REQUEST FOR RULE WAIVER

Consolidated Telcom (Consolidated), by its attorney, hereby requests a temporary waiver of Section 20.18(c) of the Commission’s Rules to allow it to delay implementation of the requirement therein that Broadband Personal Communications Services (PCS) licensees must be capable of transmitting 911 calls, by June 30, 2002, from speech or hearing disabled individuals utilizing Text Telephone Devices (TTY).

The reasons in support of this request are, as follows:

Background

Consolidated is the licensee of stations KNLG704 and KNLG705 in the Broadband Personal Communications Service (PCS), acquired in Auction No. 11. These stations operate on the F- and D-blocks, respectively (10 MHz each). The licensed service area covers the Dickinson, North Dakota Basic Trading Area (BTA 113), a rural area in southwestern North Dakota. Consolidated utilizes GSM equipment manufactured by InterWAVE Communications, Inc. of Menlo Park, California.
Consolidated's PCS facilities have only been operational since April of this year. Its equipment supplier, InterWAVE, apparently specializes in the smaller markets, such as the Dickinson, North Dakota BTA. When Consolidated contracted with InterWAVE to supply the cell site equipment and switch, there was no indication that the equipment would not be TTY compatible. Until recently, therefore, Consolidated was proceeding on the expectation that it would be in compliance with the TTY access requirement by June 30, 2002. It was only earlier this month when Consolidated learned for certain that InterWAVE would not have the necessary software upgrade ready in time to meet the deadline. See, in this regard, the letter from InterWAVE, dated June 26, 2002 and attached hereto as Appendix A. Accordingly, Consolidated is constrained to request a waiver of Rule Section 20.18(c).¹

**Consolidated's Commitment to Achieving Compliance**

Consolidated has filed five quarterly reports with the Commission, dating from April 15, 2001. In each of those reports, Consolidated indicated that it had not yet complete construction of its licensed PCS facilities but that it was committed to complying with the requirements of Rule Section 20.18 once the facilities were constructed and providing service. The short period between the completion of construction in April of this year and the June 30 deadline would not have afforded much time to integrate, test and deploy the TTY technology in conjunction with the public safety community even if InterWAVE’s switch had been TTY-compatible upon its installation. Thus, despite Consolidated’s best efforts in pursuing timely implementation of TTY service, it is unable to achieve compliance due to circumstances beyond its ability to control. Accordingly, Consolidated will not be able to meet the June 30, 2002

¹ 47 C.F.R. § 20.18(c)
deadline, established in the Commission's *Fourth Report and Order* in CC Docket No. 94-102\(^2\) and embodied in Section 20.18(c) of the Commission’s Rules. As indicated in Appendix A hereto, InterWA VE will not be able to supply the software upgrade needed to achieve TTY compatibility until the third quarter of 2003, through no lack of diligence on the part of Consolidated. Once the software upgrade is delivered, Consolidated estimates that it will take at least another three months for testing and deployment.

**Waiver Request**

Accordingly, Consolidated requests a waiver of Rule Section 20.18(c), to allow it to delay, until December 31, 2003, implementation of the requirement that it integrate, test and deploy the TTY access technology over PCS stations KNLG704 and KNLG705, in conjunction with the public safety community.

**Waiver Standards**

While the *Fourth Report and Order* is silent as to what is necessary to justify a waiver of the June 30, 2002 deadline, Section 1.3 of the Commission’s Rules\(^3\) provides that the Commission may waive its rules for good cause shown. In addition, Section 1.925(b)(3) of the Rules\(^4\) provides, for the Wireless Telecommunications Services (including PCS), that the Commission may grant a request for waiver if it is shown that:

1. 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
2. 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.

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\(^3\) 47 C.F.R. § 1.3

\(^4\) 47 C.F.R. § 1.925(b)(3)
Consolidated Has Met the Waiver Standards

As shown above, Consolidated has met the Commission’s standards for obtaining the requested waiver of Rule Section 20.18(c). While Section 20.18(c) of the Commission’s Rules imposes TTY access 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 and suppliers and government officials responsible for public safety activities. As a service provider only, Consolidated is unable to achieve compliance with the Commission’s TTY access requirements without the availability of necessary equipment and the readiness of the public safety answering points in its area. As the Commission is aware, it is only recently that TTY services have been successfully deployed by any digital wireless carriers.\(^5\)

Notwithstanding, while wireless TTY compatibility services work well for non-emergency communication, there are some remaining issues that exist for emergency situations.\(^6\) Thus, while the TTY access technology is now generally available to digital wireless carriers, it is not yet available to Consolidated. For reasons perhaps best known to InterWAVE (to which Consolidated is not privy), it is not able to meet the June 30, 2002 deadline. .

The deadline extension herein requested is in the public interest. It will afford

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\(^6\) Id. (Wireless 911 TTY calls may suffer high character error rates (CER) when received by some Public Safety Answering Points (PSAPs).
Consolidated the additional time needed to acquire the software upgrade and to deploy and test the software in an orderly manner that is likely to lead to a successful result in providing TTY access. It will not adversely affect the PSAPs in the area or the public served. It is only now that digital TTY handsets are coming on the market and so they are not yet in widespread use. In addition, there are other carriers in the areas served by Consolidated that are capable of providing service to analog TTY handsets. As of this time, no person with a speech or hearing disability has requested service over Consolidated's PCS facilities.

Moreover, the stated purpose of Rule Section 20.18(c), namely, "requiring carriers to achieve TTY/digital compatibility at the earliest possible date" will not be frustrated by granting the waiver herein requested. When the Commission established the June 30, 2002 deadline, digital TTY technology did not even exist. Establishing a date certain by which digital wireless service providers must begin complying with Rule Section 20.18(c) was "needed for the industry to maintain TTY access as a priority." While the industry has clearly focused on the issue and has just recently come up with a solution, nevertheless, the Commission should recognize that there are going to be some delays, for one reason or another, before the new technology is fully implemented. In this regard, the Commission has previously acknowledged that equipment delays constitute a justifiable basis for waiving a compliance deadline.

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7 Fourth Report and Order, at para. 29.
8 Id., at para. 7
9 Id.
10 See fn. 7
Moreover, the June 30, 2002 deadline was established with the expectation that the equipment and software necessary to achieve compliance would be available by December 31, 2001. However, as indicated in Appendix A hereto, the necessary software will not be available until the third quarter of 2003.

Accordingly, it would be highly inequitable and unduly burdensome to hold Consolidated to the June 30, 2002 deadline in these circumstances. Consolidated’s compliance is unavoidably tied to InterWAVE’s schedule for supplying the necessary software upgrade. Thus, Consolidated had no reasonable alternative but to await the delivery of InterWAVE’s software once it had committed its financial resources toward purchasing InterWAVE’s equipment. And even if Consolidated had selected another equipment supplier, there is no certainty that it would have been able to meet the June 30, 2002 deadline, given the fact that other infrastructure providers are likewise experiencing delays in meeting the deadline.

The foregoing establishes that Consolidated has been diligent in pursuing implementation of TTY service but that it is unable to do so due entirely to matters that are beyond its ability to control. The instant waiver request is specific and focused. It details the unavoidable delay that Consolidated has encountered through no fault of its own. It sets out a clear path to compliance once the necessary software becomes available. It is clear, therefore, that Consolidated has shown good cause for the waiver requested and that it has justified the waiver in accordance with Section 1.925(b)(3) of the Commission’s Rules.

\[\text{Fourth Report and Order, at para. 8.}\]
Conclusion

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

Respectfully submitted,

Consolidated Telcom

By: Harold Mordkofsky
Its Attorney

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Dated: June 28, 2002
APPENDIX A

(Letter from InterWAVE Communications, Inc., dated June 26, 2002)
June 26th, 2002

Troy Maas
Consolidated Telecom
PO Box 1077
Dickinson, ND 58602-1077

Re: E911 Compliance for TTY Mobile Users

Troy,

InterWAVE Communications will provide support for Text Telephony terminals (TTY) in line with the 3GPP technical specification TS 23.226 V5.2.0. The implementation will be based on Annex B1 of the technical specification which supports the CTM function via an additional CTM resource pool within the transcoder element of the BSS network. The time frame for the availability of this feature will be Q3 2003.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Ian Walter
Director of Product Management
InterWAVE Communications
+1.650.838.2083
DECLARATION

Dan Wilhelmson hereby declares, under penalty of perjury under the laws of the United States, that he is the General Manager and Chief Executive Officer of Consolidated Telcom; that he has read the foregoing Request for Rule Waiver to the Federal Communications Commission; and that, except for those facts of which the Commission may take official notice, all of the facts stated therein are true and correct to the best of his knowledge, information and belief.

Dated, this 28th day of June, 2002.

[Signature]

_/ Dan Wilhelmson, CEO