

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

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In the Matter of)
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Waiver of the Rules of the Federal)
Communications Commission Relating)
to the Transmission of Digital Wireless)
911 Calls from TTY Devices)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-102

East Kentucky Network, LLC
d/b/a Appalachian Cellular

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND EXTENSION OF
DIGITAL WIRELESS 911 TTY REQUIREMENTS**

1. East Kentucky Network, LLC d/b/a Appalachian Cellular (hereinafter "Appalachian"), by its attorneys, respectfully requests a waiver and extension of Section 20.18(c) of FCC Rules, 47 U.S.C. §20.18(c), and accompanying note. Specifically, Appalachian seeks a waiver and eighteen-month extension of the June 30, 2002 deadline by which digital wireless operators 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).

2. As set forth below, because circumstances exist wherein digital 911 TTY capability is not yet commercially available to Appalachian in a practical manner, Appalachian requests waiver of the deadline for digital 911 TTY capability. As demonstrated herein, good cause exists for this waiver because it is economically untenable and technically infeasible for Appalachian to comply with the

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June 30, 2002 deadline for digital 911 TTY implementation.^{1/} With respect to the Commission's 911 Phase II rules, the Commission has specifically provided that a waiver would be granted in such "instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible..."^{2/} This waiver policy is directly applicable to the June 30, 2002 deadline by which digital wireless providers must be capable of transmitting 911 calls using TTY devices.

Background and Facts

3. The FCC has adopted rules to implement Section 2(b) of the Wireless Communications and Public Safety Act of 1999, fulfilling the Congressional directive that wireless communications operators deploy a nationwide, seamless communications infrastructure for emergency services.^{3/} On December 1, 1997, the Commission adopted a *Memorandum Opinion and Order*, CC Docket No. 94-102, FCC 97-402, released December 13, 1997 ("MO&O") which, at para. 59, suspended until October 1, 1998 enforcement of the requirement that licensees providing service on *digital* wireless

^{1/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (DC Cir 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (DC Cir 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.

^{2/} Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18,710, 18,718 (1996).

^{3/} Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, §2(b).

systems be able to transmit 911 calls made by individuals with speech or hearing disabilities. Suspension of enforcement of the subject Section 20.18(c) of the Commission's Rules was further extended until November 15, 1998,^{4/} and again until January 1, 1999.^{5/} Finally the Commission established the current deployment deadline of June 30, 2002.^{6/}

4. Appalachian is a Cellular Radiotelephone Service licensee serving just over 35,000 subscribers in Kentucky RSAs 9 and 10, which are very rural, mountainous, high-cost service areas. Appalachian maintains a local reputation for providing dependable wireless telecommunications service and for working closely with the community to meet the needs of residents and businesses, particularly special needs such as TTY capability. However, as demonstrated herein, compliance with the digital 911 TTY requirements by June 30, 2002 was not "reasonably achievable" by Appalachian for reasons of technical and economical infeasibility. In order for Appalachian to be able to comply with the 911 TTY capability requirements, it must upgrade or replace existing operating systems software and other facilities at great cost, at a time of movement away from Appalachian's TDMA infrastructure.

5. Appalachian will implement TTY/E911 capability, to the benefit of persons with speech and hearing disabilities, as soon as it is technically feasible and economically practical. Anticipating that it will be able to offer reliable TTY/E911 digital wireless service within the next eighteen months,

^{4/} Order in CC Docket No. 94-102, DA 98-1982 (Wireless Telecommunications Bureau), released September 30, 1998.

^{5/} Order in CC Docket No. 94-102, DA 98-2323 (Wireless Telecommunications Bureau), released November 13, 1998.

^{6/} Fourth Report and Order, CC Docket No. 94-102, FCC 00-436, released December 14, 2000.

Appalachian is also planning to participate in marketing, distribution and consumer education efforts as recommended by the TTY Forum or as adopted by the Commission. This will include using billing inserts, customer letters and other means to inform subscribers of the limits on their use of the TTY capability on Appalachian's network. Appalachian's employees and persons responsible for customer care at retail outlets and answering customer service telephone inquiries are being trained to explain the delay to potential new customers who use TTY devices and to provide an estimate as to when digital TTY-digital service will be available in Appalachian's service area. Efforts will be coordinated with the disability community and the FCC's Consumer & Government Affairs Bureau to help ensure that Appalachian's subscribers are informed. Appalachian recognizes the value of offering TTY/E911 connections as a part of its wireless digital service, and will seek to have the TTY/E911 feature implemented to full advantage, both as a matter of public health and safety and as a matter of good business practice.

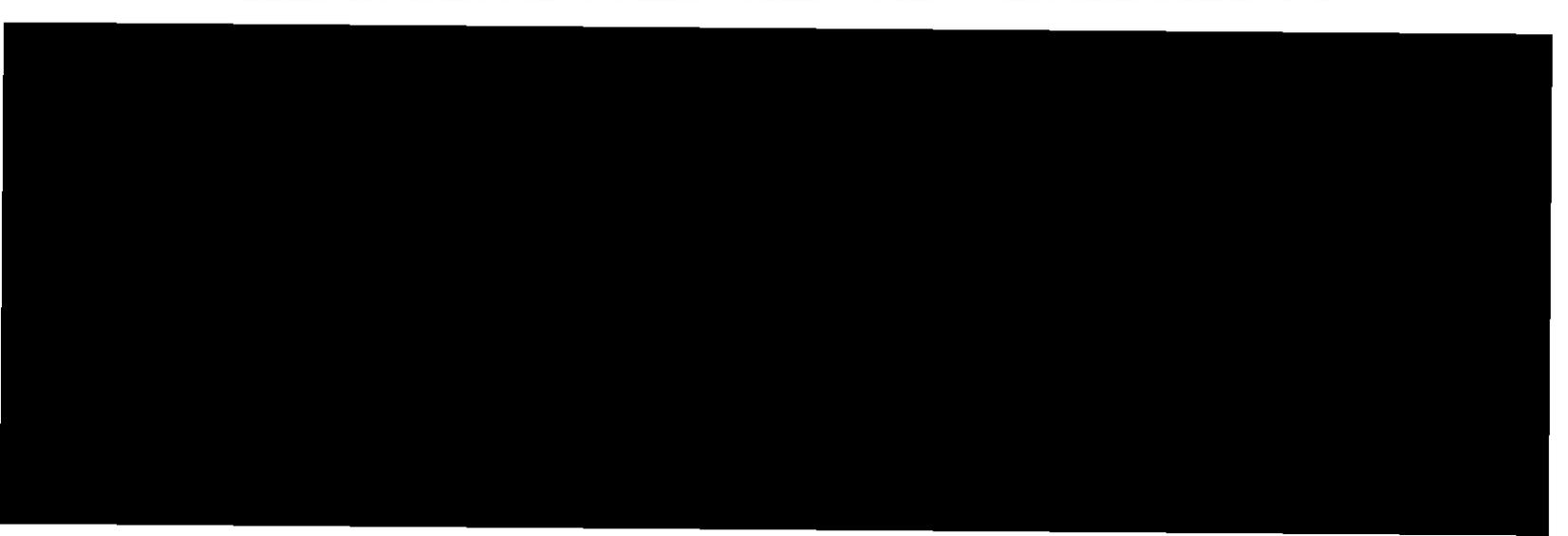
Justification for Waiver

6. Due to the lack of equipment to facilitate compliance with Section 20.18(c) in an economically feasible and technically reliable manner, fulfillment of the requirement is not presently achievable. Appalachian operates a Nortel digital switch at Harold, Kentucky. The switch is equipped with software baseline MTX09 which is not conducive to delivery of 911 calls from TTY devices. To become TTY capable, the switch must be equipped with Nortel's software load MTX10. The transition to MTX10 would require involvement by other vendors to modify the interface, and still others to modify the hardware in preparation for an MTX10 installation. For these reasons, additional months would be required to transition Appalachian's facilities to 911 TTY capability.

7. Appalachian has sought guidance from Nortel and its other vendors, but no satisfactory solution has been identified that would allow Appalachian to become 911 TTY compliant in a swift or affordable manner. The incremental nature of the necessary upgrades and the coordination required among vendors create an impediment to timely compliance over which Appalachian has no control. Nevertheless, Appalachian has a concrete plan for achieving full compliance.

8. Appalachian is beginning a transition to an alternative technology that, once operational, will be TTY compliant. Presently a TDMA carrier, Appalachian is planing to migrate away from TDMA to another, non-compatible digital technology. The new platform will enable TTY users to make 911 calls over the network, and will support Appalachian's ability to offer roaming service in conjunction with adjacent and nearby carriers. Because the major wireless carriers are abandoning TDMA, vendor support for that air interface is expected to diminish rapidly. Appalachian has little choice but to transition to either CDMA or GSM digital technology. Appalachian expects to spend about \$8 million on the platform transition. The changes will require some swapping out of equipment, including handsets. (There are no phones available that convert from TDMA to 1XRTT.) Nevertheless, the conversion will be undertaken as a necessity for system viability, and to handle Appalachian's increasing voice traffic and future data services. The change is expected to be implemented by the end of 2003.

9. If Appalachian were to be required by the FCC to upgrade its existing network immediately in order to become TTY compliant, there would be service disruptions due to technical problems and unnecessary costs would be encountered that ultimately would be passed on to the customer. Investment at this time to upgrade Appalachian's existing network solely to achieve TTY compliance would cost about \$400,000 and would be literally a lost investment. Mandating simultaneous TTY

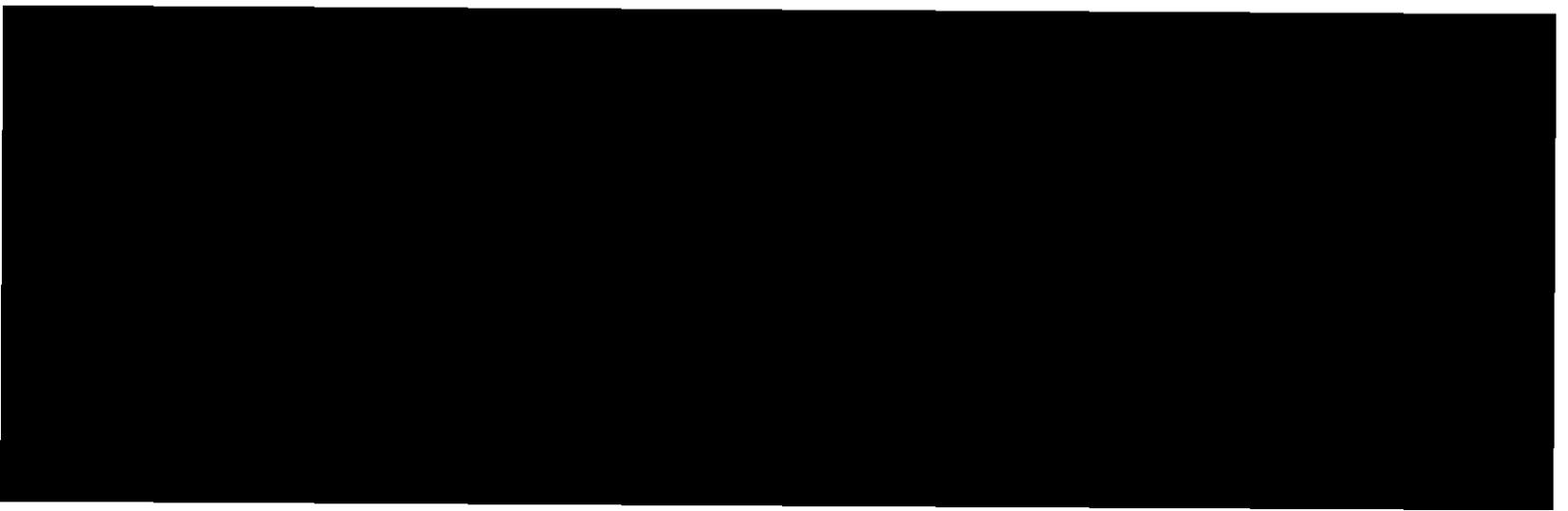


compliance in both the existing and new digital system would be unduly expensive for the small, rural operator with limited resources. Such an outcome would be wholly inconsistent with the Commission's statutory directive to be particularly supportive of small carriers, and would not serve the public interest.

10. As demonstrated herein, Appalachian's compliance with the digital 911 TTY requirements is not reasonably achievable at this time. It is technically and financially impractical. Appalachian continues to work closely with its equipment and software suppliers to institute TTY solutions in its wireless system, and Appalachian intends to install compliant equipment as part of its digital transition. In the meantime the public is being served by alternative solutions, including analog wireless TTY and landline TTY. Achieving digital wireless TTY functionality has been a priority for Appalachian's technical staff, but the service is not yet feasible. Significantly, Appalachian has received no customer requests for digital 911 TTY services. Clearly, the high cost of 911 TTY capability would be an unjust burden to place upon Appalachian at this time, especially in light of the impending deployment of a new digital platform.

Request for Waiver

11. Appalachian requests a waiver of Section 20.18(c) in furtherance of the public interest. The unique and unusual circumstances surrounding the transmission of 911 calls using TTY devices on Appalachian's digital wireless system warrants special consideration by the Commission. Appalachian's inability to comply with the implementation deadline has been due to circumstances beyond Appalachian's immediate control. Compliance by June 30, 2002 was technologically unachievable and financially imprudent. An extension of time to comply will allow Appalachian,



which offers high quality networks in very rural areas, to implement digital 911 TTY in a fashion that will greatly benefit Appalachian's subscribers, permitting a logical transition within Appalachian's network infrastructure. Further, at this time, affordable digital TTY handsets are not readily available for use by small, rural providers, nor are they expected to be in the foreseeable future. This consideration virtually assures that no large portion of the public will be harmed by grant of the subject waiver.

12. Enforcement of Section 20.18(c) requirements against Appalachian would jeopardize Appalachian's plans for improved wireless services in a rural area of the United States. Appalachian consistently attempts to offer the best services possible to its subscribers, often in a more advanced form than those offered by much larger wireless providers. The FCC has stated numerous times that it seeks to be a proponent of the spread of telecommunications services to rural areas.^{2/} In this case, Appalachian requests the opportunity to continue with the high quality of service that it presently offers to its customers, and to be relieved of the immediate obligation to offer digital TTY/E911 transmissions, by means of a waiver of Section 20.18(c) the FCC's rules.

Conclusion

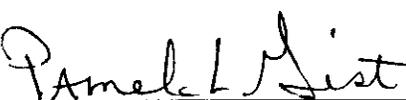
For the reasons explained, Appalachian requests a waiver of the Commission's requirements for transmission of 911 calls made from TTY devices using digital wireless systems, and, in particular, an eighteen-month extension of the June 30, 2002 date for commencement of compliance with Rule Section 20.18(c). Appalachian's showing herein is consistent with the requirements for

^{2/} Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

waiver set forth by the FCC. Its request is specific, focused and limited in scope, and with a clear path to full compliance. Furthermore, the public interest benefit of such grant exceeds the benefit of enforcement of the deadline in this instance. Accordingly, Appalachian requests that a waiver be granted as proposed.

Respectfully submitted,

**EAST KENTUCKY CELLULAR, LLC
D/B/A APPALACHIAN CELLULAR**

By: 
Pamela L. Gist
Its Attorney

Date: July 15, 2002

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DECLARATION

I, Laura Phipps, hereby state and declare:

1. I am General Manager of East Kentucky Network, LLC, a Cellular Radiotelephone Services operator and the petitioner herein.

2. I am familiar with the facts contained in the foregoing "Petition For Waiver And Extension of Digital Wireless 911 TTY Requirements" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of July, 2002.



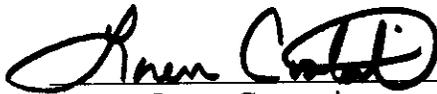
Laura Phipps

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 15th day of July, 2002, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER AND EXTENSION OF DIGITAL WIRELESS 911 TTY REQUIREMENTS to the following:

Thomas J. Sugrue, Chief
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