

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

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules	)	

**ORDER**

**Adopted: January 25, 2007**

**Released: January 26, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, and Illinois Valley Cellular RSA 2-III Partnership (collectively "Illinois Valley").<sup>1</sup> Illinois Valley seeks an extension of time from its current October 28, 2006 deadline, until December 12, 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 were to have achieved 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.<sup>2</sup>

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

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<sup>1</sup> See Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102 (filed Oct. 18, 2006) (Request for Waiver); Supplement to Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102 (filed Dec. 19, 2006) (Supplement). Illinois Valley is a Tier III wireless service provider. 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*).

<sup>2</sup> See 47 C.F.R. § 20.18(g)(1)(v). The Commission previously granted Illinois Valley waiver relief from the 95% handset penetration deadline until October 28, 2006. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petitions for Waiver of Enhanced 911 Phase II Requirements; CC Docket No. 94-102, *Order*, 20 FCC Rcd 16937, 16918 ¶ 35 (2005) (*Illinois Valley Waiver Order*).

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 compliance with the Commission's rules and policies within the shortest practicable time.<sup>4</sup>

3. Based on the record before us, and the limited nature of the additional relief requested, we find that relief from the 95% penetration requirement is warranted. We therefore grant, *nunc pro tunc*, Illinois Valley's request for an extension until December 12, 2006, to achieve 95% penetration among its subscribers of location-capable handsets.

## 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.<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>

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.<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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<sup>3</sup> 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, 7709-10 ¶ 1 (2005) (*Tier III Carriers Order*).

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

<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

6. The Commission has recognized that smaller carriers may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.<sup>12</sup> 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.”<sup>13</sup> 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>14</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.<sup>15</sup> 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.<sup>16</sup> The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier’s projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>17</sup>

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,

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<sup>12</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that “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*) (stating that “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>13</sup> *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*).

<sup>14</sup> See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

<sup>15</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.*

<sup>16</sup> See *id.*

<sup>17</sup> *Id.* at 20997 ¶ 28.

but are not location-capable.<sup>18</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, we note that 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>19</sup> The ENHANCE 911 Act, *inter alia*, directed 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 to 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>20</sup>

### C. Illinois Valley's Request for Waiver

9. Illinois Valley is a Tier III carrier that operates a CDMA network throughout its service area, while continuing to operate a legacy TDMA/analog network.<sup>21</sup> In October 2005, the Commission granted Illinois Valley an extension until October 28, 2006 to comply with the 95% location-capable handset penetration deadline.<sup>22</sup> As a condition of the extension, the Commission required Illinois Valley to file quarterly status reports describing, among other things, its efforts to achieve a 95% penetration rate and the number and status of Phase II requests it has received from PSAPs.<sup>23</sup>

10. On October 18, 2006, Illinois Valley filed a request for additional waiver, stating that it would "not meet its projections of achieving a location-capable handset penetration rate among subscribers of 95% by October 28, 2006."<sup>24</sup> Illinois Valley requested an additional six months – until April 28, 2007 – to comply with the handset penetration requirement.<sup>25</sup> In its waiver request, Illinois Valley reported that "the penetration rate of location-capable handsets has risen from 86.22% to 91.11% [over the previous six months], at an average rate of about 0.8% per month."<sup>26</sup> Subsequently, in its November 1, 2006 quarterly report, Illinois Valley reports that total location-capable handset penetration had risen to 93.56%.<sup>27</sup> On December 19, 2006, Illinois Valley filed a supplement to its request for additional waiver, in which it notified the Commission that it had achieved a 95% location-capable

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<sup>18</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

<sup>19</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>20</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>21</sup> See Request for Waiver at 2.

<sup>22</sup> See *Illinois Valley Waiver Order*, 20 FCC Rcd at 16945 ¶ 20.

<sup>23</sup> See *id.* at 16947 ¶ 25.

<sup>24</sup> See Request for Waiver at 2.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.* at 6.

<sup>27</sup> See Letter from Pamela L. Gist, Counsel to Illinois Valley Cellular, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 94-102, at 3 (filed Nov. 1, 2006) (November 1 Report).

handset penetration rate on December 12, 2006.<sup>28</sup> Accordingly, Illinois Valley revised its original request and asked that the Commission grant a waiver “at least through December 12, 2006.”<sup>29</sup>

### 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 would have ensured that Phase II would be fully implemented as quickly as possible.<sup>30</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. 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.<sup>31</sup> 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.

12. In light of these considerations, we find that Illinois Valley’s amended request for additional waiver of the 95% handset penetration requirement satisfies the Commission’s E911 waiver criteria.<sup>32</sup> Illinois Valley seeks an extension of only six weeks to comply with the 95% handset penetration requirement; its request is therefore specific, focused, and limited in scope. Furthermore, in its request Illinois Valley described customer outreach and network augmentation efforts that resulted in achieving a 95% location-capable handset penetration rate by December 19, 2006.<sup>33</sup> By demonstrating that the steps it had taken in an effort to achieve compliance ultimately proved to be successful, albeit six weeks after its deadline, Illinois Valley thereby has demonstrated a clear path to full compliance. Also important to our analysis is our finding that Illinois Valley took concrete steps in order to come as close as possible to full compliance. Over the past year, Illinois Valley has demonstrated a firm commitment to achieving a 95% handset penetration rate as quickly as possible and has made consistent progress throughout that time. We also note that in its first request for waiver, filed in August 2005, Illinois Valley estimated that it would achieve a 95% penetration rate by January 31, 2007.<sup>34</sup> Illinois Valley therefore

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<sup>28</sup> Supplement at 1.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>31</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

<sup>32</sup> Because we find that relief from the 95% handset penetration requirement is warranted under the Commission’s E911 waiver criteria, we need not address Illinois Valley’s argument that its request for additional waiver meets the standard of the ENHANCE 911 Act. See Request for Waiver at 5; Supplement at 2.

<sup>33</sup> Supplement at 1; see also Request for Waiver at 7 (describing upgrades to Illinois Valley’s CDMA network); November 1 Report at 2 (describing Illinois Valley’s efforts to encourage its customers to upgrade to location-capable handsets).

<sup>34</sup> Petition of Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, and Illinois Valley Cellular RSA 2-III Partnership for Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules, CC Docket No. 94-102, at 7 (filed Aug. 22, 2005). The Commission granted Illinois Valley’s request in part, establishing a deadline of October 28, 2006. *Illinois Valley Waiver Order*, 20 FCC Rcd at 16945-46 ¶ 21.

reached 95% almost two months ahead of its initial estimate, and in fact came very close to meeting its October 28 deadline, reporting a penetration rate of 93.56% on November 1, 2006.<sup>35</sup>

13. While we are always concerned when a carrier fails to meet an E911 deployment deadline, we believe that Illinois Valley's request for waiver satisfies the Commission's E911 waiver criteria, for the reasons described above, as well as due to its status as a Tier III carrier. We therefore grant, *nunc pro tunc*, Illinois Valley an extension until December 12, 2006, to comply with section 20.18(g)(1)(v) of the Commission's rules. We also remind Illinois Valley that it remains obligated to comply with the reporting requirements established as a condition of its original extension, and must therefore continue to file quarterly status reports with the Commission until October 28, 2007.<sup>36</sup>

#### IV. CONCLUSION

14. For the foregoing reasons, we conclude that Illinois Valley is entitled to a limited extension of the deadline by which it was required to achieve 95% penetration among its subscribers of location-capable handsets. Accordingly, we grant, *nunc pro tunc*, Illinois Valley's request for additional waiver and extend the date by which Illinois Valley must achieve 95% penetration to December 12, 2006.

#### V. ORDERING CLAUSES

15. 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.

16. IT IS FURTHER ORDERED, that Illinois Valley's Request for Additional Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules IS GRANTED, *nunc pro tunc*. The deadline for compliance with section 20.18(g)(1)(v) of the Commission's rules is December 12, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>35</sup> Illinois Valley November 1 Report at 3.

<sup>36</sup> See *Illinois Valley Waiver Order*, 20 FCC Rcd at 16947 ¶ 25 (requiring Illinois Valley to file quarterly status reports for two years as a condition of its extension).