

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

In the Matter of )
PinPoint Wireless, Inc. ) File Nos. 0000935560 and 0000935565
Request for a Waiver and Extension of the )
Broadband PCS Construction Requirements )

ORDER

Adopted: February 13, 2003

Released: February 14, 2003

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

I. INTRODUCTION

1. In this Order, we address the requests by PinPoint Wireless, Inc. ("PinPoint") for waiver and extension of time to meet the construction requirements for two broadband Personal Communications Services ("PCS") licenses. Specifically, PinPoint seeks an extension of time of just over five months (from June 26, 2002 until December 12, 2002) in order to satisfy its construction requirements under section 24.203(b) for stations KNLH671, the D block license for the Hastings, Nebraska Basic Trading Area, BTA185 ("Hastings BTA") and KNLH681, the D block license for the North Platte, Nebraska Basic Trading Area, BTA325 ("North Platte BTA"). For the reasons stated below, we deny the Extension Requests and find that PinPoint's licenses terminated automatically on June 26, 2002. We grant PinPoint special temporary authority ("STA"), on our own motion, to allow PinPoint to continue its current operations, subject to certain conditions set forth below, in order to facilitate its subscribers' smooth transition to alternative wireless providers.

II. BACKGROUND

2. PinPoint is the licensee of KNLH671 and KNLH681, the 10 MHz D block broadband PCS licenses in the Hastings and North Platte BTAs, respectively. 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 its BTAs or make a showing of substantial service within five years of initial license grant. Based on the original grant date, the five-year deadline for both subject licenses was June 26, 2002. On June 24, 2002, PinPoint filed a request for an extension of time to satisfy its construction requirements, seeking an additional ninety days to complete construction of the Hastings and North Platte markets. On August 22, 2002, PinPoint amended its Extension Requests to provide supplemental

1 See File No. 0000935560, filed by PinPoint on June 24, 2002 ("Hastings Request") and amended on August 22, 2002 ("First Hastings Amendment"), September 5, 2002 ("Second Hastings Amendment"), and December 11, 2002 ("Third Hastings Amendment"); File No. 0000935565, filed by PinPoint on June 24, 2002 ("North Platte Request") and amended on August 22, 2002 ("First North Platte Amendment"), September 5, 2002 ("Second North Platte Amendment"), and December 11, 2002 ("Third North Platte Amendment") (collectively, "Extension Requests").

2 47 C.F.R. § 24.203(b).

3 Hastings Request at 1; North Platte Request at 1.

information in response to informal requests from Commission staff.<sup>4</sup> On September 5, 2002, PinPoint amended its Extension Requests to provide additional information and to request an additional ninety days, *i.e.*, until December 26, 2002, to satisfy its construction requirements.<sup>5</sup> Finally, on December 11, 2002, PinPoint again amended its Extension Requests, this time to inform the Commission of its satisfaction of the construction requirements for the subject BTAs, and to reduce the length of its requested extension by fourteen days (from December 26, 2001 to December 12, 2002).<sup>6</sup>

### III. DISCUSSION

3. PinPoint acknowledges that it did not timely satisfy the construction requirement set forth in section 24.203(b) of the Commission's rules for the subject 10 MHz PCS licenses. 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.<sup>7</sup> Accordingly, without grant of extension of time or a waiver of the PCS construction rule, the subject licenses for the Hastings and North Platte BTAs automatically terminated as of the June 26, 2002 construction deadline. 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.<sup>8</sup> Furthermore, in recognizing that compliance with the broadband PCS construction requirements may be difficult at times, 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.<sup>9</sup> 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.<sup>10</sup> As discussed below, we find that the Petitioners fail to satisfy the criteria for grant of an extension of time to satisfy their construction requirement and/or grant of a waiver of the construction requirement.

4. As discussed below, PinPoint fails to satisfy the criteria for grant of an extension or waiver of its construction requirements. PinPoint's primary argument is that an extension of time is warranted because circumstances beyond its control, "namely an unanticipated delay in the installation of a T1 connecting circuit by the landline telephone company,"<sup>11</sup> prevented its timely construction of the subject markets. PinPoint also argues that waiver of the construction deadlines is warranted because

<sup>4</sup> See First Hastings Amendment; First North Platte Amendment.

<sup>5</sup> See Second Hastings Amendment; Second North Platte Amendment.

<sup>6</sup> See Third Hastings Amendment; Third North Platte Amendment.

<sup>7</sup> 47 C.F.R. §§ 1.946(c), 1.955(a)(2), 24.203.

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> Hastings Request at 7; North Platte Request at 6.

application of the construction requirement will not serve the underlying purpose of the rule and that grant of a waiver will serve the public interest.<sup>12</sup> PinPoint contends that “strict enforcement” of the construction requirements would not serve the public interest because it “would not enhance service to rural and small markets but most likely would result in a substantial delay in service to the affected area[s].”<sup>13</sup> PinPoint also argues that, because “the Commission is migrating toward relaxing or eliminating mid-license-term construction requirements altogether for other radio services,” requiring compliance with “5-year, mid-license-term build-out requirements for PCS is at odds with Commission action” and raises regulatory parity concerns.<sup>14</sup>

5. As an initial matter, we are not persuaded that PinPoint’s failure to construct the Hastings and North Platte BTAs in a timely manner was due to circumstances beyond their control. Accordingly, PinPoint does not warrant an extension of time pursuant to sections 1.946(e) and 24.843(b). PinPoint claims that it would have constructed both the Hastings and North Platte BTAs by its construction deadline, but for a delay in the installation of interconnection facilities by Qwest. PinPoint compares its situation with that of *Chasetel Licensee Corp.*, in which we granted a licensee an extension to resolve “last[-]minute technical problems.”<sup>15</sup> According to PinPoint, “[a] last[-]minute unpredictable delay in the landline carrier’s installation of a necessary interconnection circuit is exactly the type of problem that should be dealt with by a brief extension of the construction deadline.”<sup>16</sup> With respect to the Hastings BTA, PinPoint explains that it initially requested a T1 circuit from Qwest on May 28, 2002 (twenty-one business days before its construction deadline), only to be informed that Qwest did not own the facilities at the end of the requested T1 line.<sup>17</sup> Subsequently, on May 29, 2002, PinPoint requested a T1 from the appropriate carrier, but when ensuing negotiations indicated that PinPoint would have to pay “a rate more than triple . . . the rate per month that was previously quoted,” PinPoint contacted Qwest again, this time with the intent to use a T1 line in combination with a microwave circuit.<sup>18</sup> At the time PinPoint filed its Hastings Request, two days before its construction deadline, it had not yet placed a formal order with Qwest.<sup>19</sup> As of August 22, 2002, PinPoint did not have a T1 installation due date, nor did PinPoint have confirmation that Qwest had sufficient facilities for the requested T1 connection.<sup>20</sup> On September 5, 2002, PinPoint informed the Commission that Qwest had placed PinPoint’s order on hold because of the need to add HDSL repeaters.<sup>21</sup> Concerned about “‘excess construction charges’ . . . that may factor into PinPoint’s business planning considerations,” PinPoint explained that it could not commit to a tower lease for the Hastings site until it determined Qwest’s charges.<sup>22</sup> For this reason, PinPoint could not yet install the microwave link at the intended site, notwithstanding the fact that it possessed all the equipment for

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<sup>12</sup> Hastings Request at 4-5; North Platte Request at 4-5.

<sup>13</sup> Hastings Request at 4; North Platte Request at 4.

<sup>14</sup> Hastings Request at 5; North Platte Request at 5.

<sup>15</sup> Hastings Request at 3; North Platte Request at 3 (citing *Chasetel Licensee Corp.*, *Order*, 17 FCC Rcd 9351, 9352-53 (WTB Comm. Wir. Div. 2001) (“*Chasetel Licensee Corp.*”).

<sup>16</sup> Hastings Request at 3; North Platte Request at 3.

<sup>17</sup> Hastings Request at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> First Hastings Amendment at 1.

<sup>21</sup> Second Hastings Amendment at 1.

<sup>22</sup> *Id.*

installation of the microwave link.<sup>23</sup>

6. The facts for the North Platte BTA are substantially similar. As with the Hastings BTA, PinPoint initially requested a T1 connection from Qwest for the North Platte BTA on May 28, 2002.<sup>24</sup> While initially intending to use a landline T1 link, PinPoint was informed on June 12, 2002 that Qwest was imposing additional construction costs, in excess of \$19,000, for installation, and that the earliest that installation would be complete was late July.<sup>25</sup> PinPoint explained that, while it was prepared to pay the cost of the circuit, it was “exploring all possible alternatives” to avoid delay of the T1 installation.<sup>26</sup> PinPoint later amended the North Platte Request to state that the T1 directly to the cell site was “impractical” due to the excess construction costs, and that it now intended “to put up a short, unlicensed microwave link to which it is hoped Qwest already has facilities sufficient for a T1 without the delay of construction nor prohibitive construction costs.”<sup>27</sup> PinPoint explains that that it encountered still further delays because Qwest evidently misunderstood PinPoint’s order and was planning a T1 for the wrong tower.<sup>28</sup> As of September 5, 2002, PinPoint had not yet committed to a tower lease agreement at the intended site due to concerns “excess construction charges.”<sup>29</sup> As with the Hastings site, PinPoint states that it had all the equipment necessary for the unlicensed microwave link in a warehouse, but could not yet install the equipment until it secured a tower lease agreement, which it could not do prior to obtaining information regarding Qwest’s charges.<sup>30</sup>

7. Based upon the record before us, PinPoint’s failure to construct in a timely manner appears to be the result of the exercise of its own business judgment. While PinPoint contends that “[t]he normal speed for Qwest to turn up a T1” in the subject markets is “14 business days,” and therefore that “30 days was sufficient lead time,”<sup>31</sup> the record demonstrates that PinPoint did not, in fact, allot thirty days’ lead time. In the case of both the Hastings and North Platte BTAs, PinPoint originally requested a T1 line from Qwest with just twenty-one business days remaining its initial construction period. Furthermore, in the case of the Hastings BTA, Qwest did not even own the facilities in question. PinPoint subsequently returned to Qwest with a request for a proposal for a T1 connection using an unlicensed microwave link for the Hastings BTA with just *twelve* business days remaining in its construction period. Nearly two months *after* the construction deadline, PinPoint had not received confirmation that Qwest possessed sufficient facilities in either the Hastings or North Platte BTA to complete the T1 orders, which were modified to facilitate the use of a short, unlicensed microwave link.<sup>32</sup> Contrary to PinPoint’s assertion that “the only obstacle” that prevented its timely satisfaction of the buildout requirement was “a delay in the installation of interconnection facilities,”<sup>33</sup> it is apparent from the record that PinPoint’s failure to develop a feasible interconnection plan served as an obstacle to timely buildout. With as little time as one month left in its five-year construction period, PinPoint was still in the process of determining

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<sup>23</sup> *Id.*

<sup>24</sup> North Platte Request at 1.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> First North Platte Amendment at 1.

<sup>28</sup> Second North Platte Amendment at 1.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> First Hastings Amendment at 1; First North Platte Amendment at 1.

<sup>32</sup> *See* First Hastings Amendment at 1; First North Platte Amendment at 1.

<sup>33</sup> Hastings Request at 1, 2; North Platte Request at 1, 2.

which particular local exchange carriers owned facilities for a T1 connection and obtaining information regarding costs of installation. In sum, we find that PinPoint did not act with sufficient diligence in constructing these markets and failed to allocate sufficient time for reasonably foreseeable events.

8. Moreover, we disagree with PinPoint that its circumstances are similar to those presented in *Chasetel Licensee Corp.* In *Chasetel Licensee Corp.*, the licensee (“Chasetel”) encountered difficulties in constructing its market when two officials became disabled with serious illnesses that prevented their ability to approve Chasetel’s connection to the existing private branch exchange.<sup>34</sup> Consequently, Chasetel was forced to switch technology and experienced delays in the installation and testing of the private T1 line due to the unavailability of equipment and personnel following the attacks of September 11<sup>th</sup>.<sup>35</sup> Notwithstanding these delays, Chasetel’s “system was nearly operational at the deadline and only required three additional days to make it fully operational.”<sup>36</sup> Based upon the circumstances in *Chasetel Licensee Corp.*, we found that a brief extension of time was “warranted 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.”<sup>37</sup> PinPoint’s circumstances substantially and materially differ from those in *Chasetel Licensee Corp.* As explained above, PinPoint reasonably should have foreseen the need to obtain firm cost and other information in a timely manner from the applicable local exchange carrier in order to develop and implement a feasible interconnection plan by its construction deadline.

9. We also find that PinPoint does not satisfy the criteria for grant of a waiver pursuant to section 1.925. We reject PinPoint’s argument that application of the construction requirement in this case will frustrate the rule’s underlying purpose and that grant of a waiver will serve the public interest. PinPoint argues that the subject markets are underserved, rural areas and that enforcement of the construction rule will delay service to these markets due to the forfeiture of the licenses and the need to re-auction the spectrum.<sup>38</sup> PinPoint compares itself to *Leap Wireless*, in which we granted an extension of the construction requirements to a licensee serving small to mid-sized markets based upon such factors as the time of license acquisition and demonstrated diligence in constructing the markets.<sup>39</sup> PinPoint also compares the rural nature of its markets with those at issue in *Summit Wireless* and *Northstar Technology*, two cases in which we granted extensions to licensees.<sup>40</sup> The Commission’s construction requirements are intended to ensure that the PCS spectrum is used effectively and made available to as many communities as possible.<sup>41</sup> Based on the record before us, we do not believe that PinPoint has engaged in an effective use of its spectrum during the five-year construction period; on the contrary, PinPoint’s actions lack the requisite level of diligence expected from licensees in construction their markets. While

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<sup>34</sup> *Chasetel Licensee Corp.* at 9353, n.19.

<sup>35</sup> *Id.* at 9353.

<sup>36</sup> *Id.* at 9353-54.

<sup>37</sup> *Id.* at 9353.

<sup>38</sup> Hastings Request at 4-5; North Platte Request at 3-5.

<sup>39</sup> See Hastings Request at 4-5; North Platte Request at 4-5 (citing Leap Wireless International, Inc., Request for Waiver and Extension of the Broadband PCS Construction Requirements, *Memorandum Opinion and Order*, 16 FCC Rcd 19573 (WTB Comm. Wir. Div. 2001) (“*Leap Wireless*”).

<sup>40</sup> See Hastings Request at 4; North Platte Request at 3 (citing Northstar Technology, LLC, Request for Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 10908 (WTB Comm. Wir. Div. 2002) (“*Northstar Technology*”) and Summit Wireless, LLC and Summit Wireless WOW, LLC, Request for Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 10914 (WTB Comm. Wir. Div. 2002) (“*Summit Wireless*”).

<sup>41</sup> See *PCS MO&O* at 5018.

we consider the rural nature of a market as a factor in determining whether a waiver or extension of the construction requirements is warranted, the fact that a market is rural or underserved is not sufficient, in itself, to warrant an extension of time or waiver of our construction requirements. Furthermore, the facts presented here are not similar to those in *Leap Wireless, Summit Wireless, LLC*, or *Northstar Technology, LLC*; in each of these cases, we granted extensions of four months or less and found that the licensees acted diligently in constructing their markets. In contrast, PinPoint failed to act with sufficient diligence, as explained above, and seeks more time than *Leap Wireless* (for the “Voice Licenses” referenced by PinPoint), *Summit Wireless*, and *Northstar Technology*. Based on the circumstances presented in this case, we believe that grant of a waiver would undermine the Commission’s goals of ensuring the effective use of PCS spectrum and wide availability of services using that spectrum.

10. Furthermore, we do not believe that the potential public interest benefits raised by PinPoint are sufficient to present good cause for grant of a waiver or that failure to grant a waiver of the construction requirements will delay service to the subject markets. While we agree with PinPoint’s argument that increased competition provides benefits to rural customers, we are not persuaded that an extension is warranted in this case because, absent grant of such relief, these markets may go unserved for several years due to the time necessary to re-auction the spectrum and re-initiate a five-year construction deadline for a new licensee. First, our records indicate that all nine counties that comprise the Hastings BTA and all thirteen counties that comprise the North Platte BTA receive cellular coverage.<sup>42</sup> In addition, multiple PCS carriers provide coverage to portions of these two BTAs.<sup>43</sup> While the Commission, to the extent possible, encourages multiple wireless carriers in an area in order to promote vigorous competition, the record in this case does not support the grant of a waiver of the PCS construction requirement for a licensee who has not acted with a sufficient level of diligence. Second, *any* PCS licensee that requests an extension for a period of less than five years could make the same argument, and grant of a waiver on this basis alone would effectively undermine the construction rules adopted by the Commission.

11. Finally, we reject PinPoint’s argument that “requiring compliance with objective 5-year, mid-license-term build-out requirements for PCS is at odds” with construction requirements for other licensees and therefore raises parity concerns that should be taken into consideration in this case.<sup>44</sup> PinPoint notes that certain licensees, such as LMDS and 39 GHz licensees, need only satisfy a construction requirement at the end of their license term, “not at both the five and ten-year anniversaries.”<sup>45</sup> We note as an initial matter that broadband PCS D block licensees do not have both a five-year and a ten-year construction requirement, only a five-year requirement.<sup>46</sup> Second, PinPoint is essentially arguing that the construction requirements for broadband PCS licensees should be modified to mirror those requirements imposed on other wireless licensees. This argument, however, is more

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<sup>42</sup> The following cellular licensees are providing coverage to areas within the Hastings BTA: Liberty Cellular, Inc., Subsidiary Of ALLTEL Corporation; WWC License L.L.C.; and ALLTEL Communications of Nebraska, Inc. The following cellular licensees are providing coverage to areas within the North Platte BTA: N.E. Colorado Cellular, Inc.; Platte River Cellular of Colorado Limited; Sagir, Inc.; ALLTEL Communications of Nebraska, Inc.; and WWC License L.L.C.

<sup>43</sup> The following PCS licensees are providing coverage to areas within the Hastings and North Platte BTAs: Wireless II, L.L.C. and VoiceStream PCS BTA I License Corporation. We note that while these carriers are providing service within the Hastings and North Platte BTAs, their coverage areas do not necessarily overlap PinPoint’s coverage areas.

<sup>44</sup> Hastings Request at 5; North Platte Request at 5.

<sup>45</sup> *Id.*

<sup>46</sup> D block PCS licensees are only required to meet a five-year construction benchmark of 25 percent population coverage or substantial service. See 47 C.F.R. § 24.203(b).

appropriately raised in a petition for rulemaking. To the extent that broadband PCS licensees do have different construction requirements from licensees in other wireless services, the Commission has, when adopting specific construction requirements, taken into account various factors relevant to the spectrum in question, including the predicted likely uses of the spectrum, *e.g.*, fixed versus mobile wireless use,<sup>47</sup> and whether the spectrum is heavily encumbered.<sup>48</sup>

12. In summary, we are not persuaded that application of the construction requirement in this case would frustrate the underlying purpose of the rule or that grant of a waiver would serve the public interest. Based upon the record, we find that PinPoint fails to satisfy the standard for either an extension of time and/or a waiver of the construction requirement. We therefore deny PinPoint's Extension Requests and find that the subject D block licenses for the Hastings and North Platte BTAs automatically terminated on June 26, 2002, pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules.<sup>49</sup>

13. As a final matter, we find that it is in the public interest to grant, on our own motion, an STA to PinPoint, subject to certain conditions, in order to facilitate its subscribers' smooth transition to an alternate service provider.<sup>50</sup> First, STA is granted to PinPoint for 180 days from release of this Order. Second, to the extent that PinPoint's customers will receive either reduced or no service from PinPoint as a result of the termination of the subject licenses, PinPoint must provide written notice to each of its current subscribers that: (i) its D block authorizations for the Hastings and North Platte BTAs have been terminated and PinPoint must permanently discontinue service in these markets; (ii) it is only authorized to provide service to existing customers on its D block spectrum in these markets under a grant of special temporary authority; and (iii) it will provide customers with a written "reminder" notice thirty days prior to permanently discontinuing service in these markets.<sup>51</sup> Third, PinPoint may not solicit or add new subscribers in the Hastings and North Platte BTAs while operating under this STA. Fourth, as described above, PinPoint shall provide written notice to each of its subscribers 30 days prior to permanently discontinuing service in the Hastings and North Platte BTAs, to the extent that subscribers will receive either reduced or no service from PinPoint.<sup>52</sup> Finally, after the expiration of the STA, PinPoint will no longer be authorized to provide further service in the Hastings and North Platte BTAs, and shall cease any and all operations, on the broadband PCS D block spectrum within the Hastings and North Platte BTAs.

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<sup>47</sup> In some circumstances where there was no clear indication what the spectrum would be used for, the Commission established a more flexible construction requirement -- for example, requiring the licensee to demonstrate that it has provided substantial service by the end of its license term. *See, e.g.*, Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Service, *Second Report and Order*, 12 FCC Rcd 12545, 12659 (1997) ("Without knowing the type of service or services to be provided, it would be difficult to devise specific construction benchmarks.").

<sup>48</sup> Incumbency can affect the actual benchmark (*e.g.*, 800 MHz EA Upper 200 channels have a channel capacity requirement) or the amount of time to meet the benchmark (*e.g.*, 700 MHz Band). *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, 11 FCC Rcd 1463, 1529 (1995); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, 15 FCC Rcd 476, 505 (2000).

<sup>49</sup> 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

<sup>50</sup> In the event that PinPoint does not want to continue operation within the Hastings and/or North Platte BTAs, the STA will terminate once the Commission receives notification from PinPoint that it wishes to terminate the STA.

<sup>51</sup> PinPoint shall provide a copy of such notice to the Commission.

<sup>52</sup> PinPoint shall provide a copy of such notice to the Commission.

**IV. ORDERING CLAUSE**

14. 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 requests for waiver and extension of the broadband PCS construction requirements filed by PinPoint Wireless, Inc. on June 24, 2002, and amended on August 22, 2002, September 5, 2002 and December 11, 2002, ARE HEREBY DENIED.

15. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f), and section 1.931(a) of the Commission's rules, 47 C.F.R. § 1.931(a), Special Temporary Authority IS GRANTED *sua sponte* to PinPoint Wireless, Inc., subject to the terms and conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

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