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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 14, 2004

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

Attn: Wireless Telecommunications Bureau

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

Dear Ms. Dortch:

Cellular Phone of Kentucky, Inc. d/b/a Ramcell of Kentucky ("CPK") hereby submits its Supplement and Further Petition for Limited Waiver and Extension of Time. Note that a facsimile of the signature page 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
J. Wade Lindsey

Attachment

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APR 14 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

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

Cellular Phone of Kentucky, Inc. d/b/a Ramcell of Kentucky ("CPK"), pursuant to the Commission's October 3, 2003 *Stay Order*¹ and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby supplements its Petition for Limited Waiver and Extension of Time² ("August 29 Extension Request") and requests a further extension and limited waiver ("Further Extension Request") of Section 20.18(g) (1) of the Commission's rules, 47 C.F.R. § 20.18(g)(1), setting forth the deadlines for carriers to begin selling and activating location-capable handsets. Since its August 29 Extension Request, CPK has worked in good faith to forward its E911 Phase II deployment goals, however, due to unforeseen obstacles, CPK will require the further extension of its compliance deadlines as set forth herein. CPK submits that good cause exists to grant an additional six (6) month extension of the Section 20.18(g)(1) benchmarks.

¹ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket 94-102, *Order to Stay*, FCC 03-241, 18 FCC Rcd 20,987 (2003) ("Stay Order").

² See *Petition of Cellular Phone of Kentucky, Inc for Limited Waiver and Extension of Time of Section 20.18(g) of the Commission's Rules*, filed August 29, 2003 ("August 29 Extension Request").

I. BACKGROUND

On October 10, 2003, The Commission stayed the application of Section 20.18 (d), (e), (f), (g) and/or (h), with respect to multiple requests from Tier III carriers, including CPK's August 29 Extension Request, for a temporary waiver of these rules, until the Commission either ruled on the waiver requests or six (6) months from the release date of the Stay Order.³ In the interim, the Commission indicated that these Tier III carriers could supplement their original waiver requests with additional evidence supporting their extension requests.⁴ The Commission also reiterated its earlier finding that such waiver request supplements should "be specific, focused, and limited in scope, with a clear path to full compliance."⁵

As detailed in the August 29 Extension Request, having found it impossible to make its TDMA system compliant with TTY and E911 regulatory requirements, CPK determined 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 and it took longer than anticipated for CPK to secure the necessary funding for this effort. That funding is now in place, but given the delays associated with acquiring the funding, CPK requires an additional extension of six (6) months in which to comply with the Section 20.18(g)(1) benchmarks. Specifically, CPK needs to extend the benchmarks as follows: (1) an extension of the deadline to begin selling ALI-capable handsets until October 4, 2004; (2) an extension of the deadline to have 25% of new activations be ALI-capable until July 29, 2005; (3) an extension of the deadline to have 50% of new activations be ALI-capable until November 30, 2005; (4) an extension of the deadline to have 100% of new activations be ALI-capable until

³ *Stay Order*, 18 FCC Rcd at 20,995 ¶ 20 (2003).

⁴ *Id.*

⁵ *See* 18 FCC Rcd at 20994, ¶17, 22 (citing *Non-Nationwide Carriers Order*, 17 FCC Rcd 14842, ¶ 6).

March 31, 2006; and (5) an extension of the deadline by which the penetration of location capable handsets among its subscribers must reach 95% until June 30, 2006.

II. GOOD CAUSE EXISTS TO GRANT THE INSTANT 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 Good cause exists to grant CPK an additional extension of time.

A. CPK Must Construct a New Network in Order to Comply with the Commission's E911 Requirements.

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 of Kentucky. The largest of these counties has a population of less than 56,300, and the smallest has approximately 16,600 people.⁷ 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.⁸

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, as CPK detailed in its August 29 Extension Request, having implemented TDMA technology in its system, CPK found itself unable to acquire any ALI-capable handsets that will operate on its TDMA system.

⁶ 47 C.F.R. §§ 1.3, 1.925; *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 Commercial Atlas and Marketing Guide (Rand McNally, 135th Ed., 2004).

⁸ *Id*

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.⁹

The difficulties faced by small rural carriers, such as CPK, deploying TDMA technology are not new to the Commission. As the Commission is aware, due to migration away from TDMA technology by the larger carriers, manufacturers are reluctant to apply 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 position as CPK. Numerous petitions and waiver requests have already been filed with the Commission, seeking relief similar to that requested by CPK.¹⁰ In fact, recent supplemental filings reiterate the finding that TDMA handsets are not available.¹¹

The FCC has taken into account technology based barriers when they delay or preclude wireless carriers from meeting the FCC's deadlines. For example, when Nextel experienced difficulties meeting the FCC's various E911 implementation schedules due to 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

⁹ August 29 Extension Request at page 2. See also Exhibit I attached.

¹⁰ 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. §160© 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.

¹¹ See *Supplement to South No. 5 RSA Petition for Waiver of Section 20.18(g) of the Commission's Rules*, filed November 10, 2003; *Supplement to Artic Slope Telephone Association Cooperative, Inc. Petition for Waiver of Section 20.18 of the Commission's Rules*, filed December 1, 2003; *Supplement to Leaco Rural Telephone Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules*, filed November 11, 2003.

location technology vendors and equipment manufacturers will have substantial incentives to introduce ALI products first for those segments of the market with larger market share.”¹² 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.

Due to this inability to acquire TDMA handsets CPK elected to devote its limited resources to implementing a CDMA overlay of its system. ALI-capable CDMA handsets are readily available to CPK’s subscribers.

B. CPK Has Demonstrated a Clear Path to Compliance

Building a CDMA overlay to its system constitutes an enormous undertaking involving the expenditure of several million dollars and substantial investments of time and other resources. CPK has worked diligently to accomplish this objective. CPK has now secured the funding to begin deploying its CDMA overlay by the fourth quarter of 2004. The CDMA overlay deployment will occur in stages, with the final work to be completed by the second quarter of 2006.

This implementation schedule, however, means that CPK will be unable to meet the extended deadlines set forth in its August 29 Extension Request. CPK does, however, expect to be able to begin selling ALI-capable CDMA handsets by October 2004. While these handsets will have only limited value on CPK’s network until the CDMA overlay is complete, CPK expects that CDMA handsets will have significant value to customers who roam frequently to CDMA based systems.

Two other factors should promote the expeditious deployment of CDMA ALI-capable handsets. CPK envisions a deployment of ALI-capable handsets will quickly accelerate as CPK

¹² *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).

rolls-out CDMA technology. In addition, prepaid subscribers constitute a significant portion of CPK's customer base and prepaid customers tend to replace their handsets more frequently than post-paid customers.

Thus, CPK believes that it has a specific and focused plan for compliance with Section 20.18(g)(1) of the Commission's Regulations. This compliance plan, however, necessitates an additional extension of the Section 20.18(g)(1) benchmarks as described in Section I above.

C. Coordination with E911 Coordinators and PSAPS and the Commission

The Commission indicated in the *Stay Order* that it expected carriers seeking waivers to continue to work with "the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines."¹³ CPK continuously coordinates with its local PSAPs during its E911 deployment. CPK's E911 implementation manager, Syniverse Technologies (f/k/a Telecommunications Service Incorporated), routinely meets with the local PSAPs to set and monitor deployment goals. Currently, CPK has not yet received any requests for Phase II E911 service, however, when it does, it anticipates that such close coordination will continue through the Phase II implementation.

In addition to continuing its coordination efforts with the relevant PSAPs, CPK will also work to keep the Commission aware of its progress in completing its CDMA overlay. To that end, CPK will provide the Commission with an update of its progress in meeting its goal of completing its CDMA overlay by Q2 of 2006, 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 2, 2004).

¹³ *Stay Order*, 18 FCC Rcd at 20,997 ¶ 28 (2003).

III. CONCLUSION

For the foregoing reasons, CPK requests a limited, temporary waiver of Section 20.18(g)(1), as amended of the Commission's rules and a further 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.

April 13, 2004

EXHIBIT I



August 28, 2003

CellStar/Motorola

Dear Ted

As you know, Ramcell of Kentucky has been looking for quite some time for ALI-capable TDMA handsets to sell to its customers in compliance with its FCC mandated regulations. As part of that effort, Ramcell of Kentucky has worked closely with Motorola to obtain ALI-capable TDMA handsets. It is our understanding that such a product is currently not offered by Motorola at this time. Additionally, it is our understanding that such a product will not be offered anytime in the near future by Motorola.

If our understanding concerning the unavailability of ALI-capable TDMA handsets from Motorola is correct, please sign where indicated below. Two copies of this letter are provided, please sign and return one copy to me and keep the other copy for your records.

If your plans to offer ALI-capable TDMA handsets change, please contact me. Ramcell of Kentucky believes that Motorola manufactures quality handsets and would be interested in offering your ALI-capable TDMA handsets if Motorola decides to design, manufacture and make them generally available.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Kelly Ramsey".

Kelly Ramsey
General Manager
Ramcell of Kentucky

A handwritten signature in black ink, appearing to be "Ted".

Motorola