernLINC at which point SouthernLINC

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6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, FCC 05-173 (rel. Sept. 30, 2005) at ¶ 149.

⁴² See SouthernLINC Request at 10-11.

⁴³ See *id.* at 11.

⁴⁴ *Id.*

⁴⁵ See *id.*

⁴⁶ See *id.* at 11-12.

⁴⁷ SouthernLINC Request at 28.

⁴⁸ *Id.* at 26.

⁴⁹ *Id.*

describes the advantages of location-capable phones and provides “special upgrade offers,” (4) conducting customer calling campaigns to discuss rebanding and reflashing, and (5) conducting free site visits to enterprise and government customers to carry out rebanding and handset upgrades.⁵⁰

18. *Coordination with PSAPs.* As noted above, part of the Commission’s waiver criteria focus on carrier efforts to work with the PSAPs in its service area, so that “community expectations are consistent with a carrier’s projected compliance deadlines.”⁵¹ In this regard, SouthernLINC notes that it “has continually coordinated and consulted with PSAPs throughout its service area regarding E911 implementation issues.”⁵² Furthermore, SouthernLINC supplemented its Request with letters of support from ten PSAPs within its service area.⁵³ For example, the 911 Director, City of Homestead, Alabama, writes:

Based on the level of effort SouthernLINC Wireless has already devoted to E9-1-1, we are confident that it will do everything it can to migrate as many of its customers as possible to location-capable handsets. We do not believe that SouthernLINC should be penalized if, despite these efforts, it cannot meet the FCC’s handset deployment deadlines due to circumstances that are beyond its control. Therefore, we believe that SouthernLINC’s request for a waiver of the FCC’s handset deployment deadline is appropriate.⁵⁴

Expressions of support by PSAPs, such as the one quoted above, provide evidence of SouthernLINC’s “good faith in requesting relief.”⁵⁵ The letters provided by SouthernLINC are indicative of a close working relationship between SouthernLINC and some of the affected PSAPs, and an understanding by the PSAPs of SouthernLINC’s status and efforts in achieving compliance with the ninety-five percent penetration rate.

19. *ENHANCE 911 Act.* We find that SouthernLINC warrants some relief under the ENHANCE 911 Act. As discussed above, some of SouthernLINC’s subscribers have been reluctant to sacrifice the high power and extended range features of their current handsets that are not available with lower power A-GPS models. In this regard, SouthernLINC asserts that “a significant number of [its] subscribers frequently operate in remote areas that make them reliant on the higher power capabilities and increased range and coverage of their existing handsets” and, if they replaced these handsets with lower-power A-GPS handsets, “they may also lose the range and coverage necessary to access communications

⁵⁰ See SouthernLINC Supplement at 4-5.

⁵¹ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

⁵² SouthernLINC Request at 14. As part of its Request, SouthernLINC included letters of support from PSAPs within its service area, not as an endorsement of its waiver request, but as a “testament to the approach of partnership and close consultation with which the company has approached its E911 obligations.” See *id.* at 15 and Exhibit A.

⁵³ See *Ex Parte* Submission of PSAP Letters Regarding SouthernLINC Wireless’s Request for Waiver, CC Docket No. 94.102, filed Sept. 28, 2005; Notice of *Ex Parte* Presentation and *Ex Parte* Submission, CC Docket No. 94-102, filed Oct. 4, 2005).

⁵⁴ Letter from Harold A. Parker, 911 Director, City of Homewood, to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 16, 2005).

⁵⁵ See *supra* ¶ 6 (citing *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28).

services – including emergency services – from these remote areas.”⁵⁶ We find that certain of SouthernLINC’s customers having high power handsets would likely find it more difficult and, at times, impossible, to contact a PSAP in some parts of its service area if they were forced to convert to lower-power A-GPS phones. Given these circumstances, it appears likely that strict enforcement of the December 31, 2005 deadline would impair the ability of certain 911 callers to reach emergency assistance, and thus “would result in consumers having decreased access to emergency services,”⁵⁷ at least in some cases.⁵⁸

20. We note, however, that SouthernLINC failed to provide sufficient information to warrant the full relief requested because SouthernLINC has not adequately shown a “clear path to full compliance” with the ninety-five percent handset penetration requirement. While we appreciate the efforts SouthernLINC reports with respect to its programs to encourage its customers to either reflash their handsets or upgrade to location-capable handsets, we do not find that SouthernLINC has demonstrated with sufficient specificity how it will achieve a ninety-five percent penetration rate. In fact, SouthernLINC notes that over 16,000 of its subscribers with non-A-GPS-equipped handsets that are having to change frequencies as part of the 800 MHz rebanding process⁵⁹ have thus far elected not to upgrade to location-capable handsets despite upgrade offers, and that these customers alone account for over five percent of its overall subscriber base.⁶⁰ Yet SouthernLINC proposes no new measures it is planning to undertake to reach ninety-five percent penetration. Similarly, with respect to those customers who SouthernLINC believes want to use handsets that are higher power than current 0.6 watt A-GPS-equipped handsets, SouthernLINC does not specify what plans, if any, it may have either to increase network coverage so as to reduce the need for higher-power handsets, or work with its equipment vendor to accelerate the availability of higher-power A-GPS handsets, either mobile or portable. Rather it just reports that higher-power location-capable handsets “may never be available.”⁶¹

21. SouthernLINC also has not provided us with specific information concerning the number of subscribers that would be placed in a situation where they would be unable to make any wireless calls if required to upgrade to a location-capable handset. Further, as we note above, SouthernLINC has not provided any information with respect to its plans to expand network coverage, which would reduce the number of subscribers with decreased access to emergency services if required to transition to location-capable phones. For these reasons, we afford SouthernLINC a limited extension of one year following

⁵⁶ SouthernLINC Request at 8.

⁵⁷ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991 (2004).

⁵⁸ In light of the fact that the relief we grant herein is based solely on the directive of the ENHANCE 911 Act, specific to “qualified” Tier III carriers, that we grant a waiver of Section 20.18(g)(1)(v) if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services,” our decision does not address the circumstances or merits of the impact of the A-GPS handset defect raised by SouthernLINC. *See supra* ¶¶ 13-14.

⁵⁹ *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) *as amended by Erratum*, 19 FCC Rcd 19651 (WTB PSCID 2004) and *Erratum*, 19 FCC Rcd 21818 (WTB PSCID 2004).

⁶⁰ *See* SouthernLINC Supplement at 6 n.5.

⁶¹ SouthernLINC Request at 11.

release of this *Order*, or until November 3, 2006, to achieve ninety-five percent penetration among its subscribers of location-capable handsets.⁶²

22. *Conditions of Grant.* As a condition of grant, we expect SouthernLINC to actively inform and educate its customers concerning the advantages of having location-capable handsets, and to keep the PSAPs located within its service area abreast of its progress in achieving ninety-five percent penetration. Specifically, we will condition the relief granted herein on SouthernLINC, within six months of release of this *Order*, filing a compliance plan with the Commission. The compliance plan should set forth, with specificity, the concrete measures SouthernLINC will undertake to reach a ninety-five percent A-GPS handset penetration rate by November 3, 2006. We would expect these measures, to be addressed in SouthernLINC's report, to include progress made on the following: (1) expanding network coverage to reduce the number of customers relying on higher-power, non-A-GPS capable handsets, (2) working with its handset vendor (or other vendors) in obtaining handset models that operate at higher-power and with A-GPS capability, and (3) increasing efforts to ensure that customers reflash their handsets or upgrade to A-GPS phones, as applicable. Furthermore, from the date of release of this *Order*, and as an ongoing obligation until SouthernLINC achieves a ninety-five percent penetration rate among its subscribers of location-capable handsets, we condition the relief granted herein on SouthernLINC (1) notifying its customers, such as by billing inserts, when it reasonably expects PSAPs will make valid 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 working with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

23. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief of the December 31, 2005 ninety-five percent handset penetration requirement granted herein, we will require, in addition to the report cited above due six months following release of this *Order*, SouthernLINC to file status reports every February 1, May 1, August 1, and November 1, until two years following release of this *Order*,⁶³ which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the estimated dates on which Phase II service will be available to PSAPs served by SouthernLINC's network; (3) the status of its coordination efforts with PSAPs for alternative ninety-five percent handset penetration dates; (4) its efforts to encourage customers to either reflash their phones or upgrade to location-capable handsets; (5) the extent of subscribers having higher-power, non-A-GPS phones; (6) the percentage of its customers with location-capable phones; and (7) until it satisfies the ninety-five percent penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the November 3, 2006 revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect SouthernLINC to achieve compliance as quickly as possible.

IV. CONCLUSION

24. For the foregoing reasons, we conclude that SouthernLINC is entitled, pursuant to the ENHANCE 911 Act, to a limited extension of the December 31, 2005 requirement that it achieve ninety-

⁶² We note that we have not received any objections from the public safety community specific to the instant Request.

⁶³ We note that we are requiring SouthernLINC to file status reports beyond the one year from release of this *Order* by which we otherwise require SouthernLINC to achieve ninety-five percent penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring SouthernLINC's progress for an additional year beyond this compliance date.

five percent penetration among its subscribers of location-capable handsets. Specifically, we extend the date that SouthernLINC must achieve ninety-five percent penetration until November 3, 2006, and impose conditions and reporting requirements to ensure that SouthernLINC achieves full compliance with the Commission's E911 requirements. We reiterate that any party seeking a waiver from our E911 rules must demonstrate a clear path to full compliance.

V. ORDERING CLAUSES

25. Accordingly, 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.

26. IT IS FURTHER ORDERED, that the Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless IS GRANTED IN PART to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be November 3, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary