

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

In the Matter of)	
)	
Revision of the Commission’s Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
Farmers Mutual Telephone Company Petition for)	
Limited Waiver)	

ORDER

Adopted: February 22, 2006

Released: February 22, 2006

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission’s wireless Enhanced 911 (E911) Phase II requirements filed by Farmers Mutual Telephone Company (Farmers),¹ a Tier III wireless service provider.² Specifically, Farmers seeks a twenty-four month extension of time to comply with the requirement in Section 20.18(g)(1)(v) of the Commission’s Rules that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.³

2. Timely compliance with the Commission’s wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when the requesting carrier has met the Commission’s standard for waiver of the Commission’s rules.⁴ Where carriers have met the standard, the relief granted has required compliance with the Commission’s rules and policies within the shortest practicable time.⁵ We are also mindful of Congress’ directive in the

¹ See Farmers Mutual Telephone Company Petition for Temporary and Limited Waiver of Section 21.18(g)(1)(v) of the Commission’s Rules, CC Docket No. 94-102, filed Nov. 14, 2005 (Farmers Petition). The Farmers Petition was originally filed under the name of Farmers Mutual Cooperative Telephone Company. On January 30, 2006, Farmers filed a correction indicating that the correct name of the Petitioner is Farmers Mutual Telephone Company. See Company Name Correction Regarding Farmers Mutual Telephone Company’s Petition for Temporary and Limited Waiver of Section 21.18(g)(1)(v) of the Commission’s Rules, CC Docket No. 94-102, filed Jan. 30, 2006.

² Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

³ See 47 C.F.R. § 20.18(g)(1)(v).

⁴ See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*).

⁵ See *id.*

ENHANCE 911 Act to grant waivers for Tier III carriers of the 95% penetration benchmark if “strict enforcement . . . would result in consumers having decreased access to emergency services.”⁶

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that some relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant Farmers an extension, until one year from the date of release of this *Order*, to achieve 95% penetration among its subscribers of location-capable handsets. These conditions are particularly important because Farmers has failed to demonstrate a “clear path to full compliance” with the Commission’s December 31, 2005, handset penetration requirement consistent with the Commission’s E911 waiver standards.⁷

II. BACKGROUND

A. Phase II Requirements

4. The Commission’s E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁸ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁹ or Global Positioning System (GPS) or other location technology in subscribers’ handsets (a handset-based solution).¹⁰ The Commission’s rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹¹ However, before a wireless licensee’s obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.¹²

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission’s Rules, independent of any PSAP request for Phase II service.¹³ After ensuring that 100% of all new digital handsets activated are location-

⁶ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). *See also infra* ¶ 8.

⁷ Because we find that some relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Farmers met the Commission’s waiver standard. Although demonstration of a “clear path to full compliance” is not required to warrant some relief under the ENHANCE 911 Act, this element of our waiver standard provides useful guidance in determining the extent to which such relief should be granted.

⁸ *See* 47 C.F.R. § 20.18(e).

⁹ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. *See* 47 C.F.R. § 20.3, *Network-based Location Technology*.

¹⁰ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. *See* 47 C.F.R. § 20.3, *Location-Capable Handsets*.

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

¹² *See* 47 C.F.R. § 20.18(j)(1).

¹³ *See* 47 C.F.R. § 20.18(g)(1).

capable, licensees must achieve 95% penetration, among their subscribers, of location-capable handsets no later than December 31, 2005.¹⁴

B. Waiver Standards

6. The Commission has recognized that smaller carriers may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.¹⁵ The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”¹⁶ 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.¹⁷ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁸ A carrier’s justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.¹⁹ The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier’s projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.²⁰

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant

¹⁴ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (“wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations”); Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003)(*Order to Stay*) (“under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted”).

¹⁶ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000) (*Fourth MO&O*). See also 47 C.F.R. §§ 1.3, 1.925(b)(3); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁷ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁸ 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.*

¹⁹ See *id.*

²⁰ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.²¹ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

8. Finally, distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).²² The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²³

C. Request for Waiver

9. Farmers is a Tier III carrier providing Personal Communications Services (PCS) over a Code Division Multiple Access (CDMA) network to 2157 subscribers in remote portions of rural Idaho and small portions of Oregon on the Idaho state border.²⁴ Specifically, Farmers is licensed to serve Malheur County, Oregon, Valley County, Idaho, and portions of Payette and Washington Counties in Idaho.²⁵ Using a handset-based E911 Phase II solution, Farmers asserts that it has met all of the Commission's interim handset sale and activation deadlines established for Tier III carriers in the *Non-Nationwide Carriers Order*.²⁶ Farmers requests an extension of the December 31, 2005 deadline for achieving 95% penetration of location-capable handsets until December 31, 2007.²⁷

10. In support of its request, Farmers states that it has "gone to great lengths to encourage its customers to upgrade to location-capable phones."²⁸ Specifically, in the spring of 2005, Farmers sent a letter to 500 of its customers who had not upgraded, offering them a free location-capable handset, and 200 of these customers chose to upgrade their phones.²⁹ Despite making additional contacts with customers who continue to retain their old phones,³⁰ Farmers reports that "[t]hese customers state that

²¹ See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²² National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²³ *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* at § 107(b), 118 Stat. 3986, 3991.

²⁴ Farmers Petition at 2. In the second quarter of 2005, Farmers completed the necessary Phase II upgrades to its CDMA network and began selling and activating handsets with A-GPS-based automatic location identification (ALI) capabilities. *Id.*

²⁵ According to the 2000 census, the population densities for these counties are as follows: Malheur County has a population density of 3.2 persons per square mile, Valley County, 2.1 persons per square mile, Payette, 50.5, and Washington, 6.9. See <http://www.census.gov>.

²⁶ Farmers Petition at 2, 6.

²⁷ *Id.* at 1, 5. Farmers reports that 61% of its customers had converted to location-capable handsets as of October 20, 2005. *Id.* at 2.

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3.

³⁰ *Id.*

they are happy with their phones and their features and, in many cases, do not want to take the time to learn how to operate a new phone,”³¹ and that they “have demonstrated an unwillingness to upgrade their handsets.”³² For example, fifty-seven of its customers still use the original handsets that Farmers offered five years ago to its customers.³³ Farmers explains that, although its subscribers are gradually adopting equipment upgrades, most of the conversions have been a result of normal churn.³⁴ Farmers states “that it has had to expend considerable effort in working to convert the remaining customers who will not upgrade their handsets in spite of their public safety benefits,”³⁵ and explains that the company faces challenges in converting its existing customers to location-capable handsets, despite contacting and encouraging customers to upgrade.³⁶

11. Farmers therefore asserts that it has not been able to meet the 95% benchmark despite its best efforts to do so, and estimates that it would achieve only 70% penetration by December 31, 2005.³⁷ Farmers indicates that “it can eventually convince most, if not almost all, of its holdout customers to upgrade their phones,” predicting that it could take up to two years to convert the remaining holdout customers to upgrade to location-capable handsets and meet the 95% penetration benchmark.³⁸ Finally, Farmers discusses its “concrete plan to achieve the 95 percent benchmark” and its “plans to vigorously lobby the remaining holdout customers.”³⁹ In light of the circumstances, Farmers requests a twenty-four month extension until December 31, 2007, to convert the remaining subscribers who retain non-location-capable handsets.⁴⁰

III. DISCUSSION

12. We believe that it was critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase II would be fully implemented as quickly as possible.⁴¹ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.⁴² Accordingly, when addressing requests for waiver of the 95% handset penetration deadline,

³¹ *Id.* at 4.

³² *Id.* at 3.

³³ *Id.* 3-4.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 3-4.

³⁷ *Id.* at 2.

³⁸ *See id.* at 5.

³⁹ *Id.*

⁴⁰ *Id.* at 1.

⁴¹ *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

⁴² *See Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.⁴³

13. Consistent with that directive, we believe that, pursuant to the ENHANCE 911 Act, a limited grant of the requested waiver of the December 31, 2005 benchmark is warranted, subject to certain conditions and reporting requirements to permit effective monitoring of Farmers' progress towards full compliance with the Commission's location-capable handset penetration requirement. Specifically, we find that Farmers is entitled to some relief under the ENHANCE 911 Act because strict compliance with the handset penetration requirement "would result in consumers having decreased access to emergency services."

14. As noted earlier, Farmers states it has a "concrete and aggressive plan" to achieve the 95% benchmark.⁴⁴ Specifically, Farmers indicates that it will "send a new promotional letter to its remaining holdout customers . . . that will emphasize the emergency benefits of upgraded handsets and again offer a free phone," "contact, by phone if necessary, each and every holdout that does not respond to the planned letter in order to explain the need to upgrade to ALI-capable handsets," and "is prepared to offer one month of free service to the final holdouts if that is what it takes to convince them to change over to a new, location-capable handset."⁴⁵

15. We note, however, that Farmers failed to provide sufficient information to warrant the full relief requested because Farmers has not adequately shown a "clear path to full compliance" with the 95% handset penetration requirement. While we appreciate the additional efforts Farmers proposes to encourage its customers to upgrade to location-capable handsets, we do not find that Farmers has demonstrated with sufficient specificity that such efforts will achieve a 95% penetration rate within its requested timeframe. For example, Farmers does not explain how and when it would make the determination to start offering a free month of service, or offer other enticements, to ensure adoption of location-capable phones as rapidly as possible. As noted above, where we have granted relief, we have required compliance with the Commission's rules and policies within the shortest practicable time.⁴⁶ Therefore, at this time, we find that Farmers has not justified the requested extension until December 31, 2007.

16. In sum, taking into account the totality of the circumstances, including Farmers' Tier III status, the rural nature of much of Farmers' service area, the future efforts Farmers pledges to undertake to increase its handset penetration level, and consistent with the ENHANCE 911 Act, we conclude that an extension of the December 31, 2005 deadline, until one year from the date of the release of this *Order*, is warranted, subject to certain conditions and reporting requirements so that the Commission can effectively monitor Farmers' progress in meeting the 95% handset penetration benchmark.⁴⁷ In granting this relief, we fully expect Farmers to engage in all necessary efforts to ensure that it meets the 95% handset penetration benchmark as quickly as possible, including any additional efforts that might be required if new developments arise that are not currently foreseen. In the event Farmers finds that it must

⁴³ See *supra* ¶ 8.

⁴⁴ Farmers Petition at 7.

⁴⁵ *Id.* at 4.

⁴⁶ See *supra* ¶ 2.

⁴⁷ We note that the Commission has not received any objections from the public safety community with respect to the instant request.

request further relief, such request must demonstrate that Farmers is taking all necessary efforts to ensure that it meets the 95% benchmark as soon as possible, and be limited in scope with a clear path to full compliance. Further, such efforts should ensure that Farmers would not need to resort to service deactivations to achieve compliance. Absent Farmers' undertaking all necessary efforts on an ongoing basis, Farmers should not assume that the Commission would act favorably on any future request for relief.

17. *Conditions of Grant.* As a condition of the relief granted herein, Farmers has an ongoing obligation, until it achieves a 95% penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, when it reasonably expects PSAPs will make valid requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

18. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief of the December 31, 2005 95% handset penetration requirement granted herein, we will require Farmers to file status reports every February 1, May 1, August 1, and November 1, beginning on May 1, 2006, and until two years following the date of the release of this *Order*.⁴⁸ These reports shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of Farmers' coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect Farmers to achieve compliance as quickly as possible.

IV. CONCLUSION

19. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that Farmers is entitled to a limited extension of the December 31, 2005 requirement that it achieve 95% penetration, among its subscribers, of location-capable handsets. Specifically, we extend the date that Farmers must achieve 95% penetration until one year following release of this *Order*, and impose conditions and reporting requirements to ensure that Farmers achieves full compliance with the Commission's E911 requirements. We reiterate that any party seeking a waiver from our E911 rules must demonstrate a clear path to full compliance.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

⁴⁸ We note that we are requiring Farmers to file status reports beyond the date on which we otherwise require it to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring the progress of Farmers for an additional year following its revised deadline.

21. IT IS FURTHER ORDERED, that the Farmers Mutual Telephone Company Petition for Temporary and Limited Waiver of Section 21.18(g)(1)(v) of the Commission's Rules filed November 14, 2005 IS GRANTED IN PART to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be one year following release of this *Order*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary