

**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

Enterprise Wireless PCS, LLC (EWP), 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

EWP is the licensee of Broadband Personal Communications Service stations KNLF545 (Dothan-Enterprise, Alabama BTA), KNLF546 (Opelika-Auburn, Alabama BTA), KNLF547 (La Grange, Georgia BTA) and KNLF548 (Albany-Tifton, Georgia BTA). These licenses were acquired in the PCS C-Block auction and each is for 15 MHz of spectrum (1,902.5-1,910 MHz and 1,982.5-1,990.0 MHz) resulting from the disaggregation option, as provided in the Commission's Rules Regarding Installment Payment Financing for PCS Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket 97-82, 12 FCC Rcd 16436 (1997), as modified by

Order on Reconsideration of the Second Report and Order, WT Docket 97-82, 13 FCC Rcd 8345 (1998).

In its implementation report filed last November, Enterprise indicated that it had not yet determined the technology that would be used in complying with the E911 Phase II requirements. While EWP had clearly intended to adhere to the implementation schedule established in the Commission's *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000), it recognized that its ability to do so would depend, in large part, on the ability of equipment suppliers to have their products operational and ready on time.

Discussion

In the interim, EWP has built out its licensed PCS facilities and operates them in conjunction those of its affiliate, Public Service Cellular, Inc., from a common switch manufactured by Lucent Technologies, using Lucent's TDMA technology. Based upon its network configuration (utilizing a cell layout in which large sections of its service area are served by a single cell), EWP has determined that a network-based E911 Phase II technology that depends on triangulation from multiple cell sites cannot be economically deployed in its PCS markets. Accordingly, EWP has elected a handset technology in meeting the E911 Phase II requirements.

EWP utilizes tri-mode handsets (operating on the PCS spectrum and the cellular spectrum, digital and analog) manufactured by Nokia, Ericsson, Motorola, Audiovox and Mitsubishi. Since last November, EWP has been diligent in pursuing deployment of E911 Phase II technology in a timely manner, maintaining close contact with its equipment suppliers. However, despite its best efforts and due to circumstances beyond

its ability to control, EWP 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. To date, Lucent Technologies has not made software available that would provide an end-to-end TDMA solution; and none of EWP's handset vendors has an IS-136 compliant handset with integrated GPS functionality to facilitate a handset-based technology approach to achieving compliance with E911 Phase II requirements. Accordingly, for reasons beyond EWP's ability to control and despite its best efforts, EWP will require a waiver Rule Section 20.18(g)(1) to delay the phase-in of E911 Phase II service.

Waiver Request

EWP, therefore, requests a waiver of Rule Section 20.18(g)(1) to permit: (1) an extension of time to July 31, 2002, in which to begin selling Phase II-compliant handsets and to complete corresponding upgrades to its switch; and (2) approval of the following new deadlines for activating Phase II-compliant handsets: 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.

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.¹ 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.² Thus, the Commission

¹ 15 FCC Rcd 17442, at para. 22.

² *Id.*, at paras. 42-45

provided that its rules may be waived for good cause shown, consistent with Rule Section 1.3.³ 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, 2001.⁴ 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.⁵

EWP Has Met the Waiver Standards

As shown above, EWP 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, EWP is 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.⁶ 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 EWP will

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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

be able to order and obtain delivery of this equipment. As a small market carrier, EWP simply does not have the buying power of the national carriers let alone the clout to influence equipment design and development. Compared to carriers with regional or nationwide footprints, rural area licensees, such as EWP, will have the least negotiating leverage to secure priorities in obtaining new handsets even when they do become commercially available. Lacking the market power that induces manufacturers to engage in direct negotiations, EWP must deal with resellers who face no regulatory consequences if the October 1, 2001 and succeeding deadlines are not met. If the past is prologue, EWP will have to wait until the initial handset requirements of the national and regional carriers are satisfied before it will be able to obtain Phase II-compliant handsets.

Grant of the Requested Waiver is in the Public Interest

The deadline extensions herein requested are in the public interest. They will afford EWP 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. EWP has received no PSAP requests for Phase II service; and it is believed that none of the PSAPs in the area served by EWP will be ready for Phase II service for at least another six-to-nine months. Accordingly, no delay will result from grant of the temporary waiver herein requested. Commercial unavailability of Phase II-compliant handsets and switch upgrades are causing the delay. The waiver requests thus far received by the Commission are the consequence, not the cause, of the delay in Phase II deployment. Thus, the modest extensions of time herein requested will prejudice neither PSAPs, EWP's subscribers, nor the general public.

It is, therefore, clear that EWP 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 EWP has encountered through no fault of its own. It sets out a clear path to compliance once the necessary equipment becomes available.

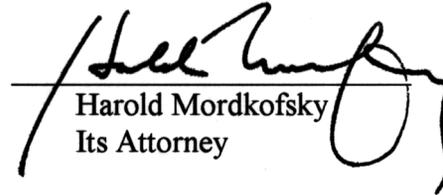
Conclusion

The extensions requested by EWP are reasonable, appropriate and necessary, due to the circumstances in which EWP currently finds itself. In view of the foregoing, the waiver herein requested is in the public interest and should be granted.

Respectfully submitted,

ENTERPRISE WIRELESS PCS, LLC

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DECLARATION

Donald E. Bond hereby declares, under penalty of perjury, under the laws of the United States, that he is the president of Public Service PCS, Inc., which is the sole member of Enterprise Wireless PCS, LLC; that he has read the foregoing Request for Rule Waiver to the Federal Communications Commission; and 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 26 day of September, 2001.



Donald E. Bond