

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

In the Matter of)	
)	
MONET MOBILE NETWORKS, INC.)	File Nos. 0000707917, 0000826083,
)	0000826085
Request for Waiver and Extension of the)	
Broadband PCS Construction Requirements)	
)	

ORDER

Adopted: April 9, 2002

Released: April 10, 2002

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

1. In this Order, we address a request by Monet Mobile Networks, Inc., on behalf of its wholly-owned subsidiaries, BWI Midwest LHC, Inc., Monet Mobile Bismark LHC, Inc., and Monet Grand Forks LHC, Inc. (collectively, "Monet"), for waiver and extension of time to meet the construction requirements ("Extension Request") for the eleven broadband Personal Communications Services ("PCS") licenses listed in Attachment A to this Order.¹ For the reasons set forth below, we grant the Extension Request with certain conditions described herein.

2. Since its formation in 1999, Monet has acquired, through the post-auction secondary market, eleven 10 MHz D- and E-block broadband PCS licenses ("Licenses") located in Basic Trading Areas ("BTAs") throughout Minnesota, North Dakota, South Dakota, and Kansas ("Markets").² Pursuant to section 24.203(b) of the Commission's rules, 10 MHz broadband PCS licensees are required to provide service to at least one-quarter of the population of their BTAs or make a showing of substantial service within five years of initial license grant.³ Based on their original grant date, the five-year deadline for the Licenses is April 28, 2002. On December 20, 2001, Monet filed the Extension Request, asking for an additional eight months (*i.e.*, from April 28, 2002 to December 28, 2002) to deploy an advanced, mobile broadband network in the Markets that will offer wireless Internet access to consumers and small businesses.⁴

3. The underlying purpose of the broadband PCS construction requirements is to ensure that the PCS spectrum is used effectively and made available to as many communities as possible.⁵ An extension

¹ See File No. 0000707917, filed December 20, 2001 and amended on March 26, 2002 (Extension Request). At the time the Extension Request was filed, all of the licenses that were part of the request were held by BWI Midwest, LHC, Inc. After the filing, Monet submitted a *pro forma* assignment for two of the licenses. As a result, Monet Mobile Bismark LHC, Inc. and Monet Grand Forks LHC, Inc. filed separate extension requests incorporating the original Extension Request. See File Nos. 0000826083 and 0000826085, respectively, filed March 27, 2002.

² The specific markets, frequency blocks, and call signs of the Licenses are listed in Attachment A.

³ 47 C.F.R. § 24.203(b).

⁴ Extension Request at 2.

⁵ 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, 5018 (1994) (*PCS MO&O*).

of time to meet the construction requirements may be granted, however, if the licensee shows that the failure to complete construction is due to causes beyond its control.⁶ Moreover, in recognizing that compliance with the broadband PCS construction requirements may at times be difficult, the Commission has stated that, in situations 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.⁷ 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.⁸

4. Based on the combination of a number of factors, we find that the totality of the record in this case supports a limited waiver of section 24.203(b) of the Commission's rules to allow Monet a brief extension of time to meet the five-year construction requirement for the Licenses. First, we conclude that strict application of the deadline in this case would not serve one of the statutory goals of performance requirements "to promote investment in and rapid deployment of new technologies and service."⁹ According to Monet, it plans to provide an advanced, high-speed broadband wireless data service that will provide consumers with Internet access at data rates comparable to DSL and cable modem services, with the added convenience of portable and mobile access.¹⁰ To provide this service, Monet proposes to use Qualcomm's 1xEV-DO "high data rate" ("HDR") wireless technology.¹¹ Monet claims, however, that, despite entering into supply contracts last year, the earliest commitment date that it has received from its vendors for HDR equipment is July 2002.¹² As we concluded in *Leap Wireless*,¹³ it would be counter-productive to require Monet to forgo deploying innovative, advanced broadband services, which can be accomplished in the very near term, and to instead install equipment that would provide services that are nearly identical to those already provided in these markets (*i.e.*, digital voice communications). Therefore, combined with the other factors described below, we find that a limited waiver of the construction requirement is in the public interest to allow Monet eight months to purchase, install, test, and initiate service using the HDR equipment. Furthermore, because the availability of the HDR equipment is a key component of the grant of waiver, as a condition of the waiver, we will require Monet to submit a progress report no later than August 15, 2002, describing its timetable for constructing facilities in each market by the new deadline, including, but not limited to, the schedules for the delivery and deployment of the HDR infrastructure and subscriber equipment.

⁶ See 47 C.F.R. §§ 1.946, 24.843. Section 1.946(e) includes examples of specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. § 1.946(e)(2)-(3).

⁷ PCS MO&O at 5019, citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁸ 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).

⁹ 47 U.S.C. § 309(j)(4)(B).

¹⁰ Extension Request at 2-3.

¹¹ *Id.* Monet states that the HDR technology will provide a 15-fold increase over currently available wireless technologies in the peak data-rate transmission between the network and the subscriber units and is also forward-compatible with many of the next generation (*i.e.*, 3G) advanced wireless protocols. *Id.*

¹² *Id.* at 3.

¹³ Leap Wireless International, Inc. Request for Waiver and Extension of Broadband PCS Requirements, *Memorandum Opinion and Order*, 16 FCC Rcd. 19573 (Comm. Wir. Div. WTB 2001) (*Leap Wireless*).

5. Second, we find that an extension in this case will serve the public interest by meeting another statutory goal of performance requirements to ensure “prompt delivery of service to rural areas” and the Commission’s stated goal of facilitating nationwide PCS services, especially in sparsely-populated areas.¹⁴ Monet asserts that all but one of the Licenses cover markets that are in the lower quartile of all BTAs in terms of population density, and that none of the Licenses covers a BTA with a total population within the top 100 markets.¹⁵ Our own research supports these claims and also demonstrates that 8 of the 11 BTAs are in the lower 10 percent in terms of population density with only between 5 to 13 people per square mile.¹⁶ Moreover, 70 percent of all the counties that comprise the 11 BTAs are in the lower quartile of all U.S. counties in terms of total population and more than 75 percent of the BTAs’ counties are in the lower quartile of counties in terms of population density. Based on this information, we find that Monet’s network, if deployed as proposed, will bring service to rural and sparsely-populated areas. Furthermore, as we found in *Leap Wireless*, the fact that Monet intends to provide broadband services, and not traditional voice services, to these sparsely-populated areas furthers the Commission’s goal of bringing advanced services to rural areas.¹⁷ Because a limited extension would promote the provision of advanced services to these rural and sparsely-populated areas, we find that it is in the public interest.

6. Finally, an extension is supported in this case by the diligence that Monet has demonstrated prior to the acquisition of the Licenses and the construction of the Markets following acquisition. Monet states that it began working with equipment vendors to develop the advanced, data-only system before it was authorized to operate the Licenses by requesting Special Temporary Authority from the Commission to begin experimental operations.¹⁸ Monet also points out that once the Commission approved the assignment of the Licenses to Monet, it was less than 18 months before the five-year deadline, with no construction having been undertaken prior to the assignment.¹⁹ Further, Monet states that it has identified and has finalized (or is the process of finalizing) leases for all the locations that it requires to provide service in the Markets,²⁰ and has begun construction and operation in two other markets using lower data-rate technology (with the intent to upgrade to HDR once it is available) in an effort to bring service to market as soon as possible.²¹ We believe that such steps make it apparent that Monet is committed to implementing the HDR technology and deploying mobile, advanced broadband services to the Markets.

¹⁴ 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”).

¹⁵ Extension Request at 6.

¹⁶ Our data is derived from populations figures in the 1990 U.S. Census.

¹⁷ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, *Second Report*, 15 FCC Rcd. 20913, 20996, 21008 (2000).

¹⁸ Extension Request at 2, 11.

¹⁹ *Id.* at 10-11.

²⁰ *Id.* at 11. Monet states that it also has entered into various other agreements necessary to provide service in the Markets, including master co-location agreements covering tower access, information service provider agreements covering Internet connectivity, and backhaul agreements to link the base stations to Monet’s central data node. *Id.* at 11-12.

²¹ *Id.* at 4, 12. Specifically, Monet states that it constructed a data-only network in the Sioux Falls, SD BTA (BTA422) and plans to construct a similar one in Fargo, ND BTA (BTA138) using Qualcomm’s CDMA2000 1xRTT technology, which has a significantly lower data rates than HDR. *Id.* at 4. Monet claims the 1xRTT technology will not accommodate most of the broadband-specific data services, but will allow it to “fine tune the service administration segment of its business as well as certain basic data services (such as email) that will not require the high data transmission rates associated with HDR.” *Id.*

Monet's diligence, combined with the other factors described herein, supports a limited waiver to allow Monet an additional eight months to construct the data system using HDR technology. Because this grant of waiver is based, at least in part, on the provision of advanced data-only service, we also condition the grant of waiver on the deployment of advanced data services in the Markets in substantially the same manner as described in the Extension Request.

7. 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 Monet Mobile Networks, Inc., on behalf of its wholly-owned subsidiaries, on December 20, 2001 IS HEREBY GRANTED to extend the five-year construction deadline of the Licenses for a period of eight months, from April 28, 2002 to December 28, 2002, conditioned on the following: (1) Monet Mobile Networks, Inc. must provide a progress report to the Chief of the Commercial Wireless Division, Wireless Telecommunications Bureau, no later than August 15, 2002, describing the progress toward meeting the construction requirements for the Licenses, including, but not limited to, schedules for the delivery and deployment of the HDR infrastructure and subscriber equipment, and (2) the deployment of advanced data services in substantially the same manner described in the Extension Request that is the subject of the instant Order.

FEDERAL COMMUNICATIONS COMMISSION

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

ATTACHMENT A

LICENSES SUBJECT TO THE EXTENSION REQUEST OF
MONET MOBILE NETWORKS, INC.

Market Number	Market Name	Frequency Block	Licensee Name	Call Sign
BTA001	Aberdeen, SD	D block	BWI Midwest LHC, Inc.	KNLG247
BTA037	Bemidji, MN	D block	BWI Midwest LHC, Inc.	KNLH737
BTA045	Bismarck, ND	E block	Monet Bismarck LHC, Inc.	KNLG791
BTA138	Fargo, ND	E block	BWI Midwest LHC, Inc.	KNLG803
BTA166	Grand Forks, ND	D block	Monet Grand Forks LHC, Inc.	KNLH747
BTA199	Huron, SD	D block	BWI Midwest LHC, Inc.	KNLG760
BTA275	Manhattan-Junction City, KS	D block	BWI Midwest LHC, Inc.	KNLG768
BTA301	Mitchell, SD	D block	BWI Midwest LHC, Inc.	KNLG773
BTA464	Watertown, SD	D block	BWI Midwest LHC, Inc.	KNLG786
BTA477	Willmar-Marshall, MN	E block	BWI Midwest LHC, Inc.	KNLH770
BTA481	Worthington, MN	D block	BWI Midwest LHC, Inc.	KNLH771