

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 MALISZEWSKYJ
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

November 30, 2001

WRITER'S CONTACT INFORMATION

202-828-5540

jap@bloostonlaw.com

Filed Electronically Via ECFS

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

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

Re: PVT Wireless Limited Partnership
Request for Limited and Temporary Waiver of Rule Section 20.18(g)
CC Docket No. 94-102

Dear Ms. Salas:

Attached below is a request for temporary waiver of the Commission's Rules for implementing E911 Phase II Service which we are filing on behalf of PVT Wireless Limited Partnership.

Please direct any questions or correspondence regarding this filing to the undersigned counsel.

Very truly yours,



John A. Prendergast

D. Cary Mitchell

Counsel to PVT Wireless Limited Partnership

Att.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Request of)	
)	
PVT Wireless Limited Partnership)	CC Docket No. 94-102
For Waiver of the Enhanced 911)	
Emergency Calling Systems Phase II)	
Deployment Rules for PCS Stations)	
KNLF775 and KNLG212)	
_____)	

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR LIMITED AND TEMPORARY WAIVER

PVT Wireless Limited Partnership (“PVT”), hereby requests a limited waiver of Section 20.18(g) of the Commission’s Rules with respect to its broadband PCS systems operating on C1-Block frequencies in the Roswell, New Mexico BTA and on the E-Block frequencies in the Carlsbad, New Mexico BTA. In particular, PVT seeks authority to deploy in these systems the same assisted Global Positioning Satellite (“A-GPS”) solution for its Code Division Multiple Access (“CDMA”) network as the Commission has approved for Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint PCS”), with the deployment benchmarks delayed fifteen (15) months to account for the fact that PVT is a small carrier that does not have the same access as Sprint PCS to the limited supply of A-GPS handsets and network upgrades necessary to provide Phase II capability.

With respect to its broadband PCS systems operating on C1-Block frequencies in the Hobbs, New Mexico BTA and on the F-Block frequencies in the Carlsbad BTA, PVT notes that it has recently deployed (or is planning to deploy) personal handyphone networks using UTStarcom’s Personal Access System (“PAS”) technology. Because the PAS systems use a

network-based ALI solution for E911 Phase II service, and because PVT has not received a PSAP request for Phase II service, it is not currently under a Phase II obligation.¹

I. BACKGROUND

PVT holds licenses for Broadband Personal Communications Service stations KNL775 (covering the Roswell, New Mexico BTA, 15Hz C1-Block), KNLG212 (covering the Carlsbad, New Mexico BTA, E-Block), KNLH424 (covering the Carlsbad, New Mexico BTA, F-Block) and KNL768 (covering the Hobbs, New Mexico BTA C1-Block). With respect to Stations KNL775 and KNLG212 (which PVT has constructed with CDMA equipment), PVT has recently entered into an outsource service provider arrangement with Alamosa PCS and Sprint PCS, and will implement the same E911 Phase II technology as Sprint PCS. In this regard, PVT is requesting a temporary waiver of Section 20.18(g) of the Commission's Rules that is consistent with the terms of the waiver that the FCC has recently granted to Sprint PCS,² but with the implementation benchmarks extended by fifteen (15) months to account for the market realities faced by a rural telephone company and very small business that seeks to provide advanced telecommunications services to customers in rural BTA markets. As a practical matter, PVT has not received any PSAP requests for E911 Phase I service, and there is very little likelihood that it will receive any Phase II requests in the next two years.

¹ See *Public Notice*, DA 01-2459, "Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification Rules" (*rel.*, October 19, 2001) at Note 7.

² See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems –Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS*, *Order*, FCC 01-197 (*rel.* October 12, 2001) ("*Sprint PCS Waiver Order*").

II. SPRINT PCS WAIVER REQUEST

In the *Sprint PCS Waiver Order*, the Commission recognized that Sprint's request for relief was specific, focused, and limited in scope, and that Sprint's proposed implementation plan provided a "clear and full path to compliance."³

The terms of the *Sprint PCS Waiver Order*, in relevant part, are summarized as follows:

- Begin sales of A-GPS handsets on October 1, 2001.
- Ensure that 25% of all new handsets activated are location-capable by July 31, 2002.
- Ensure that 100% of new digital handsets activated are location capable by December 31, 2002.
- All ne handsets must meet the Commission's accuracy standards for handset-based solutions from the date of initial deployment.
- Complete Phase II conversion of all Nortel switches by August 1, 2002.

Likewise, PVT's request for relief is specific, focused, and limited in scope, and the Phase II implementation plan proposed herein provides a clear and full path to compliance. As discussed above, PVT has entered into a joint operating arrangement with Alamosa PCS and Sprint PCS, and will implement the same E911 Phase II technology as Sprint PCS. In so doing, PVT will need to install the same upgrades to its Nortel switch as implemented by Sprint PCS, and to begin selling the same types of A-GPS handset models as Sprint PCS. However, because PVT is a much smaller carrier than Sprint PCS, it has much less bargaining power with network equipment and handset vendors. PVT will almost certainly have greater difficulties in securing the necessary software and equipment upgrades for its network, and gaining access to a supply of A-GPS handsets before they are available in large quantities to Sprint PCS (and larger Sprint PCS affiliates). PVT therefore respectfully requests authority to use a modified version of the deployment schedule for the A-GPS handset-based Phase II solution that the Commission has

approved for Sprint PCS, with the deployment benchmarks delayed fifteen (15) months. This delay is reasonable and will account for the fact that: (1) PVT is a small carrier that does not have the same access as Sprint PCS to the limited supply of A-GPS handsets and network upgrades necessary to provide Phase II capability; and (2) it will take PSAPs longer to implement the ability to use Phase II information in the rural areas served by PVT than in larger urban areas. Accordingly, the deployment benchmarks proposed by PVT are as follows:

- Begin sales of A-GPS handsets on January 1, 2003.
- Ensure that 25% of all new handsets activated are location-capable by October 31, 2003.
- Ensure that 100% of new digital handsets activated are location capable by March 31, 2004.
- All handsets must meet the Commission's accuracy standards for handset-based solutions from the date of initial deployment.
- Complete Phase II conversion of all Nortel switches by November 1, 2003.

III. PVT'S COMMITMENT TO ACHIEVING COMPLIANCE

Since initiating service with three (3) of its four (4) its broadband PCS systems this year, PVT has been diligent in pursuing deployment of E911 Phase II technology in a timely manner. However, despite its best efforts and due to circumstances beyond its control, PVT 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. The PSAPs in PVT's operating territory have not yet upgraded its facilities to utilize enhanced 911 data, and PVT has not yet received any request for Phase I or Phase II service.

³ *Sprint PCS Waiver Order* at pps. 6-7.

IV. 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.⁴ Recognizing that practical and technical realities might delay Phase II implementation, the Commission established a flexible approach in dealing with possible requests for waiver of the Phase II requirements.⁵ Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Rule Section 1.3.⁶ 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, 2001.⁷ 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.⁸

V. PVT HAS MET THE WAIVER STANDARDS

As shown above, PVT 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, suppliers and government officials responsible for public safety activities. As a service provider only, PVT would be unable to achieve compliance with the Commission's

⁴ 15 FCC Rcd 17442, at ¶ 22.

⁵ *Id.*, at ¶¶ 42-45.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

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 in all respects within the established deadlines.⁹ 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 becomes commercially available, it could be a year or more before a small carrier such as PVT will be able to obtain delivery and installation of this equipment.

Grant of the limited request for waiver herein is in the public interest. PVT has been diligent in pursuing implementation of Phase II but is unable to do so due entirely to circumstances that are beyond its control. PVT signed its outsource service provider agreement with Alamosa PCS within weeks of filing its buildout report for stations KNLF775 and KNLG212, and therefore focused on the Sprint PCS Phase II solution early on. Sprint PCS has well documented the need for additional time to implement this solution, and the Commission has agreed with this showing. The instant waiver request is specific and focused. It details the unavoidable delays PVT has encountered through no fault of its own. It sets out a clear path to compliance once the necessary equipment becomes available. Moreover, PVT has learned that the Public Safety Answering Points (PSAPs) within its licensed areas are not yet capable of utilizing E911 Phase I location information, much less Phase II ALI information. Therefore, the public interest will not be harmed by a grant of the requested waiver, because PVT should have its Phase II solution deployed well ahead of when the relevant PSAPs are prepared to utilize this advanced capability.

⁹ See *Petition for Waiver* in this docket, filed August 3, 2001, by Triton PCS License Company, L.L.C., pp.4-5.

VI. CONCLUSION

In view of the foregoing, the waiver requested by PVT is in the public interest and should be granted.

Respectfully Submitted,

PVT WIRELESS LIMITED PARTNERSHIP

By 
Lynn D. Gunwall
Vice President-Subsidiary Operations
of General Partner

John A. Prendergast, Esq.
D. Cary Mitchell, Esq.
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, DC 20037

(202) 828-5540 voice
(202) 828-5568 fax

Counsel to PVT Wireless Limited Partnership.

Dated: November 29, 2001