

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

In the Matter of)
)
Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency) CC Docket No. 94-102
Calling Systems)
)
Cable & Communications Corporation)
Petition for Waiver of Section 20.18(g)(1)(v))
of the Commission's Rules)

To: Chief, Wireless Telecommunications Bureau

PETITION FOR EXTENSION OF WAIVER

Cable & Communications Corporation ("C&CC"), pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby requests temporary waiver of the Phase II enhanced 911 ("E911") obligations set forth in Section 20.18(g)(1)(v) of the Commission's Rules.² Specifically, C&CC respectfully requests an extension of its existing deadline of September 23, 2007³ to achieve the ninety-five percent location-capable handset penetration benchmark.

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. § 20.18.

³ C&CC's September 23, 2007 deadline was established pursuant to *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Cable & Communications Corporation Petition for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, *Order*, FCC 06-39 (rel. Mar. 23, 2006) ("*Order*"). The *Order* granted C&CC an extension of 18 months after its release to meet the requirement of Section 20.18(g)(1)(v) that 95% of the handsets used by its subscribers be location-capable, subject to specific conditions and reporting requirements.

Over the past two years, C&CC has made a continued and focused effort to meet the 95% penetration benchmark, and has made significant progress toward that goal. However, with the current penetration rate standing at approximately 84%, C&CC anticipates that its ALI-capable digital handset penetration rate will reach only approximately 87% by September 23, 2007 based on recent customer behavior trends and realistic projections of future success with those subscribers currently utilizing non-conforming analog equipment. C&CC therefore requests an extension through and including October 1, 2008 within which to achieve the 95% penetration benchmark, and respectfully submits that good cause exists for such extension, as demonstrated below.

I. C&CC's Effort To Meet the Deadline Has Been Diligent

C&CC's history of effort and steady progress toward meeting FCC requirements, including this benchmark, is a matter of record before the Commission.⁴ As noted in its initial Petition filed in December, 2005, only approximately 30.5% of its subscribers utilized ALI-compliant digital phones at that time. Due to C&CC's continued marketing and education efforts, that proportion nearly doubled in one year to approximately 70% by the end of 2006, and has risen steadily, albeit slowly, since. By May, 2007, the percentage of location-capable handsets held by subscribers had risen to approximately 80% of all subscribers.

C&CC instituted a concerted plan to attract users to compliant digital phones, including aggressive marketing, education and build-out programs designed to address the reasons

⁴ See, e.g., C&CC Reports filed May 1, 2006; July 28, 2006; November 1, 2006; February 1, 2007; and May 1, 2007.

identified by its subscribers for retaining analog handsets: cost and coverage. In addition to having fully constructed nine (9) additional sites and being near the completion of a tenth during the past twelve months, with plans to complete three additional sites before year's end, C&CC has developed and periodically adjusted its marketing campaign as it gauged the success of specific promotions. Since March of 2005, C&CC has undertaken marketing programs including:

- free external antenna or subsidized booster in return for service commitment;
- heavy subsidies on popular models of compliant phones in return for service commitments;
- several models of compliant phones completely free in return for service commitments;
- free activation and discounted accessories;⁵
- significant billing credits for trading an analog for a digital phone;
- informing customers via billing inserts of public safety benefits available only with digital service;
- educating the public of the public safety advantages of digital service through print and radio advertising; and

⁵ The Commission noted with approval C&CC's efforts in this area. *See Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation*, WT Docket No. 05-286, *Order*, FCC 06-183, ¶ 32 (rel. Jan. 5, 2007).

- contacting analog subscribers by mail, followed by phone contact to discuss benefits of digital conversion.

In addition, company representatives will, over the next few months, be conducting a door-to-door campaign. Upon completion and depending upon the success of this campaign, the company will assess its place and plan further to ensure that the remaining analog subscribers are fully aware of the advantages of analog service and the promotional offers available.

Despite the effort and expense involved in these programs, C&CC continues to experience the effect of the historic reluctance of some analog users to convert to digital technology. It is a matter of record before the Commission that a relatively small but adamant portion of the rural subscriber base is simply unwilling to give up their analog phones. Where a carrier's overall subscriber base is not increasing significantly, this stubborn minority maintains its percentage status. A recent survey of C&CC's analog customers suggests (1) hardening of the attitude that "if it ain't broke, don't fix it," reflecting extreme customer satisfaction with existing analog service and equipment (the response of approximately 25% of survey respondents); and (2) growing apathy to the subject of digital conversion, reflected by roughly 92% of current analog subscribers completely ignoring an offer of a billing credit for simply responding the Company's survey seeking information about what would entice the consumer to convert to a digital handset. As noted above, C&CC's ambitious construction schedule is intended to address the other major element cited by subscribers as an impediment to digital conversion – comparable coverage.

II. An Extension of the Waiver is Warranted

Although C&CC's diligence has produced marked progress in meeting established interim goals,⁶ the recently-achieved success rate of an average of approximately 1% per month increase will be insufficient to produce the ultimate 95% penetration goal by the September, 2007 deadline. These factors, together with C&CC's progressively diminishing success rate suggesting that even the 1% per month rate is not itself sustainable, force C&CC to seek an additional extension of time to achieve the 95% penetration benchmark. Accordingly, C&CC requests an additional twelve months within which to reach the benchmark, while simultaneously committing to maintaining its conscientious efforts to achieve that level as soon as practicable. C&CC submits that an extension of the current deadline is appropriate, given that there is no practical alternative to ensuring that basic and Phase I E-911 services are available to C&CC's analog wireless customers. Moreover, inasmuch as C&CC provides the only mobile service to approximately 8000 square miles in rural Montana and North Dakota, or approximately 80% of its service territory, draconian measures introduced in hopes of enticing subscribers to change to digital service would unreasonably threaten the economic stability of service to all subscribers.⁷

⁶ See February 1, 2007 Report of C&CC (revised goal of 70% penetration met); *but see* May 1, 2007 Report of C&CC (revised goal of 85% not met; only 80% penetration rate achieved).

⁷ C&CC's recent survey revealed that approximately 5 percent of analog subscribers would reconsider digital conversion upon the improvement of digital signal coverage. C&CC's build-out plan, which includes the addition of 6 more sites over the next 12 months, would provide a partial answer to these concerns. Nonetheless, the economics of service to a sparse population spread over a vast geographic expanse demands prudent, timed investment. It is also important to note that current build-out plans are dependent, in part, upon the receipt of the levels of universal service support available at the inception of these plans. Accordingly, construction schedules may shift as the availability of universal service funding diminishes or becomes less certain.

Accordingly, this request meets the standards adopted by Congress in the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2005 (the "ENHANCE 911 Act")⁸ for the requested relief. The ENHANCE 911 Act directs the Commission to grant relief of benchmark deadline waiver requests of Tier III carriers, such as C&CC, where "strict enforcement of the requirements of [Section 20.18(g)(1)(v) of the Commission's Rules] would result in consumers having decreased access to emergency services."⁹

Furthermore, grant of C&CC's request is warranted under the Commission's standard for evaluation of waiver requests because "in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."¹⁰ C&CC has consistently pursued a reasonable course toward compliance, but, ultimately, cannot dictate the actions or choices of its subscribers. Under these circumstances, strict enforcement of the rule is both inequitable and unduly burdensome, and is also contrary to the public interest. Grant of the request maintains maximum access to the public switched network and emergency assistance, and, moreover, anticipates full compliance within a reasonable time.

⁸ National Telecommunications and Information Administration Organization Act, Pub. L. No. 108-494, 188 Stat. 3986 (2004).

⁹ *Id.*, Section 107, 118 Stat. 3986, 3991.

¹⁰ 47 C.F.R. § 1.925(b)(3)(ii). See *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); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

C&CC notes that it has worked closely with public safety officials to implement an E-911 system. In addition, C&CC has ensured, and will continue to ensure, that area PSAPs are kept aware of C&CC's progress in meeting the penetration benchmark. Finally, C&CC will continue its aggressive marketing and education campaign, and would welcome the opportunity to discuss with Commission staff additional or alternative methods that may assist C&CC in reaching the benchmark as soon as possible.

C&CC is committed to ensuring that its public safety obligations are met. It is also committed to ensuring that its subscribers are provided with high-quality, efficient communications services. C&CC submits that both goals may be achieved through grant of the requested relief.

In light of the foregoing, C&CC respectfully requests an extension of time until October 1, 2008, allowing the continuation of C&CC's slow but steady success in convincing its subscriber base to abandon non-conforming handsets.

Respectfully submitted,

CABLE & COMMUNICATIONS CORPORATION

By:


Sylvia Lesse
Its Counsel

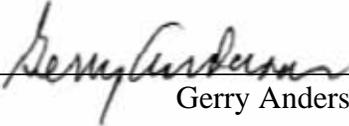
Communications Advisory Counsel, LLC
2154 Wisconsin Avenue, NW
Washington, DC 20007
(202) 333-5273

July 19, 2007

DECLARATION OF GERRY ANDERSON

I, Gerry Anderson, General Manager of Cable & Communications Corporation, do hereby declare under penalty of perjury that I have read the foregoing "Request for Extension of Waiver" and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.

July 17, 2007
Date


Gerry Anderson

Certificate of Service

I, Sylvia Lesse, of Communications Advisory Counsel, LLC, hereby certify that on this 19th day of July, 2007, I caused to be delivered, via first-class US mail, postage prepaid, a copy of the foregoing "Petition for Extension of Waiver" on the following:

Captain Kevin Krausz
Miles City Police Dept.
PSAP for Custer County, Montana
PSAP for Garfield County, Montana
2420 Bridge Street
Miles City MT 59301

Sheriff Kelly Pierson
Garfield County Sheriff's Office
PO Box 103
Jordan MT 59337

Chief Alan Michaels
Glendive Police Department
PSAP for Dawson County, Montana
PO Box 1372
Glendive MT 59330

Chuck Lee
PSAP Manager - Fallon County
PSAP for Fallon, Carter,
Prairie and Wibaux Co's, MT
PO Box 1061
Baker, MT 59313

Sheriff Rusty Jardee
Carter County Sheriff
PO Box 323
Ekalaka MT 59324

Russ Lindblom
North Dakota 911 Manager
PO Box 877
Bismarck, ND 58502-0877

Jeff Cohen*
Public Safety & Homeland Security Bureau
Federal Communications Commission
445 Twelfth St, SW
Washington, DC 20554

Dana Shaffer, Deputy Chief*
Public Safety & Homeland Security Bureau
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

* Via electronic mail

Sheriff William Klunder
Prairie County Sheriff's Office
PO Box 126
Terry MT 59349

Sheriff Darby S. Harrington
Wibaux County Sheriff's Office
PO Box 322
Wibaux MT 59353

Sheriff Dave Harris
McCone County Sheriff's Office
PSAP for McCone County, Montana
905 B Avenue, PO Box 201
Circle, MT 59215

Sheriff John Blain
Powder Riv. Co. Sheriff's Office
PSAP for Powder River Co., MT
Box 71 Courthouse Square
Broadus MT 59317

Sheriff Brad Baisch
Richland County Sheriff's Office
PSAP for Richland Co., MT
110 2nd Ave NW
Sidney, MT 59270

Lisa Solf
Petroleum County PSAP
PO Box 226
Winnett, MT 59087

Jim Kenner, IT Dept.
Rosebud County Sheriff's Office
Box 85 180 S 13th St
Forsyth, MT 59327


Sylvia Lesse