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Before the
Federal Communications Commission
Washington, D.C. 20554

May 14 9 25 AM '04

DISPATCH

In the Matter of

Revision of the Commission's Rules
To Ensure Compatibility with Enhanced 911
Emergency Calling Systems

CC Docket No. 94-102

Dobson Cellular Systems, Inc. Request for
Temporary Waiver of Section 20.18(c) of the
Commission's Rules

ORDER

Adopted: June 10, 2004

Released: June 10, 2004

By the Deputy Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant the petitions for temporary waiver filed by Dobson Cellular Systems, Inc ("Dobson")¹ to extend the time for compliance with the Commission's Text Telephone Devices (TTY) rule to December 31, 2004 for the system that it is acquiring from NOW Licenses, LLC (NOW).² Based upon our review of the information before us, we believe that the totality of the circumstances presented warrant an extension of the compliance deadline. We further find that the public interest will be served by granting such an extension to Dobson.

II. BACKGROUND

2. Under the Commission's TTY rule, commercial mobile radio service (CMRS) carriers "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."³ The rule requires compliance as of June 30, 2002. On June 28, 2002, however, the Wireless Telecommunications Bureau ("Bureau") granted certain licensees an extension of the June 30, 2002 deadline.⁴ The Bureau allowed extensions of up to a year (i.e., June 30, 2003) for smaller carriers who described vendor delays beyond their control, explicitly recognizing that smaller, predominantly rural carriers were the last to be accommodated by vendors. The Bureau also allowed carriers who chose to overbuild their obsolescent TDMA networks an additional six months to come into compliance, until December 31, 2003.

¹ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules from Dobson Cellular Systems, Inc., filed May 18, 2004 (Dobson Petition).

² 47 C.F.R. § 20.18(c).

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 12084 (WT Bur. 2002) (*June 28 Order*).

3. The systems operated by Dobson comply with the Commission's TTY requirements and are therefore "capable of transmitting 911 calls from individuals with speech or hearing disabilities...through the use of Text Telephone Devices (TTY)."⁵

4. NOW's system, however, does not comply with our TTY rule; and NOW has previously requested additional time to upgrade its network with a newer GSM air interface in order to achieve compliance.⁶ Subsequently, NOW entered into negotiations for Dobson's acquisition of NOW's licenses. On December 23, 2003, NOW and Dobson filed an application for assignment of the FCC authorizations held by NOW Licenses, LLC.⁷ That request was subsequently granted on April 30, 2004. On May 18, 2004, Dobson filed its petition for extension of the TTY compliance date to December 31, 2004 to cover the NOW system that it is acquiring. The request is based on Dobson's estimate of the time needed to install new switches and antennas on the NOW PCS system to make them fully compliant with not only the TTY requirements, but also with other requirements of our rules.

5. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.⁸ The Commission may exercise its discretion to waive a rule where unique or unusual factual circumstances make strict compliance inconsistent with the public interest.⁹ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.¹¹ Waiver of the Commission's rules are therefore appropriate only if unique circumstances warrant a deviation from the general rule,¹² and such a deviation will serve the public interest.¹³

III. DISCUSSION

6. We find that Dobson has demonstrated that good cause exists to grant its waiver request for the TTY implementation deadline. Specifically, we find that Dobson has provided substantial, credible evidence of unique circumstances that warrant an extension of time to comply with the TTY requirements. We also find that Dobson has demonstrated that granting its request for waiver would serve the public interest. Accordingly, we grant Dobson's request for waiver and allow Dobson until December 31, 2004 to bring the formerly NOW PCS system into full compliance.

7. *Unique Circumstances.* We are persuaded by Dobson's claims that special circumstances exist to support a waiver. Specifically, we find that Dobson's plan to achieve full compliance within seven months of its closing on its acquisition of NOW will offer all consumers in those licensed areas access to 911 service. Additionally, we recognize that given the extent of the upgrade that will be

⁵ See Letter from Zachary A Zehner, Counsel for Dobson, to Marlene Dortch, Secretary, Federal Communications Commission, October 31, 2002 (*Dobson TTY Compliance Letter*).

⁶ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, NOW Licenses, LLC Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, filed June 25, 2002 (*NOW's Initial Waiver Request*).

⁷ See ULS File No. 0001555982.

⁸ 47 C.F.R. §§ 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

¹⁰ 47 C.F.R. § 1.925. See also *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *WAIT Radio*, 418 F.2d at 1157.

¹² 47 C.F.R. § 1.925.

¹³ *Id.* at 1159.

required, Dobson needs additional time. As Dobson notes in its request, it will need to construct, install, and test new switches to ensure that they are compliant with the Commission's TTY rule.¹⁴ They will also need to upgrade each of the 400 antenna sites currently operated by NOW.¹⁵ Absent an extension, Dobson would have less than a month to bring this system into compliance.¹⁶ We believe that such time would be insufficient to complete all of the identified tasks and that a limited amount of additional time is warranted.

8. *Public Interest.* We conclude also that Dobson has shown that granting its request for waiver would serve the public interest. The Commission's TTY requirements are an important tool for bringing access to 911 services to all consumers. Accordingly, it is in the public interest that carriers implement TTY capabilities as quickly as possible. Dobson's current service complies with our TTY requirements and Dobson historically has met its regulatory obligations.¹⁷ We believe that affording Dobson a limited amount of additional time and granting its waiver request will provide consumers in the acquired area access to TTY capability.¹⁸ Therefore, by allowing Dobson time to upgrade the system it is acquiring from NOW, the public interest will be served because the upgrades will bring greater access to these consumers.

9. For the reasons stated above, and given the unique circumstances presented here, we find it reasonable to grant the relief as requested by Dobson. Dobson will have until December 31, 2004 to bring the former NOW PCS system into full compliance with the Commission's TTY rule, 47 CFR § 20.18(c).

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that, pursuant to sections 0.131, 0.331, 1.3, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, 1.925 the petition filed by Dobson Cellular Systems, Inc. is GRANTED.

11. IT IS FURTHER ORDERED that Dobson will have until December 31, 2004 to bring the formerly NOW PCS system into full compliance with the Commission's TTY rule, 47 CFR § 20.18(c).

12. IT IS FURTHER ORDERED that Dobson must notify us no later than 30 days after it has come into compliance with 47 CFR § 20.18(c).

FEDERAL COMMUNICATIONS COMMISSION



Michael Wilhelm
Deputy Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁴ *Dobson Request* at 4.

¹⁵ *Id.*

¹⁶ Dobson plans on closing this transaction in mid-June. The NOW extension ends on June 30, 2004. See NOW Waiver Order, CC.

¹⁷ See *Dobson TTY Compliance Letter*.

¹⁸ We note that NOW had a plan to achieve compliance but due to vendor delays and lack of resources it was not able to fulfill that plan. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, NOW Licenses, LLC Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, CC Docket No. 94-102, Order, DA 04-1697 (rel. June 10, 2004).