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AUG - 7 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 7, 2003

Marlene H Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W
Washington, DC 20554

Re: *American Samoa License, Inc*
Petition for Limited Waiver and Extension of Time and
Request to Accept Late File Document
CC Docket No 94-102
ATTN Wireless Telecommunications Bureau

Dear Ms Dortch

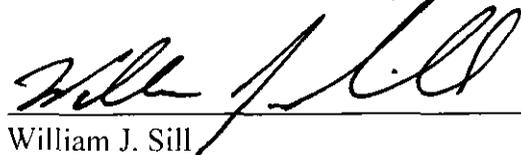
On behalf of American Samoa License, Inc ("ASLI"), pursuant to Section 1.3 of the Commission's rules, we hereby submit the attached Petition for Limited Waiver and Extension of Time and Request to Accept Late Filed Document, requesting a limited waiver of Section 20.18(c) of the Commission's rules regarding the ability of digital wireless system to be capable of transmitting 911 calls from text telephone ("TTY") devices. 47 C F R § 20.18(c).

Please contact the undersigned counsel if you should have any questions regarding this matter

Sincerely,

WILKINSON BARKER KNAUER, LLP

By.


William J. Sill

cc: Mindy Littell, Policy Division, Wireless Telecommunications Bureau
Andra Cunningham, Policy Division, Wireless Telecommunications Bureau

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

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AUG - 7 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules)
to Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)

CC Docket No. 94-102

To: Wireless Telecommunications Bureau

**PETITION FOR LIMITED WAIVER AND EXTENSION OF TIME
AND
REQUEST TO ACCEPT LATE FILED DOCUMENT**

American Samoa License, Inc. ("ASLI"), licensee of the Block B PCS license in the American Samoa MTA,¹ pursuant to Section 1.3 of the Commission's rules, hereby requests a limited waiver of Section 20.18(c) of the Commission's rules for complying with the June 30, 2002 deadline for digital wireless systems to be capable of transmitting 911 calls from text telephone ("TTY") devices, 47 C.F.R. § 20.18(c). Additionally, due to the late filed nature of the instant petition, and for the reasons outlined below, ASLI hereby requests that the Bureau accept this late filed document.

This waiver request provides the Commission with a description of the unique and profound challenges that ASLI, as a small rural wireless carrier serving the islands of Tutuila and Aunu'u in American Samoa, has faced in attempting to meet the Commission's E911 TTY deadline, particularly in light of the events which led up to the recent FCC approved transfer of control of ASLI.

¹ ASLI's call sign is KNLF302

I. BACKGROUND

ASLI is the sole PCS licensee operating on American Samoa. Previously, ASLI was a wholly owned subsidiary of American Samoa Telecom, LLC (“AST”), which in turn was 95% owned by Blue Sky Communications, Inc (“Blue Sky”).² Unfortunately, over the last few years, Blue Sky found itself under mounting financial pressures which ultimately resulted in Blue Sky’s liquidating its interest in ASLI. In February, ASLI became a wholly owned subsidiary of AST Telecom, LLC, which in turn is controlled 53% by SVCH.³

Blue Sky’s financial straits, which was the pre-cursor to the sale of its controlling interest in ASLI, resulted in many personnel, including those tasked with FCC regulatory efforts, being released from their employment. As a result of these circumstances, it appears that the requisite filing requesting a limited waiver of the Commission’s June 30, 2002 compliance deadline for digital wireless systems to be capable of transmitting E911 calls from TTY devices was not made.

Since that time, the new owners of ASLI have been working diligently to assess the operational and regulatory condition of the system and to take any necessary remedial action. Once the transfer of control was consummated on February 14, 2003, the new owners of ASLI began conducting an in-depth review of their system and determined that ASLI’s equipment was insufficient to support the provision of TTY over its system. ASLI then conducted a review of its internal files to determine whether former employees had made the requisite TTY waiver request and could find no evidence that a waiver request had been filed. Thus, in order to bring

² Blue Sky was owned by the following entities: Telecom Wireless Solutions, Inc (“TWS”) held a 40.29% interest, Stanford Venture Capital Holdings (“SVCH”) held a 29.77% interest, InterWave Communications International, Ltd. held a 19.02% interest, and Janis Wright held a 9.6% interest. TWS, in turn, is owned 22.86% by SVCH.

³ See Public Notice, Report No. 1387, released Jan. 8, 2003 referencing the grant of File No. 0001035545 authorizing the transfer of control of ASLI from AST to AST Telecom, LLC, granted Jan. 2, 2003.

the Commission's records up to date, the instant Petition and limited waiver request is being submitted. In light of the extenuating financial circumstances and changes in control that ASLI has experienced over the past year, ASLI respectfully requests that the Bureau accept this late filed Petition⁴ and grant an extension of time until March 1, 2004 to afford ASLI the time necessary to make its PCS system TTY compliant.

II. STANDARD FOR WAIVER

A waiver of the Commission's rules is generally granted for "good cause" shown, if 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 "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."⁵ The courts have found that waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁶ In the past, the Commission has found that there may be some instances where petitions for a waiver of its rules would be necessary, particularly if there are "technological issues" or "exceptional circumstances" which are preventing the deployment of such services.⁷

A waiver is warranted in the instant case. ASLI's former ultimate parent company withdrew or terminated regulatory personnel and resources at the very time that the waiver

⁴ ASLI regrets that this pleading is late filed, however as the above discussion makes clear, ASLI new owners were not in control of ASLI until well after the June 30, 2002 TTY deadline had passed. Thus, it was impossible for the new owners to have made a timely waiver request. See *ABC Cellular Corporation Page Now, Inc.*, DA 02-3474, 2002 FCC Lexis 6617 (Wireline Compet. Bur. Dec. 17, 2002).

⁵ 47 C.F.R. §§ 1.3, 1.925.

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) cert. denied, 409 U.S. 1027 (1972).

⁷ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442, 17457 (2000) ("Fourth MO&O").

request was due. ASLI's new owners inherited this situation and are using their best efforts to become TTY compliant as rapidly as possible even when faced with the twin challenges of being a small PCS carrier on an island 4,150 miles away from the U.S. mainland. Further, a grant of the waiver would be in the public interest as it would facilitate the expeditious provision of TTY service to the residents of, and visitors to, American Samoa⁸

III. THE UNIQUE CIRCUMSTANCES FACED BY ASLI WARRANTS GRANTING A LIMITED WAIVER OF ITS TTY E911 OBLIGATIONS

American Samoa, a U.S. Territory in the South Pacific, is approximately 4,150 from San Francisco. Of American Samoa's six islands, only four, Aunu'u, Ofu, Ta'u, and Tutuila, are habitable with a total population of 64,000. ASLI currently serves only two islands, Aunu'u and Tutuila. Given the size of its sole market, it is unsurprising that ASLI qualifies as a Tier III carrier under the Commission's recent E911 Phase II ALI deployment schedule for carriers.⁹

Under its new ownership structure and management, ASLI has been aggressively working with its vendors in order to ascertain how quickly it can become TTY E911 compliant. ASLI uses Nortel Networks ("Nortel") to control its Base Station System. ASLI has determined that in order to become TTY compliant, it will need to upgrade its Nortel Base System (BSS) from V.11 to V.12.4. ASLI has been requesting for several months that Nortel provide specific installation dates and cost figures in writing. Nortel only responded orally to ASLI's inquiries giving general delivery date and cost estimates. It was not until recently that ASLI received a final written quote from Nortel on the BSS upgrade. Upon receipt of this written quote, ASLI quickly issued a purchase order for the necessary equipment for its upgrade. Based on this

⁸ See *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)

⁹ 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)

written quote by Nortel. ASLI should be able to obtain the necessary hardware and software upgrades by the end of Q4 2003. ASLI will then need time to deploy and test the equipment. Accordingly, utilizing its best efforts, ASLI projects that it will need until March 1, 2004 to fully become compliant with its TTY obligations¹⁰

IV. WAIVER OF THE RULES AS REQUESTED WILL PROMOTE THE PUBLIC INTEREST

The Commission's decision to require digital-TTY compatibility was to enable TTY users to make emergency 911 calls and enjoy the benefits of digital wireless services. In order to realize these public interest goals, it is essential that the FCC allow a carrier with unusual circumstances the time necessary not only to obtain the requisite TTY hardware and software components, but to also thoroughly test them as well.

ASLI's TTY petition is not the first of its kind filed with the Commission. The Commission has considered and granted many petitions for waiver of its deadline for TTY compliance¹¹. In granting the more recent petitions, the Commission noted that the limited waivers will "only affect a small number of service areas for a limited amount of time."¹² Some of these petitions were for a full year from the June 30, 2002 deadline. Once ASLI became aware of its lack of TTY compliance it undertook corrective measures and as a result anticipates

¹⁰ ASLI is committed to supporting TTY service over its system. The only reason ASLI states that it "projects" that it will be able to become TTY compliant by March 1, 2004 rather than it "will" become compliant by that date is that given its status as a small carrier thousands of miles away from the US mainland, ASLI has witnessed the disparity of 'generally available' delivery dates and the dates that equipment is made available to ASLI. Moreover, in light of 9/11, the security matters involved in shipping the necessary equipment from France to American Samoa are significant and therefore result, at times, in significant delays, which in turn may delay ASLI's ability to install, test, and deploy the new equipment.

¹¹ See *In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order, 17 FCC Rcd 12084 (Wir Telecomm Bur June 28, 2002) ("TTY Waiver"), see also *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order, 14 FCC Rcd 1700 (1999), *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order, 14 FCC Rcd 12363 (Wir Telecomm Bur 1999).

¹² *TTY Waiver*, 17 FCC Rcd at 12092.

becoming fully compliant within less than a year of this filing. In essence, ASLI is requesting less than one year from this filing to become compliant with the FCC's TTY E911 requirements

ASLI's market contains only 64,000 people and to the best of ASLI's knowledge there is not a sizeable hearing impaired population on island. Significantly, ASLI did not find any evidence that there had been a TTY request made by anyone in American Samoa from the TTY June 30, 2002 deadline through February 14, 2003, the date upon which ASLI's transfer of control was consummated. In addition, ASLI has no knowledge of any TTY request from February 15, 2003 until July 31, 2003. Thus, there is a historical basis upon which to conclude that the number of potentially effected individuals is *de minimis*,¹³

ASLI's extension was designed to request the minimal amount of time necessary for ASLI to become TTY compliant. Grant of this limited waiver will permit ASLI to focus its attention and resources on obtaining and implementing the necessary TTY components in an expeditious manner. Accordingly, a grant of ASLI's requested waiver is in the public interest, as it will permit ASLI to provide reliable TTY E911 service to TTY users.

ASLI commits to keep the Commission abreast of its TTY progress, and thus will provide the Commission with quarterly status reports that will include specific data as to the progress of its TTY E911 implementation. In addition, ASLI will keep its subscribers and representatives of American Samoa's on-island disabled community advised of ASLI's progress.

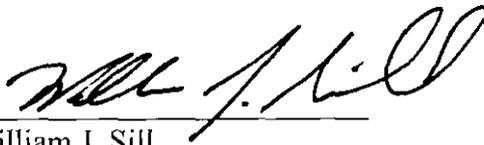
¹³ ASLI does not wish to suggest that even one request is insignificant or that it should go unheeded. ASLI pledges to obtain the requisite hardware and software to support TTY as rapidly as possible.

V. CONCLUSION

For the foregoing reasons, there is good cause exists to accept this late filed Petition. By granting the Petition, the FCC will further the public interest by affording ASLJ the minimum amount of time necessary to become TTY compliant

Respectfully submitted,

AMERICAN SAMOA LICENSE, INC.

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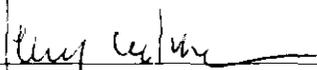
Its Attorneys

August 1, 2003

DECLARATION OF LEWIS WOLMAN

I, Lewis Wolman, am an officer of American Samoa License, Inc., and I hereby certify that to the best of my knowledge and belief the information contained on this form and the attached document is complete and accurate.

Signed:



Date:

August 1, 2003
