

**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 ON RECONSIDERATION

Adopted: February 12, 2004

Released: February 13, 2004

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

I. INTRODUCTION

1. In this Order on Reconsideration, we address the petition for reconsideration filed by PinPoint Wireless, Inc. (“PinPoint”).¹ PinPoint seeks reconsideration of an order released by the former Commercial Wireless Division (“CWD”)² on February 14, 2003,³ which denied PinPoint’s requests for waiver and extension of time to meet the construction requirements for two broadband Personal Communications Services (“PCS”) licenses.⁴ For the reasons discussed below, we grant PinPoint’s petition for reconsideration.

II. BACKGROUND

2. PinPoint is the licensee of KNLH671, the D block PCS license for the Hastings, Nebraska Basic Trading Area, BTA185 (“Hastings BTA”) and KNLH681, the D block PCS license for the North Platte, Nebraska Basic Trading Area, BTA325 (“North Platte BTA”). Pursuant to section 24.203(b) of the Commission’s rules, a 10 MHz broadband PCS licensee is required to provide service to

¹ See File Nos. 0000935560 and 0000935565, “Petition for Reconsideration,” filed by PinPoint on March 13, 2003 (“Petition”), amended on March 14, 2003 to include an original signature. After meeting with Commission staff, PinPoint provided additional information responsive to staff inquiries on April 25, 2003 (“Petition Supplement”).

² The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and certain duties of the Commercial Wireless Division have been assumed by the Mobility Division. The Mobility Division is responsible for policy, regulation, and licensing of radio services expected to be used to provide mobile wireless services, with the exception of public safety and critical infrastructure services. See Reorganization of the Wireless Telecommunications Bureau, *Order*, FCC 03-291, ¶ 2 (rel. Nov. 25, 2003); “Wireless Telecommunications Bureau Announces Primary Responsibilities and Appointments for Reorganized Bureau,” *News Release* (rel. Jan. 15, 2004).

³ PinPoint Wireless, Inc., Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 18 FCC Rcd 1904 (2003) (“*CWD Order*”).

⁴ 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”).

at least one-quarter of the population of its BTA or make a showing of substantial service within five years of initial license grant.⁵ Based on the original grant date, the five-year deadline for both 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.⁶ On August 22, 2002, PinPoint amended its Extension Requests to provide supplemental information in response to informal requests from Commission staff.⁷ 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.⁸ 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, 2002 to December 12, 2002).⁹ Pinpoint's primary argument was that an extension of time was warranted because circumstances beyond its control, "namely an unanticipated delay in the installation of a T1 connecting circuit by the landline telephone company," prevented its timely construction of the subject markets.¹⁰ PinPoint also argued, *inter alia*, that waiver of the construction deadlines was warranted because application of the construction requirement would not serve the underlying purpose of the rule and that grant of a waiver would serve the public interest.¹¹

3. On February 14, 2003, CWD released the *CWD Order*¹² and determined that PinPoint failed to satisfy the requirements for either an extension of the construction period under sections 1.946(e) and 24.843(b), or a waiver of the construction requirements under section 1.925 of our rules. On March 13, 2003, PinPoint filed the subject petition for reconsideration, providing additional information about its construction efforts in its Nebraska BTAs.¹³ On April 25, 2003, after meeting with Commission staff, PinPoint provided supplemental information responsive to staff concerns regarding its three-BTA regional footprint, which includes the McCook, North Platte and Hastings BTAs.¹⁴

⁵ 47 C.F.R. § 24.203(b).

⁶ Hastings Request at 1; North Platte Request at 1.

⁷ See First Hastings Amendment; First North Platte Amendment.

⁸ See Second Hastings Amendment; Second North Platte Amendment.

⁹ See Third Hastings Amendment; Third North Platte Amendment. PinPoint also filed notifications of construction for both licenses. See File Nos. 0001118462 and 0001118453, filed by PinPoint on December 11, 2002. PinPoint's notifications were dismissed pursuant to the denial of its requested relief.

¹⁰ Hastings Request at 7; North Platte Request at 6.

¹¹ Hastings Request at 4-5; North Platte Request at 4-5.

¹² See *CWD Order*. We note that PinPoint was granted special temporary authority ("STA") to continue operations under call signs WPZA978 (North Platte BTA) and WPZA979 (Hastings BTA).

¹³ See Petition.

¹⁴ See Petition Supplement. We note that PinPoint's petition for reconsideration presents additional information that was not provided in its underlying Extension Requests. In particular, PinPoint provides specific information regarding the public interest benefits that accrue from PinPoint's service to the three contiguous BTAs as a combined region. See Petition Supplement. Section 1.106(c) of the Commission's rules provides that new facts may be presented in a petition for reconsideration only if the facts relate to events that occurred or circumstances that changed since the last opportunity to present such matters; the facts were not known to the petitioner, and could not reasonably have been learned, prior to such opportunity; or the public interest requires consideration of the facts. See 47 C.F.R. §§ 1.106(c)(1)-(2). Because we believe that the additional information provided addresses PinPoint's provision of PCS service to a three-BTA region and also addresses public safety issues, we believe that the public interest will be served by consideration of the Pinpoint's additional information.

III. DISCUSSION

4. Upon reviewing the facts and circumstances presented in the record, we find that reconsideration of the *CWD Order* is warranted. In its petition for reconsideration, PinPoint provides detailed information regarding its business plan, which includes the provision of PCS service to an interrelated, three-BTA region in rural Nebraska.¹⁵ Further, PinPoint provides in-depth information regarding the efforts it has taken to provide service to the rural consumers of North Platte and Hastings within the five-year period, notwithstanding the fact that it acquired the subject licenses through assignment with 20 months remaining in the five-year construction period.¹⁶

5. In support of its petition for reconsideration, PinPoint explains that its expansion of service into the Hastings and North Platte BTAs complements service already initiated in the McCook BTA.¹⁷ PinPoint states that this contiguous, three-BTA region “form[s] an area that is, to a very large extent, interdependent on an economic basis and where business and consumers have a need for seamless wireless service from a single wireless provider.”¹⁸ As an example of the interrelationship between these BTAs, PinPoint notes that the Mid-Plains Area Community College has campuses in both the McCook and North Platte BTAs.¹⁹ According to PinPoint, this three-BTA region, which is rural in nature²⁰ and “comprised primarily of agriculture and related services,”²¹ includes consumers who “are most concerned with reliable service in the contiguous markets represented by the Three BTAs, and less concerned with the ability to have wireless service in some far-off metropolitan area.”²² PinPoint states that the “Three BTAs form an integrated rural market area that will benefit from a locally owned and managed wireless service provider such as PinPoint.”²³ Further, PinPoint notes that “[a]rea residents . . . frequent several recreational lakes located within the Three BTAs,” and that “PinPoint’s goal is to provide these consumers with service not only on the poorly covered access roads but also the lakes themselves.”²⁴ PinPoint notes that coverage currently provided at Harry Strunk Lake must be discontinued if PinPoint is no longer authorized to provide service in the North Platte BTA.²⁵

6. Based upon the record in this proceeding, we find that reconsideration of the *CWD Order* is warranted. In its Extension Requests, PinPoint sought a limited waiver of its construction requirements, to extend its deadline from June 26 until December 12, 2002. 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

¹⁵ See Petition at 2, 9, 13; Petition Supplement.

¹⁶ See Petition at 8-12.

¹⁷ PinPoint is the licensee of KNLG235, the F-block license for BTA270, the McCook, Nebraska BTA (“McCook BTA”).

¹⁸ Petition Supplement at 1.

¹⁹ *Id.* at 3.

²⁰ PinPoint notes that the McCook BTA has a population density of 5 persons per square mile; the Hastings BTA has a population density of 15 persons per square mile; and the North Platte BTA has a population density of 5 persons per square mile. See *Id.* at 2 (citing 2000 Census data).

²¹ *Id.*

²² *Id.*

²³ Petition Supplement at 3.

²⁴ *Id.*

²⁵ *Id.* at 3-4.

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.²⁶ We find that PinPoint warranted a limited waiver of its construction deadlines because: (1) PinPoint's service provides a significant public interest benefit to consumers in the subject rural Nebraska BTAs; and (2) grant of the limited relief requested will not contravene the underlying purpose of the Commission's construction requirements, in light of PinPoint's demonstrated commitment to providing meaningful service with its spectrum. Although PinPoint sought more than a *de minimis* extension of time, the extension was less than six months and therefore brief in duration. We are persuaded that the public interest would be served by allowing PinPoint to continue providing coverage to this three-BTA region. Furthermore, based upon the rural and regional focus of this area, we believe that PinPoint, as a smaller, locally-based carrier, is in a unique position to be responsive to the particularized needs of the area's consumers.²⁷ We also believe that reconsideration of the *CWD Order* serves the public interest by promoting public safety, to the extent that PinPoint is providing service to rural recreational lakes and thereby facilitating the deployment of enhanced 911 services in these areas.²⁸

7. Based upon the record before us, we find that the underlying purpose of the construction requirements would not be served by denying PinPoint's request for relief. 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.²⁹ We find that PinPoint has demonstrated its commitment to providing coverage to end users in rural areas, including otherwise poorly covered access roads. PinPoint states that its network "will cover numerous small towns as well as the roads and highways connecting these communities," and that, at present, "other wireless service providers offer only limited coverage of state and federal highways within the Three BTAs."³⁰ PinPoint also emphasizes that, at the time it obtained the subject licenses, 20 months remained in the five-year construction period.³¹ Although our rules specifically state that extension requests will not be granted "solely to allow a[n] . . . assignee to complete facilities that the . . . assignor failed to construct,"³² we acknowledge that the record indicates

²⁶ 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).

²⁷ We note that the Commission recently initiated a rule making proceeding to focus upon ways in which the Commission can facilitate the provision of spectrum-based services to rural areas. *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, WT Docket No. 02-381, 2000 Biennial Regulatory Review *Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket No. 01-14, *Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation*, WT Docket No. 03-202, *Notice of Proposed Rulemaking*, FCC 03-222 (rel. Oct. 6, 2003) ("*Rural NPRM*"). In the *Rural NPRM*, the Commission indicates its concern that Commission policies and regulations facilitate the provision of wireless services to all Americans, including those residing in or traveling through rural areas. *Id.* at ¶ 2. The Commission states that "[t]he continued development and operation of quality wireless facilities, systems and devices using licensed and unlicensed spectrum in rural areas is critical." *Id.* We believe that our action here is consistent with the goals outlined in this ongoing proceeding.

²⁸ *See* 47 C.F.R. § 20.18. We note that Commission licensing records do not reflect that other PCS providers operating in these BTAs are providing coverage to these particular lakes.

²⁹ *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, 5018 (1994).

³⁰ Petition Supplement at 4.

³¹ Petition at 6, 11-14.

³² *See* 47 C.F.R. § 1.946(e)(3).

that PinPoint made a concerted effort to integrate its Hastings and North Platte operations with its existing McCook BTA operations in a timely manner. Furthermore, PinPoint states that, based upon its prior experience in obtaining a T1 in the McCook BTA from the same provider, PinPoint believed that it would be able to obtain the T1 circuits in time.³³ Based upon the record, we find that a combination of factors (including the inability of the LATA access tandem provider to provision a T1 connection in a timeframe comparable to that necessary for provisioning facilities in the adjacent McCook BTA) resulted in the need for the limited relief requested in the Extension Requests. We therefore find that a grant of reconsideration is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and sections 0.131, 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331 and 1.106, the Petition for Reconsideration submitted by PinPoint Wireless, Inc., IS GRANTED, subject to the conditions set forth herein.

9. IT IS FURTHER ORDERED THAT the technical and operations staff of the Mobility Division shall be directed to return the licenses for PCS stations KNLH671 and KNLH681 to active status in the ULS licensing database.

10. IT IS FURTHER ORDERED THAT the technical and operations staff of the Mobility Division shall be directed to reinstate and accept the construction notifications filed by PinPoint Wireless, Inc. for PCS stations KNLH671 and KNLH681, ULS file nos. 0001118462 and 0001118453.

FEDERAL COMMUNICATIONS COMMISSION

Lloyd W. Coward
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

³³ *Id.* at 11-12.