

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)	
Revision of the Commission's Rules To Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency Calling)	
Systems)	
)	
California RSA #3 Limited Partnership, A California)	FCC 00-436
Limited Partnership, d/b/a Golden State Cellular Petition)	
For Waiver of the Deadline Established in the)	
Fourth Report and Order)	

To: The Wireless Telecommunications Bureau

CALIFORNIA RSA #3 LIMITED PARTNERSHIP,
A CALIFORNIA LIMITED PARTNERSHIP,
d/b/a GOLDEN STATE CELLULAR
PETITION FOR WAIVER OF THE DEADLINE ESTABLISHED IN THE FOURTH
REPORT AND ORDER

California RSA #3 Limited Partnership, A California Limited Partnership, d/b/a Golden State Cellular ("Golden State"), by its 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, 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.

I. BACKGROUND AND INTRODUCTION

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*").

In the *Fourth Report and Order* the Commission established December 31, 2001 as the deadline for carriers operating digital wireless systems to obtain 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, Golden State has kept the Commission informed as to its status on meeting these deadlines and the status of the various technological solutions aimed toward attaining that goal. Golden State has advised the Commission that matters beyond its control might well impede its ability to meet these deadlines. As detailed below, compliance with the present December 31, 2001 deadline is unattainable, but Golden State intends to meet the the June 2002 service date. Moreover, as Golden State 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 ensuring TTY E911 access over digital networks. Accordingly, Golden State herein seeks a waiver of that deadline.

Golden State provides analog and digital CDMA CMRS wireless service in the in California RSA 3, Market No. 338(B) (Alpine), which comprises Alpine, Amador, Calaveras, Toulumne, and Mariposa counties in areas surrounding and including Yosemite National Park and California's Sierra National Forest.² Golden State intends to comply with the requirements of 20.18(c) of the

^{2/} Golden State Cellular provides cellular service under Call Sign KNKN240.

rules, to provide hearing-impaired persons with TTY access via the 911 dialing code over its digital wireless network by the June 30, 2002 deadline.

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.³ 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.’”⁴ As shown below, the instant petition complies with all the waiver standards articulated in the above-cited rules and decisional precedent.

Golden State has worked diligently to upgrade its network to digital in order to better serve its subscribers and the public interest. As indicated in its quarterly Report for the third quarter of 2001, in CC Docket No. 94-102 (filed Oct. 15, 2001), Golden State only began offering CDMA digital service on its network during this fourth quarter of 2001. However, at the time of its CDMA deployment, the TTY compatibility-required upgrades were not yet available from Golden State’s

^{3/} 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).

^{4/} “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.

switch vendor, Nortel Networks, and Golden State understood that base software load MTX10 would be required in order to implement digital TTY compatibility. Moreover, Golden State was advised that its switch could not operate MTX10 base software load without the wholesale replacement of the processor in its switch. Moreover, unlike previous base software load upgrades, the migration to MTX10 requires the implementation of MTX09 first. Golden State has deployed the MTX 09 base software load (the highest base load capable of operating on the Golden State switch without the processor replacement) and has committed the requisite funds for the processor replacement, the MTX10 upgrade as well as the feature-specific CDMA TTY compatibility for early 2002.

Golden State has recently learned that there is a software “patch” available that should allow a CDMA Nortel switch to meet the TTY compatibility requirements while still operating under base load MTX09. However, Golden State did not learn of the availability of the MTX09 patch in time to allow it to be implemented prior to the December 31, 2001 deadline. Moreover, as of this date, Golden State has not had access to any TTY-compatible CDMA handsets to enable it to commence testing, even if the requisite MTX09 software patch were available and installed. Golden State does not believe that it will be able to obtain a CDMA TTY-compatible handset anytime in advance of its planned deployment of the MTX10 and switch processor upgrades. Accordingly, even if the requisite software patch were purchased for MTX09, no testing could occur prior to the MTX10 deployment. Moreover, Golden believes that any testing of the MTX09 patch that could occur, would only need to be repeated once the processor, MTX10 base load and MTX10 feature-specific CDMA TTY-compatibility software were deployed.

Golden State understands that MTX10 will be required in order for carriers to comply with the Commission's CALEA, E911 Phase II and wireless local number portability ("WLNP") requirements, as well as will continue to support the TTY/E911 compatibility requirement. Accordingly, implementation of the MTX09 patch would not relieve Golden State of the need to proceed with the MTX10 upgrades. With the need for MTX10 for TTY compatibility for CDMA carriers, coupled with the need to migrate to MTX in order to meet the other regulatory mandates, virtually *every* Nortel CMRS switch will require the MTX10 base load software upgrade. Implementation of the MTX10 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.

MTX10 only became available for general release the first week of December. Nortel has advised Golden State that with the current backlog, estimated lead time associated with the MTX10 upgrade is six to eight weeks. In light of the foregoing, there is simply no way that Golden State can obtain the MTX10 load needed to run the TTY/E911 feature software by the December 31, 2001 deadline. These upgrades require a significant expenditure for a small, rural carrier like Golden State. Notwithstanding the fact that Golden State is unable to obtain the necessary software and equipment by the December 31, 2001 deadline, Golden State's partners already have approved the purchase of an upgraded processor, MTX10 base load and feature-specific CDMA TTY-compatibility upgrade for 2002. Golden State plans to have these upgrades fully operational in time to allow for testing and implementation of the TTY-compatible software in time to meet the June 30, 2002 deadline proscribed in Section 20.18(c) of the Commission's rules.⁵

^{5/} Of course, Golden States' ability to conduct testing will be contingent on its ability to obtain a

TTY-compatible CDMA phone in sufficient time to allow it to do so. However, even if the handset is not available, Golden State plans to proceed with the processor and MTX10 upgrade and loading of the feature-specific software for CDMA TTY-compatibility by the June 30, 2002 deadline.

Golden State submits that the late availability of both options (MTX09 “patch” or the MTX10 and associated processor) made it impossible to allow implementation by the December 31, 2001 deadline. Moreover, the fact that Golden State has only recently deployed CDMA service but has proceeded to implement MTX09 and earmarked funds for installation of the switch processor upgrade needed to run MTX10 as well as deployment of the MTX10 version of the TTY-compatibility CDMA feature software demonstrates good faith on Golden State’s part to meet this deployment deadline.

The purpose of instituting the December 31, 2001 deadline was to allow carriers time for testing before the June 2002 service offering deadline. While the unavailability of a TTY-compatible CDMA handset would render that testing impossible even if the MTX09 software patch could be obtained in a timely manner, Golden State respectfully submits that the TTY digital compatibility requirement, unlike the E911 Phase II location requirement 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 Golden State understands that testing is already underway by Nortel. Significantly, if a software problem is found in another Nortel deployment, Golden State understands that the same software “fix” simply would be deployed in all Nortel systems operating that feature. Accordingly, a delay in Golden State’s deployment of the requisite software should not frustrate the purpose underlying the rule.

B. Scope of Waiver Requested

Golden State respectfully requests a waiver of the December 31, 2001 software deadline in its entirety. Golden State will proceed to upgrade its processor and deploy the MTX10 software and TTY-compatibility CDMA feature software in time to meet the June 30, 2002 deadline. Golden State therefore intends to be in full compliance with Section 20.18(c) of the Commission's rules by June 30, 2002.

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

As discussed above, waiver of the December 31, 2001 deadline will in no way delay ultimate implementation of TTY access to 911 services in June 2002. Therefore, waiver of the December 31, 2001 deadline will not harm the public interest. Given the unavailability of TTY-compatible CDMA handsets in advance of the intended MTX10 deployment date, even if Golden State were to proceed to deploy the MTX09 patch, it could not proceed with any testing any earlier than waiting for the MTX10 upgrades. Even if Golden State could obtain a CDMA TTY-compatible handset immediately and proceed with testing under MTX09 and the requisite TTY-compatibility patch, Golden State submits that any such testing would need to be repeated with the MTX10 and processor upgrades. Since those upgrades are needed in order to meet other federal service offering mandates, Golden State would not have the option of staying on MTX09 and using the TTY-compatibility patch long-term. Accordingly, Golden State respectfully submits that the public service would best be served by allowing Golden State to focus its resources on the MTX10 deployment with the permanent CDMA TTY-compatibility feature as opposed to requiring the deployment of the MTX09 patch which, while could be deployed sooner, with the unavailability of CDMA TTY-compatible handsets, would not expedite any interim testing; which testing is the only

purpose of requiring advanced deployment of system hardware and software upgrades by the December 31, 2001 deadline.

Golden State will continue to provide the Commission with quarterly updates on the status of TTY-digital capability development and deployment, as advised by Golden State's infrastructure and handset vendors. Thus, the public interest also will be served by continued full disclosure of progress made in this matter. As such Golden State urges that a Commission grant of this request for a waiver of the December 31, 2001 deadline for obtaining the software upgrades and equipment necessary to make its system capable of transmitting 911 calls from TTY devices is in the public interest.

III. CONCLUSION

The foregoing demonstrates and explains the special circumstances that satisfy the general requirements to waive a Commission rule. Accordingly, Golden State respectfully submits that good cause has been shown for the limited waiver sought herein..

Respectfully Submitted,

California RSA #3 Limited Partnership,
A California Limited Partnership,
d/b/a Golden State Cellular

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