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	)	
	)	
E911 Phase II Compliance Deadlines for	)	
Tier III Carriers	)	

Leaco Rural Telephone Cooperative, Inc. Petition for Temporary Waiver of Section 20.18(g) of the Commission's Rules

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Dated: September 1, 2005

TABLE OF CONTENTS

Summary ……...….iii

I. Background and Implementation Update……...…….2

II Leaco's Unique Management Issues and New Implementation Schedule Necessitate a Request for Relief……...…4

III Leaco's Phase II Schedule Is Consistent with Community Expectations and Demonstrates a Clear Path to Compliance……...8

IV Leaco Satisfies Other Relevant Standards for Waiver of the Commission's Rules……9

V. Leaco Satisfies the "ENHANCE 911 Act" Waiver Standard……13

VI. Conclusion…….15

SUMMARY

Leaco Rural Telephone Cooperative, Inc. ("Leaco") provides cellular and PCS services to approximately 5,700 subscribers in a remote region of New Mexico. Leaco is pursuing a handset-based solution to achieve Phase II compliance. Handset-based location capable solutions are generally the best solution for remote, rural networks such as Leaco's where network-based solutions are stymied by highly-dispersed cell sites. In Leaco's unique case, deployment of Phase II capability has been particularly difficult due to vendor difficulties and major management turmoil, leaving Leaco with no reasonable alternative but to request a temporary waiver and further extension of the Commission's Phase II "handset" deadlines applied to Leaco in the Commission's April 1, 2005 *Tier III Relief Order*.[1]

Leaco has been plagued by litigation delays relating to the necessary software upgrades by its switch vendor in order for Leaco to be able to provide location-capable data to its local PSAPs, as well as internal management woes. Specifically, Leaco's vendor has refused to make promised software upgrades needed to make Leaco's network Phase II capable and Leaco's former manager allowed Leaco's Phase II implementation progress to stall, ignoring pending benchmarks for months without informing the Leaco Board of Directors. Leaco has since hired a new General Manager and has developed an aggressive Phase II implementation schedule, pursuant to which it will secure a new vendor by the end of September 2005 and upgrade its network in order to begin selling location-capable handsets in a timely manner.

Grant of the requested waiver is in the public interest since it will allow Leaco to become Phase II capable prior to the date by which its local PSAPs are scheduled to be able to handle

[1] *In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, FCC 05-79 at ¶ 51 (April 1, 2005) ("*Tier III Relief Order*").

Phase II data. Leaco also requests a limited waiver of the Commission's 95 percent penetration deadline for location-capable handsets due to the significant number of its customers that need to migrate from three-watt analog "bag phones" to location-capable handsets once Leaco finishes its CDMA network upgrade.

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Leaco Rural Telephone Cooperative, Inc. ("Leaco"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),[2] hereby requests a temporary waiver of the handset deployment deadlines set forth in Sections 20.18(g)(1)(i)-(v) of the Commission's Phase II E911 ("Phase II") rules.[3] Leaco is fully committed to providing E911 location capability to meet the emergency needs of its customers and continues to devote substantial resources and personnel to its pursuit of Phase II compliance. However, deployment of Phase II capability has been particularly difficult for Leaco due to vendor difficulties and major management turmoil. As outlined below, Leaco believes it has cleared these hurdles and is pursuing an aggressive deployment schedule, but must respectfully request an extension of the Commission's Phase II deadlines.

Leaco is a small cellular and personal communications service ("PCS") carrier providing commercial mobile radio service ("CMRS") to approximately 5,700 subscribers in rural New

[2] 47 C.F.R. §§ 1.3 and 1.925.
[3] 47 C.F.R. §§ 20.18(g)(1)(i)-(v).

Mexico (CMA 558-B3, Lincoln, New Mexico RSA 6-B3; BTA068-C Carlsbad, New Mexico; BTA191-C2 Hobbs, NM). Because of unique circumstances, including delays beyond Leaco's control, regarding Leaco's implementation of Phase II service in rural New Mexico, Leaco has no other alternative but to request a temporary waiver and further extension of the Commission's Phase II "handset" deadlines applied to Leaco in the Commission's April 1, 2005 *Tier III Relief Order.*[4]

I. Background and Implementation Update

As Leaco first reported to the Commission on December 20, 2000, Leaco is pursuing a handset-based solution to achieve Phase II compliance. At that time, and even today with technological advances, handset-based location capable solutions are generally the best solution for remote, rural networks where network-based solutions are stymied by highly-dispersed cell sites. In particular, the rural nature of Leaco's system and its configuration do not permit the triangulation of a mobile subscriber's geographic position that a network-based E911 solution needs to achieve Section 20.18(h) accuracy without the prohibitively costly construction of additional cell sites built solely to meet such accuracy requirements.

Leaco currently operates a time division multiple access ("TDMA") network for which no handset-based E911 location solutions are available. The unavailability of automatic location identification ("ALI")-capable TDMA handsets required Leaco to upgrade and migrate its TDMA network to either a Global System for Mobile Communications ("GSM") or a code division multiple access ("CDMA") digital technology. Leaco decided to migrate its TDMA system to CDMA digital technology and had signed a contract with its equipment vendor,

[4] *In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, FCC 05-79 at ¶ 51 (April 1, 2005) ("*Tier III Relief Order*").

Lucent, to upgrade its network. Lucent subsequently assigned the CDMA upgrade work to Commnet, a company that works with smaller companies such as Leaco. Pursuant to the contract, Leaco purchased the initial equipment and software upgrades. However, due to a dispute over additional software upgrades, Leaco's network remains unable to handle Phase II location data.

Leaco had originally projected that the CDMA overlay construction would have been completed by March 2005, but the contract implementation and pricing issues discussed above led to protracted litigation[5] and have delayed the overlay. With its CDMA upgrade stalled in court, and with Leaco's new management[6] on board, Leaco revisited the business and technical reasons for committing to a CDMA upgrade over a GSM upgrade. As part of its Phase II implementation timeline discussed fully *infra*, Leaco's new management set a June 15, 2005 deadline for selecting a technology. On June 15, 2005 Leaco decided that a CDMA overlay made the most business sense as well as being the only viable Phase II solution that utilizes ALI-capable handsets.[7]

As a user of Lucent products, particularly its digital switch,[8] Leaco is wedded to using Lucent products and vendors such as Commnet that are capable of installing Lucent products. In other words, if Lucent and Commnet will not perform the needed upgrades to Leaco's switch and network, Leaco's other choices are limited. However, in an effort to ensure timely completion of

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[5] *Leaco Rural Telephone Cooperative, Inc. v. Lucent Technologies, Inc. and Commnet Wireless, Inc.*, No. CV-2005-192C (N.M. 5th Dist. Ct., Lea County).

[6] Leaco's management turnover and the implementation delays resulting from Leaco's prior management are detailed *infra*.

[7] *See Tier III Relief Order* at ¶ 116 (where the Commission acknowledges that GSM-based ALI-capable handsets remain unavailable).

[8] With a switch replacement costing near $1 million, it is not a practical option for Leaco to abandon its relatively new Lucent digital switch. Also, a switch replacement would lead to further delays in Leaco's Phase II implementation schedule.

its overlay, Leaco has made the decision to no longer rely on Lucent or Commnet meeting their contractual commitments, and Leaco is now finalizing its pursuit of alternative vendors. Leaco intends to select a new vendor by September 29, 2005. Then, as discussed below in more detail, Leaco will finalize a contract by the end of September 2005, beginning its ambitious network upgrade and Phase II implementation.[9]

II. Leaco's Unique Management Issues and New Implementation Schedule Necessitate a Request for Relief

In the *Tier III Relief Order*, the Commission established the following Phase II handset deployment deadlines for Leaco.[10] Leaco had until March 1, 2005 to begin selling and activating location-capable handsets and to ensure that twenty-five percent of all new activations were location-capable; 2) until June 1, 2005 to ensure that fifty percent of all new handset activations were location-capable; and 3) until September 1, 2005 to ensure that one-hundred percent of all new handset activations are location-capable. Leaco also remains subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

Leaco has missed the March 1, 2005 and June 1, 2005 deadlines discussed above, will be unable to meet the September 1, 2005 deadline, and expects to be unable to meet the December 31, 2005 deadline as well. Leaco, under new management, is fully cognizant of the severity of this lapse and, as detailed below, is committed to meeting an aggressive upgrade and implementation schedule. While the vendor and litigation-based delays discussed *supra* have contributed in no small part to Leaco's failure to meet these deadlines, it is Leaco's unexpected

[9] While Leaco's intent is to have an agreement with a new vendor finalized by the end of September 2005, it is possible that Leaco, Lucent, and Commnet may have resolved their dispute by then, and that the long-planned upgrade will be completed as originally contemplated.
[10] *Tier III Relief Order* at ¶¶ 48-51.

management woes, discussed below, that have led to Leaco's current inability to meet its Phase II obligations.

Leaco was without a General Manager from December 2004 until May 2005. In the months prior to that, the former General Manager, nearing retirement, essentially allowed Leaco's Phase II problems to languish without action or solutions. The former General Manager had allowed the Lucent/Commnet dispute to stall implementation even as FCC deadlines approached. In a small cooperative telecommunications company such as Leaco, the General Manager is responsible for almost every aspect of running the business. *All* regulatory and technical issues and problems flow through the General Manager. A small company like Leaco does not have the resources to hire redundant staff with regulatory experience and its Board of Directors, made up of local business leaders, townspeople, and ranchers is not expected to provide day-to-day telecommunications expertise. Simply put, Leaco, like many other small, rural companies, must rely on one in-house "expert" when it comes to FCC regulations.[11]

The General Manager at Leaco is responsible for the day-to-day running of a telecommunications company and for overseeing long-term projects. If the General Manger chooses to ignore a problem, there is no person on staff with the regulatory and technical knowledge to inform the Board of Directors. In this particular case, Leaco's Board of Directors had no indication that little was being accomplished with regards to the necessary network upgrade and Phase II implementation schedule since August of 2004[12]. The Leaco Board was

[11] *See* Exhibit 1 (Declaration of Leaco Board Member, David Bilbrey) ("Bilbrey Declaration").
[12] On August 31, 2004, Leaco informed the Commission that it was on track to meet the Phase II implementation benchmarks ultimately imposed by the Commission in its *Tier III Relief Order*. Amendment to Leaco Rural Telephone Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, filed August 31, 2004. Accordingly, the Leaco Board of Directors, relying on its General Manager, had every reason to believe that Leaco was on schedule to meet the submitted timetable.

unaware that Leaco was likely to miss pending Phase II deadlines.[13] With the former General Manager on his way out, the Board was naturally concentrating on its search for an experienced General Manager to come to Lovington, New Mexico. The difficulty of the Board's search for a new General Manager is exemplified by the fact that it did not have a replacement by the time the former General Manager exited in December 2004.

When the FCC released the April 1, 2005 *Tier III Relief Order*, Leaco was without a General Manager and its Phase II implementation progress had been stagnant for almost eight months. Based on past exemplary performance by the retiring general Manager, the Board had no reason to expect that regulatory and technical problems were left unattended. Soon after the release of the *Tier III Relief Order*, Leaco's federal counsel began working with some of the Leaco Board members and Leaco's local counsel when they realized that Leaco had missed significant Phase II implementation deadlines. Without an experienced General Manager with the expertise to make the complex business, legal, and technical decision of how to proceed, the Board was uncomfortable making such a decision and decided to wait for the newly-hired General Manager who was scheduled to start work on May 1, 2005.[14]

When the new General Manager arrived, she was brought up to speed on the technical state of the Leaco network and on the number of outstanding regulatory and business issues that had been neglected for almost a year. Achieving Phase II compliance became Leaco's and the new General Manager's top priority. On May 13, 2005, less than two weeks after Leaco's new General Manager "hit the ground running," Leaco developed a "Network Upgrade Timetable" which included the following benchmarks:

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[13] *See* Bilbrey Declaration.
[14] The new General Manager was hired on April 27, 2005.

June 15, 2005	*Technology Selection – CDMA/ GSM*
September 29, 2005	*Vendor Selection*
September 30, 2005	*Finalization/Approval of Vendor Contract by Leaco Board*
October 1, 2005	*Place Order*
December 1, 2005	*Commencement of Network Upgrade*
March 1, 2006	*Completion of Network Upgrade Based on Vendor Estimates*
March 2, 2006	*Begin Handset Testing*
March 31, 2006	*End of Network/Handset Testing Period*
April 1, 2006	*Begin Selling new Handsets*

Based on its new, aggressive schedule Leaco has adjusted its handset deployment schedule to account for the unforeseen delay that resulted from Leaco's rocky management transition. Accordingly, Leaco specifically requests a temporary limited waiver of the "selling and activating" benchmarks set forth in Section 20.18(g)(i)-(iv) of the Commission's rules, as modified by the *Tier III Relief Order*, to permit Leaco to implement its CDMA-based Phase II solution based on the following schedule:

Leaco requests that that the deadlines for Leaco to begin selling and activating handsets, and to ensure that 50 percent of the handsets sold and activated are ALI-capable be extended to April 1, 2006; and that the deadline for ensuring that 100 percent of the handsets sold and activated are ALI-capable be extended to July 1, 2006. Also, Leaco requests that the deadline for ensuring that 95 percent of Leaco's subscriber base has location-capable handsets be extended until August 1, 2007.

III. Leaco's Phase II Schedule Is Consistent with Community Expectations and Demonstrates a Clear Path to Compliance

In the Commission's *Tier III Stay Order*, the Commission indicated that it "expects all carriers seeking relief 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."[15] In addition, in its most recent *Tier III Relief Order*, the Commission strongly encouraged carriers to coordinate their Phase II implementation efforts with affected public safety agencies "to ensure that the expectations of the public safety agencies are aligned with the carriers' deployment plans."[16] Leaco, under new management, has been working with the state E911 director regarding the state of Leaco's Phase II implementation. The state director is aware of Leaco's new schedule and is pleased to be working with Leaco on this and other emergency calling issues such as mapping E911 addresses. Leaco's new General Manager attended a state-wide E911 meeting during the second week of June 2005 and it is Leaco's understanding that it should not expect the Public Safety Answering Points ("PSAP") in Leaco's service area to be capable of handling Phase II data before June 2007.

The state of New Mexico is still attempting to formulate a cost recovery mechanism for monthly recurring costs (*e.g.*, transport costs to route calls to the PSAPs), and it does not have a mechanism in place to allow for recovery of nonrecurring costs. Thus, Phase II PSAP capability in Leaco's rural service area is not expected for some time. Leaco's deployment schedule is consistent with the E911 capabilities expected by the State of New Mexico and thus meets community expectations. Leaco's amicable relationship with the state director also demonstrates Leaco's ongoing good faith efforts to implement E911 capabilities in a timely yet realistic

[15] *Tier III Stay Order* at ¶ 28.
[16] *Tier III Relief Order* at ¶ 173.

manner. As noted in the *Tier III Relief Order*, a "waiver proponent's consultation with its PSAPs is an important factor in determining whether a waiver is warranted."[17]

In its *Tier III Stay Order*, the Commission also requested "substantial evidence that the relief is as narrowly tailored as possible or that the petitioner has put in place a clear path to compliance."[18] In the *Tier III Relief Order*, the Commission granted relief where carriers were able to provide the Commission with a "concrete, specific plan."[19] Given the 8½ month period between Leaco's technology selection and scheduled completion of the network upgrade, Leaco's new schedule is as narrowly tailored as reasonably possible. Leaco's request for waiver is narrowly tailored in that it seeks relief from the requirements that it commence selling ALI-capable handsets and ensure that up to 50 percent of handsets sold or activated are ALI-capable only until such time as it is able to complete its planned network conversion.[20] Further, the new schedule, which includes Leaco's commitment to select and work with a vendor by the end of September 2005, whether it is Lucent or not, demonstrates a clear path to compliance.

IV. Leaco Satisfies Other Relevant Standards for Waiver of the Commission's Rules

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.[21] The Commission has already recognized that wireless carriers may face difficulties in meeting the FCC's E911 deadlines. In the FCC's *Fourth Memorandum Opinion and Order* ("*Fourth MO&O*"), the Commission recognized that there would be instances when "technology-related issues" or "exceptional circumstances" would cause a delay in a wireless

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[17] *Tier III Relief Order* at ¶ 41 (footnote omitted).
[18] *Tier III Stay Order* at ¶ 17.
[19] *Tier III Relief Order* at ¶ 169.
[20] The additional time sought to meet the 100 percent requirement is narrowly tailored in that it demonstrates an aggressive handset selling schedule that will "ramp up" to 100 percent just three months after Leaco begins selling and activating ALI-capable handsets.
[21] 47 C.F.R. § 1.3.

carrier's ability to become Phase II compliant.[22] In its most recent *Tier III Relief Order*, the Commission granted general relief in cases where carriers provided the Commission with "sufficient and specific factual information."[23]

Leaco's waiver petition, as illustrated by the discussion *supra*, demonstrates exceptional and unexpected circumstances encountered by a small, rural carrier in a demanding time of management transition. Moreover, as set forth below, the instant petition satisfies the applicable waiver standards.

Section 1.925(b)(3) of the Commission's rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

> The Commission may grant a request for waiver if it is shown that:
>
> (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
>
> (ii) 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.[24]

Under both of these standards, grant of the requested waiver is warranted.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's Phase II deployment rules. The Commission has recognized that temporary extensions of its "selling and activating" benchmarks will not delay actual deployment of E911 Phase II since "PSAPs in smaller or rural areas … may well require

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[22] *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 at ¶ 43 (2000) ("*Fourth MO&O*").
[23] *Tier III Relief Order* at ¶ 169.
[24] 47 C.F.R. § 1.925(b)(3).

additional time to become capable of receiving and utilizing Phase II information."[25] Since Leaco has not received a Phase II request and no such request is expected prior to Leaco's scheduled Phase II implementation date, the underlying purpose of the Phase II requirements, "to extend automatic location identification (ALI) to wireless callers,"[26] will not be frustrated by grant of this request. As the Commission determined in the *Tier III Relief Order*, when the PSAPs in a carrier's service area are incapable of receiving Phase II information, granting limited relief "will not undermine the overall policy objective of the Commission's E911 requirements."[27]

The Commission enacted Section 20.18(g) for the underlying purpose of ensuring that wireless E911 will meet fundamental public safety needs "as quickly as reasonably possible."[28] Leaco, under a new General Manager, has begun the process of converting its TDMA network to an ALI-capable CDMA network as quickly and as reasonably as it can under the exceptional circumstances. Leaco's need to develop a new implementation schedule is consistent with the Commission's determination that "the Phase II rules are intended to be applied in a manner that takes into account practical and technical realities."[29] The practical reality is that, as a small carrier, the neglect of a single important employee – the General Manager – can set back progress for almost a year. The technical reality is that Leaco, as a small carrier, is dependent upon the few vendors who can upgrade Lucent networks. Without the market power of a large, nationwide carrier, Leaco has found itself at odds with Lucent and Commnet. Still, in spite of its contract disputes with these latter vendors, Leaco is dedicated to finding a vendor by September

[25] *Tier III Stay Order* at ¶ 15.
[26] *Id*. at ¶ 14.
[27] *Tier III Relief Order* at ¶ 68.
[28] *Fourth MO&O* at ¶ 17.
[29] *Fourth MO&O* at ¶ 22.

29, 2005 and commencing the needed network upgrades. Further, Leaco's waiver request is for a limited period of time and is intended to last only until such time as it is able to complete its planned network overlay, obtain ALI-capable handsets from vendors and market these handsets to its customers, thus carefully heeding the Commission's instruction that waiver requests are "specific, focused and limited in scope, and [show] a clear path to full compliance."[30]

Application of the Section 20.18(g) handset deadlines to Leaco would be inequitable in light of Leaco's vendor difficulties and unforeseeable management problems.[31] As discussed *supra*, the Leaco Board of Directors was blind-sided by the lack of Phase II progress and, since hiring a new General Manager, has moved efficiently and forcefully to implement a Phase II solution as quickly as possible and in line with state emergency officials' expectations. Because Leaco's aggressive implementation schedule will still not allow it to meet its handset deployment deadlines, Leaco has no reasonable alternative but to seek a waiver.

The Commission has recognized the "distinct challenges" that rural carriers such as Leaco face in implementing Phase II requirements.[32] Enforcement of the Commission's current "selling and activating" benchmarks does not serve the public interest since Leaco, in spite of unforeseeable and unique circumstances and without a PSAP request for Phase II service, has made reasonable plans to complete a massive network upgrade by March 1, 2006. As a small, rural carrier with a base of only about 5,700 customers, Leaco simply does not have the

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[30] *Fourth MO&O* at ¶ 44.

[31] *See in re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Smithville Telephone Company, Inc. Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, Order, DA 04-1393 (May 18, 2004) (granting requested relief to a carrier that missed a deadline due to "management changes" that led to "substantial turmoil.")

[32] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fifth Memorandum Opinion and Order, 15 FCC Rcd. 22810 at ¶ 21 (2000) ("*Fifth MO&O*").

resources to proceed any faster. Enforcement of the current benchmarks would subject Leaco to unnecessary enforcement action, diverting its scarce resources from imminent E911 implementation, would do nothing to speed Leaco's compliance, would not bring Phase II capabilities to Leaco's local PSAPs any sooner, and would not be in the public interest.

V. Leaco Satisfies the "ENHANCE 911 Act" Waiver Standard

The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers' requests for relief of the 95 percent penetration deadline for location-capable handsets if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."[33] Leaco's situation meets this *ENHANCE 911 Act* standard. Specifically, Leaco serves 581 customers who use three-watt analog "bag phones." In many cases, these "bag phones" provide superior coverage over new, digital phones on the "edges" of the Leaco network due to the superior propagation characteristics of analog phones in remote areas. Thus, these customers rely upon these analog phones for both basic communications and for access to emergency services. Requiring Leaco to replace these hardy phones while Leaco upgrades its network will deny these customers access to basic emergency communications when traveling and working at the edges of Leaco's network, thus decreasing these customers' access to emergency services.

Currently, Leaco has 581 customers relying upon these analog bag phones, which is roughly 10 percent of Leaco's total customer base. Leaco expects that at least half of these customers will eventually replace their phones due to normal phone turnover and because they will be attracted by the safety features of ALI-capable phones. Consistent with the

[33] National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) ("*ENHANCE 911 Act*").

Commission's *Tier III Relief Order*,[34] Leaco requests an additional 13 months from the July 1, 2006 date by which it expects to be selling and activating 100 percent ALI-capable phones to meet the Commission's 95 percent penetration benchmark (*i.e.*, until August 1, 2007).

Since no PSAP in Leaco's service area is expected to be Phase II capable prior to June 2007, it would serve no purpose to deny customers who rely on the superior coverage characteristics of three-watt phones their legitimate consumer right to choose what in this case is the safest handset option for the time being.[35] Indeed, the "underlying purpose"[36] of the rule – to provide access to emergency services – would be frustrated, and the public interest disserved,[37] if these customers had no coverage at all in certain areas. Once Leaco finishes its CDMA upgrade and can offer ALI-capable phones that will work on the Leaco network and provide location data to local PSAPs, Leaco believes it can convince a sufficient number of these bag phone customers to migrate to ALI-capable phones within 13 months to allow Leaco to achieve 95 percent penetration of such handsets. In light of the "unique and unusual factual circumstances" leading to Leaco's delayed network upgrade and because of Leaco's unique bag phone customer base discussed *supra*, Leaco has "no reasonable alternative" but to seek an extension of the Commission's 95 percent penetration benchmark while it aggressively pursues its network upgrade.[38]

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[34] *See, e.g., Tier III Relief Order* at ¶¶ 38 and 83 (affording carriers an additional 13 months from the Section 20.18(g)(1)(iv) (*i.e.*, 100 percent) deadline to meet the 95 percent penetration requirement).
[35] There may be some Leaco customers who will be refuse to switch to an ALI-capable handset even when Leaco's PSAPs are able to handle Phase II data.
[36] 47 C.F.R. § 1.925(b)(3)(i).
[37] 47 C.F.R. § 1.925(b)(3)(ii).
[38] *Id*.

VI. Conclusion

Based on the foregoing, Leaco respectfully requests that the Commission grant Leaco a limited and temporary limited waiver of Section 20.18(g)(1)(i)-(v) of its rules as requested herein and permit Leaco to implement its Phase II solution based on the schedule set forth above.

Respectfully submitted,

LEACO RURAL TELEPHONE COOPERATIVE, INC.

By:_____/s/_____

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Its Attorneys

Dated: September 1, 2005

DECLARATION OF ROBERT A. YOUNG

I, **Robert A. Young**, do hereby declare under penalty of perjury the following:

1. I am the Controller of Leaco Rural Telephone Cooperative, Inc.

2. I have read the foregoing "Petition for Temporary Waiver of Section 20.18(g) of the Commission's Rules." I have personal knowledge of the facts set forth herein, and believe them to be true and correct.

Robert A. Young

Robert A. Young

9/1/05

Date

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DECLARATION OF DAVID A. BILBREY

I, **David A. Bilbrey, President**, do hereby declare under penalty of perjury the following:

1. I have served on the Board of Directors of Leaco Rural Telephone Cooperative, Inc. since **January 28, 1975**.
2. Leaco's Board of Directors is made up of local business leaders, townspeople and ranchers, and relies on the General Manager to run the company on a day-to-day basis, including compliance with FCC regulations.
3. The General Manager has sole responsibility for FCC compliance, and there is no person on staff with the regulatory or technical knowledge to inform the Board of Directors in the event the General Manager fails to exercise his responsibility.
4. The Board was not informed that in the latter half of 2004 and early 2005, the company had apparently ceased efforts to comply with its Phase II E911 obligations. Based on the past performance of Leaco's General Manager at the time, the Board had no reason to believe that Leaco's E911 compliance efforts were not continuing on schedule.
5. When the Board was informed by Leaco's local counsel in April of this year that the company had missed significant E911 implementation deadlines, the Board recognized both the need to address these issues and the fact that it lacked the expertise to do so, and resolved to delegate responsibility for addressing these issues to the new General Manager who was scheduled to start work on May 1, 2005.

David A. Bilbrey

David A. Bilbrey, President

Dated: August 31, 2005

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