

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

In the Matter of )
)
TELECORP PCS, LLC )
) File Nos. 0000182612
Request for Waiver of Section 24.203(a) of the ) 0000182956
Commission's Rules for Broadband PCS Licenses )
WPOI215 in the Louisville-Lexington-Evansville )
MTA and WPOI217 in the St. Louis MTA )
)

ORDER

Adopted: October 25, 2001

Released: October 26, 2001

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

I. Introduction

1. In this Order, we address the construction notifications and requests for waiver filed by
Telecorp PCS, LLC ("Telecorp") on July 7, 2000, with respect to two broadband Personal
Communications Service ("PCS") licenses, one identified by call sign WPOI215, partitioned and
disaggregated from the Louisville-Lexington-Evansville Major Trading Area ("Louisville MTA")<sup>1</sup> and the
other identified by call sign WPOI217, partitioned and disaggregated from the St. Louis MTA.<sup>2</sup>
Specifically, Telecorp asked the Wireless Telecommunications Bureau ("Bureau") to accept its
notifications that it had effectively met the five-year construction requirements under section 24.203(a) of
the Commission's rules for each of these licenses, or, in the alternative, to waive the requirements of section
24.203(a).<sup>3</sup> On September 19, 2000, Telecorp modified both waiver requests by indicating that it only
needed a four-month period beyond its original deadline to meet the population coverage benchmark of
section 24.203(a).<sup>4</sup> For the reasons stated below, we grant Telecorp's waiver requests as modified.

II. Background

2. In 1998, AT&T Wireless PCS, LLC ("AT&T Wireless") partitioned and disaggregated to
Telecorp certain rural portions of its broadband PCS A-Block authorizations for the St. Louis MTA ("St.

<sup>1</sup> See "Satisfaction of Construction Requirements" filed by Telecorp on July 7, 2000, File No.
0000182956, Exhibit A ("Louisville Notification/Waiver Request").

<sup>2</sup> See "Satisfaction of Construction Requirements" filed by Telecorp on July 7, 2000, File No.
0000182612, Exhibit A ("St. Louis Notification/Waiver Request").

<sup>3</sup> 47 C.F.R. § 24.203(a).

<sup>4</sup> See Reply and Supplemental Comments filed by Telecorp on September 19, 2000 ("Telecorp Louisville
Reply") and Consolidated Reply and Supplemental Comments filed by Telecorp on September 19, 2000
("Telecorp St. Louis Reply").

Louis Partition”)<sup>5</sup> and certain rural portions of the Louisville MTA (“Louisville Partition”).<sup>6</sup> Under section 24.203(a) of the Commission’s rules, broadband PCS A-Block licensees are required to provide coverage to: (1) one-third of the population of 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 the initial license grant.<sup>7</sup> At the time of the assignments, Telecorp elected to meet the five- and ten-year construction benchmarks with respect to the partitioned licensed areas, while the original licensee, AT&T Wireless, maintained responsibility for providing coverage to the areas it retained.<sup>8</sup> The five-year construction deadline applicable to both the Louisville Partition and the St. Louis Partition was June 23, 2000.

3. On July 7, 2000, Telecorp filed separate notifications of construction for the Louisville Partition and St. Louis Partition. In the notification for the Louisville Partition, Telecorp indicated that, as of the filing date, it was not providing coverage to any part of the partitioned market, but that it was working with Global PCS, Inc. (“Global”), a licensee that also obtained A-Block spectrum in the Louisville MTA from AT&T Wireless in 1998 through partitioning and disaggregation,<sup>9</sup> to share responsibility for build-out of the Louisville partitioned areas.<sup>10</sup> Furthermore, Telecorp pointed out that it had recently filed for Commission consent to merge with Global’s parent company, Tritel, which would “restore both partitions of the Louisville MTA to common ownership.”<sup>11</sup> In the notification for the St. Louis Partition,

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<sup>5</sup> Specifically, Telecorp received 20 MHz (of the 30 MHz A-Block license) in the following Basic Trading Areas (“BTAs”) within the St. Louis MTA (MTA019): Carbondale-Marion IL (BTA067); Columbia, MO (BTA090); Cape Girardeau-Sikeston, MO (BTA066); Quincy-IL-Hannibal, MO (BTA367); Poplar Bluff, MO (BTA355); Jefferson City, MO (BTA217); Mount Vernon-Centralia, IL (BTA308); West Plains, MO (BTA470); Kirksville, MO (BTA230). In addition, Telecorp acquired 20 MHz of spectrum in the following counties within the Springfield, MO BTA (BTA428): Camden County, Cedar County, Dallas County, Douglas County, Hickory County, Laclede County, Polk County, Stone County, Taney County, Texas County, Webster County, and Wright County.

<sup>6</sup> Specifically, Telecorp received 20 MHz (of the 30 MHz A-Block) in the following BTAs within the Louisville MTA (MTA026): Evansville, IN (BTA135) and Paducah-Murray-Mayfield (BTA339).

<sup>7</sup> 47 C.F.R. § 24.203(a).

<sup>8</sup> Pursuant to 47 C.F.R. § 24.714(f)(1)(i), the partitionee may elect to satisfy the applicable construction requirements for the partitioned licensed area.

<sup>9</sup> At the time of Telecorp’s filing, Global PCS, Inc. (“Global”) was the licensee of call sign WPOI255, the Block A2 partitioned license for the Louisville MTA, *i.e.*, three licensees held licenses for this market and channel block. Global submitted a construction notification on July 7, 2000, indicating that it was providing adequate service to a total population of 1,653,408 or 58 percent of its partitioned area. *See* File No. 0000182891. Recently Global assigned this license to Tritel A/B Holding Corp.

<sup>10</sup> Louisville Notification/Waiver Request at 1. Specifically, Telecorp stated the it was “unable to show that it has provided an adequate level of service to a Census Block Group, such that the Census Block Group could be counted for purposes of demonstrating coverage.” *Id.* Telecorp further stated that the combined coverage of Telecorp and Global (*i.e.*, population of 1,653,408) was the same as the coverage provided by Global (*see* note 9 *supra*), thereby indicating that, at least as of the deadline, Telecorp was not providing any coverage to its partitioned market.

<sup>11</sup> Louisville Notification/Waiver Request at 2.

Telecorp stated that, as of the filing date, it was providing coverage to a total population of 198,135 within the St. Louis Partition, or 12.26 percent of the population of the partitioned area.<sup>12</sup>

4. Despite these levels of coverage in the Louisville and St. Louis partitions falling short of the one-third benchmark set forth in section 24.203(a), Telecorp submitted that it was in compliance with the Commission's construction requirements for two reasons. First, Telecorp argued that coverage of its partitioned areas in each MTA, when aggregated with coverage of the other partitioned areas in the MTA, exceeded the one-third coverage requirement: in combination with Global, 46.5 percent of the population of the Louisville MTA received service,<sup>13</sup> and, in combination with the service provided by AT&T Wireless, more than fifty percent of the population of the St. Louis MTA received service.<sup>14</sup> Second, Telecorp argued that by combining the Louisville and St. Louis partitions with its neighboring licensed service areas (*i.e.*, partitions in the Memphis-Jackson MTA and the Little Rock MTA, forming what Telecorp referred to as its "Southeast cluster"), it provided service to approximately 41 percent of the total population of the combined licensed areas.<sup>15</sup>

5. In the event that the Commission found these showings insufficient, Telecorp also requested a waiver of the Commission's rules.<sup>16</sup> As a basis for waiver, Telecorp argued that one of the goals of adopting partitioning and disaggregation rules – to promote the provision of PCS to rural and otherwise less accessible areas – was being met by the provision of service to the Louisville Partition and the St. Louis Partition.<sup>17</sup> Telecorp pointed out that, had no partition or disaggregation occurred, the coverage requirements for each MTA could have been met without any coverage to the partitioned areas.<sup>18</sup> Telecorp also argued that grant of waiver was warranted in light of the unusual circumstances presented by the rural demographics of both the Louisville and St. Louis Partitions, specifically that the population in each was "widely dispersed, making satisfactory coverage to any critical portion difficult and costly."<sup>19</sup> Telecorp added that it was committed to providing full coverage within its partitioned areas, and specifically planned to provide service to certain markets by the fourth quarter of 2000.<sup>20</sup>

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<sup>12</sup> St. Louis Notification/Waiver Request at 2.

<sup>13</sup> Louisville Notification/Waiver Request at 2.

<sup>14</sup> St. Louis Notification/Waiver Request at 2.

<sup>15</sup> Louisville Notification/Waiver Request at 2; St. Louis Notification/Waiver Request at 2.

<sup>16</sup> Louisville Notification/Waiver Request at 2-4; St. Louis Notification/Waiver Request at 2-5.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* Telecorp indicated that coverage to the St. Louis BTA alone would have met the one-third coverage requirement for the entire St. Louis MTA and that coverage to the Louisville BTA alone would have met the one-third coverage requirement for the entire Louisville MTA. *Id.*

<sup>19</sup> *Id.* at 4.

<sup>20</sup> Specifically, Telecorp stated that, by the fourth quarter of 2000, it planned to provide service in Cape Girardeau, MO, Carbondale, IL, and Marion, IL – all within the St. Louis Partition – and in Evansville, IN, Paducah, KY, Henderson, KY, and Murray, KY – all within the Louisville Partition. *See* St. Louis Notification/Waiver Request at 4-5; Louisville Notification/Waiver Request at 4. Telecorp did not, however, indicate how close this increased service would have brought it to the one-third coverage benchmark.

6. On August 3, 2000, the Bureau issued two public notices seeking comment on whether granting TeleCorp's waiver requests would further the public interest.<sup>21</sup> In response, two parties, Rural Telecommunications Group ("RTG") and Adams Telecom, Inc. ("Adams") filed comments.<sup>22</sup> Expressing concern that the rural portions of TeleCorp's partitioned areas would not receive service in a timely manner, RTG argued that Telecorp was attempting to piggy-back on the service provided by other licensees (*i.e.*, AT&T Wireless and Global) or to "gerrymander license areas" by counting coverage in other markets.<sup>23</sup> RTG further argued that Telecorp knew the characteristics of the markets when it acquired the partitioned licenses and elected to meet the requirements independent of the partitioner.<sup>24</sup> RTG asserted that Telecorp had not sufficiently demonstrated that the demographics or physical terrain justified a waiver, and argued that granting the waiver would further delay service to these rural areas and set a dangerous precedent.<sup>25</sup> Like RTG, Adams argued that Telecorp was, or reasonably should have been, aware of the demographics of the partitioned area when it sought Commission approval for the assignment and certified that it would meet the construction benchmarks.<sup>26</sup> Adams also asserted that Telecorp had two years to meet the coverage requirements and neither demonstrated that it had taken significant steps to providing service nor provided a specific date when it would meet the benchmark.<sup>27</sup>

7. On September 19, 2000, Telecorp replied to these comments by modifying the waiver requests for both the St. Louis and Louisville Partitions.<sup>28</sup> Specifically, Telecorp stated that, by the end of September 2000, less than four months after the original construction deadline, it would provide service to 56.4 percent of the population in the Louisville Partition and 41.4 percent of the population in the St. Louis Partition.<sup>29</sup> Telecorp stated that it had initially anticipated that it could provide service to all four of the MTA partitions in its Southeast cluster using two switches, but that, after one year, demand in the initially

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<sup>21</sup> See Wireless Telecommunications Bureau Seeks Comment on Telecorp PCS, L.L.C.'s Request for Waiver of the Five-Year Broadband PCS Construction Requirement for the Partitioned/Disaggregated Louisville MTA (026), *Public Notice*, 15 FCC Rcd. 13386 (2000); Wireless Telecommunications Bureau Seeks Comment on Telecorp PCS, L.L.C.'s Request for Waiver of the Five-Year Broadband PCS Construction Requirement for the Partitioned/Disaggregated St. Louis MTA (019), *Public Notice*, 15 FCC Rcd. 13390 (2000).

<sup>22</sup> Comments filed by Rural Telecommunications Group on September 5, 2000 ("RTG Comments"). Comments filed by Adams Telecom, Inc. on September 5, 2000 ("Adams Comments"). RTG Comments were filed in response to both of Telecorp's waiver requests – St. Louis and Louisville. Adams Comments only addressed Telecorp's waiver request for the St. Louis market.

<sup>23</sup> RTG Comments at 3-4. RTG argues that such gerrymandering would be unfair to small licensees that do not hold other licenses and, therefore, could not aggregate population coverage. *Id.*

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> Adams Comments at 2-3.

<sup>27</sup> *Id.* at 3-4.

<sup>28</sup> Telecorp Louisville Reply at 1-2; Telecorp St. Louis Reply at 2.

<sup>29</sup> *Id.* at 4. Telecorp also reiterated the demographics of the St. Louis Partition, *i.e.*, that it must provide service to 2.7 times the geographic area as the partitioner for the St. Louis MTA, with a total population density of roughly one-fifth of the density of the partitioner's licensed area. Telecorp St. Louis Reply at 6.

launched markets had exhausted its available switching capacity and required the installation of an additional switch.<sup>30</sup> Because service from this new switch was not available until April 2000, a six-month delay resulted in the build-out of its markets.<sup>31</sup> Despite these set-backs, Telecorp stated that it planned to meet, and exceed, the five-year benchmark only four months after the deadline. Furthermore, in response to the Adams' objections, Telecorp listed the steps it had taken from March 1999 until September 2000 to provide service to the Louisville Partition and the St. Louis Partition and provided a date certain that service would meet the Commission's coverage requirements.<sup>32</sup> Finally, Telecorp reiterated that grant of limited waiver in this case would ensure PCS availability to areas that might otherwise go unserved, which would allay the concerns expressed by RTG and Adams that waiver would cause further delay of service to these rural areas.<sup>33</sup>

8. After submitting its reply comments, Telecorp filed two supplements to its waiver requests.<sup>34</sup> In its first supplement, Telecorp verified that, as of the end of September 2000, it achieved coverage to one-third of the population in each of the partitioned markets.<sup>35</sup> It also added that, as of the first quarter of 2001, it was serving approximately 75 percent of the Louisville Partition and 42 percent of the St. Louis Partition.<sup>36</sup> In its second supplement, Telecorp indicated that, as of September 2001, it was serving approximately 89 percent of the Louisville Partition and 60 percent of the St. Louis Partition.<sup>37</sup>

### III. Discussion

9. As an initial matter, it is clear from Telecorp's own construction notifications, that, as of the five-year deadline, it had not complied with the requirement in section 24.203(a) of the Commission's rules that it must provide adequate service to one-third of the population of its partitioned areas within five years of initial license grant. Because Telecorp elected to meet the coverage requirements independent of the original partitioner, we agree with RTG that it cannot count coverage achieved by the other party towards its own coverage requirement. We also agree with RTG that Telecorp cannot meet the coverage requirements of section 24.203(a) by combining coverage in portions of one MTA with coverage in portions of neighboring MTAs also held by the licensee. Therefore, absent grant of a waiver or extension of time, Telecorp failed to comply with the coverage requirement, which would result in automatic termination of the license.<sup>38</sup>

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<sup>30</sup> *Id.* at 8; Telecorp St Louis Reply at 6.

<sup>31</sup> *Id.*

<sup>32</sup> Telecorp Louisville Reply at 8-9; Telecorp St. Louis Reply at 9.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *See* Letter of Eric W. DeSilva, counsel to Telecorp, to William W. Kunze, Chief of Commercial Wireless Division, Wireless Telecommunications Bureau, dated April 2, 2001 ("April 2001 Supplement"); and Letter of Eric W. DeSilva to David Furth, Senior Legal Advisor, Wireless Telecommunications Bureau, dated September 18, 2001 ("September 2001 Supplement").

<sup>35</sup> April 2001 Supplement.

<sup>36</sup> *Id.*

<sup>37</sup> September 2001 Supplement.

<sup>38</sup> *See* 47 C.F.R. § 24.203(a).

10. In this case, Telecorp did request a waiver of section 24.203(a) as an alternative in its construction notifications, and later supplemented its request by indicating it had achieved more than one-third coverage of the relevant partitioned area within four months of the deadline. Pursuant to section 1.925 of the Commission's rules, 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 the 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>39</sup> Pursuant to sections 1.946(e) and 24.843(b) of the Commission's rules, an extension of time to complete construction will be granted if the licensee shows that the failure to complete construction is due to causes beyond its control.<sup>40</sup> Moreover, when adopting the PCS construction requirements, the Commission recognized that there may be cases when certain factors, such as a high level of microwave incumbency or sparse population density, would make compliance difficult.<sup>41</sup> The Commission stated that in instances in which the circumstances are unique and the public interest would be served, it would consider waiving the PCS construction requirements on a case-by-case basis.<sup>42</sup>

11. On the facts before us, we find that a waiver of the five-year coverage requirements for Telecorp's Louisville Partition and St. Louis Partition is warranted due to a combination of several factors. First, Telecorp obtained the partitioned licenses with just over two years to provide a level of coverage that licensees must normally meet in five years, made diligent efforts to achieve that level of coverage, and required only four additional months to achieve (and, in fact, exceed) the benchmark. Telecorp's short delay in meeting the construction benchmark was also caused, at least in part, by the unforeseen need for a new switch. While such an event, by itself, would not excuse a construction deadline, it demonstrates that Telecorp acted promptly to provide adequate coverage to its licensed area. Second, as indicated by its most recent filing, Telecorp has exceeded the interim benchmark, providing coverage to 60 percent of the St. Louis Partition and to 89 percent of the Louisville Partition, the latter of which surpasses even its ten-year requirement. Third, Telecorp's goal was to provide coverage to the rural areas of the Louisville and St. Louis MTAs. The St. Louis Partition has only approximately 29 percent of the population of the St. Louis MTA but over 53 percent of the geographic area, and the Louisville Partition has only approximately 20 percent of the population of the Louisville MTA but over 24 percent of the geographic area.<sup>43</sup> Grant of a limited extension in this case ensures the reasonably rapid provision of PCS service to the population of

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<sup>39</sup> 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3, the Commission has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>40</sup> 47 C.F.R. §§ 1.946, 24.843. Section 1.946(e) also states specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. § 1.946(e)(2)-(3).

<sup>41</sup> *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd. 4957, 5019, ¶ 156 (1994) (*PCS MO&O*).

<sup>42</sup> *Id.*, *citing WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>43</sup> Moreover, as Telecorp indicated, these areas might have otherwise gone unserved had the partition not occurred because coverage to the St. Louis BTA and the Louisville BTA by themselves would have meet the five-year benchmark for the entire St. Louis MTA and Louisville MTA, respectively. *See* St. Louis Notification/Waiver Request at 3; Louisville Notification/Waiver Request at 3.

these rural areas, which addresses the concerns of both RTG and Adams and the Commission's goals in adopting coverage requirements.<sup>44</sup> Finally, as we have indicated in the past, we can exercise a certain degree of flexibility with the interim five-year construction deadline because Telecorp will ultimately need to cover two-thirds of the population of the partitioned markets by the ten-year mark.<sup>45</sup>

12. We do not believe that grant of this waiver undermines the enforceability of construction benchmarks generally, as suggested by RTG. Instead, we believe that the underlying purposes of the PCS construction requirements – in particular, in this case, the provision of PCS service to rural areas – would be ill-served in this case by strict application of the five-year period to meet one-third coverage. All of the circumstances in this case taken together are unique enough to warrant the grant of an extension of the interim five-year requirement for an additional period of four months.

#### IV. Ordering Clause

13. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j)(4)(B), 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 requests for waiver of section 24.203(a) for the broadband PCS licenses identified by call sign WPOI215 and WPOI217 filed by Telecorp PCS, LLC ARE HEREBY GRANTED by extension of the five-year construction deadline for four additional months.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>44</sup> See *PCS MO&O* at 5018, ¶ 154. Moreover, the Commission recognized that sparse population density could make compliance with the construction requirements difficult and, therefore, may warrant grant of a waiver if the circumstances are unique and the public interest would be served. *Id.* at 5019, ¶ 156.

<sup>45</sup> See *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*, 15 FCC Rcd 11779, 11780-81 (Comm. Wir. Div. WTB 2000).