

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility with	)	
Enhanced 911 Emergency	)	
Calling Systems	)	

To: Chief, Wireless Telecommunications Bureau

**REQUEST FOR RULE WAIVER**

3 Rivers PCS, Inc. d/b/a 3 Rivers Wireless (3 Rivers), by its attorney, hereby requests a temporary waiver of Section 20.18(g) of the Commission's Rules to allow it delay the phase-in of its deployment of a handset-based technology in meeting the Commission's requirements for implementing E911 Phase II service.

**Background**

3 Rivers is the licensee of station WPOI209 in the Broadband Personal Communications Service (PCS). Station WPOI209 is a license partitioned from the 30 MHz Block A license granted to GTE Macro Communications Corporation (GTE), on June 23, 1995, for the Spokane-Billings Major Trading Area (MTA). On April 17, 1997, the Commission approved the application to partition to 3 Rivers a portion of GTE's license for the Spokane-Billings MTA, to include the Great Falls, Billings, Bozeman, Helena and Butte (except for Powell County) Basic Trading Areas. Its licensed service area covers about two-thirds of the state of Montana. 3 Rivers utilizes Nortel's CDMA equipment for its PCS network.

In its implementation report filed last November, 3 Rivers notified the Commission of its plans to implement a handset-based technology solution, utilizing a network server from SnapTrack, Inc. and handsets from Kyocera (Qualcomm), Nokia and Motorola, in conjunction with its Nortel Networks infrastructure. While 3 Rivers indicated that it planned to adhere to the implementation schedule established in the Commission's *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000), it stated that its ability to do so would depend, in large part, on the ability of its equipment suppliers to have their products operational and delivered on time. As of its November 9, 2000 filing, none of 3 Rivers' handset suppliers had been able to commit to a schedule for delivery of ALI-compatible units. In addition, Nortel, at the time, had not yet provided information as to the availability of the needed feature sets for the Base Transceiver Station, Base Station Controller and the DMS 100 Dual-Load Switch, citing the lack of standards for E911 Phase II compliance.

### **3 Rivers' Commitment to Achieving Compliance**

Since last November, 3 Rivers has been diligent in pursuing deployment of E911 Phase II technology in a timely manner. In addition to maintaining close contact with its equipment suppliers, 3 Rivers has become a member of the Montana statewide E911 Advisory Council. Its management regularly attends industry and public safety meetings on the subject of E911. However, despite its best efforts and due to circumstances beyond its ability to control (as more fully described below), 3 Rivers recognizes that it will not be able to meet the phase-in schedule established in the Commission's *Fourth Memorandum Opinion and Order* and embodied in Section 20.18(g) of the Commission's Rules.

### **Waiver Request**

Accordingly, 3 Rivers requests a waiver of Rule Section 20.18(g)(1), to allow it to delay by nine months each of the handset activation deadlines therein; and a waiver of Rule Section 20.18(g)(2), to defer the requirement for upgrading its infrastructure and begin delivering E911 Phase II service to a requesting PSAP until six months from the PSAP request but no earlier than October 1, 2002.

### **Implementation Details**

#### **Switch**

The Nortel DMS-100 Dual Load/Wireless on Wireline switch currently employed by 3 Rivers in its PCS system is only three years old. The switch is currently operating at software load MTX 9.0; and when 3 Rivers decided to utilize a handset-based technology (for the reasons set forth in its November 9, 2000 filing), it had planned on going to software load MTX 10.0, which it understood from Nortel would be Phase II compliant. Despite that, Nortel's sale representative informed 3 Rivers on May 11, 2001 that its current switch would not be upgraded further and that it would be required to change from the current switch configuration to a new switch. Apparently, Nortel had made a business decision, based on the market demand for the DMS-100 Dual Load Wireless on Wireline product, that MTX 9.0 would be the last DMS-100 Dual Load Wireless on Wireline software load. Since the software load of MTX 9.0 is not capable of processing a wireless location-based Phase II handset call, 3 Rivers will be required to transition its

infrastructure to separate wireline/wireless switching platforms in order to achieve Phase II compliance. The new Nortel configuration is not complete and 3 Rivers is only now in the process of negotiating its price, delivery, installation and testing. This process is expected to take at least six months and possibly as long as a year. An additional complicating factor is that 3 Rivers presently has no space for the new switch. It will have to significantly expand its space to accommodate the new equipment; and this construction is likewise expected to take six months to a year to complete.

### **Handsets**

3 Rivers has maintained close contact with its handset suppliers to determine their progress in being able to provide a handset with a GPS receiver for E911 Phase II compliance. Its findings are, as follows:

- **Kyocera/Qualcomm** – This is currently the largest volume handset supplier to 3 Rivers. At a Kyocera technology seminar on March 1, 2001, 3 Rivers' management posed the question of GPS capability for the deployment of Phase II. The response was that Kyocera was working toward developing a product but did not then have the solution for providing a handset with GPS capability. 3 Rivers has since monitored Kyocera's progress in conversation with its sales and engineering representatives to determine whether a compliant handset would be available by October 1, 2001. In response to a May 23, 2001 e-mail request, Kyocera's account representative indicated that a GPS-enabled handset would be released late in the fourth quarter of 2001, but that its location accuracy would not meet the FCC's requirements for Phase II. Kyocera is apparently working to release a product in the second

quarter of 2002 utilizing Qualcomm's patented GPSOne technology that will meet FCC requirements. Since 3 Rivers, as a small independent PCS carrier does not have the buying power of the largest carriers, it is generally one of the last in line to receive delivery of new products. Accordingly, it could easily be the third quarter of 2002 before 3 Rivers is able to receive delivery of Kyocera's anticipated new product. (Qualcomm has released the GPSOne chip; and it is currently being utilized by, Denso, a Japanese handset manufacturer. 3 Rivers has been unable to obtain any of these handsets for testing.)

- **Motorola** – 3 Rivers contacted Motorola on May 25, 2001 and asked for a firm date for the release of a Phase II compliant handset and details on the pricing structure. On May 25, 2001, Motorola's product representative replied that he would pass the request along to sales and project management. Motorola replied, on June 22, 2001, that it would not have a Phase II compliant handset available until the third quarter of 2002 and that it would be priced higher than \$250.00.
- **Nokia** – As of this time, 3 Rivers has received no response from Nokia as to its plans for providing a Phase II compliant handset.
- **After Market** – The products of two developers of aftermarket GPS add-ons, in the form of a battery with a GPS receiver, have been tested. Satellite acquisition time can exceed fifteen minutes. Testing is continuing.

### **Waiver Standards**

In its *Fourth Memorandum Opinion and Order*, the Commission indicated that the Phase II rules are intended to be applied in a manner that takes into account practical and technical realities.<sup>1</sup> Recognizing that practical and technical realities might delay Phase II implementation, the Commission established a general approach in dealing with possible requests for waiver of the Phase II requirements.<sup>2</sup> Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Rule Section 1.3.<sup>3</sup> It recognized, in the case of E911, that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001.<sup>4</sup> The Commission cautioned that waiver requests should be specific, focused and limited in scope, with a clear path to full compliance and should document the efforts aimed at compliance.<sup>5</sup>

### **3 Rivers Has Met the Waiver Standards**

As shown above, 3 Rivers has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18(g). While Section 20.18 of the Commission's Rules imposes E911 Phase II obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged the obvious, namely that achieving full compliance requires the cooperative efforts of carriers, equipment manufacturers and suppliers and government officials responsible for public safety activities. As a service provider only, 3 Rivers

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<sup>1</sup> 15 FCC Rcd 17442, at para. 22.

<sup>2</sup> *Id.*, at paras. 42-45

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

would be unable to achieve compliance with the Commission's Phase II requirements without the availability of necessary equipment and the readiness of the public safety answering points in its area. The simple truth is that there is no technology currently available that will satisfy the Commission's Phase II accuracy requirements within the established deadlines.<sup>6</sup> It is only recently that automatic location technology has advanced to the point where Phase II compliance can become a reality. However, once compliant equipment hits the market, it will undoubtedly be several more months before 3 Rivers will be able to order and obtain delivery of this equipment. As a small market carrier, 3 Rivers simply does not have the buying power of the national carriers let alone the clout to influence equipment design and development. If the past is prologue, 3 Rivers will have to wait until the initial handset requirements of the national carriers are satisfied before it will be able to obtain Phase II compliant handsets.

In addition, 3 Rivers could not have anticipated the problems and the delays with having to acquire, install and test a new switch because its switch manufacturer has decided not to upgrade a switch that is barely three years old due to economic issues that are apparently unrelated to E911 Phase II.

The deadline extensions herein requested are in the public interest. They will afford 3 Rivers the additional time needed to upgrade and test its equipment, once the equipment is available, in an orderly manner that is likely to lead to a successful result in providing Phase II service. They will not adversely affect the PSAPs in the area or the public served. 3 Rivers has only recently received one PSAP request for Phase I service; and it is believed that none of the PSAPs in the area served by 3 Rivers will be ready for Phase II service for at least another six months.

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<sup>6</sup> See *Petition for Waiver* in this docket, filed August 3, 2001, by Triton PCS License Company, L.L.C., pp. 4-5.

It is, therefore, clear that 3 Rivers has been diligent in pursuing implementation of Phase II but that it is unable to do so due entirely to matters that are beyond its ability to control. The instant waiver request is specific and focused. It details the unavoidable delays 3 Rivers has encountered through no fault of its own. It sets out a clear path to compliance once the necessary equipment becomes available.

Based on information currently available, 3 Rivers believes that it will be able to comply with the following benchmarks:

- July 1, 2002 – Begin selling and activating location capable handsets;
- By September 30, 2002 – Ensure that at least 25 percent of all new handsets activated are location-capable;
- By March 30, 2003 – Ensure that at least 50 percent of all new handsets activated are location-capable;
- By September 30, 2003 - Ensure that all new handsets activated are location-capable;
- By September 20, 2006 – Achieve 95 percent penetration of location-capable handsets among its subscribers;
- By October 1, 2002 or within six months of receiving a PSAP request, whichever is later – Begin delivering E911 Phase II service to the PSAP.

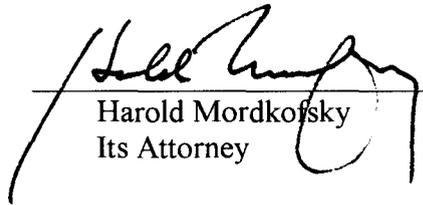
**Conclusion**

In view of the foregoing, the waiver herein requested is in the public interest and should be granted.

Respectfully submitted,

**3 Rivers PCS, Inc. d/b/a  
3 Rivers Wireless**

By:

  
Harold Mordkofsky  
Its Attorney

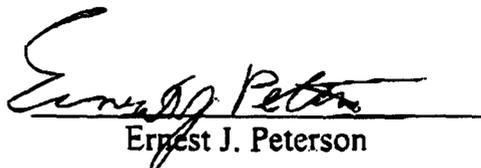
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Dated: September 12, 2001

## DECLARATION

Ernest J. Peterson hereby declares, under penalty of perjury under the laws of the United States, that he is the General Manager of 3 Rivers PCS, Inc. d/b/a 3 Rivers Wireless; that he has read the foregoing Request for Rule Waiver to the Federal Communications Commission; that, except for those facts of which the Commission may take official notice, all of the facts stated therein are true and correct to the best of his knowledge, information and belief.

Dated, this 10 day of September, 2001.

  
Ernest J. Peterson