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**CONSOLIDATED TELCOM**  
P.O. Box 1408  
Dickinson, North Dakota 58602-1408

Magalie R. Salas, Secretary  
Federal Communications Commission  
Washington, DC 20554

**Attention: Patrick Forster, Senior Engineer**  
**Policy Division**  
**Wireless Telecommunications Bureau**  
**3-A104**

**Re: Report on Implementation of Wireless E911**  
**Phase II Automatic Location Identification**  
**CC Docket 94-102**  
**Broadband PCS Stations KNLG704 and KNLG705**  
**BTA 113 (Dickinson, North Dakota)**

**Request for Rule Waiver**

In accordance with the Commission's Public Notice, FCC 01-302, released October 12, 2001, and upon the advice of the Commission's staff, we hereby inform the Commission that we have not yet constructed the referenced stations and, as a result, it appears that the E911 service requirements are inapplicable at the present time.

The five-year construction deadline for the referenced stations is April 28, 2002. These stations are not yet constructed and therefore do not offer "real-time, two way switched voice service that is interconnected with the public switched

network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls." Accordingly, the Commission's E911 service requirements, as set forth in Section 20.18(a) of the Rules, do not presently apply to the referenced stations.

We are, however, planning to construct the referenced stations by the April 28, 2002 deadline in a manner by which the requirements of Rule Section 20.18(a) will likely apply. In that event, we have elected to utilize a handset-based location technology in achieving compliance with the Commission's requirements for providing E911 Phase II service, as indicated in our November 9, 2000 filing with the Commission. Our discussions with our switch supplier (Siemens) and handset manufacturers have indicated that the software upgrades and handset equipment currently available will not allow carriers such as ourselves to achieve compliance with the E911 Phase II requirements, as set forth in Section 20.18(g) of the Commission's Rules. Moreover, the indication is that the necessary software and equipment will not be available until the second or third quarter of 2002 at the earliest.

Since it appears that we will not be able to comply with the requirements of Rule Section 20.18(g) when our system becomes operational in April 2002, we hereby request a waiver of Rule Section 20.18(g) to extend the phase-in deadlines by an additional 18 months from the extended deadlines for the largest national CMRS carriers.

In support of this request, the following is shown:

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>

As shown above, we have met the Commission's standards for obtaining the requested waiver of Rule Section 20.18(g) once our system becomes operational. 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, we 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 our 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 many more months before we will be able to order and obtain delivery of this equipment. As a small market carrier,

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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.*

<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.

we simply do 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 ourselves, 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, we would have to deal with resellers who face no regulatory consequences if the phased-in deadlines are not met. If the past is prologue, we will undoubtedly 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.

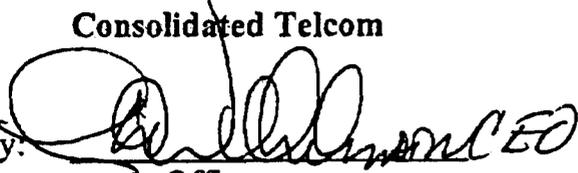
The deadline extensions herein requested are in the public interest. They will afford us the additional time needed to upgrade and test our equipment, once the equipment is available, in an orderly manner that is likely to lead to a successful result in providing Phase II service. They will not adversely affect the PSAPs in the area or the public served. We have received no PSAP requests for either Phase I or Phase II service; and it is believed that none of the PSAPs in our area 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, our ultimate subscribers, nor the general public.

The instant waiver request is specific and focused. It details the unavoidable delays encountered through no fault of CMRS carriers. It sets out a clear path to compliance once the necessary equipment becomes available.

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

Very truly yours,

Consolidated Telcom

By: 

Officer

Dan Wilhelmson, CEO

Dated: November 28, 2001

*Of Counsel:*

*Harold Mordkofsky  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast  
2120 L Street, N.W.  
Washington, DC 20037  
Tel. (202) 828-5520  
Fax (202) 828-5568  
Email halmor@bloostonlaw.com*