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**Summary**

Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless (“Five Star Wireless”) requests an additional twenty-four month temporary waiver (or temporary stay) of the requirement codified in Rule Section 20.18(g)(1)(v) that 95% of the handsets on its cellular system be Automatic Location Information (“ALI”)-capable by December 31, 2005. Five Star Wireless is the licensee of Cellular Radiotelephone Service Station KNKN691.

Five Star Wireless serves a sparsely populated rural area, and recently installed and activated Code Division Multiple Access (“CDMA”) digital air interface facilities. The CDMA facilities are E-911 Phase I and Phase II compliant. Five Star Wireless is in the process of transferring its analog and Time Division Multiple Access customers to the new CDMA facilities, and has been diligent in its efforts to persuade its customers to upgrade to CDMA ALI-capable handsets. However, the CDMA facilities have been operational for only a relatively short period of time. In addition, customers with the older 3 watt bag-phone models are reluctant to change out their higher-power handsets for the lower-power ALI-capable telephones. This customer reluctance seems to be primarily due to the coverage advantage afforded by the analog phones in Five Star Wireless’ rural service area. Five Star Wireless provides E-911 Phase I service; but has received no requests for Phase II service.

Five Star Wireless meets the E-911 waiver standards previously established by the Commission. In addition, grant of the requested relief meets the standard codified in Section 107 of the ENHANCE 911 Act.

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

**In the Matter of** )  
 )  
**Texas RSA 15B2 Limited Partnership** )  
**d/b/a Five Star Wireless** )  
 )  
**Revision of the Commission's Rules** ) **CC Docket No. 94-102**  
**To Ensure Compatibility With** )  
**Enhanced 911 Emergency Calling** )  
**Systems** )  
 )  
**Request for Temporary Waiver, or** )  
**Temporary Stay, of Section 20.18(g)(1)(v)** )  
**of the Commission's Rules** )

**To: Chief, Wireless Telecommunications Bureau**

**PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY**

Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless ("Five Star Wireless"), by its attorneys and pursuant to Sections 1.3 and 1.925 the Commission's Rules, hereby requests a twenty-four (24) month temporary waiver (or temporary stay), up to and including December 31, 2007, of the requirements of Section 20.18(g)(1)(v) of the Rules, within which to ensure that penetration of location-capable handsets among its subscribers reaches the 95 percent benchmark. Rule Section 20.18(g)(1)(v) specifies that the 95 percent penetration level be reached no later than December 31, 2005. In support hereof, the following is shown:

**I) Background**

1. Five Star Wireless is the licensee of Cellular Radiotelephone Service Station KNKN691, the Frequency Block B cellular system serving the B2 Segment of the Texas 15 - Concho Rural Service Area. Five Star Wireless serves a predominantly rural area, and has fewer than 500,000 subscribers. Because it has fewer than 500,000 subscribers, Five Star Wireless is classified as a

Tier III Commercial Mobile Radio Service (“CMRS”) provider, as defined in the Commission’s *Non-Nationwide Carriers Order (Order to Stay)*, 17 FCC Rcd. 14841, Para. No. 22 (2002).

2. There are five Public Safety Answering Points (“PSAPs”) in Five Star Wireless’ four-county service area: a) Kerr County, Texas – Kerrville Police Department (which currently forwards E-911 calls to the Kerr County Sheriff’s Department for emergencies located outside the City of Kerrville); b) Kimble County, Texas – Kimble County Sheriff’s Department; c) Gillespie County, Texas – Gillespie County Sheriff’s Department; and d) Kendall County, Texas – Kendall County Sheriff’s Department. Five Star Wireless has coordinated its E-911 plans with these various PSAPs, particularly the Kerrville Police Department.

3. At present, Five Star Wireless provides E-911 Phase I Service to all PSAPs in its four-county service area, with the exception of the Kerr County PSAP (which has not requested Phase I service). Upon information and belief, the Kerr County PSAP intends to bypass Phase I and proceed directly to Phase II. To date, Five Star Wireless has not received any PSAP requests for E-911 Phase II service.

4. Five Star Wireless originally elected to deploy a network-based E-911 Phase II Automatic Location Information (“ALI”) technology.<sup>1</sup> However, it later changed its technology selection to a handset-based ALI solution.<sup>2</sup> This change in technology selection was occasioned by the rural nature of the service area and the distances between the various cells, all of which would

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<sup>1</sup> See Five Star Wireless “E-911 Phase II Status Report,” filed November 9, 2000.

<sup>2</sup> See Five Star Wireless’ “Updated E-911 Phase II Status Report,” filed September 9, 2005 .

have rendered it difficult to meet the accuracy standards for network-based solutions codified in Section 20.18(h)(1) of the Commission's Rules without expensive network upgrades needed to perform the triangulation function; and because the handset-based solution was viewed as inherently more accurate in rural areas.

5. Five Star Wireless' system presently employs both analog and digital air interfaces. Two digital air interfaces are currently in service: a) the earlier-installed Time Division Multiple Access ("TDMA") and the more recently installed Code Division Multiple Access ("CDMA"). Insofar as relevant here, the overbuild CDMA network equipment is E-911 Phase I and Phase II compliant. The CDMA facilities have been installed as a replacement for the TDMA facilities, which are being phased out. As a result, TDMA-only telephones are no longer being activated on the system. Instead, all current activations are a mix of CDMA-only and dual-mode CDMA/analog handsets, and all of these handsets are ALI-capable. To date, approximately ten to fifteen percent of the pre-existing TDMA subscribers have been transferred to the CDMA facilities; and once the transfer of customers has been completed, the TDMA facilities will be deactivated. The TDMA facilities are E-911 Phase I capable, but (because the TDMA facilities are to be phased-out and deactivated) there are no plans to upgrade or modify them meet to Phase II requirements.

6. Currently, 100 percent of all new handset activations are E-911 ALI-capable for the handset-based solution. Thus, Five Star Wireless currently meets all of the ALI-capable handset activation benchmark requirements codified in Sections 20.18(g)(1)(i) – (iv) (*i.e.*, the 25 percent, 50 percent and 100 percent activation benchmarks). The relief requested here is confined to the December 31, 2005 ninety-five percent ALI-capable handset penetration deadline specified in Rule Section 20.18(g)(1)(v). Therefore, the relief requested is minimal.

7. Five Star Wireless has been issuing E-911 handset-based solution ALI-capable handsets to its pre-existing customers since January of 2005; and has advertised (and will continue to advertise) the need to replace non-ALI-capable handsets in bill inserts, telephone calls to customers, newspaper advertisements, and radio broadcast and cable television advertisements. While Five Star Wireless has repeatedly advised its customers (through these various means) of the need to replace the non-ALI-capable handsets with ALI-capable ones, Five Star Wireless nevertheless cannot compel the customers to change out the handsets until they are ready and willing to do so. The Commission has acknowledged that rural subscribers historically have tended to hold onto their wireless handsets for much longer than customers in larger, metropolitan markets, and that this is a unique challenge to meeting the 95 percent ALI-capable handset penetration requirement. *See E911 Compliance Deadlines for Tier III Carriers*, 20 FCC Rcd. 7709, Para. Nos. 37, 68, 70, 79 n. 203, and 101 (2005) (the “*2005 E-911 Tier III Carriers Compliance Deadlines Order*”). This is particularly true with the older, three-watt analog bag-phone models, which rural customers like to keep in service seemingly forever because their higher operating power produces greater range – an advantage in rural settings – and they strenuously resist when Five Star Wireless attempts to persuade them to replace their higher-power analog-only phones with the lower-power ALI-capable phones that are currently commercially available. At present, approximately 30 percent of the handsets on the system are ALI-capable. In addition, the transfer of customers with non-ALI-capable handsets to ALI-capable ones is impeded by Five Star Wireless annual churn rate of 16.58%, a churn rate lower than projected by the Commission when it established the December 31, 2005 ninety-five percent penetration benchmark. Therefore, due to circumstances clearly beyond its control, Five Star Wireless finds itself unable to meet the Rule Section 20.18(g)(1)(v)

requirement that, by December 31, 2005, 95 percent of the handsets on the system be ALI-capable. The additional time requested is needed to meet the 95 percent penetration requirement

## **II) Commitment to Achieving Compliance**

8. As noted above, Five Star Wireless has received no PSAP requests for E-911 Phase II service; has elected to deploy a handset-based E-911 Phase II ALI solution; has constructed replacement facilities using the CDMA air interface which are capable of providing E-911 Phase II service; is in the process of phasing-out its TDMA facilities; 100 percent of all new handset activations are E-911 Phase II ALI-capable; and has been diligently attempting to replace all pre-existing handsets with ALI-capable ones since January of 2005. Five Star Wireless has been diligent in advising its pre-existing customers (through bill inserts, telephone calls, newspaper advertisements, and radio broadcast and cable television advertisements) of the need to replace their non-ALI-capable handsets with ALI-capable ones, but to date only 30 percent of the handsets served by the system are ALI-capable. In actual practice, the impediments to achieving compliance with the Rule Section 20.18(g)(1)(v) ninety-five percent penetration requirement are, ironically, those imposed by the customers themselves who (for whatever reasons) are either unwilling or simply unmotivated to change out their existing mobile telephones for ALI-capable ones, notwithstanding Five Star Wireless' attempts to persuade them to do so. In rural areas, customers tend to hold onto their wireless telephones longer than customers in larger, metropolitan markets – and they particularly like to hold onto the older bag-phones because of their superior range. Obviously, Five Star Wireless is confined to using the art of persuasion, and cannot compel the customers to replace the handsets until they are ready and willing to do so. Thus, Five Star Wireless' is committed to achieving compliance with Rule Section 20.18(g)(1)(v), but its efforts to

achieve compliance with the regulation's requirements have been stymied by circumstances beyond its ability to control.

### **III) Temporary Waiver or Stay Request**

9. Accordingly, Five Star Wireless requests a temporary waiver, or temporary stay, up to and including December 31, 2007, of the 95 percent ALI-capable handset penetration requirement set forth in Section 20.18(g)(1)(v) of the Commission's Rules.

### **IV) Waiver Standards**

10. The general waiver standards are codified in Sections 1.3 and 1.925(b)(3) of the Commission's Rules. Section 1.3 of the Commission's Rules states, in relevant part, that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown." Section 1.925(b)(3) of the Rules states that the "Commission may grant a waiver request if it is shown that: (i) [t]he 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) [i]n 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." 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), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972). Under *WAIT Radio* and *Northeast Cellular Telephone Co.*, a rule waiver "may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the

petitioner and when the relief requested would not undermine the policy objective of the rule in question.”” Hearing Aid Compatible Telephones (WT Docket No. 01-309 – Order on Reconsideration and Further Notice of Proposed Rulemaking), FCC 05-122, released June 21, 2005 at Para. 50 n. 158.

11. 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.<sup>3</sup> 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.<sup>4</sup> Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Section 1.3 of the Rules.<sup>5</sup> It recognized, in the case of 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.<sup>6</sup> 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.<sup>7</sup>

12. In addition, Section 107 of the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, 118 Stat. 3986, 3991 (2004) (the “ENHANCE 911 Act”) directed the

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<sup>3</sup> 15 FCC Rcd. 17442 at Para. 22.

<sup>4</sup> Id. at Paras. 42-45.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

Commission to grant qualified Tier III carriers' requests for relief of the Rule Section 20.18(g)(1)(v) December 31, 2005 ninety-five percent penetration deadline for ALI-capable handsets if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."

**V) Five Star Wireless Has Met The Waiver Standards**

13. As shown above, Five Star Wireless has met the Commission's standards for obtaining the requested temporary waiver (or temporary stay) of the 95 percent penetration rate for ALI-capable handsets on the system, specified in Section 20.18(g)(1)(v) of the Commission's Rules. Clearly, in view of the unique or unusual factual circumstances present here, application of the December 31, 2005 deadline would be inequitable, unduly burdensome or contrary to the public interest. In addition, Five Star Wireless has no reasonable alternative but to request the instant waiver. Furthermore, grant of the requested relief would serve the public interest.

14. Five Star Wireless, a small Tier III CMRS carrier serving a four-county rural area, has elected to use a handset-based E-911 solution. It has installed replacement CDMA facilities that are E-911 Phase I and Phase II compliant. One hundred percent of all new handsets activated on the system are ALI-capable. In addition, Five Star Wireless has been diligently attempting to replace all pre-existing handsets with ALI-capable ones since January of 2005. In this regard, Five Star Wireless has diligently advised its pre-existing customers (through bill inserts, telephone calls, newspaper advertisements, and radio broadcast and cable television advertisements) of the need to replace their non-ALI-capable handsets with ALI-capable ones, but to date only 30 percent of the handsets on the system are ALI-capable. Indeed, Five Star Wireless is confined to the art of persuasion, and cannot compel the customers to change out the handsets until they are ready and

willing to do so. Thus, as a practical matter, Five Star Wireless' compliance with the regulation is subject to and contingent upon subscriber willingness to part with their old handsets in favor of ALI-capable ones. The Commission has acknowledged that rural subscribers historically have tended to hold onto their wireless handsets for much longer than customers in metropolitan markets, and has held that this is a unique challenge to meeting the 95 percent ALI-capable handset penetration requirement. 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para Nos. 37, 68, 70, 79 n. 203 and 101. This is particularly true of the older bag-phone models, which rural customers strongly desire to retain in service because their higher operating power translates into greater range – a perceived advantage in rural settings. Indeed, the Commission has acknowledged that the desire by customers to continue using their higher-power, three-watt analog telephones is a factor affecting a carrier's ability to meet the December 31, 2005 ninety-five percent ALI-capable handset penetration requirement; has indicated that it is "sympathetic" to these carriers' predicament in meeting the requirement; and has relied on it as a basis for granting relief. 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para. Nos. 68, 70, 79 n. 203 and 103.

15. Thus, Five Star Wireless has been diligent in its efforts to secure compliance with all applicable E-911 requirements of the Commission's Rules, including the December 31, 2005 ninety-five percent ALI-capable handset penetration requirement. Clearly, Five Star Wireless has shown a clear path to achieving full compliance and its efforts are well-documented by the showings contained herein. Indeed, the relief requested herein is minimal, confined as it is to one discrete regulatory requirement. A request for minimal relief warrants the grant of relief especially where, as here, the applicant has shown a plan to achieve full compliance. See 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para. Nos. 47, 50, and 63.

16. Equally as compelling, Five Star Wireless has kept the PSAPs in its service area apprised of its E-911 plans, and has not received any requests for E-911 Phase II service. The Commission has indicated that these factors warrant temporary relief from the E-911 obligations codified in the Rules. *See 2005 E-911 Tier III Carriers Compliance Deadlines Order*, at Para. Nos. 29, 34, 44, 50, 86. Indeed, the absence of requests for E-911 Phase II service indicates that granting the requested relief “would not undermine [the Commission’s] policy objective of ensuring access to E911 service.” *2005 E-911 Tier III Carriers Compliance Deadlines Order*, at Para. No. 86.

17. In addition, the inability to meet the December 31, 2005 ninety-five percent handset penetration deadline is clearly due to circumstances beyond Five Star Wireless’ control; and, therefore, the delay in achieving compliance with the requirement is simply unavoidable. As noted previously, Five Star Wireless has advised its pre-existing customers (through multiple means of communication) of the need to replace their existing, non-ALI-capable handsets with ALI-capable ones; but it seems that many customers (for their own reasons) simply do not wish to do so. The common sense truth of the matter is that Five Star Wireless cannot compel the customers to change out the handsets if they do not wish to do so. It appears that the customers feel that retaining their existing handsets is more important than having E-911 Phase II service, particularly in the case of the older bag-phone models which have greater range than newer model handsets – a perceived advantage in rural areas. Indeed, these customers apparently see no good reason to give up their higher-power telephones, and would gain nothing at present from replacing them with ALI-capable ones because E-911 Phase II service has not been initiated anywhere in Five Star Wireless’ four-county service area due to the absence of a PSAP request for such service.

18. It should also be emphasized that, in the *2005 E-911 Tier III Carriers Compliance*

Deadlines Order at Para. Nos. 15 - 91, the Commission granted extensions of the 95 percent ALI-capable handset penetration rule to carriers upgrading their subscribers from a TDMA to a CDMA network. Five Star Wireless circumstances are consistent with those that justified the grant of waiver relief to these other wireless carriers, and the Commission has a legal obligation to treat similarly situated parties alike. *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *see also Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994) *and Ramon Rodriguez & Associates*, 3 FCC Rcd. 407, 408 (1988) (stating that *Melody Music* “broadly sets out the Commission’s obligation to assure comparable treatment of similarly situated parties”).

**VI) The Requirements of the ENHANCE 911 Act Are Satisfied**

19. The relief requested is fully consistent with the requirements of Section 107 of the ENHANCE 911 Act. That statutory provision directs the Commission to grant qualified Tier III carriers’ requests for relief of the Rule Section 20.18(g)(1)(v) December 31, 2005 ninety-five percent penetration deadline for ALI capable handsets if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”

20. Absent grant of the requested relief, Five Star Wireless could be required to terminate service to those pre-existing customers who (for whatever reason) have voluntarily elected to retain their non-ALI-capable handsets in order to achieve compliance with the Rule Section 20.18(g)(1)(v) ninety-five percent penetration requirement. This would clearly result in the affected “consumers having decreased access to emergency services” because they would be denied access to the E-911 Phase I service already in place in three of the four counties that comprise Five Star Wireless’ service area, as well as access to basic 911 service. Clearly, such a result would disserve the public interest; and, therefore, strict application of the Rule’s requirement could produce a result

that runs counter to the policy objectives that underlie the Commission's E-911 Rules – namely the provision of emergency services to wireless consumers.

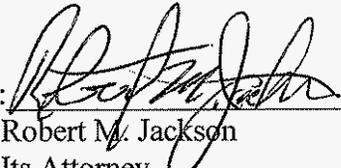
21. In addition, and as noted above, many customers desire to retain their existing, higher-power analog bag phones due to the greater range that these units afford. If required to migrate to digital CDMA handsets in the most rural portions of Five Star Wireless' service area, some subscribers would be unable to complete a telephone call at all, including emergency calls. The Commission has held that "strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain emergency callers to reach emergency assistance, and thus 'would result in consumers having decreased access to emergency services,' within the meaning of the ENHANCE 911 Act, at least in some cases." Petition For Waiver of Enhanced 911 Phase II Requirements, Order, CC Docket No. 94-102, FCC 05-182, released October 28, 2005 at Para. No. 20. See also Request for Enhanced 911 Phase II Waiver by Northeast Communications of Wisconsin d/b/a Cellcom, Order, CC Docket No. 94-102, FCC 05-200, released December 8, 2005 at Para. No. 17; Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, Order, CC Docket No. 94-102, FCC 05-188, released November 3, 2005 at Para. No. 19.

**WHEREFORE**, good cause shown, Five Star Wireless requests that the instant petition be granted.

Respectfully submitted,

**Texas RSA 15B2 Limited  
Partnership d/b/a Five Star  
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By:   
Robert M. Jackson  
Its Attorney

Filed: December 14, 2005

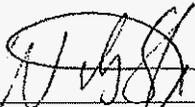
**DECLARATION UNDER PENALTY OF PERJURY**

I, W.G. (Bill) Stacy, hereby state the following:

1. I am the General Manager of Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless.

2. I have read the foregoing "Petition for Temporary Waiver or Temporary Stay." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14<sup>th</sup> day of December, 2005.

  
\_\_\_\_\_  
W.G. (Bill) Stacy