

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

In the Matter of	)	
	)	
The Commercial Mobile Alert System	)	PS Docket No. 07-287
	)	
	)	PS Docket No. 08-146
	)	
	)	
	)	

**ORDER**

**Adopted: August 3, 2012**

**Released: August 3, 2012**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. Pursuant to the Warning, Alert, and Response Network (WARN) Act,<sup>1</sup> the Federal Communications Commission (Commission) requires commercial mobile service (CMS) providers electing to participate in the Commercial Mobile Alert System (CMAS)<sup>2</sup> to have the capability to receive and transmit CMAS alerts to their subscribers consistent with their elections by April 7, 2012 (April 7 deadline).<sup>3</sup> The Rural Cellular Association (RCA), the Rural Telecommunications Group (RTG), MetroPCS Wireless, Inc. (MetroPCS), Element Mobile (Element), Panhandle Telecommunications Systems, Inc. (Panhandle), and American Messaging Services LLC (American) each filed petitions for

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<sup>1</sup> See Warning, Alert, and Response Network Act, Title VI of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (2006). See also Executive Order 13407 of June 26, 2006, Public Alert and Warning System, 71 FR 36975, June 26, 2006.

<sup>2</sup> CMAS is also known as the Personal Localized Alerting Network (PLAN) and Wireless Emergency Alerts (WEA). For purposes of this Order, we refer to the system as CMAS.

<sup>3</sup> The FCC's rules include requirements for each component of the carrier's side of CMAS to allow them to transmit CMAS alerts – the Commercial Mobile Service (CMS) provider's Gateway, the CMS provider's infrastructure and CMS provider handsets. Section 10.11 of the Commission's rules, 47 C.F.R. § 10.11, required participating CMS providers to begin to develop and test the CMAS no later than 10 months from the date that the Federal Emergency Management Agency (FEMA) makes available design specifications for the Government Interface that will allow FEMA to deliver alerts to participating CMS providers. The end of that development and testing period triggered an implementation and deployment period, not exceeding 18 months, culminating in the availability of the CMAS to the public. See *The Commercial Mobile Alert System, Third Report and Order*, 23 FCC Rcd 12561, 12582-83 ¶ 53 (2008) (*Third Report and Order*). The end of this 28-month period was April 7, 2012. See FCC's Public Safety and Homeland Security Bureau Sets Timetable in Motion for Commercial Mobile Service Providers To Develop a System That Will Deliver Alerts to Mobile Devices, PS Docket No. 07-287, *Public Notice*, 24 FCC Rcd 14388 (PSSHB 2009). Accordingly, CMS providers that have elected to participate in CMAS should have fulfilled those requirements and been ready to deliver CMAS alerts to the public either in their entire service area (*i.e.*, if they elected to transmit CMAS in whole) or in a portion of their service area (*i.e.*, if they elected to transmit CMAS in part), by April 7.

waiver of the April 7 deadline.<sup>4</sup> In addition, Cincinnati Bell Wireless, Inc. (CBW), Cricket Communications, Inc. (Cricket), Flat Wireless LLC dba Clear Talk (Clear Talk), and nTelos Wireless (nTelos) filed a joint petition for waiver of the April 7 deadline (Joint Petition), in which they alleged a common set of facts and circumstances, including a common timeline of events, to support each joint petitioner's request for a waiver.<sup>5</sup> Cricket also filed a subsequent petition for a further extension of the April 7 deadline (Cricket Petition for Further Waiver).<sup>6</sup>

2. For the reasons set forth below, with this Order, the Public Safety and Homeland Security Bureau (Bureau) grants the petitions of MetroPCS, Element, and Panhandle to the extent indicated; the petitions of CBW, Cricket, Clear Talk, and nTelos in the Joint Petition to the extent indicated; denies the petitions of RCA and RTG; denies without prejudice to refile the American Petition; and dismisses as moot the Cricket Petition for Further Waiver.

## II. BACKGROUND

3. In order to deliver CMAS alerts to their subscribers, participating wireless carriers must establish a connection with the Federal Emergency Management Agency's (FEMA) Integrated Public Alert and Warning System (IPAWS) Alert Aggregator Gateway (gateway). A necessary predicate for carrier connection to the IPAWS gateway is successful execution of two contractual agreements: the Memorandum of Agreement (MOA) and the Interconnection Security Agreement (ISA). The MOA is between the carrier and FEMA and establishes the terms governing the management, operation, and security of a connection between the carrier and IPAWS for the delivery of CMAS alerts. The ISA is between the carrier on one side, and FEMA and the Department of Homeland Security (DHS) on the other, and addresses the security requirements for the virtual private network (VPN) that DHS sets up to act as the "C" interface between the carrier's gateway, or a gateway provided to the carrier by a third party provider (TPP), and the IPAWS gateway. If a carrier is using a TPP to provide its gateway, only the TPP enters into the ISA with FEMA and DHS. One TPP may have multiple carrier clients. Each document type (MOA and ISA) has a test phase version and a production phase version, each of which must be separately negotiated and executed. According to FEMA, the test phase documents have a "notional timeline" for completion, *i.e.* FEMA's best estimate, of approximately eight weeks from execution by the carrier to completion of testing.<sup>7</sup> Similarly, the production phase documents have a "notional timeline" for completion of approximately seven weeks from execution by the carrier to completion of production testing.<sup>8</sup>

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<sup>4</sup> See Rural Cellular Association, Waiver and Extension Request, PS Dockets 07-287 and 08-146 (filed April 5, 2012) (RCA Petition); Rural Telecommunications Group, Waiver and Extension Request, PS Dockets 07-287 and 08-146 (filed April 6, 2012) (RTG Petition); Petition for Waiver of Element Mobile (filed May 22, 2012) (Element Petition); Petition for Waiver of Panhandle (filed May 22, 2012) (Panhandle Petition); Petition for Waiver of MetroPCS (filed April 5, 2012) (MetroPCS Petition); and Petition for Waiver of American Messaging Services (filed April 20, 2012) (American Petition). We note that both Panhandle and Element had earlier filed informal petitions for waiver on April 4, 2012. See E-mail from Daryl Zakov, Bennet & Bennet P.L.L.C, Counsel for Element Mobile, to Timothy May, Federal Communications Commission (sent April 4, 2012 @8:44 PM) (Element Informal Request); E-mail from Daryl Zakov, Bennet & Bennet P.L.L.C., Counsel for Panhandle Telecommunication Systems, Inc., to Timothy May, Federal Communications Commission (sent April 4, 2012 @ 8:43 PM) (Panhandle Informal Request).

<sup>5</sup> See Petition for Waiver of Cincinnati Bell Wireless, Cricket, Clear Talk and nTelos (filed April 3, 2012) (Joint Petition).

<sup>6</sup> See Letter, Robert Irving to David Turetsky, PS Docket Nos. 07-287 and 08-146 (filed May 30, 2012) (Cricket Petition for Further Waiver).

<sup>7</sup> FEMA, Integrated Public Alert and Warning System, CTIA WEA Deployment Webinar, Feb. 16, 2012, at 13.

<sup>8</sup> *Id.*

4. RCA, RTG, MetroPCS, CBW, Clear Talk, Cricket, nTelos, Panhandle and Element, all seek a waiver of the April 7 deadline for a period of time sufficient to complete the foregoing contractual processes and final CMAS “C interface”<sup>9</sup> testing that FEMA and DHS require for any CMS provider to participate in the CMAS. Specifically, RCA and RTG seek a blanket waiver of the April 7 deadline on behalf of their members or the wireless industry in general, indicating that their members could not meet the April 7 deadline because of the time required to complete FEMA’s or DHS’s contracting and interconnection negotiation processes.<sup>10</sup> MetroPCS, CBW, Clear Talk, Cricket, nTelos, Panhandle, and Element also seek waiver relief based on delays associated with the FEMA or DHS contracting and interconnection process.<sup>11</sup> With respect to MetroPCS, CBW, Clear Talk, Cricket and nTelos, each carrier indicates that it has signed individual MOAs with FEMA prior to the April 7 deadline.<sup>12</sup> In addition, each of these carriers indicates that their TPP was actively working with FEMA on their ISAs early enough to provide, at a minimum, the fifteen weeks that FEMA estimates are necessary to implement the test and production phase versions of the ISA documents. Specifically, Metro PCS, which is using Interop Technologies (Interop) as its TPP, indicates that Interop had already begun working with FEMA to implement its ISA by November 2011.<sup>13</sup> CBW, Clear Talk, Cricket and nTelos, who are all using TeleCommunications Systems (TCS) as their TPP, indicate that TCS had already begun working with FEMA to implement their ISAs by September 2011.<sup>14</sup> With respect to Panhandle and Element, both carriers state that they “completed all steps within [their] control in order to deliver CMAS alerts to [their] subscribers” prior to the deadline.<sup>15</sup> We understand this to mean that their MOA with FEMA was signed prior to the April 7 deadline. Moreover, both Panhandle and Element also indicate that their TPP was working with FEMA on their ISAs by September 2011 and May 2011, respectively.<sup>16</sup>

5. By contrast, American states that it could not meet the deadline because of technical issues in its network.<sup>17</sup> American states that when “it began updating its internet servers to access the data necessary for CMAS, it discovered technical issues that needed to be fixed and tested prior to American’s

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<sup>9</sup> The “C” interface” is the interface between the Alert Gateway and CMS provider Gateway. *See* 47 C.F.R. § 10.10(g).

<sup>10</sup> *See* RCA Petition at 1 (“the wireless industry, in particular rural and regional carriers, generally has experienced challenges in achieving timely CMAS implementation, including unforeseen delays during the FEMA contracting and interconnection process.”); RTG Petition at 1 (“one of the primary reasons for this delay is that FEMA has been unable to execute the necessary MOAs for administrative or technical reasons”). RCA seeks a blanket extension either of six weeks from the date that FEMA returns an executed MOA to carriers to test and implement CMAS or until June 1, 2012, *see* RCA Petition at 1. RTG seeks a 60 day waiver from the date that FEMA returns an executed MOA or a sixty day extension to June 5, 2012, *see* RTG Petition at 1.

<sup>11</sup> *See* MetroPCS Petition at 2 (requesting an extension until May 15, 2012 because DHS has not yet executed the ISA); Petition of CBW, Cricket, Clear Talk, and nTelos at 2 (requesting an extension until May 15, 2012 because FEMA caused delay in execution of ISA); Element Informal Request at 1 (requesting a 30-60 extension because of lack of present CMAS capability due to “testing or administrative delay on the part of ... third party vendor Intrado and/or FEMA); Panhandle Informal Request at 1 (requesting a 30-60 extension because of lack of present CMAS capability due to “testing or administrative delay on the part of ... third party vendor Intrado and/or FEMA). In their later petitions, both Panhandle and Element change their waiver requests to June 30, 2012. *See* Panhandle Petition at 3; Element Petition at 3.

<sup>12</sup> MetroPCS Petition at 1; Joint Petition at 1.

<sup>13</sup> MetroPCS Petition at 2.

<sup>14</sup> Joint Petition at 1-2.

<sup>15</sup> Panhandle Petition at 2; Element Petition at 2.

<sup>16</sup> Panhandle Petition at 1; Element Petition at 1-2.

<sup>17</sup> American Petition at 1. American requests an extension until June 30, 2012. *Id.*

implementing additional updates necessary for its provision of CMAS.”<sup>18</sup> Similarly, by letter dated May 30, 2012, Cricket filed a Petition for Further Waiver in which it informed the Bureau that “effective April 24, 2012, Cricket’s network was connected to the Federal Emergency Management Agency ... gateway” but “[d]ue to unexpected vendor delays, one Cricket switch is not yet CMAS-capable.”<sup>19</sup>

6. In addition, subsequent to their initial filings, CBW, Clear Talk, Cricket, nTelos, MetroPCS, Panhandle and Element informed the Commission that they have completed FEMA’s interconnection process and are capable of transmitting alerts to their subscribers.<sup>20</sup> Specifically, by letter dated May 15, 2012, CBW informed the Bureau that it was capable of transmitting CMAS alerts.<sup>21</sup> By letter dated May 23, 2012, Clear Talk notified the Bureau of the same.<sup>22</sup> By letter dated June 26, 2012, Cricket informed the Bureau that its “entire network is CMAS-capable.”<sup>23</sup> By letter dated May 7, 2012, nTelos informed the Bureau that its CMAS network had “gone live” and was now connected to FEMA’s gateway.<sup>24</sup> As well, by letter dated May 7, 2012, MetroPCS informed the Bureau that its CMAS network had “gone live” and was connected to FEMA’s gateway.<sup>25</sup> Finally, by letters dated July 24, 2012, Panhandle and Element informed the Bureau that their “CMAS vendor, Intrado, Inc., has achieved connectivity to the Federal Emergency Management Gateway” and that their subscribers are now able to receive wireless emergency alerts.<sup>26</sup>

### III. DISCUSSION

7. Under Section 1.925 of the Commission’s rules, in order to obtain waiver relief, a petitioner must demonstrate that “the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that the grant of waiver would be in the public interest,” or that, “in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>27</sup> The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>28</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> See Letter, Robert Irving to David Turetsky, PS Docket Nos. 07-287 and 08-146 (filed May 30, 2012) (Cricket Petition for Further Waiver). The Cricket Petition for Further Waiver requests a waiver extension to July 15, 2012. *Id.*

<sup>20</sup> We note that, although CBW, Clear Talk, Cricket, nTelos, MetroPCS, Panhandle and Element indicate that they are now in compliance with their CMAS elections and capable of transmitting alerts to subscribers, petitioners have not withdrawn their petitions and each seeks a waiver for the period of time after the April 7 deadline during which they were not in compliance with their election.

<sup>21</sup> See Letter, Patricia Rupich to David Furth, PS Docket Nos. 07-287 and 08-146 (filed May 15, 2012).

<sup>22</sup> See Letter, Donald Evans to David Turetsky, PS Docket No. 07-287 (filed May 23, 2012).

<sup>23</sup> See Letter, Robert Irving to David Turetsky, PS Docket Nos. 07-287 and 08-146 (filed June 26, 2012) (Cricket Status Report).

<sup>24</sup> See Letter, Carl Northrop to James Barnett, PS Docket Nos. 07-287 and 08-146 (filed May 7, 2012).

<sup>25</sup> See Letter, Carl Northrop to James Barnett, PS Docket Nos. 07-287 and 08-146 (filed May 7, 2012).

<sup>26</sup> See Letter, Gary Burke, Plant Manager, Panhandle, to David Turetsky, PS Docket Nos. 07-287 and 08-146 (filed July 24, 2012) (Panhandle Status Report); Letter, Jerry Wilke, Chief Operating Officer, Element, to David Turetsky, PS Docket Nos. 07-287 and 08-146 (filed July 24, 2012) (Element Status Report).

<sup>27</sup> 47 C.F.R. § 1.925.

<sup>28</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

8. We find that MetroPCS, CBW, Clear Talk, nTelos, Panhandle and Element all meet the standard for waiver of the April 7 deadline under the first prong of section 1.925 of the Commission's rules.<sup>29</sup> The underlying purpose of the April 7 deadline was to ensure that consumers have access to CMAS alerts over their mobile devices in as timely a fashion as possible.<sup>30</sup> As noted, above, MetroPCS, CBW, Clear Talk, nTelos, Panhandle, and Element all indicate that they signed their MOA with FEMA prior to the April 7 deadline, and that they had hired their TPP many months before that deadline – well within the time necessary to meet FEMA's estimated timeline to implement an ISA with the TPP.<sup>31</sup> The petitioners also indicate that their TPPs took numerous steps to complete the ISA process in a timely manner.<sup>32</sup> Because these petitioners proceeded in a timely and diligent manner to meet the deadline and because they were unable to meet the deadline due to unexpected circumstances beyond their control, *i.e.*, steps taken by FEMA or DHS that required more time than may have been contemplated by the notional timelines, we find that the underlying purpose of the rules would not be served by holding these petitioners to the April 7 deadline.<sup>33</sup> Given the voluntary nature of CMAS participation, penalizing petitioners because of circumstances beyond their control would in fact have the adverse effect of motivating carriers *not* to participate in CMAS. This would clearly frustrate the timely deployment of CMAS. Moreover, because of CMAS's extensive public safety benefits, we find that promoting carrier participation in CMAS to the greatest extent possible is consistent with the public interest.

9. Because MetroPCS, CBW, Clear Talk, and nTelos are now connected to FEMA's gateway and able to transmit CMAS alerts to their subscribers, and the May 15, 2012, extension date that they sought is now past, we grant them waiver relief up to the date that they received their gateway connections.<sup>34</sup> Similarly, because Panhandle and Element are now connected and able to transmit CMAS alerts to their subscribers as of July 24, we grant them waiver relief up to that date when they received their gateway connections.

10. With respect to Cricket, we grant its request for waiver relief pursuant to the Joint Petition and dismiss as moot its subsequently filed Petition for Further Waiver. Similar to the other three joint petitioners, we note that Cricket signed its MOA with FEMA prior to the April 7 deadline, and also indicated that its TPP was actively working with FEMA on its ISAs well before that deadline.<sup>35</sup> Cricket's Petition for Further Waiver indicates that it resolved its problems with FEMA by April 24, 2012, when it

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<sup>29</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>30</sup> See *Third Report and Order*, 23 FCC Rcd at 12582-83 ¶ 53 (“[T]he CMAS timeline rules that we adopt today” are related to “the need to ensure timely deployment of CMAS”).

<sup>31</sup> See Metro PCS Petition at 1; Joint Petition at 1-2; Panhandle Petition at 2; Element Petition at 2.

<sup>32</sup> See Metro PCS Petition at 2 (showing timetable of steps taken by TPP Interop to complete an ISA); Joint Petition at 2 (showing timetable of steps taken by TPP TCS to complete an ISA); Panhandle Petition at 1-2 (describing steps Panhandle's TPP, Intrado, has taken to complete an ISA); Element Petition at 1-2 (describing steps Elements TPP, Intrado, has taken to complete an ISA).

<sup>33</sup> We also note that Element elected to participate in CMAS only on January 27, 2012. *Id.* The relatively short period that has passed since its election also militates in Element's favor in our waiver analysis.

<sup>34</sup> See Letter from Donald J. Evans, Fletcher, Heald & Hildreth, Counsel for Flat Wireless, LLC dba Clear Talk to David Turetsky, Chief, PSHSB (filed May 23, 2012) (notification of Flat's currently-operational FEMA gateway connection); Letter from Patricia L. Rupich, Senior Manager – Regulatory, Cincinnati Bell to David L. Furth, Acting Chief, PSHSB (filed May 15, 2012) (notification of CBW's currently-operational FEMA gateway connection); Letter from Carl W. Northrop, Telecommunications Law Professionals PLLC, for MetroPCS Wireless, Inc. to James Arden Barnett, Jr., Chief, PSHSB (filed May 7, 2012) (notification of MetroPCS's FEMA gateway connection as of May 2, 2012); Letter from Carl W. Northrop, Telecommunications Law Professionals PLLC, for nTelos Wireless to James Arden Barnett, Jr., Chief, PSHSB (filed May 7, 2012) (notification of nTelos's FEMA gateway connection as of May 2, 2012).

<sup>35</sup> Joint Petition at 1-2.

connected to FEMA's gateway.<sup>36</sup> Accordingly, for the reasons set forth in paragraph 8, *supra*, we grant Cricket waiver relief pursuant to the Joint Petition, up to April 24, 2012, the date it received its gateway connection.<sup>37</sup> Cricket's Petition for Further Waiver also states that despite connecting its network to FEMA's gateway by April 24, 2012, as of May 30, 2012, Cricket was still incapable of delivering CMAS alerts to at least some of its subscribers due to a problem with one of its switches.<sup>38</sup> Cricket informed the Bureau that it has installed a CMAS-capable switch in the affected portion of its network and "Cricket's entire network is now CMAS-capable."<sup>39</sup> Accordingly, we dismiss as moot Cricket's Petition for Further Waiver.

11. We find that neither RCA nor RTG has provided sufficient information to warrant a waiver, pursuant to section 1.925, of the deadline for either the wireless industry generally or their member carriers in particular. Their petitions fail to provide sufficient facts by which we can determine whether any particular carrier acted in a timely and diligent manner in order to meet the April 7, 2012 deadline. Accordingly we deny their petitions.<sup>40</sup>

12. American elected to participate in CMAS in 2008, and states that technical issues in its network prevented it from meeting the April 7, 2012 deadline. However, American does not explain with particularity what those issues were, or why it could not have addressed those technical issues in time to meet the deadline. Thus, we find that American has not met the criteria for grant of its requested waiver of the April 7 deadline and therefore, we deny its petition, but do so without prejudice for American to refile its petition in a manner that states with specificity the reasons for its request.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.41, 1.925, THIS ORDER in PS Docket No. 07-287 IS ADOPTED.

14. IT IS FURTHER ORDERED that the formal and informal Petitions filed by Panhandle Telecommunications Systems, Inc., and Element Mobile ARE GRANTED to the extent set forth herein.

15. IT IS FURTHER ORDERED that the Joint Petition filed by Cincinnati Bell Wireless, LLC, nTelos Wireless, Flat Wireless LLC d/b/a Clear Talk, and Cricket Communications, Inc. and the Petition filed by MetroPCS Wireless, Inc. ARE GRANTED to the extent set forth herein.

16. IT IS FURTHER ORDERED that the Petitions filed by the Rural Cellular Association and the Rural Telecommunications Group ARE DENIED.

17. IT IS FURTHER ORDERED that the Petition filed by American Messaging Services LLC IS DENIED without prejudice to refile.

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<sup>36</sup> Cricket Petition for Further Waiver.

<sup>37</sup> See Cricket Petition for Further Waiver (notification of Cricket's FEMA gateway connection in all but one switch effective April 24, 2012).

<sup>38</sup> *Id.*

<sup>39</sup> Cricket Status Report at 1.

<sup>40</sup> We note that to the extent the RCA and RTG petitions sought extensions until June 1, 2012 and June 5, 2012, respectively, those extended deadlines have passed. Individual carriers may continue to file requests for waiver which we will consider on a case-by-case basis.

18. IT IS FURTHER ORDERED that the Petition for Further Waiver filed by Cricket Communications, Inc. IS DISMISSED AS MOOT to the extent set forth herein..

19. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David Turetsky  
Chief  
Public Safety and Homeland Security Bureau