

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

In the Matter of)
)
Revision of the Commission’s Rules) CC Docket No. 94-102
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)
)
Petition for Enhanced 911 Phase II Waiver)
by Leaco Rural Telephone Cooperative, Inc.)

**Leaco Rural Telephone Cooperative, Inc. Amendment to Petition for Temporary Waiver of
Section 20.18(g)(1)(v) of the Commission’s Rules**

Leaco Rural Telephone Cooperative, Inc. (“Leaco”), by its attorneys, hereby amends its December 12, 2006 Petition for Temporary Waiver of Section 20.18(g)(1)(v) of the Federal Communication Commission’s (“FCC” or “Commission”) Phase II enhanced 911 (“Phase II E911”) rules.¹ Specifically, Leaco requests additional time in order to comply with the Commission’s 95 percent location-capable handset customer penetration requirement pursuant to Section 20.18(g)(1)(v).² As discussed *infra*, after initially experiencing the rapid adoption of location-capable handsets once Leaco converted from a time division multiple access (“TDMA”) network to a code division multiple access (“CDMA”) network, a recent slowdown in customer handset conversions spurred Leaco to initiate aggressive and costly measures to motivate its

¹ *Leaco Rural Telephone Cooperative, Inc. Petition for Temporary Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules*, CC Docket No. 94-102 (December 12, 2006) (“Petition”).

² 47 C.F.R. §§ 20.18(g)(1)(v). The December 31, 2005 deadline set forth in the rule was extended to December 12, 2006. See *in re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Petition for Enhanced 911 Phase II Waiver by Leaco Rural Telephone Cooperative, Inc.*, Order, FCC 05-210 at ¶ 21 (December 12, 2005) (“*Extension Order*”). In its December 12, 2006 Petition, Leaco requested additional time until September 12, 2007 in which to comply with the handset penetration requirement.

remaining customers who had yet to purchase new, location-capable handsets. Even with these unprecedented measures, Leaco expects that it needs an additional six months of waiver relief beyond that requested in its original Petition to ensure that 95 percent of its customers are using handsets with automatic location identification (“ALI”) features.

I. Background and Phase II Implementation Status

Leaco is a Tier III carrier that employs a handset-based solution in order to offer Phase II service in rural New Mexico to its approximately 4,000 customers. Leaco serves a sparsely-populated region with only 12.6 persons per square mile according to the 2000 U.S. Census. Outside of the town of Hobbs, New Mexico, the population is even less dense. Leaco, like many carriers serving remote regions, still has customers who cling to their three-watt analog “bag” phones with their greater range than digital, location-capable handsets. Leaco is currently providing Phase II service to the Lea County public safety answering point (“PSAP”), the city of Hobbs PSAP, and the Chaves County PSAP. Leaco has had no other requests for Phase II service other than from these three PSAPs.

Leaco began selling and activating only location-capable handsets on September 15, 2006 and Leaco finished its network overlay from TDMA to CDMA at the end of January 2007. Leaco’s percentage of customers with ALI-capable handsets was at 2 percent in October 2006; 25 percent in December 2006; 35 percent in February 2007; 55 percent in May 2007; and 62 percent in August 2007. As of September 2007, Leaco’s percentage of customers with location-capable handsets stands at 81 percent. Unfortunately, Leaco’s original prediction that it could convert 95 percent of its customer base to location-capable handsets within a year of starting the sale of such handsets has proven to be overly optimistic. Still, as discussed *infra*, Leaco has an aggressive clear path to full compliance that should enable it to achieve compliance with the

Commission's handset penetration benchmark by March 12, 2008, less than 14 months after Leaco finished its conversion to CDMA.

II. Leaco Has a Clear Path to Full Compliance

As Leaco reported in its December 12, 2006 Petition, it pursued an aggressive marketing plan to encourage more customers to upgrade to location-capable CDMA handsets in as timely a manner as possible. This plan resulted in a large number of customers converting their handsets to location-capable CDMA handsets once Leaco's CDMA conversion was finished. Highlights of Leaco's original marketing plan, which Leaco continues to implement, follow:

- Leaco offers nationwide calling plans that are available *only* to customers who purchase ALI-capable handsets. Customers who do not use location-capable CDMA handsets are not allowed to participate in any new Leaco promotions or new calling plans.
- Leaco's newly constructed cell sites *only* support CDMA. Leaco continues to promote this fact by touting its improved CDMA network in advertisements, bill inserts, and store displays.
- Leaco offers 30-days free monthly service and other free features, such as voice mail and caller ID, to customers that upgraded to CDMA service.
- Leaco offers 30-days free data services to anyone purchasing a camera/internet-capable CDMA, location-capable phone.
- Leaco continues to inform its customers of these promotions and incentives using billing inserts, radio ads, newspaper ads, Leaco's monthly newsletter, Leaco's website, and direct mail.

Unfortunately, like other similarly-situated rural carriers, Leaco's initially successful "take" rates on new ALI-capable CDMA handsets met an unpredicted slowdown.³ In July 2007, Leaco first noticed that its take rates were slowing down, and determined that additional measures would be necessary in order for Leaco to persuade a substantial number of its remaining analog and TDMA customers to convert to location-capable CDMA handsets. At that point, Leaco made immediate plans to take additional steps aimed at increasing location-capable CDMA handset penetration.

Specifically, as detailed in Leaco's August 1, 2007 Report, Leaco instituted a customer education program whereby it is now attempting to convert customers with analog or TDMA handsets to location-capable CDMA handsets by contacting each individual customer that does not have a CDMA handset and offering them a location-capable CDMA handset at no cost. Leaco has even delivered such handsets to customers unwilling or unable to leave home to accept a free handset. In addition to receiving handsets at no cost, Leaco's remaining analog and TDMA holdouts will be given one month of free voice and data services. Leaco is also providing economic incentives to its employees for each and every customer they can convert to location-capable handsets. Finally, Leaco's customers who remain unwilling to let go of their beloved analog "bag" phones are being advised that Leaco has plans to discontinue the provision of analog service as early as February 18th next year at which point their current handsets will no longer function on Leaco's wireless network.⁴

³ See, e.g., *in re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Request for Waiver by East Kentucky Network, LLC d/b/a Appalachian Wireless*, Order, FCC 06-162 at ¶ 10 (November 3, 2006) ("*Appalachian Order*") (where Appalachian Wireless reported an "unpredictable slowdown" as it worked to meet the 95 percent benchmark).

⁴ For public safety reasons, Leaco will not turn off analog service in outlying areas where analog service is the *only* available service.

Since instituting this program, Leaco's penetration rate has jumped from 62 percent to 81 percent in little over one month. Nevertheless, Leaco has determined that in the event its take rates slow unexpectedly in the next few months, Leaco will provide two months of free voice and data services to customers who accept the free location-capable handsets. Leaco's willingness to give away over 500 handsets, provide free voice and data service for up to two months, and possibly lose customers by threatening to turn off their analog service indicates the extremes to which Leaco will go in order to meet the FCC's 95 percent benchmark in as timely a manner as possible. Indeed, with roughly 14 percent of Leaco's 4,000 customers in need of location-capable handsets in order for Leaco to meet the 95 percent benchmark, and with Leaco's average handset costs at over \$200 per handset,⁵ Leaco's free handset program could cost Leaco in the neighborhood of \$117,600. With the labor involved and employee incentives, Leaco's costs could top \$150,000. For a carrier with such a small customer base, this is a substantial expense. Leaco knows of no other carrier that has gone to such drastic measures to ensure that its customers convert to location-capable handsets.

Leaco's aggressive customer conversion program, discussed *supra*, demonstrates a clear path to full compliance within the next six months. With 14 percent of its customers still in need of conversion, Leaco is confident that its aggressive measures can convince and convert customers at a pace of at least two to three percent per month as it approaches the 95 percent benchmark.⁶ Leaco's handset penetration schedule is consistent with recent Commission grants of handset penetration relief to carriers that recently converted from TDMA to CDMA. The

⁵ For example, Leaco pays a wholesale cost of \$231.00 for a Motorola RAZR handset.

⁶ Leaco notes that rural carriers often experience slowdowns as they approach the last stages of adoption. *See, e.g., Appalachian Order* at ¶ 10. Leaco's six month timeframe reflects this expectation. Customers who are unwilling to accept a free CDMA handset delivered to their door, with one month of free voice and data service, appear unlikely to be easily transitioned away from their analog or TDMA handsets.

Commission granted Cable & Communications Corporation (“C&CC”) extensive relief from the 95 percent penetration benchmark until September 23, 2007 (roughly 21 months of relief), citing, among other factors, C&CC’s remote service area and Tier III carrier status,⁷ as well as C&CC’s “recently completed” CDMA overlay.⁸ C&CC finished its conversion to CDMA in November 2005.⁹ Leaco finished its CDMA overlay in February of 2007. Leaco’s request for additional time until March 12, 2008, less than 14 months after its conversion to CDMA was finished, is consistent with the FCC’s grant of relief to C&CC.

The Commission also granted relief to Copper Valley Wireless, Inc. due to unexpected delays in upgrading to CDMA service.¹⁰ Like Copper Valley, Leaco’s Phase II implementation plans were dependent upon its CDMA upgrade schedule. Leaco’s limited request for additional relief is consistent with the Commission’s acknowledgement of the practical reality that additional time is needed to achieve location-capable handset penetration once a rural carrier converts its network.

III. Leaco’s Handset Penetration Schedule Is Consistent with Community Expectations

The Commission has encouraged carriers to coordinate their Phase II implementation efforts with affected public safety agencies “to ensure that the expectations of the public safety

⁷ See *in re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Cable & Communications Corporation Petition for Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules*, Order, FCC 06-39 at ¶ 23 (March 23, 2006).

⁸ *Id.* at 19.

⁹ *Id.* at ¶ 9.

¹⁰ See *in re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Copper Valley Wireless, Inc. Petition for Waiver or Temporary Stay*, Order, FCC 06-41 at ¶ 18 (March 30, 2006) (“*Copper Valley Wireless Relief Order*”) (granting relief from the 95 percent penetration benchmark on a one-year and two-year staggered basis from the date by which Copper Valley completed and completes its CDMA overlays).

agencies are aligned with the carriers' deployment plans."¹¹ Leaco's General Manager continues to work with the state E911 director and keeps the state advised of its E911 implementation schedule. The state of New Mexico and Leaco's local PSAPs are aware of Leaco's handset penetration level and Leaco's new, extensive marketing efforts.

IV. Leaco Satisfies the Requirements of the ENHANCE 911 Act and Other Waiver Standards

As Leaco discussed in its December 12, 2006 Petition, Leaco's request meets the *ENHANCE 911 Act* standard. The *ENHANCE 911 Act* directs the Commission to grant qualified Tier III carriers' requests for relief from the 95 percent penetration deadline for location-capable handsets if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."¹² Leaco estimates that roughly 10 percent of its 4,000 customers, some of whom live in the outlying areas of Leaco's network, are using analog-only handsets, with the majority of those customers relying upon three-watt bag phones. If any of these customers were to replace their higher-powered bag phones with digital handsets with less range, they would lose access to vital mobile communications capabilities, including emergency services, in the most remote parts of Leaco's rural network. Thus relief pursuant to the *ENHANCE 911 Act* is warranted.¹³ Further, for the same reasons set forth in its Petition,

¹¹ See *in re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, E911 Phase II Compliance Deadlines for Tier III Carriers, Order, FCC 05-79 at ¶ 173 (April 1, 2005) ("*Tier III Order*").

¹² National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) ("*ENHANCE 911 Act*").

¹³ See *Extension Order* at ¶ 19; See also *in re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Request for Waiver by East Kentucky Network, LLC d/b/a Appalachian Wireless*, Order, FCC 06-162 at ¶ 13 (granting a rural carrier's request for extension of the 95 percent benchmark since certain analog and TDMA customers "would likely find it more difficult, and, at times, impossible to contact a PSAP in the 'most isolated' parts of Appalachian's service area if those customers were forced to convert to digital CDMA handsets."); *Copper Valley Wireless Relief Order* at ¶ 16

Leaco's amended request for waiver meets the Commission's general Section 1.925(b)(3) waiver standards.¹⁴

V. Conclusion

Based on the totality of Leaco's circumstances discussed herein, Leaco respectfully requests that the Commission grant Leaco a temporary waiver of Section 20.18(g)(1)(v) of its rules until March 12, 2008.

Respectfully submitted,

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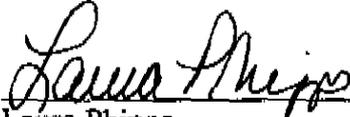
(extending the 95 percent penetration deadline pursuant to the *ENHANCE 911 Act* where certain subscribers "would likely find it more difficult, and, at times, impossible to contact a PSAP in parts of its service area if those customers were forced to convert to digital CDMA handsets.")

¹⁴ See Petition at pp. 8-10.

DECLARATION OF LAURA PHIPPS

I, Laura Phipps, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Leaco Rural Telephone Cooperative, Inc.
2. I have read the foregoing "Amendment to Petition for Temporary Waiver of Section 20.18(g)(1)(v) of the Commission's Rules." I have personal knowledge of the facts set forth herein, and believe them to be true and correct.



Laura Phipps



Date