



PUBLIC NOTICE

Federal Communications Commission
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DA 03-798
March 17, 2003

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON AN ASSIGNMENT OF AND A REQUEST FOR EXTENSION OF TIME TO CONSTRUCT A 220 MHz NATIONWIDE COMMERCIAL LICENSE

Petitions/Comments Due: April 17, 2003

Oppositions Due: April 28, 2003

Replies Due: May 5, 2003

Pursuant to sections 1.3 and 1.925 of the Commission's rules,¹ the Wireless Telecommunications Bureau ("Bureau") seeks comment on an application filed by Rush Network Corp. ("Rush Network") and the Association of American Railroads ("AAR") to assign the 220-222 MHz ("220 MHz") nationwide, commercial Phase I license, call sign WPWY753 ("License") from Rush Network to AAR.² The Bureau also seeks comment on a related request for extension of time to meet the final construction requirements for the License.³

On March 3, 2003, Rush Network and AAR submitted an application to assign the License from Rush Network to AAR. Contingent upon the Commission's consent to the assignment, AAR requests that the Commission waive four of its rules to allow AAR to use the frequencies to develop a private, non-commercial system for the freight railroad industry to operate switching locomotives in railroad yards using radio control links.⁴ Specifically, AAR seeks a waiver of sections 90.713(a) and 90.717(b) of the Commission's rules, both of which restrict the spectrum covered by the License to commercial use only.⁵ AAR also seeks waiver of section 90.715(a), which designates one frequency in each 220 MHz channel pair as the "base station" frequency and the other as the "mobile station" frequency.⁶ Finally,

¹ 47 C.F.R. §§ 1.3, 1.925.

² ULS File No. 0001217770 ("Assignment Application").

³ ULS File No. 0001217811 ("Extension Request").

⁴ Exhibit A to the Assignment Application ("Waiver Request") at 1, 4-7. According to AAR, this technology, known as "Portable Locomotive Control Technology," was approved for use in the U.S. by the Federal Railroad Administration in 2001. *Id.* at 4-6.

⁵ Waiver Request at 2. 47 C.F.R. §§ 90.713(a), 90.717(b).

⁶ Waiver Request at 2-3. 47 C.F.R. § 90.715(a).

AAR asks the Commission to waive of section 90.709(c), which subjects an assignee of a Phase I nationwide 220 MHz license to the four construction benchmarks set forth in section 90.725 of the Commission's rules.⁷

At the same time as the assignment application, including AAR's waiver request, was filed, Rush Network also requested a waiver of the construction requirements of section 90.725. Rush Network asks the Commission for at least two additional years to meet the final benchmark for the License because of equipment unavailability to expand its current system and the potential assignment with AAR.⁸

Final action on the proposed assignment from Rush Network to AAR, AAR's waiver request, and Rush Network's extension request will not be taken earlier than thirty-one days following the date of this Public Notice.⁹ Interested parties may file comments or petitions to deny no later than **April 17, 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. Persons and entities that file comments will have those comments considered but do not become parties to the proceeding and may not be able to participate as fully as petitioners. Oppositions to such pleadings may be filed no later than **April 28, 2003**. Replies to such pleadings may be filed no later than **May 5, 2003**. All filings concerning matters referenced in this Public Notice should refer to **DA 03-798** and **File Nos. 0001217770 and 0001217811**.

All comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, DC 20554. A copy of each response also should be sent to (1) Qualex International, 445 12th Street, S.W., Room CY- B402, Washington, DC, 20554, 202-863-2893, (2) Scott A. Mackoul, Esq., FCC, Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch, 445 12th Street, S.W., Room 4-A361, Washington, DC 20554, and (3) Maria Ringold, FCC, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 12th Street, S.W., Room CY-B529, Washington, DC 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Vistrionix, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 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 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See* FCC Announces a New Filing Location for

⁷ Waiver Request at 3-4, 7-8. 47 C.F.R. §§ 90.709(c), 90.725(b). The final benchmark requires the holder of a nationwide Phase I 220 MHz license to construct base stations and place those base stations in operation in all 70 geographic areas designated in the original application for the license, including at least 28 urban areas listed in section 90.741 in the rules, within ten years of the original license grant – which, in the case of the License, is July 29, 2003. 47 C.F.R. §§ 90.725(b)(4), 90.741. AAR requests that, in lieu of the current final construction benchmark, it be subject to a “substantial service” requirement.

⁸ Extension Request at 5.

⁹ *See* 47 U.S.C. § 309(b).

Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

The full text of the assignment application, AAR's waiver request and Rush Network's waiver/extension request, along with comments, oppositions, and replies, will be available for inspection and duplication during regular business hours in the Reference Information Center of the Consumer and Governmental Affairs Bureau, FCC, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554. Copies may also be obtained from Qualex. For further information regarding the public reference file, please contact Maria Ringold, Chief, Wireless Branch, Reference Information Center, 202-418-1350.

Because of the policy implications and potential impact of this proceeding on persons not parties to this request, we believe it would be in the public interest to treat this matter as a permit-but-disclose proceeding under the *ex parte* rules, *see* sections 1.1200(a) and 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1200(a), 1.1206, rather than a restricted proceeding under section 1.1208 of the Commission's rules, 47 C.F.R. § 1.1208. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject request, subsequent to the release of this Public Notice, will be permissible but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

For further information concerning this proceeding, contact Scott A. Mackoul, Commercial Wireless Division, Wireless Telecommunications Bureau, at 202-418-7498 or smackoul@fcc.gov.

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