

**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)
)
Petition for Limited Waiver)

To: Wireless Telecommunications Bureau

**Petition for Limited Waiver of Missouri RSA #5 Partnership
d/b/a Chariton Valley
Regarding TTY Access to Digital Wireless Systems**

Missouri RSA #5 Partnership d/b/a Chariton Valley Wireless Services (“Chariton Valley”), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”),¹ hereby requests a limited waiver of the June 30, 2002 deadline for operators of digital wireless systems to be capable of transmitting 911 calls from individuals with speech or hearing disabilities through the use of text telephone (“TTY”) devices.² Specifically, vendor delays in the availability of TTY compliant network solutions have made compliance with Section 20.18(c)³ impossible to date, and make such compliance by June 30, 2002 in Chariton Valley’s service area improbable if not unattainable. Without the immediate delivery of TTY equipment and software, Chariton Valley

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. § 20.18(c).

³ 47 C.F.R. § 20.18(c) provides:

TTY Access to 911 Services. Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY).

NOTE TO PARAGRAPH (c): Operators of digital wireless systems must begin complying with the provisions of this paragraph on or before June 30, 2002.

will be unable to meet the June 30, 2002 deadline in its service area and respectfully requests an extension until December 31, 2002, as outlined below.

I. Background

Chariton Valley is a small broadband personal communications service (“PCS”) carrier providing service in rural Missouri (Jefferson City, MO, BTA 217; Kirksville, MO, BTA 230; Columbia, MO, BTA 090). Chariton Valley has been working diligently with its infrastructure vendor, Lucent, to develop a TTY solution for its service area. The TTY solution is part of Chariton Valley’s overall strategy to make the necessary changes to its TDMA-based network to meet additional FCC mandates, such as the Phase II E911 requirements, in as timely a manner as possible. In order to achieve TTY capability, Chariton Valley must upgrade its switch software in the form of the Lucent 5ESS switch release 5E15 FRZ, which is part of the ECP17 software release.

In its *Fourth Report and Order*, the Commission established June 30, 2002 as the deadline for wireless carriers operating digital systems to be capable of transmitting 911 calls from individuals using TTY technology.⁴ The Commission also required carriers to file quarterly reports⁵ regarding their digital TTY progress.⁵ Chariton Valley has used these reports to inform the Commission of its progress in meeting the TTY deadlines. In its quarterly reports, Chariton Valley has updated the Commission about its TTY upgrade schedule, noting that it is dependent upon the availability and delivery schedule of the TTY product manufactured by Lucent. In its April 16, 2001, July 13, 2001, and October 15, 2001 reports, Chariton Valley indicated Lucent’s stated expectation that its TTY solution would be available to carriers by the

⁴ *In re 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*”) at ¶ 8.

⁵ *Id.* at ¶ 15.

end of 2001. However, in the October 15, 2001 report, Chariton Valley also noted that, due to its small size, it would not receive Lucent's TTY equipment until the larger carriers had first received the equipment and that Lucent had yet to commit to a delivery date. In its December 28, 2001 report, Chariton Valley informed the Commission that Lucent had revised its expected TTY solution delivery date to March 2002. On April 12, 2002, Chariton Valley noted that Lucent had again revised the estimated availability date for its TTY compliant software load ECP17 and had informed Chariton Valley that it would not be able to deliver its TTY product until October 2002, at the earliest. At that time, Chariton Valley informed the Commission that it would be seeking a waiver of the June 30, 2002 deadline.

II. Discussion

A. Current Status

While Lucent's TTY solution is now generally available, providing that solution to Chariton Valley, a small carrier, is not a high priority for Lucent. For economic reasons, Lucent is obviously concentrating on delivering its TTY solution to its large, nationwide customers before expending its limited resources on a small carrier such as Chariton Valley. Lucent has informed Chariton Valley that the earliest that it expects to be able to deliver the necessary software upgrade to Chariton Valley is October 2002. Assuming that Lucent can stay on this schedule, Chariton Valley expects that Lucent can install the TTY upgrade software by November 2002, and that Chariton Valley can test the TTY solution and have it working by December 31, 2002.⁶

⁶ These dates may need to be pushed back if Lucent's delivery schedule slips.

B. Basis for Waiver

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.⁷ The Commission, through information submitted through the quarterly reporting process and its participation in the TTY Forum, is well aware that Lucent and other manufacturers of TTY-compliant equipment have taken longer than expected to develop an industry-wide TTY standard. As discussed in more detail below, since Chariton Valley is dependent upon its TTY equipment manufacturer's delivery and implementation schedule, there is good cause for granting Chariton Valley a limited waiver of the Commission's TTY rules.

This waiver request also satisfies the Wireless Telecommunications Bureau's ("WTB") standards for grant of a waiver. Section 1.925(b)(3) of the Commission's rules sets out the general standards for determining when a waiver should be granted in WTB proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) 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; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁸

Under either of these standards, grant of the requested waiver is warranted. In the instant proceeding, the Commission has recognized the "technical difficulties associated with transmitting TTY calls on digital TTY systems" since carriers could not "pass the Baudot-encoded audio tones produced by TTY devices."⁹ In recognition of these difficulties, the

⁷ 47 C.F.R. § 1.3.

⁸ 47 C.F.R. § 1.925(b)(3).

⁹ *Fourth Report and Order* at ¶ 2.

Commission has delayed compliance and granted numerous temporary waivers.¹⁰ In extending these deadlines and granting these waivers, the FCC effectively recognized that the public interest is served by allowing manufacturers to finish developing their TTY products and by allowing carriers a reasonable amount of time to install, test, and implement the solutions.

Grant of the waiver is also consistent with the public interest since no individual will be harmed if the limited waiver sought by Chariton Valley is granted. At this time, digital TTY handsets for TDMA networks are extremely scarce and impossible to procure, virtually eliminating the possibility that the public will be harmed in the short period of time Chariton Valley needs to complete the necessary TTY upgrades. While Chariton Valley vigorously pursues its digital TTY solution, analog TTY devices will still work on the network, negating any harm to potential customers.¹¹ Recognizing the benefit to the public, the Commission encouraged carriers to continue to make analog TTY service available.¹² Chariton Valley, sharing the Commission's concern, will continue to make analog TTY service available at reasonable cost until it implements its digital TTY solution. Grant of the waiver will allow Chariton Valley to concentrate its limited resources on implementing a digital TTY solution at the earliest feasible date while continuing to offer the benefits of analog-based TTY service.

¹⁰ See *In re Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18701 (1996), *recon.*, 12 FCC Rcd 22665 (1997) at ¶ 59; *In re Revision of the Commission's Rules To Ensure Compatibility with E911 Calling Systems*, CC Docket No. 94-102, Order, 14 FCC Rcd 1700 (1998); Order, 14 FCC Rcd 3304 (1999).

¹¹ Chariton Valley is unaware of a single subscriber on its network that uses an analog-based TTY device.

¹² *Fourth Report and Order* at ¶ 28.

The underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”¹³ – would be frustrated by the application of the rule’s June 30, 2002 deadline in the instant case. The FCC was aware of the tenuous nature of establishing a date certain for digital TTY compliance when it originally established Section 20.18(c), knowing full well that digital TTY technology did not even exist at that time.¹⁴ The reason the Commission chose to establish a “date certain” for compliance was to provide an incentive “for the industry to maintain TTY access as a priority.”¹⁵ The Commission has long recognized that compliance deadlines should be linked to the availability of manufacturer equipment.¹⁶ In setting the June 30, 2002 deadline, the FCC relied on the anticipated availability of TTY equipment by December 31, 2001.¹⁷ As indicated in Chariton Valley’s series of implementation reports, it is now clear that the manufacturers’ estimates regarding the general availability of TTY equipment were off by almost ten months for small carriers. Accordingly, the June 30, 2002 deadline was developed under assumptions that proved to be incorrect with respect to timing. Chariton Valley, as evidenced in its TTY reports, has been working diligently to upgrade its network in order to achieve digital TTY compatibility and, therefore, the underlying purpose of the rule, to ensure public safety for the hearing impaired “at the earliest possible date,”¹⁸ is being served.

¹³ *Fourth Report and Order* at ¶ 29.

¹⁴ *Id.* at ¶ 7.

¹⁵ *Id.*

¹⁶ See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd. 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

¹⁷ *Fourth Report and Order* at ¶ 8.

¹⁸ *Id.* at ¶ 29 (emphasis added).

Application of the June 30, 2002 deadline to Chariton Valley would be inequitable in light of the lack of availability to Chariton Valley of the necessary TTY software upgrade, a factor outside of Chariton Valley's control. Chariton Valley is bound to Lucent's timetable for the delivery and installation of its TTY product. Chariton Valley, as a small customer of Lucent, cannot command the attention of Lucent and is at the mercy of Lucent as to when it can upgrade for digital TTY compatibility. The FCC has long held that the unavailability of equipment necessary to meet a Commission compliance deadline warrants a waiver of such deadline.¹⁹

It would also be unduly burdensome and impractical for Chariton Valley to pursue any alternative TTY solution at this time. Chariton Valley is wedded to the Lucent TTY product since Chariton Valley relies upon Lucent's proprietary switching and infrastructure products to run its entire network. Even had Chariton Valley made the economically unsound decision to scrap its entire network in favor of a new infrastructure provider in order to meet the FCC's TTY deadline, other network equipment providers, *e.g.*, Nortel, have also experienced delays in the development of their TTY solutions, and there is no guarantee that any other vendor could provide Chariton Valley with the necessary equipment any sooner than Lucent. In fact, it was Lucent that first developed a possible digital TTY solution and the Lucent solution is the current industry standard for many carriers.²⁰ Reliance upon Lucent is Chariton Valley's only feasible TTY option. As soon as Lucent delivers and installs the TTY solution, and Chariton Valley

¹⁹ See, *e.g.*, *Roosevelt County Rural Telephone Cooperative, Inc.*, Order, 13 FCC Rcd 22, 42-47 ¶¶ 29-36 (1997) (granted waiver of CIC conversion deadline where product needed to accomplish upgrade was "not readily available" from manufacturers); see also *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase II*, Order, 13 FCC Rcd 9564, 9568 (1998); *Cuba City Telephone Exchange Company*, Order, 12 FCC Rcd 21794, 21805-09 ¶¶ 16-25 (1997); *C, C & S Telco, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 349-350 ¶¶ 6, 12 (1991).

²⁰ *Fourth Report and Order* at ¶ 3.

completes testing, TTY compliance will have been achieved. Until then, Chariton Valley has no reasonable alternative but to request a waiver.

III. Conclusion

Based on the foregoing, Chariton Valley respectfully requests that the Commission grant Chariton Valley a temporary waiver of Section 20.18(c) of the Commission's Rules regarding the June 30, 2002 deadline and extend the deadline to permit Chariton Valley to implement its TTY solution by December 31, 2002.

Respectfully submitted,

**MISSOURI RSA # 5 PARTNERSHIP
D/B/A CHARITON VALLEY
WIRELESS SERVICES**

By: _____/s/_____

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May 24, 2002

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DECLARATION OF WILLIAM BIERE

I, William Biere, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Missouri RSA # 5 Partnership d/b/a Chariton Valley Wireless Services.
2. I have read the foregoing “Petition for Limited Waiver Regarding TTY Access to Digital Wireless Systems.” I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

_____/s/_____
William Biere

_____/5/24/02_____
Date