

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

In the Matter of)	
)	
Cellular Unserved Area Application of)	
Constance L. Pollard/ ETA Trust Partnership)	File No. 07570-CL-P1-95
)	
Market 341 B, California 6-Mono RSA)	
Call Sign KNKR306)	
)	

ORDER

Adopted: February 29, 2000

Released: March 1, 2000

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we address GTE Mobilnet of Central California Incorporated's (GTE) Petition to Deny (Petition) the unserved area application (Application) for Market 341B, California 6-Mono Rural Service Area (California 6 RSA) filed by the Constance L. Pollard/ETA Trust Partnership (Partnership).¹ For the reasons set forth below, we grant the Petition and dismiss the Application.²

2. On June 5, 1989, GTE was granted an authorization to service the California 6 RSA.³ GTE's five-year build-out period for the California 6 RSA expired on June 5, 1994.⁴ On July 6, 1994, on behalf of the Partnership, Caraway Communications filed multiple Phase I unserved area applications for authorization to serve an unserved area in the California 6 RSA.⁵ The Wireless Telecommunications

¹ GTE Petition to Deny, filed March 26, 1997.

² On April 15, 1997, the Broadband Branch of the Commercial Wireless Division dismissed this Application. Letter from Thomas S. Dombrowsky, Jr., Chief, Broadband Branch, Commercial Wireless Division to Ann E. Linton, Esq. Bennet & Bennet, April 15, 1997. However, on April 28, 1997, the Chief of the Commercial Wireless Division of the Wireless Telecommunications Bureau rescinded the April 15, 1997 letter and stated that a final determination regarding the Application would be made through an order. Letter from David L. Furth, Chief, Commercial Wireless Division to Caressa D. Bennet, Esq., Bennet & Bennet and Andre Lachance, Esq., GTE Mobilnet, April 28, 1997.

³ See *Public Notice*, CL-86-168 (June 5, 1989)

⁴ The Licensee of the first cellular system authorized on each channel block in each cellular market is afforded a five year period, beginning on the date the initial authorization for the system is granted, during which it may expand the system within the market. 47 C.F.R. § 22.947.

⁵ Petition at 2.

Bureau (Bureau) announced the filing of mutually exclusive applications in the California 6 RSA and designated the applications for future auction.⁶ The auction for cellular unserved area applications was held from January 13 to January 21, 1997. On January 22, 1997, upon conclusion of the cellular unserved auction, the Partnership was announced as the winning bidder for the California 6 RSA unserved area.⁷ On February 5, 1997, the Partnership filed an Application for Mobile Radio Service Authorization (Form 600), which stated that the Partnership intended to operate a cell site three miles east of Independence, California.⁸ On February 24, 1997, the Partnership's application was accepted for filing.⁹ On March 26, 1997, GTE filed its Petition.¹⁰

3. We grant GTE's Petition and deny the Partnership's above-referenced, unserved area application for California 6 RSA, because the partnership's proposed service contour would extend into GTE's protected CGSA. Because the partnership's application proposes to provide service in GTE's protected CGSA, it proposes to provide service in a location that is not an unserved area in violation of section 22.949(a)(1)(iii) of the Commission's rules.¹¹ In addition, the Partnership application seeks to obtain a license for spectrum that is not available¹² in violation of section 22.128(e)(2) of the Commission's rules¹³ because the geographic area for which the partnership is seeking to provide service is already licensed to GTE on an exclusive basis. Finally, the partnership's application violates section 22.911 of the Commission's rules¹⁴ because it interferes with GTE's cellular system without obtaining written consent.

4. We also dismiss the Partnership's Opposition to GTE's Petition because it was not timely filed. In a Public Notice released on February 24, 1997, the Bureau established March 26, 1997 as the deadline for filing Petitions to Deny against certain tentative selectees, including the Partnership, whose Phase I applications for unserved areas had been accepted for filing.¹⁵ The Bureau also established April 7, 1997 as the deadline for filing Oppositions to the petitions to deny.¹⁶ The Partnership did not file its

⁶ See *Public Notice*, CL 95-31 (Dec. 21, 1994).

⁷ See *Public Notice*, DA 97-153 (Jan. 22, 1997).

⁸ See *Public Notice*, CL-97-37 (Feb. 24, 1997).

⁹ *Id.*

¹⁰ The Partnership filed an Opposition to Petition to Deny on April 8, 1997, Opposition to Petition to Deny, filed by the Partnership on April 9, 1997 (Opposition), and GTE filed a Reply to Opposition on April 14, 1997, Reply to Opposition filed by GTE on April 14, 1997(Reply).

¹¹ 47 C.F.R. § 22.949(a)(1)(iii).

¹² 47 C.F.R. § 22.128(e).

¹³ *Id.*; see also *Sagir, Inc. v. N.E. Colorado Cellular, Inc. Memorandum Opinion and Order*, 12 FCC Rcd. 17594, 17597, 9(1997); *McElroy*, 13 FCC Rcd. At 7296, ¶ 13.

¹⁴ See 47 C.F.R. §§ 22.911(a)(1),(d)(2)(ii). See also *McElroy Electronics Corporation,, Order*, 13 FCC Rcd. 7291, 7296, ¶ 13.

¹⁵ See *Public Notice*, CL-97-37 (Feb. 24, 1997).

¹⁶ *Id.*

Opposition to GTE's Petition, however, until April 9, 1997. The Partnership argues that because GTE served its Petition on the Partnership by U.S. Mail, the time for filing its opposition was extended for three days, pursuant to section 1.4(h) of the Commission's rules.¹⁷ Section 1.4(h) of the Commission's rules, however, only applies when the filing period is ten days or less.¹⁸ Because the deadline for filing Oppositions was April 7, 1997, 12 days after the date Petitions to Deny were due, section 1.4(h) of the Commission's rules does not apply in this case. We therefore dismiss the Partnership's Opposition and will not consider it in this proceeding because it was not timely filed.

5. Accordingly, IT IS ORDERED that, pursuant to section 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.331 and 22.130 of the Commission's rules, 47 C.F.R. §§ 0.331, 22.130, the Petition to Deny filed by GTE Mobilnet of Central California Incorporated on April 14, 1997, IS GRANTED.

6. IT IS FURTHER ORDERED that, pursuant to sections 4 (i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331, and 1.4(h) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.4(h), the Opposition to GTE's Petition to Deny filed by Constance L. Pollard/ETA Trust Partnership on April 9, 1997, IS DISMISSED.

7. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 303, and 332 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303, 332, and sections 0.331, 22.128, 22.911(d), and 22.949(a)(1)(iii) of the Commission's rules, 47 C.F. R. §§ 0.331, 22.128, 22.911(d), 22.949(a)(I)(iii), the unserved area application filed by Constance L. Pollard/ETA Trust Partnership on February 5, 1997, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Paul D' Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

¹⁷ Letter from Caressa D. Bennet, Esq., Bennet & Bennet to David Furth, Esq. Chief, Commercial Wireless Division, Federal Communications Commission, April 18, 1997 at n.2.

¹⁸ Section 1.4(h) states that if a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail, and the filing period for a response is ten days or less, an additional three days (excluding holidays) will be allowed to all parties in the proceeding for filing a response. 47 C.F.R. 1.4(h). See also Rules and Policies Regarding Calling Number Identification Service – Caller ID, Order Granting Motion for Extension of time to File Reply, II rcc Rcd. 12078, n.2 (1996); Amendment of Section 1.4 of the Commission's Rules Relating to Computation of Time, Memorandum Opinion and Order, 11 FCC Rcd. 3059, I (1996); Paging Network of Virginia Inc. for License for Station KNKV 201 for Narrowband Nationwide Personal Communications Service on Frequency Block N-1, Memorandum Opinion and Order, 10 FCC Rcd. 1016. 3 (1995), Summit Communications, Inc., Memorandum Opinion and Order, 9 FCC Rcd. 4833, n.1 (1994).

