

LAW OFFICES
BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST

2120 L STREET, NW
WASHINGTON, DC 20037

(202) 659-0830
FACSIMILE: (202) 828-5568

AFFILIATED SOUTH AMERICAN OFFICES

ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

ROBERT M. JACKSON
OF COUNSEL

PERRY W. WOOFER
LEGISLATIVE CONSULTANT

EUGENE MALISZEWSKY
DIRECTOR OF ENGINEERING
PRIVATE RADIO

HAROLD MORDKOFKY
BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
KATHLEEN A. KAERCHER
MICHAEL B. ADAMS, JR.
DOUGLAS W. EVERETTE

ARTHUR BLOOSTON
1914 - 1999

September 28, 2001

WRITER'S CONTACT INFORMATION

(202) 828-5515
rmj@bloostonlaw.com

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Attn: Patrick Forster, Senior Engineer
Room 3-A104
Policy Division
Wireless Telecommunications Bureau

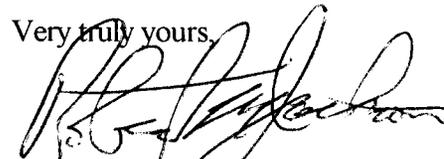
Re: WUE, Inc.,
Request for Temporary Waiver of Section 20.18(g),
CC Docket No. 94-102.

Dear Ms. Salas:

On behalf of WUE, Inc., we are transmitting herewith its request for a temporary waiver of the Commission's Rules for implementing E-911 Phase II service.

Please refer any inquiries or correspondence in connection with this matter to our offices.

Very truly yours,



Robert M. Jackson
Attorney for WUE, Inc.

Attachment
cc(w/att): John W. Christian, III

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)

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR RULE WAIVER

WUE, Inc. ("WUE") (TRS Number 801198) hereby requests, for the reasons stated by Verizon Wireless ("Verizon") in its "Updated Phase II E911 Report and Request for Limited Waiver" ("Verizon Request") filed July 25, 2001 in this Docket, a temporary waiver of Section 20.18(g) of the Commission's Rules to allow it to delay the phase-in of its deployment of a network assisted Global Positioning System/Advanced Forward Link Trilateration ("AGPS/AFLT") handset-based solution of E-911 Phase II location technology. The reasons in support of the Verizon Request advanced by Verizon are incorporated herein by reference.

I) Background

1. WUE is the licensee of Cellular Radiotelephone Service Station KNKR319, the Frequency Block B cellular system serving the B2 Segment of the Nevada 5 - White Pine Rural Service Area. WUE is a small carrier operating a stand-alone cellular system serving a rural area which is, to state it politely, sparsely populated.

2. In its E-911 implementation report filed with the Commission in November 2000, WUE noted: a) that its cellular service area is geographically proximate to, and has an increasing

economic community of interest with, the Las Vegas, Nevada MSA ("the Las Vegas MSA"); b) that Verizon Wireless ("Verizon") is the Frequency Block B cellular carrier serving the Las Vegas, Nevada MSA; and c) that switching functions for WUE's cellular system are performed by Verizon's Las Vegas MSA cellular switch. WUE's E-911 implementation report further stated that it intends "to utilize the same [Automatic Location Information ("ALI")] technology (be it handset-based or network-based) and the same brand of ALI equipment as deployed by Verizon for its Las Vegas MSA system," which Verizon has now identified as the network assisted AGPS/AFLT handset solution. WUE's November 2000 E-911 implementation report further noted that the local Public Safety Answering Point ("PSAP"), "the Lincoln County Sheriff's Department, has advised [WUE] that, because of budgetary and other financial considerations, it is unlikely that [WUE] will receive and Phase I or Phase II E-911 requests.

3. As stated in the Verizon Request:

Although Verizon is persuaded that the AGPS/AFLT is the best solution available, and will press forward to deploy AGPS/AFLT as aggressively as possible, it will be unable to meet the rules' deadlines for Phase II compliance because the network upgrades and Phase II-capable handsets will not be available in time. Verizon Wireless therefore seeks a limited waiver from Section 20.18(g) of the Commission's rules to deploy AGPS/AFLT on a timeline that is based on the scheduled switch and cell software releases from its three network infrastructure vendors (Lucent, Nortel and Motorola) and the availability of compliant handsets. To meet the Commission's requirement that carriers "come as close as possible" to implementing a compliant solution, Verizon Wireless proposes a series of steps that are premised on the successful completion of the First Office Application ("FOA") process, which includes testing equipment in Verizon Wireless' system. Verizon Wireless will:

- * Begin deploying the network-assisted portion of AGPS/AFLT by October 1, 2001 at its switches and cell sites for Lucent markets, January 1, 2002 for Nortel markets, and November 1, 2002 for Motorola markets;
- * Complete deployment of these network upgrades by April 1, 2002 for Lucent markets, August 1, 2002 for Nortel markets, and March 1, 2003 for Motorola markets;
- * Begin selling AGPS/AFLT Phase II-compliant handsets in December 2001;
- * Meet the following milestones for new handset activations:
 - * 25% of new activations by July 31, 2002
 - * 50% of new activations by March 31, 2003
 - * 100% of new activations by December 31, 2003
 - * 95% of embedded use by December 31, 2005.(Verizon Request, pp. 4-5).

II) Commitment to Achieving Compliance

4. Since November 2000, WUE has been diligent in pursuing deployment of E-911 Phase II technology in a timely manner. As noted in the Verizon Request, network upgrade equipment and the subscriber handsets are not yet commercially available for the network assisted AGPS/AFLT handset-based ALI application. Therefore, despite its best efforts and due to circumstances beyond its ability to control, WUE recognizes that it will not be able to meet the phase-in schedule established in the Commission's Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442 (2000) and embodied in Section 20.18(g) of the Rules.

III) Waiver Request

5. Accordingly, WUE requests a waiver of Section 20.18(g)(1), to allow it to delay the handset activation deadlines therein; and a waiver of Section 20.18(g)(2) of the Rules, to defer the requirement for upgrading its infrastructure and begin delivering

E-911 Phase II service to a requesting PSAP, until such time as the necessary equipment is available from the manufacturers and can be installed and handsets obtained.

IV) Waiver Standards

6. In its Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442 (2000), the Commission indicated that the Phase II rules are intended to be applied in a manner that takes into account the practical and technical realities.¹ Recognizing that practical and technical realities might delay Phase II implementation, the Commission established a general approach to dealing with possible requests for waiver of the Phase II requirements.² Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Section 1.3 of the Rules.³ It recognized, in the case of E-911, 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

V) WUE Has Met The Waiver Standards

7. As shown above, WUE has met the Commission's standards for obtaining the requested waiver of Section 20.18(g) of the

¹ 15 FCC Rcd. 17442 at Para. 22.

² Id. at Paras. 42-45.

³ Id.

⁴ Id.

⁵ Id.

Commission's Rules. While Section 20.18 of the Rules imposes E-911 Phase II obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged the obvious, i.e., 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, WUE would be unable to achieve compliance with the Commission's Phase II requirements without the availability of necessary equipment and the readiness of the PSAPs in this area; and, as a small carrier, WUE lacks the economic leverage to influence the decisions of equipment manufacturers. The simple truth is that there is no technology currently available commercially that will satisfy the Commission's Phase II accuracy requirements within the established deadlines.⁶ It is only recently that ALI technology has advanced to the point where Phase II compliance can become a reality. However, once compliant equipment is available in the marketplace, it will undoubtedly be several more months before WUE will be able to obtain delivery of this equipment.

8. Grant of the limited request for waiver contained herein is in the public interest. WUE has been diligent in pursuing implementation of Phase II but is unable to do so entirely because of matters that are beyond its ability to control. The instant

⁶ See "Petition for Waiver" in this docket filed August 31, 2001 by Triton PCS License Company, L.L.C., pp. 4-5.

waiver request is specific and focused. It details the unavoidable delays that WUE has encountered through no fault of its own. It sets out a clear path to compliance once the necessary equipment becomes available. In addition, the public interest will not be prejudiced by grant of the requested waiver. As noted above, WUE has received no E-911 implementation requests from the local PSAP in its service area; and has been advised by the PSAP that, because of budgetary and other financial considerations, it is unlikely that WUE will receive any Phase I or Phase II E-911 ALI requests.

WHEREFORE, good cause shown, WUE requests that the requested waiver be granted.

Respectfully submitted,
WUE, Inc.

Dated: 9/27/01

By: 
John W. Christian III,
President

Please Direct All Inquiries To:
Robert M. Jackson
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
Tel.: (202)828-5515
FAX: (202)828-5568