

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

In the Matter of)	
)	
Petition for Limited Waiver and Brief Extension of)	WT Docket No. 05-319
Leap Wireless International, Inc.)	
)	
Qwest Wireless, LLC Request for Limited Waiver)	WT Docket No. 05-322
of Automatic-Location-Information-Capable)	
Handset Penetration Requirements)	

ORDER

Adopted: May 3, 2006

Released: January 5, 2007

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address requests for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by two Tier II wireless service providers:¹ Leap Wireless International, Inc. (Leap), and Qwest Wireless, LLC (Qwest).² Specifically, Leap requests an extension until March 31, 2006, and Qwest requests an extension until June 30, 2006, to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.³

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines 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.⁴ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁵

¹ Tier II carriers are Commercial Mobile Radio Service (CMRS) providers that had over 500,000 subscribers as of the end of 2001 but were not designated as nationwide Tier I carriers by the Commission. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-23 (2002) (*Non-Nationwide Carriers Order*).

² Request for Limited Waiver and Brief Extension of Leap Wireless International, Inc., WT Docket No. 05-319, filed Nov. 14, 2005 (Leap Request); Qwest Wireless, LLC Request for Limited Waiver of Automatic-Location-Information-Capable Handset Penetration Requirements, WT Docket No. 05-322, filed Nov. 15, 2005 (Qwest Request).

³ See 47 C.F.R. § 20.18(g)(1)(v).

⁴ 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 (continued....)

3. Based on the record before us, we find that Leap and Qwest have not satisfied the criteria required to justify relief from the 95% handset penetration requirement, and we deny the requests of Leap and Qwest for extensions of time to comply. As we explain in more detail below, however, in light of the penetration levels Leap and Qwest reached by December 31, 2005, and the relatively short periods by which they expect to achieve compliance, we will not at this time pursue enforcement action as a result of their non-compliance. Further, we impose reporting requirements to enable the Commission to monitor their respective efforts to achieve compliance with the E911 requirements.

II. BACKGROUND

A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁶ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁷ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).⁸ The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.⁹ 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.¹⁰

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request

(Continued from previous page)

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 Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-10 ¶ 1 (2005) (*Tier III Carriers Order*). Tier III carriers may be entitled to relief pursuant to the Commission's waiver standard or, alternatively, the ENHANCE 911 Act, which directs the Commission to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services." National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1.

⁶ See 47 C.F.R. § 20.18(e).

⁷ 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*.

⁸ 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*.

⁹ See 47 C.F.R. § 20.18(f), (g)(2).

¹⁰ See 47 C.F.R. § 20.18(j)(1).

for Phase II service.¹¹ After ensuring that 100% of all new digital handsets activated are location-capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹²

B. Waiver Standards

6. On September 8, 2000, the Commission released the *Fourth MO&O*, in which it recognized that “special circumstances” may warrant a waiver of the E911 Phase II requirements.¹³ 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.¹⁴ With respect to waiver of the E911 Phase II requirements, the Commission required that waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance,”¹⁵ and that requesting carriers “should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”¹⁶ The requirement that carriers present a “clear path to full compliance,” dictates that we grant relief only when sufficiently justified, and limit any extension of the handset penetration deadline to the shortest practicable time.¹⁷ We otherwise continue to expect carriers to achieve full compliance with the E911 Phase II requirements as soon as possible.¹⁸

7. In its 2003 *Order to Stay*,¹⁹ the Commission put carriers on notice that any claim based on factors beyond a carrier’s control would be credited only if the carrier submitted specific evidence substantiating the claim, *e.g.*, documentation that, despite a carrier’s good faith efforts to conclude agreements with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks, it was unable to do so.²⁰ Carriers claiming that financial hardship prevented compliance with the December 31, 2005 95% penetration deadline were advised that a waiver was unwarranted unless the

¹¹ See 47 C.F.R. § 20.18(g)(1).

¹² See 47 C.F.R. § 20.18(g)(1)(v).

¹³ 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*).

¹⁴ 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.

¹⁵ *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

¹⁶ *Id.*

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

¹⁸ See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 45.

¹⁹ See 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 (2003).

²⁰ *Id.* at 20996-20997 ¶ 25.

carrier provided sufficient and specific factual information,²¹ and that a carrier seeking a waiver based on extraordinary financial hardship could strengthen its justification by submitting documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.²² Finally, the Commission stated 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.²³

C. Requests and Comments

8. *Leap's Request for Limited Waiver and Brief Extension.* Leap seeks a three-month deferral of its obligation to comply with the 95% penetration rule for three months, *i.e.*, until March 31, 2006.²⁴ Leap states that, as of October 20, 2005, its penetration rate was 91% and that it expected to reach 93% by December 31, 2005.²⁵ In its quarterly report submitted February 1, 2006, however, Leap reported that "[a]s of Jan. 23, 2006, 92% of Leap's customers had GPS-enabled handsets."²⁶ Leap subsequently reported that, as of April 26, 2006, 94.8% of its customers had GPS-enabled handsets.²⁷ Leap claims that "it is now in substantial compliance" with the 95% penetration requirement and, if not deemed to be in substantial compliance by the Commission, "requests an additional extension of its requested relief through June 30, 2006, to ensure that the ninety-five percent requirement is exceeded by any measure."²⁸ In support of its request, Leap states that it has "aggressively and diligently pursued compliance with the Commission's E911 deadlines, and has significantly exceeded all milestones to date."²⁹ Leap also reports that it has been "proactive to resolve any PSAP issues and has been responsive to PSAP requests."³⁰ Leap explains that it has remained focused on E911 compliance – and is "only a few percentage points away from full compliance"³¹ despite undergoing "a major financial restructuring."³² It asserts that subscribers

²¹ See *id.* at 20997 ¶ 29. The Commission noted that it generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

²² See *id.*

²³ *Id.* at 20997 ¶ 28.

²⁴ Leap Request at 1.

²⁵ *Id.* at 1-2.

²⁶ Enhanced 911 Status Report, CC Docket No. 94-102, filed Feb. 1, 2006, at 2 (Leap E911 Report).

²⁷ See Update and Supplemental Request for Conditional Relief, WT Docket No. 05-319, filed May 1, 2006, at 1 (Leap Update).

²⁸ *Id.*

²⁹ Leap Request at 4.

³⁰ *Id.*

³¹ *Id.* at 5.

³² *Id.* at 5.

attracted to its “no frills, low-cost” service model are “somewhat resistant” to handset upgrades.³³ Leap cites affirmative steps to encourage its legacy customers to upgrade, including selling only GPS-capable handsets since May 30, 2004, and offering rebates, service credits and other incentives.³⁴ For instance, Leap explains that it has run “various promotions whereby it gives a service credit up to the full price of a new phone for long-term Cricket customers who upgrade to a [compliant] handset.”³⁵ Leap argues that the current lack of PSAP readiness to utilize Phase II E911 is “another factor placing a drag on customer acceptance of handset upgrades,” which it claims justifies an extension of the deadline.³⁶ Nevertheless, Leap asserts that because approximately 3,000 of its existing customers each month upgrade to a GPS-capable handset, and because it only sells GPS-capable handsets, it is on a “clear path” to be fully compliant with the 95% benchmark by March 31, 2006.³⁷ Leap further argues that the limited, time-specific relief from the handset penetration requirement it requests is consistent with the public interest.³⁸

9. *Qwest’s Request for Limited Waiver.* Qwest seeks a six-month deferral of its obligation to comply with the requirement that it achieve 95% penetration of location-capable handsets among its subscribers; *i.e.*, until June 30, 2006.³⁹ Qwest states that, despite its “good faith efforts” to comply with the deadline, it expects to reach a penetration rate of approximately 90 to 94% by December 31, 2005.⁴⁰ As of the date of its filing, Qwest’s location-capable handset penetration rate was 88.87%.⁴¹ Qwest subsequently reported that its penetration rate was 91.2% as of December 31, 2005, and 92.8% as of February 28, 2006.⁴² Qwest asserts that it exceeded each of the earlier handset penetration benchmarks established by the Commission, and even with modest customer churn, it expects to reach the requisite 95% penetration rate sometime during the first half of 2006.⁴³ In support of its request, Qwest cites its efforts to promote ALI-capable handsets in an effort to achieve the Commission’s handset-penetration benchmarks in connection with its migration to the Sprint network.⁴⁴ Qwest explains that it worked to convert its customers “from handsets that were not equipped with Global Positioning Satellite (GPS) capability to those that were, offering a free ALI-capable handset to customers as well as discounted handsets with ALI functionalities.”⁴⁵ Separate from the efforts associated with the Sprint migration, Qwest indicates that the

³³ *Id.* at 5-6.

³⁴ *Id.* at 4, 7.

³⁵ *Id.* at 4.

³⁶ *Id.* at 6.

³⁷ *Id.* at 7.

³⁸ *Id.* at 7-8.

³⁹ Qwest Request at 1, 7.

⁴⁰ *Id.* at 3.

⁴¹ *Id.*

⁴² See Letter from Kathryn Marie Krause, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 94-102 (Mar. 28, 2006) (Qwest Letter).

⁴³ Qwest Request at 2-4.

⁴⁴ *Id.* at 3. Qwest explains that the company is now a Sprint Mobile Virtual Operator as a result of its migration from a facilities-based CMRS provider to a reseller of Sprint services. *Id.*

⁴⁵ *Id.*

company “offers at least one ALI-capable handset free of charge when customers renew their contracts.”⁴⁶ Qwest contends that its request for limited, time-specific relief from the handset penetration requirement “outlines a realistic path to compliance that incorporates current penetration levels, anticipated future purchasing patterns and customer preferences.”⁴⁷ Finally, Qwest asserts that its request is consistent with the public interest, and notes that its “handset penetration, while not at the full level the Commission requires by the end of 2005, is substantial within the context of PSAP deployments of wireless E911 not only across the country, but within its region.”⁴⁸

10. *Public notices.* By public notice, dated November 15, 2005, the Wireless Telecommunications Bureau (Bureau) sought comment on Leap’s request.⁴⁹ CTIA – The Wireless Association, the sole commenter in this proceeding, filed comments in support of Leap’s request,⁵⁰ and no reply comments were received. Likewise, by public notice, dated November 17, 2005, the Bureau sought comment on Qwest’s request.⁵¹ No comments or reply comments were received on the Qwest Request.

III. DISCUSSION

11. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005, for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase II would be fully implemented as quickly as possible.⁵² 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.⁵³ Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain

⁴⁶ *Id.*

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 5-6.

⁴⁹ See Wireless Telecommunications Bureau Requests Comment on Leap Wireless Petition for Limited Waiver and Brief Extension of the December 31, 2005 Deadline to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among its Subscribers, WT Docket No. 05-319, *Public Notice*, 20 FCC Rcd 18051 (Wireless Tel. Bur. 2005). Comments were due by Nov. 29, 2005, and reply comments were due Dec. 9, 2005.

⁵⁰ See Comments of CTIA – The Wireless Association on Petition of Leap Wireless International, Inc., WT Docket No. 05-319 (filed Nov. 29, 2005).

⁵¹ See Wireless Telecommunications Bureau Requests Comment on Qwest Wireless, LLC Request for Limited Waiver of the December 31, 2005 Deadline to Achieve Ninety-Five Percent Penetration of Location Capable Handsets Among its Subscribers, WT Docket No. 05-322, *Public Notice*, 20 FCC Rcd 18179 (Wireless Tel. Bur. 2005). Comments were due by Dec. 1, 2005 and reply comments were due Dec. 9, 2005.

⁵² See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

⁵³ Phase I E911 service provides a PSAP with data elements containing the telephone number of the originator of the 911 call and the location of the cell site or base station receiving the 911 call. See 47 C.F.R. § 20.18(d). Thus, the actual location of the caller can be miles distant from the location information provided to the PSAP, with consequent delay in providing the caller with emergency services, assuming that the caller can actually be located. Phase II service, by comparison, has a required location accuracy of one-hundred meters for 67% of calls and 300 meters for 90% of calls (network based location solution) or 50 meters for 67% of calls and 150 meters for 95% of calls (handset based location solution). See 47 C.F.R. §§ 20.18(h)(1),(2). See also *supra* ¶ 4.

mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.⁵⁴

12. Consistent with these considerations, and for the reasons set forth below, we find that the waiver requests made by Leap and Qwest do not meet the Commission's standard for relief from the E911 requirements. In light of the penetration levels Leap and Qwest reached by December 31, 2005, and the relatively short periods by which they expect to achieve compliance, however, we will not at this time pursue enforcement action. We nevertheless impose reporting requirements to permit effective monitoring of Leap's and Qwest's progress towards full compliance with the Commission's E911 requirements.

13. As with other carriers, Leap and Qwest have been aware of the December 31, 2005 deadline for over five years⁵⁵ – an ample period for Leap and Qwest to determine and implement the steps necessary to comply with the Commission's Rules. Under the circumstances of Leap's and Qwest's cases, we do not believe that Leap or Qwest has satisfied the Commission's E911 waiver standards. We first note that the results of Leap's and Qwest's efforts as of December 31, 2005 fell short of the 95% penetration standard. Despite more than a five-year lead time, Leap indicates that it reached 91% penetration in October 2005, 92% penetration as of January 23, 2006, and 94.8% as of April 26, 2006.⁵⁶ Qwest indicates that it reached 88.87% penetration as of the date of its filing (November 15, 2005), 91.2% as of December 31, 2005, and 92.8% as of February 28, 2006.⁵⁷ Each thus has failed to comply with the 95% penetration requirement. Although Leap and Qwest made some efforts to encourage customers to purchase location-capable handsets,⁵⁸ both knew or should have known prior to the December 31, 2005 deadline that those efforts were proving inadequate for achieving timely compliance. For example, to the extent either carrier offered free or reduced-price location-capable phones as an inducement to its subscribers to upgrade non-location capable handsets, it could have eliminated any requirement that such customers also accept as a condition of receipt of compliant phones a renewed or extended service contract, which would likely have improved the effectiveness of its efforts.

14. Leap offers as reasons for its non-compliance that it experienced “the burden of a major financial restructuring,” and its “unique service model and customer base” has led to customer resistance to handset upgrades.⁵⁹ If Leap anticipated that its restructuring or the characteristics of its customer base could impact its ability to timely achieve compliance, however, Leap should have taken additional steps to increase penetration levels to ensure compliance by the December 31, 2005 deadline. Qwest offers as reasons for its non-compliance the reluctance of some of its customers to upgrade to location-capable phones, and that “customer purchasing behavior [is] outside of [its] control.”⁶⁰ If Qwest found its

⁵⁴ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

⁵⁵ See *Fourth MO&O*, 15 FCC Rcd at 17455-56 ¶¶ 36-37.

⁵⁶ Leap Request at 1-2; Leap E911 Report at 2; Leap Update at 1.

⁵⁷ Qwest Request at 3; Qwest Letter at 1.

⁵⁸ See Leap Request at 4; Qwest Request at 3.

⁵⁹ See Leap Request at 5-6.

⁶⁰ See Qwest Request at 4, 5.

subscribers resistant to adopting location-capable handsets, however, it also should have taken additional steps to increase penetration levels to ensure compliance by the December 31, 2005 deadline.

15. We equally discount Leap's and Qwest's arguments that lack of PSAP readiness in some areas justifies their non-compliance.⁶¹ 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.⁶² 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.

16. We note that other carriers already have undertaken or committed to specific efforts beyond those described by Leap or Qwest. For example, Verizon Wireless Puerto Rico (VZWPR), a Tier III carrier, initiated a campaign to call all customers with non-GPS-capable handsets and offer them: (i) a choice between two free GPS-compliant handsets with the renewal of the customer's contract; (ii) a one-year contract term, rather than the usual two years; and (iii) 100 free minutes per month for three months.⁶³ As a result of these measures, VZWPR states that it reached 95% penetration of GPS-capable handsets on Dec. 19, 2005 and is now in full compliance with Section 20.18(g)(1)(v) of the Commission's rules.⁶⁴ In another instance, Great Lakes of Iowa, another Tier III carrier, stated in a pleading filed with the Commission that, as part of its efforts to achieve 95% penetration, it "called each TDMA and analog customer and, as an incentive to migrate to the CDMA network, offered them a free location capable phone and a month of free service if they upgraded their phones," and also "offered to waive its two year contract term, allowing these customers to upgrade to a free phone before their contracts would normally award another free phone."⁶⁵ Although not exhaustive, these examples illustrate more aggressive efforts that Leap and Qwest could have taken to ensure timely compliance with the 95% requirement. Moreover, these efforts were undertaken by Tier III carriers that also serve many rural or remote areas and have smaller customer bases than Leap and Qwest, both Tier II carriers.⁶⁶

17. We find that the circumstances cited by Leap and Qwest are not appreciably different than those encountered by other carriers. Thus, neither Leap nor Qwest has shown that it faced the "special circumstances" contemplated by the Commission's E911 waiver criteria. We acknowledge that Leap and

⁶¹ See Leap Request at 6; Qwest Request at 6.

⁶² See NENA Comments in WT Docket No. 05-288 (filed Oct. 21, 2005) at 4. See also Joint Petition of CTIA and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Docket No. 05-288, *Order*, FCC 06-59, ¶ 22 (rel. Jan. 5, 2007).

⁶³ See Letter from Suzanne Yelen, counsel for Verizon Wireless Puerto Rico, to Marlene H. Dortch, FCC, CC Docket No. 94-102 (requesting withdrawal of request for limited waiver of handset penetration rule).

⁶⁴ *Id.*

⁶⁵ See Great Lakes of Iowa, Inc. d/b/a CellularOne Petition for Temporary and Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2005, at 2-3.

⁶⁶ We also note that carriers have a history of upgrading their networks to more advanced air interfaces, such as from analog and TDMA systems to CDMA and GSM, and have been quite successful in convincing customers to change handsets to accommodate the new air interface, effectively requiring current customers to change out their handsets in order to continue receiving service.

Qwest report reaching handset penetration levels of between 91-92%, and 90-94%, respectively, by December 31, 2005, and that their requested extensions are of limited duration, until June 30, 2006.⁶⁷ Although those factors alone do not justify relief absent a showing that special circumstances prevented Leap's and Qwest's timely compliance with the deadline, those factors do suggest that it is not necessary at this time to pursue enforcement action to bring these carriers into compliance. However, we fully expect Leap and Qwest to come into compliance as soon as possible and, in any event, not later than June 30, 2006.

18. *Reporting Requirements.* In order to closely monitor and assess the status of Leap's and Qwest's efforts toward compliance with the E911 requirements, including the 95% handset penetration requirement, we require Leap and Qwest each to:

- Submit to the Commission status reports on the first of every month, beginning February 1, 2007, until each achieves 95% handset penetration. These reports must include detailed information that describes and discusses with specificity: (1) its efforts to encourage customers to upgrade to location-capable handsets; and (2) the percentage of its customers with location-capable handsets.
- Within five days of achieving a 95% handset penetration rate, submit to the Commission a letter certifying its full compliance with Section 20.18(g)(1)(v).
- Submit to the Commission quarterly reports (every February 1, May 1, August 1 and November 1), beginning February 1, 2007, which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); and (2) the estimated dates on which Phase II service will be available to PSAPs served by its network. These quarterly reports must be filed until one year after each certifies compliance with the 95% handset penetration requirement.

IV. CONCLUSION

19. Under the circumstances of these cases, we find that Leap and Qwest have failed to satisfy the Commission's waiver standards. For these reasons, we deny Leap's and Qwest's requests to extend the handset penetration deadline. In light of the penetration levels Leap and Qwest reached as of December 31, 2005, and the relatively short period by which they expect to reach compliance, it is not necessary at this time to pursue enforcement action to bring Leap and Qwest into compliance with Section 20.18(g)(1)(v). We impose reporting requirements to ensure that Leap and Qwest achieve full compliance with the Commission's E911 requirements.

V. PAPERWORK REDUCTION ACT

20. This document contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies were invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public

⁶⁷ We find no basis for granting Leap's request that we deem it in "substantial compliance" with the 95% penetration requirement. Section 20.18(g)(1)(v) makes no exceptions to the 95% benchmark.

Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

VI. ORDERING CLAUSES

21. 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.

22. IT IS FURTHER ORDERED, that the Petition for Limited Waiver and Brief Extension of Leap Wireless International, Inc. IS DENIED.

23. IT IS FURTHER ORDERED, that Leap is subject to the reporting requirements specified herein.

24. IT IS FURTHER ORDERED, that the Qwest Wireless, LLC Request for Limited Waiver of Automatic-Location-Information-Capable Handset Penetration Requirements IS DENIED.

25. IT IS FURTHER ORDERED, that Qwest is subject to the reporting requirements specified herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary