

3. The systems operated by Dobson comply with the Commission's TTY requirements and are therefore "capable of transmitting 911 calls from individuals with speech or hearing disabilities...through the use of Text Telephone Devices (TTY)."⁵

4. NOW's system, however, does not comply with our TTY rule; and NOW has previously requested additional time to upgrade its network with a newer GSM air interface in order to achieve compliance.⁶ Subsequently, NOW entered into negotiations for Dobson's acquisition of NOW's licenses. On December 23, 2003, NOW and Dobson filed an application for assignment of the FCC authorizations held by NOW Licenses, LLC.⁷ That request was subsequently granted on April 30, 2004. On May 18, 2004, Dobson filed its petition for extension of the TTY compliance date to December 31, 2004 to cover the NOW system that it is acquiring. The request is based on Dobson's estimate of the time needed to install new switches and antennas on the NOW PCS system to make them fully compliant with not only the TTY requirements, but also with other requirements of our rules.

5. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.⁸ The Commission may exercise its discretion to waive a rule where unique or unusual factual circumstances make strict compliance inconsistent with the public interest.⁹ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.¹¹ Waiver of the Commission's rules are therefore appropriate only if unique circumstances warrant a deviation from the general rule,¹² and such a deviation will serve the public interest.¹³

III. DISCUSSION

6. We find that Dobson has demonstrated that good cause exists to grant its waiver request for the TTY implementation deadline. Specifically, we find that Dobson has provided substantial, credible evidence of unique circumstances that warrant an extension of time to comply with the TTY requirements. We also find that Dobson has demonstrated that granting its request for waiver would serve the public interest. Accordingly, we grant Dobson's request for waiver and allow Dobson until December 31, 2004 to bring the formerly NOW PCS system into full compliance.

7. *Unique Circumstances.* We are persuaded by Dobson's claims that special circumstances exist to support a waiver. Specifically, we find that Dobson's plan to achieve full compliance within seven months of its closing on its acquisition of NOW will offer all consumers in those licensed areas access to 911 service. Additionally, we recognize that given the extent of the upgrade that will be

⁵ See Letter from Zachary A Zehner, Counsel for Dobson, to Marlene Dortch, Secretary, Federal Communications Commission, October 31, 2002 (*Dobson TTY Compliance Letter*).

⁶ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, NOW Licenses, LLC Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, filed June 25, 2002 (*NOW's Initial Waiver Request*).

⁷ See ULS File No. 0001555982.

⁸ 47 C.F.R. §§ 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

¹⁰ 47 C.F.R. § 1.925. See also *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *WAIT Radio*, 418 F.2d at 1157.

¹² 47 C.F.R. § 1.925.

¹³ *Id.* at 1159.

required, Dobson needs additional time. As Dobson notes in its request, it will need to construct, install, and test new switches to ensure that they are compliant with the Commission's TTY rule.¹⁴ They will also need to upgrade each of the 400 antenna sites currently operated by NOW.¹⁵ Absent an extension, Dobson would have less than a month to bring this system into compliance.¹⁶ We believe that such time would be insufficient to complete all of the identified tasks and that a limited amount of additional time is warranted.

8. *Public Interest.* We conclude also that Dobson has shown that granting its request for waiver would serve the public interest. The Commission's TTY requirements are an important tool for bringing access to 911 services to all consumers. Accordingly, it is in the public interest that carriers implement TTY capabilities as quickly as possible. Dobson's current service complies with our TTY requirements and Dobson historically has met its regulatory obligations.¹⁷ We believe that affording Dobson a limited amount of additional time and granting its waiver request will provide consumers in the acquired area access to TTY capability.¹⁸ Therefore, by allowing Dobson time to upgrade the system it is acquiring from NOW, the public interest will be served because the upgrades will bring greater access to these consumers.

9. For the reasons stated above, and given the unique circumstances presented here, we find it reasonable to grant the relief as requested by Dobson. Dobson will have until December 31, 2004 to bring the former NOW PCS system into full compliance with the Commission's TTY rule, 47 CFR § 20.18(c).

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that, pursuant to sections 0.131, 0.331, 1.3, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, 1.925 the petition filed by Dobson Cellular Systems, Inc. is GRANTED.

11. IT IS FURTHER ORDERED that Dobson will have until December 31, 2004 to bring the formerly NOW PCS system into full compliance with the Commission's TTY rule, 47 CFR § 20.18(c).

12. IT IS FURTHER ORDERED that Dobson must notify us no later than 30 days after it has come into compliance with 47 CFR § 20.18(c).

FEDERAL COMMUNICATIONS COMMISSION

Michael Wilhelm
Deputy Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁴ *Dobson Request* at 4.

¹⁵ *Id.*

¹⁶ Dobson plans on closing this transaction in mid-June. The NOW extension ends on June 30, 2004. See NOW Waiver Order, CC.

¹⁷ See *Dobson TTY Compliance Letter*.

¹⁸ We note that NOW had a plan to achieve compliance but due to vendor delays and lack of resources it was not able to fulfill that plan. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, NOW Licenses, LLC Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, CC Docket No. 94-102, Order, DA 04-1697 (rel. June 10, 2004).

deviation will serve the public interest.¹⁷

III. DISCUSSION

7. We find that NOW has demonstrated that good cause exists to grant its request for waiver of the TTY implementation deadline. Specifically, we find that NOW has provided substantial, credible evidence of unique circumstances that warrant an extension of time to comply with the TTY requirements. We also find that NOW has demonstrated that granting their request for waiver would serve the public interest. Accordingly, we grant NOW's requests for waiver and extend the compliance deadline for TTY capability to June 30, 2004 or upon consummation of their transaction with Dobson, whichever occurs sooner.

8. *Unique Circumstances.* We are persuaded that NOW acted in good faith in its efforts to comply with the Commission's TTY rule. We are mindful that it, like other smaller carriers, experienced vendor delay in providing upgrades needed to achieve compliance with our TTY requirements.¹⁸ In its *December 2003 Supplement*, NOW explains, in detail, the projected burden associated with upgrading its system due to its need to conduct a "far more substantial upgrade" than its vendor, Nortel, had originally anticipated.¹⁹ In the *June 28 Order*, the Wireless Telecommunications Bureau (Bureau) granted additional time to many small carriers because of vendor delay in providing software upgrades.²⁰ NOW had not filed its request in time to be included in that Order, but it is clear from its filings that an extension is warranted for the same reasons underlying the relief granted by the Bureau to those carriers addressed in the *June 28 Order*.

9. Moreover, we are persuaded by NOW's showing of exceptional financial problems. We find that NOW's financial condition is dire and has been for an extended period of time, and this severely restricts its ability to purchase needed upgrades.²¹ Specifically, we note the Independent Auditors Report that states that NOW is not in compliance with certain loan covenants and is in default on its master lease obligations.²² As that report concludes, NOW is continuing to operate only because of its pending sale to Dobson.²³ Based on the information before us, it appears that absent that sale, NOW would no longer be capable of operating, or not for as lengthy period of time.

10. Additionally, NOW's assets are being sold to Dobson. As noted above, the filing seeking assignment of its licenses was filed at the Commission on December 23, 2003. As NOW states in its *December 2003 Supplement*, the anticipated cost of upgrading its switches is over \$1,000,000.²⁴ After their transaction closes, however, Dobson intends to put all new switches in the NOW service area, which would make any upgrading of the NOW switches irrelevant on a going-forward basis.

11. Based on the totality of these circumstances, we find that special circumstances exist that warrant granting the extension as requested by NOW. In particular, given the initial showing by NOW that it would have met the showing necessary to be granted an extension under the *June 28 Order*, the evidence of severe financial hardship, and the pending sale of NOW to Dobson, we grant the extension as

¹⁷ *Id.* at 1159.

¹⁸ See NOW's *Initial Waiver Request* at 2-3; see also NOW's *December 2003 Supplement* at 3.

¹⁹ See NOW's *December 2003 Supplement* at 3.

²⁰ See *June 28 Order*, 17 FCC Rcd 12084.

²¹ See NOW's *May Supplement* at 2.

²² *Id.*

²³ *Id.*

²⁴ See NOW's *December 2003 Supplement* at 3.

requested.

12. *Public Interest.* We conclude also that NOW has shown that granting their requests for waiver would serve the public interest. The Commission's TTY requirements are an important tool for bringing access to 911 services to all consumers. Accordingly, it is in the public interest that carriers implement TTY capabilities as quickly as possible. NOW had put forward a plan to achieve compliance. Due to reasons cited above, that plan faltered. Granting NOW's waiver requests, however, will allow Dobson to make TTY capability available to consumers in the markets served by NOW in the not to distant future.²⁵ As NOW indicates in its *May 2004 Supplement*, but for the impending consummation of the Dobson transaction, NOW's customers would remain without TTY-capable 911 service for the foreseeable future. By allowing Dobson time to upgrade the system it is acquiring from NOW, the public interest will be served because Dobson will bring greater access to these consumers in a fairly expeditious fashion.

13. For the reasons stated above, and given the special circumstances presented here, we find it reasonable to grant the relief as requested by NOW. NOW is granted an extension for compliance with the Commission's TTY rules until June 30, 2004 or until such time as it consummates the transaction with Dobson, whichever is sooner.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to sections 0.131, 0.331, 1.3, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, 1.925 the petition filed by NOW Licenses, LLC is GRANTED.

15. IT IS FURTHER ORDERED that NOW Licenses, LLC will have until June 30, 2004 or until such time as it consummates the transaction with Dobson, whichever is sooner, to come into compliance with the Commission's TTY rule, 47 CFR § 20.18(c).

FEDERAL COMMUNICATIONS COMMISSION

Michael Wilhelm
Deputy Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²⁵ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Dobson Cellular Systems, Inc. Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules, CC Docket No. 94-102, Order, DA 04-1696 (rel. June 10, 2004).