

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

In the Matter of)
)
Revision of the Commission's Rules) **CC Docket No. 94-102**
To Ensure Compatibility With)
Enhanced 911 Emergency Calling)
Systems)

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR WAIVER OR TEMPORARY STAY

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Summary

Copper Valley Wireless, Inc. (“Copper Valley”) requests a temporary waiver or extension of time, up to and including December 31, 2005, of the ALI-capable handset activation deadlines specified in Paragraph No. 33 of the Commission’s E-911 Small Carriers Order to Stay (CC Docket No. 94-102), FCC 02-210, released July 26, 2002.

Copper Valley is a small wireless carrier serving a sparsely populated rural area in the State of Alaska. Copper Valley’s cellular system network equipment is first generation, analog-only equipment manufactured by Plexsys. The equipment has been discontinued by the manufacturer, and no support services are available for the equipment. As a result, the equipment cannot be made E-911 Automatic Location Information (“ALI”) compliant. Copper Valley intends to replace the equipment with new, state-of-the-art equipment which will have a digital transmission component. Until the equipment has been selected and installed, the activation of additional ALI-capable handsets is a vain act because they will not work on the present system; and because the network technology ultimately selected will determine the types of handsets the system will be able to serve. Copper Valley does not have the financial resources to acquire and activate ALI-capable handsets that it will ultimately have to replace. Copper Valley has received no Public Safety Answering Point (“PSAP”) requests for Phase I or Phase II E-911 service.

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REQUEST FOR WAIVER OR TEMPORARY STAY

Copper Valley Wireless, Inc. ("Copper Valley"), pursuant to Sections 1.3, 1.925(a) and 1.925(b)(3) the Commission's Rules, hereby requests a further temporary stay or a waiver, up to and including December 31, 2005: a) within which to ensure that at least 25 percent (November 30, 2003 deadline), 50 percent (May 31, 2004 deadline), 100 percent (November 30, 2004 deadline) of all new handsets activated on its cellular system are location-capable, Phase II E-911 handsets, as required by Paragraph No. 33 of the Commission's E-911 Small Carriers Order to Stay (CC Docket No. 94-102), FCC 02-210, released July 26, 2002 (the "July 26, 2002 Stay Order"); and b) of the requirement that penetration of location-capable handsets among its subscribers reaches 95 percent no later than December 31, 2005, as required by Paragraph No. 33 of the July 26, 2002 Stay Order. Copper Valley was granted a temporary stay of the requirements of Section 20.18(g) of the Rules in the Commission's July 26, 2002 Stay Order. Under the definitions set forth in the July 26, 2002 Stay Order, Copper Valley is a Tier III carrier providing non-nationwide Commercial Mobile Radio Service ("CMRS"). Copper Valley intends to implement a handset-based Phase II E-911 Automatic Location Information ("ALI") solution. Insofar as relevant here, under the terms of the relief granted in the July 26, 2002 Stay Order, Copper Valley is required to: (A) generally provide Phase II E-911 ALI service by September 1, 2003 or the date occurring six months following receipt of a valid Public Safety

Answering Point (“PSAP”) request, whichever is later;¹ and (B) ensure that specified percentages of all new handsets activated are location-capable no later than the dates specified in Paragraph No. 33 of the July 26, 2002 Stay Order. In support hereof, the following is shown:

I) Background

1. Copper Valley is the licensee of Cellular Radiotelephone Service Station KNKQ401, the Frequency Block B cellular system serving the B4 Segment of the Alaska 2 – Bethel Rural Service Area. Copper Valley’s service area is sparsely populated. Copper Valley is a wholly-owned subsidiary of Copper Valley Telephone Cooperative, Inc., a telephone cooperative that is owned by its subscribers.

2. In its “E-911 Phase II Status Report,” filed November 9, 2000, Copper Valley stated that it would deploy a handset-based Phase II E-911 ALI technology, subject to and contingent upon the ultimate availability of cost-effective ALI equipment that is compatible with its existing cellular system equipment (equipment that has been discontinued by the manufacturer). As noted in the November 9, 2000 status report, Copper Valley’s system utilizes analog equipment manufactured by Plexsys, equipment that has been discontinued by the manufacturer and that is no longer being supported by the manufacturer. The handset-based proposal set forth in the November 9, 2000 status report remains unchanged.

3. Because Copper Valley’s cellular system equipment and software has been discontinued by the manufacturer and is no longer being supported by the manufacturer, the system has no digital transmission capability.

4. As reported in Copper Valley’s “E-911 Interim Report,” filed July 30, 2003, there are six

¹ Because Copper Valley has not received any PSAP requests for Phase II service, no waiver of this particular term of the July 26, 2002 Stay Order is requested because Copper Valley is not

PSAPs operating in Copper Valley's service area, not including the United States Coast Guard (which arguably makes for a seventh PSAP). To date, Copper Valley has not received any PSAP requests for either Phase I or Phase II E-911 service.

5. The July 30, 2003 interim report also stated that Copper Valley has been unable to locate any E-911 equipment and software which is compatible with its cellular system network equipment. Also as of that date, Copper Valley had been unable to locate ALI-capable handsets that would operate on its system.

6. Subsequent to the filing of the July 30, 2003 Interim Report, Copper Valley located an ALI-capable handset model that is compatible with the analog RF transmission component of its system. However, because the network equipment and software has been discontinued by the manufacturer and is no longer being supported by the manufacturer, there is no network equipment or software available that will enable Copper Valley's system to in any manner process the ALI data elements, or transmit those ALI data elements to any PSAP. In addition, Copper Valley's network equipment cannot be retrofitted to render it capable of processing the ALI data elements and transmitting them to any PSAP. Thus, for all practical purposes, the handsets are useless. Accordingly, the further activation of ALI-capable handsets is a vain act at this time since they will not perform as designed on Copper Valley's system. The additional extension of time requested to meet the remaining ALI-capable handset activation benchmarks will allow Copper Valley adequate time to replace its network equipment having a digital air interface component, which will make the system E-911 capable. Any ALI-capable handsets activated on the system at this time would just have to be replaced at a future date once the new network equipment has been installed.

currently subject to any requirement requiring relief.

7. The Plexsys equipment utilized by Copper Valley is a first generation, analog-only AMPS cellular system. As noted above, the system has no digital transmission capability. The companies that initially designed, later acquired, and then provided technical service to the Plexsys cellular system equipment product line are no longer in business. Upon information and belief, Plexsys was acquired in 1995 or 1996 by COMSAT RSI of Herndon, Virginia, which subsequently discontinued all support services for the Plexsys product line. Two employees originally with Plexsys (and later with COMSAT RSI) later started Blue Ridge Communications to provide technical support for the Plexsys product line, but ultimately declared bankruptcy and went out of business. Thus, no support services of any kind currently exist for the equipment.

8. As noted above, Copper Valley is a Tier III CMRS carrier, as defined in the Commission's July 26, 2002 Stay Order. As of April 30, 2004, Copper Valley had 1,162 subscribers. Copper Valley had gross revenues of \$1,704,500.00 in calendar year 2003; \$1,807,967.00 in calendar year 2002; and \$1,959,730.00 in calendar year 2001. As these figures demonstrate, annual gross revenues are declining. The net profit for calendar year 2003 was only \$179,663.00; **with net losses** of \$306,577.00 and \$656,442.00 for calendar years 2002 and 2001, respectively. Thus, Copper Valley is an extremely small CMRS carrier with minimal revenues and limited financial resources at its disposal. In this regard, given its extremely small size and limited financial resources, Copper Valley would be unable at this time to activate large numbers of ALI-capable handsets on its system because it would be incapable of subsidizing the cost of the necessary replacement phones once the new network equipment has been installed.

9. Because its equipment is obsolete, Copper Valley intends to replace it with more modern equipment by December 31, 2005. Copper Valley initially estimates that the replacement and upgrade

to a system with digital transmission capability will cost approximately \$2.5 million. The replacement equipment will employ either the Code Division Multiple Access (“CDMA”) or Global System for Mobile Communications (“GSM”) air interface. However, to date, no decision has been made as to which of the two air interfaces will be employed. Until this decision is made, it is impossible to determine the types of ALI-capable handsets to activate on the system.

10. At present, Copper Valley is the sole provider of wireless service in Central Prince William Sound, in McCarthy and in areas around Paxson, all of which are in the State of Alaska. Accordingly, any Commission essentially requiring Copper Valley to cease operations would deny the public in these areas the ability to place basic 911 calls from their wireless telephones, a result inconsistent with the objectives embodied in Section 20.18 of the Commission’s Rules.

II) Commitment to Achieving Compliance

11. Since the November 9, 2000 filing of its E-911 Status Report, Copper Valley has been diligent in pursuing deployment of E-911 Phase II technology in a timely manner. However, as noted above, Copper Valley’s system utilizes network equipment and software which has been discontinued by the manufacturer and which is no longer supported by the manufacturer. Simply stated, there are no network equipment and software upgrades available from any source for the Plexsys equipment that can enable the equipment to process the ALI data elements, or transmit the ALI data elements to any PSAP. The only solution available is for Copper Valley to replace its existing network equipment with state-of-the art facilities, which Copper Valley is committed to complete by December 31, 2005. Since the current (i.e., Plexsys) network equipment cannot be modified to process the ALI data elements or transmit the data to any PSAP, no ALI-capable handset will work (in any practical sense) on the current system. Thus, Copper Valley’s efforts to achieve compliance have been stymied by

circumstances beyond its ability to control.

III) Temporary Stay Request

12. Accordingly, Copper Valley requests a temporary stay, up to and including December 31, 2005, of the handset activation deadlines specified in Paragraph No. 33 of the July 26, 2002 Stay Order.

IV) Waiver Standards

13. Section 1.3 of the Commission's Rules generally provides that the Commission may suspend or waive its rules, in whole or in part, for "good cause shown." In addition, the Commission may waive specific requirements of a rule where, in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or if the applicant has no reasonable alternative. Section 1.925(b)(3)(ii) of the Rules. The courts have held that a rule waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

14. In its E-911 Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442 (2000), the Commission indicated that the Phase II rules are intended to be applied in a manner that takes into account the practical and technical realities.² Recognizing that practical and technical realities might delay Phase II implementation, the Commission established a general approach to dealing with possible requests for waiver of the Phase II requirements.³ Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Section 1.3 of the Rules.⁴ It recognized, in the case of

² 15 FCC Rcd. 17442 at Para. 22.

³ Id. at Paras. 42-45.

⁴ Id.

E-911, that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by the established deployment deadlines.⁵ The Commission cautioned that waiver requests should be specific, focused and limited in scope, with a clear path to full compliance and should document the efforts aimed at compliance.⁶ In the July 26, 2002 Stay Order, the Commission temporarily stayed Sections 20.18(f) and (g) of the Rules in lieu of granting waivers, although the showings of the various petitioners were made under the waiver standard.

V) Copper Valley Has Met The Waiver Standards

15. As shown above, Copper Valley has met the Commission's standards for obtaining the requested temporary stay (or waiver) of the handset activation deadlines specified in Paragraph No. 33 of the July 26, 2002 Stay Order. Copper Valley, a small Tier III CMRS carrier with limited financial resources serving sparsely populated areas in the State of Alaska, is in a seemingly unique position. It's cellular system utilizes network equipment and software which has been discontinued by the manufacturer, and which is no longer being supported by the manufacturer. Thus, the equipment manufacturer does not provide an E-911 Phase II ALI solution. The system is technically incapable of processing ALI data elements, and of transmitting ALI data elements to any PSAP, and the network equipment cannot be made technically capable of doing so. Therefore, Copper Valley has determined to replace its network equipment. Since the type of ALI-capable handsets to be activated on the system is a function of the network equipment to be installed, further activation of ALI-capable handsets is a vain act.

⁵ Id.

⁶ Id.

16. Commission case precedent dictates that the limited waiver requested herein be granted. The Commission has addressed the issue of obsolete technology in the analogous context of the deployment of the network equipment and upgrades necessary to serve digital wireless Text Telephone (“TTY”) devices on the Time Division Multiple Access (“TDMA”) air interface. The cases are analogous because the requirement that digital wireless systems be able to process calls from TTY devices is (like the E-911 requirements) governed by Section 20.18 of the Rules; is intended to assure that 911 service can be accessed from TTY devices; and likewise serves the policy objective of enhancing public safety.

17. In the Digital Wireless TTY Order (CC Docket No. 94-102), Mimeo DA 02-1540, released June 28, 2002 at Paragraphs 12 – 13 and 21 – 22, the Commission addressed waiver requests filed by ten, small wireless carriers serving rural areas using the TDMA air interface. The petitioners argued that the plans of several major wireless carriers (including Cingular, AT&T, and US Cellular) to migrate their TDMA deployments to other, non-compatible digital air interface technologies had led all major wireless infrastructure providers to cease development of new features and functionalities for their TDMA infrastructure equipment. The petitioners indicated that they likewise would need to migrate to an alternative digital air interface, and argued that the costs of deploying TTY-compatible software in both networks simultaneously would be prohibitive because of other regulatory mandates with which they were required to comply and because of the high costs of providing service to their largely rural customers.

18. In granting relief, the Commission was persuaded by four factors. First, requiring the petitioners to implement TTY compatibility in their TDMA networks would be a waste of resources since infrastructure vendors and handset manufacturers appeared to be moving away from TDMA.

Second, the petitioners were small, rural carriers with limited resources. Third, requiring the petitioners to expend large sums of money on what would essentially be an interim solution would not be a good allocation of resources. Fourth, because of recent developments related to larger carriers moving away from TDMA and the resulting loss of vendor support for these systems, these small rural carriers were in the 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. The Commission characterized these four factors as "special circumstances warranting some deviation from the general rule," Id., Para. 21; and, accordingly, granted a conditional, 18-month extension of time to allow the carriers to migrate away from the TDMA air interface. Id., Para. 22. According to the Commission, the extension of time "would give the affected carriers an additional 18 months in which to transition away from TDMA and to move their subscribers over to a new, digital TTY-capable network and to phase out their TDMA network." Id., Para. 22.

19. In this case, the justifications for the requested waiver are even more compelling. In the Digital Wireless TTY Order, the TDMA equipment was at least capable of the upgrades necessary to process calls from TTY devices. Here, the Plexsys analog-only network equipment utilized by Copper Valley is not capable of modification to process E-911 calls and transmit them to any PSAP, and the continued activation of ALI-capable handsets until the replacement network equipment has been selected and installed is a vain act since the handsets will not work on the present system. Similar to the case in the Digital Wireless TTY Order, it would be a waste of resources to purchase and activate additional ALI-capable handsets which will not work on the present system, and which may not work on the new system. The type of handsets that will work on the new system is a function of the type of network equipment ultimately selected and installed. The expenditure of large sums of money to

acquire and distribute such handsets on the current system (and replacement handsets on the new system) would be a misallocation of scarce resources, which Copper Valley can ill afford. And, as noted above, Copper Valley has not received any PSAP requests for Phase I or Phase II E-911 service. In addition, Copper Valley is in the seemingly unique position of having to change its underlying network technology before any type of E-911 service can be offered to anyone. Clearly, all of the facts set forth herein demonstrate that continued activation of ALI-capable handsets would be unduly burdensome within the meaning of Section 1.925(b)(3)(ii) of the Rules; and constitute special circumstances warranting deviation from the general rule.

20. Grant of the request for a temporary stay contained herein is in the public interest. Copper Valley has been diligent in pursuing an E-911 Phase II solution. The instant request for a temporary stay is specific and focused. It notes the unavoidable delays that Copper Valley has encountered through no fault of its own. If Copper Valley was forced to cease operations, it would result in the loss of all wireless service (including access to basic 911 service) in Copper Valley's unique coverage areas of Central Prince William Sound, McCarthy and in areas around Paxson.

21. It should also be emphasized that the public will not be prejudiced by grant of the relief requested herein. As noted above, Copper Valley has not received any PSAP requests for Phase II E-911 ALI service.

WHEREFORE. good cause shown, Copper Valley requests that the instant request be granted.

Respectfully submitted,
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Dated: 6-3-04

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