

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

In the Matter of)
)
Copper Valley Wireless, Inc.)
)
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

PETITION FOR WAIVER OR TEMPORARY STAY

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Summary

Copper Valley Wireless, Inc. ("Copper Valley") requests a temporary waiver, or temporary stay, up to and including the dates specified in Paragraph No. 22 of this petition, within which to meet the 25%, 50% and 100% Automatic Location Information ("ALI")-capable handset activation benchmarks, and the December 31, 2005 ninety-five percent ALI-capable handset penetration requirement.

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 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. 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.

With respect to the requirement that 95% of the handsets on the system be ALI-capable by December 31, 2005, Copper Valley's requested relief meets the requirements of Section 107 of the ENHANCE 911 Act.

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PETITION 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 the dates specified in Paragraph No. 22, below, within which to meet the 25%, 50% and 100% Automatic Location Information ("ALI")-capable handset activation benchmarks, and within which to meet the 95% ALI-capable handset penetration requirement codified in Section 20.18(g)(1)(v) of the Commission's Rules. Copper Valley was previously granted temporary relief from the 25%, 50% and 100% ALI-capable handset activation benchmarks in the Commission's Non-Nationwide Carriers Order, Order to Stay, CC Docket No. 94.102, 17 FCC Rcd. 14841 (2002) ("Non-Nationwide Carriers Order") and in its subsequent E911 Compliance Deadlines for Tier II Carriers Order, CC Docket No. 94-102, 20 FCC Rcd. 7709, Para. Nos. 135 – 137 (2005) ("2005 E-911 Tier III Carriers Compliance Deadlines Order"). Under the current regulatory schedule established by the Commission, Copper Valley is required to meet all of the interim benchmarks (*i.e.*, the 25%, 50% and 100% benchmarks) for selling and activating ALI-capable handsets by December 31, 2005. In its previous "Request for Waiver or Temporary Stay," filed June 3, 2004, Copper Valley did not request relief from the requirement codified in Section

20.18(g)(1)(v) of the Rules that 95% of all handsets on the system be ALI-capable by December 31, 2005. 2005 E-911 Tier III Carriers Compliance Deadlines Order, Para. Nos. 135 – 137. Under the definitions contained in the Non-Nationwide Carriers 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 ALI solution. The reason for the instant waiver request can be briefly summarized here: a) the current analog-only cellular system equipment cannot be modified or upgraded to perform E-911 Phase II functions; b) analog ALI-capable telephones will not perform E-911 Phase II functions on the system, and the further activation of such units is a vain act; c) an equipment replacement project is underway which will provide the system with E-911 capability; and d) the equipment replacement project is proceeding at a very slow pace in view of Copper Valley's extremely small size, extremely limited financial resources, and recent changes in its executive personnel. In the 2005 E-911 Tier III Carriers Compliance Deadlines Order at Para. Nos 136 – 137, the Commission held that Copper Valley's need to replace the current analog equipment (which cannot be made E-911-capable) with new digital equipment was a special circumstance warranting the grant of relief from the ALI-capable handset activation requirements. In support hereof, the following is shown:

I) Statement Of Facts

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 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 Plexsys analog cellular system equipment (which, as noted below, has been discontinued by the manufacturer and has no available support services from any source). A handset-based solution was selected due to the rural nature of the service area and the cell layout, all of which would have rendered it difficult (if not outright impossible) to meet the accuracy standards for network-based solutions codified in Rule Section 20.18(h)(1) without the prohibitively expensive network upgrades needed to perform the triangulation function; and because the handset-based solution was viewed as inherently more accurate in rural areas. Copper Valley's selection of a handset-based solution remains unchanged. However, as discussed in detail below, the existing analog-only Plexsys equipment cannot be upgraded to perform E-911 functions, and an equipment replacement project is currently underway. Once the equipment replacement project has been completed, the system will have full E-911 capability.

A) No PSAP Requests Have Been Received

3. There are six Public Safety Answering Points ("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 E-911 Phase I or Phase II service. Copper Valley has kept the PSAPs apprised of its E-911 plans and roll-out schedule, updating this information as needed.

B) Analog ALI-Capable Handsets Do Not Perform On The System

4. At one point, Copper Valley located an ALI-capable handset model that is compatible with the analog RF transmission component of its system. However, there is no network equipment

or software available that will enable the system to be retrofitted so as to process the ALI data elements, or to transmit those data elements to any PSAP. Thus, for practical purposes, the handsets are useless; and the further activation of these handsets is a vain act since they will not perform as designed on the system. Indeed, any ALI-capable handsets activated on the current analog-only system would just have to be replaced at a future date once the new network equipment has need installed.

C) The Replacement Digital System

5. Copper Valley's cellular system is exclusively analog, and utilizes switching and base station equipment manufactured by Plexsys. The equipment has been discontinued by the manufacturer and is no longer being supported by the manufacturer or by any other source. Accordingly, the system has no digital transmission capability, and cannot be modified or retrofitted (through, for example, the installation of software patches and upgrades) to be compliant with such features as the Commission's E-911 requirements, Wireless Local Number Portability ("Wireless LNP") requirements, or the requirements of the Communications Assistance for Law Enforcement Act ("CALEA"). As the statement of facts set forth below indicates, when all factors are considered in their totality, Copper Valley continues to face truly unique circumstances in achieving compliance with Commission-imposed requirements, including the E-911 Rules.

6. The Plexsys equipment utilized by Copper Valley is a first-generation, analog-only AMPS cellular system – and it may well be one of the few such systems still in operation in the United States. The companies that initially designed, and 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) subsequently 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.

7. As of December of 2004, Copper Valley was still studying the feasibility of supplementing (and ultimately replacing entirely) the existing analog system with state-of-the-art base station and switching equipment. At that time, Copper Valley was studying the feasibility of deploying replacement equipment manufactured by Nortel Networks ("Nortel") using the Code Division Multiple Access ("CDMA") air interface. As of December 2004, preliminary estimates placed the cost of the new Nortel CDMA base station and switching equipment at \$4,361,072.87, excluding spares, installation and engineering.

8. Since December of 2004, Copper Valley has completed its feasibility study, and has entered into a contract with Vantage Point Solutions to provide engineering and design services for the replacement system, and to recommend appropriate equipment vendors for the replacement CDMA system equipment. Copper Valley is paying Vantage Point Solutions approximately \$100,000.00 for its services. Rough price quotes received to date place the cost of the replacement base station and switching equipment at approximately \$3.5 million – substantially less than the \$4.36 million price quote received for the Nortel equipment. This substantial cost savings is a major consideration to a very small carrier such as Copper Valley, which has a very small subscriber base and limited financial resources.

9. Copper Valley intends to commence construction of the replacement CDMA system no

later than June 30, 2006; and anticipates that by the end of the building season in late August 2006 it will have in place the replacement switch and replacement base station equipment at its Valdez, Glennallen, Lake Louise, Willow Creek, Tolsona Ridge and Paxson cell sites, for a total of six sites. The installation of the CDMA equipment will require the construction of a new system through, for example, the installation of additional transmitters and antennas at the cell sites and, if needed, the construction of new towers. During the period from the commencement of construction through the end of the building season, all outdoor installation work will be performed. This will include the necessary tower work, antenna mounting, outdoor cabling, and the delivery (but not the connection) of the new base station transmitter equipment to the equipment sheds; as well as the installation of such additional backhaul facilities as may be required to connect the various cell sites to the new CDMA switch. Although it is presently contemplated that Common Carrier Fixed Point-to-Point Radio Service facilities will be used for backhaul, Copper Valley may elect to utilize other or supplemental facilities using a different technology.

10. From the completion of the work described in the preceding paragraph through February of 2007, Copper Valley will perform the physical inside installation work, including the physical racking (or actual installation) of the transmitter equipment inside the equipment sheds at the various sites, cable termination, and the connection of the equipment to the new power source(s). In addition, the finalization of the equipment configuration, implementation testing, call routing testing, and optimization of the new network equipment will occur during this time period. Connecting the base station facilities to the switch will require extensive termination testing, routing testing, and billing testing to ensure operations and optimization of the network from the base station locations. It is contemplated that the testing and optimization activities will require a

technician to visit each cell site. Remote cell sites have limited accessibility during the winter months due to severe weather conditions and the remoteness of the sites.

11. The construction of these six replacement CDMA sites and the installation of the new CDMA switch will give Copper Valley the technical ability to accommodate a pending porting request from Dobson Cellular Systems, Inc. These six sites were selected as the first to be outfitted with the new equipment because of the Dobson porting request. CDMA base station facilities will be installed at the remaining seven sites during the Summer 2007 building season, and will follow the time line and procedures outlined above for the first six sites.

12. Since not all customers can be immediately transitioned to the CDMA facilities, Copper Valley will be required to operate the analog equipment indefinitely, at least until all customers are on the CDMA system. Installation of the CDMA switch alone would not provide E-911 Phase I or Phase II capability because a CDMA switch will not operate with the existing Plexsys base station equipment, meaning that it could not be used to place or receive calls or to transmit the E-911 data elements to a PSAP.

D) Copper Valley Is A Very Small Carrier With Limited Financial Resources

13. Copper Valley's Cellular Geographic Service Area ("CGSA") embraces sparsely populated areas in the State of Alaska, with thirteen cellular base station facilities at or near Valdez, Glennallen, Tolsona Ridge, Willow Creek, Naked Island, Paxson, Heney Ridge, Slana, McCarthy, Lake Louise, Cordova and Whittier. All of these areas lie within the Valdez-Cordova Census Area, which has a 2000 Census population of 10,195 persons. Copper Valley's CGSA covers only a small portion of the Valdez-Cordova Census area. According to the 2000 Census data, the Valdez-Cordova Census Area embraces a land area of 34,319 square miles. Thus, the Valdez-Cordova

Census area embraces 10,195 persons within an area of 34,319 square miles – and Copper Valley’s CGSA does not embrace the entire area or the entire population – which equates to an average population density of 0.297 person per square mile.

14. At present, Copper Valley is the sole provider of wireless service in Central Prince William Sound, in McCarthy and in areas around Paxson.

15. Copper Valley is a very small Tier II CMRS carrier. As of December 15, 2005, Copper Valley had approximately 1,162 subscribers to mobile service, and an additional 179 households that receive fixed service. Of those 179 households, 95 are in the McCarthy area and the remaining 84 are in the Copper Basin area. Many of the subscribers to mobile service use the older, higher-power three-watt analog bag-phones and vehicle-mounted phones due to their superior range when compared to the lower-power, hand-held models. For calendar year 2005, Copper Valley had gross revenues of \$1,450,355.00 as of October 31, 2005. For immediate past years, Copper Valley had gross revenues of \$1,701,594.00 in calendar year 2004; \$1,704,500 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 generally declining. The **net loss** for calendar year 2005 (as of October 31, 2005) \$24,960.00; for calendar year 2004 the **net loss** was \$70,097.00; for calendar year 2003 the net profit 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.

E) Construction Season Of Very Limited Duration

16. As noted above, the installation of the CDMA equipment will require the construction of a new system through, for example, the installation of additional transmitters and antennas at the

cell sites and, if needed, the construction of new towers. There is a limited construction season in the areas served by Copper Valley during which this work can be performed; and some of the cell sites are accessible only by helicopter due to, for example, the absence of paved roads in many areas. Construction can be performed only in the months of May through August. In winter, conditions are extremely harsh. Winter temperatures generally range from 20 to 25 degrees Fahrenheit in the Valdez/Prince William Sound area, and minus 20 to minus 40 degrees Fahrenheit in the Copper Basin area. Snowfall approximates 320 to 350 inches annually in the Valdez area, and 36 to 48 inches annually in the Copper Basin area. "Daylight" hours are extremely limited. Winter daylight (such as it is) consists of twilight conditions lasting approximately four hours per day (from roughly 10:00 a.m. to 2:00 p.m.). On a cloudy winter day, virtual nighttime conditions exist twenty hours per day; and the street lights in Valdez (the largest community served by Copper Valley, with a population of between 4,000 and 5,000 persons) remain illuminated.

F) Potential Consequences Of A Denial Of Requested Relief

17. If required to comply with the current ALI-capable handset activation deadlines and the December 31, 2005 ninety-five percent ALI-capable handset penetration requirement, Copper Valley could have to shut down its operations entirely. This would work a substantial hardship to its 1,162 mobile and 179 fixed subscribers. The extension of time requested in this petition is the realistic minimum needed to obtain and install the required replacement; and to thereafter commence the activation of ALI-capable handsets, and thereafter achieve 95% penetration of ALI-capable handsets on the system.

G) Truly Unique Circumstances

18. As the foregoing clearly demonstrates, the totality of the circumstances present in this

case are truly unique and would not arise in any of the remaining 49 states.

H) Unavoidable Delays In The Equipment Replacement Project

19. Copper Valley had hoped to be farther along in its equipment replacement project by this point in time, but was hampered by two factors. First, it was hampered by the May 2005 retirement of its parent corporation's long time Chief Executive Officer ("CEO") and General Manager; and the May 2005 resignation of its Chief Operating Officer ("COO"), who resigned after only five months on the job. The CEO and the COO were responsible for overseeing the equipment replacement project, with the CEO having primary responsibility but relying heavily on the COO for advice. As noted in Paragraph No. 1 above, the parent corporation is a telephone cooperative and, as such, is wholly-owned by its subscribers. The membership of its Board of Directors is derived from its subscriber base, and while the Board members are fully qualified in their respective private occupations, none are telecommunications experts. As such, they rely upon the recommendations of the CEO and General Manager (who, as noted, relies upon the COO). As might be expected, the new CEO and the new COO required a bit of time to get up to speed on all of the cooperative's activities, of which the equipment replacement project was but one – and an extremely important and complex one at that. Second, the financial outlay required for the equipment replacement project is truly staggering for a company of Copper Valley's very small size, and must be carefully developed and implemented to avoid placing the company in financial jeopardy.

20. The extension of time requested will enable Copper Valley to complete its new network equipment selection and installation activities and will render the system E-911, Wireless LNP and CALEA compliant.

II) Commitment To Achieving Compliance

21. 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 anyone. Simply stated, there are no network equipment and software upgrades available **from any source** for the Plexsys equipment that can enable it to process the ALI data elements, or to 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 under the construction schedule discussed above (*i.e.*, by February 25, 2007 for the first six cells and by February 25, 2008 for the remaining seven cells), a construction schedule dictated by the extremely short building season in the State of Alaska. Since the current (*i.e.*, Plexsys) network equipment cannot be modified to process the ALI data elements or to transmit the data to any PSAP, no ALI-capable handset will work 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

22. Accordingly, Copper Valley requests a temporary waiver or temporary stay of any requirement that it begin activating ALI-capable handsets on the system, up to and including: a) February 25, 2007 for the service areas of the first six cells, which are scheduled to be built during the Summer 2006 building season; and b) February 25, 2008 for the service areas of the remaining seven cells, which are scheduled to be built during the Summer 2007 building season. At those times, 100% of all new handset activations will be ALI-capable. In addition, Copper Valley

requests a temporary waiver or extension of time, up to and including February 25, 2010, of the Rule 20.18(g)(1)(v) requirement that 95% of the handsets on the system be ALI-capable.

IV) Waiver Standards

23. 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).

24. 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.¹ 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.² Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Section 1.3 of the Rules.³ It recognized, in the case of E-911, that there could be instances where technology-related issues or

¹ 15 FCC Rcd. 17442 at Para. 22.

² *Id.* at Paras. 42-45.

³ *Id.*

exceptional circumstances may mean that deployment of Phase II may not be possible by the established deployment deadlines.⁴ 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.⁵ In the *Non-Nationwide Carriers 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.

25. In addition, Section 107 of the Ensuring Help Arrives Near Callers Employing 911 Act of 2004, 118 Stat. 3986, 3991 (2004) (the “Enhance 911 Act”) directed the Commission to grant qualified Tier II 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) Copper Valley Has Met The Waiver Standards

26. 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 for it in the *2005 E-911 Tier III Carriers Compliance Deadlines Order*, and of the 95% handset penetration requirement codified in Rule Section 20.18(g)(1)(v). 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 anyone. Thus,

⁴ Id.

⁵ Id.

no equipment or software vendor provides an E-911 Phase II ALI solution for this equipment. 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, and plans to do so under the construction schedule discussed above. Since the currently available analog ALI-capable handsets will not function to provide E-911 capability, further activation of these analog ALI-capable handsets is a vain act.

27. 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.

28. In the *Digital Wireless TTY Order (CC Docket No. 94-102)*, 17 FCC Rcd. 12084 (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.

29. 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. *See also* NOW Licenses, LLC, Mimeo DA 04-1382, released May 17, 2004 at Para. No. 9 (granting Wireless LNP relief because the "current switch will most likely soon be discarded and full LNP achieved by the new switch, and further upgrades to the existing switch

will provide little benefit to consumers to justify the substantial cost, particularly given that the cost is incurred only to achieve porting in capability”).

30. 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. 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.

31. 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 were 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.

32. 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. Nevertheless, Copper Valley keeps the PSAPs apprised of its E-911 plans.

33. In addition, it should be emphasized that no valid public interest purpose would be achieved by denying Copper Valley's request. If required to comply with the ALI-capable handset activation and penetration requirements before the replacement equipment is installed and operational, Copper Valley would seemingly have no alternative other than shutting down its operations; and thus denying service to its existing mobile customers and fixed-point service households – and extreme hardship for both Copper Valley and its customers, particularly those customers in areas where Copper Valley is the sole provider of wireless service. The United States Court of Appeals for the District of Columbia Circuit views with extreme disfavor Commission regulatory requirements which require a wireless carrier to shut down all or part of its system. *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994). Furthermore, the Commission has indicated (in the specific context of Wireless LNP) that Copper Valley should not have to shut down its operations due to an inability to meet regulatory requirements. *Copper Valley Wireless, Inc.*, Mimeo DA 05-538, released March 3, 2005 at Para. No. 7.

VI) The Requirements of The Enhance 911 Act Are Satisfied

34. With respect to the December 31, 2005 ninety-five ALI-capable handset penetration requirement, 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 from 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."

35. Absent grant of the requested relief, Copper Valley could be required to shut down its operations. This would clearly result in "consumers having decreased access to emergency services" because they would be denied access to the basic 911 service that they currently receive. 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. The Commission has held that "strict enforcement of the December 31, 2005 deadline ... 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. 17. Here, denial of the requested relief would not result only in a denial of consumer access to emergency services "in some cases," it would result in a denial of access to basic 911 service in **all** cases.

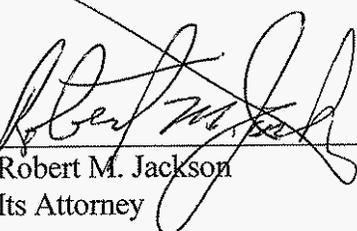
36. In addition, consistent with the wireless industry's experience in rural areas, Copper Valley anticipates that many of its mobile service customers who use the older, higher-power three-watt analog bag-phones and three-watt vehicle-mounted units will be reluctant to change to digital handsets, due to the greater range afforded by the three-watt analog models; and that a considerable amount of time will be required to transition these customers to the digital facilities. 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% 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. 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 95% ALI-capable handset penetration requirement; has stated 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.

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

Respectfully submitted,
Copper Valley Wireless, Inc.

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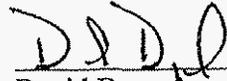
Filed: December 20, 2005

DECLARATION UNDER PENALTY OF PERJURY

I, David Dengel, hereby state the following:

1. I am the Chief Executive Officer and General Manager of Copper Valley Telephone Cooperative, Inc., the parent corporation of Copper Valley Wireless, Inc.
2. I have read the foregoing "Petition for 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 19th day of December, 2005.



David Dengel