

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

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	
Compatibility with Enhanced 911 Emergency)	CC Docket No. 94-102
Calling Systems)	
)	
Request for Waiver by California RSA No. 3)	
Limited Partnership d/b/a Golden State Cellular)	

ORDER

Adopted: December 6, 2005

Released: December 15, 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 California RSA No. 3 Limited Partnership d/b/a Golden State Cellular (Golden State), a Tier III wireless service provider¹ operating in a portion of California.² Specifically, Golden State seeks an extension of time to comply with the requirement contained in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology 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 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

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* California RSA No. 3 Limited Partnership d/b/a Golden State Cellular Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Sept. 6, 2005 at 2 (stating it is a Cellular Radiotelephone Service licensee operating in the California 3 – Alpine Rural Service Area) (Golden State Request).

³ *See* 47 C.F.R. § 20.18(g)(1)(v).

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*).

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 December 15, 2006, is warranted subject to certain conditions described below. These conditions are particularly important because Golden State 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 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

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 Golden State 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(c), *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(c), *Location-Capable Handsets*.

¹¹ *See* 47 C.F.R. §§ 20.18(f), (g)(2).

¹² *See* 47 C.F.R. § 20.18(j)(1).

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 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 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,

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.

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. Golden State is a Tier III carrier operating a CDMA network, and has deployed a handset-based E911 Phase II location solution.²¹ Golden State states that it has complied with all of the Commission's E911 requirements, and that it has exceeded the Commission's E911 implementation benchmarks for the sale and activation of location-capable handsets.²² Golden State requests an extension until June 30, 2007 of the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets.²³

10. In support of its request, Golden State explains that, despite "targeted activities" to encourage existing analog subscribers to convert to location-capable, it "foresees a challenge" in meeting the Commission's December 31, 2005 deadline.²⁴ Golden State also notes that some analog subscribers will continue to rely on analog service until it is able to build out the same coverage with CDMA, particularly in areas where the terrain is "rugged and sparsely populated."²⁵ For these reasons, Golden State submits that the requested waiver should be granted under the Commission's waiver standards, as well as under the ENHANCE 911 Act.²⁶

¹⁸ See *Tier III Carriers Order*, 20 FCC Red 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 Golden State Request at 2.

²² See *id.*

²³ See *id.* at 3.

²⁴ See *id.*

²⁵ See *id.* at 4-5, 6-7.

²⁶ See *id.* at 5-6.

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.²⁷ 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.²⁸ 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.²⁹

12. Consistent with that directive, we believe that Golden State 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. *Factors Affecting Consumer Acceptance.* Golden State asserts that although its subscribers are gradually adopting equipment upgrades, its conversion process has been slow.³⁰ Golden State explains that it faces challenges in converting its existing customers using analog handsets to location-capable handsets, despite undertaking promotional campaigns to encourage such upgrades.³¹ Golden State adds that "many analog cells are essential" where its terrain is particularly rugged and sparsely populated and includes portions of Yosemite National Park and the Sierra Nevada Mountain Range.³² Golden State further explains that the western portion of its service area is "heavily reliant upon analog service while planned CDMA cells are not yet constructed."³³ Golden State notes that the sunset of the cellular analog service requirement, to occur February 1, 2008, "will likely provide an incentive for some analog customers to upgrade their handsets, particularly those who desire to roam into markets

²⁷ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

²⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

²⁹ See *supra* ¶ 8.

³⁰ See Golden State Request at 3. Golden State reports that its location-capable handset penetration rate was forty-nine percent in January 2005 and sixty-one percent in August 2005, and anticipates the rate will be sixty-eight percent by the end of this year, and approximately eighty-eight percent by the end of 2006. See *id.*

³¹ See *id.* Such campaigns include marketing new handsets that are location-capable, and offering existing subscribers new handsets at promotional prices with the signing of a two-year contract. See *id.* See also Attachment 4 (including samples of advertisements and promotional announcements).

³² See *id.* at 5.

³³ *Id.*

where analog signal will be no longer available.”³⁴ Golden State also maintains that “many diehard analog handset users will refuse to convert until Golden State is able to build out its CDMA network to provide the same coverage area and signal strength digitally as it now provides via analog.”³⁵

14. *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.”³⁶ In this regard, Golden State asserts that it “maintains a dialogue with the PSAPs in its service area and with the Statewide Wireless E911 Coordinator.”³⁷ Golden State reports that “[s]afety officials are aware of the ongoing transition of [its] subscriber base, and that handset conversion will proceed over a period of time,” and that “PSAPs have expressed no objection or concern with the penetration schedule.”³⁸

15. *ENHANCE 911 Act.* We find that Golden State warrants some relief under the ENHANCE 911 Act. In considering the impact of strict enforcement of the Commission’s ninety-five percent requirement, Golden State notes that its “subscribers would be denied access to Phase II E911 services if [it] is required to deactivate existing service” to avoid being in violation of the Commission’s rules.³⁹ Golden State argues that it “could try to force digital handsets upon analog customers, but those customers would have no service in some areas of Golden State’s market – and would be unable to place a 911 call for basic emergency services,” and that deactivation of its analog system “would take away cellular coverage in the most rural and remote areas.”⁴⁰ These alternatives, Golden State states, “would result in consumers having ‘decreased access to emergency services’ in rural and remote areas of CA RSA 3.”⁴¹

16. We find that certain of Golden State’s analog customers 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 digital CDMA handsets. Accordingly, it appears likely that strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and thus “would result in consumers having decreased access to emergency services,” within the meaning of the ENHANCE 911 Act,⁴² at least in some cases.

17. We note, however, that Golden State failed to provide sufficient information to warrant the full relief requested because Golden State has not adequately shown a “clear path to full compliance” with the ninety-five percent handset penetration requirement. While we appreciate the efforts Golden State reports with respect to offering promotional campaigns to encourage upgrades, Golden State has not demonstrated what additional steps it would take to ensure that sufficient numbers of its customers

³⁴ *Id.* at 6.

³⁵ *Id.*

³⁶ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

³⁷ Golden State Request at 3.

³⁸ *Id.*

³⁹ *See id.* at 4.

⁴⁰ *See id.*

⁴¹ *Id.*

⁴² Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

upgrade to location-capable handsets. Further, Golden State 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. In addition, other than stating that it will “continue to aggressively expand its CDMA network facilities,”⁴³ Golden State did not offer any details concerning when and the extent to which it may expand such 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 Golden State a limited extension of one year following release of this *Order*, or until December 15, 2006, to achieve ninety-five percent penetration among its subscribers of location-capable handsets.⁴⁴

18. *Conditions of Grant.* As a condition of grant, we expect Golden State 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 on Golden State, following release of this *Order*, and as an ongoing obligation until Golden State achieves a ninety-five percent penetration rate among its subscribers of location-capable handsets, (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.

19. *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 Golden State to file status reports every February 1, May 1, August 1, and November 1, until two years following release of this *Order*,⁴⁵ 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 Golden State’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 upgrade to location-capable handsets; (5) the extent of subscribers located in areas with analog service only; (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 December 15, 2006 revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect Golden State to achieve compliance as quickly as possible.

IV. CONCLUSION

20. For the foregoing reasons, we conclude that Golden State is entitled, pursuant to the ENHANCE 911 Act, to a limited extension of the December 31, 2005 requirement that it achieve ninety-five percent penetration among its subscribers of location-capable handsets. Specifically, we extend the

⁴³ Golden State Request at 7.

⁴⁴ We note that the Commission has not received any objections from the public safety community specific to the instant Request.

⁴⁵ We note that we are requiring Golden State to file status reports beyond the one year from release of this *Order* by which we otherwise require Golden State to achieve ninety-five percent penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring Golden State’s progress for an additional year beyond this compliance date.

date that Golden State must achieve ninety-five percent penetration until December 15, 2006, and impose conditions and reporting requirements to ensure that Golden State achieves full compliance with the Commission's E911 requirements. We reiterate that any party seeking a waiver from the Commission's E911 rules must demonstrate a clear path to full compliance.

V. ORDERING CLAUSES

21. 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.

22. IT IS FURTHER ORDERED, that the Request for 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 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 December 15, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary