

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

In the Matter of )  
 )  
GTE Wireless of the Pacific, Inc. )  
 )  
Request for Waiver of Construction )  
Requirements for PCS Station WPOI208 )  
In the Yakima, Washington BTA )  
 )

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 6, 2000**

**Released: July 7, 2000**

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

**I. Introduction**

1. On June 23, 2000, GTE Wireless of the Pacific, Inc. (GTE) filed a request seeking waiver of Section 24.203(a) of the Commission's Rules in order to extend the five-year construction benchmark for Personal Communications Service (PCS) Station WPOI208 in the Yakima, Washington Basic Trading Area (BTA).<sup>1</sup> By this Order, we grant GTE's waiver request to the extent described below.

**II. Background**

2. The Yakima market was initially part of GTE's Seattle A-Block MTA license, issued under call sign KNLF247.<sup>2</sup> The Yakima BTA was then partitioned to ELLTELL Wireless, Inc. (ELLTELL) under call sign WPOI208. In its application, ELLTELL elected to meet the five-and ten-year construction benchmarks with respect to the BTA, leaving GTE to meet the requirements with respect to the remainder of the MTA. ELLTELL, however, did not construct any PCS facilities in the Yakima BTA, and instead agreed to assign its license for the partitioned Yakima BTA back to GTE subject to the grant of the assignment application.<sup>3</sup> Under current Commission rules, PCS A-Block licensees are required to provide coverage to: (1) one-third of the population in their licensed areas within five years of the initial license grant; and (2) two-thirds of the population in their licensed areas within ten years of their initial license grant.<sup>4</sup> The five-and ten-year benchmarks applicable to WPOI208 are June 23, 2000 and June 23, 2005, respectively. Even though GTE now holds the authorizations for both the BTA and the MTA, there remain separate build-out benchmarks for each of the two licenses.

<sup>1</sup> See Request for Waiver of GTE filed June 23, 2000 (Waiver Request).

<sup>2</sup> See "Wireless Telecommunications Bureau Commercial Wireless Service Information," Public Notice, Rpt. No. LB-96-06 (granting consent, File No. 00106-CW-AL-1-95 (November 24, 1995)).

<sup>3</sup> See FCC Public Notice, Rpt. No. 558 (June 14, 2000); FCC Form 603, File No. 0000109102 (filed April 20, 2000); and FCC Public Notice, Rpt. No. 522 (May 5, 2000).

<sup>4</sup> 47 C.F.R. § 24.203(a).

### III. Discussion

3. Pursuant to Commission Rule 1.925, waiver may be granted if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>5</sup> Alternatively, under Commission Rule 1.3, the Commission has authority to waive its rules if there is “good cause” to do so.<sup>6</sup>

4. In its request, GTE states that because the assignment of the WPOI208 license from ELLTELL back to GTE occurred on June 20, 2000, GTE will not be able to meet the five-year benchmark requiring one-third coverage to the BTA by the June 23, 2000 deadline.<sup>7</sup> GTE contends that from an operational standpoint, additional time is needed to undertake the comprehensive planning necessary to integrate the Yakima BTA back into the Seattle MTA. In addition, GTE submits that having the Yakima BTA licensed to the same licensee as that of the Seattle MTA better ensures the build-out of the Yakima BTA and is more likely to bring advanced wireless telecommunications services to the Yakima area.<sup>8</sup> Finally, GTE states that the build-out of its Seattle MTA system currently exceeds its five-year benchmark coverage requirements even when the population of the Yakima BTA is included. GTE currently covers 66 percent of the population of the Seattle MTA if the Yakima BTA is excluded and 62.3 percent of the Seattle MTA if the Yakima BTA is included.<sup>9</sup> GTE requests that, for these reasons, the five-year build-out requirement of Station WPOI208 be extended for three additional years.

5. On the facts before us, we find that a waiver of the five-year coverage requirements for station WPOI208 is warranted to the extent described below. Grant of this waiver is likely to result in the reasonably rapid provision of PCS service to the population of this BTA, who might otherwise go unserved. The population of the BTA represents about four percent of the population of the original Seattle MTA, and by granting this waiver we ensure that at least one-third of this currently unserved population will have access to PCS service from GTE by June 23, 2003. In other MTAs, a sparsely populated area such as this might go entirely unserved. Moreover, GTE’s coverage of the Seattle MTA not only exceeds the five-year construction requirement (one-third of population covered) but also nearly meets the ten-year benchmark requirements. Because GTE has exceeded its build out requirements, it has provided additional benefits to the public and has demonstrated a commitment to providing service. We believe that this level of build-out in the Seattle MTA warrants greater flexibility with regard to building out the Yakima BTA, in light of GTE’s very recent acquisition of that license. Moreover, since this is the

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<sup>5</sup> 47 C.F.R. § 1.925(3).

<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> Waiver Request at 2.

<sup>8</sup> Waiver Request at 1-2.

<sup>9</sup> Waiver Request at 2.

interim five-year requirement, not the final ten-year requirement, we can be flexible at this stage without modifying GTE's ultimate obligation to cover two-thirds of the populations in both partitioned areas at the ten-year mark. We conclude that full application of Rule Section 24.203(a) construction requirements would be contrary to the public interest. Therefore, we will grant the waiver request to the extent that the five-year coverage requirements applicable to the partitioned Yakima BTA are extended three years, thus requiring one-third coverage of the Yakima BTA population by June 23, 2003. The deadline for meeting the ten-year coverage benchmark of two-thirds of the Yakima BTA population shall remain unchanged.

#### IV. Ordering Clause

6. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(I), and 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 request for waiver of Commission Rule Section 24.203(a) for Station WPOI208 in the Yakima BTA filed by GTE Wireless of the Pacific, Inc. IS HEREBY GRANTED IN PART by extension of the five-year construction requirements from June 23, 2000 to June 23, 2003.

FEDERAL COMMUNICATIONS COMMISSION

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