

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 Calling Systems)	CC Docket No. 94-102
)	
Request for Waiver by MTPCS, LLC dba Chinook Wireless)	

ORDER

Adopted: March 7, 2006

Released: March 8, 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 MTPCS, LLC dba Chinook Wireless (Chinook), a Tier III wireless service provider.¹ Specifically, Chinook seeks a temporary waiver, until September 30, 2006, of 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, 2005.²

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.³ Where carriers have met the standard, the relief granted has required compliance with the Commission’s rules and policies within the shortest practicable time.⁴ We are also mindful of Congress’ directive in the 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.”⁵

¹ See Request for a Limited Waiver and Extension of the Commission’s Phase II E911 Rules By MTPCS, LLC dba Chinook Wireless, CC Docket No. 94-102, filed Nov. 29, 2005 (Chinook Request). Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

² See 47 C.F.R. § 20.18(g)(1)(v); Chinook Request at 1-2.

³ 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*).

⁴ See *id.*

⁵ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). See also *infra* ¶ 8.

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that the requested relief from the 95% penetration requirement is warranted subject to certain conditions described below. We therefore grant Chinook a waiver until September 30, 2006 of the requirement that it achieve 95% penetration among its subscribers of location-capable handsets.⁶

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.⁷ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁸ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).⁹ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹⁰ 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.¹¹

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.¹² After ensuring that 100% of all new digital handsets activated are location-capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹³

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.¹⁴ The Commission

⁶ Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Chinook met the Commission's waiver standard.

⁷ See 47 C.F.R. § 20.18(e).

⁸ 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*.

⁹ 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*.

¹⁰ See 47 C.F.R. §§ 20.18(f), (g)(2).

¹¹ See 47 C.F.R. § 20.18(j)(1).

¹² See 47 C.F.R. § 20.18(g)(1).

¹³ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁴ 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

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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.”¹⁵ 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.¹⁶ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁷ 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.¹⁸ 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.¹⁹

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 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.²⁰ 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).²¹ The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a

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extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted”).

¹⁵ 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*).

¹⁶ *See Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁷ *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.*

¹⁸ *See id.*

¹⁹ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

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

²¹ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

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.”²²

C. Request for Waiver

9. Chinook, a Tier III provider, offers digital wireless service in rural Montana on a Code Division Multiple Access (CDMA) network, and provides Phase II service using a handset-based solution.²³ Chinook asserts that it currently sells only ALI-capable handsets and has reached, as of November 29, 2005, 80% penetration of such handsets among its subscribers.²⁴ However, it is currently in the process of deploying a Global System for Mobile Communications (GSM) network and states that it will “ultimately transition all its CDMA subscribers to its GSM network.”²⁵ It indicates that it will implement a network-based Phase II solution for its GSM network, and requests a waiver of the 95% ALI-capable handset penetration requirement only “until the time it transitions its CDMA customers to its GSM network, which it anticipates occurring by no later than September 30, 2006.”²⁶ Chinook states that “[u]ntil it converts its CDMA subscribers to GSM, Chinook will continue its efforts in upgrading subscribers to location-capable handsets.”²⁷ Furthermore Chinook indicates that “[u]pon conversion to GSM, Chinook will be capable of delivering Phase II information to the PSAPs in its service area.”²⁸

10. Chinook argues that a waiver of the 95% penetration deadline is warranted because its “unique and unusual circumstances” have presented it with “considerable difficulty in converting its remaining CDMA customers to location-capable handsets.”²⁹ Chinook notes that the transition to GSM will require its subscribers to obtain GSM handsets, and asserts that “existing customers will be reluctant to upgrade their existing handsets knowing that they will only be using the handset for about ten (10) months.”³⁰ Chinook adds that “a number of Chinook’s customers continue to use older models . . . which provide for superior coverage in rural areas, which simply cannot be duplicated by E911 compliant digital handsets on the market today.”³¹ Chinook argues that these circumstances satisfy the Commission’s requirements for a waiver, and that it has met the requirements for relief under the ENHANCE 911 Act.³²

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

²² *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.

²³ Chinook Request at 2.

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.* at 2.

²⁷ *Id.* at 5. Chinook notes that its efforts have included “several types of promotions to encourage its existing subscribers to upgrade to location-capable handsets.” *Id.* at 4.

²⁸ *Id.* at 2.

²⁹ *Id.* at 5.

³⁰ *Id.* at 5-6.

³¹ *Id.* at 5.

³² *Id.* at 6.

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.³³ 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.³⁴ 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 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.³⁵

12. Consistent with that directive, we believe that, pursuant to the ENHANCE 911 Act, a grant of the requested waiver of the December 31, 2005 benchmark is warranted. Chinook requires a waiver because it did not achieve a 95% penetration rate by December 31, 2005, as required under Section 20.18(g)(1)(v), using its current handset-based Phase II system. Furthermore, following its conversion to GSM and a network-based solution, Chinook will no longer require a waiver of Section 20.18(g)(1)(v). We find that Chinook is entitled to relief from the 95% penetration requirement, until the date of its planned conversion to GSM, because throughout this period certain of Chinook's customers using older phones that "provide for superior coverage in rural areas" would likely find it more difficult, and, at times, impossible to contact a PSAP in portions of Chinook's service area if those customers were forced to convert to new ALI-capable digital handsets.³⁶ It thus appears likely that strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.³⁷ We therefore conclude that relief from the December 31, 2005 deadline is warranted pursuant to the ENHANCE 911 Act. We also note that Chinook's request is of limited duration, and that Chinook has demonstrated a clear path to full compliance with its Phase II obligations by committing to complete the transition of its customers to a network-based solution on its new GSM network by September 30, 2006. After Chinook transitions all of its subscribers to a network-based solution, which it states will occur by September 30, 2006, Chinook will no longer require relief from the 95% handset penetration requirement. Accordingly, we grant the requested extension subject to certain conditions and reporting requirements so that the Commission can effectively monitor Chinook's progress in achieving compliance with its E911 obligations.³⁸

13. *Conditions and Reporting Requirements.* As a condition of grant, we require Chinook to actively work with the PSAPs to keep them abreast of its progress in converting to GSM and implementing a network-based Phase II system. We also require Chinook to file status reports every February 1, May 1, August 1, and November 1, until September 30, 2007,³⁹ which shall include the

³³ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

³⁴ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

³⁵ See *supra* ¶ 8.

³⁶ See Chinook Request at 5.

³⁷ Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

³⁸ We note that the Commission has not received any objections from the public safety community specific to the instant request.

³⁹ We believe it is important to continue monitoring Chinook's progress for an additional year beyond the compliance deadline established by this *Order*.

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 such PSAPs; and (3) until September 30, 2006, the status of its efforts to convert its network to a GSM, network-based system. Furthermore, in its November 1, 2006 report, Chinook should provide confirmation that it has in fact fully converted to a network-based system and is thus no longer using a handset-based system for any of its calls, and is providing Phase II service to requesting PSAPs.

IV. CONCLUSION

14. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that Chinook is entitled to a limited waiver of the December 31, 2005 requirement that it achieve 95% penetration among its subscribers of location-capable handsets. Specifically, we waive the 95% handset penetration requirement until September 30, 2006, after which we expect Chinook to have transitioned its subscribers to a network-based E911 Phase II solution. We further impose the conditions and reporting requirements described above to ensure that Chinook achieves full compliance with the Commission's E911 requirements.

V. ORDERING CLAUSES

15. 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.

16. IT IS FURTHER ORDERED, that the Request For a Limited Waiver and Extension of the Commission's Phase II E911 Rules by MTPCS, LLC dba Chinook Wireless IS GRANTED, subject to the conditions and reporting requirements specified herein. Section 20.18(g)(1)(v) is waived until September 30, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary