

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

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| In the Matter of |) | |
| |) | |
| CHASETEL LICENSEE CORP. |) | File Nos. 0000594507, 0000603542 |
| |) | |
| Request for Extension of Broadband PCS |) | |
| Construction Requirements and |) | |
| Construction Notification for Call Sign KNLF468 |) | |
| in Middlesboro-Harlan, KY BTA |) | |
| |) | |

ORDER

Adopted: May 17, 2002

Released: May 20, 2002

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

I. INTRODUCTION

1. In this Order, we address a request by Chasetel Licensee Corp. (“Chasetel”) for an extension of time to meet the construction requirement for a broadband Personal Communications Services (“PCS”) license.¹ We also address Chasetel’s showing of substantial service to meet the construction requirement for the same license.² For the reasons set forth below, we grant the extension of time to construct, as modified herein, and find that the substantial service showing meets the construction requirements of section 24.203(b) of the Commission’s rules.³

II. BACKGROUND

2. On September 17, 1996, the Commission granted Chasetel’s predecessor-in-interest, Chase Telecommunications, Inc., a broadband PCS license on the C-block in the Middlesboro-Harlan, KY Basic Trading Area (“Middlesboro BTA”) under call sign KNLF468.⁴ In 1998, pursuant to the Commission’s installment payment restructuring for broadband PCS C-block licenses,⁵ Chasetel disaggregated the

¹ See File No. 0000594507, filed September 17, 2001(Extension Request), and supplemented on September 25, 2001 (Extension Supplement).

² See File No. 0000603542, KNLF468 Buildout Showing (Notification), filed September 25, 2001, and supplemented on February 12, 2001 (Notification Supplement).

³ 47 C.F.R. § 24.203(b).

⁴ According to Chasetel, on May 4, 2001, Chasetel’s parent company, Leap Wireless International, Inc., and NTCH, Inc. (“NTCH”) entered into a purchase and sale agreement for the License and a management agreement whereby NTCH would construct a system in the Middlesboro BTA that would meet the PCS construction requirements. See Extension Request at 2. On May 24, 2001, Chasetel and NTCH’s wholly-owned subsidiary, GLH Communications, Inc., filed an assignment application for the License, which was pending at time of the construction deadline. See File No. 0000467877. The Commission consented to the assignment of the License on November 15, 2001, and the parties filed a notice with the Commission that they consummated the transaction on April 9, 2002. See File No. 0000850136.

⁵ See Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket 97-82, 12 FCC Rcd. 16436 (1997), as modified on reconsideration, 13 FCC Rcd. 8345 (1998).

license, retaining 15 MHz of spectrum ("License") and returning 15 MHz to the Commission for relicensing. As part of the C-block restructuring, the licensees of disaggregated 15 MHz C-blocks were given the same construction requirement as 10 MHz broadband PCS licensees, as set forth in section 24.203(b) of the Commission's rules – *i.e.*, the licensee must provide service to at least one-quarter of the population of the BTA or make a showing of substantial service within five years of initial license grant.⁶ Based on its grant date, the five-year deadline for the License was September 17, 2001.

3. On September 17, 2001, Chasetel requested an extension of the construction period to solve last-minute technical problems.⁷ Stating that the system was on the verge of becoming operational,⁸ Chasetel requested an additional week to meet the construction requirements of section 24.203(b).⁹ Chasetel later supplemented its extension request by stating that delivery, installation, and testing of its system in the Middlesboro BTA were completed on September 20, 2001, only three days after the deadline.¹⁰

4. On September 25, 2001, Chasetel filed a notification with the Commission that it had met the construction requirements for six of its broadband PCS licenses, including the instant License.¹¹ For five of the licenses, Chasetel stated that it met the 25 percent coverage requirement, and for the instant License, Chasetel provided a showing of substantial service.¹² Pursuant to a request by the staff of the Wireless Telecommunications Bureau ("Bureau"), Chasetel supplemented its demonstration of substantial service for the License on February 12, 2002, providing additional information about the Middlesboro BTA and the service that Chasetel began providing to that market within three days of the deadline.¹³

III. DISCUSSION

5. Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, a broadband PCS license will terminate automatically as of the construction deadline if the licensee fails to meet the requirements of section 24.203 unless the Commission grants an extension request or waives the PCS construction requirements.¹⁴ An extension of time to complete construction may be granted, pursuant to sections 1.946(e) and 24.843(b) of the Commission's rules, if the licensee shows that the failure to complete construction is due to causes beyond its control.¹⁵ Furthermore, in recognizing that compliance with the broadband PCS construction requirements may be difficult at times, the Commission stated that, in situations in which the circumstances are unique and the public interest would be served, it would

⁶ 47 C.F.R. § 24.203(b). *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd. 6571, 6584-85 (1999).

⁷ Extension Request.

⁸ Specifically, Chasetel stated that, as of September 17, 2001, the central cell site was constructed, the transmitter and antennas were installed, the T-1 line connecting the cell site to the switch was connected, and the utilities and other supporting facilities were in place. Extension Request at 1.

⁹ *Id.* at 2-4.

¹⁰ Extension Supplement at 1-2.

¹¹ *See* File No. 0000603542.

¹² Notification.

¹³ Notification Supplement.

¹⁴ 47 C.F.R. §§ 1.946(c), 1.955(a)(2), 24.203.

¹⁵ 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).

consider waiving the PCS construction requirements on a case-by-case basis.¹⁶ Waiver may be granted, pursuant to section 1.925 of the Commission's rules, 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.¹⁷

6. In this case, we find that a short extension of time to meet the PCS construction requirements is warranted due to the delays caused by events that were not reasonably anticipated or foreseeable, the diligent efforts by Chasetel prior to the deadline and its level of construction at the deadline, and the *de minimis* nature of the extension. Chasetel states that it originally planned to serve Lincoln Memorial University ("LMU") in the Middlesboro BTA using a technology that integrates with the school's existing private branch exchange ("PBX").¹⁸ According to Chasetel, after several months of planning to deploy this particular technology, however, it could not get final approval to access the university's PBX because the two university officials that could give approval became unexpectedly unavailable.¹⁹ As a result, Chasetel states that it was necessary to switch to standard CDMA technology, which pushed its completion date much closer to the deadline than originally anticipated.²⁰ Nonetheless, according to Chasetel, the cell site was constructed and the system was ready to be placed into operation except for the installation and testing of the private T-1 line one week before the deadline.²¹ The final installation and testing of the T-1, however, were delayed following the attacks on the United States on September 11, 2001, when, according to Chasetel, AT&T personnel involved in the installation and testing became unavailable, and equipment that was found to be essential after testing the system also immediately became unavailable due to the grounding of all air flights, preventing overnight deliveries.²² Despite these difficulties, Chasetel states that it finished construction and placed the system into operation within three days of the deadline.²³

7. While a licensee should reasonably expect last-minute delays and should take those into account when planning the construction of its system, we find that Chasetel acted diligently in completing construction despite the unforeseeable circumstances surrounding the system construction. The unanticipated need to switch technology, combined with the restriction of personnel and the grounding of all air flights within the United States following the attacks on September 11, 2001, caused delays that were beyond something reasonably anticipated or foreseeable. Moreover, Chasetel indicates that its system was nearly operational at the deadline and only required three additional days to make it fully

¹⁶ 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 (1994) (*PCS MO&O*), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁷ 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).

¹⁸ Extension Request at 2. Specifically, Chasetel states that it planned to use "UTStarcom's PAS technology [which] uses low power base stations, 1900 MHz spectrum, and a network interface unit which integrates with an existing [PBX]." *Id.*

¹⁹ *Id.* at 2-3. Specifically, both university officials became disabled with serious illnesses that prevented them from issuing a decision on Chasetel's proposed integration with the school's existing PBX. *Id.*

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.* at 3-4.

²³ Extension Supplement at 1.

operational. Because of these reasons, we find a short extension is warranted, and therefore, grant Chasetel a three-day extension to meet the construction requirement for the License.²⁴

8. Given the grant of extension of time, we now address the demonstration of substantial service filed by Chasetel for the License. The Commission has defined “substantial service” as “service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.”²⁵ When adopting substantial service as an option for 10 MHz (and later 15 MHz) broadband PCS licenses, the Commission indicated that these smaller BTA licenses could be used to provide service to geographic areas or populations that the holders of the 30 MHz licenses that cover the larger Major Trading Areas (“MTAs”) may be less likely to cover.²⁶ The Commission provided the specific examples of “residential, cutting-edge niche services” and “services to business or educational campuses where the population may be small except during business or school hours” as uses of the spectrum that could meet the substantial service benchmark.²⁷

9. In this case, we find that Chasetel meets the substantial service benchmark by providing digital wireless telecommunications services to an area that is likely to be unserved or underserved – specifically, an educational campus in a relatively remote area of a rural market. Chasetel states that, along with its potential successor-in-interest, NTCH, Inc.,²⁸ it specifically seeks to serve the wireless telecommunications needs of campus communities outside of major cities.²⁹ According to Chasetel, this service, known as “CollegeTown PCS,” allows students, faculty, and staff of a university to communicate via PCS mobile phones for a flat fee with no mobile-to-mobile per minute charges.³⁰ As stated above, the Commission specifically cited service to educational campuses as a “niche” service that would potentially meet the substantial service standard for 10 MHz and, by extension, 15 MHz broadband PCS licensees.³¹ While we note that service to an educational campus by itself may not necessarily meet the substantial service standard, we believe that Chasetel’s service to LMU’s campus, particularly in light of the factors described below, is the type of service that the Commission had in mind when it provided the substantial service option to 10 MHz and 15 MHz PCS licensees.

10. We find that Chasetel’s service to the LMU campus and its surrounding areas is substantial in part because LMU is situated in a relatively remote part of the Middlesboro BTA. Specifically, LMU is

²⁴ We note that Chasetel requested an extension of one week, but based on Chasetel’s own account, its system was operational as of September 20, 2001, three days following the original deadline, and therefore, only a three-day extension is necessary.

²⁵ The Commission has used this basic definition of “substantial service” in a number of commercial wireless services. See, e.g., 47 C.F.R. § 24.103(d). Because the requirement can be met in a variety of ways, the Commission has stated that it will review substantial service showings on a case-by-case basis.

²⁶ PCS MO&O at 5019.

²⁷ *Id.* In addition, when responding to questions about broadband PCS C-block licenses, the Bureau pointed out that the substantial service alternative “is specifically tailored for licensees interested in providing ‘niche’ services, for example, to campuses and business parks where population levels may be small.” See Wireless Telecommunications Bureau Staff Responds to Questions about the Broadband PCS C Block Auction, *Public Notice*, No. 54270, 78 RR 2d 727, 732-733 (Jun. 8, 1995).

²⁸ See n. 4, *supra*.

²⁹ See Notification Supplement at 2.

³⁰ Notification at 3. See also www.collegetownpcs.com. According to Chasetel, the “CollegeTown PCS” service at LMU costs about \$19.95 per month, including free local calls to Knoxville where many students have family and friends. Notification Supplement at 3.

³¹ See ¶ 8. As described above, 15 MHz C-block licensees resulting from the disaggregation option in the C-Block restructuring were given the same construction requirements as 10 MHz licensees. See n.6, *supra*.

located in Harrogate, Tennessee, an area that, as Chasetel points out, is not immediately close to any major metropolitan city.³² Moreover, Chasetel points out that the two closest towns to Harrogate – Tazewell, Tennessee and Middlesboro, Kentucky – are separated by mountainous terrain.³³ Because this terrain inhibits contiguous coverage from these neighboring towns, Chasetel asserts that the students, faculty, and staff at LMU have been unable to receive consistent, adequate wireless service.³⁴ As we noted above, the Commission provided the substantial service option to 10 MHz and 15 MHz PCS licensees so that these licensees could provide service to areas or populations that would not necessarily be served by 30 MHz MTA licensees.³⁵ In this case, because Harrogate and the LMU campus are geographically separated from neighboring towns by mountainous terrain and relatively far from major metropolitan cities, we believe that its residents may be less likely to be adequately served by multiple PCS providers in a competitive environment. Indeed, our research indicates that, as of September 2001, no other PCS providers had launched service in the Middlesboro BTA,³⁶ and, to the extent that some cellular service is provided in parts of the Middlesboro BTA, it appears that, at best, only one of the two cellular providers in the region was serving the LMU campus and its surrounding area as of September 2001.³⁷ In sum, the LMU campus and its immediate surroundings are located in an area in which the Commission intended to promote service by providing the substantial service option to 10 MHz and 15 MHz broadband PCS licensees.

11. We also find that Chasetel's service to LMU is substantial in part because the Middlesboro BTA is rural and sparsely populated. Chasetel states that Middlesboro is the smallest of the three BTAs that make up the Knoxville MTA, has no significant cities or population clusters, has an average population density of only 75 people per square mile, and has no counties with a population over 37,000.³⁸ Our research found that of the four counties that comprise the Middlesboro BTA, the vast majority of the population lives in "rural" areas, as set forth by the Census Bureau.³⁹ Moreover, none of the counties are within the top 1000 counties in terms of population,⁴⁰ and the population of the entire

³² Notification Supplement at 2. The closest major city to Harrogate is Knoxville, TN, approximately 47 miles away. After Knoxville, the next closest major cities are Lexington, KY, approximately 114 miles away, and Louisville, KY, approximately 162 miles away.

³³ According to Chasetel, there is no possibility of line-of-site from cell sites in Tazewell, TN to Harrogate, TN because of a "mountainous and snaking highway" separating the towns. *Id.* at 3. Likewise, Chasetel states that it would be "both extremely difficult and prohibitively expensive" to connect Middlesboro, KY with Harrogate because of mountains that are part of the Cumberland Gap, including part of the Cumberland Gap National Preserve. *Id.*

³⁴ For example, Chasetel states that "it is sometimes possible to make a cellular call on a roam service, but acquiring a signal is extremely difficult and such calls are regularly dropped." *Id.*

³⁵ See PCS MO&O at 5019.

³⁶ Our research indicates that, as of September 2001, the broadband PCS A- and B-Block licensees for the Knoxville MTA (of which the Middlesboro BTA is a part) were providing coverage to other parts of the MTA.

³⁷ According to its own coverage map, it appears that Verizon Wireless, one of the two cellular carriers that cover the Middlesboro BTA, does not provide coverage to the Harrogate, TN area. See www.verizonwireless.com.

³⁸ Notification at 2. Chasetel also states that the Middlesboro BTA has virtually no industry and any commercial activity in the market tends to be on a very small scale. *Id.*

³⁹ Specifically, Letcher County, KY and Claiborne, KY (where LMU is located) both have 90% rural population; Harlan County, KY has 84% rural population; and Bell County, KY has 64% rural population. All of our analysis is derived from the 1990 U.S. Census, found on the Census Bureau's website (www.census.gov). In addition, as Chasetel points out, the Middlesboro BTA is one of the poorest in the continental United States. Notification Supplement at 2. According to the Bureau of Economic Analysis (www.bea.gov), the per capita income for the BTA is \$11,190, ranking it 471st out of 487 BTAs.

⁴⁰ The top 1000 counties make up approximately 86% of the total U.S. population.

BTA is only 120,997, ranking it in the lower third of markets in terms of population.⁴¹ Our research has also shown that rural markets, as compared to more urban areas, are more likely to be unserved or underserved.⁴² As indicated above, the substantial service option was intended to encourage 10 MHz and 15 MHz PCS licensees to serve unserved or underserved areas, including rural markets like the Middlesboro BTA. Furthermore, one of the statutory goals in creating performance requirements for PCS licenses is to ensure “prompt delivery of service to rural areas,”⁴³ and one of the Commission’s goals for PCS is to facilitate nationwide services, especially in sparsely populated areas.⁴⁴ Therefore, we find that Chasetel’s service to LMU and its surrounding areas is substantial because it is to an educational campus in a relatively remote area of a rural market.

12. Based on the foregoing, we conclude that a three-day extension of time to meet the construction requirement for the License is warranted and that, as of the extended construction deadline, Chasetel was providing substantial service to the Middlesboro BTA. Therefore, we grant the extension of time for Chasetel to meet the construction requirement for the License and accept Chasetel’s construction notification.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331, 1.925, and 1.946 of the Commission’s rules, 47 C.F.R. §§ 0.331, 1.925, 1.946, that the Request for Waiver and Extension of the Broadband PCS Construction Requirements filed by Chasetel Licensee Corp. on September 17, 2001 IS HEREBY GRANTED to the extent described herein.

14. FURTHER, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331, 24.203 of the Commission’s rules, 47 C.F.R. §§ 0.331, 24.203, the Demonstration of Satisfaction of the Five-Year Construction Requirement filed by Chasetel Licensee Corp. on September 25, 2001 IS HEREBY DEEMED ACCEPTABLE.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

⁴¹ The upper two-thirds of BTAs in terms of population represent approximately 96% of the total U.S. population.

⁴² See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Sixth Report*, FCC 01-192, Appendix C, Table 5 (rel. Jul. 17, 2001) (demonstrating that, of the lower quartile of counties in terms of population, only 18.0% have 3 or more mobile telephone providers compared to 93.2% of the highest quartile of counties).

⁴³ See 47 U.S.C. § 309(j)(4)(B).

⁴⁴ See, e.g., *PCS MO&O* at 5018 (“ensure that PCS service is made available to as many communities as possible and that spectrum is used efficiently”).