

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

In the Matter of	)	
	)	
Joint Petition of CTIA and the Rural Cellular	)	WT Docket No. 05-288
Association for Suspension or Waiver of the	)	
Location-Capable Handset Penetration Deadline	)	

**ORDER**

**Adopted: May 3, 2006**

**Released: January 5, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this *Order*, we address a joint petition for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by CTIA – The Wireless Association (CTIA) and the Rural Cellular Association (RCA) (collectively, Petitioners).<sup>1</sup> Specifically, Petitioners request that the Commission suspend the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must have achieved 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.<sup>2</sup> Alternatively, Petitioners urge the Commission to establish a framework, based on criteria described in the Joint Petition, to guide consideration of carriers' requests for waiver of the 95% handset penetration deadline.

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines pursuant to our waiver authority, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.<sup>3</sup> Where carriers have met the standard, the relief granted has required

<sup>1</sup> See Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC Docket No. 94-102, filed June 30, 2005 (Joint Petition). The Joint Petition was placed on public notice by the Wireless Telecommunications Bureau on October 7, 2005. See Wireless Telecommunications Bureau Requests Comment on Joint Petition of CTIA and RCA Regarding the December 31, 2005 Deadline for Licensees Employing a Handset-Based E911 Phase II Location Technology to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Their Subscribers, WT Docket No. 05-288, *Public Notice*, 20 FCC Rcd 15862 (Wireless Tel. Bur. 2005). Comments were due Oct. 21, 2005, and reply comments were due Oct. 31, 2005. Parties filing comments and reply comments are listed in the Appendix to this *Order*.

<sup>2</sup> 47 C.F.R. § 20.18(g)(1)(v).

<sup>3</sup> See Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18277, 18281-86 ¶¶ 13-30 (2001); Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18330, 18335-38 ¶¶ 15-26 (2001); Request for Waiver by Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18369-74 ¶¶ 16-26 (2001); Request for Waiver by AT&T Wireless Services, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18253, 18257-59 ¶¶ 13-19 (2001); Request for Waiver by Cingular Wireless LLC, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18305, 18308-11 ¶¶ 14-20 (2001); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency (continued....)

compliance with the Commission's rules and policies within the shortest practicable time.<sup>4</sup> Inherent in this analysis is a case-by-case approach for analyzing the particular circumstances and factors presented by a carrier seeking waiver relief. As more fully discussed below, we believe that continuing to follow this individualized approach to addressing requests for waiver of the E911 requirements will best serve the public interest and promote public safety. Accordingly, we deny the CTIA/RCA Joint Petition.

## II. BACKGROUND

### A. Phase II Requirements

3. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.<sup>5</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>6</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>7</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>8</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>9</sup>

4. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request for Phase II service.<sup>10</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees must have achieved 95% penetration, among their subscribers, of location-capable handsets no later than December 31, 2005.<sup>11</sup>

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Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*).

<sup>4</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1.

<sup>5</sup> See 47 C.F.R. § 20.18(e).

<sup>6</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

<sup>7</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3, *Location-Capable Handsets*.

<sup>8</sup> See 47 C.F.R. §§ 20.18(f), (g)(2).

<sup>9</sup> See 47 C.F.R. § 20.18(j)(1).

<sup>10</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>11</sup> See 47 C.F.R. § 20.18(g)(1)(v).

## B. Waiver Standards

5. The Commission has recognized that “special circumstances” may warrant a waiver of the E911 Phase II requirements.<sup>12</sup> The Commission also has noted that smaller carriers, in particular, may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.<sup>13</sup> The Commission’s general waiver standards require a waiver proponent to show that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup> Particularly with respect to waiver of the E911 Phase II requirements, the Commission requires that waiver requests be “specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”<sup>15</sup> By requiring carriers to present a “clear path to full compliance,” we have been able to grant relief only when sufficiently justified, and limit any extension of the handset penetration deadline to the shortest practicable time.<sup>16</sup> We otherwise continue to expect carriers to achieve full compliance with the E911 Phase II requirements as soon as possible.<sup>17</sup>

6. To the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier’s good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks.<sup>18</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.<sup>19</sup> A carrier seeking a waiver based on extraordinary financial hardship may strengthen its justification by submitting documentation

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<sup>12</sup> See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17457 ¶ 43 (2000) (*Fourth MO&O*).

<sup>13</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14846 ¶ 20 (2002) (*Non-Nationwide Carriers Order*) (“wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations”); Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (“under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted”).

<sup>14</sup> See 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

<sup>15</sup> *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

<sup>16</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

<sup>17</sup> See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 45.

<sup>18</sup> See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

<sup>19</sup> See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.<sup>20</sup> The Commission also noted that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>21</sup>

7. In applying these criteria, the Commission has in the past recognized that special circumstances particular to smaller, Tier III carriers may warrant limited relief from E911 requirements.<sup>22</sup> For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.<sup>23</sup> In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

8. Finally, distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).<sup>24</sup> The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."<sup>25</sup>

### C. Petition and Comments

#### 1. CTIA/RCA Joint Petition

9. In their Joint Petition, CTIA and RCA request that the Commission suspend the December 31, 2005 deadline for carriers employing a handset-based location solution to achieve 95% penetration of location-capable handsets, provided they have satisfied the 100% digital handset activation requirement.<sup>26</sup> In the alternative, Petitioners propose that the Commission establish a framework to guide consideration of carriers' requests for waivers of the deadline.<sup>27</sup> Petitioners contend that limited relief from the deadline "is

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<sup>20</sup> *See id.*

<sup>21</sup> *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

<sup>22</sup> Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14848 ¶ 22.

<sup>23</sup> *See Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

<sup>24</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>25</sup> *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* at § 107(b), 118 Stat. 3986, 3991.

<sup>26</sup> *See Joint Petition* at 1, 8-10.

<sup>27</sup> *See id.* at 1-2, 10-15.

necessary to ensure that wireless customers who do not want to replace their non-location capable handsets are not needlessly burdened, and that wireless carriers that made a good faith effort to comply with the Commission's rules are not penalized as a result of factors that the Commission and carriers could not have anticipated when the handset penetration deadline was established.”<sup>28</sup>

10. Petitioners assert that although “[m]ost wireless carriers using handset-based location technologies have been very diligent in meeting the Commission's benchmarks . . . the majority of these carriers will not be able to satisfy the 95 percent penetration threshold by the end of this year.”<sup>29</sup> The “primary hurdle to handset exchanges,” according to the Joint Petition, “is that Phase II E911 service is not yet available in most U.S. communities,” and “[w]ireless customers are reluctant to go to the trouble to acquire location-capable handsets when they know the PSAP will not be able to use the data the handset generates.”<sup>30</sup> Moreover, even when the PSAP is Phase II ready, Petitioners contend that some customers prefer not to upgrade to new handsets.<sup>31</sup> Customer resistance is said to be “especially acute in sparsely populated rural areas, where many wireless subscribers use three watt analog phones” for better coverage and range.<sup>32</sup> Petitioners also cite to “a variety of technical and business obstacles” to carrier efforts to meet the December 31, 2005 benchmark.<sup>33</sup> Specifically, Petitioners point to carriers switching from one network technology to another (*e.g.*, TDMA to CDMA), network technology changes as a result of a merger or acquisition, and “unforeseen problems with handset technology.”<sup>34</sup>

11. Based on these considerations, CTIA and RCA “urge the Commission to give wireless carriers additional time to meet the 95 percent handset penetration deadline,” and propose that the suspension extend “for a particular carrier until that carrier has reached the 95 percent penetration threshold through customers’ handset replacement and churn.”<sup>35</sup> In the alternative, CTIA and RCA seek adoption of “clear guidelines for carriers seeking waivers of the rule.”<sup>36</sup> They propose a three-part framework they assert would streamline the waiver request and review process: “(1) the carrier would have to make an initial ‘threshold’ showing that it has made a good-faith effort to comply with the Commission’s E911 Phase II interim deployment requirements and other FCC E911 implementation rules;<sup>37</sup> (2) the carrier would have to demonstrate that it has satisfied at least one of several established factors that would justify grant of the waiver; and (3) a carrier meeting the first two criteria would be granted additional time to

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<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* In their Reply Comments, CTIA and RCA concede that “many wireless customers travel with their phones to regions that may be serviced by Phase II equipped PSAPs.” CTIA/RCA Reply Comments at 3. They argue, however, that “when consumers decide to upgrade their handsets to obtain new features their major interest is obtaining the benefits of these new features in the market where the phone will be used primarily.” *Id.*

<sup>31</sup> See Joint Petition at 5.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.* at 7.

<sup>34</sup> See *id.*

<sup>35</sup> See *id.* at 1, 10.

<sup>36</sup> *Id.* at 10.

<sup>37</sup> Petitioners assert that such showing would include demonstration of a good faith effort to meet the interim handset deployment benchmarks and progress in meeting PSAP deployment deadlines. See *id.* at 11.

achieve the 95 percent penetration benchmark, with the amount of time allowed depending on the individual carrier's circumstances."<sup>38</sup>

12. Petitioners propose that a showing of any one of the following factors would justify granting a waiver request: (1) lower-than-forecast churn; (2) customer resistance to new handsets (by showing that more than 5% of customers have not changed handsets in over three years); (3) substantial compliance (defined as 85% penetration as of December 31, 2005); (4) technology change (*e.g.*, TDMA to CDMA or GSM); (5) network or handset technology failures; (6) customers' continued reliance on analog coverage in very rural markets; and (7) agreement with PSAPs on alternative penetration schedules.<sup>39</sup> At the same time, Petitioners argue that "carriers should not, however, be precluded from making their own showings that unique circumstances beyond their control justify an extension of time to satisfy the handset penetration requirement" or from seeking alternative forms of relief.<sup>40</sup>

## 2. Comments

13. Five wireless carriers and NTCA filed comments in support of the Joint Petition.<sup>41</sup> These commenters generally agree that relief from the penetration deadline is warranted when carriers have made good faith efforts to deploy location-capable handsets, yet some customers remain reluctant to replace or upgrade their handsets.<sup>42</sup> Carrier commenters also assert that some customers prefer to keep higher-power phones that provide greater range and coverage in rural areas, rather than upgrade to location-capable handsets that only are available in lower-power models.<sup>43</sup>

14. The Joint Petition also received support from NARUC and SDPUC. These parties maintain that grant of the Joint Petition would ensure that wireless customers are not forced to replace their

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<sup>38</sup> Joint Petition at 10-11.

<sup>39</sup> *See id.* at 12-14.

<sup>40</sup> *See id.* at 11 n. 22 and 15 n. 33.

<sup>41</sup> *See* ACS Comments; Nextel Partners Comments; NTELOS Comments; SouthernLINC Comments; USCC Comments; NTCA Comments. Another carrier, Five Star, filed Reply Comments in support of suspending the 95% penetration benchmark or, in the alternative, requesting that the Commission deem the Joint Petition a petition for rulemaking or act on its own motion to repeal the rule. *See* Five Star Reply Comments at 4-5. We find no basis for considering Five Star's request. CTIA/RCA did not request a rulemaking, and, in any event, there is no record upon which to base any consideration of Five Star's request to repeal Section 20.18(g)(1)(v).

<sup>42</sup> *See* ACS Comments at 1 ("when carriers have made a good faith effort to deploy location-capable handsets, but their customers simply choose to retain their old handsets longer than anticipated, the Commission should suspend or waive the 95% penetration deadline until carriers can achieve that goal over a longer, more customer-directed time frame"); USCC Comments at 3-4 ("Many . . . customers are satisfied with the current features of their handsets and see no reason to upgrade at this time"); SouthernLINC Comments at 3 (granting petition would "ensur[e] that wireless consumers are not . . . compelled to replace perfectly functional handsets with newer handsets that, depending on where the consumer is located, may not be able to deliver E911 Phase II service or may not even be capable of providing any service whatsoever"); NTELOS Comments at 5 (despite its many promotions of GPS handsets, "many customers remain reluctant to change their handsets for a variety of reasons"). *See also* Nextel Partners Comments at 4-5; ACS Comments at 3-4; NTELOS Comments at Att. 5.

<sup>43</sup> *See* SouthernLINC Comments at 4-5 ("Users of these higher-power handsets include utility, government, and public safety subscribers who place a high priority on the ability to communicate in rural and remote areas, often under harsh conditions. Such consumers have little incentive to upgrade to a lower-power location-capable handset that, due to weaker signal coverage, could actually decrease their access to any communications service whatsoever, let alone their access to emergency services") (footnote omitted); USCC Comments at 3-4 ("In rural areas, three-watt analog handsets provide significantly better coverage/range in remote areas").

non-location-capable handsets.<sup>44</sup> According to NARUC, customers should be able to continue to use their analog handsets until at least 2008, when carriers' obligations to continue to provide analog service will sunset.<sup>45</sup> With respect to the alternative waiver framework, NARUC argues that the Commission could act either through "granting the generic suspension . . . or choosing to act via case specific waiver requests."<sup>46</sup> SDPUC adds that adoption of a framework would assist carriers and the Commission, stating that it "notes with approval" that "customers' continued reliance on analog service in order to bridge coverage gaps" is one of the factors listed.<sup>47</sup>

15. Public safety organizations APCO and NENA filed comments opposing blanket relief from the handset penetration rule. APCO "strongly opposes" Petitioners' request for suspension of the handset penetration rule, which APCO claims "would be tantamount to a repeal" and "would send exactly the wrong message to carriers and the public."<sup>48</sup> NENA similarly observes that public safety organizations "have preferred to evaluate the merits of individual carrier requests."<sup>49</sup> NENA also questions Petitioners' assertion that the lack of PSAP readiness for Phase II is the "primary hurdle" to customers exchanging and upgrading their handsets to location capability.<sup>50</sup> NENA states that the "sheer force and variety of reasons customers don't want to change handsets," as cited in the Joint Petition, "appears to far outweigh the presence or absence of" PSAP Phase II readiness.<sup>51</sup>

16. With respect to the alternate criteria proposed by CTIA and RCA for evaluating waiver requests, APCO and NENA suggest, with qualifications, that the Commission could consider the framework. APCO states that, while it realizes "there are many factors that influence the ability to meet the 95% goal, we clearly see the need for insistent and assertive action toward that goal."<sup>52</sup> At the same time, APCO "does not oppose consideration of case-by-case waivers that are properly supported and demonstrate best efforts to meet the requirement despite factors clearly beyond the control of the entity requesting a waiver."<sup>53</sup> However, APCO contends, some of the criteria proposed in the Joint Petition "do not warrant substantial consideration," such as good faith (in the absence of factors clearly beyond the carrier's control), lower-than-expected churn, or customer resistance to new handsets.<sup>54</sup> In general, APCO

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<sup>44</sup> See NARUC Comments at 2-3 ("limited relief is necessary to ensure that wireless customers who do not want to replace their non-location capable handsets for safety reasons are not needlessly burdened"); SDPUC Comments at 3-4 ("the Commission is forcing customers who live in areas where digital coverage is still insufficient to switch to a less reliable way to communicate").

<sup>45</sup> See NARUC Comments at 4 ("Indeed, one reason the FCC required carriers to continue to provide analog services until 2008 was to allow sufficient time for carriers to enhance coverage in areas where digital coverage is currently insufficient."). See also SDPUC Comments at 3-4.

<sup>46</sup> See NARUC Comments at 5.

<sup>47</sup> See SDPUC Comments at 6. SDPUC also concurs that a carrier reaching an agreement with the "relevant PSAP" for an alternative penetration deadline could serve as a factor justifying a waiver. *Id.*

<sup>48</sup> See APCO Comments at 2-3.

<sup>49</sup> See NENA Comments at 5.

<sup>50</sup> See *id.* NENA also provided updated data on PSAP Phase II readiness. See *id.* at 4.

<sup>51</sup> See *id.* at 4. NENA further asserts that it finds no correlation between PSAP readiness and location-capable handset penetration in the area covered by the PSAP, and that, in any case, under the Commission's rules, the handset penetration requirement is not conditioned upon PSAP readiness. See NENA Reply Comments at 2-3.

<sup>52</sup> APCO Comments at 1-2.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> See *id.*

contends that these and other factors should be considered on a case-by-case basis.<sup>55</sup> In addition, APCO suggests that “a carrier’s affirmative steps to encourage existing customers to replace legacy handsets should also be a significant factor in the Commission’s review,” *e.g.*, consumer education in collaboration with public safety and special offers of free or low-cost handset replacement.<sup>56</sup>

17. NENA similarly indicates a preference for a “framework” over a blanket suspension of the deadline, but notes that no date is mentioned as a substitute deadline and adds that the “simple presence” of one of the factors Petitioners propose “should not, in itself, necessarily be a reason to grant a waiver.”<sup>57</sup> NENA reasons that “[t]he multiple issues at hand should be considered together in determining the merits of each individual carrier request.”<sup>58</sup> Overall, NENA recommends that the Commission “should make use of the kind of individual carrier analysis laid out alternatively in the Joint Petition” but that no waiver should exceed one year, to December 31, 2006.<sup>59</sup>

18. Finally, Kansas 911 filed comments generally opposing waivers of the 95% penetration benchmark, including the CTIA/RCA Joint Petition. Kansas 911 states that its members “have seen no effort on the part of the wireless service providers in our various jurisdictions to inform their customer base of the necessity to upgrade their handsets.”<sup>60</sup> Kansas 911 recommends that such petitions should be considered not properly before the Commission, or denied, for the carriers’ failures to have made concrete steps necessary to come as close as possible to full compliance with the E911 rules.<sup>61</sup>

### III. DISCUSSION

19. *Request for Suspension.* We deny Petitioners’ request for a general suspension or waiver of the December 31, 2005 handset penetration deadline. Petitioners ask that we grant a general suspension of the 95% handset penetration requirement to any wireless carrier that has ensured that 100% of all new digital handsets activated are location-capable, until the carrier satisfies the 95% penetration threshold through customers’ handset replacement and churn.<sup>62</sup> Essentially, Petitioners request that we excuse compliance with the 95% penetration requirement based only on a carrier’s prior compliance with the pre-existing, 100% activation requirement, for an indefinite period of time, and regardless of whether the carrier undertakes any particular efforts directed at achieving compliance as quickly as possible. In effect, adoption of the suspension as proposed by CTIA/RCA would render meaningless the handset penetration requirement. For these reasons, we agree with APCO that grant of the requested suspension “would be tantamount to a repeal” of the 95% penetration rule,<sup>63</sup> which we will not countenance.

20. We also find that granting generalized relief would run counter to the Commission’s stated policies with respect to the importance to public safety of achieving compliance with the 95% handset penetration rate. It was critical for all handset-based carriers to have met the final implementation deadline

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<sup>55</sup> See *id.* at 4.

<sup>56</sup> See *id.*

<sup>57</sup> See NENA Comments at 5.

<sup>58</sup> *Id.* at 5-6.

<sup>59</sup> *Id.* at 9.

<sup>60</sup> Kansas 911 Comments at 1.

<sup>61</sup> See *id.* at 2.

<sup>62</sup> See Joint Request at 10; 47 C.F.R. §§ 20.18(g)(1)(iv), (v).

<sup>63</sup> See APCO Comments at 2.



of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase II would be fully implemented as quickly as possible.<sup>64</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. Delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public.

21. In order to ensure that any relief we grant of the handset penetration requirement minimizes the impact on public safety, we have utilized a case-by-case approach and examined the particular circumstances presented by a carrier in support of a request for waiver. Carriers in need of waiver relief are expected, consistent with the Commission's waiver criteria, "to come as close as possible to full compliance" and to present a "clear path to full compliance."<sup>65</sup> Under this rubric, we have granted relief only when sufficiently justified, and limited any extension of the handset penetration deadline to the shortest practicable time.<sup>66</sup> Grant of the CTIA/RCA proposal, however, would provide an indefinite extension of time to all carriers, without consideration of the specific circumstances faced by each. Therefore, we believe that the current case-by-case review process for evaluating requests for waiver of the December 31, 2005 handset penetration deadline serves to better protect the interests of public safety than the blanket suspension proposed by CTIA/RCA. In addition, grant of a general suspension would diminish the efforts of those carriers that timely met the December 31, 2005 deadline. Given the important public safety benefits of achieving 95% penetration levels as quickly as possible, and in the interests of ensuring fairness to carriers that made good faith efforts to comply with the handset penetration requirement, we cannot grant the blanket relief sought by Petitioners.

22. We also disagree with Petitioners' argument that lack of Phase II capability in some areas justifies non-compliance.<sup>67</sup> The lack of PSAP readiness in some areas to receive and utilize wireless caller information does not provide a basis for affording relief from the December 31, 2005 deadline. Handset deployment benchmarks operate independent of PSAP readiness. In this regard, we agree with NENA that location-capable handsets benefit public safety even if the customer's local PSAP is not ready for Phase II, due to the mobile nature of wireless phones.<sup>68</sup> When customers travel, a location-capable phone provides Phase II service in the many communities where PSAPs are, in fact, Phase II ready. Accordingly, we find unpersuasive the argument that the state of PSAP readiness for Phase II service is a valid consideration when evaluating requests for extension of the handset penetration deadline.<sup>69</sup>

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<sup>64</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>65</sup> *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

<sup>66</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

<sup>67</sup> See Joint Petition at 4.

<sup>68</sup> See NENA Comments at 4.

<sup>69</sup> As discussed below, we continue to find that coordination with PSAPs on alternative penetration schedules provides evidence of good faith efforts on the part of the carriers. See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28; APCO Comments at 4 (coordination with PSAP deployment schedules and agreements with PSAPs regarding penetration deadlines "could be a factor in some limited cases as it encourages dialogue and cooperation at the local level").

23. We also are not persuaded that lower than expected “churn” justifies the proposed general suspension of the handset penetration rule.<sup>70</sup> When the Commission adopted the handset penetration requirement in 1999, it emphasized that, while seeking “largely to rely on market forces, coupled with the requirement that new activations be ALI-capable, to replace or upgrade handsets,” carriers were required to take “additional steps to ensure that the public safety goals of this proceeding are achieved within a reasonable period regardless of normal handset churn.”<sup>71</sup> The Commission specifically suggested that such efforts could include “lower rates for customers using ALI-capable handsets, rebates or generous allowances to encourage trade-ins of non-capable handsets, or actual handset exchanges or retrofitting.”<sup>72</sup> Thus, if carriers experience low churn rates, we agree with APCO that they should then take “more aggressive affirmative steps” to encourage adoption of location-capable handsets,<sup>73</sup> rather than simply pointing to lower than expected churn levels as a basis for supporting waiver relief. The responsibility of complying with the Commission’s rules obligated carriers to have developed and implemented effective plans to timely meet the December 31, 2005 95% penetration deadline. Carriers should not have relied on churn alone; to the extent that churn did not result in sufficient adoption of location-capable phones, carriers were on notice of the need to explore other means to achieve compliance.

24. *Alternate Waiver Framework.* We also deny Petitioners’ request that we adopt, in the alternative, their proposed framework for addressing individual requests for waiver relief. As noted earlier, Petitioners request that, after making an initial “threshold” showing, we grant a request for waiver if a carrier demonstrates that it satisfied at least one of the factors enumerated in the Joint Petition.<sup>74</sup> Petitioners assert that their proposed methodology would streamline the waiver preparation and review processes.<sup>75</sup>

25. At the outset, we note that, in response to concerns raised by NENA,<sup>76</sup> Petitioners state that the “presence of one of the factors cited should not, in itself, be reason to grant waiver.”<sup>77</sup> Accordingly, Petitioners now appear to favor an approach that takes into consideration multiple factors when addressing a request for waiver, rather than permitting the showing of only one to suffice for grant. The Commission already has in place well-established criteria for evaluating requests for waiver of the E911 rules on a case-by-case basis. Further, as discussed below, we question whether uniform weight should be afforded to each of the criteria, as contemplated by Petitioners’ proposed framework. In a particular case, some factors may be more pronounced and compelling than others, while other situations may merit relief given the totality of the circumstances. Thus, we continue to believe that proceeding on a case-by-case basis, where we weigh all factors in accordance with a carrier’s particular circumstances and the Commission’s established waiver criteria (as well as the standard under the ENHANCE 911 Act, as

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<sup>70</sup> See Joint Petition at 5, 12.

<sup>71</sup> Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17412 ¶ 52 (1999).

<sup>72</sup> *Id.* at 17413 ¶ 53.

<sup>73</sup> See APCO Comments at 3.

<sup>74</sup> See Joint Petition at 10-15. The initial showing would consist of a demonstration of (1) “good faith” in meeting the interim handset deployment benchmarks, as well as (2) progress in meeting PSAP deployment deadlines. See *id.* at 11.

<sup>75</sup> See *id.* at 10.

<sup>76</sup> See NENA Comments at 5.

<sup>77</sup> CTIA/RCA Reply Comments at 2-3.

applicable), is the best approach. We note that our view has the support of public safety commenters, who suggest that relevant factors should be considered together in a case-by-case review of waiver requests.<sup>78</sup>

26. We also do not find certain factors proposed by Petitioners are persuasive, on their own, in evaluating requests for relief. As explained above, carriers cannot simply rely on churn to achieve increased location-capable handset penetration rates, but rather must explore other means to encourage adoption of E911-compliant handsets. Furthermore, we reject the notion of “substantial compliance,” *i.e.*, that relief is warranted if a carrier can demonstrate that it obtained an 85% penetration rate by December 31, 2005.<sup>79</sup> Adoption of such a factor would in effect amend Section 20.18(g)(1)(v) to reduce the required penetration rate. Such action, would, in turn, adversely impact public safety by sanctioning 10% fewer wireless consumers having location-capable handsets and the important ability to automatically provide location information to PSAPs. We agree with APCO in this regard that there should be no automatic “pass rate” for compliance.<sup>80</sup>

27. Consideration of other factors, including, but not limited to, technology changes, analog coverage in very rural markets, and agreements with PSAPs on alternative penetration deadlines may be relevant in some circumstances.<sup>81</sup> However, we emphasize that carriers must do more than just identify factors that may have inhibited their ability to timely achieve compliance with Section 20.18(g)(1)(v). Specifically, carriers must provide evidence of the efforts they have taken, and the efforts they plan to take, to achieve compliance as quickly as possible. For example, we agree with APCO that such steps could include, among others, consumer education regarding the benefits of E911 capability, targeting advertising to subscribers with non-location-capable handsets, and offers of free or low-cost replacements.<sup>82</sup> As noted above, carriers seeking waiver of the December 31, 2005 deadline must also demonstrate a clear path to full compliance.<sup>83</sup>

28. In sum, we believe that the current E911 Phase II waiver standards and review process remain the best approach to balance the relevant and appropriate factors affecting specific wireless carriers with the needs of public safety. A case-by-case review process ensures that compliance will be achieved as rapidly as possible, by requiring carriers to take concrete steps to come as close as possible to full compliance, and to establish a clear path to full compliance.<sup>84</sup> This approach also permits us to tailor relief by the inclusion of conditions and/or reporting requirements, to effectively ensure and monitor ultimate compliance.<sup>85</sup>

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<sup>78</sup> See NENA Comments at 6; APCO Comments at 3, 4.

<sup>79</sup> See Joint Petition at 12.

<sup>80</sup> See APCO Comments at 4.

<sup>81</sup> In this respect, we note that the concerns raised in some comments regarding customer resistance to converting to location-capable phones, or the use of analog handsets in rural areas, can adequately be addressed in the context of specific waiver requests. The Commission’s waiver criteria, as well as the standard applicable to Tier III carriers under the ENHANCE 911 Act, as applied in our traditional case-by-case review, permit consideration of all issues raised by a carrier, while also promoting public safety and Phase II deployment, so far as possible.

<sup>82</sup> See APCO Comments at 4.

<sup>83</sup> See *supra* ¶ 5.

<sup>84</sup> See NENA Comments at 1 (waiver grants should be accompanied by new and firm deadlines).

<sup>85</sup> See APCO Comments at 5; NENA Comments at 1, 6 (supporting the use of reporting requirements to monitor compliance).

#### IV. CONCLUSION

29. For the foregoing reasons, we deny Petitioners' request that we generally suspend or waive the requirement that handset-based carriers were to have ensured by December 31, 2005 that 95% of their customers have location-capable handsets. We also decline to adopt the alternative framework proposed by CTIA and RCA for addressing individual requests for waiver. Instead, the Commission will continue to apply its well-established waiver criteria, and the standard enunciated under the ENHANCE 911 Act, on a case-by-case basis, in evaluating requests for waiver of the December 31, 2005 handset penetration requirement contained in Section 20.18(g)(1)(v) of the Commission's Rules.

#### V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

31. IT IS FURTHER ORDERED that the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline filed by CTIA – The Wireless Association and the Rural Cellular Association IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX**Comments

ACS Wireless, Inc. (ACS)  
Association of Public-Safety Communications Officials-International, Inc. (APCO)  
Kansas 911 Provider's Association (Kansas 911)  
National Association of Regulatory Utility Commissioners (NARUC)  
National Emergency Number Association (NENA)  
National Telecommunications Cooperative Association (NTCA)  
Nextel Partners, Inc. (Nextel Partners)  
NTELOS Inc. (NTELOS)  
South Dakota Public Utilities Commission (SDPUC)  
Southern Communications Services, Inc. dba SouthernLINC Wireless (SouthernLINC)  
United States Cellular Corporation (USCC)

Reply Comments

CTIA/RCA  
NENA  
Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless (Five Star)