

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

In the Matters of)	
)	
City Page & Cellular Services, Inc. d/b/a City Beepers)	File Nos. 0000727428, 0000727951
)	
Gabriel Wireless LLC)	File Nos. 0000729400, 0000729484
)	
Golden Arrow Paging, Inc.)	File Nos. 0000730960, 0000730981, 0000730994
)	
SelectPath Holding, Inc.)	File Nos. 0000729873, 0000729897
)	
Telephone & Two-Way Inc.)	File Nos. 0000729806, 0000729833
)	
UHF-DE, LLC)	File No. 0000729856
)	
Wharton Telecom Holdings, Inc.)	File No. 0000730894
)	

ORDER

Adopted: December 20, 2002

Released: December 23, 2002

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

1. The above-captioned seven applicants filed requests for waiver of section 1.2107(c) of the Commission's Rules,¹ asking the Commission to allow them to submit their long-form applications, FCC Form 601s, after the December 27, 2001 deadline for filing long-form applications in the Lower and Upper Paging Bands Auction ("Auction No. 40"). The seven applicants and the filing dates of their respective waiver requests are as follows: City Page & Cellular Services, Inc. d/b/a City Beepers ("City Page") filed on January 9, 2002;² Gabriel Wireless LLC ("Gabriel"), SelectPath Holding, Inc. ("SelectPath"), Telephone & Two-Way Inc. ("TTW"), and UHF-DE, LLC ("UHF") filed on January 10, 2002;³ and Golden Arrow Paging, Inc. ("Golden Arrow") and Wharton Telecom Holdings, Inc. ("Wharton") filed on January 11, 2002.⁴ For the reasons set forth below, we grant all seven applicants' waiver requests.

¹ 47 C.F.R. § 1.2107(c).

² See City Page's Waiver Request, File Nos. 0000727428, 0000727951.

³ See Gabriel's Waiver Request, File Nos. 0000729400, 0000729484; SelectPath's Waiver Request, File Nos. 0000729873, 0000729897; TTW's Waiver Request, File Nos. 0000729806, 0000729833; UHF's Waiver Request, File No. 0000729856.

⁴ See Golden Arrow's Waiver Request, File Nos. 0000730960, 0000730981, 0000730994; Wharton's Waiver Request, File No. 0000730894.

2. The seven applicants, all winning bidders in Auction No. 40, were required to file their long-form applications, FCC Form 601s, no later than December 27, 2001, pursuant to section 1.2107(c) of the Commission's Rules and the *Closing PN*.⁵ The seven applicants filed their long-form applications, which included the waiver requests,⁶ between January 9, 2002 and January 11, 2002, none more than fifteen days after the long-form filing deadline.

3. The seven applicants, in their respective waiver requests, argue that good cause exists for a waiver of section 1.2107(c) of the Commission's rules.⁷ The seven applicants contend that they missed the long-form filing deadline due to inadvertence and/or unawareness that the long-form applications were due. They further state that, upon discovering that they missed their long-form filing deadlines, they took immediate action to correct their errors and expeditiously prepared and filed their applications. City Page states that it did not realize that its regulatory counsel's representation did not extend to post-auction legal services.⁸ Gabriel, Golden Arrow and UHF state that they mistakenly believed that because their upfront payments satisfied their down payments due, they were not required to file long-form applications.⁹ SelectPath and TTW say that they did not realize that a separate long-form application was required for each distinct paging radio service code and therefore they each only filed one long-form application.¹⁰ TTW further claims that its alleged confusion regarding the necessity to file separate applications was "created by contradictory instructions listed on the [*Closing PN*]."¹¹ Wharton claims that the death of its Chief Executive's sister and the fact that the deadline came during the holiday season each was a factor in causing it to inadvertently update its short-form application rather than file a long-form application by the deadline.¹²

4. The seven applicants further assert that the public interest will be served by grant of a waiver of the long-form application deadline. They argue that, under the circumstances, strict application of the long-form filing deadline would be inequitable, burdensome and contrary to the public interest. Some of these applicants claim that they are small businesses, rural companies, or businesses owned by members of minority groups and women, and that they would serve areas that lack competitive wireless

⁵ See Lower and Upper Paging Bands Auction Closes: Winning Bidders Announced, *Public Notice*, 16 FCC Rcd 21821 (2001) ("*Closing PN*").

⁶ The waiver requests were attached to the seven applicants' long-form applications as Exhibit F or labeled as "Waiver Request." See File Nos. 0000727428, 0000727951, 0000729400, 0000729484, 0000730960, 0000730981, 0000730994, 0000729873, 0000729897, 0000729806, 0000729833, 0000729856, 0000730894.

⁷ 47 C.F.R. § 1.2107(c).

⁸ See City Page's Waiver Request at 1.

⁹ See Gabriel's Waiver Request at 1-3; Golden Arrow's Waiver Request at 1; UHF's Waiver Request at 4.

¹⁰ See SelectPath's Waiver Request at 5; TTW's Waiver Request at 2. We note that SelectPath timely filed its long-form application in File No. 0000704931 (on December 19, 2001), and TTW timely filed its long-form application in File No. 0000703328 (on December 18, 2001).

¹¹ TTW's Waiver Request at 2. TTW, however, fails to identify which statements in the *Closing PN* that it believes constitute "contradictory instructions." In any event, we disagree that the *Closing PN* was confusing on this point. The *Closing PN* expressly stated: "Note: For Auction 40, you must file a separate application for each distinct radio service code for which you have won markets." *Closing PN*, 16 FCC Rcd at 21857. In requesting a waiver of the long-form application filing deadline, TTW cites to Commission precedent in which waivers were granted because of confusion. See TTW's Waiver Request at 2. We conclude that the "confusion" cases cited by TTW do not provide support for TTW's instant waiver request, and our decision in this Order with respect to TTW's request is based upon other grounds, as discussed below. See *infra* paragraphs 7-8.

¹² See Wharton's Waiver Request at 1-2.

service.¹³ Several of the applicants also state that they had sufficient funds on deposit with the Commission to satisfy their down payment obligations.¹⁴

5. Many of the applicants argue, finally, that the Commission has previously granted waiver of the long-form application deadline. They rely on the case of *Pinpoint Communications, Inc.* in Auction No. 17, where a winning bidder submitted its long-form application six days after the filing deadline.¹⁵ In *Pinpoint*, they assert, the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau (“Bureau”), granted a waiver because it found that the public interest would not have been served through a strict application of the Commission’s long-form filing deadline and rules. Similarly, some cite to *PCS Partners*, where a winning bidder that submitted its long-form application four days after the filing deadline was granted a waiver.¹⁶

6. A request for waiver of the subject rule must affirmatively show that either: (i) the underlying purpose of the rule would not be served or would be frustrated by application in a particular case, and that a grant of the requested waiver is otherwise in the public interest; or (ii) the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest.¹⁷ One of the primary purposes underlying the post-auction application filing deadlines is to ensure that a bidder meets the Commission’s qualification and eligibility requirements in order to “avoid delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.”¹⁸

7. We believe that the seven applicants have presented sufficient facts that, when considered in their totality, demonstrate unique circumstances that meet the standard for waiver of the subject rule. The record indicates that, prior to the late filing of the long-form applications, each of the seven applicants had complied with all previous filing requirements in Auction No. 40 and was found to be a qualified bidder.¹⁹ Additionally, each of the seven applicants had, by virtue of its upfront payment, sufficient funds on deposit with the Commission to satisfy its payment obligations at the time the down payments were due.²⁰

8. In light of the record before us, as well as the circumstances presented by each of the seven applicants, we conclude that the public interest would be served by grant of the subject waiver requests. Dismissal of these applications in some cases would result in the denial of licenses to small businesses, rural companies, and businesses owned by members of minority groups and women, and would delay the deployment of service to areas that lack competitive wireless service. Additionally, we give considerable weight to the seven applicants’ prior record of compliance in Auction No. 40. We

¹³ City Page, Gabriel, SelectPath, and UHF each assert that they are either small businesses, rural companies, and/or businesses owned by members of minority groups and women.

¹⁴ See Gabriel’s Waiver Request at 1, 4; Golden Arrow’s Waiver Request at 1; SelectPath’s Waiver Request at 3, 5; UHF’s Waiver Request at 3, 5.

¹⁵ *Pinpoint Communications, Inc., Order*, 14 FCC Rcd 6421 (PSPWD 1999) (“*Pinpoint*”).

¹⁶ *PCS Partners, L.P., Order*, 16 FCC Rcd 4738 (CWD 2001) (“*PCS Partners*”).

¹⁷ 47 C.F.R. § 1.925(b)(3).

¹⁸ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2382 ¶ 197 (1994).

¹⁹ See Auction of Licenses for Lower and Upper Paging Bands: 193 Qualified Bidders, *Public Notice*, 16 FCC Rcd 18575 (2001).

²⁰ The Commission’s rules required, that within ten business days after the release of the *Closing PN* (i.e., December 27, 2001 -- the same day long-form applications were due), winning bidders in Auction No. 40 had to have on deposit sufficient funds to cover 20 percent of their respective total winning bids. See 47 C.F.R. § 1.2107(b).

further recognize that, because each of the seven applicants timely met its down payment requirements, and submitted its long-form application soon after the filing deadline, the post-auction licensing process for Auction No. 40 was not significantly delayed or materially adversely affected. Thus, we believe some flexibility is appropriate in these instances. Accordingly, we will grant the seven applicants' waiver requests and accept their applications for processing. This decision comports with Bureau precedent wherein spectrum auction applicants were granted partial relief for minor, inadvertent post-auction delinquencies that did not disrupt the auction process or undermine the Commission's policy of facilitating rapid implementation of reliable communications service to the public.²¹

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the waiver requests filed by City Page, Gabriel, SelectPath, TTW, UHF, Golden Arrow and Wharton filed between January 9, 2002 and January 11, 2002 are HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray
Deputy Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

²¹ See, e.g., *Silver Palm Communications, Inc., Order*, 17 FCC Rcd 6606 (Policy and Rules Branch, CWD 2002); *PCS Partners*, 16 FCC Rcd 4738; *Pinpoint*, 14 FCC Rcd 6421.