

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)
)
E911 Phase II Compliance Deadlines for Tier)
III Carriers)

ORDER

Adopted: March 22, 2005

Released: April 1, 2005

By the Commission:

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I. INTRODUCTION

1. In this *Order*, we address forty requests for relief from the Commission’s wireless Enhanced 911 (E911) Phase II requirements filed by or on behalf of small wireless carriers. We reaffirm the Commission’s commitment to ensure that the Nation’s wireless telephone users have timely access to emergency services using E911 technology. Accordingly, as discussed in detail below, we have analyzed requests for extensions of the Commission’s E911 deadlines and afford relief from such deadlines only

when the requesting carrier has met the standard for seeking a waiver of the Commission's rules.¹ Where carriers have met the standard, the relief we have afforded requires compliance with the Commission's rules and policies within the shortest practicable time.

2. We take the following actions in this *Order*:

- For carriers in the process of upgrading to CDMA technology² (CDMA carriers) and deploying a handset-based location solution, we grant requests for additional time to deploy location-capable digital handsets to those carriers that have filed sufficient information to allow us to conclude they have met the waiver standards. We also afford additional time to allow the necessary network upgrades to these CDMA systems, to the extent the carriers have presented reasonable, specific schedules for such upgrades.³ In addition, we grant relief in cases where carriers requested and adequately supported a request for extension of the December 31, 2005 deadline to ensure ninety-five percent penetration among their subscribers of location-capable handsets.
- For carriers electing network-based location solutions, we grant limited relief where justified in individual cases.⁴
- We deny a request for long-term relief from the Phase II rules for carriers operating roaming-only networks and serving as a "carrier's carrier."⁵ We similarly deny these carriers' requests for waiver of the requirements set forth in the Commission's *King County* decision.⁶

¹ Where we grant relief for deadlines that have occurred in the past, we grant such relief *nunc pro tunc*. *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done.

² Code Division Multiple Access (CDMA) is a digital wireless telephone standard that, though mainly used in the United States, has been deployed around the world.

³ The carriers in this group are: ACS Wireless, Inc.; Alaska DigiTel, LLC; Cellular Mobile Systems of St. Cloud, LLC; Cellular Phone of Kentucky; Cellular South Licenses, Inc.; Custer Telephone Cooperative, Inc.; Iowa RSA 2 Limited Partnership dba Lyrinx Wireless; Leaco Rural Telephone Cooperative, Inc.; Litchfield County Cellular, Inc. dba Ramcell of Kentucky; Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular; North Carolina RSA 3 dba Carolina West; Northwest Missouri Cellular Limited Partnership; Sagebrush Cellular, Nemont Communications, Inc., and Triangle Communications Systems, Inc.; South Canaan Cellular Communications Company, L.P.; South No. 5 RSA LP dba Brazos Cellular Communications, LLC; Wilkes Cellular, Inc.; and Wireless Communications Venture. Unless otherwise noted, all carrier petitions and reports are filed in CC Docket No. 94-102 and may be viewed in the Commission's Electronic Comment Filing System at: http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.

⁴ The carriers in this category include: Highland Cellular, LLC; N.E. Colorado Cellular, Inc.; and Southern Illinois RSA Partnership dba First Cellular of Illinois.

⁵ These carriers jointly filed and include Commnet Wireless, Inc., Commnet of Arizona, LLC, Commnet of Delaware, LLC, Elbert County Wireless, LLC, Chama Wireless, LLC, Excomm, LLC, Commnet PCS, Inc., MoCelCo, LLC, Tennessee Cellular Telephone Company, Commnet Capital, LLC, Comment of Florida, LLC, and Prairie Wireless, LLC.

⁶ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 14789 (2002) (*King County Order on Reconsideration*).

- We deny requests from carriers electing handset-based location solutions and seeking indefinite or long-term relief, or presenting no specific schedules or plans for deployment, and which are (1) using or migrating to GSM technology⁷ (GSM carriers)⁸ or (2) using AMPS or TDMA/AMPS technology⁹ (TDMA/AMPS carriers) and not proposing to deploy a CDMA or GSM digital air interface.¹⁰
- We deny a request for general relaxation of the Phase II requirements for smaller wireless carriers filed by the Rural Telecommunications Group (RTG).¹¹
- We require each Tier III carrier¹² that has been granted individual relief in this *Order* to file an interim status report with the Commission on September 1, 2005, containing the following information: (1) the number of Phase I and Phase II requests received from Public Safety Answering Points (PSAPs) (including those the carrier may consider invalid) and the status of those requests, including whether the carrier and the PSAP have reached an alternative deployment date; (2) the carrier's specific technology choice; (3) status on ordering and/or installing necessary network equipment; (4) the date on which Phase II service was/will first be available in the carrier's network; and (5) if the carrier is pursuing a handset-based solution, (a) whether ALI-capable handsets are available, and whether the carrier has obtained ALI-capable handsets or has agreements in place to obtain these handsets; and (b) information on the carrier's progress towards satisfying the requirement that ninety-five percent of its subscriber base have location-capable handsets.

II. BACKGROUND

A. PHASE II REQUIREMENTS

3. The Commission's E911 Phase II rules require wireless carriers to provide PSAPs the Automatic Location Identification (ALI) information for 911 calls that satisfies specified accuracy

⁷ The Global Systems for Mobile (GSM) digital wireless telephone standard is used in the United States, as well as in Europe.

⁸ The carriers in this group are: Arctic Slope Telephone Association Cooperative, Inc.; Edge Wireless Licenses, LLC; Key Communication, LLC and Keystone Wireless, LLC; and Enterprise Wireless PCS, L.L.C.

⁹ Compared with CDMA and GSM, Time Division Multiple Access (TDMA) is an earlier-generation digital wireless telephone standard used in the United States. The Analog Mobile Phone System (AMPS) standard was the initial wireless telephone standard used in the United States.

¹⁰ These carriers include Copper Valley Wireless, Inc.; Cordova Wireless Communications, Inc.; and OTZ Telecommunications, Inc.

¹¹ See RTG Petition for Waiver and Request for Temporary Limited Stay of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 29, 2003.

¹² Tier III carriers are defined as 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*). By comparison, Tier II carriers are those not among the five carriers with national footprints (the Tier I carriers) and that had over 500,000 subscribers as of the end of 2001. See *id.* at 14843, 14847 ¶¶ 7, 22.

requirements. Carriers can provide ALI information by deploying location information technology in their networks (a network-based solution),¹³ Global Positioning System (GPS) technology in the subscribers' handsets (a handset-based solution),¹⁴ or a combination of location technology in both the network and handsets (a hybrid solution).¹⁵ Depending on the technology employed, the carrier must identify the location of the caller within certain accuracy and reliability standards.¹⁶ The Commission's rules contain phased-in approaches for both network-based and handset-based location technologies, requiring carriers to deploy Phase II service commencing October 1, 2001, or within six months of receiving a PSAP request, whichever is later.¹⁷

4. In addition to the requirement to deploy the facilities necessary to deliver location information, a wireless carrier that elects to employ a handset or hybrid solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules.¹⁸ Carriers must comply with the handset deployment benchmarks independent of any PSAP request for Phase II service. Specifically, the Commission's rules establish the following deadlines, some of which already have passed, for carriers electing a handset or hybrid-based solution:

- Begin selling and activating location-capable handsets no later than October 1, 2001;
- Ensure that at least twenty-five percent of all new handsets activated are location-capable no later than December 31, 2001;
- Ensure that at least fifty percent of all new handsets activated are location-capable no later than June 30, 2002;

¹³ 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*.

¹⁴ 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*.

¹⁵ Hybrid solutions combine network-based equipment with handset-based location technologies to provide more robust methods of determining the location of a caller through the use of multiple inputs. For example, Verizon Wireless has deployed an assisted-GPS (A-GPS) system combined with an advanced forward link trilateration (A-FLT) system. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18366, 18370 ¶¶ 8, 17 (2001).

¹⁶ The standards for Phase II location accuracy and reliability are as follows: (1) for network-based technologies, 100 meters for 67 percent of calls, and 300 meters for 95 percent of calls, and (2) for handset-based technologies, 50 meters for 67 percent of calls, and 150 meters for 95 percent of calls. See 47 C.F.R. § 20.18(h).

¹⁷ See 47 C.F.R. §§ 20.18(f), (g)(2). Specifically, licensees who employ a network-based location technology must provide Phase II E911 service to at least fifty percent of their coverage area or fifty percent of their population beginning October 1, 2001, or within six months of a PSAP request, whichever is later; and to one-hundred percent of their coverage area or one-hundred percent of their population within eighteen months of such a request or by October 1, 2002, whichever is later. Licensees who employ a handset-based location technology must install any hardware and/or software in their networks to enable the provision of Phase II service beginning October 1, 2001, or within six months of a PSAP request, whichever is later.

¹⁸ See 47 C.F.R. § 20.18(g)(1).

- Ensure that one-hundred percent of all new handsets activated are location-capable no later than December 31, 2002; and
- Ensure that penetration of location-capable handsets among their subscribers reaches ninety-five percent no later than December 31, 2005.¹⁹

5. In its wireless E911 *Non-Nationwide Carriers Order*, the Commission granted a temporary stay of Phase II deadlines for Tier III carriers that had filed petitions for relief.²⁰ Specifically, the Commission required Tier III carriers that employ a network-based location technology to provide:

- Phase II E911 service to at least fifty percent of the PSAP's coverage area or population beginning September 1, 2003 or within six months of a PSAP request, whichever is later; and
- Phase II E911 service to one-hundred percent of the PSAP's coverage area or population by September 1, 2004 or within eighteen months of a PSAP request, whichever is later.²¹

6. The *Non-Nationwide Carriers Order* required Tier III carriers that employ a handset-based location technology to:

- Begin selling and activating location-capable handsets no later than September 1, 2003;
- Ensure that at least twenty-five percent of all new handsets activated are location-capable no later than November 30, 2003;
- Ensure that at least fifty percent of all new handsets activated are location-capable no later than May 31, 2004;
- Ensure that one-hundred percent of all new handsets activated are location-capable no later than November 30, 2004; and
- Ensure that penetration of location-capable handsets among their subscribers reaches ninety-five percent no later than December 31, 2005.²²

7. Furthermore, the *Non-Nationwide Carriers Order* provided that, once a PSAP request is received, that Tier III carriers shall, within six months or by September 1, 2003, whichever is later, install any hardware and/or software in their networks to enable the provision of Phase II service.²³

8. Following adoption of the *Non-Nationwide Carriers Order*, a number of Tier III carriers which had not previously requested extensions, and thus were not covered by that *Order*, filed petitions for relief.²⁴ Other Tier III carriers, which already had been granted relief, sought additional relief.²⁵ In

¹⁹ See 47 C.F.R. § 20.18(g)(1).

²⁰ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-14853 ¶¶ 32-33. The Commission also granted relief for Tier II carriers. See *id.* at 14849 ¶¶ 26-27.

²¹ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852 ¶ 32.

²² See *id.* at 14852-53 ¶ 33.

²³ *Id.*

²⁴ Carriers which filed later requests for extensions are: Amarillo License, L.P. and High Plains Wireless, L.P. (jointly); ComScape Telecommunications of Wilmington License, Inc.; Duluth PCS, Inc.; Elkhart Telephone Co. (continued....)

response, in the *Order to Stay*, the Commission described the types of showings required to justify waiver of the wireless E911 rules, opened a window for those Tier III carriers to file supplemental information to support their requests for relief, and required the filing of status reports detailing the carriers' efforts to deploy Phase II E911 services.²⁶ The Commission also stayed the application of the wireless E911 rules for those Tier III carriers seeking relief, pending a ruling on their waiver petitions.²⁷ The stay permitted additional time for the Tier III carriers to supplement the record and for the Commission to address the issues presented in the requests for relief.²⁸

B. APPLICABLE WAIVER STANDARDS

9. The Commission has recognized that smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment.²⁹ Section 1.3 of the Commission's Rules establishes that the Commission may grant relief from its rules for good cause shown.³⁰ The Commission generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the

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dba Epic Touch Co.; Litchfield County Cellular, Inc. dba Ramcell of Oregon; North Carolina RSA 1 Partnership; NSP LC; and Texas RSA 15B2 Limited Partnership dba Five Star Wireless.

²⁵ Carriers that requested additional relief from that granted in the *Non-Nationwide Carriers Order* are: Arctic Slope Telephone Association Cooperative, Inc.; Bachow/Coastel, L.L.C.; Blanca Telephone Company; Cellular Mobile Systems of St. Cloud, LLC; Copper Valley Wireless; Cordova Wireless; Corr Wireless Communications, LLC; Edge Wireless; Highland Cellular, LLC; Iowa RAS 2 Limited Partnership dba Lyrax Wireless; Leaco Rural Telephone Cooperative, Inc.; Minnesota Southern Wireless Company dba HickoryTech; Missouri RSA No. 5 Partnership dba Chariton Valley; Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular; N.E. Colorado Cellular, Inc., NECO PCS, Inc., and Wireless II, LLC; OTZ Telecommunications, Inc.; Public Service Cellular, Inc. and Enterprise Wireless PCS, L.L.C.; RSA 1 Limited Partnership dba Cellular 29 Plus; Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication Systems, Inc.; South Canaan Cellular Communications Company, L.P.; South No. 5 RSA LP dba Brazos Cellular Communications, LLC; Sussex Cellular, Inc.; Wilkes Cellular, Inc.; and Wireless Communications Venture.

²⁶ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 (2003) (*Order to Stay*). Tier III carriers granted relief under the *Non-Nationwide Carriers Order* or the *Order to Stay* must file annual reports detailing: (1) the number of Phase I and Phase II requests from PSAPs (including those the carrier may consider invalid); (2) the carrier's specific technology choice (*i.e.*, network-based or handset-based solution, as well as the type of technology used); (3) the status on ordering and/or installing necessary network equipment; (4) information on whether ALI-capable handsets are now available, and whether the carrier has obtained ALI-capable handsets or has agreements in place to obtain these handsets (if the carrier is pursuing a handset-based solution); (5) the estimated date on which Phase II service will first be available in the carrier's network; and (6) information on whether the carrier is on schedule to meet the ultimate implementation date of December 31, 2005 (if the carrier is pursuing a handset-based solution). *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14843 ¶ 35; *Order to Stay*, 18 FCC Rcd at 20997-98 ¶ 30.

²⁷ See *Order to Stay*, 18 FCC Rcd at 20989 ¶ 3.

²⁸ See *id.* at 20994-96 ¶¶ 17-21.

²⁹ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20; *Order to Stay*, 18 FCC Rcd at 20987 ¶ 2.

³⁰ 47 C.F.R. § 1.3. See also Section 1.925 of the rules, 47 C.F.R. § 1.925(b)(3).

relief requested would not undermine the policy objective of the rule in question.³¹ A petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.³²

10. In the *Order to Stay*, the Commission provided specific guidance on the types of factual showings that would provide sufficient support for a waiver request.³³ The Commission emphasized that carriers must provide clear evidence supporting the grounds they rely upon in seeking relief. For example, 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.³⁴ If a carrier claims that it is technically infeasible to meet the Commission's accuracy standards, it must provide "concrete, specific plans to address the accuracy standards and . . . [its] testing data and other evidence to demonstrate [its] inability to meet the accuracy requirements."³⁵ As the Commission repeatedly has cautioned, carriers may not rely only on generalized statements about technical infeasibility. Instead, they must provide detailed technical data on the particular portions of their network or items of equipment that prevent them from complying with E911 requirements. To the extent that a carrier is requesting a waiver in order to accommodate its transition from one air interface to another, it must demonstrate "a clear path to full compliance" by, for example, providing concrete evidence of its documented commitment to a date certain for that transition to be accomplished.³⁶ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.³⁷ 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 available from federal, state, or local funding sources.³⁸ In addition, carriers seeking relief are expected to work with state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with the carriers' projected compliance deadlines.³⁹

11. Finally, distinct from the Commission's rules and established precedent regarding waivers of our E911 requirements, we note that in December 2004, Congress enacted the Ensuring

³¹ See *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) (*WAIT Radio*); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

³² See *WAIT Radio*, 418 F.2d 1159.

³³ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶¶ 22-29.

³⁴ See *id.* at 20996-97 ¶ 25.

³⁵ *Id.* at 20997 ¶ 26 (citing *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 41).

³⁶ *Id.* at 20997 ¶ 27.

³⁷ 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.*

³⁸ See *id.*

³⁹ See *id.* at 20997 ¶ 28. The Commission advised carriers that they should provide supporting documentation of their efforts to coordinate with the PSAPs or E911 coordinators as evidence of their good faith efforts. *Id.*

Needed Help Arrives Near Callers Employing 911 Act of 2004 (*ENHANCE 911 Act*).⁴⁰ The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers' requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission's Rules, if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."⁴¹ While we apply the *ENHANCE 911 Act* standard in this *Order*, we recognize that the *ENHANCE 911 Act* was enacted after many of the waiver requests had been filed, and thus those waiver requests did not explicitly address application of the Act's waiver standard. Nothing in this *Order* precludes a qualified Tier III carrier⁴² from seeking further relief under the *ENHANCE 911 Act*'s standard.

III. DISCUSSION

12. We have reviewed the forty Tier III petitions for relief from our E911 requirements, together with their supplemental filings. They fall into six categories: (1) carriers deploying a handset-based solution in conjunction with a CDMA upgrade; (2) carriers electing a network-based solution; (3) carriers operating roaming-only networks ("carriers' carriers"); (4) carriers electing a handset-based solution in conjunction with a GSM upgrade; (5) AMPS/TDMA carriers electing a handset-based solution; and (6) other requests. We address each category below.

A. Category 1: Carriers Electing a Handset-Based Solution in Conjunction with a CDMA Upgrade

13. The first category is comprised of carriers that have already upgraded or are in the process of upgrading their networks to the CDMA air interface, and deploying a handset-based Assisted GPS (A-GPS) location technology.⁴³ These carriers have requested waivers of the Tier III location-capable handset deployment benchmarks. We note at the outset that A-GPS technology is now a standard feature of a wide range of CDMA handsets. The two largest CDMA carriers, Sprint and Verizon Wireless, currently sell only A-GPS-enabled handsets.⁴⁴ The success of these and other CDMA carriers⁴⁵

⁴⁰ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

⁴¹ *Id.* at § 107, 118 Stat. 3986, 3991.

⁴² 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 or 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.

⁴³ 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.

⁴⁴ Sprint began activating only location-capable handsets in June 2003. As of August 2, 2004, it offered more than twenty different GPS-enabled handset models, and sold over twenty-six million GPS-enabled handsets. *See* Sprint Eleventh Quarterly E911 Implementation Report, CC Docket No. 94-102, filed Aug. 2, 2004, at 6. As of December 31, 2003, Verizon Wireless offered only A-GPS-capable handsets. On February 1, 2005, the company stated that these handsets included all thirty-one handset models then currently sold, and that it planned to continue to add more A-GPS capable phones. *See* Verizon Wireless Enhanced 911 Status Report, CC Docket No. 94-102, filed Feb. 1, 2005, at 2.

⁴⁵ ALLTEL Communications reported that as of November 1, 2003, ninety-eight percent of new handset activations were A-GPS-equipped and that it was offering twelve A-GPS handset models. ALLTEL believed it met the May 31, 2004 Tier II threshold requirements that one-hundred percent of all new digital handsets must be (continued....)

in deploying location-capable handsets in accordance with the timeframes established in the Commission's rules and the *Non-Nationwide Carriers Order* indicates that location-capable handsets are readily available. Additionally, carriers have begun deploying the network equipment necessary to calculate and deliver A-GPS-derived location information to large numbers of PSAPs across the country.⁴⁶ Because location-capable handsets and network equipment using A-GPS technology are now available to CDMA carriers, it is reasonable to expect that availability will increase as manufacturers continue to adjust their product lines to meet the demands of CDMA carriers, including Tier III carriers.

14. Some Tier III CDMA carriers using a handset-based solution seek relief from the interim benchmarks adopted in the *Non-Nationwide Carriers Order* as well as temporary exclusions for legacy networks where CDMA upgrades are under way. In addition, some of the Tier III CDMA carriers request relief from the December 31, 2005 ninety-five percent handset penetration deadline. We discuss these requests below.

15. **ACS Wireless, Inc. (ACSW):** ACSW currently serves the state of Alaska through a TDMA and AMPS network that it is upgrading to CDMA.⁴⁷ ACSW requested an extension from

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location-capable. See ALLTEL Communications, Inc. E-911 Eighth Quarterly Report, CC Docket No. 94-102, filed Aug. 3, 2004, at 2. As of November 30, 2003, Leap Wireless reported that eighty-six percent of handsets it sold were location-capable and that 99.44 percent of handsets were location-capable as of May 30, 2004. Leap further indicated that Phase II was deployed to eighty-one PSAPs in five states as of July 30, 2004. See Leap Wireless Eighth E911 Quarterly Report, CC Docket No. 94-102, filed Aug. 1, 2004, at 1-2. As of April 2004, Qwest Wireless reported that all handsets sold and activated were location-capable. See Qwest Wireless LLC Implementation Status Report, CC Docket No. 94-102, filed Aug. 2, 2004, at 3. As of May 2004, United States Cellular reported that over ninety-five percent of the total handsets it sold were location-capable and that Phase II was deployed to 185 PSAPs. See United States Cellular Corporation Quarterly E911 Implementation Report, CC Docket No. 94-102, filed Aug. 2, 2004, at 5-6. As of June 2004, Western Wireless reported that nineteen models it sold have A-GPS capability and that all but "a few" handsets were GPS-capable as of June 2004. See Quarterly Report of Western Wireless Corporation on its Enhanced 911 Phase II Deployment, CC Docket No. 94-102, filed Aug. 2, 2004, at 2-3.

⁴⁶ As of the close of the 2nd Quarter of 2004, Sprint reported that it had deployed Phase II capability to a total of 1041 PSAPs in thirty-two states and the District of Columbia. See Sprint Eleventh Quarterly E911 Implementation Report, CC Docket No. 94-102, filed Aug. 2, 2004 at i. Verizon Wireless reported that, as of April 15, 2004, it provided Phase II service to 1,285 PSAPs in thirty-three states. See Verizon Wireless Enhanced 911 Status Report, CC Docket No. 94-102, filed July 30, 2004 at 1.

⁴⁷ See ACS Wireless Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Nov. 14, 2003 (ACSW Waiver Petition). ACSW submitted that its CDMA deployment will proceed in three stages: (1) December 31, 2003 for completion of coverage of Anchorage and Matanuska Valley (fifty percent of Alaska's population and over fifty percent of ACSW's subscriber base); (2) December 31, 2004 for coverage of all other major population centers including Fairbanks, Juneau, and the Kenai Peninsula (seventy-five percent of Alaska's population and over eighty-five percent of ACSW's subscriber base); and (3) December 31, 2005 for remaining coverage areas, including remote locations and smaller-populated communities. In an update filed on January 14, 2005, ACSW indicated that it had substantially completed Stages I and II. ACSW reported, however, that it will need to revise its Stage III deployment to push out the construction of the twenty-nine remaining sites until December 31, 2006 due to budgetary constraints and the short construction season in Alaska, specifically in the very remote and rural areas. See Update to ACS Wireless Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Jan. 14, 2005 (ACSW Waiver Petition Update).

September 1, 2003 to January 31, 2004 to begin selling and activating location-capable handsets.⁴⁸ ACSW also sought modification of the one-hundred percent benchmark for activated handsets: *i.e.*, rather than have one-hundred percent of new activations location-capable by November 30, 2004, ACSW requested that it be permitted to ensure that ninety percent of all new handset activations in Anchorage and Fairbanks be location-capable by May 30, 2005 and that ninety percent of all new handset activations in the remaining portion of its service area in Alaska be location-capable by December 31, 2005.⁴⁹ ACSW also sought an extension from December 31, 2005 to December 31, 2007 to ensure that penetration of location-capable handsets reaches ninety-five percent.⁵⁰ It also requested forbearance from the Phase II accuracy and reliability standards until December 31, 2008.⁵¹

16. *Benchmark relief.* We find that good cause exists to grant ACSW relief from the interim benchmarks for location-capable handsets. As the upgrade to CDMA progresses, ACSW has committed to selling and activating only location-capable handsets.⁵² The Commission has recognized that such upgrades present deployment challenges and may be a basis for an extension. Carriers, however, must provide concrete evidence of their planned deployment.⁵³ ACSW, through its waiver request and supplement, has provided both a path to compliance and evidence of its progress down that path. We are particularly encouraged by the fact that ACSW has completed the CDMA upgrade at 121 of its 150 sites.⁵⁴ Additionally, ACSW is working with the local PSAPs in its area to keep them informed of ACSW's deployment schedule,⁵⁵ consistent with the Commission's expectations set forth in the *Order to Stay*.

17. We recognize that granting ACSW relief to allow its handset deployment to coincide with its CDMA upgrade could mean that analog and TDMA customers will, in some cases, not receive Phase II service until ACSW finishes its transition to CDMA. We believe, however, that requiring ACSW to invest its resources to upgrade analog and TDMA networks with location technologies, despite the fact they soon will be replaced, could unnecessarily delay expansion and improvement of ACSW's services, and could even threaten its financial viability. We are persuaded by the fact that ACSW faces

⁴⁸ See ACSW Waiver Petition at 12. In earlier filings, ACSW requested relief from the interim benchmarks so that it could deploy its CDMA network. See ACS Wireless Petition for Limited Waiver, CC Docket No. 94-102, filed Dec. 3, 2001. ACSW was granted a stay consistent with the dates set forth in the *Non-Nationwide Carriers Order*.

⁴⁹ See ACS Wireless' Supplement to its Petition for Limited Waiver and Forbearance, CC Docket No. 94-102, filed Jan. 26, 2005 at 7-8 (ACSW 2005 Supplement).

⁵⁰ *Id.* at 8.

⁵¹ *Id.* at 11-13. ACSW's forbearance request, as made in the ACSW Waiver Petition and ACSW Waiver Petition Update, was addressed separately and denied. See Petition for Forbearance From E911 Accuracy Standards Imposed on Tier III Carriers For Locating Wireless Subscribers Under Rule Section 20.18(h); Petition for Limited Waiver and Forbearance by ACS Wireless, Inc., *Order*, DA 05-420 (PSCID rel. Feb. 14, 2005).

⁵² See ACSW Waiver Petition at 12; ACSW Waiver Petition Update at 4.

⁵³ See *supra* ¶ 10.

⁵⁴ See ACSW 2005 Supplement at 4.

⁵⁵ See *id.* at 13; ACSW Waiver Petition Update at 4.

no pending PSAP requests for Phase II service in the areas that remain to be upgraded to CDMA.⁵⁶ We also find that it is reasonable to allow ACSW to continue to sell and activate non-CDMA handsets without location capability to its customers in areas where its CDMA upgrade has not been completed. However, once the upgrade to CDMA is completed, ACSW must comply with the requirement of the E911 rules that all digital handsets activated be location-capable.⁵⁷

18. We grant ACSW relief with respect to the interim benchmarks.⁵⁸ Specifically, we grant ACSW's request for a waiver to provide and activate location-capable handsets by January 31, 2004 instead of by September 1, 2003. We also grant ACSW relief from the deadline for requiring that one-hundred percent of all new handsets activated are location capable. We grant ACSW an extension until May 30, 2005 to ensure that one-hundred percent of all new handset activations in Anchorage and Fairbanks, Alaska are location-capable and until December 31, 2005 to ensure that one-hundred percent of all new handset activations statewide are location-capable.⁵⁹ This waiver will allow ACSW to continue selling and activating non-location-capable analog and TDMA handsets in areas where its CDMA rollout has not been completed. We require, however, that as ACSW upgrades its network, it must begin selling and activating only location-capable CDMA handsets in the upgraded areas, consistent with the plan set out in its January 26, 2005 filing.⁶⁰

19. *Handset Penetration.* In light of our decision to grant ACSW an extension of the interim benchmark requirements, we correspondingly grant ACSW a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location capable handsets. We recognize that ACSW will require a sufficient period of time to ensure that the location-capable handsets that it sells and activates are sufficiently integrated into its customer base. Further, we are persuaded by ACSW's assertion that it faces unique challenges during the final stages of its CDMA construction program due to the small population it serves and the cost of deploying CDMA sites in rural and remote areas.⁶¹ ACSW explained that it has made progress in deploying its CDMA network in the major

⁵⁶ See ACSW 2005 Supplement at 2. ACSW did report that it received a request for Phase II service from the Anchorage PSAP. The Anchorage PSAP has requested that ACSW begin delivering Phase I and Phase II information by February 14, 2005. ACSW reported that it will comply with that request. See ACSW Waiver Petition Update at 4.

⁵⁷ 47 C.F.R. § 20.18(g)(1)(iv).

⁵⁸ We note that where we grant relief of the interim location-capable handset deployment benchmarks, we do not negate the independent obligation to install any necessary hardware or software into the network to respond to a valid PSAP request for Phase II service.

⁵⁹ We note that ACSW requests that it be allowed until May 30, 2005 to ensure that *ninety* percent of all new handset activations in Anchorage and Fairbanks, Alaska are location-capable and until December 31, 2005 to ensure that *ninety* percent of all new handset activations statewide are location-capable. Our rules do not set forth a benchmark to ensure that ninety percent of new handset activations are location-capable; rather, our rules contemplate that, ultimately, one-hundred percent of new handset activations are location-capable. We require that ACSW adhere to this one-hundred percent benchmark.

⁶⁰ See ACSW 2005 Supplement at 2.

⁶¹ See *id.* at 4. For example, ACSW pointed to the lack of highways that cannot accommodate large trucks delivering CDMA equipment and the corresponding need to barge the equipment to the communities and use helicopters to transport the completed site to the designated locations. ACSW added that poor weather conditions common to the area and the short construction season further hamper its efforts to complete its CDMA build-out to remote areas. See *id.* at 4-5, 8-9.

population centers, but cannot achieve the ninety-five percent penetration deadline broadly throughout its customer base until it is able to complete its CDMA build-out.⁶² ACSW also noted that it would be able to provide E911 Phase II location data for its Anchorage CDMA subscribers by February 2005, and will be prepared to provide such services to the Fairbanks Northstar Borough, but was unaware of any other PSAP in Alaska that has the means to receive E911 Phase II location data.⁶³

20. For the foregoing reasons, we provide ACSW with a limited extension of the location-capable handset penetration deadline. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.⁶⁴ We believe that a thirteen-month timeframe should provide ACSW with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend ACSW's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to May 30, 2005 (for Anchorage and Fairbanks) and December 31, 2005 (for other areas within Alaska), we afford ACSW an additional thirteen months from these dates to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, ACSW must ensure that ninety-five percent of its subscriber base has location-capable handsets by June 30, 2006 (for Anchorage and Fairbanks) and by January 31, 2007 (for all other areas in Alaska).

21. We note that this relief from the ninety-five percent handset penetration requirement is more limited than ACSW requested. ACSW sought relief from the ninety-five percent handset penetration deadline from December 31, 2005 until December 31, 2007. We do not believe that such an extended period of time is adequately supported or necessary. Further, we believe that our countervailing public policy interest in ensuring that carriers comply with the location-capable handset penetration requirement as quickly as possibly overrides ACSW's request for more protracted relief.⁶⁵

22. **Alaska DigiTel, LLC (Alaska DigiTel):** Alaska DigiTel operates both a CDMA network and a roaming-only GSM network in parts of Alaska, and describes itself as a small carrier (16,000 subscribers) with limited financial resources. In an August 29, 2003 filing, Alaska DigiTel requested a limited waiver and extension of time to comply with both the Phase I and Phase II E911 rules.⁶⁶ Alaska DigiTel requested a waiver and extension of the E911 requirement concerning the installation of the network equipment necessary to deliver Phase I or Phase II service to the PSAP to June 30, 2005 for both Phase I and Phase II.⁶⁷ Additionally, Alaska DigiTel sought relief from the interim

⁶² See *id.* at 8.

⁶³ See *id.* at 9. ACSW added that there are no local PSAPs for many of the smaller communities in its service area. *Id.*

⁶⁴ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

⁶⁵ Our decision does not preclude ACSW from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

⁶⁶ See Alaska DigiTel, LLC Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Aug. 29, 2003 (Alaska DigiTel Waiver Petition).

⁶⁷ *Id.* at 2-3.

location-capable handset activation benchmarks in the Commission's E911 rules.⁶⁸ Alaska DigiTel requested that the Commission grant it an extension of the September 1, 2003 deadline to commence selling and activating location-capable handsets until June 30, 2005.⁶⁹ Alaska DigiTel subsequently reported that location-capable handsets for CDMA are available and anticipated that one-hundred percent of its new handset sales will be location-capable by December 31, 2005, instead of by November 30, 2004 as required under the Commission's rules.⁷⁰ Although Alaska DigiTel noted that it would not be able to meet the December 31, 2005 deadline that ninety-five percent of handsets among its subscribers be location-capable, it has not sought relief from this requirement.⁷¹

23. *Deployment of Network Equipment.* Alaska DigiTel claimed that, although its CDMA network is Phase I capable, the costs of delivering Phase I service to the PSAPs would be substantial.⁷² It further claimed that the need to upgrade its existing CDMA network to allow a handset-based technology to transmit Phase II location information would result in such a severe financial strain that it would jeopardize the company as an on-going concern.⁷³ Sections 20.18(d) and (g)(2) of the Commission's Rules condition the requirement to deploy network equipment for delivery of location information to the PSAPs upon a PSAP making a valid request for service.⁷⁴ Absent a request, the carrier is not required to deploy any equipment into its network for the delivery of this information. Because no valid PSAP request is currently pending, according to the carrier,⁷⁵ it has no current obligation to deploy Phase I and it is uncertain when it will face such an obligation. Hence, no waiver is needed at this point for Phase I or Phase II compliance. We therefore dismiss as premature Alaska DigiTel's request for waiver of sections 20.18(d), (f), and (g)(2) of the Commission's rules.

24. In any event, we note that Alaska DigiTel has not sufficiently substantiated its request for waiver of the Commission's Phase I and Phase II E911 requirements based on financial hardship. Specifically, Alaska DigiTel did not provide specific documentation supporting its claim of financial hardship, including any efforts to obtain financing, as required under the Commission's waiver standards.⁷⁶ Indeed, under Alaska statutes, municipalities can set surcharges to recover wireless 911 costs, and a wireless carrier is entitled to recovery of Phase I costs.⁷⁷ Alaska DigiTel would need to explain why such sources of support are inadequate.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Alaska DigiTel, LLC Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 3 (Alaska DigiTel 2004 Interim Report).

⁷¹ *Id.*

⁷² See *id.* at 4.

⁷³ *Id.*

⁷⁴ See 47 C.F.R. §§ 20.18(d), (g)(2).

⁷⁵ Alaska DigiTel states that it received a combined Phase I and Phase II request from the Anchorage, Alaska PSAP on May 15, 2003, but was later informed that the city was not prepared to implement E911 and would issue a revised notice once it could process E911 calls. See Alaska DigiTel Waiver Petition at 3-4.

⁷⁶ See *supra* ¶ 10.

⁷⁷ Alaska Statutes 29.35.131, 911 Surcharge.

25. *Benchmark relief.* We deny Alaska DigiTel's request for waiver of the interim benchmarks, *i.e.*, its proposal to begin selling and activating location-capable handsets on June 30, 2005 instead of September 1, 2003, and to satisfy the one-hundred percent sale and activation benchmark on December 31, 2005 instead of November 30, 2004. As explained above, Alaska DigiTel did not provide sufficient evidence to demonstrate financial hardship, and did not otherwise show that it is technically infeasible to meet the accuracy standards.⁷⁸ Absent such showings, Alaska DigiTel's waiver request does not persuade us that it cannot satisfy the applicable benchmarks. As Alaska DigiTel acknowledged, location-capable handsets are now readily available for CDMA carriers.⁷⁹ Accordingly, the Commission's rules require Alaska DigiTel to sell and activate location-capable handsets according to the scheduled benchmarks in the Commission's rules, independent of whether it has pending PSAP requests for Phase II service.⁸⁰ While Alaska DigiTel may be facing challenging circumstances, we cannot afford the relief it seeks without the submission of a waiver request that complies with our requirements. We therefore encourage Alaska DigiTel to file a renewed request for waiver of our rules in accordance with the guidance we provide above for meeting our waiver standard.⁸¹

26. **Cellular Mobile Systems of St. Cloud, LLC (CMS):** CMS provides AMPS and TDMA service in Minnesota and is migrating to CDMA.⁸² CMS requested limited relief from the requirement that it install network equipment for the delivery of Phase II service to its PSAPs, as required by section 20.18(g)(2) of the Commission's Rules.⁸³ CMS also requested an extension of the interim benchmarks for handset deployment. Specifically, CMS requested that the following deadlines all be extended until September 27, 2004: (1) the September 1, 2003 deadline to begin selling and activating location-capable handsets, (2) the November 30, 2003 deadline to ensure that at least twenty-five percent of all handsets sold and activated are location-capable, and (3) the May 31, 2004 deadline to ensure that fifty percent of all handsets sold and activated are location-capable. Further, CMS requested that the November 30, 2004 deadline to ensure that one-hundred percent of all new handsets sold and activated are location-capable be extended until December 31, 2004.⁸⁴ CMS did not request an extension of the December 31, 2005 ninety-five percent handset penetration requirement.⁸⁵

⁷⁸ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 29. Alaska DigiTel only stated that it would be premature to enter into any agreements with handset vendors until it has upgraded its CDMA network. See Alaska DigiTel Waiver Petition at 4; Alaska DigiTel 2004 Interim Report at 2.

⁷⁹ See Alaska DigiTel 2004 Interim Report at 1.

⁸⁰ See 47 C.F.R. § 20.18(g). See *supra* ¶ 5 (discussing the modified deployment schedule for Tier III carriers).

⁸¹ We further advise Alaska DigiTel that if it anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, it should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

⁸² See Cellular Mobile Systems of St. Cloud, LLC Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 28, 2003 (CMS Waiver Petition).

⁸³ See *id.* at 7 n.16.

⁸⁴ See CMS Waiver Petition at 9; Amendment to Cellular Mobile Systems of St. Cloud, LLC Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed June 30, 2004 at 1-2 (CMS Amendment).

⁸⁵ See CMS Waiver Petition at 9 n.24. However, CMS noted that it is possible that it might not meet the December 31, 2005 handset penetration deadline. See Second Interim Report Regarding E911 Phase II Deployment: Cellular Mobile Systems of St. Cloud, LLC, CC Docket No. 94-102, filed Jan. 14, 2004 at 2-3 (CMS (continued...))

27. *Deployment of Network Equipment.* CMS indicated that it had not received a valid PSAP request for Phase II service.⁸⁶ CMS also stated that it is working with the State of Minnesota on a revised deployment plan.⁸⁷ We find CMS's request for relief premature as it relates to installing the necessary hardware and software in its network to enable Phase II E911 service within six months of a valid PSAP request. The requirements in Section 20.18(g)(2) are contingent upon a PSAP making a valid request for service, which requires that the PSAP be capable of receiving and utilizing the data elements associated with Phase II service.⁸⁸ Absent a valid request, the carrier is not required to deploy equipment into its network for the delivery of this information.⁸⁹ We thus find that because CMS has no current obligation to deploy Phase II service, and because it has worked out a coordinated plan for deployment of E911 Phase II with the State of Minnesota,⁹⁰ no waiver is needed at this time. We therefore dismiss CMS's request for a waiver of section 20.18(g)(2) concerning the installation of network equipment for the delivery of Phase II service.

28. *Benchmark relief.* We find that good cause exists to grant the relief sought by CMS concerning the interim benchmarks for handset deployments. As CMS noted in its waiver request, the intent of the Commission's E911 rules is to "meet important public safety needs as quickly as reasonably possible."⁹¹ As a TDMA carrier relying on a handset-based solution, CMS was hampered by the unexpected unavailability of location-capable handsets for the TDMA air interface. As CMS noted in its petition, the two largest carriers then using TDMA, AT&T and Cingular, announced they were migrating to a GSM protocol.⁹² As a result, CMS maintained that handset manufacturers abandoned plans to introduce TDMA handsets capable of determining and transmitting location information.⁹³ Although CMS subsequently decided to transition its network to the CDMA air interface, for which location-capable handsets are readily available, this process necessarily will take some time to implement.⁹⁴

29. Moreover, we are persuaded that CMS is acting in good faith in requesting additional relief based on its coordination of its deployment schedule with the administrator of the Minnesota E-911 Statewide Program.⁹⁵ In the *Order to Stay*, the Commission explained that carriers seeking additional
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Second Interim Report). In the event that CMS anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, CMS must file an appropriate and timely request for relief.

⁸⁶ See CMS Second Interim Report at 1. CMS reported that it received a "blanket request" from the State of Minnesota for both Phase I and Phase II service, but that the Phase II component is not a valid request because the PSAPs in its service area are not capable of receiving Phase II information. See *id.*

⁸⁷ See *id.* at 2.

⁸⁸ 47 C.F.R. § 20.18(j).

⁸⁹ See 47 C.F.R. § 20.18(g)(2).

⁹⁰ Minnesota coordinates its E911 deployment efforts through a central state administrator.

⁹¹ CMS Waiver Petition at 7 (*citing* 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, 17449 ¶ 17 (2000)).

⁹² See *id.* at 3.

⁹³ See *id.*

⁹⁴ See CMS Amendment at 2-3.

⁹⁵ See CMS Second Interim Report at 2.

time would be expected to coordinate their efforts with the state and local E911 coordinators and all affected local PSAPs.⁹⁶ The Commission also indicated that it would take notice of such efforts as a sign of a carrier's good faith in requesting additional relief.⁹⁷ As CMS indicated in its petition and its amendment, the plan it proposed has been coordinated with and agreed to by the administrator of the Minnesota E-911 Statewide Program.⁹⁸

30. In addition, CMS's petition sets forth a plan for achieving full compliance.⁹⁹ As the Commission stated in the *Order to Stay*, in order for a carrier to receive a grant of additional time, it must set out a plan showing a clear path to full compliance.¹⁰⁰ The schedule CMS set forth in its petition will allow it to meet the final location-capable handset benchmark of December 31, 2005, when it also must achieve a ninety-five percent penetration rate for location-capable handsets among its subscribers. We thus find that allowing this carrier to focus its efforts on achieving full compliance will better serve the objective of promoting ubiquitous access to E911.

31. For the foregoing reasons, we grant CMS's waiver request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we grant CMS relief, from September 1, 2003 until September 27, 2004 to begin selling and activating location-capable handsets, and from November 30, 2003 and May 31, 2004, respectively, until September 27, 2004, to ensure that twenty-five percent and fifty percent of all new handset activations are location-capable. We also grant CMS's request for extension from November 30, 2004 until December 31, 2004, for the date on which one-hundred percent of all new handsets sold and activated must be location-capable. We note that we continue to require CMS to comply with the December 31, 2005 deadline to ensure ninety-five percent penetration of location-capable handsets among its subscribers.

32. **Cellular Phone of Kentucky, Inc. (CPK):** CPK operates a TDMA network in Kentucky that it is upgrading to CDMA. CPK sought the following extensions: (1) from September 1, 2003 to October 4, 2004 to begin selling location-capable handsets; (2) from November 30, 2003 to October 31, 2005 to ensure that twenty-five percent of all new handset activations are location-capable; (3) from May 31, 2004 to February 28, 2006 to ensure that fifty percent of all new handset activations are location-capable; (4) from November 30, 2004 to June 30, 2006 to ensure that one-hundred percent of all new digital handset activations are location-capable; and (5) from December 31, 2005 to January 31, 2007 to ensure that penetration of location-capable handsets among its subscribers reaches ninety-five percent.¹⁰¹

⁹⁶ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

⁹⁷ See *id.*

⁹⁸ See CMS Amendment at 3.

⁹⁹ See CMS Waiver Petition at 9.

¹⁰⁰ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

¹⁰¹ See Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Apr. 14, 2004 at 2 (CPK April 2004 Supplement); Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Dec. 22, 2004 at 1 (CPK December 2004 Supplement). See Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Apr. 14, 2004 at 2 (CPK April 2004 Supplement); Cellular Phone of Kentucky, Inc., Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Dec. 22, 2004 at 1 (CPK December (continued...))

33. CPK maintained that the migration away from TDMA technology by the larger carriers has resulted in reluctance on the part of equipment manufacturers to develop location-capable handsets for the TDMA air-interface.¹⁰² As a result, CPK is transitioning its network to the CDMA air interface, for which location-capable handsets are readily available. CPK claimed that the process will take some time to implement and seeks relief from the Commission's E911 handset requirements as described above.

34. *Benchmark Relief.* We find that good cause exists to grant CPK a limited extension of the interim benchmarks. As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements.¹⁰³ The Commission, however, also recognized the need for such carriers to have a plan to achieving full compliance as a factor to be considered in granting additional relief.¹⁰⁴ CPK has such a plan to complete its CDMA upgrade. We also take note of CPK's coordination efforts with its local PSAPs.¹⁰⁵ As CPK states, it routinely meets with the local PSAPs in its area to set and monitor deployment goals for Phase II E911 service.¹⁰⁶

35. We are concerned, however, by the protracted rollout of location-capable handsets proposed by CPK. While the deployment plan set out by CPK achieves full compliance, it does so eighteen months later than the Commission's Rules require. As we have noted, location-capable CDMA handsets are readily available.¹⁰⁷ Accordingly, we do not believe the extended timeframes proposed by CPK are warranted. While we understand that CPK will need time to deploy its CDMA upgrade, we believe that a more aggressive approach to handset deployment should accompany that rollout. We therefore require that CPK begin activating only location-capable handsets as it completes its CDMA upgrade. This should ensure that consumers in CPK's service area will have access to location-capable handsets as CPK enables the CDMA air interface.

36. We therefore grant in part CPK's request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we extend the date to begin selling and activating location-capable handsets from September 1, 2003 to October 4, 2004; extend the date to ensure that twenty-five percent of all new handsets sold and activated are location-capable from November 30, 2003 to October 31, 2005; extend the date to ensure that fifty percent of all new handsets sold and activated are location-capable from May 31, 2004 to November 30, 2005; and extend the date to ensure that one-hundred percent of all new handset activations are location-capable from November 30, 2004 to December 31, 2005. We believe that these limited extensions are appropriate because, by CPK's estimate, its CDMA upgrade should be substantially complete by the date it is required to ensure that one-

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2004 Supplement). CPK reports that it met the October 4, 2004 date to begin selling location-capable handsets. See CPK December 2004 Supplement at 2. CPK initially filed its request in August 2003. See Cellular Phone of Kentucky, Inc., Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Aug. 29, 2003 (CPK Waiver Petition).

¹⁰² See CPK April 2004 Supplement at 4.

¹⁰³ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

¹⁰⁴ *Id.*

¹⁰⁵ See CPK April 2004 Supplement at 6.

¹⁰⁶ *Id.*

¹⁰⁷ See *supra* ¶ 13.

hundred percent of all new handset activations are location-capable.¹⁰⁸ If the estimated completion date has changed, such that additional relief is necessary,¹⁰⁹ CPK should file an appropriate waiver request.

37. *Handset Penetration.* In light of our decision to grant CPK an extension of the interim benchmark requirements, we correspondingly grant CPK a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base has location-capable handsets. We recognize that CPK will require a sufficient period of time to ensure that the location-capable handsets that it sells and activates are sufficiently integrated into its customer base. Further, CPK stated that its rural non-prepaid subscribers historically have tended to hold onto their cellular handsets for much longer than customers in larger, metropolitan markets.¹¹⁰ We acknowledge that CPK faces unique challenges in satisfying the ninety-five percent handset penetration requirement.

38. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.¹¹¹ We believe that a thirteen-month timeframe should provide CPK with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend CPK's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford CPK an additional thirteen months from these dates to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, CPK must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2007.¹¹²

39. **Cellular South Licenses, Inc. (Cellular South):** Cellular South operates in portions of Mississippi, Tennessee, Florida, and Alabama, using AMPS and TDMA air interfaces in some areas and CDMA in others.¹¹³ In its waiver request, Cellular South stated that it is upgrading its AMPS and TDMA

¹⁰⁸ Specifically, CPK expects the final work to be completed by the second quarter of 2006. See CPK April 2004 Supplement at 5.

¹⁰⁹ We note that CPK originally stated that work would commence in the third or fourth quarter of 2004. See *id.*; CPK Waiver Petition at 3. Subsequently, it stated that work would begin in the first quarter of 2005, but did not state whether the delay in commencing construction affected the estimated completion date. See CPK December 2004 Supplement at 2.

¹¹⁰ See CPK December 2004 Supplement at 2.

¹¹¹ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

¹¹² Because we grant CPK the relief it requested of the handset penetration deadline under our established rules and precedent, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

¹¹³ See Cellular South Licenses, Inc. Petition for Extension of the Implementation Deadline for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Dec. 17, 2002, at 3 (Cellular South Waiver Petition).

networks to CDMA.¹¹⁴ It requested additional time equal to that granted other Tier III carriers in the *Non-Nationwide Carriers Order*.¹¹⁵

40. In December 2004, Cellular South informed the Commission that its CDMA network was fully deployed across its service area in the first quarter of 2004.¹¹⁶ Cellular South also reported that it is selling location-capable handsets in all markets and that it is Phase II compliant. Cellular South further stated that it has successfully deployed Phase II service where it had PSAP requests.¹¹⁷ Cellular South has not requested relief from the December 31, 2005 ninety-five percent handset penetration requirement, but expressed concerns about its ability to ensure that its customers adopt location-capable handsets in sufficient numbers to meet this requirement.¹¹⁸

41. *Benchmark Relief.* We find that good cause exists to grant the relief sought by Cellular South. As a TDMA carrier, Cellular South originally intended to deploy a network-based solution.¹¹⁹ Subsequently, however, it determined that it would be more prudent to deploy a handset-based location technology, and decided to do so in conjunction with a CDMA upgrade to its network.¹²⁰ As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements.¹²¹ The Commission, however, also recognized the need for such carriers to have a plan to achieving full compliance as a factor to be considered in granting additional relief.¹²² Cellular South has such a plan to complete its CDMA upgrade. The schedule Cellular South set forth will allow it to meet the deadlines previously established in the *Non-Nationwide Carriers Order*. We also take note of Cellular South's coordination efforts with its local PSAPs. Cellular South indicated in its interim report that it was coordinating with the PSAP administrators in Mississippi, Alabama, Florida, and Tennessee to ensure that Cellular South and the PSAPs have a coordinated plan to bring E911 to those states.¹²³ A waiver proponent's consultation with its PSAPs is an important factor in determining whether a waiver is warranted.¹²⁴

¹¹⁴ See *id.* at 3.

¹¹⁵ See *supra* ¶ 5. The relief requested by Cellular South would require it to: (a) begin activating location-capable handsets no later than September 1, 2003; (b) ensure that at least twenty-five percent of all new handsets activated are location-capable no later than November 30, 2003; (c) ensure that at least fifty percent of all new handsets activated are location-capable no later than May 31, 2004; and (d) ensure that one-hundred percent of all new digital handsets activated are location-capable no later than November 30, 2004.

¹¹⁶ Staff contacted counsel for Cellular South on December 16, 2004 for this update.

¹¹⁷ See Cellular South Licenses, Inc. Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Aug. 1, 2003, at 3 (Cellular South Interim Report).

¹¹⁸ See *id.* at 4.

¹¹⁹ See Cellular South Waiver Petition at 2.

¹²⁰ *Id.*

¹²¹ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

¹²² *Id.*

¹²³ See Cellular South Interim Report at 1-2.

¹²⁴ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

42. For the foregoing reasons, we grant Cellular South's waiver request for relief from the interim deadlines for the sale and activation of location-capable handsets. Therefore, Cellular South is granted relief to: (a) begin selling and activating location-capable handsets no later than September 1, 2003; (b) ensure that at least twenty-five percent of all new handsets activated are location-capable no later than November 30, 2003; (c) ensure that at least fifty percent of all new handsets activated are location-capable no later than May 31, 2004; and (d) ensure that one-hundred percent of all new digital handsets activated are location-capable no later than November 30, 2004. We note that we continue to require Cellular South to comply with the December 31, 2005 deadline to ensure ninety-five percent penetration of location-capable handsets among its subscribers.

43. **Custer Telephone Cooperative, Inc. (Custer):** Custer operates an analog and TDMA network in Idaho and is converting to CDMA.¹²⁵ Custer stated that it was deploying a handset-based location solution in conjunction with its conversion to CDMA, scheduled for July 1, 2004.¹²⁶ Custer requested that the following deadlines be extended until November 1, 2004: the September 1, 2003 deadline to begin selling and activating location-capable handsets; the November 30, 2003 deadline to ensure that at least twenty-five percent of all handsets sold and activated are location-capable; and the May 31, 2004 deadline to ensure that fifty percent of all handsets sold and activated are location-capable.¹²⁷ Custer noted that as of November 1, 2004, all handsets sold will be location-capable,¹²⁸ which is ahead of the Commission's November 30, 2004 deadline for ensuring that one-hundred percent of all phones activated are location-capable. Custer further explained that by beginning to sell and activate only capable handsets by its requested date, it will be able to meet the December 31, 2005 deadline to achieve ninety-five percent penetration of location-capable handsets.¹²⁹

44. *Benchmark Relief.* We believe that relief from the interim benchmarks is warranted. While Custer initially requested an additional year to come into compliance, it now requests only minimal benchmark relief. Additionally, we are encouraged by Custer's efforts in working with local PSAPs to ensure a coordinated deployment.¹³⁰

45. We therefore grant Custer's requests to extend the date for initiating the sale and activation of location-capable CDMA handsets from September 30, 2003 until November 1, 2004, the date for ensuring that at least twenty-five percent of handsets activated are location-capable from November 30, 2003 until November 1, 2004, and the date for ensuring that at least fifty percent of

¹²⁵ See Phase II Interim Report and Request for Waiver, CC Docket No. 94-102, filed Oct. 23, 2003, at 3 (Custer Waiver Petition).

¹²⁶ See *id.* at 2.

¹²⁷ See Supplement to Phase II Interim Report and Request for Waiver, CC Docket No. 94-102 at 1, filed Sept. 10, 2004 (Custer Supplement).

¹²⁸ See *id.*

¹²⁹ See *id.* Custer originally requested the following relief: (1) to begin selling and activating location-capable handsets by September 30, 2004; (2) ensure that at least twenty-five percent of all new CDMA handsets activated are location-capable by January 1, 2005; (3) ensure that at least fifty percent of all new CDMA handsets activated are location-capable by June 30, 2005; (4) ensure that one-hundred percent of all new CDMA handsets activations are location-capable by December 31, 2005; and (5) ensure that ninety-five percent of all CDMA subscribers have location-capable handsets by December 31, 2006. See Custer Waiver Petition at 4.

¹³⁰ See Custer Supplement at 1-2.

handsets activated are location-capable from May 31, 2004 until November 1, 2004. Custer will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

46. **Iowa RSA 2 Limited Partnership dba Lyrix Wireless (Lyrix):** Lyrix operates an analog and CDMA network in Iowa.¹³¹ Lyrix sought a waiver only of the September 1, 2003 deadline for beginning to sell and activate location-capable handsets until November 30, 2003.¹³²

47. *Benchmark Relief.* We find that good cause exists to grant Lyrix's request for waiver of the initial benchmark. Lyrix's request for relief is minimal, and Lyrix has shown a plan to achieve full compliance that is within the parameters established by the *Non-Nationwide Carriers Order*, with the exception of this initial benchmark to begin selling and activating location-capable handsets. For these reasons, we find that Lyrix's request would not undermine the overall policy objectives of ensuring access to E911. Accordingly, we grant Lyrix's request for an extension of the deadline to begin selling and activating location-capable handsets from September 1, 2003 until November 30, 2003.

48. **Leaco Rural Telephone Cooperative, Inc. (Leaco):** Leaco provides analog and TDMA-based service in rural New Mexico.¹³³ Leaco sought the following extensions: (1) from September 1, 2003 to March 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 to March 1, 2005 to ensure that twenty-five percent of all new activations are location-capable; (3) from May 31, 2004 to June 1, 2005 to ensure that fifty percent of all new handset activations are location-capable; and (4) from November 30, 2004 to September 1, 2005 to ensure that one-hundred percent of all new handset activations are location-capable.¹³⁴

49. Leaco decided to transition its TDMA network to CDMA.¹³⁵ Leaco selected a handset-based solution, but claimed that the unexpected industry abandonment of TDMA, the unavailability of TDMA handsets, and the need to overhaul its entire network, combined with the technical incompatibility of a network-based solution in its rural service area, left it with no reasonable alternative but to seek a waiver.¹³⁶

¹³¹ See Petition of Iowa RSA 2 Limited Partnership Petition for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (Lyrix 2003 Waiver Petition).

¹³² See Supplement to Petition of Iowa RSA 2 Limited Partnership Petition for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2003 (Lyrix Supplemented Waiver Request). In its initial petition, Lyrix had also requested relief from the November 30, 2003 deadline to ensure that at least twenty-five percent of handsets activated are location-capable, citing concern about the availability of location-capable handsets. See Lyrix 2003 Waiver Petition at 2. Lyrix withdrew that request when it supplemented its waiver filing. See Lyrix Supplemented Waiver Request at 2.

¹³³ See Interim Report Regarding E911 Phase II Deployment Leaco Cellular, Inc., CC Docket No. 94-102, filed July 31, 2003, at 2 (Leaco July 2003 Interim Report); Leaco Rural Telephone Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 11, 2003, at 2 (Leaco Waiver Petition).

¹³⁴ See Amendment to Leaco Rural Telephone Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 31, 2004 at 2 (Leaco Amended Petition).

¹³⁵ See *id.* at 2.

¹³⁶ See *id.* at iv, 3-5.

50. *Benchmark Relief.* We find that good cause exists to grant the relief requested by Leaco. Leaco has made substantial progress from an initial request that was highly speculative to laying out a clear path to compliance that needs only minimal benchmark relief.¹³⁷ We find sufficient evidence that Leaco is making significant effort to achieve full compliance with the Commission's E911 requirements. Additionally, we find that Leaco's diligence in keeping the state and PSAPs in its area informed of its deployment plans warrant this grant of relief.¹³⁸

51. We therefore grant Leaco's requests to: (1) extend the date for initiating the sale and activation of location-capable CDMA handsets from September 1, 2003 until March 1, 2005; (2) extend the date to ensure that twenty-five percent of all new handset activations are location-capable from November 30, 2003 to March 1, 2005; (3) extend the date to ensure that fifty percent of all handset activations are location-capable from May 31, 2004 until June 1, 2005; (4) extend the date to ensure that one-hundred percent of all new handset activations are location capable from November 30, 2004 until September 1, 2005. Leaco will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.¹³⁹

52. **Litchfield County Cellular, Inc. dba Ramcell of Kentucky, LLC (LCC):** LCC provides service in six rural counties in Kentucky, and is upgrading its current TDMA network to CDMA.¹⁴⁰ LCC requested the following extensions: (1) from November 30, 2003 to October 31, 2005 to ensure that twenty-five percent of all new handset activations are location-capable; (2) from May 31, 2004 to February 28, 2006 to ensure that fifty percent of all new handset activations are location-capable; (3) from November 30, 2004 to June 30, 2006 to ensure that one-hundred percent of all new digital handset activations are location-capable; and (4) from December 31, 2005 to January 31, 2007 to ensure that penetration of location-capable handsets among its subscribers reaches ninety-five percent.¹⁴¹

¹³⁷ In filings as recent as January 2004, Leaco had not determined to which air interface it planned to migrate. *See* Second Interim Report Regarding E911 Phase II Deployment, Leaco Rural Telephone Cooperative, Inc., CC Docket No. 94-102, filed Jan. 4, 2004.

¹³⁸ *See* Leaco Amended Petition at 3.

¹³⁹ Leaco did not request a waiver of the December 31, 2005 deadline for achieving ninety-five percent handset penetration. However, Leaco expressed concerns about its ability to meet this deadline given its timeframe for its transition to CDMA and the reluctance of its customers to adopt new location-capable handsets. *See* Second Interim Report Regarding E911 Phase II Deployment, CC Docket No. 94-102, filed Nov. 11, 2003, at 2. In the event that Leaco anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, Leaco should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. *See supra* ¶ 11.

¹⁴⁰ *See* Litchfield County Cellular, Inc. Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Aug. 29, 2003 at 1-3 (LCC Waiver Petition). LCC subsequently filed supplemental information and modified its initial waiver request. *See* Litchfield County Cellular, Inc. Supplement and Request for Further Waiver, CC Docket No. 94-102, filed April 14, 2004 (LCC April 2004 Supplement); Litchfield County Cellular Inc. Interim Report, CC Docket No. 94-102, filed April 19, 2004; Litchfield County Cellular, Inc. Supplement and Further Petition for Limited Waiver and Extension of Time, CC Docket No. 94-102, filed Dec. 22, 2004 (LCC December 2004 Supplement).

¹⁴¹ *See* LCC Waiver Petition at 2; Litchfield December Supplement at 1. LCC reports that it met the October 4, 2004 date to begin selling location-capable handsets. *See* LCC December 2004 Supplement at 2.

53. LCC maintained that the migration away from TDMA technology by the larger carriers has resulted in reluctance on the part of equipment manufacturers to develop location-capable handsets for the TDMA air-interface.¹⁴² As a result, LCC is transitioning its network to the CDMA air interface, for which location-capable handsets are readily available. LCC claimed that the process will take some time to implement and seeks relief from the Commission's E911 handset requirements as described above.

54. *Benchmark Relief.* We find that good cause exists to grant LCC a limited extension of the interim benchmarks. As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements.¹⁴³ The Commission, however, also recognized the need for such carriers to have a plan to achieving full compliance as a factor to be considered in granting additional relief.¹⁴⁴ LCC has such a plan to complete its CDMA upgrade. We also take note of LCC's coordination efforts with its local PSAPs.¹⁴⁵ As LCC states, it routinely meets with the local PSAPs in its area to set and monitor deployment goals for Phase II E911 service.¹⁴⁶

55. We are concerned, however, by the protracted rollout of location-capable handsets proposed by LCC. While the deployment plan set out by LCC achieves full compliance, it does so eighteen months later than the Commission's Rules require. As we have noted, location-capable CDMA handsets are readily available.¹⁴⁷ Accordingly, we do not believe the extended timeframes proposed by LCC are warranted. While we understand that LCC will need time to deploy its CDMA upgrade, we believe that a more aggressive approach to handset deployment should accompany that rollout. We therefore require that LCC begin activating only location-capable handsets as it completes its CDMA upgrade. This should ensure that consumers in LCC's service area will have access to location-capable handsets as LCC enables the CDMA air interface.

56. We therefore grant in part LCC's request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we extend the date to begin selling and activation location-capable handsets from September 1, 2003 to October 4, 2004; extend the date to ensure that twenty-five percent of all new handsets sold and activated are location-capable from November 30, 2003 to October 31, 2005; extend the date to ensure that fifty percent of all new handsets sold and activated are location-capable from May 31, 2004 to November 30, 2005; and extend the date to ensure that one-hundred percent of all new handset activations are location-capable from November 30, 2004 to December 31, 2005. We believe that these limited extensions are appropriate because, by LCC's estimate, its CDMA upgrade should be substantially complete by the date it is required to ensure that one-

¹⁴² See LCC April 2004 Supplement at 4.

¹⁴³ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

¹⁴⁴ *Id.*

¹⁴⁵ See LCC April 2004 Supplement at 6.

¹⁴⁶ *Id.*

¹⁴⁷ See *supra* ¶ 13.

hundred percent of all new handset activations are location-capable.¹⁴⁸ If the estimated completion date has changed, such that additional relief is necessary,¹⁴⁹ LCC should file an appropriate waiver request.

57. *Handset Penetration.* In light of our decision to grant LCC an extension of the interim benchmark requirements, we correspondingly grant LCC a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location capable handsets. We recognize that LCC will require a sufficient period of time to ensure that the location-capable handsets that it sells and activates are sufficiently integrated into its customer base. Further, LCC notes that the majority of its existing customer base currently has non-location-capable TDMA handsets, and it states that its rural non-prepaid subscribers have historically tended to hold onto their cellular handsets for much longer than customers in larger, metropolitan markets.¹⁵⁰ We acknowledge that LCC faces unique challenges in satisfying the ninety-five percent handset penetration requirement.

58. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.¹⁵¹ We believe that a thirteen-month timeframe should provide LCC with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend LCC's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford LCC an additional thirteen months from these dates to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, LCC must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2007.¹⁵²

59. **Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular (MMC):** MMC operates an analog and TDMA network and is in the process of upgrading to CDMA.¹⁵³ MMC requested a waiver to extend both the September 1, 2003 deadline for beginning the sale and activation of location-capable handsets, and the November 30, 2003 deadline for ensuring that at least twenty-five

¹⁴⁸ Specifically, LCC expects the final work to be completed by the second quarter of 2006. *See* LCC April 2004 Supplement at 5.

¹⁴⁹ We note that LCC originally stated that work would commence in the third or fourth quarter of 2004. *See id.*; LCC Waiver Petition at 3-4. Subsequently, it stated that work would begin in the first quarter of 2005, but did not state whether the delay in commencing construction affected the estimated completion date. *See* LCC December 2004 Supplement at 2.

¹⁵⁰ *See* LCC December 2004 Supplement at 2.

¹⁵¹ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

¹⁵² Because we grant LCC the relief it requested of the handset penetration deadline under our established rules and precedent, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. *See supra* ¶ 11.

¹⁵³ *See* Petition of Missouri RSA No. 7 Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (MMC 2003 Waiver Petition).

percent of all new handsets activated are location-capable, until the first quarter of 2004.¹⁵⁴ MMC subsequently stated that it only was seeking a very limited waiver of the rules to allow up to twenty-five percent of its new activations to be made with handsets that are not ALI-capable.¹⁵⁵ MMC requested relief from the requirement that one-hundred percent of all new handsets activations be location-capable by November 30, 2004, until it receives designation as an eligible telecommunications carrier (ETC) for purposes of receipt of universal service funding.¹⁵⁶ MMC stated that on August 5, 2004, the Missouri Public Service Commission denied its request for ETC designation, which it contends was essential to its plans for upgrading the rural-most portions of its service area to CDMA.¹⁵⁷ MMC sought rehearing by the MPSC.¹⁵⁸

60. *Benchmark Relief.* As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements. However, Tier III carriers requesting a waiver of the Phase II deployment requirements must demonstrate a path to achieving full compliance.¹⁵⁹ Furthermore, carriers claiming financial hardship must provide specific factual information in support of their claims, including efforts to obtain financing from available sources. MMC has upgraded eighteen of its twenty-seven cell sites with the CDMA air interface¹⁶⁰ and is currently selling only location-capable handsets in those areas that it has upgraded to CDMA.¹⁶¹ MMC has sought universal service funding in order to finance the remaining build-out of its CDMA network.

61. We decline to grant MMC indefinite relief from the November 30, 2004 requirement for selling only location-capable handsets. While we appreciate MMC's efforts to obtain financing by applying for ETC status with the state of Missouri, the outcome of this proceeding is uncertain, and MMC has not otherwise provided specific financial information to support its financial hardship. Furthermore, MMC has not explained why it has not sought funding from any other available federal, state, or local sources. However, in light of the fact that MMC reported that it is not in receipt of any pending Phase II requests, we grant MMC an additional six months from the date of release of this *Order* to ensure that one-hundred percent of all new digital handsets activated are location-capable. Furthermore, MMC will

¹⁵⁴ See *id.* at 1. MMC did not provide a specific date other than stating that it requested relief until the "first quarter" of 2004. We thus assume that it requested relief until March 31, 2004. We caution petitioners to provide specific dates when requesting relief. MMC did not request relief from the May 31, 2004 benchmark to ensure that at least fifty percent of handsets activated are location-capable, or from the November 30, 2004 benchmark to ensure that one-hundred percent of handsets activated are location-capable.

¹⁵⁵ See Petition of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov 5, 2004, at 8 n.12 (MMC 2004 Waiver Petition). We assume based on this subsequent filing that MMC no longer was seeking relief from the initial (September 1, 2003) and twenty-five percent (November 30, 2003) benchmark requirements.

¹⁵⁶ See *id.* at 7-9.

¹⁵⁷ *Id.* at 6, 8.

¹⁵⁸ *Id.* at 6. By contacting counsel for MMC by telephone, staff was informed that the MPSC issued an order on November 30th, 2004, effectively denying MMC's application for ETC status. Counsel for MMC further indicated that it continues to pursue MMC's application for ETC designation with the MPSC.

¹⁵⁹ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

¹⁶⁰ See MMC 2004 Waiver Petition at 6.

¹⁶¹ *Id.* at 7.

continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

62. **North Carolina RSA 3 dba Carolina West Wireless (Carolina West):** Carolina West previously operated an AMPS and TDMA network that it has since upgraded to CDMA.¹⁶² It commenced Phase II service and started activating only location-capable handsets on June 18, 2004.¹⁶³ Carolina West sought to have the date for initiating sale of location-capable handsets extended from September 30, 2003 until June 18, 2004; the date for ensuring that twenty-five percent of all new handset activations are location-capable extended from November 30, 2003 until June 18, 2004; and the date for ensuring that fifty percent of all new handset activations are location-capable extended from May 31, 2004 until June 18, 2004.¹⁶⁴ Carolina West stated that the PSAPs in its service area have consented to this schedule.¹⁶⁵

63. *Benchmark Relief.* We find that the relief requested by Carolina West would not undermine our overall policy objective of ensuring access to enhanced 911 services. As an initial matter, we note that Carolina West has transformed its waiver request from one that initially sought an additional nine months of relief to one that requests minimal benchmark relief.¹⁶⁶ We find such progress constitutes sufficient evidence that Carolina West is striving to achieve full compliance with the Commission's E911 requirements. Additionally, we note Carolina West's diligence in working with and informing the PSAPs in its service area, which serves as further evidence of its good faith efforts to achieve compliance.¹⁶⁷

64. We therefore grant Carolina West's request that the date for initiating sale and activation of location-capable handsets be extended from September 30, 2003 until June 18, 2004; that the date for ensuring that twenty-five percent of all new handset activations are location-capable be extended from November 30, 2003 until June 18, 2004; and that the date for ensuring that fifty percent of all new handset activations are location-capable be extended from May 31, 2004 until June 18, 2004. Carolina West will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.¹⁶⁸

¹⁶² See North Carolina RSA 3 Cellular Telephone Company dba Carolina West Wireless Petition for Extension of the Handset Activation Schedule Beginning November 30, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 20, 2003 at 3 (Carolina West 2003 Waiver Petition); see also Supplement to North Carolina RSA 3 Cellular Telephone Company dba Carolina West Wireless Petition for Extension of the Handset Activation Schedule Beginning November 30, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed June 28, 2004 at 1-2 (Carolina West June 2004 Supplement).

¹⁶³ See Carolina West June 2004 Supplement at 2.

¹⁶⁴ See *id.* at 2. Carolina West did not seek extension of the deadline for achieving the one-hundred percent benchmark, which it expected to achieve before the November 30, 2004 deadline. See *id.*

¹⁶⁵ See *id.* at 6.

¹⁶⁶ See *id.*

¹⁶⁷ See *supra* ¶ 10.

¹⁶⁸ We note that Carolina West expressed reservations about its ability to meet this benchmark. See Carolina West June 2004 Supplement at 2. In the event that Carolina West anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, Carolina West should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

65. **Northwest Missouri Cellular Limited Partnership (Northwest Missouri):** Northwest Missouri operated an AMPS and TDMA network that it planned to upgrade to CDMA. It requested extensions of both the September 1, 2003 deadline for initiating the sale and activation of location-capable handsets and the November 30, 2003 deadline for ensuring that at least twenty-five percent of all new handset activations were location-capable.¹⁶⁹ Northwest Missouri sought the requested relief to better coordinate its rollout of CDMA with its offering of location-capable handsets.¹⁷⁰ We have confirmed that the migration was completed in the summer of 2004 and that, since November 30, 2004, Northwest Missouri has been activating only location-capable handsets, consistent with the requirement adopted in the *Non-Nationwide Carriers Order*.¹⁷¹

66. *Benchmark Relief.* We find that good cause exists to grant the relief requested. We do not believe that the minimal interim benchmark relief sought by Northwest Missouri will undermine the overall policy objective of the Commission's E911 rules. We therefore grant the relief Northwest Missouri seeks and extend the September 1, 2003 deadline for initiating the sale and activation of location-capable handsets until May 31, 2004 and the November 30, 2003 deadline for ensuring that at least twenty-five percent of all new handset activations are location-capable until May 31, 2004. Northwest Missouri will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

67. **Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc. (Sagebrush Carriers):** The Sagebrush Carriers share a switch used to provide analog and CDMA service in Montana.¹⁷² They began selling and activating location-capable handsets ahead of the September 1, 2003 deadline, but were unsure if sufficient handsets would be available to meet the other benchmarks.¹⁷³ Consequently, the Sagebrush Carriers requested extensions from November 30, 2003 to May 31, 2004 to ensure that at least twenty-five percent of all new handsets activated are location-capable; from May 31, 2004 to November 30, 2004 to ensure that at least fifty percent of all new handsets activated are location-capable; from November 30, 2004 to May 31, 2005 to ensure that one-hundred percent of all new digital handsets activated are location-capable; and from December 31, 2005 to June 30, 2006 to ensure that penetration of location-capable handsets among its subscribers reaches ninety-five percent.¹⁷⁴ In a supplement filed in response to the Commission's *Order*

¹⁶⁹ See Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (Northwest Missouri Waiver Petition). Northwest Missouri did not specify dates for which it expected to achieve compliance. However, we can infer that since it requested relief only from the initial September 1, 2003 deadline to commence activation and sale of location-capable handsets, and the November 30, 2003 deadline to ensure that at least twenty-five percent of handsets activated are location-capable, that it requested relief with respect to both of these deadlines until the next benchmark of May 31, 2004, by which date it must ensure that fifty percent of handsets activated are location-capable. We caution carriers to provide specific dates when filing requests for extensions of the Phase II benchmark requirements.

¹⁷⁰ See Supplement to Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2003 at 2.

¹⁷¹ Staff contacted counsel for Northwest Missouri to obtain this information.

¹⁷² See Sagebrush E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Aug. 1, 2003 at 1 n.1 (Sagebrush August 2003 Interim Report).

¹⁷³ See *id.* at 2.

¹⁷⁴ See *id.*

to Stay, the Sagebrush Carriers reported that they had been unable to obtain location-capable handsets that offer the same coverage range as handsets that do not provide location information, and that customers were returning the location-capable handsets because of their reduced range.¹⁷⁵ Based on these experiences with deployment, the Sagebrush Carriers reiterated their previous request for waiver.¹⁷⁶ In their most recent filing, the Sagebrush Carriers requested a permanent waiver of the December 31, 2005 ninety-five percent handset penetration requirement.¹⁷⁷

68. *Benchmark Relief.* We find that good cause exists to grant the Sagebrush Carriers relief from the interim benchmarks as requested. As the Commission stated in the *Order to Stay*, under extraordinary conditions like those faced by the Sagebrush Carriers, additional relief may be warranted.¹⁷⁸ As the Sagebrush Carriers explain in their filings, they face certain challenges as location-capable handsets evolve to provide a greater range of service than the analog handsets currently used by the Sagebrush Carriers' subscribers.¹⁷⁹ We are, however, encouraged by the fact that the Sagebrush Carriers exceeded the Commission's requirement for beginning to sell and activate location-capable handsets, as they reported that since early November 2003 all new activations were one-hundred percent location-capable.¹⁸⁰ Moreover, since none of the PSAPs in the Sagebrush Carriers' service area is capable of receiving Phase II information,¹⁸¹ subscribers will not be harmed by a grant of additional time. We thus find that granting limited relief to the Sagebrush Carriers will not undermine the overall policy objective of the Commission's E911 requirements.

69. For the foregoing reasons, we grant the Sagebrush Carriers' request for relief from the interim benchmarks. Specifically, we grant an extension from November 30, 2003 to May 31, 2004 to ensure that at least twenty-five percent of all new handsets activated are location-capable; from May 31, 2004 to November 30, 2004 to ensure that at least fifty percent of all new handsets activated are location-capable; and from November 30, 2004 to May 31, 2005 to ensure that one-hundred percent of all new digital handsets activated are location-capable.

70. *Handset Penetration.* In light of our decision to grant the Sagebrush Carriers an extension of the interim benchmark requirements, we correspondingly grant them a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location-capable handsets. We recognize that the Sagebrush Carriers will require a sufficient period of time to ensure that the location-capable handsets that they sell and activate are sufficiently integrated into their customer base. Further, we acknowledge that the Sagebrush Carriers face unique challenges in satisfying the ninety-five percent handset penetration requirement. In its most recent filing, the Sagebrush Carriers

¹⁷⁵ See Sagebrush Supplement to E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Nov. 7, 2003 at 1-2 (Sagebrush 2003 Supplement).

¹⁷⁶ *Id.* Sagebrush reported that twenty-one percent of all new handset activations were location-capable by October 2003. *Id.*

¹⁷⁷ See Second Supplement to E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines and Request for Clarification, CC Docket No. 94-102, filed Jan. 7, 2005 at 4 (Sagebrush 2005 Supplement).

¹⁷⁸ See *Order to Stay*, 18 FCC Rcd at 20994 ¶ 17.

¹⁷⁹ See Sagebrush 2003 Supplement at 1.

¹⁸⁰ See *id.* at 4.

¹⁸¹ See *id.* at 5.

reported that it continues to be their experience that subscribers are returning location-capable handsets due to their reduced range.¹⁸² The Sagebrush Carriers claimed that manufacturers are not improving the coverage capabilities of location-capable handsets for use in the large, sparsely populated areas that they serve with cell sites designed to cover the largest area possible.¹⁸³ As a result, the Sagebrush Carriers reported a change-over rate of one to one and a half percent per month from non-location capable handsets to location-capable handsets, despite efforts to encourage adoption of location-capable handsets with contract release and better rate plan offers.¹⁸⁴

71. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.¹⁸⁵ We believe that a thirteen-month timeframe should provide the Sagebrush Carriers with an adequate period of time to ensure that their embedded customer base uses location-capable handsets. Because we extend the Sagebrush Carriers' deadline for ensuring that one-hundred percent of all new handset activations are location-capable to May 31, 2005, we afford the Sagebrush Carriers an additional thirteen months from this date to ensure that the handset penetration rate among their subscribers reaches ninety-five percent. Accordingly, the Sagebrush Carriers must ensure that ninety-five percent of their subscriber base has location-capable handsets by June 30, 2006.

72. We note that the relief that we are affording the Sagebrush Carriers is more limited than their requested relief. The Sagebrush Carriers requested a permanent waiver of the December 31, 2005 ninety-five percent handset penetration requirement.¹⁸⁶ While we are sympathetic to the Sagebrush Carriers' explanation that their subscribers prefer the longer-range analog handsets, we do not think a permanent waiver is consistent with maximizing consumers' access to emergency services. We remain open, however, to a more limited waiver should Sagebrush demonstrate that one is warranted.¹⁸⁷

73. **South Canaan Cellular Communications Company, L.P. (South Canaan):** South Canaan provides AMPS and TDMA service in Pennsylvania, and is in the process of upgrading to

¹⁸² See *id.* at 2.

¹⁸³ See *id.* at 2-3.

¹⁸⁴ See *id.* at 4-5.

¹⁸⁵ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

¹⁸⁶ See Sagebrush 2005 Supplement at 4. The Sagebrush Carriers requested clarification of whether carriers are to include subscribers having analog handsets in calculating the penetration among their subscribers of location-capable handsets. See *id.* We clarify that we intended no such exclusion. Therefore, in meeting the December 31, 2005 deadline, carriers must achieve ninety-five percent penetration among their subscribers of location-capable handsets, regardless of whether certain subscribers use analog handsets. We note that the Sagebrush Carriers stated it was not likely they would meet the December 31, 2005 deadline even if analog handsets were excluded from this computation. See *id.*

¹⁸⁷ See *supra* ¶ 21. Our decision does not preclude the Sagebrush Carriers from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

CDMA.¹⁸⁸ It commenced selling and activating location-capable handsets prior to the September 1, 2003 compliance deadline,¹⁸⁹ and reported that as of December 21, 2004, it was selling only compliant phones.¹⁹⁰ Essentially, then, South Canaan sought relief until December 21, 2004, of the following deadlines: the November 30, 2003 deadline to ensure that at least twenty-five percent of all new handsets activated are location-capable; the May 31, 2004 deadline to ensure that at least fifty percent of all new handsets activated are location-capable; and the November 30, 2004 deadline to ensure that one-hundred percent of all new digital handsets activated are location-capable.¹⁹¹ South Canaan also requested an extension from December 31, 2005 until December 31, 2007 to ensure that ninety-five percent of its subscribers have location-capable handsets.¹⁹²

74. South Canaan has received a request for Phase II service from one of the PSAPs in its service area, in Pike County, and has worked with this PSAP to develop a deployment schedule with a compliance date of February 15, 2005.¹⁹³ South Canaan also devised a subscriber education campaign, to coincide with its CDMA roll-out, to encourage analog customers to adopt location-capable handsets, which includes a marketing effort explaining that digital handset are necessary to enable the provision of location information, and incentives such as rebates for turning in analog phones.¹⁹⁴ Based on these campaigns, South Canaan anticipates that it will be able to meet the ninety-five percent activation benchmark by the end of 2007.¹⁹⁵

75. *Benchmark Relief.* We find that good cause exists to grant South Canaan a waiver of the interim handset activation benchmark requirements. South Canaan's efforts to keep the Commission informed of its progress through its multiple progress reports indicate to us the importance that this carrier places on ensuring its compliance. South Canaan has voluntarily filed quarterly updates to keep the

¹⁸⁸ See Petition for Waiver of Section 20.18 of the Commission's Rules, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Aug. 1, 2003, at 2-3 (South Canaan 2003 Waiver Petition).

¹⁸⁹ See Supplement to Petition for Waiver of Section 20.18 of the Commission's Rules, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Nov. 10, 2003, at 2 (South Canaan 2003 Supplement).

¹⁹⁰ See E911 Phase II Interim Implementation Report, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Dec. 21, 2004, at 1-2 (South Canaan Dec. 2004 Report).

¹⁹¹ We note that South Canaan initially had requested more extensive relief from the interim benchmarks. Specifically, South Canaan requested the following deployment schedule: begin selling and activating location-capable CDMA handsets by January 1, 2005; ensure that twenty-five percent of new CDMA handsets activated are location-capable by March 31, 2005; ensure that fifty percent of new CDMA handsets activated are location-capable by September 30, 2005; ensure that one-hundred percent of all new CDMA handsets activated are location-capable by March 31, 2006; and ensure that ninety-five percent of CDMA subscribers have location-capable handsets by December 31, 2007. See South Canaan 2003 Waiver Petition at 8. It subsequently modified its request in light of its progress in deploying its CDMA upgrade. See South Canaan Dec. 2004 Report at 1-2.

¹⁹² See South Canaan 2003 Waiver Petition at 8; see also E911 Phase II Interim Implementation Report, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Jan. 15, 2004, at 3 (South Canaan Jan. 2005 Report).

¹⁹³ See South Canaan Jan. 2005 Report at 2.

¹⁹⁴ See *id.* at 2. The campaign will include free and heavily-discounted location-capable handsets to customers that enter into a new two-year agreement for service. *Id.*

¹⁹⁵ See *Id.*

Commission current on both its upgrade to CDMA and its work with the local PSAPs in its area. We are encouraged by South Canaan's imminent completion of its CDMA upgrade, based upon the timeframes it has provided the Commission in its quarterly reports.¹⁹⁶ Such diligence evidences South Canaan's commitment to achieving full compliance with the Commission's E911 requirements, which is the type of showing the Commission explained it would need from Tier III carriers to grant additional relief.¹⁹⁷ Additionally, we find that South Canaan's diligence in working with and informing the PSAPs in its service area of its deployment schedule signals good faith efforts to achieve compliance with the Commission's requirements.¹⁹⁸

76. For these reasons, we grant South Canaan relief from the interim benchmarks. Specifically, we grant South Canaan an extension from November 30, 2003 until December 21, 2004 to ensure that at least twenty-five percent of all new handsets activated are location-capable; from May 31, 2004 until December 21, 2004 to ensure that at least fifty percent of all new handsets activated are location-capable; and from November 30, 2004 until December 21, 2004 to ensure that one-hundred percent of all new digital handsets activated are location-capable.

77. *Handset Penetration.* In light of our decision to grant South Canaan an extension of the interim benchmark requirements, we correspondingly grant South Canaan a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location-capable handsets. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.¹⁹⁹ We believe that a thirteen-month timeframe should provide South Canaan with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend South Canaan's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2004, we afford South Canaan an additional thirteen months from this date to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, South Canaan must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2006.

78. We note that this relief from the ninety-five percent handset penetration requirement is more limited than South Canaan requested. South Canaan sought relief from the ninety-five percent handset penetration deadline from December 31, 2005 until December 31, 2007. We do not believe that such an extended period of time is adequately supported or necessary. Further, we believe that our countervailing public policy interest in ensuring that carriers comply with the location-capable handset

¹⁹⁶ See South Canaan Jan. 2005 Report at 1 (anticipating digital conversion of its remaining site by February 15, 2005).

¹⁹⁷ See *supra* ¶ 10.

¹⁹⁸ See South Canaan Dec. 2004 Report at 1. See also *supra* ¶ 10.

¹⁹⁹ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

penetration requirement as quickly as possibly overrides South Canaan's request for more protracted relief.²⁰⁰

79. **South No. 5 RSA LP dba Brazos Cellular Communications, LLC (Brazos):** Brazos provides TDMA service in rural Texas and is upgrading to CDMA.²⁰¹ Brazos sought the following extensions of the Commission's deadline: from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 until September 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.²⁰² Brazos does not request relief from the ninety-five percent requirement, indicating that it will use its best efforts to encourage subscribers to convert.²⁰³

80. *Benchmark Relief.* We find good cause exists to grant Brazos a limited waiver to permit it to coordinate its location-capable handset deployment with its CDMA upgrade. Brazos' need for additional time is due in part to its transitioning from a TDMA air interface to CDMA.²⁰⁴ Brazos maintained that the migration from TDMA technology by the larger carriers resulted in reluctance on the part of equipment manufacturers to develop location-capable handsets for the TDMA air-interface.²⁰⁵ Brazos decided to transition its network to the CDMA air interface, a process that will take some time to implement. The Commission recognized that the transition from one air interface to another takes some time to implement, and requested that carriers seeking additional relief for this purpose provide a plan to achieve full compliance, which Brazos has provided.²⁰⁶

81. We are also encouraged by Brazos' efforts to coordinate its deployment plan with its local PSAPs. Brazos stated that the local PSAPs are agreeable to its Phase II schedule, which will achieve Phase II capability prior to PSAP readiness.²⁰⁷ Brazos stated that it has discussed its deployment

²⁰⁰ See *supra* ¶ 21. Our decision does not preclude the South Canaan from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

²⁰¹ See South No. 5 RSA LP Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 8, 2003 at 2 (Brazos 2003 Waiver Petition).

²⁰² See Further Supplement to South No. 5 RSA LP Petition and Request For Additional Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed June 8, 2004, at 3 (Brazos June 2004 Supplement). Brazos initially requested interim relief to extend the deadline to begin selling and activating handsets and the deadline to meet the twenty-five percent requirement to July 1, 2004; to extend the fifty percent deadline to September 1, 2004; and to extend the one-hundred percent deadline to December 31, 2004. See Brazos 2003 Waiver Petition at 9.

²⁰³ See Brazos June 2004 Supplement at 4. In an earlier filing, Brazos indicated that it was unlikely to be fully Phase II compliant by December 31, 2005, because many of its customers, approximately fifteen percent, use three watt analog phones and would be reluctant to accept location-capable digital handsets due to their relatively smaller ranges. See Brazos 2003 Waiver Petition at 3-4.

²⁰⁴ See Brazos 2003 Waiver Petition at 2.

²⁰⁵ See Brazos 2003 Supplement at 2.

²⁰⁶ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

²⁰⁷ See Brazos June 2004 Supplement at 4.

plan with the Texas Council of Governments, which coordinates E911 efforts in the state of Texas, and that it and the local PSAPs are aware of the transition period Brazos has set out in its requests.²⁰⁸ In evaluating Brazos' waiver request we have taken into account its consultation with PSAPs in its service area and the Texas Council of Governments, as such consultation is an important factor in determining whether a waiver is warranted.²⁰⁹

82. For the foregoing reasons, we find that granting relief to Brazos would not undermine our policy objective of ensuring access to E911 service. We therefore, grant Brazos' requests for the following extensions: from September 30, 2003 to July 1, 2005 to begin selling and activating location-capable handsets; from November 30, 2003 to July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 to September 1, 2005 to ensure that at least fifty percent handsets activated are location-capable; and from November 30, 2004 to December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

83. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.²¹⁰ We believe that a thirteen-month timeframe should provide Brazos with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend Brazos' deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford Brazos an additional thirteen months from this date to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, Brazos must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2006.²¹¹

84. **Wilkes Cellular, Inc. (Wilkes):** Wilkes provides analog service in rural Georgia. Wilkes stated that it receives switching services from Alltel and therefore must follow Alltel in using a handset-based solution.²¹² Wilkes added that it would utilize a handset solution and install a digital overlay over its analog cellular network, with the digital network expected to be in place by early 2004.²¹³ While Wilkes did not state which digital interface it will be using, we infer from its association with

²⁰⁸ See *id.*

²⁰⁹ See *supra* ¶ 29.

²¹⁰ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

²¹¹ Because we relied on our established rules and precedent in granting the relief of the handset penetration deadline to Brazos, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. Our decision, however, does not preclude Brazos from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

²¹² See E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Aug. 1, 2003, at 1-2 (Wilkes Interim Report).

²¹³ See *id.*

Alltel that it will upgrade to CDMA technology. Wilkes further stated that it had not received a Phase II request, but anticipated that Phase II service would be available by April 1, 2004.²¹⁴

85. Wilkes requested a seven-month extension of each of the benchmarks for activating location-capable handsets.²¹⁵ Wilkes thus requested that we grant extensions of the following deadlines: (1) from September 1, 2003 until April 1, 2004 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until June 30, 2004 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until December 31, 2004 to ensure that at least fifty percent of handsets activated are location-capable, and (4) from November 30, 2004 until June 30, 2005 to ensure that one-hundred percent of handsets sold are location capable.

86. *Benchmark Relief.* We find good cause exists to grant Wilkes waiver relief to permit it to coordinate its location-capable handset deployment with its CDMA upgrade. Wilkes' need for additional time is due to transitioning from an analog air interface to CDMA. The Commission recognized that the transition from one air interface to another takes some time to implement, and requested that carriers seeking additional relief for this purpose provide a plan to achieve full compliance, which Wilkes has provided. Furthermore, since Wilkes had not yet received a request for Phase II service, we find that granting the relief requested would not undermine our policy objective of ensuring access to E911 service. We therefore, grant Wilkes' requests for the following extensions: from September 30, 2003 to April 1, 2004 to begin selling and activating location-capable handsets; from November 30, 2003 to June 30, 2004 to ensure that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 to December 31, 2004 to ensure that at least fifty percent handsets activated are location-capable; and from November 30, 2004 to June 30, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

87. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.²¹⁶ We believe that a thirteen-month timeframe should provide Wilkes with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend Wilkes' deadline for ensuring that one-hundred percent of all new handset activations are location-capable to June 30, 2005, we afford Wilkes an additional thirteen months from this date to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, Wilkes must ensure that ninety-five percent of its subscriber base has location-capable handsets by July 31, 2006.²¹⁷

²¹⁴ See *id.* at 2-3.

²¹⁵ See *id.* at 2.

²¹⁶ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

²¹⁷ Because we relied on our established rules and precedent in granting the relief of the handset penetration deadline to Wilkes, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. Our decision, however, does not preclude Wilkes from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

88. **Wireless Communications Venture (WCV):** WCV provides service in Minnesota.²¹⁸ In a June 2004 amendment to its waiver petition, WCV reported that the upgrade of its network from TDMA to CDMA was complete.²¹⁹ WCV sought an extension of the date to begin selling and activating location-capable handsets from September 30, 2003 to September 27, 2004.²²⁰ It also sought an extension from November 30, 2003 to September 27, 2004 to meet the requirement that at least twenty-five percent of handsets activated are location-capable; and from May 31, 2004 to September 27, 2004 to meet the requirement that at least fifty percent of handsets activated are location-capable.²²¹

89. *Benchmark Relief.* We find that good cause exists to grant the relief sought by WCV. We are persuaded by WCV's petition because it set out a plan to achieving full compliance.²²² The schedule WCV set out in its petition will allow it to meet the final benchmark of December 31, 2005, when it must achieve a ninety-five percent penetration rate for location-capable handsets among its subscribers. We thus find that allowing this carrier to focus its efforts on achieving full compliance will better serve the Commission's interest in ensuring ubiquitous access to E911 service.

90. Moreover, we are persuaded that WCV is acting in good faith in requesting additional relief, based on its reported efforts to coordinate its deployment schedule with the administrator of the Minnesota E-911 Statewide Program.²²³ WCV and the administrator of the Minnesota Statewide 9-1-1 Project agreed upon a deployment timetable.²²⁴ In the *Order to Stay*, the Commission explained that carriers seeking additional time would be expected to coordinate their efforts with the state and local E911 coordinators and all affected local PSAPs.²²⁵

91. For these reasons, we grant WCV's waiver request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we grant WCV the following relief: from September 30, 2003 to September 27, 2004 to begin selling and activating location-capable handsets; from November 30, 2003 to September 27, 2004 to meet the requirement that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 to September 27, 2004 to meet the requirement that at least fifty percent of handsets activated are location-capable; and from November 30, 2004 to December 31, 2004 by which one-hundred percent of all handsets activated are location-capable.

²¹⁸ See Wireless Communications Venture Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 28, 2003, at 5 (WCV 2003 Waiver Petition).

²¹⁹ See Amendment to Wireless Communications Venture Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed June 30, 2004, at 2 (WCV 2004 Amended Waiver Petition).

²²⁰ See *id.* at 1.

²²¹ *Id.* In its original petition, WCV also sought relief from the one-hundred percent benchmark to December 31, 2004. See WCV 2003 Waiver Petition at 10. WCV subsequently reported that it met this requested deadline. See Second Supplement to Wireless Communications Venture Petition for Waiver of Section 20.19(g) of the Commission's Rules, CC Docket No. 94-102, filed Jan. 24, 2005, at 1.

²²² See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

²²³ See WCV Second Interim Report Regarding E911 Phase II deployment Wireless Communications Venture, CC Docket No. 94-102, filed Jan. 14, 2004, at 2 (WCV Second Interim Report).

²²⁴ *Id.* at 2-3.

²²⁵ See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

B. Category 2: Carriers electing network-based solutions

92. The next category of Tier III carriers consists of requests for relief by carriers employing network-based solutions. By definition, these solutions work with existing handsets and thus do not require handset replacement or upgrades. Carriers are permitted to phase in deployment over an eighteen month period and, as compared to carriers utilizing handset-based technologies, are allowed to meet the broader location parameters of the accuracy standard for network-based technologies.²²⁶ Once deployed, network-based solutions reportedly can be readily adapted to support multiple air interfaces and network upgrades, *e.g.*, analog, TDMA, CDMA or GSM.²²⁷

93. **Highland Cellular, LLC (Highland):** Highland operates a TDMA network in rural West Virginia, and is transitioning to a GSM network.²²⁸ It requested that the Commission grant a two year extension of the Phase II deployment and accuracy requirements for its GSM network.²²⁹ Highland set forth an eight-step plan for deploying its GSM network-based solution, and also a schedule for compliance, anticipating that its TDMA customers would begin migrating to its GSM network in November 2004.²³⁰

94. In its subsequent January 15, 2004 Interim Report, Highland stated it was able to launch its GSM network in October 2003, and that twelve percent of its customer base already had begun the transition from TDMA to GSM phones.²³¹ With respect to its Phase II status, Highland stated that it was still reviewing vendor and technology options for network-based solutions based on either Time Delay of Arrival (TDOA) or Timing Advance/Network Measurement Report (TA/NMR) technologies.²³²

²²⁶ See 47 C.F.R. § 20.18(h)(1) (requiring an accuracy of one-hundred meters for sixty-seven percent of calls, and 300 meters for ninety-five percent of calls).

²²⁷ See, *e.g.*, Andrew Corporation description of its Geometrix technology, at http://www.andrew.com/products/wireless_call_loc/geometrix_e911_upgrd.aspx.

²²⁸ See Request of Highland Cellular, LLC for A Limited Waiver and Extension of the Commission's Phase II Rules, CC Docket No. 94-102, filed Aug. 29, 2003, at 1-2 (Highland Waiver Request).

²²⁹ See Highland Waiver Request at 2-3. Although Highland did not provide specific dates for extension of our requirements, we presume that, by requesting an additional two years, it asked for the following relief: (1) from September 1, 2003 to September 1, 2005 to provide Phase II service to at least fifty percent of the PSAP's coverage area or population, or within six months of a PSAP request, whichever is later, and (2) from September 1, 2004 to September 1, 2006 to provide Phase II service to one-hundred percent of the PSAP's coverage area or population, or within eighteen months of a PSAP request, whichever is later.

²³⁰ *Id.* at 4-5. The eight steps are as follows: (1) obtaining proposals from GSM-based network location vendors; (2) obtaining vendor engineering studies on achievable accuracy levels; (3) selecting a vendor based on pricing and technical details; (4) identifying a deployment plan; (5) conducting the necessary tower and cell site upgrades; (6) installing equipment at cell sites and within the switch; (7) network integration and testing; and (8) testing with PSAPs.

²³¹ See Highland Cellular, Inc. E911 Interim Compliance Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1 (Highland 2004 Interim Report).

²³² See *id.* at 2. TDOA uses equipment installed at carrier base stations to triangulate a call's location based on differences in the arrival times of a handset's signal at three or more of the cell sites. TA/NMR is a refinement of GSM-based Phase I E911 service, identifying the cell and sector and then using timing information and signal strength information from adjacent cells to calculate an improved location solution.

Highland further reported that it had received Phase II requests from six PSAPs, and that it had been actively working with the PSAPs in its community with respect to E911 deployment.²³³ Highland projected that network-based solutions will meet the accuracy requirements in only three of the ten counties it is licensed to serve.²³⁴ However, Highland indicated that the GSM cell sites it was deploying would provide significant improvements in accuracy as compared to the TDMA segment of its system.²³⁵ Highland also added that its lenders may refuse to finance additional Phase II deployment costs.²³⁶ Highland claimed that the foregoing factors will make it very challenging to meet the current Phase II accuracy requirements for a network-based solution.²³⁷

95. In its most recent report, Highland stated that the migration of its customer base to GSM increased to fifty-two percent during 2004, and projected this number to increase to eighty percent by the end of 2005.²³⁸ However, Highland reported that despite making progress in working with and evaluating network-based solutions from various vendors, it believed that the topography and cell density of its network was such that none of the technology options would allow the company to meet the FCC's accuracy requirements.²³⁹ Highland added that it had reached accord with the PSAPs that the public would be best served by deployment of technology that provides the best long-term accuracy standard, and that it continued to be engaged in further discussions with technology vendors.²⁴⁰

96. *Deployment of Network Equipment.* We find that Highland has made substantial progress in converting its network to GSM and has worked earnestly, in cooperation with the PSAPs, to seek a network-based solution that would meet the Commission's Phase II accuracy requirements. Highland has engaged in an extensive process of furnishing its vendors technical network information, while constructing new GSM cell sites, to find a way to meet the Commission's accuracy requirements.²⁴¹ Highland submitted evidence that with its current cell site layout, in many areas of its network there is insufficient RF signal to permit triangulation to work.²⁴² Highland also reported that the manufacturer will not support an ALI TDMA solution for either network-based or handset-based technologies.²⁴³

97. Based on the foregoing reasons, we grant Highland an extension from September 1, 2003 to September 1, 2005 to provide Phase II service to at least fifty percent of either the PSAP's coverage area or its population, or within six months of a PSAP request, whichever is later, and from September 1,

²³³ See *id.*

²³⁴ See *id.* at 4-5.

²³⁵ See *id.* at 5.

²³⁶ See *id.*

²³⁷ See *id.*

²³⁸ See Highland Cellular, Inc. Update to E911 Interim Compliance Report, CC Docket No. 94-102, filed Feb. 9, 2005, at 1.

²³⁹ See *id.* at 2.

²⁴⁰ See *id.*

²⁴¹ See Highland 2004 Interim Report at 2-3.

²⁴² See *id.* at 4.

²⁴³ See Highland Waiver Request at 4.

2004 to September 1, 2006 to provide Phase II service to one-hundred percent of a PSAP's coverage area or population, or within eighteen months of a PSAP request, whichever is later.

98. **N.E. Colorado Cellular, Inc. (NECC):** In its initial waiver request, NECC reported that it operated an AMPS network in Colorado and acquired a CDMA network in Nebraska, and that it was converting both networks to GSM.²⁴⁴ NECC elected to deploy a network-based location solution, but for its GSM networks only.²⁴⁵ NECC proposed to implement Phase II service in Colorado within six months of a valid PSAP request, and by January 2005 in Nebraska.²⁴⁶ NECC later estimated that Phase II service would first be available on its GSM network by November 2004.²⁴⁷

99. In both states, however, NECC stated that it would be unable to meet the Phase II accuracy standards, due to the inability to obtain the proper cell site triangulation.²⁴⁸ Particularly in Nebraska, NECC stated that coverage beyond the major highways had just begun, and that its ability to be in compliance with the accuracy standards would improve as more towers in its planned 300 tower build-out were constructed.²⁴⁹ NECC thus requested a waiver of the accuracy requirements for both its Colorado and Nebraska service areas through 2007, to allow it to provide location data within 500 meters for fifty percent of the calls,²⁵⁰ instead of one-hundred meters for sixty-seven percent of calls and 300 meters for ninety-five percent of calls, as required under Section 20.18(h)(1).

100. NECC indicated that it was communicating regularly and had a good working relationship with the PSAPs in its service areas.²⁵¹ In Colorado, NECC indicated that it had received four Phase II requests and would be implementing Phase II service for two of the PSAPs as of November 15, 2004, and the remaining two by January 15, 2005.²⁵² NECC stated that these implementations are in the portion of its service areas where both GSM and AMPS service are provided.²⁵³ As for Nebraska, NECC reported no Phase II requests, but expected five requests in May 2004.²⁵⁴

²⁴⁴ See Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Sept. 5, 2003, at 2 (NECC Waiver Request).

²⁴⁵ See Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1 (NECC Jan. 2004 Interim Report); N.E. Colorado Cellular, Inc. Petition for Extension of the Implementation Schedules Beginning September 1, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 17, 2004, at 2 (NECC 2004 Petition). NECC explained that the AMPS product line in Colorado does not support a network-based Phase II location solution. See NECC Jan. 2004 Interim Report at 1.

²⁴⁶ See NECC Waiver Request at 8.

²⁴⁷ See NECC Jan. 2004 Interim Report at 2.

²⁴⁸ See *id.*; NECC Jan. 2004 Interim Report at 1-2.

²⁴⁹ See NECC Jan. 2004 Interim Report at 1-2.

²⁵⁰ See N.E. Colorado Cellular, Inc. Supplement to Petition for Extension of the Implementation Schedule for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 10, 2003, at 4 (NECC 2003 Supplement).

²⁵¹ See NECC Jan. 2004 Interim Report at 1.

²⁵² See NECC 2004 Petition at 2.

²⁵³ See *id.*

²⁵⁴ See NECC Jan. 2004 Interim Report at 1.

101. In a separate request filed in 2004, NECC sought a waiver specific to its network in Colorado to permit it to migrate analog customers to its GSM platform.²⁵⁵ NECC expected seventy percent of its subscriber base in Colorado to be migrated to GSM by the end of 2004.²⁵⁶ However, NECC cited to certain analog customers who desire to retain their analog phones, favoring coverage over Phase II service capability.²⁵⁷ NECC added that it expected to complete its GSM upgrade by first quarter 2005,²⁵⁸ and that there was no Phase II solution for the analog portion of its network.²⁵⁹ NECC foresaw a need for a two-year timetable to migrate the remainder of its analog customers to digital.²⁶⁰

102. *Deployment of Network Equipment.* First, with respect to the GSM portions of its network, NECC does not require an extension of the Commission's Phase II rules and thus we dismiss this request. NECC indicated it would have Phase II service capability in its GSM network by November 2004, and with respect to its Colorado service areas, that it has responded, or would be responding, to the four PSAP requests. Moreover, in Nebraska, if NECC received the PSAP requests expected in May 2004, we assume, as we have not been notified otherwise, that NECC implemented Phase II service for those PSAPs as well.²⁶¹ Further, NECC's filings indicate that, in its Colorado service areas, its GSM network deployment is proceeding close to the schedule that it has anticipated. In addition, the migration of its customer base to the GSM network is significantly progressing.

103. However, with respect to its analog customers, we conclude that grant of a waiver regarding NECC's deployment of a Phase II network solution work is warranted.²⁶² As NECC indicated, there is no Phase II solution for analog handsets. Further, we find that NECC diligently has pursued a program of upgrading its analog network to GSM while undertaking efforts to migrate its analog customers to GSM. Therefore, we grant NECC an extension of two years from the date of its request, or until November 17, 2006, to ensure that all of its analog customers are transitioned to GSM and thus are offered Phase II services.

104. *Accuracy Requirements.* We deny NECC's request for waiver of the accuracy requirement through 2007 because we do not believe it was sufficiently supported and, in any event, is overbroad. NECC did not provide any testing data or other evidence to support its request for an accuracy level of 500 meters for fifty percent of calls, or for the need for relief through 2007. In addition, NECC submitted no information from its technology vendor concerning the levels of accuracy that can reasonably be achieved as its GSM network is built out. Such information is of particular significance to our consideration of this waiver request.²⁶³ NECC did not distinguish between those segments of its GSM network that already are built, and which presumably could achieve better accuracy, and those

²⁵⁵ See NECC 2004 Petition at 2.

²⁵⁶ See NECC Jan. 2004 Interim Report at 2.

²⁵⁷ See NECC 2004 Petition at 3-4.

²⁵⁸ See *id.* at 3.

²⁵⁹ See *id.* at 4; NECC 2003 Supplement at 2-3.

²⁶⁰ See NECC 2004 Petition at 4.

²⁶¹ See NECC 2003 Supplement at 4.

²⁶² See 47 C.F.R. § 20.18(f).

²⁶³ See *supra* ¶ 9.

segments not upgraded with GSM. Moreover, given its representations of its deployment schedule for approximately 300 additional towers for its Nebraska build-out beyond the major highways, NECC should have been able to develop a more specific schedule for meeting the Phase II requirements, rather than requesting the blanket relief it seeks through 2007.

105. While we do not believe that NECC has met our standards for waiver of the Commission's accuracy requirements, we note that we would be receptive to a renewed request for waiver that would contain the specific information necessary to justify such a request as described above. Specifically, NECC should provide testing data or other information from a technology vendor to demonstrate its inability to meet the accuracy requirements, and provide specific plans towards meeting the accuracy requirements.²⁶⁴ We also are mindful of the fact that NECC reported that it will work with the PSAPs regarding the location accuracy data that it will be able to achieve as it builds out its GSM network,²⁶⁵ and we encourage NECC to continue these efforts.

106. **Southern Illinois RSA Partnership dba First Cellular of Southern Illinois (First Cellular):** First Cellular operates an AMPS and CDMA network that is being converted to GSM. In an August 26, 2003 Petition, First Cellular requested a waiver of the requirement that carriers deploying a network-based solution follow a schedule beginning September 1, 2003, to ensure they provide Phase II service to at least fifty percent of the PSAP's coverage area or population, and September 1, 2004 to ensure they provide Phase II service to one-hundred percent of the PSAP's coverage area or population.²⁶⁶ First Cellular reported that the vendor initially selected for a network-based Phase II solution unexpectedly determined that it was unable to solve compatibility problems between its equipment and First Cellular's cellular system equipment.²⁶⁷ First Cellular requested a waiver of up to twenty-four months to deploy its network-based solution.

107. In a November 10, 2003 Supplement, First Cellular stated that it planned to deploy a Phase II solution for CDMA and AMPS by summer 2004, with GSM Phase II deployment to occur as soon as possible upon completion of the GSM overlay throughout its service area.²⁶⁸ In a January 14, 2004 Interim Report, First Cellular projected installation of the GSM network within seven to twenty months, with initial deployment in summer 2004.²⁶⁹ First Cellular also reported it was negotiating funding through a capital lease agreement and planned to submit costs for Phase II deployment to the State of Illinois for potential reimbursement.²⁷⁰

²⁶⁴ See *supra* ¶ 10.

²⁶⁵ See January 2004 Interim Report at 1.

²⁶⁶ See Southern Illinois RSA Partnership dba First Cellular of Southern Illinois Petition for Extension of the Implementation Schedule Beginning September 1, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Aug. 26, 2003, at 1 (First Cellular August 2003 Petition).

²⁶⁷ See *id.* at 3.

²⁶⁸ See Southern Illinois RSA Partnership dba First Cellular of Southern Illinois Supplement to Petition for Extension of the Implementation Schedule for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 10, 2003, at 3 (representing that the Phase II solution from its selected vendor would support its planned GSM system as well as the current AMPS and CDMA systems).

²⁶⁹ See Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Jan. 14, 2004, at 2.

²⁷⁰ See *id.* at 2.

108. *Deployment of Network Equipment.* First Cellular also submitted that it had received seven Phase II requests, but that the requesting PSAPs were not yet ready to receive or use Phase II data.²⁷¹ Consequently, we dismiss First Cellular's request for waiver, without prejudice, as unnecessary. Carriers only are required to respond to valid PSAP requests.²⁷² Furthermore, carriers have six months following a valid PSAP request to provide E911 service to at least fifty percent of the PSAP's coverage area or population, and eighteen months to provide E911 service to one-hundred percent of the PSAP's coverage area or population.

C. Category 3: Carriers Operating Roaming-Only Networks

109. Twelve carriers, operating under a "carriers' carrier" business model (the Commnet Carriers), sought relief from various E911 requirements.²⁷³ Under the carriers' carrier business model, each of the Commnet Carriers provides roaming-only service to subscribers of other carriers and has no subscribers of its own.²⁷⁴ Each of the carriers utilizes a switching facility locating outside of its market and thus some distance from the PSAP.²⁷⁵ Further, each operates in rural areas using analog, TDMA, or GSM technologies.²⁷⁶ The Commnet Carriers stated that handset-based solutions are not available for any of their network technologies.²⁷⁷ In addition, due to the nature of their networks, they also claimed that network-based solutions, necessarily requiring triangulation, are not feasible.²⁷⁸ Only one of the Commnet Carriers, MoCelCo, LLC, has received a Phase II request.²⁷⁹

110. The Commnet Carriers requested a permanent or long-term (at least 5 years) waiver of the Phase II requirements.²⁸⁰ Alternatively, they requested that they be declared in compliance with all E911 obligations, on the basis that the Commission's E911 rules were not intended to apply to carriers

²⁷¹ See *id.* at 1.

²⁷² Under the Commission's rules, a carrier is required to provide E911 only if the PSAP requesting service is capable of receiving and utilizing the data and a mechanism for recovering PSAP costs is in place. 47 C.F.R. § 20.18(j).

²⁷³ See Petition for Limited and Temporary Waiver of Deadlines for Implementation of Phase II E911 on the Same Basis as Other Tier III Wireless Carriers, and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Sept. 9, 2002 (Commnet Petition); Amendment and Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911 and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Aug. 15, 2003 (Commnet Amendment). The carriers, jointly filing, include Commnet Wireless, Inc.; Commnet of Arizona, LLC; Commnet of Delaware, LLC; Elbert County Wireless, LLC; Chama Wireless LLC.; Excomm, LLC; Commnet PCS, Inc.; MoCelCo, LLC; Tennessee Cellular Telephone Company; Commnet Capital, LLC; Commnet of Florida, LLC; and Prairie Wireless, LLC. See Commnet Amendment at 2-3.

²⁷⁴ See Commnet Amendment at 1, 4.

²⁷⁵ See *id.* at ii, 3.

²⁷⁶ See *id.* at 3, 4.

²⁷⁷ See *id.* at 4.

²⁷⁸ See *id.* at 4-5.

²⁷⁹ See *id.* at 5.

²⁸⁰ See *id.* at 6.

providing roaming-only service.²⁸¹ The Commnet Carriers also sought a waiver of the Commission's ruling in the *King County* case that the 911 selective router is the demarcation point for allocating costs between a wireless carrier and a PSAP E911 obligations.²⁸²

111. *Applicability of Phase II Requirements.* The Commission has made clear that wireless carriers providing services similar to commercial mobile radio services are subject to the E911 rules.²⁸³ Specifically, the Commission specified criteria for determining which licensees should be subject to its E911 requirements. It required compliance by those licensees: (1) that offered real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services; (2) whose customers clearly expected access to 911 and E911; (3) that competed with analog and broadband PCS providers; and (4) where it is technically and operationally feasible to provide enhanced 911 service.²⁸⁴

112. All of these criteria apply to carriers providing roaming-only service. First, roaming-only service, like service provided by licensees with customers of their own, interconnects to the public switched network. Further, roaming-only service provided by carriers' carriers is indistinguishable from service provided by the caller's "home" wireless service provider, and, therefore, consumers of roaming-only service would have the same expectations as when using their home network with respect to having access to E911 service. Additionally, carriers' carriers clearly compete with other facilities-based CMRS licensees. Finally, as other facilities-based licensees have shown through their deployment of the infrastructure necessary for E911 to occur, it is technically feasible to comply with the Commission's rules, and, as explained more fully below, it also is technically feasible for carriers' carriers to comply as well. Accordingly, we reject the Commnet Carriers' argument that the Commission's E911 rules were not intended to apply to roaming-only service providers.

113. *Phase II Requirements.* Having established that carriers' carriers are subject to the Commission's E911 requirements, we next address the Commnet Carriers' request for a permanent or long-term extension to comply with the Phase II rules. In view of the critical importance of the Commission's E911 rules to public safety, the Commission has insisted that carriers seeking relief must provide specific evidence in support of their request, as well as a clear path to full compliance, and cannot rely on generalized assertions of technical infeasibility.²⁸⁵ The Commnet Carriers' petition fails to meet this standard. The Commnet Carriers made only conclusory assertions that they have no handset-based or network-based options to provide Phase II service, presented no plan whatsoever for compliance, and offered no evidence of any efforts to work with vendors to investigate potential solutions. We would require substantial further justification, on a case-by-case basis, and in more focused requests for relief, in order to consider these waiver requests, as well as information describing efforts to cooperate with PSAPs

²⁸¹ See *id.* at 6-7.

²⁸² See Commnet Amendment at 8 (*citing* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 14789, 14792-93, ¶¶ 8, 10 (2002) (*King County Order*)).

²⁸³ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, IB Docket No. 99-67, *Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340, 25346 ¶¶ 15-16.

²⁸⁴ *Id.* at 25343.

²⁸⁵ See *supra* ¶ 10.

requesting Phase II service. Accordingly, we deny the Commnet Carriers' request for a permanent or long-term waiver of the Commission's Phase II rules. We note that we would be receptive to renewed and specific requests for waiver, provided such requests meet our waiver standards.

114. *King County Demarcation Point.* We also deny the Commnet Carriers' request for a waiver of the requirements set forth in the Commission's *King County Order*. The *King County Order* established the 911 selective router as the demarcation point for allocating E911 implementation costs between wireless carriers and PSAPs, in the absence of an agreement to the contrary between the parties.²⁸⁶ The Commnet Carriers contended that, given that their switches are located outside of their service areas, it would be prohibitively expensive for them to establish dedicated facilities between their mobile switching centers and the 911 selective router.²⁸⁷ The Commnet Carriers requested that the Commission grant them a waiver of the *King County Order* such that the demarcation point is the wireless carrier switch, rather than the 911 selective router.²⁸⁸ They also argued that although the *King County Order* allows for alternate cost allocation arrangements between carriers and PSAPs, the PSAPs have no incentive to even engage in negotiations to share these costs.²⁸⁹

115. In the *King County Order*, the Commission specifically considered and rejected the establishment of a different demarcation point for small rural wireless carriers.²⁹⁰ The Commission concluded that, since the risk incurred where a dispatcher cannot locate a 911 wireless caller does not vary with the size of the wireless carrier that picks up the call, the E911 requirements should apply equally to small and rural carriers and to larger carriers.²⁹¹ Furthermore, the Commission advised that, when its rules impose a disproportionate burden on a particular carrier, the carrier should work with the public safety entities involved to mitigate the burden, and, if necessary, seek individual relief from the Commission.²⁹² We note that the Commnet Carriers have provided no evidence that they have even attempted to work with the PSAPs with respect to implementation costs. The Commnet Carriers have not adequately substantiated their request for waiver of the demarcation point established in the *King County Order*. We note that the Commnet Carriers have assumed worst-case conditions, *e.g.*, that lengthy dedicated T-1 lines are the only way to deliver E911 calls to the 911 selective router, that no cost recovery from other available federal, state, or local sources is available, and that the PSAPs will not be willing to negotiate solutions for sharing implementation costs. Moreover, the Commnet Carriers have not provided specific information regarding the actual or projected cost of the E911 infrastructure they would incur. For the foregoing reasons, we deny the Commnet Carriers' waiver request to establish the mobile switching center as the demarcation point.

²⁸⁶ See *King County Order*, 17 FCC Rcd at 14792-93, ¶¶ 8, 10.

²⁸⁷ See Commnet Petition at 13-14; Commnet Amendment at 9-10.

²⁸⁸ See Comment Petition at ii. Alternatively, the Commnet Carriers suggested that PSAPs should be obligated to pay one-half the cost of separate, dedicated T-1 connections for 911 traffic. See Commnet Amendment at 6 n. 10.

²⁸⁹ See Commnet Amendment at 10 n. 15.

²⁹⁰ See *King County Order*, 17 FCC Rcd at 14796 ¶ 18.

²⁹¹ See *id.*

²⁹² See *id.*

D. Category 4: Carriers Electing a Handset-Based Solution in Conjunction with a GSM Upgrade

116. The three nationwide Tier I carriers using the GSM air interface initially planned to employ a handset-based location technology called Enhanced-Observed Time Difference (E-OTD).²⁹³ Challenges arose during testing and development of this technology, however, and the Tier I GSM carriers now use or are deploying network-based solutions for Phase II.²⁹⁴ Several Tier II and Tier III carriers also are employing network-based solutions.²⁹⁵ The Tier III carriers in the instant category which currently use or are planning to use the GSM air interface, however, have sought waivers to permit them to deploy a handset-based solution for their GSM networks. These carriers recognize that location-capable GSM handsets are not available, but claim that this solution is best-suited to their rural or remote service areas. The carriers in this category generally request lengthy or indefinite relief until location-capable GSM handsets become available. As discussed below, we have reviewed these carriers' individual requests and have afforded relief where appropriate. We note that we fully expect, in cases where we have provided carriers relief to satisfy a revised deployment schedule, that these carriers will comply with these revised dates and benchmarks. We further note that, in the event that location-capable GSM handsets remain unavailable, we would expect carriers to actively explore other location technologies in order to achieve Phase II capability. Carriers should not assume that we would act favorably on future requests for relief on this basis.

117. **Arctic Slope Telephone Association Cooperative, Inc. (ASTAC):** ASTAC provides analog and TDMA-based cellular service to the North Slope of Alaska, and is migrating its network to GSM.²⁹⁶ ASTAC selected a handset-based solution to achieve Phase II compliance, because the characteristics of its network do not permit the necessary triangulation that network-based solutions require.²⁹⁷ ASTAC stated that it planned to complete the overlay of its network with GSM by September 2005, but the unavailability of location-capable GSM handsets would make it impossible to meet the handset deployment benchmarks.²⁹⁸ ASTAC requested extensions of the following deadlines: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handset; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are

²⁹³ See 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 (2000). E-OTD is a positioning method that generally relies upon measuring the time at which signals from the Base Transceiver Station arrive at two geographically dispersed locations -- the mobile phone/station and a fixed measuring point known as the Location Measurement Unit, whose location is known.

²⁹⁴ See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, T-Mobile USA, Inc. Amended Request for Limited Modification of E911 Phase II Implementation Plan, 17 FCC Rcd 24908 (2002).

²⁹⁵ See Amarillo License, L.P. and High Plains Wireless, L.P Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 2 and Modified Request for Further Modification, CC Docket No. 94-102, filed Feb. 27, 2004, at 4; Corr Wireless Communications, LLC Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1-2; PCS License Company L.L.C. Phase II E911 Implementation Report, CC Docket No. 94-102, filed May 3, 2004, at 3.

²⁹⁶ See Arctic Slope Telephone Association Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 11, 2003, at 2 (ASTAC Petition).

²⁹⁷ See *id.* at 2-3.

²⁹⁸ See *id.* at 2, 6, 9.

location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.²⁹⁹ ASTAC reported that it was on schedule to meet the December 31, 2005 ninety-five percent handset penetration requirement.³⁰⁰

118. ASTAC stated that, as each segment of the system is converted to GSM, it planned to offer location-capable handsets to customers served by those cell sites, assuming equipment vendors can deliver such handsets.³⁰¹ ASTAC also noted that it was investigating the use of software defined radios in its GSM overlay network, which also would be an upgrade to a CDMA interface.³⁰² ASTAC reported that it has been working closely with state emergency services administrators with respect to E911 deployment, and that the sole PSAP in ASTAC's territory is not expected to have Phase II capability in the near future due to lack of state funds.³⁰³ In its January 8, 2004 Second Interim Report, ASTAC indicated that it expected location-capable GSM handsets to be available during the fourth quarter of 2004, when it expected to begin deployment of its GSM upgrade.³⁰⁴

119. *Benchmark Relief.* We find that ASTAC has been diligent in pursuing a location solution for its network. Further, we believe that ASTAC has satisfied the Commission's standards for seeking relief of the Commission's Phase II implementation requirements. Given its rural service area, ASTAC has chosen to pursue a handset-based solution, and ASTAC has been making progress towards completing its GSM overlay to enable such a solution. Furthermore, ASTAC has been meeting with vendors, coordinating its efforts with the PSAP, and has provided a clear path to full compliance with respect to its transition to GSM. ASTAC, through no fault of its own, is dependent on the availability of location-capable GSM handsets.

120. For these reasons, we grant ASTAC the following extensions: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handset; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

121. **Edge Wireless Licenses, LLC (Edge):** Edge operates TDMA networks in Oregon, Idaho, Wyoming, and California. Edge provides roaming-only GSM service in Idaho and Wyoming, and

²⁹⁹ See *id.* at 11-12.

³⁰⁰ See Second Interim Report Regarding E911 Phase II Deployment Arctic Slope Telephone Association Cooperative, Inc., CC Docket No. 94-102, filed Jan. 8, 2004, at 2 (Second Interim Report). ASTAC also mentioned, however, that it was possible that it may not meet this deadline. See *id.* In the event that ASTAC anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, ASTAC should file an appropriate and timely request for relief.

³⁰¹ See Supplement to Arctic Slope Telephone Association Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Dec. 1, 2003, at 3 (ASTAC Dec. 2003 Supplement).

³⁰² See *id.*

³⁰³ See *id.* at 5.

³⁰⁴ See Second Interim Report at 2. We note that location-capable GSM handsets are not yet available.

both roaming and home GSM service in Oregon and California.³⁰⁵ Edge stated that because it operates in a predominantly rural area, it had selected a handset-based location technology for both its TDMA and GSM network, as a network-based solution may not meet the Phase II accuracy and reliability standards for its rural network.³⁰⁶ Edge sought a waiver of the Commission's Phase II requirements with respect to the sale and activation of location-capable handsets, based on the fact that there are no location-capable TDMA or GSM handsets available.³⁰⁷ Edge stated that there is no reasonable way for it to comply with the September 1, 2003 deadline to commence the sale and activation of location-capable handsets for either its TDMA or GSM network, as such handsets were not available.³⁰⁸

122. Edge stated that it installed Phase II-compatible GSM network equipment and will install the required software and equipment at its Medford, Oregon switch after location-capable handsets are commercially available and distributed to Edge subscribers.³⁰⁹ Edge reported that it has no agreements in place to obtain location-capable handsets, but it anticipated that Phase II service will be available on its GSM network in the second half of 2005.³¹⁰ Edge further stated that it is unlikely it will achieve ninety-five location-capable handset penetration by December 31, 2005, but did not specifically seek a waiver of this requirement.³¹¹ Edge noted that it has been actively working with the PSAPs in its service area regarding the deployment of Phase II service,³¹² and it does not appear the Edge has received any valid Phase II PSAP requests.³¹³

123. *Benchmark Relief.* Given its rural service area, we find it reasonable for Edge to pursue a handset-based solution, and Edge has made progress towards completing its GSM overlay and installing Phase II-compatible network equipment to enable such a solution. However, Edge has not provided sufficient information to warrant a waiver of the Commission's rules. Edge has not provided details with respect to its efforts to meet with vendors, and with PSAPs, and has not provided specific schedules and a clear path to full compliance with respect to its transition to GSM. Furthermore, Edge has not provided any dates for when it plans to commence activation of location-capable handsets.

124. However, given that Edge has been working with the PSAPs in its area regarding the deployment of Phase II service, that no PSAPs in Edge's service area have requested Phase II service, and that Edge is dependent on the availability of location-capable GSM handsets, we will grant Edge a limited

³⁰⁵ See Edge Wireless Licenses, LLC E911 Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1 (Edge Interim Report).

³⁰⁶ See Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Sept. 2, 2003, at 2 (Edge Waiver Request); Edge Interim Report at 2.

³⁰⁷ See Edge Waiver Request at 3-4; Edge Interim Report at 1. Edge did not offer any specific dates for when it would be able to meet the location-capable handset activation benchmarks.

³⁰⁸ See *id.*

³⁰⁹ See Edge Interim Report at 2.

³¹⁰ See *id.* at 3. Edge noted that it currently provides Phase II service in four counties in Oregon using the TDMA/Airbiquity solution. See *id.*

³¹¹ See *id.*

³¹² See *id.* at 1.

³¹³ See *id.* at 2.

extension of time to comply with the Commission's rules. We would expect that during this time Edge would submit a waiver request that provides a clear path toward full compliance and evidence of Edge working with vendors and PSAPs toward that end. Specifically, we grant Edge the following extensions: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.³¹⁴

125. **Key Communications, LLC (Key) and Keystone Wireless, LLC (Keystone):** Key and Keystone operate GSM networks in West Virginia and Pennsylvania, respectively. In a jointly filed petition, the carriers stated that due to the failure of handset manufacturers to make available location-capable GSM handsets, they decided to pursue a hybrid Phase II solution.³¹⁵ The carriers explained that the installation of a Nortel solution, based on Timing Advance/Network Measurement Report (TA/NMR) technology, involves a network-based component, followed by deployment of A-GPS handsets.³¹⁶ They noted that the network component alone does not meet the accuracy requirements contained in the Commission's rules, but that it offers a greater level of accuracy than Phase I service.³¹⁷ The carriers stated that A-GPS handsets are not likely to be available until the third or fourth quarter of 2005.³¹⁸ Even once the handsets are deployed, the carriers submitted that the system still may not be capable of meeting the accuracy requirements of the Commission's rules.³¹⁹

126. Key reported that it has informed requesting PSAPs of its plan to implement a hybrid Phase II solution and that the involved PSAPs are satisfied with the proposed implementation schedule.³²⁰ Keystone also reported that it has informed the requesting PSAPs of its plan to implement a hybrid solution, but that the involved PSAPs have expressed some concern about Keystone's implementation

³¹⁴ In the event that Edge anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, Edge should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

³¹⁵ See Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Dec. 10, 2003, at 2-3 (Key and Keystone Supplement). In an earlier petition, the carriers explained that they were considering a handset-based Phase II solution, because the terrain in their coverage areas precludes network-based triangulation. See Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Aug. 21, 2003, at 1, 3-4 (Key and Keystone Aug. 2003 Petition). See also Key Communications, LLC Tier III Carrier Interim Report Fourth Quarter 2004, CC Docket No. 94-102, filed Jan. 3, 2005, at 2 (Key Interim Report) and Keystone Wireless, LLC Tier III Carrier Interim Report Fourth Quarter 2004, CC Docket No. 94-102, filed Jan. 3, 2005, at 2 (Keystone Interim Report) (each stating that only a minor portion of its service area is potentially susceptible to triangulation techniques).

³¹⁶ See Second Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Jan. 3, 2005, at 1-2 (Key and Keystone Second Supplement).

³¹⁷ See Key and Keystone Supplement at 3-4.

³¹⁸ See Key and Keystone Second Supplement at 2.

³¹⁹ See *id.* at 3-4 (submitting that Nortel cannot guarantee that even with full implementation of the TA/NMR technology, the Phase II accuracy requirements will be met).

³²⁰ See Key Interim Report at 3.

schedule.³²¹ The carriers requested extensions from September 1, 2003 until October 1, 2006 to commence the sale and activation of location-capable handsets, from November 30, 2003 until December 31, 2006 to ensure that at least twenty-five percent of handsets activated are location-capable, from May 31, 2004 to June 30, 2007 to ensure that at least fifty percent of handsets activated are location-capable, and from November 30, 2004 to December 31, 2007 to ensure that one-hundred percent of handsets activated are location-capable.³²² Furthermore, Key and Keystone requested a stay of the Section 20.18(h) accuracy requirements until December 31, 2011, or twelve months from receipt of a valid E911 Phase II request, whichever is later.³²³

127. *Benchmark relief.* We find that good cause exists to grant limited relief to Key and Keystone. It appears that they have stayed abreast of technological developments and modified their plans accordingly in an effort to achieve compliance, as evidenced by their decision to explore the TA/NMR solution. However, in light of the fact that the carriers stated that A-GPS handsets would be available by third or fourth quarter 2005, we will grant more limited extensions than requested. Specifically, we grant Key and Keystone the following extensions: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and (4) from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable. We believe that the relief granted properly balances the expected availability of location-capable handsets for GSM networks with the critical need to ensure that Phase II services are made available as quickly as possible.

128. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.³²⁴ We believe that a thirteen-month timeframe should provide Key and Keystone with an adequate period of time to ensure that their embedded customer base uses location-capable handsets. Because we extend Key's and Keystone's deadlines for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford Key and Keystone an additional thirteen months from this date to ensure that the handset penetration rate among their subscribers reaches ninety-five percent. Accordingly, Key and Keystone must ensure that ninety-five percent of their subscriber bases has location-capable handsets by January 31, 2006.³²⁵

³²¹ See Keystone Interim Report at 3. Keystone added that it has retained Intrado to assist it in working with the PSAPs to resolve their concerns. See *id.*

³²² See Key and Keystone Second Supplement at 4.

³²³ See *id.*

³²⁴ Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

³²⁵ Because we relied on our established rules and precedent in granting the relief of the handset penetration deadline to Key and Keystone, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. Our decision, however, does not preclude Key and Keystone from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

129. *Accuracy requirements.* We deny Key's and Keystone's requests for relief from the accuracy requirements as premature. As the carriers indicate, the accuracy of their planned systems cannot be known until they are installed and activated.³²⁶ Accordingly, the carriers may submit a more specific request for relief in the future should they determine, after installation, that such a waiver is needed.³²⁷

130. **Enterprise Wireless PCS, L.L.C. (Enterprise):**³²⁸ Enterprise operates analog and TDMA networks in Georgia, Alabama, and South Carolina, and is migrating these networks to GSM. Enterprise sought waivers of the September 1, 2003 deadline to commence sale and activation of location-capable handsets, the November 30, 2003 deadline to ensure that at least twenty-five percent of handsets activated are location-capable, and the May 31, 2004 deadline to ensure that at least fifty percent of handsets activated are location-capable.³²⁹ The carrier planned to meet the November 30, 2004 deadline to ensure that one-hundred percent of handsets activated are location-capable.

131. Enterprise stated that network-based solutions are incapable of performing triangulation from isolated rural sites, and that location-capable GSM handsets do not exist.³³⁰ Enterprise intended to deploy a GSM handset-based Phase II solution as part of its GSM network overbuild as soon as location-capable handsets became available.³³¹ Enterprise also reasoned that the waiver would not come at the cost of delay or prejudice to public safety in its service territory, as there were no pending Phase II requests.³³² In a November 2003 Supplement, Enterprise stated that it had definitive plans to proceed with a GSM overlay and had already implemented GSM at a number of cell sites.³³³ Enterprise argued that grant of its waiver would preserve the handset-solution option, if and when location-capable GSM handsets become available, while denial might well preclude it from ever being able to deploy a Phase II solution that meets the accuracy requirements.³³⁴

132. *Benchmark Relief.* We find that Enterprise has been diligent in pursuing a location solution for its network. Further, we believe that Enterprise has satisfied the Commission's standards for

³²⁶ See Key and Keystone Second Supplement at 3-4.

³²⁷ See *supra* ¶¶ 10, 105.

³²⁸ Enterprise originally filed its request for relief as a joint filing with Public Service Cellular, Inc. (PSC). See Petition of Public Service Cellular, Inc. and Enterprise Wireless PCS, L.L.C. for Limited Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (PSC and Enterprise Petition). FCC licenses held by PSC recently were acquired by ALLTEL Communications, Inc. See FCC File No. 0001993328. Counsel for PSC subsequently filed a letter to amend the joint filing to withdraw the portion pertaining to PSC. See Letter from Carl W. Northrop and W. Ray Rutngamlug, Paul, Hastings, Janofsky & Walker LLP, to Marlene H. Dortch, Secretary, FCC, dated Mar. 7, 2005. Accordingly, we will address only those portions of the petitions filed jointly by PSC and Enterprise that are applicable to Enterprise.

³²⁹ See PSC and Enterprise Petition at 1.

³³⁰ See *id.* at 2, 4.

³³¹ See *id.* at 5.

³³² See *id.*

³³³ See Supplement to Petition of Public Service Cellular, Inc. and Enterprise Wireless PCS, L.L.C. for Limited Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2003, at 2.

³³⁴ See *id.* at 2-3.

seeking relief of the Commission's Phase II implementation requirements. Given its rural service area, Enterprise has chosen to pursue a handset-based solution, and it has been making progress towards completing its GSM overlay to enable such a solution. Furthermore, Enterprise has provided a clear path to full compliance with respect to its transition to GSM. Enterprise, through no fault of its own, is dependent on the availability of location-capable GSM handsets. Accordingly, we grant the following extensions, as requested: (1) from September 1, 2003 until November 30, 2004 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until November 30, 2004 to ensure that at least twenty-five percent of handsets activated are location-capable; and (3) from May 31, 2004 until November 30, 2004 to ensure that at least fifty percent of handsets activated are location-capable.

133. Finally, we note that we are perplexed by Enterprise's request for relief, including its statement that it expected to meet the November 30, 2004 deadline to ensure that one-hundred percent of handsets activated are location-capable, given the fact that GSM location-capable handsets are not yet available. We would have expected Enterprise to have further supplemented its request for relief in light of the fact that GSM location-capable handsets are not yet available. If changed circumstances have affected Enterprise's need for relief of the Commission's sale and activation benchmarks, we would expect Enterprise to submit further requests for waiver relief. Further, in the event that Enterprise anticipates that it cannot comply with the December 31, 2005 ninety-five percent handset penetration deadline, Enterprise should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*.³³⁵

E. Category 5: TDMA/AMPS Carriers Electing a Handset-Based Solution

134. The carriers in this section request extended relief from application of the Commission's E911 rules, including extension of the initial and interim benchmarks for selling and activating location-capable handsets. They note, for example, that location-capable handsets are not available for TDMA or AMPS and that their customers will be reluctant to purchase location-capable handsets for other air interfaces until such service actually is available. The carriers also assert that their local PSAPs have not requested Phase II service and are not likely to do so in the near future.

135. **Copper Valley Wireless, Inc. (CVW):** CVW operates in a sparsely populated area of Alaska, serving 1162 subscribers as of April 2004.³³⁶ CVW stated that it uses Plexsys analog equipment which has been discontinued and no longer is supported.³³⁷ Accordingly, there are no network equipment and software upgrades available to enable processing or transmitting of ALI data using its analog network.³³⁸ CVW explained that it had no other choice but to modernize its network to either CDMA or GSM, which it anticipated would be complete by December 31, 2005.³³⁹ CVW requested that the

³³⁵ See *supra* ¶ 11.

³³⁶ See Copper Valley Wireless, Inc. Request for Waiver or Temporary Stay, CC Docket No. 94-102, filed June 3, 2004, at 4 (CVW Waiver Request).

³³⁷ See *id.* at 2.

³³⁸ See *id.* at 5.

³³⁹ See *id.* at 5. We note that in a subsequent filing in the local number portability proceeding, CVW stated that it elected to upgrade its network with the CDMA air interface, and that the new equipment would be installed and operational by February 25, 2006. See Petition for Waiver of Extension of Time, CC Docket No. 95-116, filed Dec. 23, 2004, at 11. However, CVW has not subsequently amended its E911-related waiver request to reflect (continued....)

Commission waive all interim benchmarks for selling and activating location-capable handsets, and instead allow CVW until December 31, 2005 to not only begin selling and activating location-capable handsets, but to begin selling and activating only location-capable handsets.³⁴⁰ CVW did not request a waiver of the December 31, 2005 ninety-five percent penetration requirement. Further, CVW has not received any Phase I or II requests.³⁴¹

136. *Benchmark relief.* We find that good cause exists to grant CVW a waiver of the interim benchmark requirements. Since its analog network no longer was being supported, it had no options for implementing Phase II capability absent a digital upgrade. We are thus encouraged by CVW's efforts at choosing a technology that will allow it to come into compliance, including specifying a timeframe for completing its upgrade. Completion of its digital upgrade will afford CVW more options to achieve Phase II capability. Under these circumstances, the steps CVW has taken towards achieving compliance demonstrate a commitment to satisfying our requirements and warrant an extension. We also find it significant to our decision to grant CVW relief that its local PSAPs have not made any requests for receiving Phase I or Phase II service. We encourage CVW to coordinate its efforts in connection with its upgrade with the PSAPs in its service area. In this way, CVW can ensure that community expectations are consistent with its projected plans for achieving compliance.

137. For the foregoing reasons, we grant CVW's request to extend from September 1, 2003 until December 31, 2005 the deadline to begin the sale and activation of location-capable handsets. We waive the interim benchmark dates for CVW to ensure that twenty-five and fifty percent of all new handset activations are location-capable. Finally, we grant an extension from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of all new handset activations are location-capable.³⁴²

138. **Cordova Wireless Communications, Inc. (Cordova):** Cordova operates an analog network between the Chugach and Wrangell mountain ranges and the Gulf of Alaska, encompassing five square miles of land and two square miles of water.³⁴³ Cordova serves 300 customers with two cell towers that are mainly directed out to sea to accommodate a commercial fishing-oriented customer base.³⁴⁴ Cordova elected a handset-based location solution, as it would be impossible to triangulate using only its two towers.³⁴⁵ Approximately seventy percent of Cordova's customers are commercial fisherman, and thus Cordova argued that these customers have an alternative means of contacting

(Continued from previous page) _____

any changes to either its selection of a new digital air interface or its schedule for implementing a new air interface.

³⁴⁰ See CVW Waiver Request at 1, 6.

³⁴¹ See *id.* at 3.

³⁴² We advise CVW that if it anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, CVW should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

³⁴³ See Cordova Wireless Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 7, 2003, at 2 (Cordova Petition).

³⁴⁴ See *id.* at 2.

³⁴⁵ See *id.* at 5 n.11.

emergency services that may provide location information.³⁴⁶ Cordova stated that it was committed to eventually replacing its switch with a digital upgrade, but claimed that emergency location systems would be redundant for the fishing vessels used by its most of its customers, and that the \$1 million expense of a replacement switch and network upgrade would lead to bankruptcy.³⁴⁷ Cordova reported that it has not received any Phase I or Phase II PSAP requests, and that there is no public safety entity capable of utilizing Phase II data in its service area.³⁴⁸ Cordova stated that it may be in a position to implement Phase II as early as September 30, 2006.³⁴⁹ Cordova also indicated that it does not expect to meet the December 31, 2005 for achieving a ninety-five penetration rate for location-capable handsets.³⁵⁰

139. *Benchmark Relief.* We understand that Cordova serves a small and sparsely-populated area, but the sparseness of that area may only amplify the need to provide E911 Phase II location information. Our concerns are somewhat allayed by the fact that many of the subscribers to Cordova's service have an alternative means of contacting emergency services that may provide location information. On the other hand, that necessarily means that its remaining land-based customers do not have such options available to them. We also are mindful of the financial costs described by Cordova involved with implementing a digital upgrade, its efforts to expand its network to generate more revenue,³⁵¹ and the fact that no PSAP has made a request for either Phase I or Phase II service. Given its rural service area, we find it reasonable for Cordova to have chosen to pursue a handset-based solution, but Cordova has not indicated whether it has made any efforts to meet with vendors, and has not provided specific schedules and a clear path to full compliance with respect to its transition to a digital air interface. Cordova also has not indicated whether it can seek financing from federal, state, or local sources. Furthermore, Cordova is quite non-specific in terms of the relief it seeks, as it has not provided any dates for when it might anticipate being able to commence activation of location-capable handsets. Due to the shortcomings in Cordova's request, we are unable to grant Cordova the full relief that may be warranted.

140. Given that no PSAPs in Cordova's service area have requested E911 service, however, and the particular factual, technical, and economic circumstances concerning Cordova's network, we will grant Cordova a limited extension of time to comply with the Commission's rules until such time it can file a request for waiver that meets our waiver standards. Specifically, we grant Cordova the following extensions from the Commission's interim benchmarks: (1) from September 1, 2003 until September 1, 2005 to begin selling and activating location-capable handset; (2) from November 30, 2003 until September 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until December 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and (4) from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

³⁴⁶ See *id.* at 2-4. As Cordova stated in its waiver request, many of its customers are on fishing vessels, which are required to carry location tracking systems. See *id.* at 4. The remaining non-sea-based customers total ninety. See *id.* at 4-5.

³⁴⁷ See *id.* at 5-7.

³⁴⁸ See Second Interim Report Regarding E911 Phase II Deployment, Cordova Wireless Communications, Inc., CC Docket No. 94-102, filed Jan. 14, 2004, at 1 (Cordova Second Interim Report).

³⁴⁹ See *id.* at 3.

³⁵⁰ See *id.*

³⁵¹ See *id.* at 2.

141. Finally, we note that while we are sympathetic to Cordova's circumstances, we cannot afford Cordova the relief that it seeks without the submission of a waiver request that complies with our requirements. We therefore encourage Cordova, given the unique challenges it faces, to file a renewed request for waiver of our rules in accordance with the guidance we provide above for meeting our waiver standard.³⁵²

142. **OTZ Telecommunications, Inc. (OTZ):** OTZ operates a single-cell TDMA system serving 175 customers in a small Eskimo community above the Arctic Circle supplied mainly by cargo planes.³⁵³ OTZ stated that location-capable TDMA handsets are not available and because of its low subscribership, it cannot afford to upgrade its network from TDMA to another digital network to begin selling location-capable handsets.³⁵⁴ OTZ estimated that the cost to upgrade its facilities would be \$1 million and would exceed \$5700 per customer to cover its upfront switch replacement costs.³⁵⁵ As a result, OTZ asserted that it simply cannot afford to implement the network upgrades necessary to enable a Phase II solution.³⁵⁶ OTZ indicated that it has not received any Phase I or Phase II requests, nor is the single PSAP in its area equipped to handle receipt of wireless location information.³⁵⁷ OTZ requested that the deadlines to begin selling and activating handsets be extended until such time as a cost-effective solution is developed that does not prematurely negate OTZ's current plant investment, until an effective cost recovery mechanism is established that will mitigate the burdens on OTZ's customers of a technology overlay, or until OTZ's present equipment has reached the end of its useful life and needs replacement.³⁵⁸

143. *Benchmark Relief.* We understand that OTZ serves a small, isolated and sparsely-populated area, but the sparseness of that area may only amplify the need to provide E911 Phase II location information. We also are mindful of the financial costs described by OTZ involved with implementing a digital upgrade, and the fact that the PSAP has not made a request for either Phase I or Phase II service, nor is it capable of receiving location data. Given its rural service area, we find it reasonable for OTZ to have chosen to pursue a handset-based solution, but OTZ has not indicated whether it has made any efforts to meet with vendors, and has not provided specific schedules and a clear path to full compliance with respect to its transition to a digital air interface. OTZ also has not indicated whether it can seek financing from federal, state, or local sources. Furthermore, OTZ has not provided specific schedules or any dates for when it might anticipate being able to commence activation of

³⁵² In light of the fact that Cordova mentioned that it was possible that it may not meet the December 31, 2005 handset penetration deadline, we also encourage Cordova to file an appropriate and timely request for relief of this requirement, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

³⁵³ See OTZ Telecommunications, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003, at 2 (OTZ Petition); Second Interim Report Regarding E911 Phase II Deployment OTZ Telecommunications, Inc., CC Docket No. 94-102, filed Jan. 8, 2004, at 1-2 (OTZ Second Interim Report). Given that OTZ's network consists of a single cell site, it is not possible to accomplish triangulation using a network-based location solution. See *OTZ Petition* at 2.

³⁵⁴ See *OTZ Petition* at 3-5; *OTZ Second Interim Report* at 1-2.

³⁵⁵ See *OTZ Petition* at 4.

³⁵⁶ See *id.* OTZ has provided the Commission with specific financial information to establish these estimates.

³⁵⁷ See *id.* at 7.

³⁵⁸ See *id.* at 10.

location-capable handsets. Due to the shortcomings in OTZ's request, we are unable to grant OTZ the full relief that may be warranted.

144. Given that the PSAP in OTZ's service area has not requested E911 service, however, and the particular factual, technical, and economic circumstances concerning OTZ's network, we will grant OTZ a limited extension of time to comply with the Commission's rules until such time it can file a request for waiver that meets our waiver standards. Specifically, we grant OTZ the following extensions: (1) from September 1, 2003 until September 1, 2005 to begin selling and activating location-capable handset; (2) from November 30, 2003 until September 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until December 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and (4) from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

145. Finally, we note that while we are sympathetic to OTZ's circumstances, we cannot afford OTZ the relief that it seeks without the submission of a waiver request that complies with our requirements. We therefore encourage OTZ, given the unique challenges it faces, to file a renewed request for waiver of our rules in accordance with the guidance we provide above for meeting our waiver standard.³⁵⁹

F. Category 6: Other Requests

146. In this category, we address petitions filed by both network-based and handset-based carriers. The petitions present a range of relatively minor issues, including license transfers or other changed circumstances that make certain of these petitions moot, as well as requests for nominal benchmark relief.

147. **Alabama Wireless, Inc.:** On August 24, 2001, Alabama Wireless requested a waiver seeking additional time to deploy a handset-based Phase II solution.³⁶⁰ Subsequently, in an August 29, 2003 letter, Alabama Wireless indicated that it sold its license to Verizon on January 19, 2002 and that its E911 request may thus be dismissed as moot.³⁶¹ In this regard, Alabama Wireless filed a request to withdraw its petition.³⁶² Accordingly, we dismiss Alabama Wireless' request for waiver as moot.

148. **Amarillo License, L.P. and High Plains Wireless, L.P. (Amarillo and High Plains):** Amarillo and High Plains provide Phase II service through a network-based solution.³⁶³ In January 2005, Amarillo and High Plains submitted a supplement to their earlier requests for an extension of time until

³⁵⁹ We advise OTZ that if it anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, it should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

³⁶⁰ See Request for Limited Phase II E911 Waiver, CC Docket No. 94-102, filed Aug. 24, 2001, at 2.

³⁶¹ See E911 Extension Request, CC Docket No. 94-102, filed Feb. 22, 2005, at 1.

³⁶² See Letter from David J. Kaufman to Joel Taubenblatt, Acting Chief, Policy Division (Feb. 23, 2005).

³⁶³ See Seventh Further Modified Request for Further Modification of Deadlines of Amarillo License, L.P. for Station KNKA574 and High Plains Wireless, L.P. for Station KNL919 on Implementation of Wireless Enhanced 911 Phase II Automatic Location Identification (ALI) System, CC Docket No. 94-102, filed Dec. 23, 2004, at 2.

June 30, 2005 to provide Phase II E911 service to the entire PSAP area within their service territories.³⁶⁴ Specifically, the supplement included a copy of an electronic mail message from the PSAP indicating its consent to the revised implementation schedule proposed by Amarillo and High Plains.³⁶⁵

149. We find Amarillo and High Plains' extension request unnecessary. A carrier and a PSAP may establish deadlines different than those required under the Commission's rules.³⁶⁶ When a carrier and a PSAP reach such an agreement, a waiver of the Commission's rules is unnecessary. As the carriers and the PSAP have reached agreement on a revised implementation schedule, we dismiss as moot Amarillo's and High Plains' petition for waiver.

150. **Blanca Telephone Company (Blanca):** Blanca originally requested extension of the twenty-five percent benchmark from November 30, 2003 to May 30, 2004, the fifty percent benchmark from May 31, 2004 to November 30, 2004, the one-hundred percent benchmark from November 30, 2004 to May 30, 2005, and the ninety-five percent location-capable handset penetration benchmark from December 31, 2005 until June 30, 2006.³⁶⁷ Blanca requested this relief because it had been told by its vendors that they would be unable to provide location-capable handsets in sufficient quantities to enable Blanca to meet the benchmark requirements.³⁶⁸ However, Blanca subsequently reported that it would in fact be able to order location-capable handsets in sufficient quantities by the end of November 2003.³⁶⁹ It thus modified its waiver request to seek an extension only of the November 30, 2003 deadline, until May 30, 2004, to ensure that at least twenty-five percent of handsets activated are location-capable.³⁷⁰ Otherwise, Blanca expected to timely reach the fifty percent and one-hundred percent benchmarks.³⁷¹

151. It appears that Blanca has significantly accelerated its deployment of location-capable handsets beyond that required by the *Non-Nationwide Carriers Order* and has taken substantial, effective steps to comply with the Phase II rules. Accordingly, we find good cause to grant Blanca's request for a limited waiver of the November 30, 2003 deadline for ensuring that at least twenty-five percent of handsets activated are location-capable until May 30, 2004 benchmark. We dismiss as moot Blanca's August 1, 2003 request for waiver of additional relief to extend the deadline for the fifty percent benchmark from May 31, 2004 to November 30, 2004, the one-hundred percent benchmark from

³⁶⁴ See Supplement to Seventh Further Modified Request for Further Modification of Deadlines of Amarillo License, L.P. for Station KNKA574 and High Plains Wireless, L.P. for Station KNLF919 on Implementation of Wireless Enhanced 911 Phase II Automatic Location Identification (ALI) System, CC Docket No. 94-102, filed Jan. 31, 2005.

³⁶⁵ See *id.*

³⁶⁶ See 47 C.F.R. § 20.18(j)(5) ("Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f), and (g)(2) of this section.").

³⁶⁷ See Blanca Telephone Company E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Aug. 1, 2003.

³⁶⁸ See *id.* at 1-2.

³⁶⁹ See Blanca Telephone Company Supplement to E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Nov. 7, 2003, at 1.

³⁷⁰ See *id.* at 1-2.

³⁷¹ See *id.* at 2.

November 30, 2004 to May 30, 2005, and the ninety-five percent location-capable handset penetration benchmark from December 31, 2005 until June 30, 2006.

152. **ComScape Telecommunications of Raleigh-Durham License, Inc. (ComScape):** ComScape provides CDMA-based service in two regions in North Carolina. ComScape earlier had requested for its Wilmington License affiliate the same relief afforded other Tier III carriers under the Commission's *Non-Nationwide Carriers Order*.³⁷² The *Order to Stay* granted this request, thus allowing additional time for its Wilmington License affiliate to comply with the E911 interim benchmarks.³⁷³ In its request being addressed herein, ComScape sought the same relief granted in the *Order to Stay* to its Wilmington License affiliate for its Raleigh-Durham affiliate.³⁷⁴ In a joint January 2004 Interim Report, ComScape stated that it had not received any PSAP requests but intended to meet any valid Phase II requests within six months of receipt.³⁷⁵ It also stated that location-capable handsets are available, that it would continue to obtain them, and that it anticipated that it will be able to comply with the Tier III deployment schedule, including the December 31, 2005 ninety-five percent handset penetration deadline.³⁷⁶ We grant ComScape's request to extend the relief granted in the *Order to Stay* to its Raleigh-Durham affiliate.

153. **Corr Wireless Communications, LLC (Corr):** Corr provides GSM and TDMA service in Alabama.³⁷⁷ It provides Phase II service through a network-based solution.³⁷⁸ Corr sought relief from the September 1, 2003 deadline to begin providing Phase II service to at least fifty percent of the PSAP's coverage area or population, as established by the *Non-Nationwide Carriers Order*, to January 15, 2004, in order to complete its initial deployment of network-based Phase II location solutions in response to PSAP requests.³⁷⁹ In its January 2004 Interim Report, Corr stated that it completed installation of the Phase II network-based system throughout its TDMA network in mid-December 2003, and that the system is fully operational.³⁸⁰ Corr also reported that installation and integration of the Phase II solution

³⁷² See Report and Request for Modification of Deadlines of ComScape Telecommunications of Wilmington License, Inc. on Plan for Implementation of Wireless Enhanced 911 Phase II Automatic Location Identification (ALI) System for Station KNLG700, CC Docket No. 94-102, filed Aug. 19, 2002.

³⁷³ See *Order to Stay*, 18 FCC Rcd at 20999 ¶ 33.

³⁷⁴ See Report and Request for Modification of Deadlines of ComScape Telecommunications of Raleigh Durham License, Inc. on Plan for Implementation of Wireless Enhanced 911 Phase II Automatic Location Identification (ALI) System for Station KNLG699, CC Docket No. 94-102, filed Oct. 23, 2003.

³⁷⁵ See Interim Report on Implementation of Wireless Enhanced 911 Phase II Automatic Location Identification (ALI) of ComScape Telecommunications of Raleigh Durham License, Inc. for Station KNL699 and of ComScape Telecommunications of Wilmington License, Inc. for Station KNLG700, CC Docket No. 94-102, filed Jan. 13, 2004, at 2-3.

³⁷⁶ See *id.* at 3.

³⁷⁷ See Interim Report for Tier III Carriers; Corr Wireless Communications, LLC, CC Docket No. 94-102, filed Jan. 15, 2004, at 2 (Corr Jan. 2004 Interim Report).

³⁷⁸ See *id.* at 1.

³⁷⁹ See Further Supplement to Corr Wireless Communications, LLC's Emergency Petition for Short-Term Waiver, CC Docket No. 94-102, filed Dec. 16, 2003, at 1.

³⁸⁰ See Corr Jan. 2004 Interim Report at 2.

into Corr's GSM overlay network was expected shortly and that, as of January 14, 2004, its vendor had declared the system ready for commercial application.

154. We find that relief is warranted in this case. Corr was granted an extension under the *Non-Nationwide Carriers Order*, as well as a stay under the *Order to Stay*. While the stay was in place, Corr completed its network upgrade so that its system was fully operational. Based on the foregoing reasons, we grant Corr an extension from September 1, 2003 to January 15, 2004 to begin providing Phase II service to at least fifty percent of either the PSAP's coverage area or its population.

155. **Great Western Cellular Holdings, L.L.C. (GWCH):** GWCH filed a petition for waiver on November 6, 2002 seeking modification of the implementation deadlines.³⁸¹ At that time, GWCH was in the process of building out its network and had only recently initiated service.³⁸² In an August 1, 2003 report, GWCH stated that it had moved to a "carrier's carrier" business model, under which it would provide roaming services to other carriers' subscribers but would not have any subscribers of its own.³⁸³ GWCH requested an interim waiver of the Phase II rules while it completed its network build-out.³⁸⁴

156. On March 19, 2004, however, GWCH filed a petition to withdraw its request without prejudice, citing recent favorable developments in its E911 compliance capabilities and efforts, particularly in the expected performance of a network-based solution.³⁸⁵ GWCH stated that it had selected a network-based solution vendor, was working with the Minnesota State 911 Project Manager to provide a plan to meet Phase II compliance by December 31, 2005,³⁸⁶ and had arranged an alternative deployment date in accordance with the Phase II rules.³⁸⁷ It therefore requested to withdraw its petition on the grounds that its request for relief was premature.³⁸⁸ We grant GWCH's petition to withdraw its petition for waiver.

157. **Minnesota Southern Cellular Telephone Company dba HickoryTech Wireless (Hickory Tech):** Hickory Tech operated a TDMA network in Minnesota. In an August 25, 2003 Petition, Hickory Tech stated that it would deploy a network-based solution and sought a waiver seeking additional time to complete deployment and testing and a waiver of the accuracy requirements until December 31, 2005.³⁸⁹ Hickory Tech also requested a waiver of the handset deployment requirements, in

³⁸¹ Great Western Cellular Holdings, L.L.C. Petition for Waiver of the Commission's E911 Implementation Deadlines, CC Docket No. 94-102, filed Nov. 6, 2002.

³⁸² See *id.* at 2.

³⁸³ See Great Western Cellular Holdings, L.L.C. Tier III Carrier Interim Report, CC Docket No. 94-102, filed Aug. 1, 2003 at 1.

³⁸⁴ See *id.* at 2.

³⁸⁵ See Great Western Cellular Holdings, L.L.C. Petition to Withdraw Petition for Waiver Without Prejudice, CC Docket No. 94-102, filed Mar. 19, 2004 at 1 (GWCH Petition to Withdraw).

³⁸⁶ See 47 C.F.R. § 20.18(j)(5).

³⁸⁷ See GWCH Petition to Withdraw at 3-4.

³⁸⁸ See *id.*

³⁸⁹ See Petition of Minnesota Southern Wireless Company dba Hickory Tech for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003, at ii-iii.

recognition of the possibility that it would implement a handset-based solution in some of its licensed areas in the future.³⁹⁰

158. Subsequently, Hickory Tech was acquired by Western Wireless Corporation, a Tier II carrier employing a handset-based solution.³⁹¹ According to Western Wireless, it had received approval of its E911 migration plan for Hickory Tech's service area from the Minnesota Statewide 9-1-1 Program Manager, and under this plan expected to complete Hickory Tech's migration and on-going E911 deployments by the end of June 2004.³⁹² In subsequent reports, Western Wireless indicated that it has completed Phase II deployments covering nearly its entire network in Minnesota and had met all pending Phase II requests.³⁹³ In view of these changed circumstances, including the acquisition of Hickory Tech by Western Wireless, the change implemented by Western Wireless to a location-based technology, Western Wireless' agreement with the State of Minnesota on its deployment plan, and the reported successful Phase II deployment by Western Wireless, we dismiss the Hickory Tech petition as moot.

159. **Missouri RSA # 5 Partnership dba Chariton Valley Wireless Services (Chariton Valley):** Chariton Valley operates a TDMA network in Missouri, recently completed a GSM overlay, and plans to employ a network-based location solution.³⁹⁴ Chariton Valley was granted relief in the *Non-Nationwide Carriers Order*. In August 2003, Chariton Valley stated that on January 24, 2003 it had received one Phase II request in Macon County, Missouri but that an upgrade to its switch, originally scheduled for September 12, 2003, was delayed by its switch vendor until October 17, 2003.³⁹⁵ Chariton Valley requested a temporary Phase II waiver under which it would begin providing enhanced Phase II 911 services to at least fifty percent of the Macon County PSAP's coverage area or population on September 1, 2004, instead of by July 24, 2004 (six months following the PSAP's request) and to one-hundred percent of the Macon County PSAP's coverage area or population by September 1, 2005, instead of by July 24, 2005 (eighteen months following the PSAP's request).³⁹⁶ For any new PSAP requests, Chariton Valley requested that its deadline for providing enhanced Phase II 911 services to at least fifty percent of a PSAP's coverage area or population begin on September 1, 2004 or within six months of a PSAP request, whichever is later, and to one-hundred percent of the PSAP's coverage area or population by September 1, 2005 or within eighteen months of a PSAP request, whichever is later.³⁹⁷ In a January 2004 Interim Report, Chariton Valley stated that it would provide Phase II service to one-hundred percent

³⁹⁰ See *id.* at iii.

³⁹¹ See Quarterly Report of Western Wireless Corporation on its Enhanced 911 Phase II Deployment, CC Docket No. 94-102, filed Feb. 2, 2004, at 10.

³⁹² See *id.*

³⁹³ See Quarterly Report of Western Wireless Corporation on its Enhanced 911 Phase II Deployment, CC Docket 94-102, filed Aug. 2, 2004 at 9; Quarterly Report of Western Wireless Corporation on its Enhanced 911 Phase II Deployment, CC Docket No. 94-102, filed Nov. 1, 2004, Appendix A at 1-4.

³⁹⁴ See Missouri RSA # 5 Partnership Petition for Waiver of Section 20.18(f) of the Commission's Rules, CC Docket No. 94-102, filed August 27, 2003, at 1-2 (Chariton Valley Petition); Second Supplement and Amendment to Missouri RSA # 5 Partnership Petition for Waiver of Section 20.18(f) of the Commission's Rules, CC Docket No. 94-102, filed Mar. 10, 2005, at 2 (Chariton Valley Supplement).

³⁹⁵ See Chariton Valley Petition at 3-6.

³⁹⁶ See *id.* at 9-10.

³⁹⁷ *Id.*

of the Macon County PSAP service area by April 30, 2004, that it had not received any additional Phase II requests, and that it fully expected to be able to provide Phase II service within six months of any new Phase II requests.³⁹⁸

160. On March 10, 2005, Chariton Valley reported substantially changed circumstances, citing to internal management problems, and mounting cost and accuracy issues that developed with its location solution vendor.³⁹⁹ As an initial matter, Chariton Valley updated its January 2004 Second Interim Report to indicate that it received two additional PSAP requests for Phase II service, from Shelby County on April 20, 2004, and from Chariton County on September 10, 2004.⁴⁰⁰ Chariton Valley then reported that it would be unable to meet either of these new requests, as well as the initial Macon County request, until October 18, 2005.⁴⁰¹ Accordingly, Chariton Valley now requests the following extensions of the requirement to begin providing E-911 Phase II services to at least fifty percent of a PSAP's coverage area or population: (1) with respect to the Macon County, from July 24, 2004 until October 18, 2005, (2) for Shelby County, from October 20, 2004 until October 18, 2005, and (3) for Chariton County, from March 10, 2005 until October 18, 2005. With respect to Macon County only, Chariton Valley also sought relief from July 24, 2005 until October 18, 2005 to begin providing Phase II services to one-hundred percent of the PSAP's coverage area or population. For any new PSAP requests received by April 17, 2005, Chariton Valley requested an extension until October 18, 2005 to begin providing Phase II service to fifty percent of a PSAP's coverage area or population.⁴⁰²

161. Chariton Valley has entered into discussions for a "first office application" with a new E-911 vendor that it believes can provide the most accurate, cost-effective, and timely Phase II solution, and now expects to have a Phase II solution implemented by October 18, 2005.⁴⁰³ Although Chariton Valley's new General Manager has been keeping the Macon, Shelby, and Chariton County PSAPs apprised of its implementation schedule,⁴⁰⁴ neither the Macon County PSAP nor the Shelby County PSAP were willing to extend their requests.⁴⁰⁵ Notwithstanding its acknowledged inability to make "any measurable progress" with its former Phase II vendor,⁴⁰⁶ Chariton Valley stated that its new vendor's solution may prove to be relatively more accurate and affordable and thus of potential future benefit to

³⁹⁸ See Second Interim Report Regarding E911 Phase II Deployment, Missouri RSA #5 Partnership dba Chariton Valley Wireless Services, CC Docket No. 94-102, filed Jan. 14, 2004, at 1-2 (Second Interim Report).

³⁹⁹ See Chariton Valley Supplement at 4-5. Specifically, Chariton Valley stated that it had to replace its General Manager responsible for overseeing its Phase II implementation process, and that its costs for its chosen location solution were rising while its location vendor was unable to confirm it could meet the Commission's accuracy requirements.

⁴⁰⁰ See *id.* at 3.

⁴⁰¹ See *id.*

⁴⁰² See *id.* at 4.

⁴⁰³ See *id.* at 5-6.

⁴⁰⁴ See *id.* at 6.

⁴⁰⁵ See *id.* at 5.

⁴⁰⁶ See *id.* at 8.

similarly situated Tier III carriers.⁴⁰⁷ Most recently, Chariton Valley reported that it had the concurrence of all three PSAPs to its revised implementation schedule.⁴⁰⁸

162. *Deployment of Network Equipment.* As an initial matter, we are concerned that Chariton Valley waited until March 10, 2005 to notify the Commission that it would not meet its previously reported date of April 30, 2004 by which it expected to be able to provide Phase II services. We caution carriers to keep us apprised should they fail to meet previously-reported implementation dates. In any event, under the Commission's E911 rules, a carrier and a PSAP may agree to a deployment schedule that allows for different timeframes than under the Commission's rules.⁴⁰⁹ As Chariton Valley and the PSAPs in Macon County, Shelby County, and Chariton County have reached such an agreement, we dismiss as moot Chariton Valley's petition for waiver.

163. **North Dakota PCS Alliance (Alliance):** Alliance was granted a stay in the October 10, 2003 *Order to Stay* based on a petition for relief filed on July 31, 2002, shortly after adoption of the *Non-Nationwide Carrier Order*.⁴¹⁰ In a November 10, 2003 letter, the North Dakota Network Company stated that it was granted relief in the *Non-Nationwide Carrier Order* and, as the successor-in-interest to Alliance, the request for relief in the Alliance Petition should be considered moot.⁴¹¹ Accordingly, we dismiss the Alliance Petition as moot.

164. **RSA 1 Limited Partnership dba Cellular 29 Plus (Cellular 29):** Cellular 29 provides analog and digital CDMA service in Iowa, and has selected a handset-based solution. Cellular 29 sought waiver of the September 1, 2003 benchmark to begin selling and activating location-capable handsets.⁴¹² According to its filings, Cellular 29 began selling and activating location-capable handsets in late October or early November 2003.⁴¹³ The relief sought by Cellular 29 is minimal, as it was able to begin selling and activating location-capable handsets within two months of September 1, 2003. Additionally, as Cellular 29 indicated in its supplement, at the time of its request, none of the PSAPs in its service area had

⁴⁰⁷ See *id.* According to Chariton Valley, its new vendor, GBSB Technologies, Inc., utilizes automatic direction finding technology, which is a new type of angle of arrival technology designed for use in rural markets. See *id.* at 9.

⁴⁰⁸ See Third Supplement to Missouri RSA # 5 Partnership Petition for Waiver of Section 20.18(f) of the Commission's Rules, CC Docket No. 94-102, filed Mar. 18, 2005, at 1; Fourth Supplement to Missouri RSA # 5 Partnership Petition for Waiver of Section 20.18(f) of the Commission's Rules, CC Docket No. 94-102, filed Mar. 22, 2005, at 1-2.

⁴⁰⁹ See 47 C.F.R. § 20.18(j)(5).

⁴¹⁰ See North Dakota PCS Alliance Petition for Waiver of E911 Phase II Location Technology Implementation Rules, CC Docket No. 94-102, filed July 30, 2002.

⁴¹¹ See Letter from Steven D. Lyme, CEO/General Manager North Dakota Network Co. to Marlene Dortch, Secretary, FCC, dated Nov. 10, 2003.

⁴¹² See Supplement to Petition of RSA 1 Limited Partnership dba Cellular 29 Plus for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2003 at 2 (Cellular 29 Supplement).

⁴¹³ See Cellular 29 Supplement at 2. Cellular 29 does not provide a specific date, rather it states in the supplement that "within the past two weeks, Cellular 29 [received] the ALI-handsets."

requested either Phase I or Phase II service.⁴¹⁴ For these reasons, we find good cause to grant Cellular 29's request for waiver of the September 1, 2003 benchmark.

165. **Sussex Cellular, Inc. (Sussex):** Sussex operates an AMPS-based system and has elected to provide Phase II location information through a network-based solution.⁴¹⁵ In an earlier filing, Sussex indicated that it would employ a handset-based solution for its analog network in rural New Jersey and requested a waiver of the benchmark requirements.⁴¹⁶ Sussex has no PSAP requests for Phase II service.⁴¹⁷ Because Sussex has elected to fulfill its E911 obligations through a network-based system, it is no longer required to comply with the handset deployment deadlines. We therefore dismiss as moot its request for relief from those requirements.

166. **Rural Telecommunication Group (RTG) Petition:** RTG is a trade association representing rural carriers.⁴¹⁸ On August 29, 2003, RTG filed a petition requesting a waiver and temporary limited stay of portions of the wireless E911 rules as they applied to small carriers with 100,000 or fewer subscribers, as of December 31, 2003, operating in rural areas.⁴¹⁹ RTG proposed revised schedules for these carriers based upon the air interface and location technology a carrier employs.⁴²⁰ For those carriers with fewer than three cell sites in a licensed service area and deploying a network-based solution, RTG requested that they be allowed an extension of twenty-four months of a PSAP request to provide Phase II service to one-hundred percent of a PSAP's coverage area or population.⁴²¹ For carriers with three or more cell sites, but with a sufficiently low "Tower Density Factor,"⁴²² RTG also requested that they be allowed twenty-four months from a PSAP's request to come into compliance with the accuracy standards, provided such carriers commit to deploying state-of-the-art network-based Phase II technology.⁴²³

⁴¹⁴ See *id.* at 3.

⁴¹⁵ See Sussex Cellular, Inc. Amendment of E-911 Phase II Implementation Plan, CC Docket No. 94-102, filed Nov. 10, 2003 (Sussex 2003 Amendment). In its amended implementation plan, Sussex stated that because a handset-based solution is not technically feasible for its AMPS system and the expense of a digital conversion cannot be justified, it has elected a network-based solution. See *id.* at 1.

⁴¹⁶ See Sussex Cellular, Inc. Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules, CC Docket No. 94-102, filed Sept. 28, 2001.

⁴¹⁷ See Enhanced 911 Tier III Interim Report, Sussex Cellular, Inc., CC Docket no. 94-102, filed Jan. 14, 2004, at 2.

⁴¹⁸ RTG describes itself as an organized group of rural telecommunications providers who have joined to provide telecommunications technologies to remote and underserved sections of the country, including wireless services. See Petition for Waiver and Request for Temporary Limited Stay of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 29, 2003 at 1, n. 1 (RTG Petition).

⁴¹⁹ See *id.* at 3-4. RTG proposes that carriers with 100,000 or fewer subscribers be classified as "Tier IV" carriers. See *id.* at 3-4.

⁴²⁰ See *id.* at 9-11.

⁴²¹ See *id.* at 4-5.

⁴²² See *id.* at 5-6 and n.10. The TDF is intended to be used as a proxy to determine average density and distance between cell towers, to approximate ALI capabilities.

⁴²³ See *id.* at 5-7.

167. RTG also proposed an alternative handset deployment schedules for Tier IV carriers. Specifically, RTG requested a six-month extension of the Tier III handset deployment benchmarks for CDMA carriers relying on a handset-based solution, and a twelve-month extension for TDMA carriers that are converting to CDMA.⁴²⁴ Carriers who were relying on a CDMA handset solution, and received a PSAP request on or before September 1, 2003, would be given six months of the PSAP request, or by March 1, 2004, whichever is later, to deploy Phase II capability.⁴²⁵ Tier IV CDMA carriers who were formerly relying on TDMA technology, and who receive a PSAP request on or before March 1, 2004, must meet these requirements within six months of a request or by September 1, 2004, whichever is later.⁴²⁶ Tier IV carriers relying on GSM handsets would be given an additional twenty-four months to meet the handset deployment and penetration benchmarks established for Tier III carriers.⁴²⁷ Tier IV carriers relying on a GSM handset solution who have already received a PSAP request prior to March 1, 2005 would be granted a stay until six months after receipt of the PSAP request or by September 1, 2005, whichever is later.⁴²⁸

168. Alternatively, RTG proposed making handset deployment deadlines contingent upon a PSAP request for Phase II service.⁴²⁹ Specifically, once a valid PSAP request is received, a carrier must begin selling and activating location-capable handsets no later than six months after receipt; ensure that at least twenty-five percent of handsets activated are location-capable no later than nine months after receipt, ensure that at least fifty percent are location-capable no later than fifteen months after receipt, ensure one-hundred percent no later than twenty-one months after receipt, and achieve ninety-five percent penetration no later than fifty-seven months after receipt.⁴³⁰

169. For the reasons discussed below, we deny RTG's requested relief. In this *Order*, and throughout the course of this proceeding, the Commission has provided Tier III carriers additional amounts of time to comply with the Phase II requirements. The Commission has granted such relief only in cases where carriers provided the Commission with concrete, specific plans, including technical data and sufficient and specific factual information. In contrast, RTG's petition does not provide the type of specific information we need to properly evaluate whether granting relief is warranted. For example, RTG does not identify the particular carriers to whom its request would apply, nor does it explain why the carriers it represents cannot meet the deployment or accuracy requirements. While RTG raises valid issues concerning the problems facing rural carriers as a general matter, a more individually tailored approach would best address the twin goals of ensuring that E-911 services are made available as soon as possible while avoiding unnecessary burdens on rural carriers.

170. In addition, we find that RTG's proposed relief, as it applies to carriers employing a network-based solution, to be overbroad. RTG's proposal would apply to all carriers who elect a network-based solution, regardless of whether any carrier could comply with the Phase II requirements by

⁴²⁴ See *id.* at 7-11.

⁴²⁵ See *id.* at 11.

⁴²⁶ See *id.*

⁴²⁷ See *id.* at 12.

⁴²⁸ See *id.*

⁴²⁹ See *id.* at 13.

⁴³⁰ See *id.* at 13-14.

employing an alternative solution, such as a handset-based solution. Further, RTG's claim that deployment of network-based solutions would require substantial resources does not account for the fact that in many cases carriers may be reimbursed from state funds or other sources.⁴³¹ RTG also presents insufficient evidence to support the specific definitions it proposes and does not fully explain the connection between cell site density and the requested extensions in meeting the accuracy requirements. For example, RTG does not explain how the requested extension would assist the carriers in eventually meeting the accuracy requirements.

171. We also find that RTG's proposed alternate deployment schedule for carriers employing a handset-based solution is overbroad. RTG's proposal would grant additional time to carriers, even though our record indicates location-capable CDMA handsets and associated network equipment are now readily available.⁴³² Additionally, the general delays in handset deployment sought by RTG could result in unnecessary and unjustified delays in Phase II implementation for carriers who do not in fact require further relief. For the foregoing reasons, we deny RTG's request for relief.

G. Reporting Requirements

172. To assist in monitoring Tier III carriers' E911 deployment progress, we require, as a condition of the relief granted to individual Tier III carriers in this *Order*, that each such carrier file an interim status report (Interim Report). The Interim Report will be due on September 1, 2005, by which time we expect these carriers to have made significant progress towards deploying E911 service. This report is intended to provide specific, verifiable information to allow us to monitor Tier III carriers' progress closely and determine whether Tier III carriers are on track for compliance with each of the benchmarks of this *Order* and with other applicable provisions of the E911 rules. The Interim Report will include the following information: (1) the number of Phase I and Phase II requests received from Public Safety Answering Points (PSAPs) (including those the carrier may consider invalid) and the status of those requests, including whether the carrier and the PSAP have reached an alternative deployment date; (2) the carrier's specific technology choice; (3) status on ordering and/or installing necessary network equipment; (4) the date on which Phase II service was/will first be available in the carrier's network; and (5) if the carrier is pursuing a handset-based solution, (a) whether ALI-capable handsets are available, and whether the carrier has obtained ALI-capable handsets or has agreements in place to obtain these handsets; and (b) information on the carrier's progress towards ensuring that ninety-five percent of its subscriber base has location-capable handsets.

IV. CONCLUSION

173. We remain committed to ensuring that E911 services, and particularly Phase II ALI services, are made available to the public as quickly as possible. However, we must balance this goal with the financial and technical limitations faced by certain carriers. Therefore, we granted relief of Phase II implementation deadlines only in cases where carriers have sufficiently met our stringent standards for obtaining a waiver of our rules. We strongly encourage carriers to coordinate their implementation efforts with the affected PSAPs to ensure that the expectations of public safety agencies are aligned with the carriers' deployment plans.

⁴³¹ See, e.g., *supra* ¶ 11 and *Order to Stay*, 18 FCC Rcd at 20997 ¶ 29.

⁴³² See *supra* ¶ 9.

174. We remind carriers that the Commission has not hesitated to exercise its enforcement authority in circumstances in which such action served the public interest.⁴³³ The Commission trusts that those carriers afforded relief will now focus their resources on overcoming any obstacles that they may face in ensuring timely compliance with their current E911 deployment obligations. The Commission expects that any Tier III carrier that has been granted relief in this *Order* will adhere to its revised deployment schedule. In the event that carriers fail to take the concrete steps necessary to implement, in good faith, any revised deployment schedule, the Commission may refer such carriers to the Enforcement Bureau for appropriate action.

V. ORDERING CLAUSES

175. Accordingly, IT IS ORDERED, pursuant to the Commission's exercise of authority under Section 1.3 of the Commission's rules, that the foregoing *Order* IS ADOPTED.

176. IT IS FURTHER ORDERED, that the requests for relief of the wireless E911 rules by ACS Wireless, Inc.; Cellular Phone of Kentucky, Inc.; Cordova Wireless Communications, Inc.; Edge Wireless Licenses, LLC; Litchfield County Cellular, Inc. dba Ramcell of Kentucky, LLC; Key Communications, LLC and Keystone Wireless, LLC; Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular; OTZ Telecommunications, Inc.; Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc.; and South Canaan Cellular Communications Company, L.P. ARE GRANTED TO THE EXTENT INDICATED HEREIN BUT ARE OTHERWISE DENIED.

177. IT IS FURTHER ORDERED, that the request for relief filed by Alaska DigiTel, LLC of the network equipment deployment requirements IS DISMISSED WITHOUT PREJUDICE and the request for relief filed by Alaska DigiTel, LLC of the Phase II benchmark requirements IS DENIED.

178. IT IS FURTHER ORDERED, that the request for relief filed by Cellular Mobile Systems of St. Cloud, LLC of the network equipment deployment requirements IS DISMISSED WITHOUT PREJUDICE and the request for relief filed by Cellular Mobile Systems of St. Cloud, LLC of the Phase II benchmark requirements IS GRANTED.

179. IT IS FURTHER ORDERED, that the request for relief filed by N.E. Colorado Cellular, Inc. of the network equipment deployment requirements IS DISMISSED IN PART AND GRANTED IN PART and the request for relief filed by N.E. Colorado Cellular, Inc. of the accuracy requirements IS DENIED.

180. IT IS FURTHER ORDERED, that the requests for relief of the wireless E911 rules filed by Arctic Slope Telephone Association Cooperative, Inc.; Cellular South Licenses, Inc.; ComScape Telecommunications of Raleigh-Durham License, Inc.; Copper Valley Wireless, Inc.; Corr Wireless Communications LLC; Custer Telephone Cooperative, Inc.; Enterprise Wireless PCS, L.L.C.; Highland Cellular, LLC; Iowa RSA 2 Limited Partnership dba Lyrinx Wireless; Leaco Rural Telephone Cooperative, Inc.; North Carolina RSA 3 dba Carolina West Wireless; Northwest Missouri Cellular Limited Partnership; RSA 1 Limited Partnership dba Cellular 29 Plus; South No. 5 RSA LP dba Brazos Cellular Communications, LLC; Wilkes Cellular, Inc.; and Wireless Communications Venture ARE GRANTED.

⁴³³ See, e.g., AT&T Wireless Services, Inc., Notice of Apparent Liability and Forfeiture, File No. EB-02-TS-018 (May 20, 2002); T-Mobile USA, Notice of Apparent Liability and Forfeiture, File No. EB-02-TS-624 (Mar. 5, 2003).

181. IT IS FURTHER ORDERED, that the request for relief filed by Southern Illinois RSA Partnership dba First Cellular of Southern Illinois IS DISMISSED WITHOUT PREJUDICE.

182. IT IS FURTHER ORDERED, that the Petition for Limited and Temporary Waiver of Deadlines for Implementation of Phase II E911 on the Same Basis as Other Tier III Wireless Carriers, and for Waiver of *King County* Demarcation Point Ruling filed by Commnet Wireless, Inc. *et al.* IS DENIED.

183. IT IS FURTHER ORDERED, that the requests for relief of the E911 Phase II rules filed by Alabama Wireless, Inc.; Amarillo License, L.P. and High Plains Wireless, L.P.; Minnesota Southern Cellular Telephone Company dba HickoryTech Wireless; Missouri RSA #5 Partnership dba Chariton Valley Wireless Services; North Dakota PCS Alliance; and Sussex Cellular, Inc. ARE DISMISSED AS MOOT.

184. IT IS FURTHER ORDERED, that the additional time requested by Blanca Telephone Company to meet the twenty-five percent benchmark for location-capable handset activations IS GRANTED and that its requests for further relief ARE DISMISSED AS MOOT.

185. IT IS FURTHER ORDERED, that the March 19, 2004 Petition to Withdraw by Great Western Cellular Holdings, L.L.C. IS GRANTED and its November 6, 2002 Petition for Waiver IS DISMISSED AS MOOT.

186. IT IS FURTHER ORDERED that the Petition for Waiver and Request for Temporary Limited Stay filed by the Rural Telecommunications Group IS DENIED.

187. IT IS FURTHER ORDERED that those Tier III carriers granted individual waiver relief herein must file an Interim Report on their progress and anticipated compliance with the terms and conditions set forth herein and with the Commission's wireless E911 rules.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary