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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)
)

CC Docket No. 94-102

To: Wireless Telecommunications Bureau

Missouri RSA # 5 Partnership d/b/a Chariton Valley Wireless Services
Petition for Limited Waiver
of Sections 20.18(e) and (g) of the Commission's Rules

Missouri RSA # 5 Partnership d/b/a Chariton Valley Wireless Services ("Chariton Valley"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby requests a limited and temporary waiver of Sections 20.18(e) and (g) of the Commission's rules.² Chariton Valley is fully committed to providing E911 location capability to meet the emergency needs of its customers and continues to devote substantial resources and personnel to its pursuit of Phase II E911 ("Phase II") compliance. However, deployment of Phase II capability has been particularly difficult for Chariton Valley due to obstacles it has faced in its attempts to obtain the Phase II handset, cell site, network signaling, switching and location equipment, and software upgrades necessary to make Phase II a reality prior to the Commission's October 1, 2001 deadline. Specifically, vendor delays in the availability of Phase II compliant network solutions and Phase II capable handsets have made compliance with Section 20.18(g)(1)(i) impossible to date, and make such compliance by October 2001 in most of Chariton Valley's service area

¹ 47 C.F.R. §§ 1.3 and 1.925.
² 47 C.F.R. §§ 20.18(e) and (g).

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improbable if not unattainable. Without the general availability of Phase II equipment, Chariton Valley will be unable to meet the October 1, 2001 deadline in most of its service area and respectfully requests an extension as outlined below.³

I. Chariton Valley Is Unable to Meet the FCC's October 1 Handset Availability Deadline Due to Factors Outside of Its Control

Chariton Valley is a small broadband personal communications service ("PCS") carrier providing service in rural Missouri (Jefferson City, MO, BTA 217; Kirksville, MO, BTA 230; Columbia, MO, BTA 090). Chariton Valley has been working diligently with its main supplier, Lucent, to develop a Phase II solution for its service area. As Chariton Valley reported in a supplement to its November 9, 2000 report, Chariton Valley has selected a handset-based solution for its TDMA operation. Chariton Valley's Phase II solution will require a new software load in its switch, hardware changes consisting of a new processor for its switch and assorted cell site upgrades, as well as automatic location information ("ALI")-capable handsets. As discussed in detail below, vendor-associated delays in delivery of each of these elements will prevent Chariton Valley from meeting its relevant Phase II deadlines in the vast majority of its service area.

Chariton Valley will order an upgrade to its switch software in the form of the Lucent 5ESS switch release 5E15 FRZ, which is part of MSC release R17.1 when it is available⁴ and will add location center hardware in order to transmit Phase II data to PSAPs.⁵ In the past,

³ Chariton Valley plans to use a network-based solution in the few areas of its rural network where cell site density might make a network-based solution technically possible. In such areas, Chariton Valley does not anticipate that a waiver will be necessary. Chariton Valley notes that it has yet to receive a Phase II request from any Public Safety Answering Point ("PSAP").

⁴ At this time, Lucent is not accepting orders for the R17.1 upgrade.

⁵ In general, the following hardware and software is needed to transmit Phase II data to PSAPs: IS41C – Dialed Number Trigger, E911 Software, MPC – Mobile Positioning Center, PDE – Position Determining Entity, and receivers at each cell site.

Lucent promised Chariton Valley that the R17.1 upgrade would be commercially available in September 2001. However, as Qwest recently noted, Lucent now expects three-month delays in order to provide ALI-capable software and hardware.⁶ Based on past experience, Chariton Valley expects a three to four month delay to allow for delivery and testing. Accordingly, absent unexpected advances in Lucent's schedule, Chariton Valley does not anticipate having the ability to process Phase II data until March 2002 at the earliest.

Chariton Valley has investigated the potential product offerings of many different Phase II vendors in addition to Lucent, including those offered by Tandler, SCC Communications, Technocom Corporation, GTE Telecommunications Services, Cell-Loc, True Position, US Wireless, and SigmaOne Communications Corporation. Chariton Valley has selected Lucent based on its network's compatibility with Lucent products, because Lucent's voice coder is embedded in Chariton Valley's system, and because the Lucent product appears to be the most robust solution available at the earliest date.

To meet the Commission's ALI requirements, Chariton Valley also requires an upgrade to its hardware infrastructure from Lucent. Based on Chariton Valley's previous experiences, delays in the delivery of hardware can last up to nine months after such hardware first becomes available.⁷ After successful installation of the necessary equipment, Chariton Valley will have to test all of the upgrades – a process that generally takes six to eight weeks.⁸ With the unsated demand for Phase II technology building and the large nationwide carriers competing for

⁶ See Qwest Amended Petition for Waiver at 2.

⁷ Chariton Valley's experiences are consistent with those of other carriers. See, e.g., Inland Cellular Petition for Waiver at 6 (small carriers can expect to see generally available technology six to nine months after vendors deliver ALI-capable technology to the large, nationwide carriers). As Inland Cellular pointed out in its waiver petition, small carriers face "unique difficulties and obstacles" when attempting to contact national vendors. Inland Cellular Petition for Waiver at 1.

⁸ See, e.g., Qwest Petition for Waiver at 16.

equipment, Chariton Valley does not realistically expect delivery of the necessary Phase II hardware until at least nine months after the products first appear on the market.⁹ In fact, even large carriers are reporting six-month lags between the availability of equipment and delivery, installation, and testing.¹⁰

While Chariton Valley will be unable to process Phase II data without the Lucent upgrades, it is the unavailability of ALI-capable handsets that is likely to cause the most serious delays to Chariton Valley's Phase II compliance plans. Chariton Valley plans to integrate the Lucent network upgrades with ALI-capable handsets. Unfortunately, as discussed below, Chariton Valley's Phase II upgrade efforts have been stymied by a general lack of availability of ALI-capable handsets.

As a small carrier without substantial market clout with vendors, Chariton Valley is forced, in many cases, to base its handset plans on second-hand information on product delivery dates and details of what products will be available for purchase. Even Western Wireless, a huge rural carrier in comparison with Chariton Valley, notes that it "does not have the clout to dictate the production of new handsets with [ALI] capability."¹¹ This process makes it difficult for Chariton Valley to accurately predict the date when it can begin selling ALI-capable handsets to its customers. Notwithstanding the lack of vendor-supplied information regarding handset availability dates, information provided by large carriers in their waiver requests suggests that the earliest date by which ALI-capable handsets will be commercially available is December 1, 2001.¹² The December 2001 date is consistent with information that Chariton Valley has

⁹ See, e.g., Inland Cellular Petition for Waiver at 6.

¹⁰ See, e.g., Cingular Petition for Waiver at 27.

¹¹ See Western Wireless Petition for Waiver at 12.

¹² See Verizon Wireless Petition for Waiver at 14 (December 2001); see also U.S. Cellular Corporation Petition for Waiver at 13 (4th Quarter 2001).

obtained from vendors and record sources. Nokia has noted that it has no plans to develop an ALI-capable handset for TDMA networks. Chariton Valley has contacted Motorola and has yet to receive a response. Chariton Valley continues to pursue contacts with other handset makers such as Kyocera. As Cingular documented in its waiver request, many major handset vendors such as Nokia, Motorola, and Panasonic have abandoned TDMA development efforts.¹³ Like many ALI technology vendors, Tandler has noted that it would be delighted to sell its ALI technology if it were readily available. Unfortunately, not only is the Tandler handset solution unavailable at this time, but large carriers are placing orders, pushing small carriers such as Chariton Valley to the back of the line. Even if Tandler were able to commit to a general availability date for its equipment, the economic incentive for Tandler to fill 500,000 Verizon orders rather than a few thousand for Chariton Valley will most certainly lead to additional delays beyond any such date. Chariton Valley, based on its experiences and confirmed by other small carriers,¹⁴ expects a six to nine month delay after vendors first deliver ALI-capable handset technology to the large, nationwide carriers before such equipment is made available to Chariton Valley.

Chariton Valley is aware of only one TDMA handset solution that may be commercially available. According to Airbiquity's testimony to Congress, its ALI product is commercially available. Chariton Valley has investigated the Airbiquity solution, and has ruled it out based on technical incompatibility. The Airbiquity product appears to be capable of working only with certain model Nokia products. Since Nokia has abandoned TDMA networks and Chariton Valley must find handset vendors with ALI-capable TDMA products, Airbiquity is not a practical solution to Chariton Valley's Phase II handset obligations.

¹³ Cingular Petition for Waiver at 20.

¹⁴ See, e.g., Inland Cellular Petition for Waiver at 6.

Chariton Valley, like many carriers that serve rural areas, has ruled out a purely network-based Phase II solution.¹⁵ Chariton Valley's investigation of network-based solutions has confirmed that triangulation-based location solutions do not work well in less densely populated rural areas, where cell sites are scarce. In fact, the Commission has confirmed the "distinct challenges" that rural carriers such as Chariton Valley face in implementing Phase II requirements.¹⁶ Chariton Valley will use TDOA and AOA where it can,¹⁷ but must rely heavily on ALI-capable handsets to meet the FCC's Phase II accuracy standards. In the Chariton Valley network, an E911 caller is not always within the range of multiple cells. In addition, many of Chariton Valley's cell sites are spaced in straight lines (by roadways, for example), making triangulation a geometric impossibility.¹⁸ Chariton Valley will continue to work with Lucent on its Phase II solution, but cannot achieve full Phase II compliance in the majority of its service area without ALI-capable handsets.

II. Chariton Valley Satisfies the Relevant Standards for Waiver of the Commission's Rules

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.¹⁹ The Commission must take a "hard look"²⁰ and then decide if such a

¹⁵ See, e.g., Verizon Wireless Petition for Waiver at 33.

¹⁶ See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fifth Memorandum Opinion and Order, 15 FCC Rcd. 22810, ¶ 21 (2000) ("*Fifth MO&O*").

¹⁷ As discussed above, Chariton Valley hopes to use a network-based solution where cell site density in Chariton Valley's rural network makes TDOA and AOA possible.

¹⁸ See, generally, *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, ¶ 23 (1999) ("*Third R&O*").

¹⁹ 47 C.F.R. § 1.3.

²⁰ *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

waiver is in the public interest.²¹ The Commission has already recognized that wireless carriers may face difficulties in meeting the October 1, 2001 deadline to comply with Sections 20.18 (e) and (g) of its rules. In the FCC's *Fourth Memorandum Opinion and Order* ("*Fourth MO&O*"), the Commission recognized that there would be instances when "technology-related issues" or "exceptional circumstances" would cause a delay in a wireless carrier's ability to meet the October 1, 2001 deadline to become Phase II compliant.²² Such recognition is consistent with the Commission's acknowledgement that "bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps."²³ Manufacturers, although racing to meet carrier demand, have yet to overcome the technological complexities in order to make ALI-capable handsets available in time for carriers to meet the FCC's deadlines. The requested waiver is consistent with the Commission's recognition that compliance deadlines should be linked to the availability of manufacturer equipment.²⁴

The Commission also indicated that a petition for waiver must be "specific, focused and limited in scope, and with a clear path to full compliance."²⁵ Chariton Valley's waiver petition is specific, narrow in scope, and provides the Commission with Chariton Valley's efforts and future plans to satisfy the FCC's Phase II requirements. Moreover, as set forth below, the instant petition satisfies the applicable waiver standards.

²¹ *Northeast Cellular Telephone Company, L.P., et al v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²² *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 at ¶ 43 (2000) ("*Fourth MO&O*").

²³ GARMIN International, Inc., *Order on Reconsideration*, DA 01-851 at ¶ 5.

²⁴ *See, e.g., Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd. 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

²⁵ *Fourth MO&O* at ¶ 44.

Section 1.925(b)(3) of the Commission's rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of 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.²⁶

Under both of these standards, grant of the requested waiver is warranted. Application of the Section 20.18(g) handset deadline to Chariton Valley would be inequitable in light of the lack of availability of ALI-capable handsets, a factor outside of Chariton Valley's control. The unavailability of such handsets, combined with the technical incompatibility of a network-based solution in the vast majority of its service area, leaves Chariton Valley with no reasonable alternative but to seek a waiver.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's Phase II rules in Section 20.18. The Commission's extension of the original March 1, 2001 implementation date to October 1, 2001 balanced the need for an expeditious rollout of Phase II services with the Commission's recognition that Phase II chip manufacturers such as Qualcomm had been experiencing delays, making compliance by the original deadline infeasible.²⁷ In setting the October 1 deadline, the FCC relied on the anticipated availability of the necessary equipment. As discussed herein, it is now clear that the

²⁶ 47 C.F.R. § 1.925(b)(3).

²⁷ *Fourth MO&O* at ¶ 33.

handset equipment required to meet the October 1 deadline will not be available in time to allow Chariton Valley to meet this deadline. A temporary limited waiver of Section 20.18(g)(1)(i) is entirely consistent with the underlying purpose of the establishment of the October 1 deadline.

III. Schedule for Compliance

Chariton Valley requests a waiver, based upon the following timetable, of the FCC's October 1, 2001 deadline to "begin selling and activating" handsets and the Commission's related benchmark deadlines contained in Section 20.18(g). Chariton Valley's schedule is based on its experiences and contacts with vendors and publicly available information regarding handset availability. Based upon its own inquiries and confirmed in other carriers' waiver requests,²⁸ Chariton Valley believes the earliest and most optimistic date by which the large, nationwide carriers will see delivery of ALI-capable handsets is by December 2001.²⁹ Accounting for expected delays before such handsets reach a small carrier such as Chariton Valley and necessary testing,³⁰ Chariton Valley does not expect to be capable of selling and activating handsets prior to October 2002. While Chariton Valley hopes to begin selling and activating handsets prior to October 2002, Chariton Valley has no firm basis to believe that it will have the necessary handsets prior to this date. Accordingly, Chariton Valley requests that the deadline for Chariton Valley to begin selling and activating handsets be extended to October 1, 2002, the 25 percent benchmark be extended until December 31, 2002, that the 50 percent

²⁸ See, e.g., Qwest Petition for Waiver at 15.

²⁹ As discussed above, the Airbiquity solution that works only with the Nokia phones is not a reasonable alternative for a TDMA carrier.

³⁰ Chariton Valley notes that testing typically takes approximately six weeks. Without the necessary time to fully test a solution, or without the proper technology for Chariton Valley's rural region, Chariton Valley's Phase II solution could fail, undermining public confidence in wireless E911. Chariton Valley does not want to offer the sense of security that the offering of Phase II location technology will ultimately provide until it has a proven system. A rushed and inoperable system will not benefit the public.

benchmark be extended until June 30, 2003, and that the 100 percent benchmark be extended until December 31, 2003. Chariton Valley also requests that the 95 percent penetration rate deadline be extended until December 31, 2006.

IV. Conclusion

Based on the foregoing, Chariton Valley respectfully requests that the Commission grant Chariton Valley a temporary waiver of Sections 20.18(e) and (g) of its rules and permit Chariton Valley to implement its Phase II solution based on the schedule set forth herein.

Respectfully submitted,

**MISSOURI RSA # 5 PARTNERSHIP
D/B/A CHARITON VALLEY
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Dated: September 24, 2001

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DECLARATION OF WILLIAM BIERE

I, William Biere, do hereby declare under penalty of perjury the following:

1. I am the Representative of Missouri RSA # 5 Partnership d/b/a Chariton Valley Wireless Services.

2. I have read the foregoing "Petition for Limited Waiver of Sections 20.18(e) and (g) of the Commission's Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



William Biere

9-21-01

Date

CERTIFICATE OF SERVICE

I, Joy Barksdale, do hereby certify that on this 24th day of September 2001, a copy of the foregoing Petition for Limited Waiver of Sections 20.18(e) and (g) of the Commission's Rules was served by hand delivery to the following parties:

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