



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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DA 04-122

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## WIRELESS TELECOMMUNICATIONS BUREAU, MOBILITY DIVISION

### SEEKS COMMENT ON WARREN C. HAVENS' PETITION TO WAIVE OR EXTEND 220 MHZ PHASE II ECONOMIC AREA AND REGIONAL LICENSES FIVE-YEAR CONSTRUCTION REQUIREMENT

Comment Date: February 10, 2004

Reply Comment Date: February 20, 2004

On January 12, 2004, Warren C. Havens (Havens) filed a Petition to Waive or Extend the time to construct certain Phase II 220 MHz Economic Area (EA) and Regional licenses for certain channel blocks,<sup>1</sup> specified in Section 90.767 of the Commission's Rules, 47 C.F.R. § 90.767 (Waiver Request). Havens states that a majority of Phase II EA and Regional licensees have five-year construction deadlines in 2004 and requests that the Commission either waive the five-year construction deadline for these licenses or extend the five-year construction deadline by three years. Havens asks that the requested relief be afforded to all Phase II 220 MHz EA and Regional licenses for certain channel blocks.

**Please be advised that the Wireless Telecommunications Bureau is not tolling construction requirements for 220 MHz Phase II EA and Regional licensees pending review of this Waiver Request. Licenses that are not timely constructed or for which a timely extension request is not filed will terminate automatically. Terminated licenses will not be eligible for relief in the context of this Waiver Request. In the event that a 220 MHz Phase II EA or Regional licensee requires an extension of its applicable construction requirement(s), such licensee must file an FCC Form 601 seeking an extension of time under Section 1.946(e), 47 C.F.R. § 1.946(e), on or before its construction deadline.**

In support of his Waiver Request, Havens argues that the primary purpose of the subject licenses is to provide trunked, two-way voice communications via narrowband (5 kHz) channels and that no such equipment is available to licensees (*i.e.*, no manufacturer is currently producing and supporting such equipment). Havens argues that an extension of the construction deadline will permit licensees to seek, obtain, and install equipment capable of two-way voice communications. Havens argues that, although data communications equipment is available from at least one source, licensees should not be forced to provide data services merely to meet the construction deadline if they do not believe there is a business case to support such service in their markets. Similarly, while Havens admits that 12.5 kHz voice

<sup>1</sup> See Universal Licensing System file numbers 0001576564, 0001576565, and 0001576566.

communications equipment is available from at least one source, he argues that many licensees do not have a sufficient number of contiguous 5 kHz channels that may be aggregated to support the wider bandwidth 12.5 kHz channel.

EA and Regional Phase II 220 MHz licensees are required to provide coverage to at least one-third of the population of the EA or Region within five years, and to at least two-thirds of the population within ten years of initial licensing.<sup>2</sup> EA and Regional licensees offering fixed services or who have incumbent co-channel Phase I licensees in their market may, in the alternative, meet their construction requirement by demonstrating an appropriate level of substantial service at their five- and ten-year benchmarks.<sup>3</sup> Havens requests that the Commission waive the five-year construction requirement in full, *i.e.*, only require the subject licensees to meet the ten-year construction requirement. In the alternative, Havens seeks a three-year extension of the construction requirement in order to obtain 5 kHz voice communications equipment. Havens argues that, because the lack of available equipment impacts all Phase II 220 MHz EA and Regional licensees in certain channel blocks similarly, relief should be extended to all such licensees.

Interested parties may file comments on the Waiver Request on or before February 10, 2004. Parties interested in submitting reply comments must do so on or before February 20, 2004. All comments should reference the subject request including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-325, Washington, D.C. 20554.<sup>4</sup> A copy of each filing also should be sent to: (1) Qualex International, Inc., Portals II, 445 Twelfth Street, S.W., Room CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center (RIC), 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Nicole McGinnis, Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 Twelfth Street, S.W., Room 6223, Washington, D.C. 20554.

The Waiver Request and responsive comments and reply comments will be available for inspection and duplication during regular business hours in the Reference Information Center (RIC) of the Consumer Information Bureau (CIB), Federal Communications Commission, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies may also be obtained from the Commission's duplicating contractor, Qualex International, Inc., Portals II, 445 Twelfth Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). For further information regarding the public reference file for this request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

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

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<sup>2</sup> 47 C.F.R. 90.767

<sup>3</sup> *Id.*

<sup>4</sup> The address for FCC filings 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 at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. 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. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

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 allowed 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).

Action by the Chief, Mobility Division, Wireless Telecommunications Bureau.

FOR FURTHER INFORMATION CONTACT Nicole McGinnis, Mobility Division, Wireless Telecommunications Bureau at (202) 418-0620, TTY (202) 418-7233 or via email to [Nicole.McGinnis@fcc.gov](mailto:Nicole.McGinnis@fcc.gov).

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