

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

In the Matter of	)	
	)	
Waiver of the Rules of the Federal	)	CC Docket No. 94-102
Communications Commission Relating	)	
to the Transmission of Digital Wireless	)	East Kentucky Network, LLC
911 Calls from TTY Devices	)	d/b/a Appalachian Cellular

To: Chief, Wireless Telecommunications Bureau

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

1. East Kentucky Network, LLC d/b/a Appalachian Wireless (hereinafter "Appalachian"), by its attorneys, respectfully requests a waiver and further extension of Section 20.18(c) of FCC Rules, 47 U.S.C. §20.18(c). Specifically, Appalachian seeks a waiver and additional four-month extension of time by which digital wireless operators must 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). This request supplements Appalachian's Petition filed on July 15, 2002, requesting an extension through December 31, 2003.

2. As set forth below, because circumstances continue to exist wherein digital 911 TTY capability is not yet commercially available to Appalachian in a practical manner, Appalachian requests a further, limited 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 extended December 31, 2003 deadline for digital 911 TTY implementation.<sup>1/</sup> The Commission has specifically provided that a waiver would be granted in such instances justified by technology-related issues or exceptional circumstances.<sup>2/</sup> As indicated below, Appalachian's request for additional E911 TTY relief is specific, focused, and limited in scope. In keeping with the Commission's consideration of special circumstances affecting 911 services upgrades, Appalachian has undertaken concrete steps to come as close as possible to full compliance, has documented its efforts, and has a clear path to full compliance.<sup>3/</sup>

### **Background and Facts**

3. The FCC adopted rules to implement Section 2(b) of the Wireless Communications and Public Safety Act of 1999, fulfilling the Congressional directive that wireless communications

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<sup>1/</sup> "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.

<sup>2/</sup> 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).

<sup>3/</sup> Public Notice titled "Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification Rules" released October 19, 2001 (footnotes omitted), citing the Commission's Fourth Memorandum Opinion and Order in CC Docket No. 94-102, 15 FCC Rcd 17442, at 17457 (2000).

operators deploy a nationwide, seamless communications infrastructure for emergency services.<sup>4/</sup> Appalachian has sought diligently to abide with the Commission established directives for the deployment of digital 911 TTY services and the provisions set forth in Fourth Report and Order, CC Docket No. 94-102, FCC 00-436, released December 14, 2000 regarding enforcement of the requirement that licensees providing service on digital wireless systems be able to transmit 911 calls made by individuals with speech or hearing disabilities. Appalachian has consistently filed Quarterly Status Reports with the Commission in this matter, and will continue to do so.

4. Appalachian provides TDMA and AMPS-based Cellular Radiotelephone Services to just over 38,000 subscribers in Kentucky RSAs 9 and 10, which are very rural, mountainous, high-cost service areas. Appalachian maintains a record of good quality service to consumers and to special needs such as TTY capability. However, compliance with the digital 911 TTY requirements has not been “reasonably achievable” by Appalachian for both technical and financial reasons. TTY upgrade of the TDMA system was technically infeasible until recently. At this point, however, Appalachian has established a firm plan for implementation of a CDMA-based air interface technology by May 1, 2004. For Appalachian to implement a TDMA-based system useful for only the next four months would result in a stranded investment of at least \$40,000, a truly burdensome amount for a small, rural operator such as Appalachian.

5. In order for Appalachian to comply with the 911 TTY capability requirements, it would have to upgrade or replace existing operating systems software and other facilities at great cost, and at a crucial time of imminent movement away from Appalachian’s TDMA infrastructure. It would be contrary to the public interest to financially jeopardize Appalachian with enforcement of the 911

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<sup>4/</sup> Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, §2(b).

TTY implementation requirements before the company initiates CDMA platform services, and certainly Appalachian's subscribers do not have the means to pay higher subscription rates to cover the costs of TDMA-based 911 TTY services. The population of Appalachian's service areas is low, and the people are of very modest income. Appalachian submits that due to these circumstances the costs for digital 911 TTY can be justifiably postponed. If Appalachian is permitted to accomplish digital 911 TTY installation in sync with installation at Appalachian's CDMA overlay, Appalachian can implement digital 911 TTY in a most cost efficient manner, to the full benefit of its subscribers

**Alternative Means of Emergency TTY Calling Remain in Place**

6. Appalachian continues to provide 911 TTY capability on its analog system, to the benefit of persons with speech and hearing disabilities. Appalachian Wireless continues to conduct marketing, distribution and consumer education programs to inform subscribers of the limits on their use of the TTY capability on Appalachian Wireless' network. Subscribers are also regularly informed that TTY devices are available on the local telephone company's wireline service. Appalachian Wireless' employees and customer care representatives provide customers with updated estimates as to when digital TTY service will be available on Appalachian's network. Methods of communication include using billing inserts and customer letters, as well as direct contact at retail outlets and responses to customer telephone inquiries. Efforts are coordinated with the disability community. Appalachian recognizes the value of offering TTY/E911 connections as a part of its wireless digital service, and looks forward to providing the feature as a matter of public health and safety and as a matter of good business practice.

### **Path To Compliance**

7. Appalachian has a concrete plan for achieving full compliance. Implementation of its CDMA system this spring will render the system fully compliant. The new platform will enable TTY users to make 911 calls over the network. The high cost of achieving 911 TTY capability on the TDMA network for such a short time interval would be an unjust burden to place upon Appalachian in light of the impending deployment of the new digital platform.

### **Justification for Further Extension of Time**

8. Appalachian requests a additional 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. A further extension of time to comply will allow Appalachian, which offers a high quality network in very rural areas, to implement digital 911 TTY in a fashion that will greatly benefit Appalachian's subscribers and permit a logical transition within Appalachian's network infrastructure.

9. Generally, the Commission's rules may be waived when there is good cause shown<sup>5/</sup> and "when special circumstances warrant deviation from the general rule, and such deviation will serve the public interest."<sup>6/</sup> In the context of E911, the Commission has recognized that individual waivers that are "specific, focused and limited in scope, and with a clear path to compliance" may be granted where due to "technology-related issues" or "exceptional circumstances," a wireless carrier is unable

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<sup>5/</sup> 47 C.F.R. § 1.3..

<sup>6/</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, at 17457; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

to meet the established deadline.<sup>7</sup> As explained herein, Appalachian's request satisfies this standard. Appalachian has presented a waiver request that is specific, focused and limited in scope.

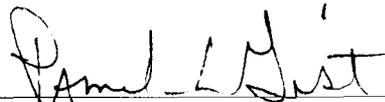
### **Conclusion**

For the reasons explained, Appalachian requests a waiver and further extension of the Commission's requirements for transmission of 911 calls made from TTY devices using digital wireless systems, and, in particular, an additional four-month extension, through May 1, 2004, for commencement of compliance with Rule Section 20.18(c). Appalachian's showing herein is consistent with the requirements for 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 and further extension be granted as proposed.

Respectfully submitted,

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

By: \_\_\_\_\_



Pamela L. Gist  
Its Attorney

Date: January 14, 2004

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<sup>7</sup> Id.

**DECLARATION**

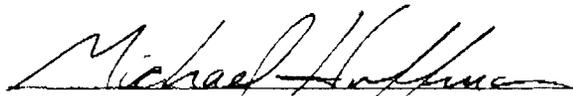
I, Michael Huffman, hereby state and declare:

1. I am Controller of East Kentucky Network, LLC, d/b/a Appalachian Wireless, a Cellular Radiotelephone Services operator and the petitioner herein.

2. I am familiar with the facts contained in the foregoing "Supplement To 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 14th day of January 2004.



Michael Huffman, Controller  
East Kentucky Network, LLC  
d/b/a Appalachian Wireless

## CERTIFICATE OF SERVICE

I, Daniel Ladmirault, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 14<sup>th</sup> day of January, 2004, sent by first-class mail, a copy of the foregoing SUPPLEMENT TO PETITION FOR WAIVER AND EXTENSION OF DIGITAL WIRELESS 911 TTY REQUIREMENTS to the following:

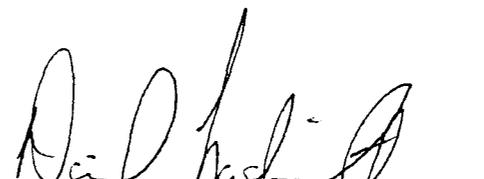
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