

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

In the Matter of )  
Revision of the Commission’s Rules )  
To Ensure Compatibility with Enhanced )  
911 Emergency Calling Systems ) CC Docket No. 94-102  
)  
Public Service Wireless )  
Petition For Waiver of Section 20.18(g) )  
of the Commission’s Rules )

To: The Wireless Telecommunications Bureau

**PETITION OF PUBLIC SERVICE CELLULAR, INC.  
FOR WAIVER OF SECTION 20.18 OF THE COMMISSION’S RULES**

Public Service Cellular, Inc. (“PSCI”), by its attorney and pursuant to Sections 1.3 and 1.925 of the Commission’s Rules, 47 C.F.R. §§1.3, 1.925, hereby petitions the Commission to waive a September 24, 2003 deadline for providing network or handset-based Phase II E911 service in response to a Public Safety Answering Point (“PSAP”) request. By letter dated March 24, 2003, the Calhoun County 9-1-1 District (“Calhoun County PSAP”), asked PSCI to deploy E911 Phase II service in Calhoun County, thus triggering the instant deadline.<sup>1/</sup> Calhoun County is one of fifty-eight (58) counties in which PSCI is licensed to provide commercial mobile radio service (“CMRS”), and PSCI operates only a single cell site in that County. Significantly, as of this point in time, PSCI faces no other current Phase II E911 implementation deadlines anywhere else in its licensed coverage area. PSCI presently operates a time division multiple access (“TDMA”) digital network for which

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<sup>1/</sup> The subject deadlines are codified in Sections 20.18(f) and (g) of the Commission’s Rules, 47 C.F.R. §20.18(f), (g), which were recently modified by Commission order. See Revision Of The Commission’s Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102 (Order To Stay), 17 FCC Rcd 14841 (2002), (hereinafter “*Phase II Stay Order*”).

no handset-based E911 location solutions are available. The operation of a single TDMA base station in Calhoun County renders network-based solutions unworkable. PSCI is, however, in the process of migrating its TDMA network to one of two alternate digital technologies. Those technologies offer E911 location options not available with TDMA. Accordingly, PSCI seeks a one year extension of the current Phase II deadline to afford it sufficient time in which to complete the migration of its (“TDMA”) digital network to an alternate technology which can support Phase II E911 location services. With no economic solution available that would enable PSCI to comply with the Calhoun County PSAP request at this time, enforcement of the current deadline will dis-serve Section 20.18's public safety objectives, and will be unduly burdensome for PSCI. The proposed waiver is in the public interest, is supported by good cause, and should be granted expeditiously by the Commission.

#### **I. STATEMENT OF FACTS**

PSCI and its affiliates provide analog and TDMA-based cellular service in west-central Georgia, eastern Alabama and a portion of South Carolina. This combined service area includes fifty eight (58) counties. With the exception of a few population centers like Columbus, Georgia, Anniston and Dothan, Alabama and Anderson, South Carolina, the vast majority of PSCI's service area is sparsely populated rural areas lacking concentrated centers of commercial and industrial activity. Because of these demographic characteristics, PSCI strives to maximize the geographic “footprint” served by each of its cellular base stations (or cells). For the same reason, overlap of the reliable service contours of adjacent cells is typically limited to areas where “hand-off” from one cell coverage area to another is essential for continuous, uninterrupted communications.

PSCI provides service throughout most of its coverage area with cells having the minimal measure of overlap needed to permit reliable cellular communications, but far from sufficient to permit the triangulation of a mobile subscriber unit's geographic position that a network-based E911 solution needs to achieve Section 20.18(h) accuracy. Given the constraints posed by this network configuration, PSCI has been unable to find a single network solution vendor that will commit to achieving Section 20.18(h) Phase II accuracy in the rural portions of the PSCI service area.

Based on the foregoing, PSCI determined that the only E911 Phase II technology currently available to realize Section 20.18(h) accuracy requirements appeared to be a handset-based solution. Roughly twenty months ago, however, Cingular and AT&T, the two largest carriers then employing the TDMA air interface, announced that they were phasing out their use of that protocol in favor of migrating to a GSM protocol. As a result, developers of handset-based solutions announced that they were discontinuing development of Phase II solutions for the TDMA protocol, including development of a TDMA-based automatic location identifier ("ALI") handset. Absent a TDMA-capable handset, PSCI is compelled to replace its entire digital network with a new protocol for which ALI-capable handsets are (or will be) available if it is to attain Phase II compliance.

Contemporaneous with the timing of the Cingular and AT&T announcements, PSCI was deploying its initial network in Calhoun County, Alabama. Those facilities were being deployed with the same TDMA technology which PSCI was using throughout the balance of its network and which Cingular, its major roaming partner at the time, had deployed throughout its network. With the Cingular and AT&T announcements, followed closely by the vendor announcements to discontinue support for the TDMA protocol, PSCI, while proceeding with the deployment of the single cell in Calhoun County needed to satisfy its 5 year construction requirement for that license,

put the balance of its planned deployment of additional cells sites in that area on hold, pending a selection of an alternate digital technology on which to migrate and expand its system. Knowing that the TDMA protocol was being abandoned, PSCI could not afford to make a short-term deployment of additional TDMA cell sites knowing that those cells would need to be totally switched out in the near-term.

Moreover, while Cingular continues to be a major roaming partner with PSCI, PSCI has other major roaming partners that rely upon the CDMA protocol for rendering their digital service. Accordingly, PSCI has been involved in negotiations with all of its roaming partners to determine which digital protocol will best serve the long-term needs of PSCI and its customers. Given that the “link budgets” for GSM and CDMA differ dramatically, cell site placement in rural environments can vary significantly from one technology to the other. Accordingly, PSCI has placed all coverage expansion on hold pending a final technology decision. PSCI expects that decision to be finalized within the next several months with the network overbuild to commence shortly thereafter. System expansion would follow on the heels of the network overbuild, at a pace which can be economically supported given PSCI’s size and subscriber base. The costs associated with this transition from TDMA to a Phase II-capable digital protocol for PSCI are daunting. To transition its entire network is a multi-million dollar undertaking; even without allowing for system coverage expansion.

In this factual context, PSCI received its first E911 Phase II request in late 2002 from the PSAP serving Dade County, Alabama. As with the Calhoun County situation, PSCI has but a single cell site serving Dade County. PSCI explained its current situation to the Dade County PSAP and requested that the Phase II request be withdrawn to allow PSCI to finalize its network deployment

decisions.<sup>2/</sup> The PSAP agreed and has withdrawn its request for now; which request the PSAP has agreed not to re-issue prior to September of 2003. PSCI will remain in close contact with that PSAP as PSCI's deployment plans solidify so that the PSAP request for Phase II service can be coordinated with PSCI's system overbuild and expansion in Dade County, Alabama.

Shortly after resolving the Dade County matter, PSCI received the instant request from the Calhoun County PSAP dated March 24, 2003. (the "March 24 Request"), included herewith as Appendix A. PSCI responded to the March 24 Request by letter dated March 28, 2003 (the "March 28 Response"), included as Appendix B hereto. After explaining the same facts to the Calhoun County PSAP, PSCI requested, as it had with the Dade County PSAP, that the March 24, 2003 Request be withdrawn and not re-issued prior to September 1, 2003. The PSAP called the undersigned counsel to discuss the letter during which time the PSAP was provided with additional information about the PSCI deployment in Calhoun County and advised that PSCI's next-closest cell site was located in Franklin County, Georgia, some fifty (50) miles away from the single PSCI cell site located in Calhoun County. PSCI explained its planned digital migration and specifically advised that it was unaware of any network-based solution that PSCI could deploy to provide meaningful location information from a single cell site. Coupled with the lack of an ALI-capable TDMA handset, PSCI explained that, to the best of PSCI's knowledge, there was no economically

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<sup>2/</sup> PSCI worked this solution out directly with the PSAP as guided by the Commission in *Order on Reconsideration, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington*, FCC 02-146, CC Docket No. 94-102, (rel. July 24, 2002). "Where our rules impose a disproportionate burden on a particular carrier, the carrier may work with the public safety entities involved to mitigate that burden and, if necessary, may seek individual relief from the Commission." *Id.* at paragraph 18.

deployable solution that it could implement to meet the PSAP request in advance of the replacement technology overlay.

By letter dated March 31, 2003, the Calhoun County PSAP simply denied PSCI's request, without explanation. A copy of that denial is set forth as Appendix C hereto. On April 8, 2003, PSCI responded to that letter asking what solution the PSAP had in mind that, given PSCI's situation, would enable PSCI to meet the PSAP's request. PSCI was certain that the PSAP would not have denied the PSCI request without knowing of a solution that PSCI was not aware of. That PSCI letter is appended hereto as Appendix D. PSCI was wrong. By letter dated April 10, 2003, the PSAP advised that it also knew of no solution for PSCI but that complying with its request was PSCI's problem; not theirs. A copy of that response is appended hereto as Appendix E.

## **II. ARGUMENT**

### **A. Controlling Waiver Standard**

Section 1.925(b)(3) of the Commission's Rules, 47 C.F.R. § 1.925(b)(3), requires a waiver proponent to demonstrate either that: (a) a rule's underlying purpose would be frustrated or dis-served by its instant application, and that waiver thereof serves the public interest; or (b) a rule's application, due to unique or unusual circumstances, would be inequitable, unduly burdensome or contrary to the public interest, or that the proponent has no reasonable alternative. Alternatively, pursuant to Section 1.3 of the Rules, the Commission has authority to waive its rules if there is "good cause" to do so.<sup>3/</sup>

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<sup>3/</sup> See also Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990). "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."

Where a waiver request is stated with clarity and accompanied by supporting data, the Commission is obligated to give the request a “hard look,” rather than mere “perfunctory treatment,” and decide the request based on the individual facts presented.<sup>4/</sup> A “hard look” at the facts presented herein will show that PSCI has no real alternative to seeking the instant waiver and that seeking to compel PSCI to comply with Calhoun County PSAP’s March 24, 2003 request at this time will actually undermine and frustrate Section 20.18(f) and (g)’s underlying purpose. PSCI will also show that waiving Section 20.18(f) and (g) is consistent with both the public interest and the “good cause” standard codified by Section 1.3 of the Commission’s Rules. Moreover, in the present factual context, PSCI’s strict compliance with the March 24 Request will indeed be inequitable, unduly burdensome and contrary to the public interest.<sup>5/</sup> Stated simply, as to the March 24 Request, PSCI meets all applicable waiver standards indicated by Commission rule, precedent and policy, and should be granted the relief set forth herein.

**B. In Responding To The March 24 Request,  
PSCI Has Only Three Options**

As discussed, in its March 28 Response, PSCI asked the Calhoun County PSAP to withdraw its March 24 Request. Out of the fifty eight (58) counties served by PSCI and its affiliates, Calhoun

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<sup>4/</sup> See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969)

<sup>5/</sup> Notably, PSCI is a member of the Tier III Coalition for Wireless E911, which recently filed a petition for forbearance from enforcement of the accuracy standards set forth in Section 20.18(h) (“*TierIII Co Forbearance Petition*”). See “Wireless Telecommunications Bureau Seeks Public Comment on Petition For Forbearance From E911 Accuracy Standards Imposed On Tier III Carriers,” Public Notice in WT Docket No. 02-377, DA 02-3470, released December 17, 2002. Although grant of the subject forbearance petition may render the instant waiver request moot, there is no guarantee that the Commission will act by the September 24, 2003 deadline for providing Phase II E911 service to 50% of the PSAP’s coverage area or population using a network-based solution, or to begin selling and activating ALI-capable handsets using a handset-based solution.

County's is the only presently pending E911 Phase II Request received by PSCI. PSCI operates a single cell site in Calhoun County with the next nearest PSCI cell site located fifty miles away. There is no solution, network or handset-based, that will perform the requisite locational functionality from a single, TDMA cell site. As expressed to the Calhoun County PSAP, the only viable alternative is for PSCI to coordinate the deployment of an E911 solution in conjunction with the deployment of its overlay alternative digital technology. Impossibility of providing a compliant E911 solution for the single-site Calhoun County TDMA cell site clearly provides PSCI with no reasonable alternative but to seek the instant waiver and makes it unduly burdensome for PSCI to comply with the Calhoun County PSAP-only Phase II deployment request at this time. Indeed, the advantages to both PSCI and its subscribers of coordinating the deployment of its E911 Phase II solution in Calhoun County in terms of capital outlays, uniform deployment of a new digital protocol and prospective availability of a more effective E911 solution which would be available throughout the PSCI service area, are significant and enduring. The suggestion, however, was summarily rejected by the local PSAP.

In light of the rejection, PSCI must provide E911 Phase II capability in Calhoun County in conformity with Section 20.18 of the Rules by September 24, 2003. This imperative imposes on PSCI one of three options, absent grant of the waiver requested here (or the relief requested in the *TierIII Co Forbearance Petition*). These options are discussed below in terms of their respective economic cost, impact on personal safety of local subscribers in Calhoun County, and regulatory consequences for PSCI.

## 1. The Network Solution Option

First, PSCI could deploy a “one-to-one” network-based solution at its existing single cell site in Calhoun County. To implement this deployment, PSCI will incur a substantial capital cost, which it estimates will be in excess of \$250,000, plus operational costs. That investment will have to be recovered from local subscribers, of which PSCI has only a handful in Calhoun County.

Unfortunately, after making this capital outlay, the resulting system would not be capable of providing the requisite level of accuracy from the single cell site. Accordingly, the monies paid would be in a vain. While additional sites could be added, the locations of the additional cell sites will vary significantly depending upon which alternate digital technology PSCI ultimately deploys. Moreover, PSCI must devote its limited capital resources initially to overbuilding its entire network with the new digital protocol, before being able to expand its coverage footprint; capital that must also be devoted to comply with the Commission’s CALEA, TTY and wireless local number portability mandates as well. Accordingly, a network-based solution is clearly not available in time to meet the present Calhoun County deadline. In sharp contrast, the delay of the Calhoun County E911 deployment to correspond with the overbuild of the PSCI digital network and in conjunction with E911 deployments timed to correspond with other PSAPs in PSCI’s service area, would allow the capital and operating costs to be spread across all of PSCI’s subscriber base, as opposed to the handful of PSCI customers located in Calhoun County. Again, no network solution vendor known to PSCI will guarantee its system’s compliance with Section 20.18(h) accuracy standards in PSCI’s service territory within Calhoun County. As a result, the network solution alternative— notwithstanding its extraordinary cost relative to the number of local subscribers involved— will still fail to attain Section 20.18(h) accuracy in Calhoun County. Should PSCI exercise this option,

it will expose itself to Commission enforcement action.<sup>6/</sup> Accordingly, even with this deployment, PSCI will be in precisely the same position; asking the Commission for the instant waiver until such time as it can deploy a system in conjunction with its new digital overlay which, over time, will better be able to provide improved locational accuracy.

## 2. The Handset Solution Option

In lieu of a network-based solution, PSCI could deploy ALI-capable handsets to meet its Phase II obligations. Because PSCI (as discussed above) utilizes the TDMA air interface and, because large carriers have uniformly abandoned this technology, no handset manufacturer or vendor is developing (let alone selling) TDMA ALI-capable handsets. Thus, a handset-based solution must also await PSCI's overlay of its entire TDMA digital network with a new protocol for which ALI-capable handsets are (or will be) available before it can deploy a handset solution. The capital cost associated with converting Calhoun County's single cell to a non-TDMA protocol is roughly two million dollars (due to unavoidable switch and network upgrades).<sup>7/</sup> Stated differently, before it can offer ALI-capable handsets to its handful of local subscribers in Calhoun County, PSCI must incur capital costs of tens of thousands of dollars per subscriber.

Equally significant, even if the local subscribers were somehow persuaded to assume the astronomical costs associated with the single-site digital migration, no benefit in terms of E911 and

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<sup>6/</sup> *Phase II Stay Order*, 17 FCC Rcd at 14841 (¶ 37). (“Each carrier remains ultimately responsible for providing timely compliant Phase II service. If any carrier does not have compliant Phase II service available on the dates set forth herein, it will be deemed noncompliant and referred to the Commission’s Enforcement Bureau for possible action.”)

<sup>7/</sup> No other PSAP in PSCI’s FCC-licensed service territory has demanded that PSCI provide Phase II capability. As a result, the two million dollar digital conversion cost will be incurred solely as a result of the Calhoun County PSAP request.

individual safety would accrue to these subscribers unless they converted existing handsets to those with ALI functionality, which they are in no way obligated to do under the Commission’s Rules. If local subscribers voluntarily acquired new handsets (at additional cost) to take advantage of the newly-available E911 Phase II capability in Calhoun County, they, unfortunately, would be saddled with equipment that was technologically incompatible with the rest of PSCI’s cellular network. It is highly unlikely that customers would be willing to sacrifice digital service throughout the remaining fifty-seven counties in PSCI’s service area in order to have an ALI-capable handset which would be able to access digital services only in the coverage area of the single Calhoun County cell site. Again, coordination of the E911 service offering with the completion of the PSCI digital overlay would obviate this issue.

Assuming *arguendo* that, notwithstanding the detrimental consequences outlined above, PSCI proceeded to convert its digital air interface, its ability to acquire and distribute ALI-capable handsets is highly questionable. The Commission itself acknowledged that Tier III carriers like PSCI are unable to generate sufficient handset demand to warrant direct customer relationships with manufacturers.<sup>8/</sup> As a result, PSCI will have no choice but to deal with wholesalers, distributors and other intermediaries who have no specific commitment to accommodating demand in a small, rural market like PSCI’s and may have powerful economic incentives to accord such demand the lowest of priorities assuming they commit to accommodating that demand at all.

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<sup>8/</sup> See *Phase II Stay Order*, ¶ 20 (“This approach recognizes that wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations.”); see also, *id.* ¶ 10 (“ . . . The record demonstrates that non-nationwide CMRS carriers have much less ability than the nationwide CMRS carriers to obtain the specific vendor commitments necessary to deploy E911 immediately . . .”).

Finally, even if PSCI overlaid a new digital interface and succeeded in acquiring ALI-capable handsets, there is little empirical evidence as to whether such handsets can attain Section 20.18(h) accuracy when deployed in a remote, rural environment like PSCI's licensed service area. In contrast to urban areas where CMRS traffic is substantially pedestrian, a significantly higher percentage of rural traffic is generated by vehicular-based portable handsets that lack external antennas. To provide accurate "XY" coordinate data to the PSAP, these handsets must maintain line-of-site contact with GPS satellites; if that contact is obstructed or lost, the "911" dialing subscriber's geographic coordinates cannot be conveyed accurately. If "911" is dialed when the ALI-capable handset is in a building or structure, or when it is in an automobile or other vehicle (assuming no link exists between the handset and an exterior antenna), the handset's ALI technology could be degraded depending on the amount of structural and morphological attenuation.<sup>9/</sup>

In practice, once the ALI-capable handset loses contact with the GPS satellite, most handset-based solutions appear to rely on network assistance to substitute for the absent GPS locational information. These "network-assisted" solutions then face the same limitations that network-based solutions do in their ability to consistently and accurately determine the subscriber location, using only existing, wide-spaced rural cell sites. In the instant case, with only a single cell site available for a fifty mile radius, the requisite Phase II accuracy requirements cannot be met.

### 3. Comparison of Network and Handset-Based Options

At this juncture, it is illuminating to pause and consider the drawbacks attending PSCI's two most obvious options in responding to the March 24 Request. The network solution will, at a

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<sup>9/</sup> *Id.* Even the Commission has acknowledged that handset technology may fail in tall buildings or in tunnels. *Third R&O*, ¶¶ 24, 57.

minimum, involve a capital cost of several hundred thousand dollars the recovery of which, if limited to Calhoun County, would most likely cause some if not all of PSCI's local Calhoun County subscribers either to discontinue service completely or to substitute a wireless service that is inferior to their existing cellular communications capability from a public safety or personal emergency perspective. Moreover, no matter how much money it invests in this option, PSCI will remain vulnerable to enforcement action for failing to achieve Section 20.18(h) accuracy if not granted the instant waiver.

The handset-based solution, which can only be implemented by proceeding immediately to deploy an alternative digital technology for Calhoun County only, involves a capital expenditure that could be more than ten-fold the analogous cost for the network option. The recovery of that level of expenditure in any reasonable time frame would most likely result in the complete abandonment of PSCI's service by its Calhoun County subscribers. Assuming *arguendo* that some local subscribers maintained their service, whether PSCI would be able to obtain ALI-capable handsets from distribution channels willing to deal with a small rural carrier is subject to serious question. And assuming it somehow overcame this formidable hurdle, PSCI would still have to contend with the handset solution's technological vulnerabilities and unproven track record in isolated and remote rural environs where only a single cell site is available to afford network assistance at times when the handset cannot "see" the satellite. Stated differently, having invested millions of dollars to comply with the Commission's E911 Phase II objectives, PSCI will still be before the Commission seeking the instant waiver.

Considering that each of its two most likely options involves inordinate capital expenditures whose recovery will chase the purported beneficiaries of the March 24 Request (*i.e.*, local Calhoun

County subscribers) from PSCI's system and thus degrade their access to wireless E911 and emergency communications, and because the Phase II solutions associated with these expenditures will still most likely fail to meet the Commission's current location accuracy requirements, PSCI must consider a third option now that Calhoun County has rejected the deferral request set forth in PSCI's March 28 Response.

#### 4. Discontinuing Service in Calhoun County

As a PCS licensee whose operations constitute CMRS, PSCI can discontinue service without prior Commission authority.<sup>10/</sup> Discontinuing its single cell site operation in Calhoun County will render Calhoun County's March 24 Request moot. That action may completely deprive its local subscribers in Calhoun County of CMRS, or may cause some percentage to transition to an alternate wireless service that may well be no more capable from a safety and emergency perspective. Nevertheless, for the reasons explained above, the same outcome in terms of local subscribers is anticipated if PSCI attempts to implement either the network or handset solution under present circumstances. By discontinuing its Calhoun County operations until such time as that cell site can be migrated to an alternate technology in conjunction with the balance of the PSCI network and a Phase II solution can be implemented to meet more than a single PSAP request, PSCI at least avoids immense capital expenditures for technology that seems incapable of meeting Commission accuracy standards in rural areas and whose implementation will, most likely, still subject PSCI to enforcement liability. In terms of the relevant criteria, the service termination option is no worse than the network and handset alternatives from a customer safety perspective, and is unambiguously superior in terms of capital outlays and avoiding potential fines, forfeitures and other potential

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<sup>10/</sup> See Section 20.15(b)(3) of the Rules.

enforcement proceedings. Of course, PSCI submits that the ability of a subscriber to place a 911 call in the event of an emergency (even without locational functionality) is immeasurably preferable than not being able to place that call at all. Indeed, even if other CMRS carriers were somehow able to offer Phase II E911 compliant service in Calhoun County, the PSCI customers roaming into that area (since the PSCI cell site would no longer be on the air) would most likely still be unable to receive any locational service since these customers; prior to the time of completion of the PSCI digital overlay, as those customers would still have the incompatible TDMA, non-ALI capable handsets.

**C. Strict Enforcement Of Phase II Implementation Deadlines Here Will Undermine Section 20.18(f) and (g)'s Essential Purpose**

The Commission enacted Section 20.18(f) and (g) to ensure that wireless E911 will meet fundamental public safety needs “as quickly as reasonably possible.”<sup>11/</sup> Considering Calhoun County’s refusal to defer its March 24 Request, will PSCI’s implementation of any of the three options discussed above satisfy this “underlying purpose” of Section 20.18(f) and (g)? To the contrary, as demonstrated, local Calhoun County subscribers will experience a serious and unavoidable decline in their personal public safety if PSCI is compelled to proceed with any of the three options discussed above.

Under the network-based or handset-based option, financial responsibility for the steep capital expense will be imposed on the handful of Calhoun County subscribers, repelling many or all from continued utilization of PSCI’s CMRS offering. Subscribers that cancel wireless service altogether, as well as those that convert to a less-functional substitute, will clearly suffer a

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<sup>11/</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (Fourth Memorandum Opinion and Order in CC Docket No. 94-102), FCC 00-326, 15 FCC Rcd. 17442 ¶ 17 (2000), *recon. pending* (“Fourth MO&O”).

diminution in their overall personal safety and emergency/urgent situation communications capability. Such an outcome is irreconcilable with the Commission's logic and purpose in enacting Section 20.18. Surely, if CMRS users in a specific rural area and under particular circumstances become less safe due to application of an individual rule provision, that rule's purpose has been utterly dis-served.

That Section 20.18(f) and (g) is not working in the instant situation is made plain by PSCI's need to contemplate the option of suspending operation of its single Calhoun County cell site. Contraction of an established carrier's coverage footprint likewise cannot be consistent with Section 20.18's stated public safety objective. The requested waiver will pre-empt these counterintuitive and anomalous ramifications of enforcing Section 20.18 in this instance—a decline in personal safety of incumbent CMRS subscribers and a compressing of the reliable service area offered by PSCI. Accordingly, the waiver sought here by PSCI will undeniably serve the public interest, the last requirement for grant of a waiver enumerated in Section 1.925(b)(3)(i) of the Rules.

This waiver request is for a limited period of time and is intended to last only until such time as PSCI is able to complete its digital overlay. Moreover, the limited delay sought here should result in significantly more PSAPs serving within PSCI's FCC-licensed service area to be ready, willing and able to support Phase II E911 service. Indeed, PSCI had only asked for a temporary deferral of the Calhoun County E911 Phase II request; with the intent that PSCI, as with the Dade County PSAP, would work closely with the Calhoun County PSAP to hopefully ensure that the request was re-issued in a time frame that would more closely correspond with completion of the PSCI overlay and the deployment of E911 capabilities by other PSAPs in PSCI's service area. The instant petition thus carefully heeds the Commission's instruction that waiver requests from, *inter alia*, rural carriers

are “specific, focused and limited in scope, and [show] a clear path to full compliance.”<sup>12/</sup> Accordingly, the instant request is intentionally limited in scope, and provides a direct and unambiguous route to full compliance.<sup>13/</sup>

**D. Unique Circumstances Make Application of Section 20.18(f) and(g) Inequitable, Unduly Burdensome and Contrary to the Public Interest**

A “hard look” at the instant waiver proposal readily demonstrates that it also satisfies the alternate waiver test stated in Section 1.925(b)(3), *i.e.*, “unusual circumstances” make the rule’s application “unduly burdensome” for the waiver applicant. The unusual circumstances here result from a Phase II request that involves but a single county in PSCI’s sparsely populated and lightly traveled rural service area. Compounding these extraordinary facts, PSCI serves a minimal number of subscribers in Calhoun County. Finally, the unanticipated third-party decisions to abandon the TDMA protocol, coupled with the network and handset vendors decision not to develop ALI-capable handsets, places small, rural carriers such as PSCI in an extremely unique position. The self-evident inequity and burden attending this confluence of circumstances impelled PSCI to seek mitigation by asking Calhoun County PSAP in its March 28 Response to withdraw its Phase II request.<sup>14/</sup> A

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<sup>12/</sup> Fourth MO&O, 15 FCC Rcd 17442 (¶ 44).

<sup>13/</sup> The path to full compliance is, of course, based upon the availability of an economically Phase II E911-compliant solution that, in fact, works in rural deployments. PSCI has no ability to influence the time frame or the design of E911 solutions; solutions which have been designed toward meeting the needs of the large, urban carriers. Of course, technical inabilities beyond PSCI’s control are not properly matters for which PSCI should be held responsible.

<sup>14/</sup> “Where our rules impose a disproportionate burden on a particular carrier, the carrier may work with the public safety entities involved to mitigate that burden and, if necessary, may seek individual relief from the Commission.” *Order on Reconsideration, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington*, FCC 02-146, CC Docket No. 94-102, (rel. July 24, 2002), at paragraph 18.

similar request for deferral was agreed to by the Dade County PSAP. Regrettably, that proposal was refused, without explanation or reason by the Calhoun County PSAP.

Insisting that PSCI undertake a Phase II implementation involving hundreds-of-thousands or perhaps millions of dollars in capital costs, while still having no hope of complying with the accuracy requirements from a single-site TDMA network, with only a handful of subscribers from whom to recoup these costs, is the quintessential undue financial burden or economic inequity that Section 1.925(b)(3)(ii) was designed to redress. By attempting to require E911 Phase II compliance with only a single PSAP request, out of “sync” with other PSAPs in the PSCI coverage area and the PSCI network overbuild, the Calhoun County PSAP has insured that PSCI’s deployment burden would be intolerable and inequitable. Moreover, the highly likely prospect that this particular PSAP request may cause Calhoun County subscribers to terminate service or substitute a service that is less functional potently demonstrates that strict application of Section 20.18(f) and (g) will gravely undermine the public’s interest in an economical, efficient and ubiquitous wireless voice and data network.

### **III. CONCLUSION**

In light of the foregoing arguments, the Commission should grant the instant waiver request. However, should the Commission not grant this request, PSCI respectfully submits that, as a part of that denial, the Commission should set forth a clear path under which PSCI can deploy an E911 Phase II-compliant solution from the single-site TDMA network that would both comply with the Commissions rules and be economically deployable. The inability to do so would mandate the grant of the limited waiver sought herein to allow PSCI sufficient time in which to complete its digital



CERTIFICATE OF SERVICE

I, Ruth E. Garavalia, a secretary with the law firm of Kurtis & Associates, P.C., do hereby certify that I have this 9<sup>th</sup> day of May, 2003, had copies of the foregoing “Petition of Public Service Cellular, Inc. for Waiver of Section 20.18 of the Commission’s Rules” and associated Appendices sent via overnight courier service to the following:

Mr. Jerry W. Jackson, Director  
Calhoun County 9-1-1 District  
110 East 15th Street  
Anniston, Alabama 36201

/S/ Ruth E. Garavalia  
Ruth E. Garavalia