

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

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	
Compatibility with Enhanced 911 Emergency	)	CC Docket No. 94-102
Calling Systems	)	
	)	
Request for Waiver by Virginia Cellular LLC, Inc.	)	
d/b/a Cellular One	)	

**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 Virginia Cellular LLC, Inc. d/b/a Cellular One (VA Cellular), a Tier III wireless service provider<sup>1</sup> operating in rural Virginia.<sup>2</sup> Specifically, VA Cellular seeks an eighteen-month extension of time to comply with the requirement contained in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.<sup>3</sup>

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.<sup>4</sup> Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.<sup>5</sup> We are also mindful of Congress' directive in the

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<sup>1</sup> 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*).

<sup>2</sup> See Virginia Cellular LLC, Inc. d/b/a Cellular One (VA Cellular) Request for Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Nov. 15, 2005 at 2 (stating it is a CMRS licensee providing wireless service in rural Virginia) (VA Cellular Request).

<sup>3</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>4</sup> 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*).

<sup>5</sup> 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.”<sup>6</sup>

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that some relief from the 95% handset penetration requirement, until one year following release of this *Order*, is warranted, subject to certain conditions described below. The conditions of this extension are particularly important because VA Cellular 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.<sup>7</sup>

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

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.<sup>13</sup> After ensuring that 100% of all new digital handsets activated are location-

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

<sup>7</sup> 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 VA Cellular 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.

<sup>8</sup> *See* 47 C.F.R. § 20.18(e).

<sup>9</sup> 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*.

<sup>10</sup> 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*.

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

<sup>12</sup> *See* 47 C.F.R. § 20.18(j)(1).

<sup>13</sup> *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.<sup>14</sup>

## 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.<sup>15</sup> 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.”<sup>16</sup> 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.<sup>17</sup>

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from the E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.<sup>18</sup> 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

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<sup>14</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>15</sup> 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”).

<sup>16</sup> 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).

<sup>17</sup> *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

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

Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).<sup>19</sup> 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.”<sup>20</sup>

### C. Request for Waiver

9. VA Cellular is a Tier III carrier that has deployed a CDMA network throughout its service area but continues to operate a legacy analog network.<sup>21</sup> VA Cellular submits that because a minimum of 66% of its subscribers are already using location-capable handsets, the company has made substantial progress toward increasing the percentage of location-capable handsets among its subscribers since July 2003, when it began selling and activating location-capable handsets.<sup>22</sup> VA Cellular requests an extension until June 30, 2007 of the December 31, 2005 deadline for achieving 95% penetration of location-capable handsets.<sup>23</sup>

10. In support of its request, VA Cellular states that it is averaging over 800 location-capable handset upgrades per month, offering “substantial rebates” on location-capable handsets, providing “considerable replacement credits” (in excess of \$50,000 thus far) to convert analog subscribers to digital,<sup>24</sup> and “significantly discounting” equipment pricing for new and existing customers.<sup>25</sup> VA Cellular states that it will be difficult to convert its analog customers to location-capable handsets until the company completes its digital network and offers subscribers the same coverage that its analog system currently provides in rural areas.<sup>26</sup> VA Cellular explains that in its predominantly rural service area, “a number” of its subscribers retain their 3 watt “bag phones” because, relative to digital phones, the higher power of analog phones “provides for superior coverage in rural areas.”<sup>27</sup> Thus, VA Cellular believes that subscribers using bag phones have a “strong disincentive” to upgrade to location-capable handsets.<sup>28</sup> For these reasons, VA Cellular submits that the requested waiver should be granted under the Commission’s waiver standards, as well as under the ENHANCE 911 Act.<sup>29</sup>

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

<sup>20</sup> *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.

<sup>21</sup> VA Cellular Request at 2, 4.

<sup>22</sup> *Id.* at 2-3.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 1-2, 3.

### III. DISCUSSION

11. 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.<sup>30</sup> 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.<sup>31</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We also must remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.<sup>32</sup>

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

13. *Factors Affecting Consumer Acceptance.* As noted above, VA Cellular asserts that, notwithstanding that customers are upgrading to location-capable handsets at the rate of 800 per month, certain customers are reluctant to relinquish their analog phones because of the perceived superior performance of these higher-power "bag phones" in a rural environment.<sup>33</sup> VA Cellular submits that "3 watt analog phone users believe they are safer because the analog phones provide access to 911 service in many areas where a digital handset, even if E911 compliant, would be unable to complete a 911 call."<sup>34</sup> Thus, the company argues that strict enforcement of the 95% penetration requirement, at least at this time, could result in some of its customers having "decreased access to emergency services."<sup>35</sup> For the future, VA Cellular believes that the sunset of the analog service requirement on February 1, 2008 "will likely provide an incentive for customers to upgrade their handsets."<sup>36</sup> Finally, we note that VA Cellular also commits to continue to offer customer incentives to upgrade to location-capable handsets.<sup>37</sup>

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

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

<sup>32</sup> See *supra* ¶ 8.

<sup>33</sup> VA Cellular Request at 4-5.

<sup>34</sup> *Id.* at 5.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.* at 5.

14. *Coordination with PSAPs.* As noted above, part of the Commission’s waiver criteria focus on carrier efforts to work with the PSAPs in its service area, so that “community expectations are consistent with a carrier’s projected compliance deadlines.”<sup>38</sup> In this regard, VA Cellular reports that it has communicated with the PSAPs that serve its operating areas, and none has opposed VA Cellular’s request for an extension of time.<sup>39</sup> VA Cellular has attached letters of support for its request for an extension from Harrisonburg City/Rockingham County, and the County of Augusta.<sup>40</sup> Additionally, VA Cellular notes that it provides compliant, operational Phase II service in Harrisonburg City, Waynesboro City, and Rockingham and Augusta counties, and will provide service in Nelson County once the county completes upgrades that will enable receipt of Phase II service.<sup>41</sup>

15. *ENHANCE 911 Act.* We note VA Cellular’s contention that strict enforcement of the 95% penetration requirement could act to deprive certain of its customers of access to emergency services.<sup>42</sup> In this connection, we accept VA Cellular’s representation that the company’s current digital network could not provide those customers with service comparable to that achieved with the analog system.<sup>43</sup> Accordingly, we conclude that, at present, requiring the company’s customers to use location-capable phones in areas in which VA Cellular’s analog service is perceived as superior to its digital service, would impair the ability of certain 911 callers to summon aid in the event of an emergency. Accordingly, VA Cellular has established that strict enforcement of the 95% penetration requirement would result in customers having “decreased access to emergency services” within the meaning of the ENHANCE 911 Act.

16. We find, however, that VA Cellular failed to provide sufficient information to warrant the full relief requested because it has not adequately shown a “clear path to full compliance” with the 95% handset penetration requirement. Although we acknowledge VA Cellular’s efforts in offering promotional incentives to encourage upgrades, VA Cellular has not demonstrated what additional steps the company would take to ensure that sufficient numbers of its customers upgrade to location-capable handsets. Further, VA Cellular has not provided us with specific information concerning the number of subscribers that would be unable to make wireless calls in certain areas if required to upgrade to a location-capable handset. In addition, other than stating that the company is focused on “upgrading its digital network in other parts of its licensed area that would ultimately provide for better and more expansive wireless service,”<sup>44</sup> VA Cellular did not offer any details concerning when, and the extent to which, it may expand such coverage, in order to reduce the number of subscribers with potentially decreased access to emergency services if they were required to transition to location-capable phones.

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<sup>38</sup> *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

<sup>39</sup> VA Cellular Request at 4.

<sup>40</sup> *Id.* at Exhibit 1.

<sup>41</sup> *Id.* at 3-4.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

For these reasons, we afford VA Cellular a limited extension of one year following release of this *Order* to achieve 95% penetration among its subscribers of location-capable handsets.<sup>45</sup>

17. *Conditions of Grant.* As a condition of grant of the relief granted herein, VA Cellular 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, of the status of PSAP 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 VA Cellular to file status reports every February 1, May 1, August 1, and November 1, until two years following release of this *Order*,<sup>46</sup> which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the extent of subscribers located in areas with analog service only; (6) the percentage of its customers with location-capable phones; and (7) until it satisfies the 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 VA Cellular to achieve compliance as quickly as possible.

#### IV. CONCLUSION

19. For the foregoing reasons, we conclude that VA Cellular is entitled, pursuant to the ENHANCE 911 Act, 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 VA Cellular must achieve 95% penetration until one year from the date of release of this *Order*, and impose conditions and reporting requirements to ensure that VA Cellular achieves full compliance with the Commission's E911 requirements. We reiterate that any party seeking a waiver from the Commission's E911 rules must demonstrate a clear path to full compliance.

#### V. ORDERING CLAUSES

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.

21. IT IS FURTHER ORDERED, that the Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules filed by Virginia Cellular LLC, Inc. d/b/a Cellular One IS GRANTED IN PART to the extent described above, and subject to the conditions and reporting

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<sup>45</sup> We note that the Commission has not received any objections from the public safety community specific to the instant Request.

<sup>46</sup> We note that we are requiring VA Cellular to file status reports beyond the date by which we otherwise require VA Cellular to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring VA Cellular's progress for an additional year following its revised deadline.

requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be one year from the date of release of this *Order*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary