

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

In the Matter of)	
)	
Request for a Limited Waiver of)	CC Docket No. 94-102
United States Cellular Corporation)	

ORDER

Adopted: May 4, 2006

Released: January 5, 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 United States Cellular Corporation (USCC),¹ a Tier II wireless service provider.² Specifically, USCC requests 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 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 See Request for a Limited Waiver of United States Cellular Corporation, CC Docket No. 94-102, filed Dec. 29, 2005 (USCC Request). In support of its Request, USCC submitted certain information under a request for confidential treatment pursuant to § 0.459 of the Commission's Rules. Because this *Order* discusses only that information already made public by USCC, we need not rule on USCC's request at this time. Until we so rule, we will honor USCC's request for confidential treatment. See 47 C.F.R. § 0.459(d)(1).

² 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*).

³ See 47 C.F.R. § 20.18(g)(1)(v). As noted below, however, USCC states that it yet "may require an additional extension" of unspecified duration. See *infra* ¶ 8; USCC Request at 2 n.2.

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 Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18369-74 ¶¶ 16-26 (2001); Request for

(continued....)

3. Based on the record before us, we find that USCC's failure to satisfy the Commission's E911 waiver standards forecloses granting the requested six-month extension of the Commission's December 31, 2005 95% handset penetration requirement. USCC's compliance efforts prior to December 31, 2005 were insufficient, and it inexcusably delayed, until 2006, instituting more aggressive measures of attaining compliance. Furthermore, two factors give us no confidence in USCC's ability to achieve compliance even were we to grant its requested six-month extension. First, USCC itself admits uncertainty about its ability to come into compliance within six months. Second, USCC states that a significant percentage of its subscribers have handsets for which it is unable to determine location capability and that USCC is unable to determine either the number or identity of those subscribers. Therefore, finding no basis for granting USCC's waiver request, we are denying its request and referring to the Commission's Enforcement Bureau, USCC's admitted violation of Section 20.18(g)(1)(v) of the Commission's Rules.

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

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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, 7709-7710 ¶ 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 to 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) (*Order to Stay*).

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. USCC's Request for Limited Waiver

8. USCC is a Tier II CMRS carrier employing Code Division Multiple Access (CDMA) technology and has elected a handset-based E911 Phase II location solution.²⁴ It filed its waiver request only two days before the December 31, 2005 95% penetration deadline, and seeks an extension, until June 30, 2006, of its obligation to meet the handset penetration requirement. It is uncertain whether it can reach compliance by that date, stating that it "may require an additional extension" because "its ultimate success depends on customer behavior that USCC does not control."²⁵ Although identifying the location-capability of subscriber handsets is an essential first step in determining the measures necessary to reach compliance, USCC reports that approximately 7% of its subscriber base have "unidentified GPS capabilities."²⁶ Moreover, USCC only recently discovered that "over 250,000 handsets previously included in the unidentified handset category were in fact non-compliant."²⁷ It estimated that, with respect to 93% of its subscriber base, it could reach 95% penetration by December 31, 2005.²⁸ However, it also posited a "worst case scenario" based on the assumption that all of the remaining, unidentified, 7% of its subscribers lack location-capable handsets.²⁹ In that case, USCC estimated that it would reach only an 85% penetration rate by December 31, 2005.³⁰

9. USCC argues that its requested relief is consistent with applicable legal waiver standards, as well as the public interest.³¹ It claims that its inability to comply with Section 20.18(g)(1)(v) of the

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 See *id.* at 20997 ¶ 28.

²⁴ See USCC Request at 4. Tier II carriers using a handset-based solution were given extensions of the handset sale and activation deadlines in the *Non-Nationwide Carriers Order*, but remain subject to the December 31, 2005 deadline for ensuring that 95% of their subscribers have location-capable handsets. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14849 ¶ 27.

²⁵ USCC Request at 2 n.2, 6 n.5.

²⁶ *Id.* at 1.

²⁷ *Id.* at 3.

²⁸ *Id.* at 1.

²⁹ *Id.* at 1 n.1.

³⁰ *Id.*

³¹ *Id.* at 2, 11.

Commission's Rules is "due to circumstances beyond its control."³² Specifically, it claims that its inability to comply with the December 31, 2005 deadline stems from the "unwillingness of a subset of long-time customers with low monthly usage levels to swap-out their current handsets."³³ USCC claims, but does not substantiate, that customers with non-compliant handsets resist upgrades for a number of reasons, including their being "not responsive to the new features and functionality of upgraded handsets."³⁴ USCC also claims that such customers "do not use their handsets enough to justify changing them," would need to "learn new handset features, reenter contact and other information stored on their current handset and/or purchase new accessories," or "live in rural areas and are unwilling to part with their three-watt analog handsets because they provide significantly better coverage/range in remote areas than any digital handset."³⁵ USCC also points to the lack of PSAP Phase II deployments within its service area as a contributing factor to the unwillingness of its customer to adopt location-capable handsets, asserting there is a "very high correlation between customers with non-compliant handsets in the consumer/small business segment and low PSAP Phase II deployment."³⁶ Finally, USCC submits that low churn rate contributes to its inability to achieve the requisite penetration level.³⁷

10. USCC asserts that, in the past, it has "undertaken a series of steps . . . in an effort to increase penetration of location-capable handsets."³⁸ These efforts include: making "all the handset offers and the promotional pricing previously reserved for new customers available to existing customers who renewed their service contracts," relaxing the "standard eligibility requirements for existing customers to qualify for new handsets at subsidized prices," offering location-capable handsets "at a variety of price points," tripling the number of direct marketing campaigns promoting equipment upgrades to customers with non-compliant handsets (including text messages to handsets and telemarketing calls), and changing equipment policies to remove non-compliant handsets from its network.³⁹ However, USCC has not stated when it began these efforts or the extent to which its promotional material informs customers of the E911 capability of compliant handsets.

11. In order to demonstrate that it has a "clear path to full compliance," USCC states that it would undertake several new initiatives to encourage its customers to upgrade to compliant handsets. These initiatives are intended to "address many obstacles between these customers and the purchase of an upgraded handset."⁴⁰ USCC states it will "launch a major notification and marketing campaign [in early 2006] . . . unlike any campaign USCC has undertaken to date,"⁴¹ which will be "directed to its customers with either non-compliant handsets or handsets with unidentified GPS-capabilities."⁴² The campaign is to

³² *Id.* at 1.

³³ *Id.*

³⁴ *Id.* at 12.

³⁵ *Id.* USCC adds that "coerced trade-in of analog handsets at this time will likely cause coverage losses due to the differences in range between three-watt analog handsets and any Phase II compliant digital handset currently available." *Id.* at 13.

³⁶ *See id.* at 15-16 (claiming that "over 30 percent of USCC's customers with non-compliant handsets live in markets where less than one in three PSAPs have been upgraded to provide Phase II service").

³⁷ *See id.* at 14-15.

³⁸ *Id.* at 7.

³⁹ *See id.* at 7-9.

⁴⁰ *See id.* at 10, 11.

⁴¹ *Id.* at 9.

⁴² *See id.* at 2.

focus “almost exclusively on the E911 handset penetration requirement and the benefits . . . from enhanced location accuracy,” as well as “an entirely separate pricing and promotional plan that will be developed exclusively for customers with non-compliant or unidentified handsets.”⁴³ Depending on the results of these efforts, “USCC is prepared to implement a so-called hotline campaign, where customers will automatically be hotlined to a call center when they attempt to use their handset where they will be reminded about and offered an upgraded handset either directly from USCC or through a retail store at the available promotional price.”⁴⁴

12. The National Emergency Number Association (NENA) filed comments on USCC’s waiver request.⁴⁵ NENA urges the Commission to take a “hard look at this request, despite its relatively short term of six months,” because “expecting six months of a major marketing campaign to increase location-capable handset penetration by 10% or more is simply a recipe for a further waiver request in June, 2006.”⁴⁶ NENA questions why USCC’s customer notification and marketing campaign aimed at encouraging handset upgrades is only beginning now, as well as why USCC does not know the capabilities of 7% of its customers’ handsets.⁴⁷ In addition, NENA reiterates its view that Phase II capability in PSAPs may be one factor among many in a customer’s decision to replace or keep an older phone, but expresses doubts that this is a “primary hurdle” explaining why customers may be unwilling to upgrade their handsets.⁴⁸

13. On April 4, 2006, or more than three months after the filing of its waiver request as well as the December 31, 2005 compliance date, USCC filed a supplement stating: “As a result of an aggressive marketing campaign designed to convince customers with noncompliant or unidentified handsets to upgrade and the use of a recently-discovered vendor database that allowed the Company to identify the GPS-capabilities of approximately 200,000 previously unidentified handsets, USCC’s GPS-capable handset penetration is 91.48% as of March 31, 2006.”⁴⁹

III. DISCUSSION

14. 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.⁵⁰ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine

⁴³ *Id.* at 9-10. The campaign will include “instant rebates at the point of purchase rather than mail-in rebates, as many customers are reluctant to provide the extra cash outlay upfront.” *Id.* at 10.

⁴⁴ *Id.* at 11.

⁴⁵ See Comments of NENA on Request for Limited Waiver by United States Cellular Corporation, CC Docket No. 94-102 (filed Jan. 25, 2006). The Commission did not formally invite comments on the USCC Request.

⁴⁶ *Id.* at 2.

⁴⁷ See *id.* at 1.

⁴⁸ See *id.* at 2 (referencing its comments filed on Oct. 21, 2005, in WT Docket No. 05-288).

⁴⁹ See Supplement to Request for a Limited Waiver of United States Cellular Corporation, CC Docket No. 94-102, filed Apr. 4, 2006, at 1.

⁵⁰ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

their location, searching for those callers when the callers cannot provide this information, or both.⁵¹ 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. 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.⁵² Consistent with these considerations, and for the reasons set forth below, we find that the waiver request made by USCC does not meet the Commission's standards for relief from the E911 requirements.

15. USCC's waiver request is not "specific, focused and limited in scope," as required by the applicable waiver criteria.⁵³ While USCC's request for a six-month extension appears on its face to be limited in duration, USCC expressly disclaims any promise that it will come into compliance within the timeframe it proposes. USCC instead states that "its ultimate success depends on customer behavior that USCC does not control. . . . [and] it may require an additional extension of the handset penetration deadline to achieve full compliance."⁵⁴ Further, when USCC filed its waiver request, it admitted that it had not even determined the compliance status of 7% of its customers. On April 4, 2006, USCC supplemented its waiver request and reported that it had identified the previously unknown status of approximately 200,000 handsets, and that it had reached a penetration rate of 91.48% as of March 31, 2006. However, it continues to argue that lack of "customer compliance" could result, and would justify, USCC's continuing failure to reach 95% penetration even beyond its requested six-month extension. The phrase "clear path to full compliance"⁵⁵ comprehends a carrier identifying measures that will result in compliance within a time period "limited in scope." USCC's tentative and qualified undertakings preclude our finding that its proposal meets the Commission's waiver requirements. We are also troubled that USCC was unable until three months after the compliance date to even identify the status of the "unknown" 200,000 handsets. USCC's inattention to its regulatory obligations is further illustrated by its choosing to wait until after the compliance date before undertaking an "aggressive marketing campaign" to increase its penetration rate.

16. Apparently, USCC has finally begun to address its failure to comply with the December 31, 2005 deadline, and it has taken some first steps along the path to full compliance. However, these preliminary steps neither justify its failure to comply with the deadline in the first instance, nor cure the conditional nature of its waiver request, even as supplemented. Thus, as discussed in detail below, we have concluded USCC has failed to meet the Commission's standards for waiver of the 95% handset penetration deadline.⁵⁶

⁵¹ 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 actually can be located. Phase II service, by comparison, has a required location accuracy of 100 meters for 67% of calls and 300 meters for 95% of calls (for a network-based location solution) or 50 meters for 67% of calls and 150 meters for 95% of calls (for a handset-based location solution). See 47 C.F.R. § 20.18(h)(1)-(2).

⁵² See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

⁵³ See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

⁵⁴ See USCC Request at n.2.

⁵⁵ See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

⁵⁶ See *id.*

17. As referenced above, USCC has been on notice for several years of the December 31, 2005 deadline.⁵⁷ Nevertheless, USCC admits that its efforts to meet the Phase II E911 requirements “focused more on new features and improved functionality with only minor mentions of E911 capabilities.”⁵⁸ USCC contends that its inability to satisfy the penetration requirement was “outside of its control”⁵⁹ because it encountered customer resistance to handset upgrades. This explanation, however, raises doubts as to USCC’s commitment to achieve compliance with the handset penetration requirement. Its poor progress in achieving the requisite penetration level should have resulted in USCC undertaking an aggressive marketing campaign well before the implementation deadline. For example, to the extent USCC offered free or reduced-price location-capable phones as an inducement to its subscribers to upgrade non-location capable handsets, USCC 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. Instead, USCC waited until only two days before the December 31, 2005 deadline to indicate its intention to undertake new initiatives designed to address the ability of its customers to upgrade their phones. If USCC found its subscribers resistant to adopting location-capable handsets, it should have taken additional steps to ensure increased penetration levels years ago, not in early 2006. We find especially inexplicable that, as late as two days before the December 31, 2005 deadline, USCC continued to be unaware of the compliance status of 7% of its subscribers.

18. USCC’s claim that some of its customers rely on the use of higher-power analog phones in areas where they may not be able to receive wireless service with a digital, location-capable phone, is notably non-specific. For example, USCC does not specify how many of its customers rely on the use of higher-power phones, or whether it can take any steps to reduce the need for such phones in certain portions of its service territory. We do not know what plans USCC may have to expand digital coverage into areas where a location-capable phone may be unable to communicate with the network, or whether it has investigated the present or future availability of higher-power, location-capable phones for use in such circumstances.⁶⁰ USCC’s statements lack detail and do not evince a firm commitment to rectify its non-compliance.

19. We also do not credit USCC’s reliance on customer churn as justifying its non-compliance with the December 31, 2005 deadline. When the Commission first adopted a 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.”⁶¹ 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.”⁶²

⁵⁷ See *id.* at 17455-56 ¶¶ 36-37.

⁵⁸ USCC Request at 9.

⁵⁹ See *id.* at 2.

⁶⁰ Two Tier III carriers have stated that they will introduce a “digital bag-phone manufactured by Motorola which will have transmission characteristics that approach those of traditional analog phones” and will make available for purchase “external antennas and signal boosters that can be attached to [their] ALI-capable phones to enhance the signal quality.” See Request for Limited Waiver of Eastern Sub-RSA Limited Partnership, CC Docket No. 94-102 at 6 (filed Dec. 9, 2005); Request for Limited Waiver of Washington RSA No. 8 Limited Partnership, CC Docket No. 94-102 at 6 (filed Dec. 9, 2005).

⁶¹ 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).

⁶² *Id.* at 17413 ¶ 53.

Thus, USCC was on notice that it had an obligation to take more aggressive, affirmative steps to encourage adoption of location-capable handsets, rather than simply pointing to lower than expected churn levels as a basis for waiver relief.

20. Similarly, we reject USCC's argument concerning the state of PSAP readiness for E911 implementation.⁶³ 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.⁶⁴ 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.

21. We also find that USCC has not demonstrated a "clear path to full compliance." At the time of its filing, USCC did not know the compliance status of 7% of its customers, and continues to offer no explanation for why it believes that the measures it proposes to undertake beginning early this year will achieve compliance within its requested timeframe. Although USCC heralds its new marketing campaign,⁶⁵ its plan lacks specifics and does not establish a definitive schedule. USCC admits as much by stating:

[t]his six-month waiver request presumes that a sufficient number of customers with non-compliant or unidentified handsets decide to upgrade to GPS-compliant handsets. Although USCC hopes this new notification and marketing campaign will achieve this goal, its ultimate success depends on customer behavior that USCC does not control.⁶⁶

This statement evidences only that USCC is uncertain about how or when it would achieve compliance. USCC's showing could not be more at odds with the waiver requirement that it "provide a clear path to full compliance," and does not establish that it will achieve compliance with the 95% penetration requirement as rapidly as possible. In sum, we cannot countenance USCC: (1) having missed the requisite penetration rate by as much as 10%, (2) purporting to excuse its non-compliance because customer resistance was "outside of its control," without evidence that it took earlier and more aggressive measures, and (3) waiting until 2006 to take more aggressive steps to achieve compliance. USCC's actions do not constitute "concrete steps necessary to come as close as possible to full compliance" as required by the applicable waiver criteria.

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

- Submit to the Commission status reports on the first of every month, beginning February 1, 2007, until USCC achieves 95% handset penetration. These reports must include detailed information that describes and discusses with specificity: (1) USCC's

⁶³ See USCC Request at 2, 15-16.

⁶⁴ 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 of the Location-Capable Handset Penetration Deadline, WT Docket No. 05-288, *Order*, FCC 06-59, ¶ 22 (rel. Jan. 5, 2007).

⁶⁵ See USCC Request at 9.

⁶⁶ *Id.* at 2 n.2.

efforts to encourage customers to upgrade to location-capable handsets; and (2) the percentage of USCC's customers with location-capable handsets.

- Within five days of achieving a 95% handset penetration rate, submit to the Commission a letter certifying USCC's 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 USCC's network. These quarterly reports must be filed until one year after USCC certifies compliance with the 95% handset penetration requirement.

We note that these conditions may be modified by any future enforcement action taken by the Enforcement Bureau.

IV. CONCLUSION

23. Under the circumstances of this case, we find that USCC has failed to satisfy the Commission's E911 waiver standards. For these reasons, we reject USCC's request to extend the handset penetration deadline and will address its failure to meet the deadline through the enforcement process. The Commission previously has placed carriers on notice that referrals may be made to the Enforcement Bureau, even when requests for relief are submitted in advance of deadlines set forth in the Commission's Rules or orders.⁶⁷ We therefore refer the matter of USCC's non-compliance with the handset penetration requirement to the Enforcement Bureau for appropriate enforcement actions.

V. PAPERWORK REDUCTION ACT

24. 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 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

25. 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.

26. IT IS FURTHER ORDERED, that the Request for a Limited Waiver of United States Cellular Corporation IS DENIED.

⁶⁷ See Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 18 FCC Rcd 21838, 21844 ¶ 12 (2003) ("A carrier may seek a waiver in advance of a deadline in the Phase II rules or its compliance plan. However, the carrier always becomes liable for possible enforcement action if it fails to comply with an applicable Phase II deadline. Referral to the Enforcement Bureau when such an apparent violation is reported, or otherwise appears likely, is a normal and familiar exercise of the Commission's authority and discretion").

27. IT IS FURTHER ORDERED, that USCC is subject to the reporting requirements specified herein.

28. IT IS FURTHER ORDERED, that the matter of USCC's non-compliance with Section 20.18(g)(1)(v) SHALL BE REFERRED to the Commission's Enforcement Bureau for appropriate action.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary