

WILKINSON) BARKER) KNAUER) LLP

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
www.wbklaw.com
WILLIAM J. SILL
202.783.4141
wsill@wbklaw.com

VIA ECFS

January 30, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Attn: Public Safety and Homeland Security Bureau, Policy Division

Re: *Litchfield County Cellular, Inc. dba Ramcell of Kentucky
Further Supplement to Petition for Waiver of the Location-Capable
Handset Benchmark Deadlines
CC Docket No. 94-102*

Dear Ms. Dortch:

Litchfield County Cellular, Inc. dba Ramcell of Kentucky (“LCC”), by counsel, hereby further amends its pending Petition for Waiver of the location-capable handset deployment benchmarks and seeks further extension of the 95 percent handset penetration requirement pursuant to the *ENHANCE 911 Act*.¹ On October 17, 2006, LCC modified its requested relief of

¹ See Petition of Litchfield County Cellular, Inc. dba Ramcell of Kentucky for Waiver of the Location-Capable Handset Benchmark Deadlines, CC Docket No. 94-102 (filed Oct. 27, 2005); Supplement of Litchfield County Cellular, Inc. dba Ramcell of Kentucky to Petition for Waiver of the Location-Capable Handset Benchmark Deadlines, CC Docket No. 94-102 (filed Feb. 17, 2006); Further Supplement of Litchfield County Cellular, Inc. dba Ramcell of Kentucky to Petition for Waiver of the Location-Capable Handset Benchmark Deadlines, CC Docket No. 94-102 (filed Aug. 30, 2006); Further Supplement of Litchfield County Cellular, Inc. dba Ramcell of Kentucky to Petition for Waiver of the Location-Capable Handset Benchmark Deadlines, CC Docket No. 94-102 (filed Oct. 17, 2006) (collectively, the “Amended Petition”).

Marlene H. Dortch
January 30, 2007
Page 2

the interim handset sale and activation benchmarks through January 31, 2007.² LCC has separately been granted relief from the 95 percent handset penetration requirement through January 31, 2007.³ By this filing, LCC updates the Commission on the progress made by LCC since the October 17, 2006 Supplement and requests a further extension of: (1) the ALI-capable handset sale and activation benchmarks set forth in Sections 20.18(g)(1)(i)-(iv) of the Commission's Rules; and (2) the December 31, 2005 95 percent ALI-capable handset penetration requirement. LCC requests an extension of the benchmarks and the 95 percent penetration deadline until 12 months from the consummation of the sale of its TDMA system in order to finalize and complete the sale of its TDMA system and to enable the buyer to incorporate LCC's customers into its network.

As the Commission is aware, after a prolonged search for a buyer, LCC has finally reached an agreement in principle with a large, well-established wireless carrier to purchase LCC's AMPS/TDMA system.⁴ Significantly, the purchasing carrier will bring LCC's markets into compliance with the Commission's E911 requirements. The buyer is in process of concluding its due diligence and upon the successful completion of this effort it is anticipated

² See Further Supplement of Litchfield County Cellular, Inc. dba Ramcell of Kentucky to Petition for Waiver of the Location-Capable Handset Benchmark Deadlines, CC Docket No. 94-102 (filed Oct. 17, 2006).

³ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, 20 FCC Rcd 7709 (2005) ("Tier III Carriers Order").

⁴ See Further Supplement of Litchfield County Cellular, Inc. dba Ramcell of Kentucky to Petition for Waiver of the Location-Capable Handset Benchmark Deadlines, CC Docket No. 94-102, at 2-4 (filed Aug. 30, 2006).

Marlene H. Dortch
January 30, 2007
Page 3

that the parties will prepare and file the requisite Section 310(d) application to the FCC by not later than February 14, 2007.⁵

Grant of the requested relief is warranted.⁶ As demonstrated in the Amended Petition and herein, LCC has met the Commission's standards for obtaining temporary relief of the ALI-handset sale and activation rules set forth in the Commission's rules. As the Commission has recognized, smaller carriers face "extraordinary circumstances" in meeting the deadlines for Phase II deployment.⁷ LCC, a small Tier III rural wireless carrier that operates a cellular TDMA network to provide wireless service in sparsely populated, rural counties in Kentucky, is currently in the unique position of awaiting for the purchaser of its system to complete its due diligence review before finalizing the sale of LCC's TDMA system. Moreover, since no equipment vendor provides an E911 Phase II ALI solution for TDMA systems, LCC's TDMA system is technically incapable of processing ALI data elements, and of transmitting ALI data to any PSAP via a handset-based solution.⁸ As a result, LCC must seek a waiver of the

⁵ Upon Commission request, LCC will arrange for representatives of the buyer and Commission staff to discuss the timing of the transaction as well as the impact of the transaction for E911 Phase II service in LCC's markets.

⁶ Section 1.3 of the Commission's Rules generally provides that a waiver is appropriate whenever special circumstances warrant deviation from the general rule, and such deviation will serve the public interest. 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. *See* 47 C.F.R. §§ 1.3, 1.925(b)(3)(ii).

⁷ *See Tier III Carriers Order*, 20 FCC Rcd at 7714; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, Order to Stay, 17 FCC Rcd 14841, 14846 (2002) ("wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with [the Commission's] regulations.").

⁸ LCC chose a handset-based solution because of the rural nature of its markets and the cell site configuration of its system, both of which would have rendered it extremely difficult to meet the accuracy standards via deployment of a network-based solution. As a result, the adoption of a network-based solution would not have provided a meaningful E911 Phase II solution for LCC's markets.

Marlene H. Dortch

January 30, 2007

Page 4

Commission E911 ALI-handset sale and activation requirements. Moreover, the purchaser currently operates a CDMA network employing a handset-based solution and thus deployment of a network-based solution – which would not likely provide ALI meeting FCC accuracy requirements in LCC’s rural markets – would be unduly burdensome and inequitable. Grant of the requested temporary relief would allow LCC to complete the sale of its system to a carrier that will bring LCC’s market into compliance with the Commission’s E911 requirements.

Furthermore, LCC’s request for relief of the 95 percent ALI-handset penetration benchmark is warranted under the *ENHANCE 911 Act*. The *ENHANCE 911 Act* directs the Commission to grant qualified Tier III carriers’ requests for relief from the 95 percent penetration requirement if “strict enforcement of the requirements of that [rule] would result in consumers having decreased access to emergency services.”⁹ If not granted the requested relief, LCC would effectively be compelled to construct a CDMA overlay (which it cannot afford to do) and shut down its AMPS/TDMA system entirely, which would create a substantial hardship for its customers, many of whom are located in extremely isolated areas within LCC’s service area. Further, AMPS/TDMA technology has greater range than CDMA technology and even if LCC could afford to expeditiously deploy a CDMA overlay, some subscribers will find it more difficult to complete calls if forced to shift to a CDMA handset. If compelled to shut down AMPS/TDMA service, LCC’s customers would not be able to place *any* cellular calls for a period of time, much less calls to 911 for basic and Phase I emergency services. Strict enforcement of the Commission’s rules would clearly result in customers having “decreased

⁹ National Telecommunications and Information Administration Organization Act - Amendment, Pub. L. No.108-494, 118 Stat. 3986, 3991 (2004)(“*ENHANCE 911 Act*”).

Marlene H. Dortch

January 30, 2007

Page 5

access to emergency services.”¹⁰ The requested relief is the realistic minimum amount of time needed to complete the sale of LCC’s AMPS/TDMA system and integrate LCC’s market into the buyer’s system. Because strict enforcement of the 95 percent penetration requirement at this juncture would effectively compel LCC to simultaneously shut down its AMPS/TDMA system and rapidly deploy a CDMA, its customers would be deprived of basic 911 services, and thus relief pursuant to the *ENHANCE 911 Act* is warranted.

For the reasons discussed herein and in LCC’s Amended Petition, the requested extension is in the public interest as it will result in LCC’s system meeting the Commission’s Phase II requirements while assuring that B Block cellular service will continue uninterrupted in KY RSA 11.

Kindly contact the undersigned should you have any questions in this regard.

WILKINSON BARKER KNAUER, LLP

By:



William J. Sill

Nguyen T. Vu

*Counsel for Litchfield County Cellular, Inc. dba
Ramcell of Kentucky*

¹⁰ The Commission has found that the criteria of the *ENHANCE 911 Act* are met where, as here, strict enforcement of the Commission’s ALI-capable handset activation and penetration deadlines would make it “more difficult, and, at times impossible” for TDMA customers to contact a PSAP if those customers were forced to convert to digital CDMA handsets. See *Request for Waiver by East Kentucky Network, LLC d/b/a Appalachian Wireless*, Order, FCC 06-162 (rel. Nov. 3, 2006). See also, *Copper Valley Wireless, Inc. Petition for Waiver or Temporary Stay*, Order, FCC 06-41 (rel. March 30, 2006) (grant of waiver for analog-only provider until February 25, 2009).