

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

In the Matter of)	
)	
)	File No. EB-05-SE-116
)	
Dobson Cellular Systems, Inc.)	NAL/Acct. No. 200632100010
)	FRN # 0001699719
)	
American Cellular Corporation)	NAL/Acct. No. 200632100011
)	FRN # 0003767324
)	
Subsidiaries of Dobson Communications Corp.)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 17, 2006

Released: April 18, 2006

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Dobson Cellular Systems, Inc. (“DCS”) and American Cellular Corporation (“ACC”) (collectively, “Dobson”)¹ apparently willfully and repeatedly violated Sections 20.18(d) and (f) of the Commission’s Rules (“Rules”),² by failing to provide Enhanced 911 (“E911”) Phase I service within six months of a valid request by the relevant Public Safety Answering Point (“PSAP”) in a total of nine (9) instances, and failing to provide E911 Phase II service within six months of a valid request by the relevant PSAP in a total of forty-one (41) instances. For DCS’s and ACC’s apparent violations, we propose forfeitures totaling Seven Hundred Fifty Thousand Dollars (\$750,000).

II. BACKGROUND

2. The Commission’s wireless E911 rules ensure that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. Under Phase I of the E911 rules, wireless carriers must provide designated PSAPs with both the telephone number of the mobile handset that originated the 911 call and the location of the base station or cell site that received the 911 call.³ Wireless carriers are required to provide such information within six months of a valid request by a designated PSAP.

3. The E911 Phase II rules require wireless carriers to provide designated PSAPs with the location of wireless 911 callers by longitude and latitude, a capability referred to as Automatic Location Identification (“ALI”).⁴ Wireless carriers may provide ALI information by deploying either a network-

¹ Dobson Cellular Systems, Inc. and American Cellular Corporation are sister companies and wholly-owned subsidiaries of Dobson Communications Corporation.

² 47 C.F.R. § 20.18(d) and (f).

³ 47 C.F.R. § 20.18(d).

⁴ 47 C.F.R. § 20.18(e).

based solution or a handset-based solution.⁵ If the carrier chooses to deploy a network-based solution, it must provide designated PSAPs with Phase II service to at least 50 percent of the PSAP's coverage area or at least 50 percent of its population within six months of a valid PSAP request, and to 100 percent of the PSAP's coverage area or 100 percent of its population within 18 months of such a request.⁶ In addition, carriers choosing a network-based solution must provide the location information with an accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.⁷

4. A PSAP request for Phase I or Phase II service is deemed valid if the PSAP can demonstrate that it will be capable of receiving and utilizing the Phase I or Phase II data no later than six months after its request. Specifically, a PSAP request is deemed valid if the PSAP can demonstrate that: (i) a mechanism is in place for recovering the PSAP's costs; (ii) it has ordered the equipment necessary to receive and utilize the E911 data to be installed no later than six months following its request; and (iii) it has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities, including any necessary ALI database upgrades.⁸ A carrier may request documentation predictive of a PSAP's readiness to receive and utilize the E911 Phase I or Phase II service it has requested (commonly referred to as "Richardson documentation").⁹ Where a carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided.¹⁰

5. DCS and ACC are mid-sized or Tier II carriers¹¹ serving primarily rural and suburban

⁵ See 47 C.F.R. § 20.18(f) and (g). Network-based location solutions employ equipment and/or software added to the 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*. Handset-based 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*.

⁶ 47 C.F.R. § 20.18(f). In 2002, the Commission temporarily stayed certain E911 Phase II deadlines for Tier II and Tier III carriers. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, CC Docket No. 94-102, 17 FCC Rcd 14841 (2002) ("Order to Stay"). For Tier II carriers choosing to deploy a network-based Phase II solution, the Commission provided that carriers must provide Phase II service to at least 50 percent of the PSAP's coverage area or population beginning March 1, 2003, or within six months of a PSAP request, whichever is later; and to 100 percent of the PSAP's coverage area or population by March 1, 2004, or within 18 months of such a request, whichever is later. *Id.* at 17851, ¶ 26.

⁷ 47 C.F.R. § 20.18(h)(1).

⁸ See 47 C.F.R. § 20.18(j)(1), (2); see also *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order, 16 FCC Rcd 18982, 18982 ¶ 1 (2001) ("City of Richardson"), recon. granted in part, denied in part, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order on Reconsideration, 17 FCC Rcd 24282 (2002) ("Richardson Reconsideration").

⁹ See *Richardson Reconsideration*, 17 FCC Rcd at 24283, ¶ 5.

¹⁰ 47 C.F.R. § 20.18(j)(3); see also *Richardson Reconsideration*, 17 FCC Rcd at 24284, ¶ 10. A wireless carrier is free to request readiness documentation from a PSAP more than 15 days after receipt of the PSAP's E911 service request, but in this event, the PSAP's failure to provide the documentation within 15 days will not toll the six-month implementation period. *Id.*

¹¹ The Commission has defined "Tier II" carriers to include Commercial Mobile Radio Service ("CMRS") carriers that had over 500,000 subscribers as of the end of 2001. *Order to Stay*, 17 FCC Rcd at 14848, ¶ 22.

markets in a total of 16 states. The companies previously relied primarily upon Time Division Multiple Access (“TDMA”)-based networks, but have since completed overlaying their TDMA networks with Global System for Mobile Communications (“GSM”)/General Packet Radio Service (“GPRS”) technology.¹² The companies utilize a network-based solution to provide Phase II service. In certain markets, DCS and ACC provide Phase II service utilizing a hardware-based network solution provided by Andrew Corporation (“Andrew”), while in other markets they provide Phase II service utilizing a software-based network solution provided by Polaris Wireless (“Polaris”).

A. Informal Complaint

6. On April 14, 2005, the Enforcement Bureau received an informal complaint from the 911 State Administrator, Michigan State Police, on behalf of 14 Michigan PSAPs (“Complainant PSAPs”).¹³ The complaint alleged that Dobson failed to timely implement E911 Phase I and Phase II service to two Michigan PSAPs (Midland and Roscommon Counties) and E911 Phase II service to 12 Michigan PSAPs (Alcona, Arenac, Baraga, Gogebic, Iosco, Mackinac, Marquette, Mecosta, Menominee, Osceola, Sanilac and Tuscola Counties). The complaint asserted that in early 2004, Dobson was in the process of purchasing NPI Wireless (“NPI”). The complaint further asserted that at that time, the Complainant PSAPs had pending requests for Phase I or II service with NPI or Dobson, and had met the readiness requirements under *City of Richardson*. Prior to completion of the sale of NPI’s assets to Dobson on June 15, 2004, NPI sought an extension of time to fulfill the Phase II requests from the Complainant PSAPs located in NPI markets until December 31, 2004. Certain of the Complainant PSAPs granted this request.

7. The complaint asserted, however, that in October 2004 Dobson requested an additional extension of time to deploy the pending Phase II requests for all of its Michigan market (including, in addition to the 14 Complainant PSAPs, numerous other Michigan PSAPs that had pending Phase II requests) until March 31, 2005, because of “a lack of corporate financial resources.” The Michigan PSAPs denied this extension request, but they agreed to refrain from lodging a complaint with the FCC if Dobson met certain criteria.¹⁴ The criteria included: (1) Dobson’s active pursuit of an implementation schedule for Phase II; (2) weekly updates on the progress and activity related to that schedule; and (3) immediate application to Michigan’s cost recovery mechanism for CMRS providers. According to the complaint, Dobson failed to meet these criteria. The complaint further noted that on March 31, 2005, Dobson provided a revised deployment schedule, which was for a statewide “uncalibrated” deployment followed by accuracy-test driving.¹⁵ On April 11, 2005, the Michigan 911 State Administrator notified Dobson on behalf of the Complainant PSAPs that its schedule for an uncalibrated deployment was unacceptable and that a complaint against Dobson would be lodged with the FCC.

8. On May 4, 2005, the Enforcement Bureau issued a Letter of Inquiry (“LOI”) to Dobson seeking information concerning its E911 implementation efforts with respect to the 14 Complainant PSAPs, as well as in other markets where Dobson had E911 requests that had been pending for more than

¹² Dobson Cellular Systems, Inc. E911 Quarterly Report, CC Docket No. 94-102, filed February 1, 2006.

¹³ Letter from Harriet Miller-Brown, State 911 Administrator, Michigan State Police, to Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau (April 14, 2005) (“Informal Complaint”).

¹⁴ The Michigan PSAPs formally denied Dobson’s extension request and outlined the criteria for refraining from filing a complaint with the FCC in letters to the E911 Project Manager dated November 1, 2004 and November 30, 2004. Informal Complaint, Attachments A and B.

¹⁵ Informal Complaint, Attachment I. The March 31, 2005 deployment schedule explained that an “uncalibrated” deployment means that the caller’s latitude and longitude information may or may not be within the FCC’s accuracy standards. *Id.*

six months.¹⁶ On May 24, 2005, Dobson submitted a partial LOI Response addressing its E911 implementation efforts with respect to the 14 Complainant PSAPs.¹⁷ On June 23, 2005, Dobson submitted a Supplemental LOI Response addressing E911 requests in other markets that had been pending for more than six months.¹⁸ On August 25, 2005, Dobson submitted a Second Supplemental LOI Response to provide an update on its E911 implementation efforts with respect to the 14 Complainant PSAPs.¹⁹

B. Complainant PSAPs

9. Dobson's May 24, 2005 LOI Response addressed its E911 implementation efforts with respect to the 14 Complainant PSAPs. As discussed below, Dobson's LOI Response indicated that it failed to implement Phase I service within six months in response to a valid request from one of these 14 PSAPs and that it failed to implement Phase II service within six months in response to valid requests from eleven of these 14 PSAPs.²⁰ Seven of these PSAPs are in markets that were acquired by Dobson from NPI on June 15, 2004, three of these PSAPs are in markets that have been solely owned by Dobson, and one PSAP is located in a market owned by Dobson and in a market formerly owned by NPI.²¹ Dobson stated that because it was aware prior to the acquisition that NPI's facilities were not E911 compliant, it asked NPI to obtain extensions from the relevant Michigan PSAPs to at least December 31, 2004 for all outstanding Phase II requests in the NPI markets.²² NPI obtained extensions of the Phase II deployment deadlines until December 31, 2004 for certain, but not all, of these markets.²³

10. **Alcona County, Michigan.** DCS acquired the Alcona County (GSM-only) market when it purchased NPI's assets on June 15, 2004.²⁴ Upon acquiring this market, DCS obtained a copy of

¹⁶ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Ronald L. Ripley, Senior Vice President and General Counsel, Dobson Cellular Systems, Inc. (May 4, 2005).

¹⁷ Letter from Ronald L. Ripley, Senior Vice President and General Counsel, Dobson Cellular Systems, Inc. (May 24, 2005) ("LOI Response").

¹⁸ Letter from Ronald L. Ripley, Senior Vice President and General Counsel, Dobson Cellular Systems, Inc. (June 23, 2005) ("Supplemental LOI Response").

¹⁹ Letter from Lawrence J. Movshin and Timothy J. Cooney (August 25, 2005) ("Second Supplemental LOI Response").

²⁰ We note that the Michigan 911 State Administrator's informal complaint alleged that Dobson had failed to timely implement Phase I service to two Michigan PSAPs and Phase II service to 14 Michigan PSAPs. However, Dobson's LOI response indicated that Phase I service had in fact been deployed in Roscommon County, Michigan prior to its acquisition of this market on June 15, 2004. LOI Response, Attachment A, at 1. Further, Dobson's LOI Response indicated that it treated Phase II requests from Menominee County, Sanilac County, and Tuscola County, Michigan as invalid, because it made timely requests for *Richardson* documentation from these counties, but did not receive responses from these counties demonstrating their readiness to receive and utilize Phase II information. *Id.* at 3-4. Thus, we find herein that Dobson apparently failed to implement Phase I service within six months in response to a valid request from one of the Complainant PSAPs and to implement Phase II service within six months in response to valid requests from eleven of the Complainant PSAPs.

²¹ LOI Response, Attachment A, at 2-4.

²² LOI Response at 4. Under Section 20.18(j)(5) of the Rules, a carrier and a PSAP may establish, by mutual consent, Phase I and Phase II deployment deadlines different from those imposed in the rules. 47 C.F.R. § 20.18(j)(5).

²³ LOI Response, Attachment A, at 2-4.

²⁴ *Id.* at 2.

Alcona County's request for Phase II service dated November 1, 2003, as well as an agreement between Alcona County and NPI dated June 1, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS "deployed" Phase II service in Alcona County and initiated the transmission of ALI data on April 25, 2005.²⁵ However, in its November 1, 2005 E911 Quarterly Report, DCS stated that it "considers a market as being E911 Phase II 'deployed' after [it] has completed testing of the installed hardware and software with the PSAP to confirm that the PSAP is receiving latitude and longitude information in the appropriate format."²⁶ In its Second Supplemental LOI Response, Dobson indicated that DCS completed testing on June 13, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.²⁷ DCS's Quarterly Report also indicated that it "completed testing on June 13, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."²⁸ We observe an apparent inconsistency between Dobson's representations in its LOI Responses and the Quarterly Reports filed by DCS regarding when it "deployed" E911 service to Alcona County. We note, however, with respect to either date, DCS apparently failed to timely deploy E911 service to Alcona County.²⁹ DCS apparently did not complete deployment of Phase II service in Alcona County until at least April 22, 2005, almost four months after the extended December 31, 2004 deployment deadline.

11. **Arenac County, Michigan.** DCS acquired the Arenac County (GSM-only) market when it purchased NPI's assets on June 15, 2004.³⁰ Upon acquiring this market, DCS obtained a copy of Arenac County's request for Phase II service dated October 31, 2003, as well as an agreement between Arenac County and NPI dated April 30, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS deployed Phase II service and initiated the transmission of ALI data in Arenac County on April 21, 2005.³¹ Dobson's Second Supplemental LOI Response indicated, however, that it subsequently encountered technical issues regarding six sites and, on June 10, 2005, the PSAP requested that it reinstate Phase I service and turn off Phase II service until deployment and accuracy issues were resolved.³² DCS's November 1, 2005 Quarterly Report indicated that it "completed testing on August 8, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in

²⁵ *Id.* at 12.

²⁶ Dobson Cellular Systems, Inc. E911 Quarterly Report, CC Docket No. 94-102, filed November 1, 2005 ("DCS November 1, 2005 Quarterly Report"), at 1. ACC's November 1, 2005 E911 Quarterly Report includes a similar statement. American Cellular Corporation E911 Quarterly Report, CC Docket No. 94-102, filed November 1, 2005 ("ACC November 1, 2005 Quarterly Report"), at 1. Tier II carriers, such as Dobson and ACC, are required to submit quarterly reports to the Commission providing detailed information regarding the status of all pending Phase I and Phase II requests and their compliance with applicable provisions of the E911 rules. *Order to Stay*, 17 FCC Rcd at 14851-53 ¶¶ 28-31.

²⁷ Second Supplemental LOI Response at 1.

²⁸ *Id.*, Appendix A, at 3.

²⁹ Likewise, with respect to other PSAPs discussed below, we observe an apparent inconsistency between Dobson's representations in its LOI Responses and the Quarterly Reports filed by DCS and ACC regarding when they "deployed" E911 service. As with Alcona County, we find that, using either date, DCS or ACC apparently failed to timely provide E911 service to these PSAPs.

³⁰ LOI Response, Attachment A, at 2.

³¹ *Id.* at 12.

³² Second Supplemental LOI Response at 1.

the appropriate format.”³³ Thus, DCS apparently did not complete deployment of Phase II service in Arenac County until at least April 22, 2005, almost four months after the extended December 31, 2004 deployment deadline.

12. **Baraga County, Michigan.** The Baraga County market has been held solely by ACC as part of the Michigan 1 RSA.³⁴ ACC received a request for Phase II service from Baraga County on September 19, 2003, requested *Richardson* documentation from Baraga County on that same date, and received documentation confirming that the request is valid on October 2, 2003. Dobson stated in its LOI Response that ACC deployed TDMA Phase II service and initiated the transmission of ALI data in Baraga County on May 5, 2005, but could not complete deployment of GSM Phase II service until mid-July when a third party provider performed necessary software upgrades.³⁵ Dobson indicated its Second Supplemental LOI Response that ACC completed installation of the software and hardware necessary for the network-based Phase II solution for its GSM facilities on July 8, 2005, and that ACC completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format on July 12, 2005 for TDMA and on July 14, 2005 for GSM.³⁶ Thus, ACC apparently did not complete deployment of Phase II service in Baraga County until at least July 8, 2005, almost 22 months after Baraga County made its valid Phase II request.

13. **Gogebic County, Michigan.** The Gogebic County market has been held solely by ACC as part of the Michigan 1 RSA.³⁷ ACC received a request for Phase II service from Gogebic County on February 24, 2004. Although Dobson did not state that ACC requested *Richardson* documentation from Gogebic County within 15 days of receiving the Phase II request, it indicated that ACC received documentation confirming that the request is valid on April 15, 2004. Dobson stated in its LOI Response that ACC deployed TDMA Phase II service and initiated the transmission of ALI data in Gogebic County on May 5, 2005, but could not complete deployment of GSM Phase II service until mid-July when a third party provider performed necessary software upgrades.³⁸ Dobson indicated its Second Supplemental LOI Response that ACC completed installation of the software and hardware necessary for the network-based Phase II solution for its GSM facilities on July 8, 2005.³⁹ ACC’s November 1, 2005 Quarterly Report indicated that it completed testing to demonstrate to the PSAP that latitude and longitude information are being transmitted in the appropriate format on July 12, 2005 for TDMA and on July 18, 2005 for GSM.⁴⁰ Thus, ACC apparently did not complete deployment of Phase II service in Gogebic County until at least July 8, 2005, almost 17 months after Gogebic County made its valid Phase II request.

14. **Iosco County, Michigan.** DCS acquired the Iosco County (GSM-only) market when it purchased NPI’s assets on June 15, 2004.⁴¹ Upon acquiring this market, DCS obtained a copy of Iosco County’s request for Phase II service dated August 18, 2003, as well as an agreement between Iosco

³³ DCS November 1, 2005 Quarterly Report, Appendix A, at 4.

³⁴ LOI Response, Attachment A, at 2.

³⁵ *Id.* at 12.

³⁶ Second Supplemental LOI Response at 1.

³⁷ LOI Response, Attachment A, at 2.

³⁸ *Id.* at 12.

³⁹ Second Supplemental LOI Response at 1.

⁴⁰ ACC November 1, 2005 Quarterly Report, Appendix A, at 9.

⁴¹ LOI Response, Attachment A, at 2.

County and NPI dated May 4, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS deployed Phase II service and initiated the transmission of ALI data in Iosco County on April 22, 2005.⁴² Dobson indicated in its Second Supplemental LOI Response that it completed testing on June 10, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.⁴³ Thus, DCS apparently did not complete deployment of Phase II service in Iosco County until at least April 22, 2005, almost four months after the extended December 31, 2004 deployment deadline.

15. **Mackinac County, Michigan.** DCS acquired the Mackinac County (GSM-only) market when it purchased NPI's assets on June 15, 2004.⁴⁴ Upon acquiring this market, DCS obtained a copy of Mackinac County's request for Phase II service dated February 3, 2003, as well as an agreement between Mackinac County and NPI dated May 3, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS deployed Phase II service and initiated the transmission of ALI data in Mackinac County on April 28, 2005.⁴⁵ Dobson indicated in its Second Supplemental LOI Response that it completed testing on July 7, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.⁴⁶ Thus, DCS apparently did not complete deployment of Phase II service in Mackinac County until at least April 28, 2005, almost four months after the extended December 31, 2004 deployment deadline.

16. **Marquette County, Michigan.** The Marquette County market has been held solely by ACC as part of the Michigan 1 RSA.⁴⁷ ACC received a valid request for Phase II service from Marquette County on April 13, 2004. Dobson stated in its LOI Response that ACC deployed TDMA Phase II service and initiated the transmission of ALI data in Marquette County on May 4, 2005, but could not complete deployment of GSM Phase II service until mid-July when a third party provided performed necessary software upgrades.⁴⁸ Dobson indicated in its Second Supplemental LOI Response that ACC completed testing of its TDMA facilities on July 7, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.⁴⁹ The Second Supplemental LOI Response also indicated that ACC encountered technical issues with the deployment of one GSM site and had to re-schedule testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format for its GSM facilities.⁵⁰ ACC's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on July 7, 2005 for TDMA and August 11, 2005 for GSM.⁵¹ Thus, ACC

⁴² *Id.* at 12.

⁴³ Second Supplemental LOI Response at 2. Dobson also indicated that the PSAP subsequently requested that Dobson revert back to Phase I until such time as accuracy can be improved. *Id.*

⁴⁴ LOI Response, Attachment A, at 3.

⁴⁵ *Id.* at 12.

⁴⁶ Second Supplemental LOI Response at 2.

⁴⁷ LOI Response, Attachment A, at 3.

⁴⁸ *Id.* at 12.

⁴⁹ Second Supplemental LOI Response at 2.

⁵⁰ *Id.*

⁵¹ ACC November 1, 2005 Quarterly Report, Appendix A, at 7. ACC's November 1, 2005 Quarterly Report did not (continued ...)

apparently did not complete deployment of Phase II service in Marquette County until at least August 11, 2005, almost 16 months after Marquette County filed its valid Phase II request.

17. **Midland County, Michigan (Phase I and II).** DCS acquired the Midland County market when it purchased NPI's assets on June 15, 2004.⁵² Midland County requested Phase I service from NPI on August 16, 2000, and requested Phase II service from NPI on January 27, 2004.⁵³ DCS stated that it did not receive a copy of Midland County's Phase I and Phase II requests until November 3, 2004. DCS treated the requests as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS expected to deploy Phase I on or around May 27, 2005, and that the timing of Phase II deployment would be determined once Phase I is operational.⁵⁴ Dobson's Second Supplemental LOI Response indicated that DCS completed Phase I deployment and "began working on Phase II deployment" on May 26, 2005.⁵⁵ The Second Supplemental LOI Response also indicated that DCS completed testing on June 15, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.⁵⁶ Thus, DCS apparently did not complete deployment of Phase I service in Midland County until May 26, 2005, and did not complete deployment of Phase II service in Midland County until June 15, 2005, more than six months after it received the valid requests for Phase I and Phase II service.

18. **Mecosta County, Michigan.** DCS acquired the Mecosta County market when it purchased NPI's assets on June 15, 2004.⁵⁷ Upon acquiring this market, DCS obtained a copy of Mecosta County's request for Phase II service dated April 1, 2004, as well as an agreement between Mecosta County and NPI dated April 28, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS deployed Phase II service and initiated the transmission of ALI data in Mecosta County on April 20, 2005.⁵⁸ Dobson indicated in its Second Supplemental LOI Response that DCS completed testing on July 15, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.⁵⁹ Thus, DCS apparently did not complete deployment of Phase II service in Mecosta County until at least April 20, 2005, almost four months after the extended December 31, 2004 deployment deadline.

19. **Osceola County, Michigan.** Osceola County lies in a market owned by DCS as part of the Michigan 5 RSA and in a market formerly owned by NPI.⁶⁰ DCS received a request for Phase II

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address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

⁵² LOI Response, Attachment A, at 1.

⁵³ *Id.* at 1, 3.

⁵⁴ *Id.* at 5, 12.

⁵⁵ Second Supplemental LOI Response at 2.

⁵⁶ *Id.*

⁵⁷ LOI Response, Attachment A, at 3.

⁵⁸ *Id.* at 12.

⁵⁹ Second Supplemental LOI Response at 3.

⁶⁰ LOI Response, Attachment A, at 3.

service from Osceola County on May 4, 2004, but responded on May 24, 2004 that it did not currently provide service in Osceola County and did not intend to do so until the NPI transaction is complete.⁶¹ Upon acquiring NPI's assets, DCS obtained a copy of Osceola County's request for Phase II service to NPI dated April 1, 2004, as well as an agreement between Osceola County and NPI dated April 28, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its LOI Response that DCS deployed Phase II service and initiated the transmission of ALI data in Osceola County on April 19, 2005 for GSM and on April 25, 2005 for TDMA.⁶² Dobson indicated in its Second Supplemental LOI Response that DCS completed testing on June 2, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.⁶³ Thus, DCS apparently did not complete deployment of Phase II service in Osceola County until at least April 25, 2005, almost four months after the extended December 31, 2004 deployment deadline.

20. **Roscommon County, Michigan.** DCS acquired the Roscommon County market when it purchased NPI's assets on June 15, 2004.⁶⁴ Upon acquiring this market, DCS obtained a copy of Roscommon County's valid request for Phase II service dated October 28, 2003. DCS acknowledged that it was notified upon closing that NPI was unable to obtain an extension of the Phase II deployment deadline from Roscommon. Dobson stated in its LOI Response that DCS deployed Phase II service and initiated the transmission of ALI data in Roscommon County on April 21, 2005.⁶⁵ In its Second Supplemental LOI Response, Dobson indicated that on June 9, 2005, the PSAP requested that it revert back to Phase I service on a temporary basis, and turn off Phase II service, until deployment and accuracy issues were resolved.⁶⁶ The Second Supplemental LOI Response further indicated that DCS completed testing on July 27, 2005 to demonstrate to the PSAP that latitude and longitude information are being transmitted in the appropriate format.⁶⁷ However, on July 29, 2005, the PSAP again requested that DCS revert back to Phase I service until such time as accuracy can be improved.⁶⁸ Thus, DCS apparently did not complete deployment of Phase II service in Roscommon County until at least April 21, 2005, approximately ten months after it acquired the market from NPI.

21. **Dobson's Response.** Dobson attributed its failure to timely implement Phase II service for the Complainant PSAPs to several factors. First, Dobson asserted that it failed to "adequately anticipate the enormous technical effort that would be required to deploy E911 Phase II in a relatively short time to satisfy so many requests due on the same date."⁶⁹ Specifically, Dobson noted that a number

⁶¹ Although Dobson stated in its LOI Response that DCS informed Osceola County that it did not currently provide service in Osceola County and did not intend to do so until the NPI transaction was complete, DCS's November 1, 2005 Quarterly Report indicated that it received a request for Phase I service from Osceola County on September 1, 2000, and deployed Phase I service in Osceola County on April 25, 2002. DCS November 1, 2005 Quarterly Report, Appendix A, at 5. Thus, DCS apparently had previously provided service in Osceola County.

⁶² LOI Response, Attachment A, at 13.

⁶³ Second Supplemental LOI Response at 3.

⁶⁴ LOI Response, Attachment A, at 4.

⁶⁵ *Id.* at 13.

⁶⁶ Second Supplemental LOI Response at 3.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ LOI Response at 2.

of PSAPs had requested Phase II deployment with six month deadlines that would fall close together.⁷⁰ In addition, Dobson cited its acquisition of the NPI markets. Dobson noted, in this connection, that NPI's facilities were not E911 Phase II compliant and could not be upgraded to E911 Phase II capability.⁷¹ Dobson indicated that it began to design, develop and construct a new GSM switch in Michigan in May 2004, prior to acquisition of NPI's assets; completed construction of the new GSM switching facilities in September 2004; and finally completed migration of all of its Michigan cell sites, including the 350+ newly acquired NPI cell sites, to the new GSM switch in November 2004.⁷² Dobson asserted that it was unable to begin Phase II deployment until it completed this transition in November 2004.

22. Dobson further asserted that it failed to "anticipate vendor failures in terms of key equipment."⁷³ In this regard, Dobson indicated that Andrew, the hardware-based E911 solution vendor on which it had initially relied, was unable to deliver sufficient equipment to meet deployment requirements by the deployment deadline, and Dobson ultimately had to switch to Polaris to deploy a software solution in the Michigan markets.⁷⁴

23. Moreover, Dobson stated that its E911 Project Manager apparently misinterpreted the PSAPs' forbearance from filing complaints with the FCC as "tacit approval" to Dobson's extending the deployment deadline.⁷⁵ Dobson stated that the E911 Project Manager met with representatives of the Michigan PSAPs on October 21, 2004; informed the PSAPs that even if its E911 solution vendor were able to timely deliver equipment by the December 31, 2004 deployment deadline, the vendor would need additional time to install the equipment; and requested an additional three months extension of the deployment deadline until March 31, 2005.⁷⁶ Dobson admitted that "[it] cannot be denied that the PSAPs refused to agree to the extension for deployment."⁷⁷ However, it maintained that the PSAPs expressed their willingness to take no action with the FCC if Dobson provided continued progress updates to the PSAPs on a weekly basis and deployment occurred by the then-promised March 31, 2005 deployment deadline. Dobson claimed that the E911 Project Manager "viewed the PSAPs' forbearance as *de facto* concurrence with an alternative deployment date and so reported to Dobson's management."⁷⁸ Dobson acknowledged that the E911 Project Manager did not adequately communicate with the PSAPs and that Dobson's management did not adequately challenge his reports that all of the PSAPs were "on board" with the extended deadlines for deployment.⁷⁹

24. Dobson further noted that upon receiving a copy of the Michigan 911 State Administrator's informal complaint to the FCC on April 14, 2005, it immediately initiated an internal

⁷⁰ *Id.* at 3-4.

⁷¹ *Id.*, Appendix A, at 6.

⁷² *Id.*

⁷³ *Id.*, Appendix A, at 6-7.

⁷⁴ *Id.*

⁷⁵ *Id.* at 4.

⁷⁶ *Id.*, Appendix A, at 7-8.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 4.

inquiry into its E911 compliance efforts throughout Dobson's markets.⁸⁰ This effort resulted, among other things, in removing oversight of E911 matters from the E911 Project Manager; re-establishing contacts with the PSAPs to confirm their understanding of the current deployment schedule; engaging outside counsel to investigate the status of all of the Michigan Phase I and Phase II requests pending before Dobson; and a restatement and clarification of Dobson policies with respect to the treatment of E911 requests.⁸¹

C. Other PSAPs

25. Dobson's June 23, 2005 Supplemental LOI Response identified additional PSAPs in Michigan and in several other states which had requests for Phase I or Phase II service that had been pending for more than six months. As set forth below, Dobson's Supplemental Response indicated that it failed to implement Phase I service within six months of a valid request from eight PSAPs and that it failed to implement Phase II service within six months of valid requests from 30 PSAPs.⁸²

26. **Clare County, Michigan.** DCS acquired the Clare County market when it purchased NPI's assets on June 15, 2004.⁸³ Upon acquiring this market, DCS obtained a copy of Clare County's request for Phase II service dated March 8, 2004,⁸⁴ as well as an agreement between Clare County and NPI dated April 29, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. With respect to Clare County and the other non-Complainant Michigan PSAPs discussed below, Dobson referenced its LOI Response but did not otherwise discuss the steps it took to implement E911 service. Dobson stated in its Supplemental LOI Response that DCS completed internal testing of its E911 Phase II solution on April 21, 2005, and completed its "formal acceptance" on June 7, 2005.⁸⁵ Dobson further noted, however, that DCS subsequently encountered technical difficulties and would work to resolve the issues. DCS's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on April 21, 2005, and that it "completed testing on July 8, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."⁸⁶ Thus, DCS apparently did not complete deployment of Phase II

⁸⁰ *Id.*

⁸¹ *Id.* at 4-5.

⁸² Although Dobson's Supplemental LOI Response identified numerous other Phase I and Phase II requests that had been pending for more than six months, some of these requests appeared to be invalid because the PSAP failed to provide *Richardson* documentation in response to a timely request from DCS or ACC. In addition, some of the PSAPs had entered into agreements with DCS or ACC to extend the six-month implementation deadline. Finally, in some cases, there was insufficient information in the record to find that DCS or ACC failed to timely implement Phase I or Phase II service in apparent violation of the rules.

⁸³ Supplemental LOI Response, Attachment B, Response to Question 13, at 19.

⁸⁴ Dobson indicated that Clare County's Phase II request was incorrectly addressed to T-Mobile, which subsequently informed Clare County that the request should have been sent to NPI. Dobson stated that it has not seen any evidence that the request was in fact re-addressed to NPI. Supplemental LOI Response, Attachment B, Response to Question 13, at 20. However, given that Clare County entered into an agreement with NPI to extend the deployment deadline until December 31, 2004, it is reasonable to presume that the request was re-addressed to NPI.

⁸⁵ Supplemental LOI Response, Attachment B, Response to Question 13, at 20. Dobson does not explain in the Supplemental LOI Response what it means by "formal acceptance." However, it appears that this means that it has completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format and presented this testing to the PSAP for acceptance.

⁸⁶ DCS November 1, 2005 Quarterly Report, Appendix A, at 5.

service in Clare County until at least April 21, 2005, almost four months after the extended December 31, 2004 deployment deadline.

27. **Crawford County, Michigan.** DCS acquired the Crawford County market when it purchased NPI's assets on June 15, 2004.⁸⁷ Upon acquiring this market, DCS obtained a copy of Crawford County's request for Phase II service dated October 23, 2003, as well as an agreement between Crawford County and NPI dated April 28, 2004, which extended the deployment deadline until December 31, 2004. DCS indicated it treated the request as valid and did not request *Richardson* documentation. Dobson stated in its Supplemental LOI Response that DCS deployed Phase II service on April 27, 2005, and completed its formal acceptance on June 15, 2005.⁸⁸ DCS's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on April 27, 2005, and that it "completed testing on July 6, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."⁸⁹ Thus, DCS apparently did not complete deployment of Phase II service in Crawford County until at least April 27, 2005, almost four months after the extended December 31, 2004 deployment deadline.

28. **Dickinson County, Michigan.** ACC received a request for Phase II service from Dickinson County on February 5, 2004, requested *Richardson* documentation on February 6, 2004, and received documentation confirming that the request was valid on February 19, 2004.⁹⁰ Dobson stated in its Supplemental LOI Response that ACC deployed TDMA Phase II service to Dickinson County on May 5, 2005, and was currently working to complete testing by June 24, 2005.⁹¹ Dobson indicated that ACC would not be completing deployment of GSM Phase II service until mid-July, when an equipment vendor performed software upgrades for its cell sites. ACC's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on July 12, 2005 for TDMA and on July 14, 2005 for GSM.⁹² Thus, ACC apparently did not complete deployment of Phase II service to Dickinson County until July 14, 2005, more than 17 months after Dickinson County made its valid Phase II request.

29. **Houghton County, Michigan.** ACC received a request for Phase II service from Houghton County on January 9, 2004, requested *Richardson* documentation on January 14, 2004, and received documentation confirming that the request was valid on January 21, 2004.⁹³ Dobson stated in its Supplemental LOI Response that ACC deployed TDMA Phase II service to Houghton County on May 5, 2005, and was currently working to complete formal acceptance by June 24, 2005.⁹⁴ Dobson indicated that it would not be completing deployment of GSM Phase II service until mid-July, when an equipment vendor performed software upgrades for its cell sites. ACC's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based

⁸⁷ Supplemental LOI Response, Attachment B, Response to Question 13, at 19.

⁸⁸ Supplemental LOI Response, Attachment B, Response to Question 13, at 20.

⁸⁹ DCS November 1, 2005 Quarterly Report, Appendix A, at 5.

⁹⁰ Supplemental LOI Response, Attachment B, Response to Question 13, at 22.

⁹¹ *Id.*

⁹² ACC November 1, 2005 Quarterly Report, Appendix A, at 8. ACC's November 1, 2005 Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

⁹³ Supplemental LOI Response, Attachment B, Response to Question 13, at 23.

⁹⁴ *Id.*

E911 Phase II solution” on July 12, 2005 for TDMA and on July 14, 2005 for GSM.⁹⁵ Thus, ACC apparently did not complete deployment of Phase II service to Houghton County until at least July 14, 2005, more than 18 months after Houghton County made its valid Phase II request.

30. **Isabella County, Michigan.** DCS acquired the Isabella County (GSM-only) market when it purchased NPI’s assets on June 15, 2004.⁹⁶ Upon acquiring this market, DCS obtained a copy of Isabella County’s request for Phase II service dated April 21, 2004, as well as an agreement between Isabella County and NPI dated April 28, 2004, which extended the deployment deadline until December 31, 2004. DCS treated the request as valid and did not request *Richardson* documentation. Dobson stated in its Supplemental LOI Response that DCS deployed Phase II service on April 20, 2005, and that DCS intended to complete its formal acceptance on June 22, 2005.⁹⁷ However, Dobson noted that it encountered difficulties with two base stations and would continue to work to resolve the problem. DCS’s November 1, 2005 Quarterly Report indicated that it “completed installation of the necessary software and hardware of the network-based E911 Phase II solution” on April 20, 2005, and that it “completed testing on July 7, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.”⁹⁸ DCS further stated in its Quarterly Report that it reverted back to Phase I on July 8, 2005, at the request of the PSAP.⁹⁹ Thus, DCS apparently did not complete deployment of Phase II service in Isabella County until at least April 20, 2005, almost four months after the extended December 31, 2004 deployment deadline.

31. **Kalkaska County, Michigan.** DCS received a valid request for Phase II service from Kalkaska County on October 14, 2004.¹⁰⁰ Dobson stated in its Supplemental LOI Response that DCS completed internal testing of its E911 Phase II software solution on April 22, 2005, and completed its formal acceptance with the PSAP on June 14, 2005.¹⁰¹ DCS’s November 1, 2005 Quarterly Report indicated that it “completed installation of the necessary software and hardware of the network-based E911 Phase II solution” on April 25, 2005, and that it “completed testing on July 8, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.”¹⁰² Thus, DCS apparently did not complete deployment of Phase II service in Kalkaska County until at least April 25, 2005, more than five months after Kalkaska County made its valid Phase II request.

32. **Keweenaw County, Michigan.** ACC received a valid request for Phase II service from Keweenaw County on November 24, 2004.¹⁰³ Dobson stated in its Supplemental LOI Response that ACC deployed TDMA Phase II service to Keweenaw County on May 5, 2005, and was currently working to

⁹⁵ ACC November 1, 2005 Quarterly Report, Appendix A, at 8. ACC’s November 1, 2005 Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

⁹⁶ Supplemental LOI Response, Attachment B, Response to Question 13, at 20.

⁹⁷ *Id.*

⁹⁸ DCS November 1, 2005 Quarterly Report, Appendix A, at 4.

⁹⁹ See paragraph 52 *infra*.

¹⁰⁰ Supplemental LOI Response, Attachment B, Response to Question 13, at 18.

¹⁰¹ *Id.*

¹⁰² DCS November 1, 2005 Quarterly Report, Appendix A, at 1.

¹⁰³ Supplemental LOI Response, Attachment B, Response to Question 13, at 23.

complete formal acceptance by June 24, 2005.¹⁰⁴ Dobson indicated that ACC would not be completing deployment of GSM Phase II service until mid-July, when an equipment vendor performed software upgrades for its cell sites. ACC's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on July 14, 2005 for GSM and on July 17, 2005 for TDMA.¹⁰⁵ Thus, ACC apparently did not complete deployment of Phase II service to Keweenaw County until at least July 17, 2005, more than seven months after Keweenaw County made its valid Phase II request.

33. **Lake County, Michigan.** DCS received a request for Phase II service from Lake County on October 29, 2003, requested *Richardson* documentation on December 22, 2003, and received documentation confirming that the request was valid on January 29, 2004.¹⁰⁶ Dobson stated in its Supplemental LOI Response that DCS deployed Phase II service to Lake County on April 19, 2005, and completed its formal acceptance on June 1, 2005.¹⁰⁷ DCS's November 1, 2005 Quarterly Report confirmed that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on April 19, 2005, and that it "completed testing on June 1, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."¹⁰⁸ Thus, DCS apparently did not complete deployment of Phase II service to Lake County until at least April 19, 2005, almost 18 months after Lake County made its valid Phase II request.

34. **Leelanau County, Michigan.** DCS received a request for Phase II service from Leelanau County on February 2, 2004, requested *Richardson* documentation on February 6, 2004, and received documentation confirming that the request was valid on February 14, 2004.¹⁰⁹ Dobson stated in its Supplemental LOI Response that DCS deployed Phase II service to Leelanau County on April 25, 2005, and completed its formal acceptance on June 14, 2005.¹¹⁰ DCS's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on April 25, 2005, and that it "completed testing on July 12, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."¹¹¹ Thus, DCS apparently did not complete deployment of Phase II service to Leelanau County until at least April 25, 2005, more than 14 months after Leelanau County made its valid Phase II request.

35. **Mason and Oceana Counties, Michigan.** DCS received a request for Phase II service

¹⁰⁴ *Id.*

¹⁰⁵ ACC November 1, 2005 Quarterly Report, Appendix A, at 8. ACC's November 1, 2005 Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

¹⁰⁶ Supplemental LOI Response, Attachment B, Response to Question 13, at 19. We note that a wireless carrier may request readiness documentation from a PSAP more than 15 days after receipt of the PSAP's E911 service request, but in this event, the PSAP's failure to provide the documentation within 15 days will not toll the six-month implementation period. See 47 C.F.R. § 20.18(j)(3); see also *Richardson Reconsideration*, 17 FCC Rcd at 24284, ¶ 10. Thus, Lake County's failure to provide *Richardson* documentation within 15 days of DCS's untimely request did not toll the six-month implementation period.

¹⁰⁷ Supplemental LOI Response, Attachment B, Response to Question 13, at 19.

¹⁰⁸ DCS November 1, 2005 Quarterly Report, Appendix A, at 1.

¹⁰⁹ Supplemental LOI Response, Attachment B, Response to Question 13, at 19.

¹¹⁰ Supplemental LOI Response, Attachment B, Response to Question 13, at 19.

¹¹¹ DCS November 1, 2005 Quarterly Report, Appendix A, at 1.

from Mason-Oceana 911 on October 3, 2003, requested *Richardson* documentation on October 7, 2003, and received documentation confirming that the request was valid on October 17, 2003.¹¹² Dobson stated in its Supplemental LOI Response that DCS deployed Phase II service to Oceana County on April 19, 2005, and completed its formal acceptance with Oceana County on June 1, 2005.¹¹³ Dobson further noted, however, that DCS had encountered difficulties with one site in Mason County and was working to resolve the issue. DCS's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on April 19, 2005, and that it "completed testing on July 6, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."¹¹⁴ Thus, DCS apparently did not complete deployment of Phase II service to Mason and Oceana Counties until at least April 19, 2005, more than 17 months after Mason-Oceana 911 made its valid Phase II request.

36. **Newaygo County, Michigan.** DCS acquired the Newaygo County (GSM-only) market when it purchased NPI's assets on June 15, 2004.¹¹⁵ DCS stated that it did not receive a copy of the Phase II request from NPI in 2003; rather, it received a valid request directly from the PSAP during a meeting with various Michigan PSAPs on October 21, 2004. Dobson stated in its Supplemental LOI Response that DCS deployed Phase II service on April 29, 2005, and that it completed its formal acceptance on June 2, 2005.¹¹⁶ DCS's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-based E911 Phase II solution" on April 29, 2005, and that it "completed testing on June 3, 2005 to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format."¹¹⁷ Thus, DCS apparently did not complete deployment of Phase II service in Newaygo County until at least April 29, 2005, more than six months after it received the valid Phase II request from Newaygo County.

37. **Ontonagon County, Michigan.** ACC received a request for Phase II service from Ontonagon County on April 23, 2004, requested *Richardson* documentation on May 14, 2004, and received documentation confirming that the request was valid on May 20, 2004.¹¹⁸ Dobson stated in its Supplemental LOI Response that ACC deployed TDMA Phase II service to Ontonagon County on May 5, 2005, and was currently working to complete formal acceptance by June 24, 2005.¹¹⁹ Dobson indicated that ACC would not be completing deployment of GSM Phase II service until mid-July, when an equipment vendor performed software upgrades for its cell sites. ACC's November 1, 2005 Quarterly Report indicated that it "completed installation of the necessary software and hardware of the network-

¹¹² Supplemental LOI Response, Attachment B, Response to Question 13, at 18. Although Dobson indicated that DCS owned and operated this market prior to June 2004, when it acquired NPI's assets in Michigan, it also stated that DCS obtained a copy of the Phase II request made by Mason-Oceana 911 to NPI on January 29, 2003, along with an agreement, dated April 29, 2003, to extend NPI's Phase II deployment deadline until December 31, 2004. *Id.* It is unclear from this statement whether DCS relied on this extension granted to NPI, or what the basis for such reliance was, given that it owned and operated the market prior to its acquisition of NPI's assets.

¹¹³ *Id.*

¹¹⁴ DCS November 1, 2005 Quarterly Report, Appendix A, at 1.

¹¹⁵ Supplemental LOI Response, Attachment B, Response to Question 13, at 21.

¹¹⁶ *Id.*

¹¹⁷ DCS November 1, 2005 Quarterly Report, Appendix A, at 5.

¹¹⁸ Supplemental LOI Response, Attachment B, Response to Question 13, at 22.

¹¹⁹ *Id.*

based E911 Phase II solution” on June 23, 2005 for TDMA and on July 14, 2005 for GSM.¹²⁰ Thus, ACC apparently did not complete deployment of Phase II service to Dickinson County until at least July 14, 2005, more than 15 months after Ontonagon County made its valid Phase II request.

38. **Anchorage, Alaska (Phase I and II).** DCS received valid requests for Phase I and Phase II service from the Anchorage Police Department on May 4, 2004.¹²¹ Dobson indicated in its Supplemental LOI Response that DCS attempted to deploy Phase I service on May 27, 2005, but discovered that it did not have the necessary connectivity in place.¹²² Dobson stated that to rectify the problem, DCS would have to re-order additional SS7 lines. DCS’s November 1, 2005 Quarterly Report indicated that the necessary trunks were ordered from the LEC on July 25, 2005, DCS received the trunks in August 2005, and deployed Phase I service on August 18, 2005.¹²³ DCS’s Quarterly Report further indicated that it “completed installation of the necessary software and hardware of the network-based E911 Phase II solution” on October 28, 2005.¹²⁴ Thus, DCS apparently did not complete deployment of Phase I service to Anchorage until August 18, 2005, more than 15 months after Anchorage made its valid Phase I request, and did not complete deployment of Phase II service to Anchorage until at least October 28, 2005, more than 17 months after Anchorage made its valid Phase II request.

39. **Montgomery County, Kansas.** ACC received a request for Phase II service from Montgomery County on July 15, 2002, requested *Richardson* documentation from the PSAP on October 29, 2002, and received such documentation confirming that the request was valid on November 25, 2002.¹²⁵ Dobson noted in its Supplemental LOI Response that Andrew provided ACC with a market plan for delivering a potential Phase II solution on October 20, 2003; that Andrew and ACC representatives corresponded regularly from at least January 2004 until July 2004 regarding the need for a population map to identify what type of coverage Andrew’s solution would reach, but the map was not produced; and that it is no longer using Andrew in this market, but has instead shifted to utilizing Polaris. Dobson further noted that it expected to complete all internal testing of the implemented solution by July 15, 2005, after which it would schedule formal acceptance.¹²⁶ ACC’s November 1, 2005 Quarterly Report indicated that it “completed deployment of the necessary software and hardware of the network-based E911 Phase II solution” on August 30, 2005.¹²⁷ Thus, ACC apparently did not complete deployment of Phase II service to Montgomery County until at least August 30, 2005, more than three years after Montgomery County made its valid Phase II request.

40. **Barren and Metcalfe Counties, Kentucky.** ACC received a request for Phase II service

¹²⁰ ACC November 1, 2005 Quarterly Report, Appendix A, at 8. ACC’s November 1, 2005 Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

¹²¹ Supplemental LOI Response, Attachment B, Response to Question 13, at 1.

¹²² *Id.* at 2.

¹²³ DCS November 1, 2005 Quarterly Report, Appendix A, at 1.

¹²⁴ *Id.* DCS’s November 1, 2005 Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

¹²⁵ Supplemental LOI Response, Attachment B, Response to Question 13, at 27.

¹²⁶ *Id.* at 28.

¹²⁷ ACC November 1, 2005 Quarterly Report, Appendix A, at 11. The Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

from the Barren-Metcalf E9-1-1 for Barren and Metcalf Counties on May 4, 2004, requested *Richardson* documentation from the PSAP on May 14, 2004, and received documentation confirming that the request was valid on May 27, 2004.¹²⁸ Dobson noted that ACC only operates one cell site in these counties, making use of the Andrew solution impractical, but did not otherwise discuss what steps it took to implement Phase II service in these counties. Dobson stated in its Supplemental LOI Response that ACC completed internal testing of the Polaris solution on June 13, 2005, and had scheduled formal acceptance for Barren County on June 23, 2005 and for Metcalf County on June 28, 2005.¹²⁹ ACC's November 1, 2005 Quarterly Report indicated that it "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution for both Barren and Metcalf Counties" on July 27, 2005.¹³⁰ Thus, ACC apparently did not complete deployment of Phase II service in Barren and Metcalf Counties until at least June 13, 2005, more than 13 months after receiving a valid Phase II request from Barren-Metcalf E9-1-1.

41. **Adair County, Kentucky.** ACC received a request for Phase II service from Adair County on May 19, 2004, requested *Richardson* documentation from the PSAP on May 19, 2004, and received documentation confirming that the request was valid on May 26, 2004.¹³¹ Dobson noted that ACC only has two cell sites in this county, making Phase II deployment technically problematic, but did not otherwise discuss what steps it took to implement Phase II service in Adair County. Dobson stated in its Supplemental LOI Response that ACC completed internal testing of the Polaris solution on June 13, 2005, and completed formal acceptance on June 21, 2005.¹³² However, during acceptance testing, ACC and the PSAP encountered a problem relating to one particular sector of testing, and both parties were working to resolve the issue. ACC's November 1, 2005 Quarterly Report indicated that it "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution" in Adair County on July 20, 2005.¹³³ Thus, ACC apparently did not complete deployment of Phase II service until at least June 13, 2005, more than 13 months after receiving a valid Phase II request from Adair County.

42. **Hardin County, Kentucky.** ACC received a request for Phase II service from Hardin County on June 1, 2004, requested *Richardson* documentation from the PSAP on June 3, 2004, and received documentation confirming that the request was valid on July 7, 2004.¹³⁴ Dobson stated that it attempted to call Hardin County to discuss ACC's current deployment efforts multiple times in June 2005 with no success, but did not otherwise discuss what steps it took to implement Phase II service in Hardin County. Dobson stated in its Supplemental LOI Response that ACC completed internal testing on June 13, 2003, and attempted to complete formal acceptance on June 21, 2005, but encountered technical difficulties.¹³⁵ ACC's November 1, 2005 Quarterly Report indicated that it "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution" in Hardin County on July

¹²⁸ Supplemental LOI Response, Attachment B, Response to Question 13, at 6.

¹²⁹ *Id.*

¹³⁰ ACC November 1, 2005 Quarterly Report, Appendix A, at 1.

¹³¹ Supplemental LOI Response, Attachment B, Response to Question 13, at 10.

¹³² *Id.*

¹³³ ACC November 1, 2005 Quarterly Report, Appendix A, at 3.

¹³⁴ Supplemental LOI Response, Attachment B, Response to Question 13, at 12. Because Hardin County did not provide the *Richardson* documentation within 15 days of ACC's request, the six-month implementation period was tolled briefly, until it provided the documentation on July 7, 2004. *See* 47 C.F.R. § 20.18(j)(3).

¹³⁵ *Id.*

14, 2005.¹³⁶ Thus, ACC apparently did not complete deployment of Phase II service until July 14, 2005, more than 12 months after receiving a valid Phase II request from Hardin County.

43. **Green County, Kentucky.** ACC received a valid request for Phase II service from Green County on July 17, 2003.¹³⁷ On February 10, 2004, Dobson's E911 Project Manager notified Green County that ACC was preparing a market plan, noting however that an alternative solution might be required since ACC only operated one cell site in the county. In March 2004, Andrew completed the market plan, which demonstrated the lack of viability with only one operating cell site in the county. In July 2004, the E911 Project Manager requested a meeting to discuss the problems associated with the single cell density problem but did not receive a response from the PSAP. Dobson stated that ACC completed internal testing of the Polaris solution on June 13, 2003, and completed formal acceptance on June 16, 2005.¹³⁸ However, ACC encountered technical difficulties with one particular TDMA cell site and planned to continue to work to resolve it. ACC's November 1, 2005 Quarterly Report indicated that it "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution" in Green County on July 19, 2005.¹³⁹ The Quarterly Report noted that ACC encountered technical difficulties that it has resolved. Thus, ACC apparently did not complete deployment of Phase II service until July 19, 2005, approximately two years after receiving a valid Phase II request from Green County.

44. **Frederick County, Maryland (Phase I and II).** DCS received a request for Phase I service from Frederick County on June 7, 2004, and a request for Phase II service on June 14, 2004.¹⁴⁰ On June 14, 2004, DCS requested information regarding a nondisclosure agreement for Phase I, as well as *Richardson* documentation, and received a signed NDA and the requested *Richardson* documentation on July 19, 2004. Dobson indicated in its Supplemental LOI response that DCS encountered difficulty in establishing trunks to the selective router and had not yet deployed Phase I or Phase II service in Frederick County.¹⁴¹ DCS's November 1, 2005 Quarterly Report indicated that it deployed Phase I service on October 20, 2005, and that it also "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution" on October 20, 2005.¹⁴² Thus, DCS apparently did not complete deployment of Phase I and II service to Frederick County until at least October 20, 2005, more than 15 months after Frederick County made its valid Phase I and II requests.

45. **Carroll County, Missouri (Phase I and II).** DCS received valid requests for Phase I and II service from Carroll County on August 4, 2004.¹⁴³ Dobson noted that, between December 2004 and February 2005, its E911 Project Manager repeatedly received incomplete cell site data from internal Dobson sources, which delayed deployment of Phase I.¹⁴⁴ Dobson also noted that DCS ordered the

¹³⁶ ACC November 1, 2005 Quarterly Report, Appendix A, at 3.

¹³⁷ Supplemental LOI Response, Attachment B, Response to Question 13, at 13.

¹³⁸ *Id.*

¹³⁹ ACC November 1, 2005 Quarterly Report, Appendix A, at 3.

¹⁴⁰ Supplemental LOI Response, Attachment B, Response to Question 13, at 4.

¹⁴¹ *Id.* at 4-5.

¹⁴² DCS November 1, 2005 Quarterly Report, Appendix A, at 9. DCS's Quarterly Report did not address when it completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

¹⁴³ Supplemental LOI Response, Attachment B, Response to Question 13, at 2.

¹⁴⁴ *Id.* at 3.

necessary trunks from the LEC in mid-March 2005, but the LEC did not provide the trunks on the scheduled May 16, 2005 delivery date, pushing the Phase I deployment date back further. DCS's November 1, 2005 Quarterly Report indicated that it deployed Phase I service on July 15, 2005, and that it "completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format" on September 26, 2005.¹⁴⁵ Thus, DCS apparently did not complete deployment of Phase I service to Carroll County until July 15, 2005, almost a year after Carroll County made its valid Phase I request, and did not complete deployment of Phase II service to Carroll County until September 26, 2005, more than 13 months after Carroll County made its valid Phase II request.

46. **Schoharie County, New York (Phase I and II).** ACC received a valid request for Phase II service from Schoharie County on September 20, 2004.¹⁴⁶ Dobson stated that ACC identified technical difficulties in implementing Phase II service since it operates on only two cell sites in Schoharie County and initially worked with Andrew to develop a market plan that would provide a viable Phase II solution. Subsequently, ACC shifted to the Polaris solution in this market. Dobson indicated in its Supplemental LOI Response that ACC deployed TDMA Phase II service on May 24, 2005, and also attempted to deploy GSM Phase II service on that date but encountered technical difficulties which it was trying to remedy. On June 17, 2005, Dobson's E911 Project Manager discovered that due to an oversight he had not scheduled any activities relating to GSM Phase I deployment in this county.¹⁴⁷ ACC's November 1, 2005 Quarterly Report indicated that it deployed TDMA Phase II service on May 24, 2005.¹⁴⁸ The Quarterly Report also indicated that ACC deployed GSM Phase I service on October 20, 2005, and, on that same date, "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution" for GSM Phase II service.¹⁴⁹ Thus, ACC apparently did not complete deployment of Phase I and Phase II service until October 20, 2005, more than a year after Schoharie County made its valid Phase II request.

47. **Otsego County, New York.** ACC received a valid request for Phase II service from Otsego County on February 20, 2004.¹⁵⁰ Dobson stated that ACC identified technical difficulties in implementing Phase II service due to a 'string-of-pearls' cell site configuration and initially worked with Andrew to develop a market plan that would provide a viable Phase II solution. Subsequently, ACC shifted to the Polaris solution in this market. Dobson indicated in its Supplemental LOI Response that ACC deployed Phase II service, including formal acceptance, on May 24, 2005. However, ACC's November 1, 2005 Quarterly Report indicated that it deployed GSM Phase II service on May 24, 2005, but that it "completed deployment of the necessary software and hardware of the network-based E911 Phase II solution" for TDMA Phase II service on July 19, 2005.¹⁵¹ Thus, ACC apparently did not complete deployment of Phase II service until July 19, 2005, almost 17 months after Otsego County made

¹⁴⁵ DCS November 1, 2005 Quarterly Report, Appendix A, at 9.

¹⁴⁶ Supplemental LOI Response, Attachment B, Response to Question 13, at 28.

¹⁴⁷ ACC received a valid request for Phase I service from Schoharie County on November 4, 2002, and deployed TDMA Phase I in Schoharie County on November 11, 2003. ACC November 1, 2005 Quarterly Report, Appendix A, at 11. When ACC subsequently overlaid its TDMA network with GSM technology in Schoharie County, it apparently failed to deploy GSM Phase I service.

¹⁴⁸ ACC November 1, 2005 Quarterly Report, Appendix A, at 11.

¹⁴⁹ *Id.* The Quarterly Report did not address when ACC completed testing for GSM Phase II to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format.

¹⁵⁰ Supplemental LOI Response, Attachment B, Response to Question 13, at 28.

¹⁵¹ ACC November 1, 2005 Quarterly Report, Appendix A, at 11.

its valid Phase II request.

48. **Steuben County, New York (Phase I and II).** DCS received a valid request for Phase I and II service from Steuben County on November 3, 2004.¹⁵² On December 1, 2004, Dobson's E911 Project Manager requested necessary cell site data from internal Dobson personnel and received an incomplete version of the cell site data on February 8, 2005, which was not finalized until May 12, 2005. DCS subsequently ordered trunks from the LEC and was still awaiting delivery of the trunks at the time it submitted its Supplemental LOI Response. DCS's November 1, 2005 Quarterly Report indicated that it had difficulties establishing connectivity with the LEC, and finally deployed both Phase I and Phase II on October 26, 2005.¹⁵³ Thus, DCS apparently did not complete deployment of Phase I or Phase II service until October 26, 2005, almost one year after Steuben County made its valid Phase I and II requests.

49. **Barbour County, West Virginia (Phase I).** ACC received a valid request for Phase I service from Barbour County on June 8, 2004.¹⁵⁴ Dobson asserted that its E911 Project Manager contacted Barbour County and set a tentative deployment date of March 18, 2005, to which Barbour County orally consented. Dobson further asserted that in early May 2005 (after Dobson's tentative deployment date), the E911 Project Manager began accumulating cell site data for Barbour County. Dobson noted that ACC was awaiting delivery of the only open item, the p-ANIs¹⁵⁵ which had been ordered from the LEC, before it could test for final deployment. ACC's November 1, 2005 Quarterly Report indicated that it deployed Phase I service in Barbour County on July 19, 2005.¹⁵⁶ Thus, ACC apparently did not complete deployment of Phase I service until July 19, 2005, more than one year after Barbour County made its valid Phase I request.

50. **Lewis and Gilmer Counties, West Virginia (Phase I and II).** ACC received valid requests for Phase I and II service on behalf of both Lewis and Gilmer Counties on December 20, 2004.¹⁵⁷ Dobson asserted that its E911 Project Manager communicated with Lewis and Gilmer Counties regarding the technical difficulties it faced in implementing Phase II service due to a string-of-pearls cell site configuration in Lewis County and the fact that there is only a single cell site in Gilmer County. In early May 2005, Dobson's E911 Project Manager began accumulating cell site data necessary for deployment of the Polaris Phase II solution. Dobson stated in its Supplemental LOI Response that ACC was awaiting certain technical data ordered from the LEC before it could test for final deployment and that it expected to schedule final Phase I testing on or around June 24, 2005. Dobson stated that ACC expected to complete internal Phase II testing by July 31, 2005, after which it would schedule formal acceptance.¹⁵⁸ ACC's November 1, 2005 Quarterly Report indicated that it completed deployment of Phase I service in Lewis and Gilmer Counties on July 19, 2005.¹⁵⁹ ACC's Quarterly Report also indicated that it

¹⁵² Supplemental LOI Response, Attachment B, Response to Question 13, at 29.

¹⁵³ DCS November 1, 2005 Quarterly Report, Appendix A, at 10.

¹⁵⁴ Supplemental LOI Response, Attachment B, Response to Question 13, at 17.

¹⁵⁵ Pseudo-Automatic Number Identification or "p-ANI" is "a number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning." The special meaning assigned to the p-ANI is determined by agreements between the system originating the call, intermediate systems routing and handling the call, and the destination system. 47 C.F.R. § 20.3.

¹⁵⁶ ACC November 1, 2005 Quarterly Report, Appendix A, at 11.

¹⁵⁷ Supplemental LOI Response, Attachment B, Response to Question 13, at 14-15.

¹⁵⁸ *Id.* at 15.

¹⁵⁹ ACC November 1, 2005 Quarterly Report, Appendix A, at 7.

“completed installation of the necessary software and hardware of the network-based E911 Phase II solution” and “completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format” in both Lewis and Gilmer Counties on October 31, 2005. Thus, ACC apparently did not complete deployment of Phase I service in Lewis and Gilmer Counties until July 19, 2005, approximately seven months after receiving valid requests for Phase I service for these two PSAPs, and that it did not complete deployment of Phase II service in Lewis and Gilmer Counties until October 31, 2005, approximately ten months after receiving valid requests for Phase II service for these two PSAPs.

51. **Harrison, Marion, Monongalia, Preston, and Taylor Counties, West Virginia.** ACC received valid requests for Phase II service from the North Central West Virginia MECCA 911 on behalf of Harrison, Marion, Monongalia, Preston and Taylor Counties on September 2, 2003.¹⁶⁰ In light of difficulties anticipated due to low cell site density in these counties, Dobson’s E911 Project Manager met with all five of the individual county PSAP directors on March 26, 2004. At this meeting, the E911 Project Manager requested and received oral agreement from the five PSAPs to extend the deployment schedule until July 1, 2004. Dobson noted that ACC ordered Phase II equipment from Andrew and necessary GPS antennas in June 2004; that the GPS antennas were delivered on July 1, 2004 and installed in October 2004; and that the Andrew equipment was delivered in September 2004 and installed in November 2004. Dobson further noted that ACC ordered additional required equipment in December 2004, and completed installation of this equipment in June 2005. Dobson stated that ACC expected to complete all internal testing by July 1, 2005, after which it would schedule formal acceptance.¹⁶¹ ACC’s November 1, 2005 Quarterly Report indicated that it “completed installation of the necessary software and hardware of the network-based E911 Phase II solution” and “completed testing to demonstrate to the PSAP that latitude and longitude information is being transmitted in the appropriate format” in all five counties between August 22 and August 24, 2005.¹⁶² Thus, ACC apparently did not complete deployment of Phase II service in these five counties until between August 22 and 24, 2005, approximately two years after receiving valid Phase II requests for these five PSAPs and eleven months after Dobson’s extended deployment deadline of July 1, 2004.

III. DISCUSSION

52. Under Section 503(b)(1)(b) of the Communications Act of 1934, as amended (“Act”), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁶³ To impose such a forfeiture penalty, the Commission must issue

¹⁶⁰ Supplemental LOI Response, Attachment B, Response to Question 13, at 16-17.

¹⁶¹ *Id.* at 17.

¹⁶² ACC November 1, 2005 Quarterly Report, Appendix A, at 5-6.

¹⁶³ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, 16 FCC Rcd 1359 (2001) (“*Callais Cablevision*”) (issuing a notice of apparent liability for forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage). The term “repeated” means that the act was committed or omitted more than once, or lasts more than one day. *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9; *Southern California*, 6 FCC Rcd at 4388, ¶ 5.

a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁶⁴ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹⁶⁵ As set forth in detail below, we conclude under this standard that Dobson is apparently liable for forfeiture for its apparent willful and repeated violations of Section 20.18(d) and (f) of the Rules.

53. The fundamental issue in this case is whether Dobson apparently violated the Commission's rules by willfully or repeatedly failing to timely provide E911 Phase I and Phase II service in response to valid PSAP requests. Based on a preponderance of the evidence, we conclude that DCS and ACC are each apparently liable for a forfeiture of \$375,000 for a total forfeiture in the amount of \$750,000 for apparently willfully and repeatedly violating Section 20.18(d) and (f) of the Rules.

A. Failure to Timely Provide E911

54. As noted above, the E911 Phase I rules require wireless carriers to provide designated PSAPs with both the telephone number of the mobile handset that originated the 911 call and the location of the base station or cell site that received the 911 call, within six months of a valid request by a designated PSAP. Under the E911 Phase II rules, wireless carriers must provide designated PSAPs with the location of wireless 911 callers, using either a network-based or handset-based solution. Carriers, such as Dobson, which choose to deploy a network-based Phase II solution must provide Phase II service to at least 50 percent of the PSAP's coverage area or at least 50 percent of its population within six months of a valid PSAP request, and to 100 percent of the PSAP's coverage area or 100 percent of its population within 18 months of such a request. With respect to the Complainant PSAPs, the record before us establishes that Dobson apparently failed to timely provide Phase I service in response to one valid PSAP request and failed to timely deploy Phase II service in response to eleven valid PSAP requests.¹⁶⁶ With respect to the other PSAPs, the record establishes that Dobson apparently failed to timely provide Phase I service in response to eight valid PSAP requests and failed to timely deploy Phase II service in response to 30 valid PSAP requests.¹⁶⁷ Accordingly, based on the preponderance of the evidence, we find that Dobson apparently failed to timely provide Phase I service in response to valid PSAP requests in violation of Section 20.18(d) of the Rules in nine instances, and apparently failed to timely provide Phase II service in response to valid PSAP requests in violation of Section 20.18(f) of the Rules in 41 instances. We note that 25 of these 50 violations occurred in markets in which DCS is the system licensee, and 25 occurred in markets in which ACC is the system licensee.

B. Proposed Forfeiture

55. Section 503(b) of the Act and Section 1.80(a) of the Rules provide that any person who

¹⁶⁴ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁶⁵ See, e.g., *SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

¹⁶⁶ See discussion at paragraphs 9-20, *supra*. Following receipt of Dobson's LOI responses, the Enforcement Bureau received additional complaints from the Michigan 911 State Administrator and the Michigan Communication Directors Association which asserted that Dobson's Phase II deployment in Michigan has not yielded a level of accuracy that the PSAPs can rely upon or that meets the FCC's accuracy standards. We note that the issue of location accuracy as a general matter is being addressed via the Network Reliability and Interoperability Council ("NRIC") process. See NRIC VII FOCUS GROUP 1A, Near Term Issues for Emergency/E9-1-1 Services, Final Report, December 16, 2005, available at <http://www.nric.org/fg/index.html>. Accordingly, we do not address this issue herein.

¹⁶⁷ See discussion at paragraphs 25-51, *supra*.

willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. Based upon the record before us, Dobson's apparent violations of Section 20.18(d) and (f) of the Rules were willful and repeated.

56. Under Section 503(b)(2)(B) of the Act,¹⁶⁸ we may assess a common carrier a forfeiture of up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. Additionally, in assessing an appropriate forfeiture amount, we must consider the factors set forth in Section 503(b)(2)(D) of the Act,¹⁶⁹ which includes "the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require," as well as guidelines set forth in the Commission's Forfeiture Policy Statement.¹⁷⁰

57. The Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules do not establish a base forfeiture for violation of Sections 20.18(d) and 20.18(f). Nevertheless, the Commission has stated that the "omission of a specific rule violation from the list ... [establishing base forfeiture amounts] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules."¹⁷¹ Thus, the Commission retains its discretion to issue forfeitures on a case-by-case basis,¹⁷² and has assessed forfeiture liability,¹⁷³ for rule violations irrespective of whether corresponding base forfeiture amounts have been established.

58. The record establishes that Dobson apparently failed to timely provide E911 Phase I service in nine instances and to timely provide E911 Phase II service in 41 instances. Thus, Dobson apparently failed to timely provide E911 service in a total of 50 instances. As noted above, 25 of these 50 violations occurred in markets in which DCS is the system licensee, and 25 occurred in markets in which ACC is the system licensee.

¹⁶⁸ 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *see also* 47 C.F.R. § 1.80(c).

¹⁶⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁷⁰ *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹⁷¹ *Id.* at 12 FCC Rcd at 17099 ¶ 22.

¹⁷² *Id.*

¹⁷³ *See Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22630 ¶¶ 19-20 (2002) (assessing an aggregate \$133,000 forfeiture irrespective of the absence of an established base forfeiture for violations of the cable signal leakage standards); *Midwest Television, Inc.*, 20 FCC Rcd 3959 (Enf. Bur. 2005) (assessing a \$20,000 proposed forfeiture irrespective of the absence of an established base forfeiture for failure to broadcast emergency information accessible to hearing impaired viewers); *A-O Broadcasting Corp.*, 31 Communications Reg. (P&F) 411 ¶ 22 (2003), *forfeiture ordered*, 20 FCC Rcd 756 (2005) (assessing a \$28,000 forfeiture, *inter alia*, irrespective of the absence of an established base forfeiture for violations of radio frequency exposure limits).

59. Having considered the statutory factors enumerated above, we conclude that a substantial proposed forfeiture is warranted. First, we find that the violations here are egregious. Violations of E911 requirements are extremely serious, given the critical function these requirements serve in promoting and safeguarding life and property.¹⁷⁴ Further, we note that nine of the 50 violations involved Dobson's failure to timely provide Phase I service. The Phase I requirements set forth in Section 20.18(d) have been in effect for over seven years. We also believe that a substantial proposed forfeiture is warranted based on the continuous and repeated nature of the violations. In this regard, we take into account the substantial number of violations and the fact that a number of the violations involved valid PSAP requests that had been pending for as long as two or three years. Finally, we take into account Dobson's size and ability to pay a forfeiture in determining the appropriate forfeiture amount. We note, in this connection, that Dobson is the largest independent rural wireless carrier and the ninth largest wireless carrier in the country. Dobson owns more than sixty wireless markets in 16 states and serves more than 1.6 million subscribers. Dobson generated more than \$1 billion in revenue in 2004,¹⁷⁵ and for the first nine months of 2005 showed a 17% increase in revenues over the previous nine months.¹⁷⁶ As the Commission made clear in the *Forfeiture Policy Statement*, large or highly profitable communications entities, such as Dobson, could expect forfeitures higher than those reflected in the base amounts.¹⁷⁷ In view of Dobson's size and ability to pay, we believe that a substantial proposed forfeiture is appropriate in order for the proposed forfeiture to serve as an effective deterrent to future violations the E911 requirements.

60. We recognize that Dobson has encountered some difficulties in developing its Phase II solution, including delays in the delivery of equipment and necessary facilities, which impeded timely deployment.¹⁷⁸ It is well established that "an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance" with E911 requirements.¹⁷⁹ On the other hand, a carrier's "concrete and timely actions" taken with a vendor, manufacturer, or other entity

¹⁷⁴ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20852 ¶ 2 (1999), *clarified*, 16 FCC Rcd 18982 (2001); see also *T-Mobile USA, Inc.*, 18 FCC Rcd 3501, 3504 ¶ 7 (2003); *Sprint Spectrum LP d/b/a Sprint PCS*, 19 FCC Rcd 19901, 19906 ¶ 12 (Enf. Bur. 2004), *consent decree ordered*, 20 FCC Rcd 12328 (Enf. Bur. 2005).

¹⁷⁵ Dobson Communications Corporation 2004 Annual Report to Shareholders, www.dobson.net.

¹⁷⁶ Dobson Communications Corporation Form 424B3 (Prospectus), February 10, 2006, at 25.

¹⁷⁷ Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100.

¹⁷⁸ See paragraphs 40-41, 43, 46-47 and 50-51 *supra*.

¹⁷⁹ *Order to Stay*, 17 FCC Rcd at 14854 ¶ 37; *Revision of the Commission's Rules to Ensure Compatibility of Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum LP d/b/a Sprint PCS*, 16 FCC Rcd 18330, 18340 ¶ 32 (2001); *Revision of the Commission's Rules to Ensure Compatibility of Enhanced 911 Emergency Calling Systems, Request for Waiver by AT&T Wireless Services*, 16 FCC Rcd 18253, 18261 ¶ 26 (2001).

may be considered as possible mitigation factors in an enforcement context.¹⁸⁰ Based on the record before us, we conclude that Dobson has not shown that it exercised the level of diligence expected of carriers in addressing the deployment of E911 services to warrant any mitigation. Rather, the record indicates that Dobson may not have dedicated sufficient resources and attention to E911 implementation at a time when it was actively expanding its wireless market holdings and converting its network from TDMA to GSM technology. Moreover, it appears that many of the violations stemmed, in part, from a lack of corporate oversight of the Dobson employee charged with the important function of managing Dobson's deployment of E911. We also note that nine of the 50 apparent violations involved Dobson's failure to timely provide Phase I service, which does not present the same technical challenges as Phase II deployment.

61. Accordingly, based on the egregious, continuous and repeated nature of the violations and Dobson's ability to pay a forfeiture, we propose an aggregate forfeiture of \$750,000 for Dobson's apparent willful and repeated violations of Section 20.18(d) and (f) of the Rules. While the proposed forfeiture amount is substantial, we note that it is significantly lower than the straightforward application of the applicable maximum statutory forfeiture amount.¹⁸¹ Because DCS and ACC each apparently failed to timely provide E911 service in 25 instances, each system licensee is apparently liable for half of the total proposed forfeiture amount, \$375,000.

IV. CONCLUSION

62. We conclude that DCS and ACC both apparently willfully and repeatedly violated Section 20.18(d) and (f) of the Rules by failing to fulfill valid requests for Phase I and Phase II E911 service to the above-listed PSAPs within six months of the date of the request. For these violations, we propose forfeitures totaling \$750,000.

V. ORDERING CLAUSES

63. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Dobson Cellular Systems, Inc. and American Cellular Corporation are each **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** for willful and repeated violations of Section 20.18(d) and (f) of the Rules as follows:

- (a) Dobson Cellular Systems, Inc. in the amount of three hundred seventy five thousand dollars (\$375,000); and
- (b) American Cellular Corporation in the amount of three hundred seventy five thousand dollars (\$375,000).

64. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Dobson Cellular Systems, Inc. and American Cellular Corporation **SHALL PAY** the full amount of the proposed forfeitures or **SHALL FILE** written statement(s) seeking reduction or cancellation of the proposed forfeitures.

65. Payment of the forfeitures shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeitures are not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸² Payment of the forfeitures must be made by check or similar instrument, payable to the

¹⁸⁰ *Id.*

¹⁸¹ *See* paragraph 56 *supra*.

¹⁸² 47 U.S.C. § 504(a).

order of the Federal Communications Commission. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁸³ The payments should note the following:

(a) Dobson Cellular Systems, Inc. -- NAL/Acct. No. 200632100010 and FRN # 0001699719; and

(b) American Cellular Corporation -- NAL/Acct. No. 200632100011 and FRN # 0003767324.

66. The response(s), if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

67. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁸⁴

68. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Ronald L. Ripley, Senior Vice President and General Counsel, Dobson Cellular Systems, Inc. and American Cellular Corporation, 14201 Wireless Way, Oklahoma City, Oklahoma 73134, and to Lawrence J. Movshin, Esq., and Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, 2300 N Street, N.W., Suite 700, Washington DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁸³ See 47 C.F.R. § 1.1914.

¹⁸⁴ *Id.*