

**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 Farmers Mutual Telephone Company
Regarding TTY Access to Digital Wireless Systems**

Farmers Mutual Telephone Company ("Farmers"), 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 Farmers' service area improbable if not unattainable. Without the immediate delivery of TTY equipment and software,

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.

Farmers 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

Farmers is a small, broadband PCS carrier providing service in rural Idaho and Oregon (BTA050 in Boise, Idaho). Farmers has been working diligently with its infrastructure vendor, Nortel, to develop a TTY solution for its service area. The TTY solution is part of Farmers' overall strategy to make the necessary changes to its CDMA-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, Farmers must upgrade its switch software in the form of the Nortel MTX10 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 reports regarding their digital TTY progress.⁵ Farmers has used these reports to inform the Commission of its progress in meeting the TTY deadlines. In its quarterly reports, Farmers 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 Nortel. In its October 15, 2001 report, Farmers indicated Nortel's stated expectation that its TTY solution would be available to carriers by January 2002.

However, in its December 21, 2001 and April 15, 2002 reports, Farmers noted that Nortel

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.

had revised the estimated availability date for its TTY compliant software release MTX10 to September 2002. In its April 15, 2002 report, Farmers informed the Commission that it would be seeking a waiver of the June 30, 2002 deadline. Also in its April 15, 2002 report, Nortel indicated that it had to modify (“split”) Farmers’ switch in order to be able to load MTX10.⁶ Nortel is scheduled to implement the switch modification and software upgrade load by late 3rd quarter 2002.

II. Discussion

A. Current Status

While Nortel’s TTY solution is now generally available, providing that solution to Farmers, a small carrier, is not a high priority for Nortel. For economic reasons, Nortel is obviously concentrating on delivering its TTY solution to its large, nationwide customers before expending its limited resources on a small carrier such as Farmers. Nortel has informed Farmers that the earliest that it expects to be able to deliver the necessary software upgrade to Farmers is September 2002. Assuming that Nortel can stay on this schedule, Farmers expects that Nortel can install the TTY upgrade software by late 3rd quarter 2002, and that Farmers can test the TTY solution and have it working by December 31, 2002.⁷

⁶ Farmers’ switch is a DMS100W wireline/wireless hybrid. Nortel no longer supports such wireline/wireless hybrid switches with software upgrades. Farmers must split the switch in two in order to upgrade to MTX10 in the separate wireless portion in order to achieve digital TTY compatibility.

⁷ These dates may need to be pushed back if Nortel’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.⁸ The Commission, through information submitted through the quarterly reporting process and its participation in the TTY Forum, is well aware that Nortel 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 Farmers is dependent upon its TTY equipment manufacturer's delivery and implementation schedule, there is good cause for granting Farmers 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.⁹

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

⁸ 47 C.F.R. § 1.3.

⁹ 47 C.F.R. § 1.925(b)(3).

Baudot-encoded audio tones produced by TTY devices.”¹⁰ In recognition of these difficulties, the Commission has delayed compliance and granted numerous temporary waivers.¹¹ 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 Farmers is granted. At this time, digital TTY handsets are a brand new product and relatively scarce, virtually eliminating the possibility that any significant portion of the public will be harmed in the short period of time Farmers needs to complete the necessary TTY upgrades. While Farmers vigorously pursues its digital TTY solution, analog TTY devices will still work on the network, negating any harm to potential customers.¹² Recognizing the benefit to the public, the Commission encouraged carriers to continue to make analog TTY service available.¹³ Farmers, 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 Farmers to concentrate its limited resources on implementing a digital

¹⁰ *Fourth Report and Order* at ¶ 2.

¹¹ *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).

¹² Farmers is unaware of a single subscriber on its network that uses an analog-based TTY device.

¹³ *Fourth Report and Order* at ¶ 28.

TTY solution at the earliest feasible date while continuing to offer the benefits of analog-based TTY service.

The underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”¹⁴ – 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.¹⁵ 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.”¹⁶ The Commission has long recognized that compliance deadlines should be linked to the availability of manufacturer equipment.¹⁷ In setting the June 30, 2002 deadline, the FCC relied on the anticipated availability of TTY equipment by December 31, 2001.¹⁸ As indicated in Farmers’ 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. Farmers, as evidenced in its TTY reports, has been working diligently to upgrade its network in order to achieve digital TTY compatibility and, therefore, the

¹⁴ *Fourth Report and Order* at ¶ 29.

¹⁵ *Id.* at ¶ 7.

¹⁶ *Id.*

¹⁷ *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).

¹⁸ *Fourth Report and Order* at ¶ 8.

underlying purpose of the rule, to ensure public safety for the hearing impaired “at the earliest *possible* date,”¹⁹ is being served.

Application of the June 30, 2002 deadline to Farmers would be inequitable in light of the lack of availability to Farmers of the necessary TTY software upgrade, a factor outside of Farmers’ control. Farmers is bound to Nortel’s timetable for the delivery and installation of its TTY product. Farmers, as a small customer of Nortel, cannot command the attention of Nortel and is at the mercy of Nortel 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.²⁰

It would also be unduly burdensome and impractical for Farmers to pursue any alternative TTY solution at this time. Farmers is wedded to the Nortel TTY product since Farmers relies upon Nortel’s proprietary switching and infrastructure products to run its entire network. Even had Farmers 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.*, Lucent, have also experienced delays in the development of their TTY solutions, and there is no guarantee that any other

¹⁹ *Id.* at ¶ 29 (emphasis added).

²⁰ *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).

vendor could provide Farmers with the necessary equipment any sooner than Nortel.²¹ Reliance upon Nortel is Farmers' only feasible TTY option. As soon as Nortel delivers and installs the TTY solution, and Farmers completes testing, TTY compliance will have been achieved. Until then, Farmers has no reasonable alternative but to request a waiver.

III. Conclusion

Based on the foregoing, Farmers respectfully requests that the Commission grant Farmers 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 Farmers to implement its TTY solution by December 31, 2002.

Respectfully submitted,

**FARMERS MUTUAL
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By: _____/s/_____

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²¹ Farmers understands that Lucent, the other primary manufacturer of TTY equipment, is also approximately 10 months behind schedule, and is not expected to be delivering equipment to small carriers like Farmers until 4th quarter 2002.

DECLARATION OF J. JAY GARRETT

I, J. Jay Garrett, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Farmers Mutual Cooperative Telephone Company.
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/_____
Jay Garrett

_____/5/24/04_____
Date