

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 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	)	
	)	
	)	
El Dorado Cellular, a California Corporation)	)	DA 98-2631
d/b/a Mountain Cellular	)	
Petition For Limited Waiver of Section	)	
20.18(g) of the Commission's Rules	)	

To: The Wireless Telecommunications Bureau

**PETITION OF EL DORADO CELLULAR, A CALIFORNIA CORPORATION  
d/b/a MOUNTAIN CELLULAR  
FOR LIMITED WAIVER OF SECTION 20.18(g) OF THE COMMISSION'S RULES**

El Dorado Cellular, a California Corporation d/b/a Mountain Cellular ("Mountain Cellular"), by its attorneys and pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3 and the Public Notice in the above-captioned proceeding,<sup>1/</sup> hereby requests a limited waiver of Sections 20.18(g) of the Commission's Rules, 47 C.F.R. §20.18(g), with respect to the October 1, 2001 deadline for implementing Phase II E911 service.<sup>2/</sup> Mountain Cellular previously informed the Commission that it intends to deploy a handset-based approach to provide Phase II E911 service. Although Mountain Cellular remains committed to this solution, Phase II-compliant handsets and corresponding upgrades to cellular (and other mobile) switching systems remain commercially

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<sup>1/</sup> "Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification Requirements," DA 98-2631, released December 24, 1998 (hereinafter "Wireless E911 Waiver PN").

<sup>2/</sup> To the extent necessary, Mountain Cellular respectfully requests a limited waiver of any other sub-section of Section 20.18 (e.g., 20.18(e) and (h), which require licensees to provide Phase II E911 service in accordance with quantified accuracy standards) that the Commission deems necessary and relevant to extending the October 1, 2001 deadline stated in Section 20.18(g)(1).

unavailable at this time making it impossible, for reasons wholly beyond Mountain Cellular's control, to comply with the Commission deadlines for commencing sale of Automatic Location Identification ("ALI")-compatible handsets.

Thus, Mountain Cellular respectfully requests: (1) an extension of time up to and including July 31, 2002 in which to begin selling Phase II-compliant handsets and to complete corresponding upgrades to its cellular switch; and (2) approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by October 31, 2002; 50% of new activations by April 30, 2003, 100% of new activations by December 31, 2003; and 95% of embedded base by December 31, 2005.

In support of this petition, Mountain Cellular respectfully states as follows:

#### **I. STATEMENT OF FACTS**

Mountain Cellular provides analog and is in the process of deploying CDMA-based cellular service in California RSA 11, Market No. 346 (B) (El Dorado), which comprises El Dorado County near the El Dorado National Forest in the Sierra Nevada Mountains in California.<sup>3/</sup> This county is relatively large, has mountainous terrain and is sparsely populated. As a result, Mountain Cellular utilizes a cell layout in which large sections of California RSA 11 are served by a single transmitting station site (or cell). In this design, cell contour overlap is typically limited to areas where "hand-off" from one cell coverage area to another is essential for continuous, uninterrupted communications. Based upon its network configuration, Mountain Cellular determined that a network-based wireless E911 location solution that depends on triangulation from multiple cell sites

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<sup>3/</sup> Mountain Cellular provides cellular service under Call Sign KNKN220.

to satisfy the Commission's accuracy standards cannot be economically deployed in California RSA 11.

Based on this determination, Mountain Cellular advised the Commission on November 8, 2000 that it intended to meet its E911 Phase II requirement by deploying a handset-based solution, which will provide public safety agencies with accurate location data for 911 callers and will thus meet the objectives set forth in the Commission's E911 rules. For reasons beyond Mountain Cellular's control, however, this solution cannot be deployed by October 1, 2001, the deadline Section 20.18(g)(1) of the Rules imposes on carriers even where no Public Safety Answering Point ("PSAP") request has been made. Because Phase II-compliant handsets and necessary upgrades to cellular switching systems are unavailable commercially, the waiver sought by Mountain Cellular is just and appropriate in this instance.

The Commission may grant a waiver for "good cause shown," if the waiver is deemed in the public interest, or if there are unique factual circumstances that render application of the rule inequitable or particularly burdensome.<sup>4/</sup> Citing *WAIT Radio*, the Wireless E911 Waiver PN stated (at 4) that the Commission may waive a rule "where waivers are founded upon an 'appropriate general standard,' 'show special circumstances warranting a deviation from the general rule' and 'such deviation will serve the public interest.'" In its Fourth Memorandum and Order in this proceeding, the Commission concluded that there may be instances where waivers of Phase II E911

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<sup>4/</sup> 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

rules will be necessary, particularly if “technology-related issues” or “exceptional circumstances” preclude Phase II services from being deployed.<sup>5/</sup>

As shown below, the instant petition complies with all the waiver standards articulated in the above-cited rules, decisional precedent, and orders and public notices issued in CC Docket No. 94-102. Indisputably, Phase II-compliant handsets and corresponding switch upgrades are unavailable on a commercial basis. This inescapable fact, which can be characterized both as an “exceptional circumstance” and a “technological issue,” renders adherence to the October 1, 2001 deadline impossible— not to mention “inequitable” and “particularly burdensome.” By allowing for the orderly implementation of Phase II compliant handsets, the limited waiver requested here will further the policy objectives animating Section 20.18(g) of the Commission’s Rules while serving the public’s interest in widely-available and accurate wireless E911 service. For this reason, Mountain Cellular’s request should be granted.

## **II. DISCUSSION**

### **A. PHASE II COMPLIANT HANDSETS AND SWITCH UPGRADES ARE COMMERCIALY UNAVAILABLE**

ALI-capable handsets and related switch upgrades are, at present, commercially unavailable. No remedy to this situation will occur in the few days remaining before the October 1, 2001 Phase II-compliance deadline stated in Section 20.18(g)(1)— an unavoidable fact that others have amply demonstrated in this proceeding<sup>6/</sup> and independently verified by Mountain Cellular in discussions

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<sup>5/</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (Fourth Memorandum Opinion and Order in CC Docket No. 94-102), FCC 00-326, 15 FCC Rcd. 17442 ¶ 43 (2000), *recon. pending* (“Fourth MO&O”).

<sup>6/</sup> *See, e.g.,* Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II (continued...)

with its own handset suppliers and switch vendor.<sup>7/</sup> Thus, for reasons beyond Mountain Cellular's control, it is unable to deploy its handset based solution in accordance with the deadline imposed by Section 20.18(g)(1).

Relying on claims by handset and network equipment manufacturers, the Commission last year concluded that an October 1, 2001 deadline for deploying E911 Phase II service was reasonable. According to the Commission, "ALI technologies are already, or will soon be, available" for carriers seeking to comply with Phase II requirements.<sup>8/</sup> This Commission prediction concerning equipment has proven to be unrealistic. No handset vendor is willing or able to commit to provide Mountain Cellular with the handsets, and Mountain Cellular's switch vendor is unable to provide it with the necessary switch upgrades in sufficient time to enable Mountain Cellular to begin selling E911 Phase II compliant handsets and to provide Phase II E911 location service by the October 1, 2001 deadline.

As others have noted, small rural carriers like Mountain Cellular face a specific disadvantage in attempting to obtain location-capable equipment and technology from manufacturers. As

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<sup>6/</sup>(...continued)

Implementation Milestones at 13-16 (August 23, 2001); Comments of AT&T Wireless Services, Inc. at 6 (August 20, 2001); Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules at 3 (July 30, 2001); Qwest Wireless, LLC and TW Wireless, LLC's Petition for Extension or Time or Waiver of Section 20.18 of the Rules at 8 (July 23, 2001); and South Canaan Cellular Communications Company L.P. Petition for Waiver of Section 20.18(g) of the Rules at 2 (August 31, 2001).

<sup>7/</sup> Mountain Cellular has repeatedly queried its switch vendor seeking details regarding the costs, availability dates, engineering requirements and implementation details associated with making its switching gear Phase II-compliant. A response dated September 13, 2001 indicates that the information requested is currently unavailable, although the vendor represents that "a number of the details [sought by Mountain Cellular] . . . are being finalized . . . ." If requested, Mountain Cellular will endeavor to make this correspondence available to the Commission.

<sup>8/</sup> Fourth MO&O, 15 FCC Rcd. 17442 at ¶ 44.

compared to urban carriers or large regional and nationwide carriers, rural carriers, whose subscriber numbers are comparatively small and geographically dispersed, are unable to negotiate directly with handset manufacturers and typically acquire their handsets from distributors. Relative to carriers with regional or nationwide footprints, rural licensees will have the least negotiating leverage to secure any priority in obtaining new handsets even when they do become commercially available.

As succinctly described by Inland Cellular Telephone Co. in its recent Phase II waiver request:

Smaller carriers in smaller markets are at the ‘end of the line’ for product distribution. It is accepted industry practice that [General Availability] dates are availability dates for large market carriers only and that small carriers can expect significant delays. It is Inland’s experience that it often takes anywhere from six to nine months *after* the General Availability (“GA”) date for Inland to receive its equipment.<sup>9/</sup>

Mountain Cellular vigorously echoes these sentiments. Lacking the market power that induces manufacturers to engage in direct negotiations, Mountain Cellular must deal with intermediaries that face no regulatory consequences if Phase II-compliant handsets are unavailable by the October 1, 2001 deadline. Moreover, even if contrary to all expectations and indications the GA date for this equipment were to occur on October 1, months will pass before the product trickles down to small rural carriers like Mountain Cellular. As a result, Mountain Cellular and other rural carriers opting for the handset approach to E911 Phase II compliance are compelled to pursue a limited waiver of Section 20.18(g)(1).

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<sup>9/</sup> Inland Cellular Telephone Co. Petition For Limited Wavier Of Sections 20.18(e) and (g) Of The Rules, dated July 30, 2001, at 6 (emphasis in the original).

**B. SMALL AND RURAL CARRIERS FACE UNIQUE ISSUES  
IN MEETING THEIR E911 PHASE II OBLIGATIONS**

Mountain Cellular and other small, rural carriers advised the Commission in November 2000 of their plans to deploy a handset-based solution for meeting the E911 Phase II requirements set forth in Section 20.18(e)(h). The handset approach was selected because the costs associated with a network-based deployment were intolerably high for a small, rural carrier that has only a relatively modest number of subscribers over which to spread the costs of complying not only with E911 Phase II, but such other federal mandates as CALEA, wireless number portability, *etc.* In addition, there was (and is) substantial uncertainty as to whether a network-based solution will provide the location accuracy quantified in Section 20.18(h) in non-urban environments with an expansive geographic area served by the minimum number of cell sites needed to provide reliable coverage to a sparse and diffuse population. Moreover, in many cases, topographical features impede radio propagation.

For the foregoing reasons, the unique attributes of providing wireless communications in rural areas in many cases eliminated the network-based approach as a viable option for carriers seeking to comply with their E911 Phase II obligation. Many rural carriers like Mountain Cellular thus determined that only the handset-based solution was economically feasible. Having no real alternative but to select the handset approach, Mountain Cellular and similarly-situated carriers, for reasons wholly beyond their control, now find themselves unable to obtain ALI-capable handsets or switch-based solutions that can meet Section 20.18(h) accuracy standards.

**C. GRANTING A LIMITED WAIVER TO MOUNTAIN CELLULAR WILL SERVE THE PUBLIC INTEREST WITHOUT PREJUDICE TO PSAPS**

Granting the limited waiver sought by Mountain Cellular here will serve the public interest without prejudice to PSAPs, the public safety community, or the general public. Specifically, the proposed waiver will still promote the Commission's paramount objective of rapidly deploying Phase II E911 service by allowing Mountain Cellular to extend to its customers and to the public in California RSA 11 the most accurate location technology at the earliest possible date. Assuming the limited waiver is granted, Mountain Cellular will continue to consider proposals for network-based approaches during the extended compliance period, notwithstanding its inability, to date, to find any such proposal whose costs are reasonable and whose vendor will guarantee compliance with the accuracy requirements of Section 20.18(h) in Mountain Cellular's rural service area.<sup>10/</sup> A waiver will thus afford Mountain Cellular maximum flexibility to determine the optimum solution for its unique circumstances as a rural wireless carrier.

This flexibility will entail no delay, increased cost or other prejudice to PSAPs or the public safety community in Mountain Cellular's service territory. Indeed, no PSAP has requested that Mountain Cellular initiate Phase II (or Phase I) implementation, and no network-based solution would be deployed by Mountain Cellular until it has received such a request. Regarding deployment of a handset-based approach, no delay will ensue from grant of the limited waiver proposed here.

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<sup>10/</sup> Mountain Cellular remains skeptical that a network-based solution can be economically deployed and, at the same time, achieve Commission accuracy criteria. Accordingly, at present, Mountain Cellular cannot change its November 2000 decision that a handset-based approach is its only viable means for achieving Phase II compliance. If, as a result of its ongoing evaluations, Mountain Cellular learns of an economically feasible and sufficiently accurate network-based system, then it will amend its November 2000 determination and advise the FCC that it will deploy such a solution within 6 months of a PSAP request.

Commercial unavailability of Phase II handsets and switch upgrades are causing the delay; the multiple waivers which the Commission has received are merely the unavoidable consequence (not the cause) of the unfortunate delay in Phase II deployment. Thus, the modest extension in the October 1 deadline proposed here will prejudice neither PSAPs, the public safety community, Mountain Cellular's subscribers, nor the general public.

In sharp contrast, denial of the waiver will serve no purpose. The handsets simply do not yet exist at this time making it impossible to comply with the current handset-based solution deadlines. Similarly, Mountain Cellular continues to be unable to identify a viable network-based solution that can meet the Commission's accuracy requirements when deployed in Mountain Cellular's market with its mountainous terrain and network configuration. Coupled with the fact that no PSAP has yet to even request E911 Phase I service from Mountain Cellular, it is clear that denial of this waiver would neither hasten the availability of E911 service to the market nor serve any other public interest.

**D. PROPOSED COMPLIANCE SCHEDULE**

Mountain Cellular respectfully requests: (1) an extension of time up to and including July 31, 2002 in which to begin selling Phase II-compliant handsets and to complete corresponding upgrades to its cellular switch; and (2) approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by October 31, 2002; 50% of new activations by April 30, 2003, 100% of new activations by December 31, 2003; and 95% of embedded base by December 31, 2005. These dates are based upon current projected deliverable dates by Mountain Cellular's handset suppliers.

The proposed compliance schedule is necessitated by the present commercial unavailability of Phase II-compliant handsets and corresponding switch upgrades. It is further compelled by the discrimination customarily faced by small, rural carriers with respect to wireless equipment that is in high demand. Even if the GA date for Phase II-compliant handsets and switch upgrades were to occur on October 1, the demands of the large urban carriers would quickly exhaust the initial supply. Several additional months will pass before product “trickles down” to small rural carriers like Mountain Cellular. In this context, the extension represented by Mountain Cellular’s proposed compliance schedule is eminently reasonable, appropriate and necessary.

### **III. CONCLUSION**

The foregoing demonstrates and explains the technology-related issues and special circumstances that satisfy the general requirements to waive a Commission rule, as well as the more detailed requirements to waive the E911 Phase II rules set forth in the Fourth MO&O. Accordingly, there is good cause to grant the limited waiver requested herein.

Respectfully submitted,

EL DORADO CELLULAR, A CALIFORNIA  
CORPORATION d/b/a MOUNTAIN CELLULAR

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Dated: September 19, 2001

**CERTIFICATE OF SERVICE**

I, CAROL MINDZAK, a secretary with the law firm of Kurtis & Associates, P.C., do hereby certify that I have this 19<sup>th</sup> day of September 2001, had copies of the foregoing “PETITION OF EL DORADO CELLULAR, A CALIFORNIA CORPORATION d/b/a MOUNTAIN CELLULAR FOR LIMITED WAIVER OF SECTION 20.18(g) OF THE COMMISSION’S RULES” sent via hand delivery to the following:

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