



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 03-3031

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

Released: October 6, 2003

CINGULAR WIRELESS AND NEXTWAVE SEEK FCC CONSENT FOR THE FULL AND PARTIAL ASSIGNMENT OF THIRTY-FOUR BROADBAND PERSONAL COMMUNICATIONS SERVICES LICENSES

WT Docket No. 03-217

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: November 5, 2003
Oppositions Due: November 17, 2003
Replies Due: November 24, 2003

NextWave Personal Communications Inc. and NextWave Power Partners Inc. (collectively, "NextWave")¹ and subsidiaries of Cingular Wireless LLC ("Cingular") have filed a series of applications pursuant to Section 310(d) of the Communications Act of 1934, as amended.² In these applications, the parties seek Commission consent to either fully or partially assign C and F Block broadband Personal Communications Services ("PCS") authorizations in thirty-four markets from NextWave to Cingular. There are no related microwave stations or international authorizations being assigned.

I. SECTION 310(d) APPLICATIONS

The following applications seek consent for the full or partial assignment of thirty-four C and F Block PCS licenses that were granted pursuant to Part 24 of the Commission's rules. The applications have been assigned the file numbers indicated below:

¹ The Commission's licensing records currently show NextWave Personal Communications Inc. and NextWave Power Partners Inc. as the respective licensees of the call signs that are encompassed within this public notice. Pursuant to currently pending applications on file with the Commission, the Commission's licensing records and the applications listed in this public notice will be corrected to show the licensees as NextWave Personal Communications Inc., Debtor-in-Possession, and NextWave Power Partners Inc., Debtor-in-Possession, respectively. Accordingly, the applications listed in this public notice will be treated as involving assignments of authorizations from NextWave Personal Communications Inc., Debtor-in-Possession, and NextWave Power Partners Inc., Debtor-in-Possession, respectively.

² 47 U.S.C. § 310(d).

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001461949 ³	NextWave Personal Communications, Inc.	KNLF693
0001462008	NextWave Personal Communications, Inc.	KNLF676
0001462060	NextWave Personal Communications, Inc.	KNLF653
0001462065	NextWave Personal Communications, Inc.	KNLF648
0001462358	NextWave Personal Communications Inc.	KNLF812
0001462360	NextWave Personal Communications, Inc.	KNLF645
0001462372	NextWave Personal Communications, Inc.	KNLF646
0001462378	NextWave Personal Communications, Inc.	KNLF679
0001462417	NextWave Power Partners, Inc.	KNLH204
0001462499	NextWave Power Partners, Inc.	KNLH200
0001462500	NextWave Power Partners, Inc.	KNLH208
0001462559	NextWave Power Partners Inc.	KNLF938
0001462570	NextWave Power Partners, Inc.	KNLH203

II. DESIGNATED ENTITY AND ENTREPRENEURIAL ELIGIBILITY ISSUES

The proposed transaction would include the assignment of C and F Block PCS licenses to Cingular. The Commission’s Rules state that “[n]o assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted,” except when, among other things, “[t]he application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied.”⁴ The parties state that the five-year build-out notifications have been filed for all of the C and F block licenses implicated in the assignment applications.

The licenses at issue are subject to installment payment financing and Cingular is not a qualified designated entity. The parties propose to pay, upon consummation of the proposed transaction, a portion of the total amount owed for the licenses directly to the U.S. Treasury. Consequently, as part of its approval of the instant applications, the parties request that the Commission grant waivers of sections 1.2111 and 24.714 of its rules, or explicitly state that delivery of such payment constitutes full payment, and satisfies all conditions, required under sections 1.2111 and 24.714 of its rules.⁵ Furthermore, the parties request a waiver of section 24.724(c)(2)(ii), which requires that unjust enrichment payments be submitted to the Commission within thirty days of the release of the public notice consenting to a partial assignment application.⁶ The parties state that the payment to the U.S. Treasury will occur on the date of consummation in compliance with section 1.2111 of the Commission’s rules.⁷

³ ULS File No. 0001461949 has been designated as the lead application, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular application will be available through this file number.

⁴ 47 C.F.R. § 24.839(a)(6).

⁵ 47 C.F.R. §§ 1.2111, 24.714.

⁶ 47 C.F.R. § 24.714(c)(2)(ii).

⁷ 47 C.F.R. §§ 1.2111(c), (d). *See* Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 15 FCC Rcd. 15,293, 15,315, ¶ 37.

III. GENERAL INFORMATION

The assignment applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.⁸

This proceeding is a restricted proceeding pursuant to section 1.1208 of the Commission's rules.⁹ *Ex Parte* presentations are prohibited to or from Commission decision-making personnel until the proceeding is no longer subject to administrative reconsideration or review or judicial review.

Interested parties must file petitions to deny no later than **November 5, 2003**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **November 17, 2003**. Replies to such pleadings must be filed no later than **November 24, 2003**. All filings concerning matters referenced in this Public Notice should refer to **DA 03-3031** and **WT Docket No. 03-217**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,¹⁰ submissions in this matter may be filed electronically (*i.e.*, by the Commission's Electronic Comment Filing System ("ECFS")) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**¹¹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper

⁸ See 47 U.S.C. § 309(b).

⁹ 47 C.F.R. § 1.1208.

¹⁰ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, FCC 01-345 (rel. Nov. 29, 2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001); Reminder Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, DA 03-2730 (rel. Aug. 22, 2003).

¹¹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); (2) Erin McGrath, Commercial Wireless Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Joel Rabinovitz, Office of General Counsel, at joel.rabinovitz@fcc.gov, or (202) 418-2822 (facsimile); and (4) Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at rita.cookmeyer@fcc.gov or (202) 418-0890 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's Electronic Comment Filing System (ECFS), which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

For further information, contact Erin McGrath, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-7240, or Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

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