



PUBLIC NOTICE

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

DA 05-1042

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

Released: April 8, 2005

URBAN COMM-NORTH CAROLINA, INC., SUNCOM WIRELESS, INC. AND CELLCO PARTNERSHIP SEEK FCC CONSENT TO THE TRANSFER OF CONTROL AND ASSIGNMENT OF BROADBAND PCS LICENSES

WT Docket No. 05-169

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: May 9, 2005
Oppositions Due: May 19, 2005
Replies Due: May 26, 2005

Urban Comm-North Carolina, Inc., Debtor-in-Possession (“Urban Comm”), SunCom Wireless, Inc. (“Triton”),¹ a wholly-owned subsidiary of Triton PCS Holdings, Inc., and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) (collectively, the “Applicants”) have filed a series of applications pursuant to Section 310(d) of the Communications Act of 1934, as amended,² seeking Commission consent to (1) the full or partial assignment to Verizon Wireless of ten C-block broadband Personal Communications Services (“PCS”) licenses, and (2) the subsequent transfer of control of Urban Comm to Triton. Upon consummation of the proposed transaction, Verizon Wireless will receive 30 MHz of spectrum in three Basis Trading Areas (“BTAs”), 20 MHz of spectrum in five BTAs and 10 MHz of spectrum in two BTAs.³ The remainder of Urban Comm’s licenses (“Triton’s Licenses”) will be retained by Urban Comm, under the indirect control of Triton. Triton’s Licenses will consist of 10 MHz in eighteen BTAs and 20 MHz in two BTAs.⁴

The full or partial assignments to Verizon Wireless will occur pursuant to an Agreement to Purchase FCC Licenses by and between Urban Comm and Verizon Wireless dated as of December 22, 2004 (the “Verizon Purchase Agreement”). Because Urban Comm is undergoing bankruptcy reorganization, the U.S. Bankruptcy Court for the Southern District of New York (the “Bankruptcy

¹ Triton PCS, Inc. recently changed its name to SunCom Wireless, Inc. For ease of reference, however, we will continue to refer to this applicant as “Triton.”

² 47 U.S.C. § 310(d). The applications were amended subsequent to their initial submission. When searching for these applications on the Wireless Telecommunications Bureau’s Universal Licensing System (“ULS”) at <http://wireless.fcc.gov/uls/>, the amended versions of the applications will appear with an “AM” as the purpose code.

³ Post-transaction, Verizon Wireless will hold between 10 MHz and 55 MHz of spectrum in the applicable BTAs.

⁴ Post-transaction, Triton will hold between 10 MHz and 65 MHz of spectrum in the applicable BTAs.

Court”) has reviewed and approved the Purchase Agreement, and entered a “Sale Order” authorizing this transaction.⁵ The proposed transaction does not involve the assignment of any other FCC licenses or authorizations, including microwave stations or international Section 214 authorizations.

The transfer of control of Urban Comm to Triton will be conducted pursuant to a Stock Purchase Agreement and Assignment Agreement (collectively referred to as the “Triton Stock Purchase Agreement”), both dated as of November 30, 2004, entered into among Urban Comm; its immediate parent, Urban Comm-Mid-Atlantic, Inc., Debtor-in-Possession (“Urban MA”); Urban Comm’s ultimate parent, Urban Communicators PCS Limited Partnership, Debtor-in-Possession (“Urban LP”); and Triton PCS Holdings, Inc. (“Triton Holdings”), the ultimate parent of Triton. Prior to execution, the Triton Stock Purchase Agreement was submitted to the Bankruptcy Court by the Debtors and was approved by the Bankruptcy Court in an order dated December 1, 2004.⁶ At closing, Urban LP will issue 100 shares of newly issued common stock of Urban Comm to Triton Holdings, which will constitute all of the then-issued and outstanding shares of Urban Comm’s capital stock.

I. SECTION 310(d) APPLICATIONS

The following applications for consent to the full and partial assignment of PCS licenses, granted pursuant to Part 24 of the Commission’s rules, to Verizon Wireless have been assigned the file numbers below.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001994620	Urban Comm-North Carolina, Inc.	KNLF372
0002007683	Urban Comm-North Carolina, Inc.	KNLF374

The following application for consent to the transfer of control of PCS licenses, granted pursuant to Part 24 of the Commission’s rules, to Triton has been assigned the file number below.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001978782	Urban Comm-North Carolina, Inc.	KNLF372

II. DESIGNATED ENTITY AND ENTREPRENUERIAL ELIGIBILITY ISSUES

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.”⁷ The Applicants state that each of Urban

⁵ See *In re* Urban Communicators PCS Ltd. Partnership, *et al.*, Nos. 98 B 47996, 98 B 47997, 98 B 10086 (REG) (Bankr. S.D.N.Y. Mar. 24, 2005) (authorizing and approving the sale of certain PCS licenses to Cellco Partnership d/b/a Verizon Wireless, free and clear of liens and encumbrances).

⁶ See *In re* Urban Communicators PCS Ltd. Partnership, *et al.*, Nos. 98 B 47996, 98 B 47997, 98 B 10086 (REG) (Bankr. S.D.N.Y. Dec. 1, 2004) (approving terms and conditions of the proposed stock purchase agreement, break-up fee, non-solicitation covenant, good faith deposit terms and conditions, and termination fee terms and conditions).

⁷ 47 C.F.R. § 24.839(a)(6).

Comm's licenses was granted more than five years ago, and the relevant five-year construction requirements set forth in Section 24.203 of the Commission's rules have been satisfied with respect to each of the Licenses.

Urban Comm, Urban LP, and Urban MA, and the Commission entered into a settlement agreement (the "Settlement Agreement"), dated as of March 14, 2005, regarding the installment payment obligations incurred by Urban Comm with respect to its licenses. The Bankruptcy Court approved the Settlement Agreement by Order dated April 4, 2005.⁸ The Triton Stock Purchase Agreement and the Verizon Purchase Agreement, provide that, at their respective closings, Triton and Verizon Wireless will each deliver to the Commission a portion of the purchase price in satisfaction of the claims against the licenses. The Applicants have requested that as part of its approval of the proposed transfer and full or partial assignments, the Commission find that delivery of this payment (including its timing) will constitute full payment, and will satisfy all conditions, pursuant to sections 1.2111 and 24.714 of the Commission's rules,⁹ or that the Commission grant waivers of these sections to the extent necessary.

III. *EX PARTE* STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,¹⁰ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.¹¹

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.¹² More than a one- or two-sentence description of the views and arguments presented is generally required.¹³ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹⁴ We urge parties to use the Electronic Comment Filing System ("ECFS") to file *ex parte* submissions.¹⁵

IV. GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for

⁸ See *In re* Urban Communicators PCS Ltd. Partnership, *et al.*, Nos. 98 B 47996, 98 B 47997, 98 B 10086 (REG) (Bankr. S.D.N.Y. Apr. 4, 2005) (approving and authorizing terms and conditions of the proposed settlement agreement with the Commission).

⁹ 47 C.F.R. §§ 1.1206(b), 24.714.

¹⁰ 47 C.F.R. § 1.1200(a).

¹¹ *Id.* § 1.1206.

¹² See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd. 19,945 (2000).

¹³ See 47 C.F.R. § 1.1206(b)(2).

¹⁴ *Id.* § 1.1206(b).

¹⁵ See discussion *infra* Part IV.

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.¹⁶

Interested parties must file petitions to deny no later than **May 9, 2005**. 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 **May 19, 2005**. Replies to such pleadings must be filed no later than **May 26, 2005**. All filings concerning matters referenced in this Public Notice should refer to **DA 05-169** and **WT Docket No. 05-1042**, 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,¹⁷ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed through ECFS,**¹⁸ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. 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 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.

Parties are requested to deliver one copy of each pleading electronically, by e-mail or facsimile,

¹⁶ See 47 U.S.C. § 309(b).

¹⁷ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd. 21,483 (2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd. 22,165 (2001); Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, 18 FCC Rcd. 16,705 (2003).

¹⁸ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd. 11,322 (1998).

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, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile); (2) Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at susan.singer@fcc.gov, or (202) 418-7447 (facsimile); (4) Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at kathy.harris@fcc.gov, or (202) 418-7447 (facsimile); and (5) Kimberly Reindl, Office of General Counsel, at kimberly.reindl@fcc.gov, or (202) 418-2822 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.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 ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. In addition, applications filed under Parts 22, 24, 27, 90, and 101 of the Commission's rules are available electronically through ULS, which may be accessed on the Commission's Internet website. Additional information regarding the transaction will be available on the FCC's Office of General Counsel's website, <http://www.fcc.gov/ogc>, which will contain a fully indexed, unofficial listing and electronic copies of all materials in this docket. Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to access@fcc.gov.

For further information, contact Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2042, or Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-1340.

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