

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

In the Matter of)
Revision of the Commission's Rules to Ensure) CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)
Request for Waiver by LL License Holdings, Inc.)
Request for Waiver by Cal-One Cellular L.P. d/b/a)
Cal-North)
Request for Waiver by Cellular Network)
Partnership, A Limited Partnership d/b/a Pioneer)
Cellular)
Request for Waiver by Midwest Wireless)
Holdings L.L.C.)

ORDER

Adopted: February 9, 2006

Released: February 10, 2006

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 four Tier III wireless service providers, LL License Holdings, Inc. (LL License); Cal-One Cellular L.P. d/b/a Cal-North (Cal-North); Cellular Network Partnership, A Limited Partnership d/b/a Pioneer Cellular (Pioneer); and Midwest Wireless Holdings L.L.C., through its three operating entities Midwest Wireless Wisconsin L.L.C., Midwest Wireless Iowa L.L.C., and Midwest Wireless Communications L.L.C. (Midwest) (collectively, Petitioners). Specifically, LL

1 Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (Non-Nationwide Carriers Order).

2 The original waiver request was filed under the name of Great Lakes of Iowa, Inc. d/b/a CellularOne (Great Lakes). However, Great Lakes recently assigned its licenses to LL License. See ULS File Nos. 0002373713 and 0002354772. LL License filed an amendment to the request filed by Great Lakes notifying the Commission of the license assignments and attesting to the fact that there have been no changes to the facts and circumstances contained in the original request. See LL License Holdings, Inc. Amendment to 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 Feb. 1, 2006.

3 See 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 (LL License Request); 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. 14, 2005 (Cal-North Request);

(continued...)

License, Cal-North, and Pioneer each seek a twelve-month extension of time and Midwest seeks a six-month extension of time 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, 2005.⁴

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.⁵ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁶ We are also mindful of Congress' directive in the ENHANCE 911 Act to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services."⁷

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, we find that relief from the 95% penetration requirement is warranted subject to certain conditions described below. Specifically, we grant LL License, Cal-North, and Pioneer extensions until December 31, 2006, and we grant Midwest an extension until June 30, 2006, to achieve 95% penetration, among their subscribers, of location-capable handsets.⁸

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.⁹ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),¹⁰ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).¹¹ The Commission's rules also establish phased-in

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Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Nov. 4, 2005 (Pioneer Request); Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Nov. 4, 2005 (Midwest Request).

⁴ See 47 C.F.R. § 20.18(g)(1)(v).

⁵ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*).

⁶ See *id.*

⁷ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). See also *infra* ¶ 8.

⁸ Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether the Petitioners met the Commission's waiver standard.

⁹ See 47 C.F.R. § 20.18(e).

¹⁰ 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*.

¹¹ 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*.

schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹² 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.¹³

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request for Phase II service.¹⁴ 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, 2005.¹⁵

B. Waiver Standards

6. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.¹⁶ The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."¹⁷ 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.¹⁸ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁹ A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.²⁰ The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

¹² See 47 C.F.R. §§ 20.18(f), (g)(2).

¹³ See 47 C.F.R. § 20.18(j)(1).

¹⁴ See 47 C.F.R. § 20.18(g)(1).

¹⁵ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 ("wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) ("under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted").

¹⁷ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000) (*Fourth MO&O*).

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

¹⁹ 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.*

²⁰ See *id.*

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.²¹

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.²² 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).²³ 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."²⁴

C. Requests for Waiver

9. Each Petitioner is a Tier III carrier that has deployed a CDMA network throughout its service areas but continues to operate a legacy TDMA /analog network.²⁵ Each implemented a handset-based Phase II solution and met or exceeded all applicable handset sale and activation benchmark deadlines.²⁶ Each indicates, however, that at the time it filed its waiver request, it did not expect to be able to meet the December 31, 2005 deadline by which handset-based carriers must achieve 95% penetration among their subscribers of location-capable handsets. Specifically, LL License expected to reach approximately 85% by December 31, 2005 and requests an additional twelve months, to December 31, 2006, to reach 95% penetration.²⁷ Cal-North expected to reach approximately 80% by December 31, 2005 and requests an additional twelve months, to December 31, 2006, to reach 95% penetration.²⁸

²¹ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

²² *See Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²³ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²⁴ *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.

²⁵ *See* LL License Petition at 2 (CDMA overbuild completed in March 2004); Cal-North Petition at 2 (converted analog network to CDMA in October 2001), Pioneer Request at 2 (CDMA deployment completed in the third quarter of 2003); Midwest Request at 2 (CDMA deployment completed in the fourth quarter of 2003).

²⁶ *See* LL License Petition at 2; Cal-North Petition at 2; Pioneer Request at 3; Midwest Request at 3.

²⁷ *See* LL License Petition at 1-2.

²⁸ *See* Cal-North Petition at 2-3.

Pioneer projected that it would reach 81% by December 31, 2005 and seeks an extension of twelve months, to December 31, 2006, to reach 95% penetration.²⁹ Midwest projected that it would reach 94% by December 31, 2005 and seeks an extension of six months, to June 30, 2006, to reach 95% penetration.³⁰

10. In support of their requests, each asserts that it has engaged in targeted activities to encourage subscribers to upgrade. LL License states that it “has gone to great lengths to encourage its customers to upgrade to the CDMA network and use location-capable phones.”³¹ Cal-North makes the same statement.³² Pioneer and Midwest each assert it has engaged in “aggressive campaigns” to encourage subscribers to acquire ALI-capable handsets.³³ Pioneer and Midwest argue that if the December 31, 2005 deadline is strictly enforced, they will be required either to terminate service to customers with non-compliant phones, reducing their access to emergency services, or to implement a network-based solution that “would not work well” in their rural service areas.³⁴ Pioneer and Midwest also note that some subscribers with 3-watt analog or TDMA phones are located in “sparsely populated areas” where the CDMA signal is not as strong as the analog or TDMA signal.³⁵ LL License and Cal-North each assert that, in certain portions of their service areas, a number of their customers with analog or TDMA phones would be unable to make any calls at all, including to 911, if required to upgrade to location-capable CDMA phones.³⁶ Petitioners argue that, for these reasons, their requests meet the standard for relief under the ENHANCE 911 Act as well as the Commission’s E911 waiver standards.³⁷

²⁹ See Pioneer Request at 8.

³⁰ See Midwest Request at 8.

³¹ LL License Petition at 2. For example, LL License notes that “[i]n the summer of 2005, [it] called each TDMA and analog customer and . . . offered them a free location capable phone and a month of free service if they upgraded their phones . . . [and] offered to waive its two year contract term.” *Id.* at 3. LL License adds that it is “prepared to offer more than one month of free service to the final TDMA and analog holdouts if that is what it takes to convince them to change over to a new, location-capable handset,” and is “also in the process of building more than enough cell sites to eliminate the need for three-watt ‘bag’ phones in areas where lower-powered CDMA handsets currently do not function.” *Id.* at 4-5. We commend LL License on its extraordinary efforts aimed at encouraging its subscribers to adopt location-capable phones.

³² Cal-North Petition at 3. Cal-North adds that it “plans to contact each holdout to explain the need to upgrade to ALI-capable handsets” and is “prepared to offer free handset upgrades to the holdouts if that is what it takes to convince them to change over to a new, location-capable handset.” *Id.* at 4.

³³ See Pioneer Request at 3-4 (including free phone offers accompanied by “free minutes, text messaging, accessories and service commitments”), Midwest Request at 3 (including free phone offers accompanied by “free minutes, caller ID, accessories and rebate offers”). Both Pioneer and Midwest also attach “Samples of Marketing of Location-Capable Handsets” to their requests.

³⁴ See Pioneer Request at 5-6, Midwest Request at 5-6.

³⁵ See Pioneer Request at 6; Midwest Request at 6.

³⁶ See LL License Petition at 7-8, 10; Cal-North Petition at 7-8, 10. Specifically, LL License argues that if “forced to require its ‘bag’ phone customers to immediately replace their handsets with lower-powered CDMA handsets, these customers will not be able to reach *any* emergency services since the CDMA handsets do not have the power to access [its] network on its ‘edges.’” *Id.* at 10 (emphasis in original). Similarly, Cal-North states that if “forced to require its ‘bag’ phone customers to immediately replace their handsets with lower-powered CDMA handsets, these customers will not be able to reach *any* emergency services since the CDMA handsets do not have the power to access Cal-North’s network on its ‘edges.’” *Id.* at 10 (emphasis in original).

³⁷ See LL License Petition at 7-10; Cal-North Petition at 7-10; Pioneer Request at 5-7; Midwest Request at 5-7.

III. DISCUSSION

11. We believe that it is critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II will be implemented and ensure that Phase II is fully implemented as quickly as possible.³⁸ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.³⁹ Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.⁴⁰

12. Consistent with that directive, we find that certain of each Petitioner's customers using TDMA and analog phones would likely find it more difficult, and, at times, impossible to contact a PSAP in parts of their respective service areas if those customers were forced to convert to digital CDMA handsets. It thus appears likely that strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.⁴¹ We therefore conclude that relief from the December 31, 2005 deadline is warranted pursuant to the ENHANCE 911 Act. We also note that the requests are of limited duration. Accordingly, we grant the requested extensions subject to certain conditions and reporting requirements so that the Commission can effectively monitor each of the Petitioner's progress in meeting the 95% handset penetration benchmark.⁴² We emphasize that, in granting the full extensions requested by the Petitioners, we expect the Petitioners to achieve 95% penetration among their subscribers of location-capable handsets within the extended timeframes granted herein.

13. *Conditions.* As a condition of the relief granted herein, the Petitioners have an ongoing obligation, until each achieves a 95% handset penetration rate among its subscribers of location-capable handsets, to (1) notify their customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of their progress in achieving higher location-capable handset penetration rates.

14. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief of the December 31, 2005 95% handset penetration requirement granted herein, we will require

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

³⁹ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

⁴⁰ See *supra* ¶ 8.

⁴¹ Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991. Because we make this finding, we do not address arguments advanced by Pioneer and Midwest that, absent relief, they would need to implement network-based Phase II solutions.

⁴² We note that the Commission has not received any objections from the public safety community specific to the instant requests.

each of the Petitioners to file status reports. For LL License, Cal-North and Pioneer, status reports will be due every February 1, May 1, August 1, and November 1, until December 31, 2007; for Midwest, status reports will be due every February 1, May 1, August 1, and November 1, until June 30, 2007.⁴³ These reports shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until each satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect each of the Petitioners to achieve compliance as quickly as possible.

IV. CONCLUSION

15. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that the Petitioners are entitled to a limited extension of the December 31, 2005 requirement that they achieve 95% penetration among their subscribers of location-capable handsets. Specifically, we extend the date that LL License, Cal-North and Pioneer must achieve 95% penetration until December 31, 2006, and we extend the date that Midwest must achieve 95% penetration until June 30, 2006. We further impose the conditions and reporting requirements described above to ensure that the Petitioners achieve full compliance with the Commission's E911 requirements.

V. ORDERING CLAUSES

16. IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

17. IT IS FURTHER ORDERED, that the Petition for Temporary and Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules by LL License Holdings, Inc. IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be December 31, 2006.

18. IT IS FURTHER ORDERED, that the Petition for Temporary and Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules by Cal-One Cellular L.P. d/b/a Cal-North IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be December 31, 2006.

19. IT IS FURTHER ORDERED, that the Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules by Cellular Network Partnership, A Limited Partnership d/b/a Pioneer Cellular IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be December 31, 2006.

⁴³ We note that we are requiring Petitioners to file status reports beyond the dates on which we otherwise require them to achieve 95% penetration among their subscribers of location-capable handsets. We believe it is important to continue monitoring the progress of the Petitioners for an additional year following each of their revised deadlines.

20. IT IS FURTHER ORDERED, that the Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules by Midwest Wireless Holdings L.L.C. IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be June 30, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary