

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

In the Matter of	)	
	)	
Progressive Cellular III B-2	)	
	)	File No. 10008-CL-P-317-A-88
Application for Authorization to Construct	)	
a New Domestic Public Cellular Radio System	)	
for the Alaska 3-Haines RSA	)	
(Market No. 317A)	)	

**ORDER**

**Adopted: January 21, 2000**

**Released: January 24, 2000**

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we address the Request for Dismissal of Application (Dismissal Request) and request for approval of settlement agreement filed by Progressive Cellular III B-2 (Progressive) on December 12, 1995. For the reasons discussed below, we approve the settlement agreement and grant Progressive's request for dismissal with prejudice of its application for a construction permit to operate on frequency block A in the Alaska 3-Haines Area RSA.<sup>1</sup>

2. Pursuant to an Agreement dated June 23, 1995 (Agreement)<sup>2</sup> among Progressive, Alaska-3 Cellular Corporation (Alaska-3)<sup>3</sup> and Progressive Cellular III B-3,<sup>4</sup> the parties have resolved certain long-standing issues regarding the status of the Alaska 3-Haines RSA authorization.<sup>5</sup>

<sup>1</sup> Progressive's application was assigned FCC File No. 10008-CL-P-317-A-88.

<sup>2</sup> A copy of the Agreement is attached to Progressive's Dismissal Request as Exhibit 1.

<sup>3</sup> Alaska-3 is the current non-wireline licensee for the Alaska 3-Haines RSA (Market No. 317A), having been assigned the authorization by RJL Cellular Partnership (RJL), the re-lottery winner in the Alaska 3-Haines RSA. See *Public Notice*, Report No. CL-95-5 (released October 21, 1994).

<sup>4</sup> Progressive Cellular III B-3 was the winner of the lottery held for the Oklahoma 4-Nowato RSA (Market No. 599A). Progressive Cellular III B-3, in a separate pleading, has requested Commission approval of a settlement with unrelated parties to resolve outstanding issues regarding the authorization in the Oklahoma 4-Nowato RSA, which will be addressed in a separate order.

<sup>5</sup> The factual history regarding the Commission's licensing of the Alaska 3-Haines RSA is set forth in the substantial Commission record in this matter. See, e.g., In Re Application of Kent S. Foster, *Memorandum Opinion and Order*, 7 FCC Rcd 7971 (1992) (wherein Progressive's application under File No. 10008-CL-P-317-A-88 was reinstated to pending status); In Re Application of Progressive Cellular III B-2, *Memorandum Opinion and Order*, 5 FCC Rcd 2772 (1990) (denial of Progressive's July 28, 1989 Application for Review); In Re Application of Progressive Cellular III B-2, *Memorandum Opinion and Order*, 4 FCC Rcd 5254 (1989) (denial of Progressive's Petition for Reconsideration and Reinstatement after Commission dismissed Progressive's application for violation

3. Since the filing of Progressive's application, the Commission has rewritten Part 22 of the Commission's rules.<sup>6</sup> Section 22.959<sup>7</sup> specifically provides that pending applications for authority to operate the first cellular system on a channel block in an MSA or RSA market continue to be processed under the rules governing the processing of such applications that were in effect when those applications were filed, unless the Commission determines otherwise in a particular case. Pursuant to section 22.959 and the Commission's 1996 decision in Western California Cellular Partners,<sup>8</sup> we will apply former section 22.29,<sup>9</sup> which was in effect at the time of the filing of Progressive's application for an initial cellular system, in our review of the proposed settlement agreement. Under former section 22.29, parties that, under a settlement agreement, apply to the Commission for the amendment or dismissal of either pleadings or applications shall at the time of the filing notify the Commission that such filing is the result of an agreement or understanding. The parties here have complied with the notification requirement that was in effect at the time of the initial application filing. We conclude that the parties' proposed settlement satisfies the requirements of former section 22.29 and that approval of the settlement agreement is in the public interest.<sup>10</sup>

4. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Request for Dismissal of Application and request for approval of settlement agreement IS GRANTED.

5. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.331 and 1.934(a)(1)(i) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.934(a)(1)(i), the application filed by Progressive Cellular III B-2 (File No. 10008-CL-P-317-A-88) is DISMISSED with prejudice.

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of the firm financial commitment rule). As Progressive's application for the Alaska 3-Haines RSA is being dismissed pursuant to this Order, we dismiss as moot RJL's January 7, 1993 Petition for Reconsideration of the Commission's 1992 reinstatement of Progressive's application to pending status. For the same reason, we dismiss as moot Progressive's May 25, 1990 Petition for Reconsideration of the Commission's denial of its Application for Review.

<sup>6</sup> Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, 9 FCC Rcd 6513 (1994).

<sup>7</sup> 47 C.F.R. § 22.959 (1998).

<sup>8</sup> In Re Applications of Western California Cellular Partners and MTEL Cellular, Inc., *Order*, 11 FCC Rcd 5705 (1996).

<sup>9</sup> 47 C.F.R. § 22.29 (1988).

<sup>10</sup> We decline to apply the rule against "greenmail," 47 C.F.R. § 22.129, which was intended to deter speculative filings, as there is nothing in the history of this proceeding to indicate that the application for initial cellular service authorization was filed as part of a speculative venture. Section 22.129 was renumbered as current rule section 1.935 in the Commission's adoption of the Universal Licensing System rules. See In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules To Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027 (1998).

6. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the May 25, 1990 Petition for Reconsideration filed by Progressive Cellular III B-2 and the January 7, 1993 Petition for Reconsideration filed by RJL Cellular Partnership are DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze  
Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau