

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

In the Matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)

To: The Commission

**DOBSON CELLULAR SYSTEMS, INC. REQUEST FOR LIMITED WAIVER OF
DECEMBER 31, 2005 E911 DEADLINE**

Pursuant to Sections 1.3 and 1.925 of the Commission's rules, Dobson Cellular Systems, Inc. ("Dobson")¹ hereby requests a temporary waiver of Section 20.18(g)(1)(v) of the Commission's rules.² The instant waiver is limited in scope to nine markets that Dobson acquired in December, 2004, and that are utilizing legacy CDMA technology that Dobson is actively working to replace.³

INTRODUCTION

Dobson is a "Tier II" CMRS carrier serving predominantly rural and suburban markets in 11 states. Except for the markets subject to this waiver, Dobson provides service to its subscribers chiefly through the Global System for Mobile Communications ("GSM") air interface protocol, the digital technology standard used in Europe, Asia and by several other U.S.

¹ Dobson is a wholly-owned subsidiary of Dobson Communications Corporation ("DCC"), which also owns American Cellular Corporation ("ACC"). ACC similarly operates in rural and suburban markets in 9 states.

² This rule requires Commercial Mobile Radio Service ("CMRS") providers that employ handset-based E911 location technology to achieve 95% penetration among their subscribers of handsets capable of automatic location identification ("ALI") by December 31, 2005 ("Handset Penetration Deadline"). *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, Order To Stay*, CC Docket No. 94-102, 17 FCC Rcd 14841 (2002) .

³ Attachment A lists the nine relevant markets.

carriers.⁴ Because handset manufacturers have not made handset-based E911 solutions available for GSM handsets in the U.S., Dobson employs a network-based Phase II E911 solution for its GSM subscribers. Indeed, upon the acquisition of these nine CDMA markets in December, 2004,⁵ Dobson rapidly overlaid and completed implementation of its GSM technology and initiated Phase II E911 services utilizing a network-based Phase II E911 solution.

However, to avoid undue disruption of the subscriber base it inherited, Dobson has continued to operate the incumbent CDMA network as well and continues to provide Phase II service to the former RFB customers via the handset-based solution associated with that network. Although efforts have been made, and will continue to be made, to migrate all legacy subscribers to the GSM network, the instant request for waiver of the Handset Penetration Deadline is only necessitated by reason of those CDMA customers in these nine markets that, despite Dobson's efforts, remain on the legacy CDMA network.⁶ Dobson has strong business incentives to migrate these legacy CDMA subscribers to its GSM network as soon as reasonably possible, because the operation of two technologies is spectrally inefficient and the CDMA billing platform used to serve this continually decreasing subscriber base is very expensive to maintain.

DISCUSSION

A. Dobson is Migrating Customers From Legacy CDMA and Analog to GSM

⁴ Dobson has completed an overlay of its TDMA digital network with GSM technology, although it continues to operate the legacy TDMA and (as required by the FCC's rules) analog networks in most of its markets.

⁵ Pursuant to an order of the Bankruptcy Court, Dobson acquired from RFB Cellular, Inc., debtor-in-possession, and affiliated companies ("RFB"), the assets, other than the FCC licenses, associated with wireless telecommunications systems in nine markets in Michigan on December 29, 2004, and began operating those systems pursuant to a Spectrum Manager lease with the seller. On June 22, 2005, after receipt of Commission approval for the assignment of RFB's licenses, Dobson acquired the former RFB licenses for the nine markets.

⁶ As discussed, Dobson inherited a network that had implemented the handset based solution. In accordance with Commission rules, Dobson maintains a handset-based solution for the legacy CDMA platform and will continue to provide handset-based Phase II service during the transition.

The former licensee, RFB, provided service to these markets utilizing analog and CDMA technology. To the extent required by Commission rules, RFB had implemented a handset-based Phase II E911 solution and was marketing ALI-capable handsets at the time of the acquisition. Since Dobson acquired the former RFB assets, all of the CDMA handsets activated by Dobson have been ALI-capable, in compliance with the Commission's rules. However, not all of the handsets in use were ALI-capable at the time the system assets were acquired.

Upon acquisition of the RFB systems, Dobson immediately began to overlay these markets with GSM technology, which also included, where required, the implementation of a network-based solution for the provision of E911 Phase II services. After finishing the GSM overlay in July 2005, Dobson began actively to solicit legacy subscribers to switch to Dobson's GSM network, and it stopped activating new CDMA accounts and selling CDMA handsets.⁷ Dobson continues to provide incentives to migrate pre-existing analog and CDMA customers, including CDMA customers using ALI-capable handsets, to the GSM network. In order to induce CDMA customers to migrate, Dobson provides a phone either completely free of charge or for the incremental cost of only \$0.99. Dobson is also introducing new, lower rate GSM access plans in order to attract inherited subscribers who are clinging to legacy rate plans. Dobson will continue to offer other incentives, as it has strong business reasons to do so: long-term operation of the inherited CDMA network is spectrally inefficient and the inherited CDMA billing system that must be utilized to serve these legacy subscribers is expensive to maintain.⁸

⁷ A few exceptions have been made since July 2005 to accommodate existing business accounts but even these "exception-only" additions will not be made after December 31, 2005.

⁸ Dobson has also been offering to all its analog and CDMA subscribers in the RFB markets subsidized GSM handset pricing that it typically only extends to brand new customers (or those with fewer than 6 months remaining on their existing contracts) to minimize a subscriber's entry costs. In addition Dobson allows these subscribers to take advantage of existing promotions (*e.g.*, one month of free data). Further, all Dobson advertising in the Michigan region is based around promotion of its GSM network.

As a result of these efforts, between July 2005 and December 2005 the number of former RFB subscribers who continue to use CDMA or analog handsets has declined to less than 12,500 (almost 50% of legacy CDMA/analog customers). Dobson continues to reduce the base of legacy handsets every week. Still, despite the company's best efforts, there are legacy subscribers who refuse to change. Unfortunately, by Dobson's best estimates, approximately 4,000 of the remaining legacy subscribers use non-ALI-capable handsets.⁹ Approximately 2,900 of the non-ALI compliant handset subscribers remain firmly entrenched on Dobson's analog network in these markets. These subscribers show little inclination to switch to any form of digital service despite Dobson's continued efforts to provide incentives for them to do so.

B. Customers Are Reluctant to Upgrade Handsets

Since Dobson is uncertain as to the likelihood of supporting the CDMA network after all former RFB subscribers have moved to GSM handsets, Dobson is not attempting to persuade its subscribers to upgrade their non-ALI-capable handsets to those with ALI capability. Rather, Dobson must persuade its customers to migrate to a different air interface that will utilize a network-based solution and, more significantly, allow the carrier to achieve the economies and efficiencies inherent in operating a single air interface in each market. The challenges to achieving such changes are, nevertheless, quite similar in some respects to those confronting CDMA-based carriers employing handset-based solutions. Dobson has experienced the same strong customer resistance to changing out digital handsets or to migrating from analog handsets, factors which the Commission previously acknowledged will drive a carrier's ability to meet

⁹ Dobson is unable to determine the exact number of subscribers from this pool with non-compliant handsets. Instead, this estimate is based on a comparison of subscribers under long-term contract versus those not under contract ("month-to-month"). Dobson estimates that any month-to-month subscriber is unlikely to have replaced a handset within the last two years and therefore is probably not operating an ALI-capable handset.

handset penetration requirements.¹⁰ Short of turning off a subscriber's service, a carrier in Dobson's position is hard-pressed to compel a subscriber to use the internet or travel to the carrier's retail outlet to change phones.

So despite Dobson's efforts to migrate customers to GSM and render moot the issue of compliance with the 95% penetration standard, a significant number of non-ALI-capable handsets will remain in use in these markets by December 31, 2005. To the small number of subscribers who have found a comfort level with their current phone, promotional pricing or even free phones apparently are not worth the perceived difficulty associated with visiting a store to acquire a new phone, transfer number directories between phones and purchase different or additional accessories. Unlike CDMA-based carriers, it would be counterproductive for Dobson to market new ALI-capable handsets to these former RFB customers, since Dobson is trying to migrate these customers off the CDMA network and onto the GSM handsets that will operate with its network-based E911 Phase II services and that provide more efficient and feature-rich services. A waiver is therefore required, since the purpose of the rule cannot be satisfied in these circumstances.

C. Waiver Standard

Sections 1.3 and 1.925 of the Commission's Rules set forth the general standard for determining when a waiver should be granted. Section 1.3 of the Commission's Rules establishes that the Commission may grant relief from its rules for good cause shown. Such good cause exists if the Commission finds that strict compliance would be inconsistent with the

¹⁰ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17388, ¶¶ 51-53 (1999) ("*Third Report and Order*"); See *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, ¶ 37 (2000) ("*Fourth MO&O*"); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, FCC 05-182 at ¶ 8 (rel. Oct. 28, 2005). Further, the Commission recognized that, due to a variety of reasons, "the actual pace of ALI-capable handset deployment could lag and may take several years" as "[s]ome customers will undoubtedly (continued on next page)

public interest and when the requested relief would not undermine the policy objectives of the rule in question.¹¹ Section 1.925 requires that the waiver petition demonstrate that, in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest or strict application of the deadline set forth in the rule would be inequitable.¹²

In addition, the Commission in the *Fourth MO&O* recognized that waivers may be warranted for handset milestones. Further, the Commission clarified the applicable standard, nothing that requests for waiver should be “specific, focused and limited in scope, and with a clear path to full compliance.”¹³ The Commission also pointed out that “carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver requests.”¹⁴

D. Plan for Compliance

The instant waiver request is limited in scope to the recently acquired RFB markets and provides a clear path for converting inherited CDMA and analog subscribers off the legacy CDMA network and billing platform onto Dobson’s more robust GSM network as soon as possible. In these former RFB markets, Dobson will continue to market its GSM network exclusively and will continue to actively solicit customers to change from their CDMA or analog

elect to economize by keeping their handsets for much longer than average, despite the advantages of ALI-capable handsets.” See *Third Report and Order* at ¶¶ 51-53; *Fourth MO&O* at ¶ 37.

¹¹ The Commission’s waiver rules require the proponent to show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative. See 47 C.F.R. §§ 1.3, 1.925. See also *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); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (a waiver of the Commission’s rules 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).

¹² See *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹³ *Fourth MO&O* at ¶ 44.

¹⁴ *Id.*

phones. Moreover, Dobson has not renewed or extended any CDMA or analog contracts in the last four months and will not do so in the future.

Having achieved a strong level of migration to date, Dobson will initiate a targeted letter writing campaign, informing former RFB customers of the ability to receive a free or \$0.99 phone along with a rate plan comparable or superior to the customer's current plan. Dobson also will initiate a direct marketing campaign focused on these former RFB subscribers; and Dobson will create a new access plan as a further incentive for subscribers who signed up for low-minute rate plans with RFB that are not currently available to Dobson subscribers. In addition to introducing comparable rate plans, Dobson will be providing those subscribers a far greater coverage area on the GSM network than RFB was able to provide, at the same or minimally more cost. Additionally, Dobson will host numerous in-store promotions and distribute additional print materials offering incentives for these customers to voluntarily migrate to GSM handsets.

Dobson does not request an open-ended, indefinite waiver. Instead, Dobson envisions completing all CDMA migrations not later than December 31, 2006, after which Dobson will affirmatively require subscribers to migrate from the CDMA network or face discontinuance of their service. Although forced migration of CDMA subscribers is a drastic step, Dobson is prepared to take it not only to satisfy regulatory concerns, but because the cost of maintaining the legacy network simply cannot be justified beyond this more than 18 month transition.¹⁵

¹⁵ As discussed above, Dobson's main focus is to migrate the former RFB customers to Dobson's GSM network and terminate use of the legacy billing platform. Once that process is completed, Dobson will evaluate whether it will retain some capacity on the CDMA network to serve roamers. To the extent that the CDMA network remains in service, Dobson will continue to provide Phase II E911 service to roamers.

CONCLUSION

For the foregoing reasons, Dobson respectfully requests a waiver through December 31, 2006, of Section 20.18(g)(1)(v) of the Commission's rules limited to nine recently acquired markets in Michigan.

Respectfully submitted,
DOBSON CELLULAR SYSTEMS, INC.

By: /s/ Ronald L. Ripley

RONALD L. RIPLEY, ESQ.
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
14201 Wireless Way
Oklahoma City, OK 73134
(405) 529-8376

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LICENSE LIST
Attachment A

Service	Licensee	Call Sign	Block	Market
Cellular	Dobson Cellular Systems, Inc.	KNKN834	A	MI 4 - Cheboygan RSA (CMA475)
Cellular	Dobson Cellular Systems, Inc.	KNKN858	A	MI 2 - Alger RSA (CMA473)
PCS	Dobson Cellular Systems, Inc.	KNLF885	E	Traverse City, MI (BTA446)
PCS	Dobson Cellular Systems, Inc.	WPSJ964	C	Mt. Pleasant, MI (BTA307)
PCS	Dobson Cellular Systems, Inc.	KNLG360	F	Sault Ste. Marie, MI (BTA409)
PCS	Dobson Cellular Systems, Inc.	KNLG355	F	Escanaba, MI (BTA132)
PCS	Dobson Cellular Systems, Inc.	KNLG353	F	Alpena, MI (BTA011)
PCS	Dobson Cellular Systems, Inc.	KNLG357	F	Petoskey, MI (BTA345)
PCS	Dobson Cellular Systems, Inc.	KNLG358	F	Saginaw-Bay City, MI (BTA390)