

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

In the matter of Applications of)
)
3DL Wireless, LLC) File No. 0000365151
(Markets BTA047, BTA135 and BTA318))
)
3G PCS, LLC) File No. 0000364147
(Market BTA 261))
)
Alaska Native Wireless, L.L.C.) File No. 0000363827
(Markets BTA036, BTA074, BTA081, BTA084,) File No. 0000364320
BTA095, BTA106, BTA110, BTA159, BTA174,)
BTA212, BTA220, BTA239, BTA261, BTA262,)
BTA289, BTA298, BTA318, BTA319, BTA321,)
BTA331, BTA336, BTA357, BTA358, BTA408 (C3)
& C4), BTA440, BTA480 and BTA448))
)
Black Crow Wireless, L.P.) File No. 0000365273
(Markets BTA047, BTA159, BTA212, BTA220,)
BTA226 (C4 & C5), BTA235, BTA329 (C3 & C4),)
BTA428 (C4 & C5) and BTA326))
)
Cellco Partnership, d/b/a Verizon Wireless) File No. 0000364146
(Markets BTA007, BTA010, BTA027, BTA036,)
BTA047, BTA051 (C4 & C5), BTA056, BTA059,)
BTA074, BTA084, BTA093, BTA095, BTA110,)
BTA128, BTA135, BTA174, BTA179, BTA189,)
BTA196, BTA204, BTA235, BTA239, BTA244,)
BTA252, BTA261, BTA262, BTA263, BTA268,)
BTA274, BTA289, BTA298, BTA318, BTA319,)
BTA321 (C4 & C5), BTA329, BTA331, BTA350,)
BTA357, BTA358, BTA361, BTA364, BTA376,)
BTA402, BTA408, BTA412, BTA413 (C4 & C5),)
BTA441, BTA461, BTA480, BTA025, BTA078,)
BTA107, BTA116, BTA181, BTA240, BTA245,)
BTA346, BTA370, BTA389, BTA394, BTA399,)
BTA404, BTA452 and BTA483))
)
Cook Inlet/VS GSM V PCS, LLC) File No. 0000365280
(Markets BTA020, BTA027, BTA029, BTA036,)
BTA074, BTA174, BTA189, BTA204, BTA331,)
BTA402, BTA413 and BTA441))
)
DCC PCS, Inc.) File No. 0000365171
(Markets BTA010, BTA029, BTA056, BTA059,)
BTA226, BTA268, BTA350, BTA401, BTA402,)
BTA441 and BTA461))

VoiceStream PCS BTA I License Corporation) File No. 0000365311
 (Markets BTA084, BTA401, BTA091, BTA099,)
 BTA177, BTA216 and BTA297))

ORDER

Adopted: April 25, 2003

Released: April 28, 2003

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

I. INTRODUCTION

1. This Order addresses two Petitions filed on March 9, 2001 (collectively, “Petitions”) to Defer or, in the Alternative, to Condition Grant of the above-captioned applications (“Applications”). One Petition was filed jointly by NextWave Personal Communications Inc. and NextWave Power Partners Inc. (collectively, “NextWave”), and one was filed by The Official Committee of Unsecured Creditors of NextWave Telecom Inc. (collectively, together with NextWave, “Petitioners”). For the reasons set forth below, we dismiss the Petitions as moot.

II. BACKGROUND

2. On January 26, 2001, the Commission concluded Auction No. 35, which included various Personal Communications Services (“PCS”) licenses for spectrum that previously was conditionally licensed to NextWave.¹ The winning bidders in Auction No. 35 submitted long-form applications on February 12, 2001 to obtain their respective licenses. Petitioners filed the Petitions on March 9, 2001, asking the Commission to defer grant of the licenses until the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) ruled on NextWave’s then-pending appeal of the cancellation of its licenses,² or, at a minimum, to conditionally grant the license applications subject to the

¹ See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period, *Public Notice*, 16 FCC Rcd 2339 (2001).

² In 1996 and 1997, NextWave was the high bidder on 95 licenses in the broadband PCS C, D, E, and F block auctions. See Entrepreneur’s C Block Auction Closes: FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas, *Public Notice*, DA 96-716 (rel. May 8, 1996); Entrepreneur’s C Block Reauction Closes—FCC announces Winning Bidders in the Reauction of 18 Licenses to Provide Broadband PCS in Basic Trading Areas,” *Public Notice*, 11 FCC Rcd 8183 (1996); “D, E, and F Block Auction Closes—Winning Bidders in the Auction of 1,479 Licenses To Provide Broadband PCS in Basic Trading Areas, *Public Notice*, DA 97-81 (rel. Jan. 15, 1997). After NextWave failed to make its required installment payments, its C and F Block licenses, in the Commission’s view at the time, cancelled automatically on October 30, 1998. On January 12, 2000, the Commission announced its intention to auction various PCS licenses, including those involving spectrum previously conditionally licensed to NextWave. See Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000, *Public Notice*, DA 00-49 (rel. Jan. 12, 2000). On February 11, 2000, NextWave filed a Petition for Reconsideration of the Public Notice, challenging the cancellation of its licenses. See Petition for Reconsideration filed by NextWave Personal Communications Inc. and NextWave Power Partners Inc. (Feb. 11, 2000). The Commission denied NextWave’s Petition for Reconsideration on September 6, 2000. See Public Notice DA 00-49 Auction of C and F Block Broadband PCS Licenses, NextWave Personal Communications Inc and NextWave Power Partners Inc. Petition for Reconsideration, Settlement Request Pursuant to DA 99-745 for Various Broadband PCS C Block Licenses, *Order on Reconsideration*, FCC 00-335 (rel. Sept. 6, 2000). On September 15, 2000, NextWave filed a Notice of Appeal with the D.C. Circuit seeking review of

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outcome of the court's ruling.

3. After the conclusion of Auction No. 35, the D.C. Circuit ruled that Section 525 of the Bankruptcy Code³ prevented the Commission from revoking NextWave's licenses for its post-bankruptcy default.⁴ Pursuant to the D.C. Circuit's mandate, the Wireless Telecommunications Bureau ("Bureau") restored NextWave's licenses to active status.⁵

4. In response to requests by certain Auction No. 35 winning bidders, the Commission, on November 14, 2002, released its *Final Refund Order*, which gave (1) eligible winners in Auction No. 35 the option to request the dismissal of their pending applications for C and F block broadband PCS licenses for spectrum that previously had been licensed to NextWave or Urban Comm-North Carolina, Inc. ("Pending Applications") and (2) the payors of record the option to request a refund of the remainder of the down payments associated with the Pending Applications.⁶

III. DISCUSSION

5. All of the Applications that are subject to the Petitions now have been dismissed. In response to the *Final Refund Order*, all of the eligible Auction No. 35 winners requested the dismissal of their Pending Applications. The Bureau reviewed and granted all of their respective dismissal requests.⁷

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the Commission's action canceling the PCS licenses and the Order on Reconsideration. See *NextWave Personal Communications, Inc. and NextWave Power Partners, Inc. v. FCC*, Case No. 00-1402, Petition for Review (D.C. Cir. Sept. 15, 2000).

³ 11 U.S.C. § 525(a).

⁴ *NextWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *aff'd*, 123 S.Ct. 832 (2003).

⁵ Wireless Telecommunications Bureau Announces the Return to Active Status of Licenses to NextWave Personal Communications Inc. and NextWave Power Partners Inc., Subject to the Outcome of Ongoing Litigation, *Public Notice*, 16 FCC Rcd 15970 (WTB 2001).

⁶ In the Matter of Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35, Requests for Refunds of Down Payments Made In Auction No. 35, WT Docket No. 02-276, *Order and Order on Reconsideration*, 17 FCC Rcd 23354 (2002) ("*Final Refund Order*"). Pursuant to an earlier order, the Commission already had allowed eligible Auction No. 35 winners to receive a refund of 85 percent of their down payments associated with the Pending Applications. See Requests for Refunds of Down Payments Made In Auction No. 35, *Order*, 17 FCC Rcd 6283 (2002).

⁷ See Wireless Telecommunications Bureau Grants Dismissal Requests of Eligible Auction No. 35 Winners and Dismisses Applications For 12 C and F Block Broadband Personal Communications Services (PCS) Licenses, *Public Notice*, 17 FCC Rcd 23939 (2002); Wireless Telecommunications Bureau Grants Dismissal Requests of Eligible Auction No. 35 Winners and Dismisses Applications For 156 C and F Block Broadband Personal Communications Services (PCS) Licenses, *Public Notice*, 17 FCC Rcd 24492 (2002); Wireless Telecommunications Bureau Grants Dismissal Requests of Eligible Auction No. 35 Winners and Dismisses Applications For 33 C and F Block Broadband Personal Communications Services (PCS) Licenses, *Public Notice*, 17 FCC Rcd 24761 (2002); Wireless Telecommunications Bureau Grants Dismissal Requests of Eligible Auction No. 35 Winners and Dismisses Applications For 49 C and F Block Broadband Personal Communications Services (PCS) Licenses, *Public Notice*, 17 FCC Rcd 25263 (2002); Wireless Telecommunications Bureau Grants Dismissal Requests of Eligible Auction No. 35 Winners and Dismisses Applications For Five C and F Block Broadband Personal Communications (PCS) Licenses, *Public Notice*, DA 02-3585 (rel. Dec. 24, 2002); Wireless Telecommunications Bureau Grants Dismissal Requests of Eligible Auction No. 35 Winners and Dismisses Applications For 5 C and F Block Broadband Personal Communications (PCS) Licenses, *Public Notice*, DA 03-685 (rel. Mar. 7, 2003); Wireless Telecommunications Bureau Grants Dismissal Request of Eligible Auction No. 35 Winner and Dismisses Application For One C and F Block Broadband Personal Communications (PCS) License, *Public Notice*, DA 03-1252 (rel. Apr. 24, 2003).

Accordingly, since the Applications that are subject to the Petitions are no longer pending before the Commission, we dismiss the Petitions as moot.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the Petitions to Defer or, in the Alternative to Condition Grant respectively filed jointly by NextWave Personal Communications Inc. and NextWave Power Partners Inc. and by The Official Committee of Unsecured Creditors of NextWave Telecom Inc. on March 9, 2001 are hereby DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray
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Commercial Wireless Division
Wireless Telecommunications Bureau