

**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)
)
RSA 1 Limited Partnership dba Cellular 29 Plus)
Petition For Waiver of Section 20.18(g)(1)(v))
of the Commission's Rules)

To: The Wireless Telecommunications Bureau

**PETITION OF RSA 1 LIMITED PARTNERSHIP DBA CELLULAR 29PLUS
FOR WAIVER OF SECTION 20.18(g)(1)(v) OF THE COMMISSION'S
RULES**

RSA 1 Limited Partnership dba Cellular 29 Plus (ACellular 29[®]), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission (AFCC[®] or ACommission[®]),^{1/} hereby petitions the Commission to waive the December 31, 2005 deadline to achieve 95% penetration of location-capable handsets among its subscribers.^{2/} Cellular 29 was granted a limited waiver of the September 1, 2003 deadline to begin selling automatic location identifier (AALI[®]) capable handsets.^{3/} Cellular 29 has met all other applicable handset benchmarks. In support of this waiver, the following is respectfully shown:

^{1/} 47 C.F.R. ' ' 1.3, 1.925.

^{2/} The subject deadline was codified in Sections 20.18(g)(i)-(ii) of the Commission's Rules, 47 C.F.R. ' ' 20.18(g)(i)-(ii), which was modified by Commission Order. See Revision Of The Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102 (Order To Stay), 17 FCC Rcd 14841 (2002), (hereinafter *AStay Order*[®]).

^{3/} Revision Of The Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102 (Order) rel. April 1, 2005 (hereinafter *AWaiver Order*[®]) at ¶ 164.

I. STATEMENT OF FACTS

Cellular 29 is a Tier III carrier that provides analog and digital CDMA CMRS wireless service in Iowa 1 - Mills RSA.^{4/} Cellular 29's service area is predominantly sparsely populated rural areas lacking concentrated centers of commercial and industrial activity. Because of these demographic characteristics, Cellular 29 strives to maximize the geographic footprint served by each of its cellular base stations (or cells). For the same reason, overlap of the reliable service contours of adjacent cells is typically limited to areas where a hand-off from one cell coverage area to another is essential for continuous, uninterrupted communications.

Cellular 29 has placed digital CDMA facilities at each of its existing analog cell sites. However, because of propagation characteristics of digital technologies coupled with the lower power of digital handsets as compared to analog "bag phones" and mobile units, there are areas where a subscriber using an analog unit can obtain coverage where a CDMA digital subscriber cannot (even when the CDMA handset reverts to its analog mode). Cellular 29 has begun adding CDMA fill-in sites to further enhance its CDMA digital coverage but areas remain where the use of a higher-power analog handset, bag phone or installed mobile unit allows coverage where a CDMA handset does not.

On December 28, 2004, Cellular 29, as a part of the Tier IV Coalition For Wireless handset-based E911, filed a *Petition For Partial Forbearance From E911 Legacy Handset ALI Compatibility Requirements For Wireless Subscribers Under Rule Section 20.18(g)(1)(v)* ("Forbearance Petition"). Near contemporaneous with that filing, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 ("*ENHANCE 911 Act*").^{5/} Because the *ENHANCE*

^{4/} Station KNKN649 (CMA412B).

^{5/} National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

911 Act addresses the precise rule section for which the *Forbearance Petition* was filed, and given that the *ENHANCE 911 Act* requires a more expedited resolution of a waiver request of that section and provides additional guidelines for disposing of such waivers by Tier III carriers, Cellular 29 is filing the instant waiver request in lieu of continuing to prosecute the *Forbearance Petition*.

II. ARGUMENT

Section 1.925(b)(3) of the Commission's Rules, 47 C.F.R. ' 1.925(b)(3), sets forth the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau (AWTB@) proceedings and requires a waiver proponent to demonstrate either that: (a) a rule's underlying purpose would be frustrated or dis-served by its instant application, and that waiver therefore serves the public interest; or (b) a rule's application, due to unique or unusual circumstances, would be inequitable, unduly burdensome or contrary to the public interest, or that the proponent has no reasonable alternative. Under either of these standards, grant of the requested waiver is warranted. In addition, the *ENHANCE 911 Act* mandates granting a waiver of the requirements of Section 20.18(g)(1)(v) if strict enforcement of that rule would result in consumers having decreased access to emergency services.

A. Waiver is in the Public Interest

In the *Waiver Order*, Cellular 29 has previously sought and been granted only a slight extension of the deadline by which it had to commence selling ALI-compatible handsets. Cellular 29 has met all other benchmarks for ALI-capable handset sales and currently sells only ALI-capable handsets. In addition, Cellular 29 has launched an educational campaign to advise its existing analog subscribers that those handsets are not capable of providing locational information when a 911 call is placed. Cellular 29 has also offered financial incentives for those subscribers to convert to digital calling plans and upgrade their handsets to ALI-compatible handsets. However, as of this date, a

significant number of Cellular 29's existing analog subscribers have opted to retain their analog phones.

The reality is that Cellular 29 does not have any means whereby it can force an analog user to migrate to a CDMA digital handset. Section 22.901 of the Commission's rules *requires* Cellular 29 to continue supporting and providing service to analog handsets at least until early February, 2008. In addition, the rules require that Cellular 29 provide service to any compatible handset that comes into its market. Finally, Title II of the Act, which applies to all common carriers, requires cellular carriers like Cellular 29 to provide services to all subscribers on a nondiscriminatory basis. Accordingly, were Cellular 29 to refuse to continue providing service to an existing analog customer (or fail to activate a new customer seeking to use its own non-ALI-compatible handset) Cellular 29 would be in violation of the Commission's rules and the Act. However, failing to do so will most surely result in Cellular 29 failing to meet the requirements of Section 20.18(g)(1)(v) of the rules. Accordingly, faced with conflicting rules that require the carrier to make a conscious decision to knowingly violate one section of the rules or another, the only reasonable approach is for the carrier to seek a waiver of one or more of those requirements. While as of this point in time only three percent (3%) of Cellular 29's existing subscriber handsets utilize analog handsets, Cellular 29 is concerned that as larger carriers "cut back" on their support for analog phones, it may experience "porting-in" of analog handsets by subscribers of other carriers.

Cellular 29 does not take any of its obligations as a Commission licensee lightly; least of all obligations relating to the completion of emergency communications. However, as a Tier III rural carrier, Cellular 29 understands that refusal to provide service to analog handsets might well result in emergency calls in the most-rural parts of its service area becoming impossible to complete because of limitations in the propagation characteristics of low-power digital handsets as compared with analog phones. Accordingly, if Cellular 29 sought and was granted a waiver of the analog service

provisions of the rules, Cellular 29 might then be able to meet the obligations of Section 20.18(g)(1)(v). However, the result might well be that subscribers in some of the most rural portions of the Cellular 29 service area, while having phones that *could* provide locational information, being unable to do so because they are unable to complete a phone call at all! Accordingly, Cellular 29 respectfully submits that requiring strict compliance with Section 20.18(1)(v) would result in consumers having decreased access to emergency services. Under these circumstances, the *ENHANCE 911 Act* mandates grant of the waiver sought herein.

In seeking its original, extremely limited waiver, Cellular 29 advised the Commission of the initial limited availability of ALI-capable handsets. While Cellular 29 did begin obtaining such handsets within in a few months of the original waived deadline, in the interim Cellular 29 had purchased and activated a number of non-ALI handsets. In addition, with the advent of local number portability, Cellular 29 has had a number of customers port their numbers into Cellular 29 from other CDMA carriers. Recognizing its inability to place any restrictions that serve as artificial constraints on porting, Cellular 29 has not required the purchase of new handsets where the customer's existing handset was capable of operating on the Cellular 29 system.^{6/} Accordingly, as of this point in time, eleven percent (11%) of Cellular 29's existing CDMA handsets are not ALI-compatible. While

^{6/} Indeed, the Commission recognized this situation and excluded the activation of such handsets from the calculations of whether a carrier had met its E911 activation benchmarks:

The new handset activation benchmarks apply only to new handsets not to new activations of older model or refurbished handsets (i.e. when a customer switches wireless service from one wireless carrier to another but retains his or her current handset, that "new activation" of service need not be included in the total of wireless carrier's new handset activations for purposes of measuring ALI-capable handset activation benchmarks. *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (Fourth Memorandum Opinion and Order), 15 FCC Rcd 17442 (2000), (hereinafter *Fourth MO&O*) at footnote 62.

Ironically, that "exclusion" now acts to disadvantage carriers who have ported such handsets, as they were required to do, since the exclusion while applying to the new activation benchmarks does not address the impact of such handsets on a carrier's 20.18(g)(1)(v) obligations.

Cellular 29 has offered incentives for these customers to upgrade their handsets, again there is no means whereby Cellular 29 can force a customer to upgrade its phones or legally “deny service” to a customer that does not wish to upgrade its phone.

In light of the foregoing, Cellular 29 respectfully submits that the underlying purpose of the rule would be frustrated or dis-served by its instant application, and that waiver therefore serves the public interest. Indeed, in light of the unusual circumstances regarding these conflicting rule requirements it would be inequitable and contrary to the public interest to seek to enforce these rules since Cellular 29 clearly has no reasonable alternative but to find itself in violation of at least one of these conflicting rule sections. Cellular 29 therefore seeks additional time in which to satisfy the requirements of Section 21.28(g)(1)(v). Specifically, Cellular 29 seeks an extension of 13 months, up to and including January 31, 2007, in which to satisfy the requirements of Section 21.28(g)(1)(v) as it relates to CDMA handsets activated on the Cellular 29 system. In addition, Cellular 29 respectfully requests that it not be required to count analog handsets in the calculation of the 95% obligation of Section 20.18(g)(1)(v) until the sunset of the analog service obligation in February, 2008.

Cellular 29 notes that in the *Waiver Order*, many carriers that sought far more extensive waivers than Cellular 29 were granted 13 month extensions of complying with the obligations of Section 21.18(g)(1)(v). Cellular 29, which has demonstrated good faith in meeting each benchmark subsequent to the initial benchmark, seeks no less favorable treatment than those carriers with respect to its inability to currently satisfy the obligations of Section 20.18(g)(1)(v) of the rules. As previously demonstrated, Cellular 29 has made substantial progress in getting ALI-capable handsets to its subscribers and herein seeks only a limited waiver for a limited period of time.

Cellular 29, having met the deployment benchmarks that were within its control (those relating to the sales of new handsets) can do nothing but educate its subscribers as to the limitations associated with their analog handsets and attempt to provide incentives for its existing subscribers to convert to ALI-compatible CDMA handsets. Consumer decisions not to migrate to lower-power CDMA handsets at this time, and not any decision on the part of Cellular 29, will delay Cellular 29's ability to satisfy the legacy handset requirements; not the grant of the waiver sought herein.

In sharp contrast, denial of the waiver would serve no purpose. While the denial of the waiver would place Cellular 29 in violation of section 20.18(g)(1)(v), it would do nothing to enable Cellular 29 to "force" its subscribers to trade-in their handsets or enable them, even if they converted their handset, to actually obtain locational services during an emergency if the handset, which might have been "in-range" for analog service is "out-of-range" for service from a low-power CDMA handset. Accordingly, in extremely rural areas, denial of the instant waiver would result in consumers having reduced access to emergency services.

B. The Instant Waiver Request is Limited in Scope and Provides a Route to Compliance

The Commission enacted Section 20.18(g) to ensure that wireless E911 will meet fundamental public safety needs as quickly as reasonably possible.^{7/} Considering Cellular 29's satisfaction of virtually all handset sale benchmarks, it is clear that Cellular 29 has sought to satisfy the underlying purpose of Section 20.18(g) as soon as reasonably possible. Moreover, the instant waiver request is narrowly drawn to only include waiver of the legacy handset obligation for a limited period of time. While Cellular 29 acknowledges that the handset sale obligations have been known for quite some time, the Commission has recognized that small rural carriers were disadvantaged in being unable to obtain such handsets in a timely manner. Nevertheless, with a less-

^{7/} *Fourth MO&O* at & 17.

than 2 month waiver of the initial sales obligation, Cellular 29 has been able to obtain CDMA ALI-capable handsets from its distributors, in sufficient quantities to enable it to satisfy all subsequent benchmarks in a timely manner. However, delays in initially obtaining such handsets coupled with the Commission's policies with respect to number porting have served to exaggerate the number of non-ALI compatible digital handsets in use by Cellular 29 subscribers. Grant of a 13 month extension as it relates to CDMA handsets, comparable to that already granted to other carriers in the *Waiver Order*, should provide sufficient time to enable Cellular 29 to migrate sufficient CDMA phones to achieve the 95% legacy penetration requirement.

Subsequent to adopting the handset obligations, the Commission set a February 2008 deadline for cellular carriers to continue supporting analog handsets. Ironically, the reasons that the Commission found for extending that obligation are the very reasons that a significant number of the rural-most subscribers are unwilling to trade in their higher-power analog phones for low-power CDMA phones at this time. Accordingly, Cellular 29 seeks to exclude from the count of its legacy handsets (for purposes of determining compliance with Section 20.18(g)(1)(v) through February 5, 2008), all analog handsets which customers elect to keep in service notwithstanding having been informed as to the inability of those handsets to provide locational information during the placement of a 911 call. To the extent necessary to achieve compliance with Section 21.28(g)(1)(v), Cellular 29 will, beginning February 6, 2008, cease supporting analog handsets. The instant petition thus carefully heeds the Commission's instruction that waiver requests from rural carriers are Aspecific, focused and limited in scope, and [show] a clear path to full compliance.^{8/} Accordingly, the instant request is intentionally limited in scope, and provides a direct and unambiguous route to compliance with the handset activation deadlines.

^{8/} *Fourth MO&O* at & 44.

III. CONCLUSION

In light of the foregoing, Cellular 29 respectfully requests that the instant waiver be granted.

Respectfully submitted,

RSA 1 LIMITED PARTNERSHIP
dba CELLULAR 29 PLUS

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Dated: July 27, 2005

DECLARATION

I, Robert Mauer, hereby declare and state as follows:

1. I am General Manager for RSA 1 Limited Partnership dba Cellular 29 Plus, a ATier III@ CMRS carrier as defined by the Federal Communications Commission;
2. That I am familiar with the facts as set forth in the foregoing Petition of RSA 1 Limited Partnership dba Cellular 29 Plus for Waiver of Sections 20.18(g)(1)(v) of the Commission's Rules;
3. That the statements set forth therein are true, complete and correct of my own knowledge except such statements made on information and belief, and as to such statements, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

7/26/05
Date

/S/ Robert Mauer
Robert Mauer