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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency )  
Calling Systems )  
)  
Telephone Service Company )  
Petition for Waiver of Sections 20.18 )  
of the Commission's Rules )

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER**

Telephone Service Company ("TSC"), by its attorneys, and pursuant to Section 1.3 and 1.925 of the Commission's Rules,<sup>1</sup> hereby requests waiver of the Phase II enhanced 911 ("E911") obligations set forth in Section 20.18 of the Commission's Rules.<sup>2</sup> Waiver is warranted due to the fact that the underlying purpose of the Rule would be frustrated by application to TSC and grant of the waiver would be in the public interest. To further the public interest, TSC proposes a specific deployment schedule based upon representations made by handset-based solution vendors.

**I. Background**

TSC's PCS license covers the Lima, Ohio (BTA255) market. TSC anticipates that it will begin providing service in April 2002. TSC has chosen to implement CDMA technology

1 47 C.F.R. §§ 1.3 and 1.925.

2 47 C.F.R. § 20.18. A facsimile copy of a Declaration by an authorized company representative attesting to the accuracy of this petition is attached. A supplemental filing will be made after the original has been received.

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in its network. To date, TSC has not received a Phase I or a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP's costs.

## **II. Waiver is Warranted**

The standard for grant of a waiver of the Commission's Rules is that "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."<sup>3</sup> TSC's waiver request meets these standards.

### **A. The Underlying Purpose of the Commission's E911 Rule Would be Frustrated by Application to the Instant Case**

Requiring TSC to meet the November 30, 2001 Phase II E911 deadline would frustrate the underlying purpose of the FCC's E911 Rules by jeopardizing the provision of service through imposition of financially burdensome and technically infeasible requirements. The FCC adopted its E911 Rules with the goal of "stimulat[ing] the application of wireless technology to improv[e] emergency 911 systems."<sup>4</sup> The Commission recognized that this goal could not be accomplished without "research, testing and development requiring coordinated efforts by public safety organizations, wireless carriers, location technology vendors and equipment manufacturers."<sup>5</sup> Due to concerns expressed by the carriers, vendors and

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<sup>3</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>4</sup> *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 (2000) ("Fourth MO&O").

<sup>5</sup> *Id.*

manufacturers regarding the technical and financial feasibility of implementing E911 services, the FCC adopted a phased-in approach that is “rigorous without being impossible or commercially self-defeating.”<sup>6</sup> Further, the Commission provided for waivers of its Rule in situations in which it is not economically or technologically feasible for a carrier to meet the phased-in deployment timetable.<sup>7</sup>

**1. Imposition of a Network-Based E911 Phase II Solution is Not Financially Feasible for TSC**

TSC is not presently providing service and to date has not received a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP’s costs. Accordingly, TSC is not currently required to provide a network-based Phase II E911 solution. However, as it anticipates turning up service, TSC has been investigating various types of E911 solutions.

This investigation has revealed that network-based solutions are not financially feasible. Without the ability to spread the high costs of a network-based solution over a large subscriber

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<sup>6</sup> *In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18707 (1996) (“R&O”). See *Notice of Proposed Rulemaking* 9 FCC Rcd 6170, 6178 (1994) (FCC proposed a phased-in approach due to concerns about “technical and financial feasibility expressed by manufacturers and communications service providers”).

<sup>7</sup> See, e.g., R&O at 18718 (noting that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the timetable allowed and stating that these cases can be dealt with through individual waivers); *U.S. Cellular, et.al. v. FCC*, Case No. 00-1072, D.C. Cir., FCC Brief at 33 (“If a small or rural carrier can show that, in fact, it is uniquely disadvantaged by the technological or economic demands imposed on it by the FCC’s E911 implementation schedule, the waiver procedure is available for it to seek appropriate individualized relief”).

base. the cost of deploying a network-based solution would be prohibitively expensive.<sup>8</sup> By eliminating a critical precondition for implementation of E911 service, that a carrier cost recovery mechanism be in place, the Commission placed a heavy financial burden on small and rural carriers which diverts the limited financial resources away from system build-out and improved services. Accordingly, a network-based solution is neither technically nor financially feasible.

**2. Imposition of the Commission's Implementation Schedule for a Handset-Based Solution is Not Technically Feasible for TSC**

To require TSC to sell ALI-capable handsets to new customers according to the FCC's timetable would frustrate the FCC's goal that the imposition of E911 requirements be technically feasible. TSC has not been able to identify any location technology vendors or equipment manufacturers that currently produce ALI-capable phones for CDMA systems or will have them available by the April 2002 turn up date. Accordingly, TSC cannot meet the FCC's handset-based implementation schedule.

According to Alltel's Waiver Request, none of the major handset manufacturers currently produce GPS-capable handsets available for CDMA systems.<sup>9</sup> Samsung has indicated that it

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<sup>8</sup> See, e.g., the Phase II Implementation Report for North Carolina RSA 3 Cellular Telephone Company, Inc. dba Carolina West Wireless filed November 9, 2000 containing information regarding Grayson Wireless' network-based solution and estimating that the cost of deployment of Grayson's solution is estimated to be approximately \$25,000 per cell site plus a \$65,000 central control system. The Commission has previously cited United States Cellular Corporation's estimate that it would cost about \$90 million to upgrade its more than 2,500 cell sites to employ TruePosition's network-based solution, *i.e.*, approximately \$36,000 per cell site.

<sup>9</sup> See Alltel Communications Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules filed July 25, 2001 at 17 ("Alltel's Waiver Request") at 14 noting manufacturers' plans to have GPS-capable handsets available for commercial availability for CDMA systems sometime during 2002.

will manufacture GPS-capable handsets in the near future; however, it requires a minimum order of 5000, an amount far in excess of TSC's projected new activations. Accordingly, a handset-based solution is not technically feasible for TSC.

**B. Waiver Would be in the Public Interest**

TSC is not requesting a blanket waiver of the Commission's E911 Phase II requirements but rather requests waiver only to the extent that these requirements cannot be accomplished in a technically or economically feasible way. Accordingly, TSC seeks an extension of the deadline to allow it to implement a handset solution in the most efficient and expeditious manner.

Based upon the representations made by manufacturers in Alltel's Waiver Request, TSC seeks a waiver for a fifteen-month deferral of each of the penetration benchmarks in Section 20.18(g)(1)(i)-(iv). Such an extension would allow time for manufacturers to complete development for CDMA systems and enable TSC to grow its subscriber base so that it can continue to provide competitive service while incurring the costs of deploying E911 services.

Imposition of financially burdensome and technically infeasible requirements would jeopardize the provision of competitive service. TSC has not yet begun to provide service. Accordingly, it will have a very small subscriber base for some time. Without the ability to spread the high costs of an E911 solution over a large subscriber base, the cost of deploying the network component would prove to be prohibitively expensive. Additionally, the imposition of costly upgrades at this early stage in the development of the wireless company would place the carrier at a competitive disadvantage. The larger, more established wireless carriers that compete with TSC are able to spread the costs of E911 compliance into their larger subscriber

bases. To impose financially burdensome requirements on TSC while it is still in its start-up mode would further disadvantage the new competitor and could potentially drive the new company out of business, depriving the public of a wireless competitor in the Lima, Ohio market.

### **III. Conclusion**

Because implementation of the FCC's E911 Phase II implementation requirements are neither technically nor financially feasible, TSC requests a waiver of the requirements. The requested waiver would allow for a fifteen-month deferral of each of the penetration benchmarks required for carriers that choose handset-based solutions. Such a waiver would be in the public interest as it would allow time for manufacturers of CDMA handsets to fully develop the solutions and allow for the advancement of a newly formed competitive wireless service provider.

Respectfully submitted,

**TELEPHONE SERVICE COMPANY**

By:   
Sylvia Lesse  
John Kuykendall

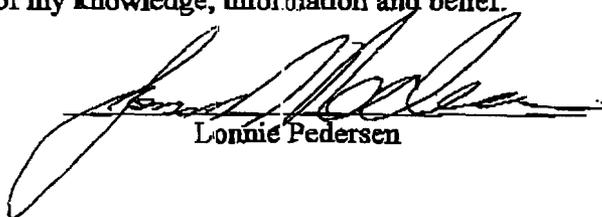
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November 29, 2001

**DECLARATION OF LONNIE PEDERSEN**

I, Lonnie Pedersen, President of Telephone Service Company, do hereby declare under penalty of perjury that I have read the foregoing Petition for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.

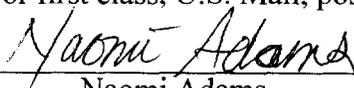


Lonnie Pedersen

Dated: November 29, 2001

**CERTIFICATE OF SERVICE**

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition For Waiver" was served on this 29<sup>th</sup> day of November 2001, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:

  
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