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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 28 2002

In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency )  
Calling Systems )  
)  
MobileTel, Inc. )  
Petition for Waiver of Section 20.18(c) )  
of the Commission's Rules and the )  
Deadlines Established in the )  
Fourth Report and Order )

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

PETITION FOR WAIVER

MobileTel, Inc. ("MobileTel"), by its attorneys, and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,<sup>1</sup> hereby requests a waiver of Section 20.18(c) of the Commission's Rules and the June 30, 2002 deadline for compliance with 911 text telephone ("TTY") obligations for digital wireless carriers.<sup>2</sup> A waiver is warranted due to the fact that MobileTel confronts circumstances that will render compliance with the

<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.925.

<sup>2</sup> 47 C.F.R. § 20.18(c) (the "TTY Rule"); *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, FCC 00-436 (rel. Dec. 14, 2000) ("Fourth Report and Order"). The Fourth Report and Order established a deadline of December 31, 2001 for digital wireless carriers to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices. *Id.* at para. 8. The Commission recognized, however, that some solutions might not be commercially available by that deadline and established June 30, 2002 as the "final deadline." *Id.* at para. 9. Accordingly, to the extent necessary, MobileTel also requests retroactive waiver of the December 31, 2001 deadline.

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deadline impossible, due to factors beyond the carrier's control. To further the public interest, MobileTel proposes a specific deployment schedule to implement a TTY solution in the most efficient and expeditious manner.<sup>3</sup> Accordingly, the Commission should grant this instant waiver.

## **I. Background**

MobileTel operates a cellular system covering mostly rural areas in southern Louisiana (Houma-Thibodaux Market - CMA184). MobileTel's system is a TDMA-based network comprised of a Nortel DMS-MTX switch and 21 cell sites.

Last year, MobileTel's billing vendor gave notice that it would cease providing billing services to the company in the near future. MobileTel promptly identified a new billing vendor and made arrangements for the conversion to occur as soon as possible. Subsequently, MobileTel made arrangements with Nortel to upgrade its switch to MTX10, the software load containing the TTY solution, as soon as the conversion was complete. In order for the new billing system to work properly, MobileTel must convert to the new billing system before the MTX10 software load is installed. MobileTel anticipated that both the conversion and the upgrade would be completed far in advance of the June 30, 2002 compliance deadline. However, due to recurring problems with the new billing vendor including missed deadlines, MobileTel was forced to select a replacement. As a result, the billing conversion has been delayed until the fall, thereby delaying the upgrade of the switch until late this year.

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<sup>3</sup> The Petitioner provides analog service within its service area. Accordingly, the public would not be harmed by a temporary waiver because alternative access to TTY exists.

## **II. Waiver is Warranted**

Grant of waiver of the Commission's Rules is warranted when

(ii) [i]n 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.<sup>4</sup>

MobileTel's waiver request satisfies this waiver standard.

### **A. MobileTel Confronts Unique and Unusual Circumstances**

But for the unique circumstances, MobileTel would have met the June 30, 2002 compliance deadline. Prior to the December 31, 2001 benchmark for ordering TTY software, MobileTel exercised reasonable diligence by making the necessary arrangements with both the billing vendor and Nortel to meet the June 30, 2002 compliance deadline. Further, MobileTel established a timetable for the billing vendor to meet to allow sufficient time for Nortel to make the necessary upgrades well in advance of the June 30, 2002 compliance deadline. However, due to reasons outside of MobileTel's control, the new billing vendor failed to meet its deadlines and eventually had to be replaced. These unavoidable problems with the billing conversion have caused the upgrade of the switch to be delayed until later this year. Accordingly, due to circumstances beyond its control, MobileTel will be unable to make the necessary upgrades in its network by the June 30, 2002 compliance deadline.

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<sup>4</sup> 47 C.F.R. § 1.925(b)(3)(ii).

**B. It Would Be Inequitable, Unduly Burdensome and Contrary to the Public Interest to Require MobileTel to Meet the June 30, 2002 Compliance Deadline**

MobileTel has diligently sought to complete the billing process in a timely manner and has coordinated with Nortel to ensure installation of the necessary upgrades as soon as the conversion is completed. Imposing penalties for delays resulting from unavoidable problems related to its billing vendor will not hasten compatibility with TTY devices; it will simply punish the carrier, who is without power to influence the required outcome.<sup>5</sup>

Moreover, requiring MobileTel to meet the June 30, 2002 compliance deadline would frustrate the ability of the carrier to provide service by removing MobileTel's ability to bill its customers. MobileTel must complete its billing conversion before installing the switch upgrade. Otherwise, it is impossible for MobileTel to bill its customers. Even if MobileTel went to great expense to change out its entire TDMA system in order to meet the compliance deadline, it is still unclear as to whether TDMA TTY-compatible handsets will be available for use in TDMA systems.<sup>6</sup>

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<sup>5</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, Sprint Spectrum L.P. d/b/a Spring PCS, Verizon Wireless, AT&T Wireless Services, Inc., Nextel Communications, Inc.*, Orders, FCC 01-293, 01-294, 01-295, 01-296, 01-297, 01-299 (adopted Oct. 2, 2001, rel. Oct. 5, 2001), Separate Statement of Commissioner Kathleen Abernathy at p.4 (in the context of enhanced 911 waiver requests, Commissioner Abernathy states, "it is a mistake to equate manufacturer conduct with carrier conduct and to punish one for the acts and omissions of the other").

<sup>6</sup> See *Petition of Public Service Cellular, Inc. for Waiver of Section 20.18(c) of the Commission's Rules and the Deadlines Established in the Fourth Report and Order*, CC Docket No. 94-102, FCC 00-436, filed December 21, 2001 at 4.

**C. Grant of the Waiver Would Further the Public Interest**

MobileTel is not requesting a blanket waiver of the Commission's TTY Rule but, rather, is requesting a waiver only to the extent that these requirements cannot be accomplished in a technically and economically feasible way. Accordingly, MobileTel seeks a nine-month extension of the deadline, until March 31, 2003, to allow it to implement a TTY solution in the most efficient and expeditious manner.<sup>7</sup> Such an extension would allow MobileTel to complete the conversion to a new billing system, barring any more unforeseen difficulties with its billing conversion process, and to install and test the TTY solution in its network.<sup>8</sup> During the temporary extension period, MobileTel would continue to submit quarterly progress reports to keep the Commission apprised of progress towards compliance.

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<sup>7</sup> Further, the public would not be harmed by grant of such relief due to the fact that individuals with speech or hearing disabilities could continue to use TTY devices on MobileTel's cellular network with wireless telephones in an analog mode.

<sup>8</sup> See Fourth Report and Order at para. 8 (Commission recognizing that "a number of things must be done to ensure the solution works properly within a digital wireless system" once the solution is made generally available and allowing for an additional six months to integrate, test and deploy the technology).

### III. Conclusion

Unique and unusual circumstances render MobileTel's ability to meet the June 30, 2002 compliance deadline impossible due to factors beyond its control. Imposition of a rule that would frustrate the carrier's ability to provide service would be inequitable, unduly burdensome and contrary to the public interest. To advance the public interest, the FCC should extend the deadline for MobileTel to comply with the TTY requirements until March 31, 2003.

Respectfully submitted,

**MOBILETEL, INC.**

By:

  
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John Kuykendall  
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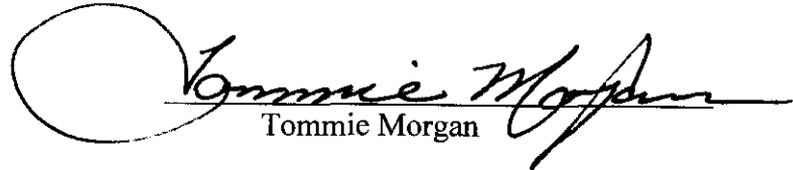
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June 28, 2002

**DECLARATION OF TOMMIE MORGAN**

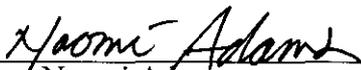
I, Tommie Morgan, President of MobileTel, Inc. ("MobileTel"), do hereby declare under penalty of perjury that I have read the foregoing "Petition for Waiver" and that the information contained therein that pertains to MobileTel is true and accurate, to the best of my knowledge, information and belief.

  
Tommie Morgan

Dated: JUNE 27, 2002

**CERTIFICATE OF SERVICE**

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition for Waiver" was served on this 28<sup>th</sup> day of June 2002, via hand delivery to the following parties:

  
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