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August 29, 2003

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AUG 29 2003

Marlene H Dortch
Secretary of the Commission
Federal Communications Commission
445 - 12th Street, S.W., Room TW-A325
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Attn. Wireless Telecommunications Bureau – Policy Division

Re. *Cellular Phone of Kentucky, Inc*
Petition for Limited Waiver and Extension of Time -- CC Docket No. 94-102

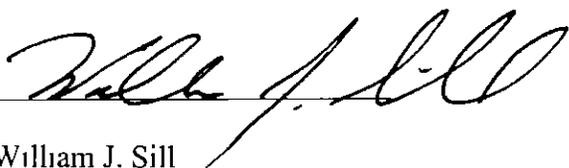
Dear Ms. Dortch

Cellular Phone of Kentucky, Inc (“CPK”) hereby submits its Petition for Limited Waiver and Extension of Time. Note that a telecopy of the certification is being provided with this filing. The original will be submitted to the Commission upon receipt.

Please do not hesitate to contact the undersigned with any questions that you may have at (202) 783-4141

Sincerely,

WILKINSON BARKER KNAUER, LLP

By: 
William J. Sill

Attachment

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AUG 29 2003

Before the
Federal Communications Commission
Washington, DC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
Phase II Compliance Deadlines for Non-)
Nationwide CMRS Carriers)

To Wireless Telecommunications Bureau, Policy Division

**PETITION FOR LIMITED WAIVER
AND EXTENSION OF TIME**

Cellular Phone of Kentucky, Inc. ("CPK"), pursuant to Section 1.3 of the Commission's rules, 47 C F R § 1.3, hereby requests a limited waiver of Section 20.18(g)(1) of the Commission's rules, 47 C F R § 20.18(g)(1), as amended by the Commission in its *Order to Stay* in the instant proceeding,¹ requiring carriers to begin selling and activating location-capable handsets by September 1, 2003, have 25% of all new activated handsets be location capable by November 30, 2003, have at least 50% of all new activated handsets be location capable by May 31, 2004, and have 100% of all new digital handset activated be location capable by November 30, 2004

I. Background

CPK is the cellular licensee of Station KNKN965 operating a TDMA digital system on the block B1 portion of the Kentucky 6 – Madison RSA. CPK is truly a small wireless carrier. Its cellular system covers three sparsely populated counties in the state

¹ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, *Order to Stay*, FCC 02-210, 17 FCC Rcd 14.841 (2002)

of Kentucky. The largest of these counties has a population of less than 56,300, and the smallest has approximately 16,600 people.² Most MSAs, and many RSAs, have single cities with populations greater than all of CPK's three counties combined, a total of approximately 125,514 people.³

II. A Limited Waiver is Necessary and Warranted

A. Due to Lack of Available Handsets, CPK Cannot Begin Selling ALI-Capable Handsets by September 1, 2003

As a small rural cellular provider, CPK is working diligently to ensure its ability to support any E911 Phase I or Phase II requests that come its way. However, having selected to implement TDMA technology in its system, CPK now finds itself unable to acquire any ALI-capable handsets that will operate on its TDMA system. CPK has been in contact with several different handset distributors all of which acknowledge that the manufacturers that they represent do not carry TDMA ALI-capable handsets.

The difficulties faced by small rural carriers, such as CPK, deploying TDMA technology are not new to the Commission. In response to its requirement that all digital wireless service providers be capable of transmitting 911 calls over TTY devices, many small rural carriers submitted petitions for extensions of time due to the costs involved with upgrading their TDMA systems. The Commission noted:

[b]ecause of recent developments related to larger carriers moving away from TDMA and the resulting loss of vendor support for these systems, these small carriers are in an unusual position of having to change their underlying technology on the eve of the Commission's regulatory deadline for implementing digital-TTY capability in their systems. These are special circumstances warranting some deviation from the general rule.⁴

² Commercial Atlas and Marketing Guide (Rand McNally, 133rd Ed., 2002)

³ *Id.*

⁴ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Order*, 17 FCC Rcd 12,084, 12,092 (WTB June 28, 2002) ("E911 Order")

As a result of its sustained efforts, CPK was able to upgrade its system to become TTY compliant, however it simply has not been able to find a vendor to provide it with ALI-capable handsets. As the Commission is aware, due to migration away from TDMA technology by the larger carriers, manufacturers are reluctant to use their resources to develop a TDMA ALI-capable handset, leaving the smaller carriers such as CPK without a TDMA handset solution.

CPK notes it is not alone in its TDMA dilemma. Many small rural carriers with TDMA systems have found themselves in the same posture as CPK. Numerous petitions and waiver requests have already been filed with the Commission, seeking relief similar to that requested by CPK.⁵

Due to the various problems CPK has encountered in its attempts to make its TDMA system compliant with TTY and E911 regulatory requirements, CPK has determined that it will be necessary for it to undertake the significant expense and effort of building a CDMA overlay to its system. Such an undertaking constitutes an enormous one time expense, particularly for a small carrier such as CPK. Accordingly, CPK anticipates that it will have the necessary funding by early 2004 in order to implement its CDMA overlay by Q3 or Q4 of 2004. Once the overlay is completed, CPK will be able to obtain CDMA ALI-capable handsets which are readily available. Thus, CPK requests

⁵ See *Petition of Minnesota Southern Wireless Company dba Hickory Tech, for Waiver of Section 20.18 of the Commission's Rules*, filed Aug. 25, 2003, *Petition of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular, for Waiver of Section 20.18 of the Commission's Rules*, filed Aug. 25, 2003, *Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18 of the Commission's Rules*, filed Aug. 25, 2003, *OTZ Telecommunications, Inc., Petition for Waiver of Section 20.18(g) of the Commission's Rules*, filed Aug. 25, 2003, *Leaco Rural Telephone Cooperative, Inc., Petition for Waiver of Section 20.18(g) of the Commission's Rules*, filed Aug. 11, 2003. See also *Petition Pursuant to 47 U.S.C. §160C for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18(h) filed by the Tier III Coalition for Wireless E911*, WT Docket No. 02-377, at p. 23, filed Nov. 20, 2000.

in Section C *infra*, a limited waiver of Section 20.18(g)(1) of the Commission's rules until Q4 of 2004 to begin selling ALI-capable handsets

B. Good Cause Is Shown For A Limited Waiver

A waiver of the Commission's rules is generally granted for "good cause" shown, if "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."⁶

Small rural carriers, such as CPK, are uniquely affected by the Commission's various regulatory obligations. But small carriers using TDMA technology experience an even greater difficulty meeting these regulatory obligations. As noted above, many of the larger carriers have migrated away from TDMA technology leaving a handful of small carriers still utilizing this technology. Manufacturers are reluctant to use their research and development funds to meet the needs of a few small carriers using a technology that many are steering away from. This leaves CPK and other similarly situated small carriers with the inability to find the necessary ALI-capable handsets needed to comply with the Commission's requirements.

The FCC has taken into account technology based barriers when they delay or preclude wireless carriers from meeting the FCC's deadlines. When Nextel experienced difficulties meeting the FCC's various E911 implementation schedules due its choice of iDEN technology, the FCC found that "it is reasonable to expect that Nextel might find it more difficult to meet the same schedule as carriers employing the more common air interfaces, because location technology vendors and equipment manufacturers will have

⁶ 47 C.F.R. §§ 1.3, 1.925, *Northeast Cellular Telephone Co v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *WAT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972)

substantial incentives to introduce ALI products first for those segments of the market with larger market share”⁷ The same holds true today for carriers using TDMA technology. The vendors have no incentive to introduce or carry ALI products because there are not enough carriers using this technology.

As a small carrier, CPK has limited resources in terms of time, money and manpower with which to simultaneously maintain reliable service while expanding its system’s capacity and coverage area. CPK’s resources are depleted further as it works to comply with the Commission’s important public policy initiatives, including Communication for Law Enforcement Act (“CALEA”), Text Telephone Devices (“TTY”) and Enhanced 911 (“E-911”). While remaining committed to these projects, in today’s economy CPK’s monetary as well as non-monetary resources are being stretched thin by the need to maintain reliable service, to increase its system’s capacity and to comply with the Commission’s mandates.

The inability to acquire TDMA handsets leaves CPK with two choices. 1) upgrade its TDMA network so that its Phase II solution will be network-based, or; 2) use CPK’s limited resources to implement another technology overlay, in CPK’s case CDMA, so that the necessary ALI-handsets are readily available to CPK’s subscribers. Because CPK is a small carrier with limited funds, it does not have the ability to simultaneously undertake both solutions, i.e., upgrade its TDMA network while constructing a CDMA overlay. Rather it must select the solution that in the long run will provide it prove the most beneficial for both its subscribers and Ramcell. Given the rural nature of its system, and the spacing of its sites, Ramcell is concerned that a network-

⁷ *Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc*, 24 CR 1125, 1131 (2001)

based solution may be more difficult to achieve than a CDMA overlay. After considerable deliberation, CPK has elected to implement a CDMA overlay of its system.

C. CPK Requests a Limited Extension

As previously mentioned, in order to comply with the Commission's rules, CPK has determined that it will overlay its current TDMA network with a CDMA solution so that CDMA ALI-capable handsets, which are readily available, will work in CPK's system. In order to secure the proper financing and implement the CDMA overlay, CPK estimates it will need an extension of the September 1, 2003 deadline until October 31, 2004; an extension of the November 20, 2003 deadline until January 31, 2005; an extension of the May 31, 2004 deadline until May 31, 2005, and; an extension of the November 30, 2004 deadline until September 30, 2005. CPK notes, however, that it does not anticipate needing an extension of the December 31, 2005 deadline by which the penetration of location capable handsets among its subscribers must reach 95%. Rather CPK envisions a quick progression of the deployment of ALI-capable handsets once its system is overlaid with CDMA technology.

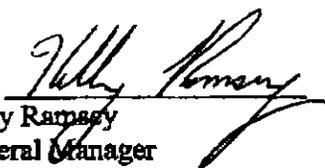
In order to provide the Commission with an update of its progress in meeting its goal of completing its CDMA overlay by Q4 of 2004, CPK will provide the Commission with a Status Report three months before each extended deadline (*i e*, the first report would be filed on July 30, 2004).

CONCLUSION

For the foregoing reasons, CPK requests a temporary waiver of Section 20.18(g)(1), as amended of the Commission's rules and an extension of time as described herein to begin selling and activating location capable handsets. CPK respectfully suggests that the grant of the waiver and the limited extension would be in the public interest.

Respectfully submitted,

CELLULAR PHONE OF KENTUCKY, INC.

By: 
Kelly Ramsey
General Manager
Cellular Phone of Kentucky, Inc.

August 28, 2003