

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)	
)	
Illinois Valley Cellular RSA 2-I Partnership)	FCC 00-436
Illinois Valley Cellular RSA 2-II Partnership)	
Illinois Valley Cellular RSA 2-III Partnership)	
Joint Petition For Limited Waiver of Section)	
20.18(g) of the Commission's Rules)	

**JOINT PETITION OF ILLINOIS VALLEY CELLULAR RSA 2-I PARTNERSHIP,
ILLINOIS VALLEY CELLULAR RSA 2-II PARTNERSHIP, AND ILLINOIS VALLEY
CELLULAR RSA 2-III PARTNERSHIP FOR LIMITED WAIVER OF SECTION 20.18(c)
OF THE COMMISSION'S RULES AND THE DEADLINES ESTABLISHED IN THE
FOURTH REPORT AND ORDER**

To: The Wireless Telecommunications Bureau

Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, and Illinois Valley Cellular RSA 2-III Partnership (collectively "IVC"), by their attorneys, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3, hereby requests a waiver of the deadline in the *Fourth Report and Order*¹ in the above-captioned proceeding, and of Section 20.18(c) of the Commission's Rules, 47 C.F.R. §20.18(c), with respect to the December 31, 2001 deadline for carriers operating digital systems to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices, and the June 30, 2002 deadline for operators of digital wireless systems capable of transmitting 911 calls from individuals

¹ In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 Fcc Rcd 25216, 65 Fed. Reg. 82293 (December 28, 2000), ("*Fourth Report and Order*").

with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (“TTY”).²

I. BACKGROUND AND INTRODUCTION

In the *Fourth Report and Order* the Commission established December 31, 2001 as the deadline for carriers operating digital wireless systems to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices. It further established June 30, 2002 as the deadline for carriers to integrate, test and deploy the technology in their systems in conjunction with the public safety community.

Pursuant to the quarterly reporting requirements set forth in the *Fourth Report and Order* in CC Docket No. 94-102, IVC has periodically informed the Commission of its status on meeting these deadlines and the status of the various technological solutions aimed toward attaining that goal. IVC has continually advised the Commission that matters beyond its control might well impede its ability to meet these deadlines. As detailed below, both software availability as well as major technological changes announced by major carriers in the wireless industry, all matters beyond IVC’s control, have combined to create circumstances that make compliance with the present December 31, 2001 deadline impossible and the June 2002 service date unduly burdensome. Moreover, as IVC will show below, waiving the December 31, 2001 deadline will not frustrate the Commission’s intent in setting that interim deadline on the way to TTY/E911 compliance and waiver of the June 2002 deadline is not likely to result in the denial of TTY/E911 access to any customers. Accordingly, IVC herein seeks a waiver of those deadlines.

^{2/} See 47 C.F.R. § 20.18(c).

IVC provides analog and TDMA-based cellular service in the Illinois 2 Bureau RSA, Market No. 395-B: Illinois Valley Cellular RSA 2-I Partnership provides these services in Market No. 395-B1, which comprises portions of Bureau, Stark, Putnam, and La Salle Counties;³ Illinois Valley Cellular RSA 2-II Partnership provides these services in Market No. 395-B2, which comprises portions of Bureau, Stark, Putnam, La Salle, and Livingston Counties, and all of Marshall County;⁴ and Illinois Valley Cellular RSA 2-III Partnership provides these services in Market No. 395-B3, which comprises part of Livingston County and all of Ford and Iroquois Counties.⁵ As the Commission is well aware, during the past twelve months, the two major carriers utilizing TDMA technology (Cingular and AT&T) announced their plans to migrate their TDMA deployments to a totally different, non-compatible digital technology. Just this past week, US Cellular was reported as having decided to migrate its remaining markets to a different, non-compatible digital technology. The Cingular/AT&T announcements led to the announcements by virtually all major cellular infrastructure providers, including Nortel (IVC's infrastructure provider), to announce plans to cease development of new features and functionalities for their TDMA infrastructure equipment. Moreover, most handset providers have ceased development of new TDMA handsets to include features such as those needed to provide handset-based E911 Phase II location technologies; the only location technology which appears to provide an economical means of meeting the FCC's E911 Phase II requirements in rural areas. While the handset providers have made it clear that there will be no E911 Phase II ALI-compatible handsets for TDMA, less clear is whether there will be a TTY

^{3/} Illinois Valley Cellular RSA 2-I Partnership provides cellular service under Call Sign KNKN583.

^{4/} Illinois Valley Cellular RSA 2-II Partnership provides cellular service under Call Sign KNKN582.

^{5/} This also includes portions of Kankakee and McLean Counties in Illinois which were previously unserved areas claimed as part of Illinois Valley Cellular RSA 2-III Partnership's CGSA. Illinois Valley Cellular RSA 2-III Partnership provides cellular service under Call Sign KNKN581.

compatible TDMA handset (since development of that handset began prior to the Cingular and AT&T announcements but the size of the potential market for such TDMA handsets is now extremely limited) and, if so, at what cost.

II. DISCUSSION

A. Basis For a Waiver of the December 31, 2001 Deadline

The Commission may grant a waiver for “good cause shown,” if the waiver is deemed in the public interest, or if there are unique factual circumstances that render application of the rule inequitable or particularly burdensome.⁶ Citing *WAIT Radio*, the Commission has stated that it may waive a rule “where waivers are founded upon an ‘appropriate general standard,’ ‘show special circumstances warranting a deviation from the general rule’ and ‘such deviation will serve the public interest.’”⁷ As shown below, the instant petition complies with all the waiver standards articulated in the above-cited rules and decisional precedent.

^{6/} 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

^{7/} “Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification Requirements,” DA 98-2631, released December 24, 1998 at page 4.

Nortel has announced the availability of the requisite software to meet the TTY/E911 compatibility requirements. However, IVC was advised that that software will only operate with base software load MTX10. The problem arises in that software load MTX10 includes significant 3G upgrades and requires a processor replacement before it can be installed. The cost of the processor upgrade alone is substantial.⁸ In addition to the foregoing, unlike previous MTX load upgrades, IVC was advised that the upgrade to MTX10 cannot be accomplished from any software load below MTX09. At the time, IVC was running MTX08. In preparation for the MTX10 upgrade, IVC has upgraded its base software load to MTX09, the highest software load that could run on the IVC switch with its then-current processor and an recently completed the upgrade of the Nortel switch itself to the minimum processor needed to support MTX10.

Significantly, the MTX10 software load is also required in order for carriers to comply with the Commission's CALEA, E911 Phase II and wireless local number portability requirements, as well as the TTY/E911 compatibility requirement. The end result is that virtually *every* Nortel CMRS switch will require the MTX10 base load software upgrade. Implementation of that upgrade requires both advanced preparation by the carrier and an over-night process run directly by Nortel. The carrier-alone *cannot* implement the MTX10 base load software upgrade.

MTX 10 only became available for general release the first week of December. Nortel has advised IVC that with the current backlog, estimated lead time associated with that base load upgrade is six to eight weeks. In light of the foregoing, there is simply no way that IVC can obtain the requisite base software load needed to run the TTY/E911 feature software by the December 31, 2001 deadline. IVC respectfully submits that the unavailability of the base software load in

^{8/} IVC is prohibited under non-disclosure agreement with Nortel from releasing pricing information but IVC can make that information available to the Commission for *in camera* inspection, should the Commission so request.

sufficient time to allow implementation by the deadline is a matter beyond its control. Moreover, the fact that IVC has proceeded to implement MTX09 and to install the switch processor upgrade needed to run the requisite base software load needed to run the TTY/E911 feature demonstrates good faith on IVC's part to meet this deployment deadline.

The purpose of instituting the December 31, 2001 deadline was to allow time for carrier testing before the June 2002 service offering deadline. IVC respectfully submits that the TTY digital compatibility requirement, unlike the E911 Phase II location which has market-specific accuracy issues, is a function of compatible network hardware, software and handsets. If a particular configuration works in one deployment for a particular vendor's infrastructure, it should work equally well in any other deployment. This is a compatibility requirement; the network is either compatible or not and IVC understands that testing is already underway by Nortel. Significantly, if a software problem is found in another Nortel deployment, IVC understands that the same software "patch" simply would be deployed in all Nortel systems operating that feature. Accordingly, a delay in IVC's deployment of the requisite software should not frustrate the purpose underlying the rule.

B. Basis For a Waiver of the June 30, 2002 Deadline

As the Commission is aware, vendors have decided to no longer support TDMA in light of AT&T's and Cingular's abandonment of TDMA technology - a situation CLEARLY beyond IVC's control. Moreover, it is still unclear as to whether or not TDMA TTY compatible handsets will be made commercially available and, if so, at what price - a situation also beyond IVC's control. Finally, even if such handsets are available, with the well-publicized move away from TDMA, it is doubtful that an end-user looking to invest in a TTY compatible digital phone would elect to do so through a TDMA carrier. From IVC's experience, in its more than a decade of operation, it is not aware of a single subscriber on its analog network that utilizes a TTY device. However, even if

there were such a subscriber, nothing in this waiver request would impede its ability to continue operating its current analog handset with its TTY device. Finally, even if the IVC TDMA digital network were made fully TTY compatible, if a subscriber approached IVC to purchase a TTY compatible digital phone (assuming such a phone were available) IVC would be constrained to advise that potential TDMA handset purchaser that, as set forth more fully below, IVC might not be supporting that handset in the long-term and that that handset would not be supported in the digital mode in Chicago. The likelihood of any potential subscriber proceeding with such a purchase under these circumstances, is extremely remote.

Significantly, the press of other Commission mandates, most significantly the E911 Phase II location requirements, is forcing small rural TDMA carriers to evaluate entire digital network replacements inasmuch as there does not appear to be an economical network-based E911 Phase II solution that will meet the Commission's accuracy requirements. Accordingly, IVC is currently exploring and obtaining vendor quotes for a change-out of its digital technology. IVC does not foresee any alternative to such a digital technology swap out and expects to implement an alternate technology within the next 24 months. Accordingly, any and all monies spent on obtaining the requisite software to make its TDMA network TTY compatible would be lost investment.

Most significantly, even if IVC were to spend the capital on meeting this obligation, as set forth above, there is very little likelihood that any IVC subscriber would ever use it. Moreover, IVC submits that it is unlikely that any roamers would use the service either. IVC's primary roaming partner is Verizon Wireless out of Chicago. Verizon utilizes CDMA digital technology and therefore all Verizon roaming on IVC's network is currently performed in the analog mode. While the other cellular carrier in Chicago, Cingular wireless, is a TDMA provider, Cingular currently owns IVC's direct competitor in Illinois RSA 2 and its subscribers therefore typically do not roam on IVC. Accordingly, even if IVC were to deploy TDMA TTY compatible software, it is unlikely

that a Chicago-based digital mobile TTY-compatible mobile would ever be served on the IVC digital network. Instead, that roamer would revert to the analog mode, as it does today, and be readily able to use its TTY device in that analog mode.

When IVC makes its migration to a new digital technology, IVC will deploy that technology in a mode fully compatible with TTY devices. Accordingly, IVC will have TTY capabilities in place, assuming that hardware and software is available to have such. In light of the fact there appears to be no likelihood that a digital TTY mobile would ever be used on the current IVC TDMA digital network, it is respectfully submitted that requiring implementation of TTY compatibility on the current TDMA network would be unduly burdensome. Moreover, denial of the waiver would not appear to increase the likelihood that any actual TDMA TTY device would ever be used on the IVC network within the next 24 months. Finally, grant of the waiver would not preclude access to 911 services by TTY devices as those devices could still continue to be used in the analog mode, as they would have needed to be used for the past two decades on all cellular networks.

3. Scope of Waiver Requested

IVC respectfully requests a waiver of the December 31, 2001 software deadline in its entirety. IVC will proceed to implement a migration to MTX10 in calendar year 2002, inasmuch as this base software load is required for certain CALEA compliance requirements, as well as E911 Phase II support and wireless local number portability. IVC understands that the only additional feature required for TTY 911 access would be the application-specific TDMA TTY compatibility software. Significantly, the Nortel software feature required for TTY compatibility in a different digital technology, such as CDMA, is a separate and distinct software feature from that required for TTY compatibility in the TDMA network. Accordingly, any monies spent to deploy that specific feature would be lost with the network conversion to another digital technology.

With respect to the June 30, 2002 full implementation deadline, IVC respectfully requests a waiver until December 31, 2003. This will enable IVC to complete its digital technology migration prior thereto. Of course, as set forth above, as the migration is completed, the IVC digital network would be compatible with TTY devices.

D. Grant of the Instant Waiver Requests Will Serve the Public Interest.

IVC submits that grant of this waiver would serve the public interest by allowing the conservation of limited resources to be better used to move toward meeting the other three Commission-mandated system upgrades; E911 Phase II (which also appears to require a full digital network switch out in rural markets) CALEA and wireless local number portability. Significantly, while each of these service requirements further legitimate public needs, to a small rural carrier, such as IVC, collectively they represent a capital outlay of millions of dollars and are not envisioned to be revenue producing. Accordingly, it clearly would serve the public interest by freeing small, rural TDMA carriers, such as IVC, from meeting the TTY compatibility requirements on the TDMA digital networks that will be phased out. It is far from certain that there will ever be a TDMA TTY compatible phone available in commercial quantities and, even if there are, it is doubtful that an end user would make the investment to purchase such a phone which is only compatible with a technology that appears to have been universally abandoned by all of its original large-carrier proponents. Thus, small, rural carriers are being forced to migrate to alternate technologies in order to meet the other impending regulatory mandates.

Further, IVC will continue to provide the Commission with quarterly updates on the status of development and deployment, throughout the entire waiver period until such time as its new TTY-compatible digital network is deployed. Specifically included in such reports, in addition to handset availability matters, will be a full disclosure of any requests for TTY-compatible handsets received during the quarter. Significantly, if IVC is incorrect on its assertions, by having proceeded

to implement the requisite MTX10 base software load upgrade, it would be in a position to move quickly to deploy the TDMA TTY-compatibility feature should an actual need arise and a *bona fide* user be willing to proceed to purchase a TDMA TTY compatible handset understanding that IVC intends to move away from the TDMA technology before the close of 2003.

III. CONCLUSION

IVC submits that, in the short-run, it is unable to obtain the requisite software upgrades by December 31, 2001 to comply with that deadline for having installed all required TTY compatibility software. Moreover, from the longer-term perspective, IVC will be unable to obtain the necessary ongoing vendor (infrastructure and handset) support for its existing TDMA digital network to allow it to meet such regulatory requirements as E911 Phase II and therefore plans to migrate its TDMA network in the near future to an alternate digital technology. All of these realities are based upon circumstances not of IVC's making and certainly beyond its control. Moreover, as demonstrated above, even if IVC spent the capital needed to upgrade its TDMA digital network to full TTY compatibility, it is extremely unlikely that TDMA TTY handsets (even if made available in commercial quantities) would ever actually try to access the IVC network. As such, IVC submits that it would be unduly burdensome, with little likelihood of any real public benefit flowing from requiring IVC to meet the June 30, 2002 full implementation deadline.

In light of the foregoing, IVC respectfully submits that good cause has been shown for the grant of the limited waiver sought herein.

Respectfully Submitted,

ILLINOIS VALLEY CELLULAR RSA 2-I PARTNERSHIP
ILLINOIS VALLEY CELLULAR RSA 2-II PARTNERSHIP
ILLINOIS VALLEY CELLULAR RSA 2-III PARTNERSHIP

December 21, 2001

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