

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

In the Matter of)
)
Petition for Extension of Terms for 220-222 MHz)
Band Phase I Nationwide Licenses held by Access)
220 LLC (WFPF444 and WPFR284) and Other)
Relief or, Alternatively, for Renewal of Licenses)
)
Petition for Extension of Term for 220-222 MHz)
Band Phase II Nationwide License Held by Access)
220 LLC (WPOI701) and Other Relief)
)
Petition for Extension of Terms for 220-222 MHz)
Band Phase II Economic Area and Regional)
Licenses Held by Access 220 LLC and Other)
Relief)
)
WT Docket No. 02-224
ULS Application Nos. 0001873639 and
0001873671

MEMORANDUM OPINION AND ORDER

ADOPTED: OCTOBER 23, 2006

RELEASED: OCTOBER 23, 2006

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 16, 2004, Access 220, LLC, and its parent company, Access Spectrum, LLC (collectively, "Access"),¹ filed a joint "Request for Renewal of Licenses and for Additional Waivers," seeking waiver of certain rules and other relief regarding 119 licenses in the 220 MHz band (Petition).² In its Petition, Access requests a 15-year extension of the original license terms with regard to its two 220 MHz Phase I³ nationwide licenses scheduled to expire in September 2004. Alternatively, Access requests renewal of each of these Phase I nationwide licenses for another 10-year term based on the submissions included in its Petition. With regard to its 117 Phase II 220 MHz licenses, most of which are scheduled to expire in 2009,⁴ Access requests waiver of various rules and other relief that would

1 While we use "Access" to refer to Access Spectrum, LLC, and Access 220, LLC, or either of them, we recognize that Access 220, LLC, holds the licenses in the 220 MHz band addressed by the Access Petition and this Order.

2 Appendix B includes a list of Access' 220 MHz licenses. We refer to the 220-222 MHz band in this Order as the "220 MHz band" or the "220 MHz service."

3 Licenses in the 220 MHz band resulting from applications filed on or before May 24, 1991 are referred to as Phase I licenses. See 47 C.F.R. § 90.701(b). Licenses in the 220 MHz band resulting from applications filed after May 24, 1991 are referred to as Phase II licenses. See 47 C.F.R. § 90.701(b). Access' two 220 MHz Phase I nationwide licenses bear call signs WFPF444 and WPFR284.

4 See supra n.3. Access' 117 Phase II licenses at issue include a single Phase II nationwide license, ten Phase II regional economic area grouping licenses (Phase II REAG Licenses), and 106 Phase II economic area licenses

(continued...)

allow: (a) the consolidation of the Phase I and Phase II licenses under a single call sign; (b) the establishment of a uniform expiration date in September 2019 for the consolidated license; (c) the removal of existing interim construction requirements; (d) the continued submission of annual reports in lieu of compliance with such interim construction requirements; and (e) the substitution of a single substantial service standard for renewal at the 2019 expiration of the consolidated license.

2. For the reasons discussed below, we find that, given the unique and unusual circumstances in this case, it would be in the public interest to partially grant Access' request for waiver pursuant to section 1.925(b),⁵ thereby providing for a conditional five-year renewal for its two Phase I nationwide licenses that were scheduled to expire in 2004. However, we deny Access' request for further relief with regard to its Phase I and Phase II licenses. Accordingly, Access' Phase II licenses remain subject to the existing 2007 interim performance requirements and current requirements for renewal in 2009 and 2012.

II. BACKGROUND

3. In 1995, the Commission established a new framework for the operation and licensing of the 220 MHz band, declaring that its "primary goal is to establish a flexible regulatory scheme that would allow for more efficient licensing, eliminate unnecessary regulatory burdens on both existing and future licensees, and enhance the competitive potential of the 220 MHz service in the mobile marketplace."⁶ Also, the Commission stated that it sought to "ensur[e] that license[s] are granted to those who value the spectrum most high[ly] and will maximize its use to provide the best quality and variety of service to consumers."⁷

4. In 2000, the Commission established a class of commercial licensees known as "band managers" in the 700 MHz Guard Bands, explaining that "the Band Manager approach to licensing is potentially an important step in the direction of providing spectrum users with more flexibility to obtain access to the amount of spectrum, in terms of quantity, length of time, and geographic area, that best suits their needs."⁸ The Commission has also noted that "band manager spectrum leasing serves several public interest goals, including: providing licensees with incentives to maximize the efficient use of spectrum; enabling spectrum users to gain access to the amount of spectrum (in terms of quantity, length of time, and geographic area) that is best suited to their business needs; enabling more market-based determinations about how best and most efficiently to use the limited spectrum resource; and, promoting

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(Phase II EA Licenses) (collectively Phase II Licenses). See n.53 *infra* regarding four of its Phase II licenses scheduled to expire in 2012.

⁵ 47 C.F.R. § 1.925(b).

⁶ See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 188, 193 ¶ 2 (1995) (*220 MHz Second MO&O*).

⁷ *Id.*

⁸ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5313-5314 ¶ 31 (2000) (*700 MHz Second R&O*). For example, in the 700 MHz Guard Band, the Commission has referred to band managers "as 'demand aggregators' that make spectrum available on a commercial basis to facilitate all types of spectrum use that are consistent with the [applicable] technical restrictions" and explained that such a manager is "responsible for distributing the licensed spectrum among its customers" but that it is "permitted to apportion spectrum based on both geographic area and frequency." *700 MHz Second R&O*, 15 FCC Rcd at 5312-5313 ¶¶ 27-28.

the rapid development and deployment of new technologies, products, and services.”⁹ The Commission recently requested comment on proposals for revisions in the regulation of the 700 MHz Guard Bands.¹⁰

5. In July 2002, Access, a current 700 MHz Guard Band Manager, sought a waiver of several Commission rules to become a band manager in the 220 MHz band¹¹ and, on October 16, 2002, the Wireless Telecommunications Bureau (Bureau) conditionally granted Access’ request.¹² Under the *Access Waiver Order*, Access continued to be subject to most existing technical and construction requirements applicable to all 220 MHz service licensees, but Access was permitted to rely on a showing of substantial service with respect to all three (two Phase I and one Phase II) of its nationwide licenses.¹³ The *Access Waiver Order* also applied certain features of the 700 MHz Guard Band Manager scheme to Access’ 220 MHz band operations, including: 1) the requirement that Access lease to non-affiliated third parties via spectrum user agreements (SUAs) the predominant portion of its 220 MHz licensed spectrum, which were expected to construct facilities sufficient for Access to meet its 220 MHz band construction requirements;¹⁴ and 2) the requirement to file annual reports reflecting its progress in making spectrum in the 220 MHz band available to others.¹⁵

6. In 2004, Access was subject to various construction deadlines with regard to its licenses

⁹ See *700 MHz Second Report and Order*, 15 FCC Rcd at 5313-5314, ¶¶ 29-31; and Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604, 20632-20633 ¶ 58 (2003) (*Secondary Markets Report and Order*) corrected by Erratum, 18 FCC Rcd 24817 (2003).

¹⁰ See Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, *Notice of Proposed Rulemaking*, FCC 06-133 (rel. Sept. 8, 2006).

¹¹ Access’ July 2002 filing sought: 1) a limited waiver of the section 90.733 permissible use restrictions on all of its 220 MHz licenses so it could begin band management operations with those licenses; and 2) waivers to permit construction activities under its Phase I and Phase II nationwide licenses to be measured using a “substantial service” test that allowed reliance on the construction undertaken by third parties (*i.e.*, its band manager customers). See Request for Waiver of Access 220, LLC, to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, WT Docket No. 02-224 (filed July 3, 2002).

¹² See Access 220, LLC, Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, *Memorandum Opinion and Order*, 17 FCC Rcd 20474 (WTB 2002), *recon. denied*, 18 FCC Rcd 23841 (WTB 2003) (*Access Waiver Order*).

¹³ *Id.* at 20473 ¶ 22. Access had specifically sought the ability to rely on substantial service for its three nationwide licenses, which were acquired from Intek License Acquisition Corp. (Intek) and which were the subject of earlier Commission relief. See Intek License Acquisition Corp., *Memorandum Opinion and Order*, 16 FCC Rcd 16431 (WTB CWD 2001) (*Intek Waiver Order*). Specifically, for the two Phase I nationwide licenses, the *Intek Waiver Order* permitted Intek to satisfy either the remaining six- and ten-year construction requirements set forth in section 90.725 or the remaining construction requirements for Phase II nationwide licenses set forth in section 90.767. *Id.* at 16434. However, because Intek did not submit a six-year construction showing for the two Phase I nationwide licenses, the Bureau declared in the *Access Waiver Order* that Access must satisfy the Phase II nationwide construction requirements set forth in section 90.769. *Id.* at 20473 ¶ 23. Section 90.769 provided at that time that Phase II nationwide licensees must construct a sufficient number of base stations to meet certain geographic area and population coverage requirements or, alternatively, could demonstrate substantial service if offering fixed services as part of their systems. 47 C.F.R. § 90.769 (2002).

¹⁴ See *Access Waiver Order*, 17 Rcd at 20470 ¶ 17 (*citing* 47 C.F.R. § 27.603(c)). The Bureau also permitted Access to use third party activities to meet the construction requirements applicable to the licenses it held in that band. *Id.* at 20473 ¶¶ 22- 23.

¹⁵ *Access Waiver Order*, 17 FCC Rcd at 20470 ¶ 17.

in the 220 MHz band.¹⁶ In April 2004, Access submitted notifications of construction claiming it was eligible to use the “substantial service” option and that it had met the applicable five-year construction requirements for its Phase II 220 MHz EA, REAG and nationwide licenses by providing such service through diligently pursuing the provision of band management services, by partnering with equipment manufacturers to develop previously non-existent voice and data solutions for this band, and by investing substantial sums in spectrum sales and marketing efforts.¹⁷ Also, Access’ two Phase I nationwide licenses were scheduled to expire on September 19 and September 23, 2004, respectively. In its Petition, Access seeks alternative relief by submitting renewal requests for these two licenses, arguing that it has met the applicable construction requirements by providing substantial service.¹⁸

7. In the July 2004 *Havens Extension Order*, the Bureau recognized the technical constraints, scarcity of equipment, and other limitations in the 220 MHz band and granted a three-year extension of the five-year interim construction requirement to all Phase II 220 MHz licensees that timely requested relief or that had not reached the interim deadline.¹⁹ On its own motion, the Bureau found it in the public interest to extend similar relief to Access, noting that Access, the only 220 MHz band manager, had diligently implemented its band manager operations.²⁰ On September 16, 2004, Access filed the Petition now before us.²¹ Later that month, the Commission released an order in its rural services proceeding making the substantial service standard available to those 220 MHz Phase II licensees that were not already authorized to use that standard to satisfy their construction requirements.²² On

¹⁶ See *supra* n.13 (referencing section 90.769 Phase II nationwide requirements and application of those requirements to Access’ Phase I nationwide licenses). For Access’ Phase II REAG and EA licenses, the rules in effect at that time required Access to demonstrate construction of a sufficient number of base stations to cover at least one-third of the population in each relevant market area by the five-year mark. If the REAG and EA licensee offered fixed services or had one or more incumbents in their area, they could alternatively demonstrate an appropriate level of substantial service at their construction deadline. 47 C.F.R. §90.767.

¹⁷ See ULS File No. 0001686961 (filed April 6, 2004). As noted, the rules in effect at the time for the 220 MHz band only allowed EA and REAG licensees to use the substantial service option if they provided fixed services or had one or more Phase I incumbents in their service area. *Supra* n.16. However, in its April 2004 notification, Access, apparently including itself among licensees that provide fixed services, argued that it was eligible to use the substantial service option for all of its licenses, rather than for only its three nationwide authorizations, and that the concept of substantial service should be applied flexibly to it as a band manager. See ULS application 0001686961 at 3-9.

¹⁸ Petition at 24-31.

¹⁹ Request of Warren C. Havens for Waiver or Extension of the Five-Year Construction Requirement for 220 MHz Service Phase II Economic Area and Regional Licenses, *Memorandum Opinion and Order*, 19 FCC Rcd 12994, 13000-13002 ¶¶ 14-20 (WTB 2004) (*Havens Extension Order*).

²⁰ *Id.* at 13003 ¶ 22. In September 2004, due to the extension provided to Access and other 220 MHz licensees, the Bureau’s Mobility Division dismissed without prejudice 148 notifications of compliance with construction requirements, filed by Access and other licensees. See Wireless Telecommunications Bureau, Mobility Division, Announces the Dismissal of 220 MHz Service Phase II Construction Notifications, *Public Notice*, 19 FCC Rcd 18095 (WTB MD 2004).

²¹ Petition at 7-8, 24-40.

²² Specifically, the Commission amended Section 90.769(a) of its rules, 47 C.F.R. §90.769(a), to allow all 220 MHz Phase II nationwide licensees to use the substantial service standard to satisfy their construction requirements without requiring the provision of fixed service. Similarly, the Commission amended Section 90.767(a) of its rules, 47 C.F.R., §90.767(a), to allow all Phase II REAG and EA licensees to use that standard without requiring the provision of fixed service or requiring such licensees to have a Phase I incumbent in their markets. 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, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 19078, 19120, ¶ 75 and Appendix A (2004) (*Rural Services R & O*).

September 30, 2004, we placed the Petition on Public Notice for comment.²³ On December 8, 2004, Access filed a “Supplemental Reply of Access Spectrum” (Access Reply) responding to oppositions raised in reply comments.

III. PLEADINGS AND DISCUSSION

A. Access’ Request for Consolidation of Phase I and Phase II Licenses, Extended License Term, Removal of Interim Construction Requirements and Related Relief

8. Access requests waiver of various Commission rules,²⁴ arguing that it is primarily engaged in making its spectrum available to third parties in a customized fashion as a band manager, and therefore should not be subject to traditional construction requirements.²⁵ In support, Access states that as a band manager, it is providing customers with spectrum tailored to their spectral, geographic, temporal and technical needs, but that it does not necessarily deploy its own network or provide communication services directly to end users and does not dictate the timing and extent of each customer’s network build-out and coverage.²⁶ Access also argues that the patch-work of varying terms and construction requirements across all of its licenses limits its flexibility in assigning spectrum resources to meet customer needs. For example, because customers often require access to spectrum associated with various Access licenses, Access asserts that fulfilling customer needs should be its primary consideration in assigning available channels rather than upcoming construction deadlines. Access further argues that the periodic requirement to satisfy construction milestones has caused uncertainty for potential customers that may question whether Access can proffer the required showing necessary to protect its licenses and ensure uninterrupted spectrum access. Access submits that the requested consolidation in a single license under one call sign of all of its 220 MHz licenses and the extension of the term of that consolidated license to 2019 would enhance considerably Access’ ability to attract and retain customers.²⁷ In further support of its waiver request, Access argues that strict application of the Part 90 construction rules would not serve their underlying purpose of ensuring the use of spectrum and deterring warehousing, but rather would continue to foster uncertainty for Access’ customers.²⁸ Access submits that grant of the requested

²³ See Wireless Telecommunications Bureau, Mobility Division, Seeks Comment on Access 220 LLC’s Request for Waiver of Construction Requirements and Extension of Terms of Its Licenses in the 220 MHz Service, *Public Notice*, 19 FCC Rcd 19075 (WTB MD 2004). Comments were filed by The American Association of Railroads (AAR), CSX Transportation (CSX), Cyber Communications, Inc. (Cyber Comm), Dataradio (Dataradio), Day Wireless Systems (Day), Industrial Telecommunications Association (ITA), and Motorola, Inc. (Motorola). Reply comments were filed by the American Mobile Telecommunications Association (AMTA), BizCom USA (BizCom), and the Northeast Utilities System (Northeast). See Appendix A. We note that ITA and AMTA have combined to form the Electronic Wireless Association (EWA) (see www.enterprisewireless.org).

²⁴ Access seeks waivers of section 90.725(a) (construction requirements for Phase I Nationwide licenses), section 90.743(a)(1) and (b)(1)-(3) (renewal requirements for Phase I Nationwide licenses), section 90.743(c) (ten-year term for Phase I Nationwide licenses), section 90.765 (ten-year term for Phase II licenses), 90.767 (construction requirements for Phase II EA and REAG licenses), and section 90.769 (construction requirements for Phase II Nationwide licenses). 47 C.F.R. §§ 90.725(a), 90.743(a)(1) and (b)(1)-(3), 90.743(c), 90.765, 90.767, and 90.769.

²⁵ Petition at 16, 17.

²⁶ *Id.* at 10, 12.

²⁷ *Id.* at 19.

²⁸ *Id.* at 20. As evidence that it is not warehousing spectrum, Access claims that it has spent “millions” in equipment development and spectrum marketing efforts and that it is under considerable pressure to make its spectrum available to paying third parties as rapidly as possible. Access adds that rigid adherence to the multiple deadlines in these rules could promote uneconomic construction as well as continued uncertainty on the part its potential customers, thus impeding development of the 220 MHz band. *Id.*

waivers and related relief would advance two important Commission goals: efficient use of the 220 MHz spectrum and development of the band manager concept as a way of fostering efficient use of spectrum.²⁹

9. Access also asserts that a 15-year license term is more appropriate for a band manager in the 220 MHz Service. Because the Commission gave band managers in the 700 MHz Guard Band 15-year license terms to allow for the clearing of incumbent broadcast operations, Access argues that a similar license term is appropriate for its 220 MHz band manager operations. Specifically, Access contends that the limited spectrum made available in the 220 MHz band (2 MHz) and the narrow channels bandwidths established in that band (5 kHz) have combined to prevent the development of a robust equipment market in that band.³⁰ Access submits that the resulting lack of available equipment for use in the band causes its prospective customers and their equipment vendors to need more time to develop and deploy the equipment necessary to make better use of this spectrum, noting that the majority of its customers seek equipment for wider channels than 5 kHz to deploy new voice and data solutions.³¹ Further, because customers often seek spectrum to implement long term business plans, Access explains that expanding the term of the proposed new consolidated license from 10 to 15 years and removing interim construction requirements would remove uncertainty as to whether the spectrum will be available for the duration of such plans.³² Access also argues that it has only been a short time since it was given authority to provide band manager services in the 220 MHz band and that it will take additional time for potential customers to accept this new model for accessing spectrum.³³

10. *Comments and Replies.* AAR, CSX, Day, Dataradio, CyberComm, and Northeast all use or have used 220 MHz spectrum provided by Access and filed comments supporting Access' request for consolidation of its 220 MHz licenses and related relief. These parties all argue that Access' band manager operations at 220 MHz provide important flexible spectrum options for a wide range of customers including schools, public safety operations and niche applications.³⁴ Generally, these parties argue that the current regulatory regime creates uncertainty for Access' customers and partners, as well as creating unnecessary administrative burdens on Access as a band manager at 220 MHz.³⁵ These commenters also support the Access Petition because they believe its grant would create a more flexible, more stable, and more appropriate regulatory environment for band manager operations.³⁶ As a matter of precedent, AAR notes that in response to its request several years ago, the Commission consolidated into one "ribbon license" more than 300 site-specific Private Land Mobile Radio Service (PLMRS) licensees

²⁹ Petition at 2. Access submits that grant of these waivers would cause it to be regulated more like band managers in the 700 MHz Guard Band as it claims was intended when Access was granted a waiver to be a band manager in the 220 MHz band. *Id.* at 9.

³⁰ Petition at 22, Access Reply at 12. As a result of the fragmentation of the 220 MHz band, Access notes it holds band manager spectrum under more than 100 separate licenses with varying terms. Petition at ii.

³¹ Access Reply at 12. Access argues that a 15-year license term is needed to create the climate for equipment development at 220 MHz because it often takes two years to develop equipment and Access typically seeks spectrum use agreements of ten years or five years with an optional five-year renewal. Petition at 22.

³² Petition at 16. Additionally, Access asserts that moving the renewal date to 2019 would eliminate unnecessary administrative burdens on Access and the Commission's staff. Petition at 21.

³³ Petition at 24.

³⁴ *See, e.g.*, Northeast Reply at 1. Because of the flexibility Access provides, Northeast uses Access' 220 MHz spectrum for the wireless Supervisory Control and Data Acquisition (SCADA) system that monitors and controls its distribution of electrical power in New England.

³⁵ *See, e.g.*, Day Comments at 1. Day urges consolidation of Access' licenses in the 220 MHz band to relieve that band manager from the administrative costs and uncertainties created by its current patchwork license structure.

³⁶ *See, e.g.*, CyberComm Comments at 1.

that had been used throughout the country by the railroad industry for Advanced Train Control Systems (ATCS).³⁷

11. ITA and Motorola also filed comments in support of these consolidation requests. ITA contends that the consolidation of licenses and related waivers sought by Access will promote stability within the 220 MHz service; enhance spectral efficiency; and promote new services, including mission-critical applications for enterprises, municipalities, and communications solution providers.³⁸ Motorola also supports the extended license term for Access arguing that entities deploying systems need assurance that the spectrum will be available for the life of the radio system, which in some cases can extend to 15 years.³⁹

12. AMTA supports Access' request for consolidation of its 220 MHz licenses and related requests provided similar relief is granted to other 220 MHz licensees,⁴⁰ in order to avoid providing Access with a competitive advantage or treating similarly situated licensees differently. AMTA argues that because Access acquired commercial spectrum and then requested waiver relief to become a band manager, then it should not now be permitted to use that election to boost itself to a superior competitive position. In particular, AMTA asserts that the challenges arising from Access' inability to control its destiny by building facilities rather than leasing spectrum to others are the result of its regulatory choice and that its current leasing authority was presumably an objective of Access in seeking band manager status. AMTA also contends that since the adoption of the Commission's spectrum leasing rules, the "differences between band managers and other commercial licensees have diminished significantly, while their competitive intersections have increased."⁴¹

13. BizCom USA opposes Access' request for the consolidation of Access' 220 MHz licenses and related relief, arguing that Access' status as a band manager does not justify the requested waivers and would remove regulatory parity in the band by placing Access at a competitive advantage.⁴² BizCom argues that grant of the Access request would undermine the purpose of the Commission's construction rules, which is to preclude warehousing of spectrum and that the removal of applicable construction requirements until 2019 would leave little or no incentive for Access to ensure the spectrum is deployed. According to BizCom, if Access cannot build out its 220 MHz spectrum (either on its own

³⁷ AAR Comments at 3-4. In allowing that consolidation of its PLMRS licenses, AAR contends the Commission agreed with AAR that such consolidation would streamline Commission's processes concerning these licenses and provide the railroad industry with flexibility in deploying ATCS base stations. *Id.* See also Petition of Association of American Railroads for Modification of Licenses for Use in Advanced Train Control Systems and Positive Train Control Systems, *Order*, 16 FCC Rcd 3078, 3082 ¶¶ 9-10 (WTB PSPWD 2001) (*AAR Order*).

³⁸ ITA Comments at 3-6. According to ITA, potential end users are concerned about Access' ability to administratively maintain hundreds of call signs, each with various coverage areas, performance requirements, service showings, construction deadlines, and renewal dates, and that a grant of relief would provide users a 15 year assurance of a viable communications solutions, would reduce fears of continued regulatory instability in this band, and would provide equipment manufacturers with sufficient time to allow the market for 220 MHz equipment to develop. *Id.*

³⁹ Motorola Comments at 3. Motorola reports it has collaborated with Access to develop conventional and trunked voice equipment for the 220 MHz band and that this equipment has proven to be an effective solution to help meet private land mobile operational needs.

⁴⁰ AMTA Reply at 3.

⁴¹ *Id.* at 4-5. AMTA suggests that the relief requested by Access warrants larger consideration in a rule making so that all 220 MHz licensees (and other Part 90 commercial licensees in other bands) are subject to the same regulatory framework. *Id.* Regarding the Commission's spectrum leasing rules, see n.49 *infra*.

⁴² BizCom Reply at ii and 12.

or through its lessees) under the same requirements as other 220 MHz licensees, then Access should forfeit its spectrum.⁴³ BizCom further argues if relief is granted, Access' incentive to construct would be eliminated because Access could merely lease its spectrum without taking responsibility to ensure that third parties are actually using the spectrum.⁴⁴ BizCom also contends that the consolidation of Access' licenses under one call sign would provide a competitive advantage over other licensees in terms of fees paid and would imply that Access is an indefinite licensee of that particular spectrum.⁴⁵

14. *Discussion.* Section 1.925(b)(3) of the Commission's rules outlines the standards under which waiver requests are considered. Under this rule, a waiver may be granted if it is shown that: "(i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁴⁶

15. Based on the record before us, we find that Access has failed to meet the established waiver criteria regarding its request for consolidation of its Phase I and Phase II licenses under a single call sign, elimination of interim construction requirements, and extension of the term of a consolidated license until 2019. First, we note that the purpose of the 220 MHz construction rules is to encourage rapid spectrum development and discourage warehousing of spectrum.⁴⁷ While we agree that a band manager should be able to provide its customers with some degree of certainty, flexibility and convenience, we do not believe that a band manager's business approach is so unique as to justify the extraordinary relief Access requests. Specifically, we find that a waiver of Access's interim construction requirements and grant of a 15-year extension of its license term to 2019 would undermine the purpose of the rule (*i.e.*, ensuring that spectrum is widely deployed without warehousing), and would create a significant regulatory disparity among 220 MHz band licensees by potentially affording Access and its customers a competitive advantage.⁴⁸ While Access argues that potential customers face uncertainty due to the lack of uniformity among Access' regulatory requirements, we note that licensees in many wireless

⁴³ *Id.* at 11 (noting waiver request from Access includes no assurance that the large quantities of spectrum it holds will actually be deployed at any time prior to 2019).

⁴⁴ BizCom Reply at 12.

⁴⁵ Access responds to BizCom by submitting that the relief it requests would not jeopardize spectrum efficiency because band manager licensing is a market-based mechanism that gives band managers and their customers substantial financial incentive to deploy equipment and use their spectrum. Access Supplemental Reply at ii. Access also asserts that, given the Commission's control over spectrum transfer and assignments, it can implement this consolidation without damaging the integrity of the 220 MHz licensing scheme as BizCom suggests. *Id.*

⁴⁶ 47 C.F.R. § 1.925(b). Additionally, Section 1.3 of the Commission's rules provides authority for rule waivers upon a showing of good cause. 47 C.F.R. § 1.3.

⁴⁷ Section 309(j) of the Communications Act states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees, and to promote investment and deployment of new technologies and services. *See* 47 U.S.C. §309(j)(4)(B).

⁴⁸ The Commission has sought to maintain regulatory parity within wireless markets. For example, in extending its manual roaming rule to other services in the Commercial Mobile Radio Service (CMRS), the Commission stated that roaming capability may be a key competitive consideration in the wireless market and that new entrants may be at a competitive disadvantage with respect to incumbent wireless carriers if their subscribers have no ability to roam on other networks. *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9469-70, ¶ 11 (1996). The Commission further determined to extend the roaming rule "in order to ensure regulatory parity and to promote competition in the wireless market by enhancing all such carriers' abilities to compete." *Id.* at 9471 ¶ 13.

services deploy networks composed of a mix of licenses that may be subject to differing construction requirements and renewal deadlines, including service providers that lease their spectrum pursuant to the Commission's spectrum leasing policies.⁴⁹ In certain types of spectrum leasing, for example, lessees routinely enter into agreements to operate on leased spectrum where continued access to the spectrum is dependent upon the licensee's (lessor) continuing regulatory compliance, including meeting construction deadlines.

16. We also note that in 2002 Access specifically sought to extend the 700 MHz band manager regime to its 220 MHz licenses. Further, the approximately 15 year license term for 700 MHz Guard Band Managers was justified by the need for additional time to relocate incumbent television operations that limit deployment in that band,⁵⁰ and there are no similar incumbency issues in the 220 MHz band. Finally, we find that the limited spectrum, narrow channelization, band fragmentation, and equipment availability issues raised by Access do not justify a substantially prolonged license term until 2019.⁵¹ While we recognize persistent technical and equipment challenges in the 220 MHz band,⁵² the record reflects that some 220 MHz band equipment exists, more is being manufactured, and that Access has been able to enter into SUAs with 220 MHz customers. We find that maintaining the current deadlines for the Phase II licenses,⁵³ which have already been extended once for three years, is in the public interest to encourage rapid spectrum development, discourage warehousing, and maintain regulatory parity with other 220 MHz licensees.

17. We also note that the Bureau has allowed consolidation of radio licenses, but only for administrative convenience in regulating a single communications network or integrated system of networks.⁵⁴ After a review of the record, we are not convinced that the totality of Access' 220 MHz

⁴⁹ The Commission's spectrum leasing rules generally permit two types of leasing options, *de facto* transfer leasing and spectrum manager leasing. A *de facto* transfer lease arrangement places primary responsibility upon the lessee to interact with the Commission and ensure compliance with the Commission's rules. See *Secondary Markets R&O*, 18 FCC Rcd at 20612-13 ¶ 13 (2003). Under this option, "licensees and spectrum lessees may enter into spectrum leasing arrangements—for any amount of spectrum, in any geographic area, and for any period of time within the scope and term of the license—in which *de facto* control of the leased spectrum is transferred to the spectrum lessee(s) for the duration of the lease." *Id.* In this type of spectrum leasing arrangement, the licensee retains *de jure* control. *Id.* Under the second option, spectrum manager leasing, "licensees and spectrum lessees may enter into spectrum leasing arrangements—for any amount of spectrum, in any geographic area, and for any period of time within the scope and term of the license—without the need for prior Commission approval, provided the licensees retain *de facto* control...over the leased spectrum." *Id.* at 20610-12 ¶ 12. In this type of lease arrangement, the licensee retains both *de jure* and *de facto* control. *Id.* See generally 47 C.F.R. Part 1, Subpart X ("Spectrum Leasing").

⁵⁰ Specifically, the Commission determined these Guard Band Manager licenses would "extend eight years beyond the year 2006, the date as of which incumbent broadcasters are required to have relocated to other portions of the spectrum." See *700 MHz Second R&O*, 15 FCC Rcd at 5330-5331 ¶ 72. See also Section 27.13(b) of the Commission's rules, 47 C.F.R. § 27.13(b).

⁵¹ Petition at ii, 22; Access Reply at 12.

⁵² See ¶ 23 *infra*.

⁵³ We note that under the relief provided in the *Havens Extension Order*, 113 of Access' 220 MHz licenses have interim construction benchmarks in 2007 and renewal deadlines in 2009. Another four of the licenses held by Access in that band also have interim construction benchmarks in 2007 but have renewal deadlines in 2012.

⁵⁴ As noted earlier, AAR requested and obtained consolidation under a single "ribbon" license over 300 site-specific Private Land Mobile Radio licenses used in connection with AAR's Advanced Train Control System. Finding such consolidation would bring significant public safety benefits and noting the importance of an efficient, ubiquitous,

(continued...)

licenses comprises a single communications network or an integrated system of networks to warrant a consolidation of these licenses. Further, a grant of the requested license consolidation, coupled with the request for a new 15-year license term, would materially alter Access' construction obligations for 119 licenses both geographically and spectrally. We do not find unique or unusual factual circumstances that make the continued application of these Part 90 rules to Access inequitable, unduly burdensome or contrary to the public interest, or that Access lacks reasonable alternatives to satisfy them. Accordingly, we do not believe that the public interest would be served by consolidation of these licenses and the related relief requested by Access, and we will continue to evaluate each license on an individual basis to determine compliance with relevant construction requirements.⁵⁵

B. Alternative Request for Renewal of Phase I Nationwide Licenses

18. As an alternative to the extended license term request denied above, Access seeks renewal, based upon its efforts to provide substantial service as a 220 MHz band manager, of its two Phase I nationwide licenses that were scheduled to expire in September 2004. In support, Access contends that the Commission has found that the substantial service standard must be applied flexibly, in a manner that serves the policy goals of the Commission, and administered on a case-by-case basis taking into account the specific circumstances of the licensee.⁵⁶ Access argues that it has satisfied the factors the Commission has considered in assessing substantial service. Specifically, Access argues it: (1) has facilitated the offering of specialized and technologically sophisticated services at 220 MHz; (2) serves both niche markets and customers outside population centers; (3) offers band manager services nationwide; (4) is not warehousing spectrum and its resources are available to customers; (5) has made substantial investments developing services in the 220 MHz band; and (6) supports the deployment of new technologies and services.⁵⁷ Access notes that as a band manager, it has been able to provide customers with rapid access to spectrum in different locations and on different frequencies without having to secure prior Commission approval.⁵⁸ As a result of these efforts, Access reports that it has executed SUAs with a number of unaffiliated entities for portions of the 220 MHz spectrum and that it has collaborated with other 220 MHz licensees in order to provide necessary spectrum capacity for certain customers.⁵⁹

19. Access also argues that it has furthered the Commission's goals by devoting considerable attention to the nationwide marketing of spectrum in the 220 MHz band. Access notes that it has made investments in the development of equipment and formed partnerships with equipment manufacturers and producers of ancillary telecommunications devices resulting in the development of previously non-existent voice and data solutions.⁶⁰ Access states that it has hired numerous sales professionals and launched a sustained campaign to market spectrum to private wireless users.⁶¹ While it has experienced

(...continued from previous page)

and internationally coordinated railroad communications system, the Bureau's former Public Safety and Private Wireless Division granted that AAR request in 2001. *AAR Order*, 16 FCC Rcd at 3082 ¶ 9.

⁵⁵ See, e.g., *Cingular Interactive, L.P., Showing of Substantial Service Pursuant to Section 90.665(c)*, File No. 0000226552, *Order*, 16 FCC Rcd 19200, 19203 (WTB 2001).

⁵⁶ Petition at iv and 28.

⁵⁷ *Id.* at 30-37.

⁵⁸ *Id.* at 10-11.

⁵⁹ *Id.* at 5. See also n.75 *infra*.

⁶⁰ Petition at 4.

⁶¹ *Id.* at 5

some success, Access contends that the band manager concept is still being developed and that it will take additional time before the marketplace fully accepts this new model as a means to secure access to spectrum. Access contends that a finding that it is providing substantial service would be consistent with the Commission's goals and would serve the public interest.⁶²

20. *Comments and replies.* To maintain a viable 220 MHz market, Motorola urges the Commission to grant Access' Phase I license renewals and related relief because the development of new 220 MHz systems and services can take time. In addition, because full use of the 700 MHz band manager spectrum is hindered by incumbent broadcast operations, Motorola contends Access should be allowed to continue its development of the 220 MHz spectrum because in some areas of the country, that spectrum represents one of the few options for the implementation of additional private land mobile systems.⁶³

21. BizCom, however, claims that Access' Petition falls far short of the requirements for renewal of these licenses and urges rejection of this alternative request.⁶⁴ BizCom notes that although the Commission has been flexible in reviewing substantial service showings, "substantial service implies some level of construction."⁶⁵ While acknowledging that from time to time the Commission has taken into account the more subjective factors cited by Access, BizCom notes this has always been done in the context of specific construction or build-out showings that are supplemented with safe harbor examples involving some level of construction.⁶⁶ BizCom claims that Access does not provide any documentation, quantitative evidence or specific examples of the extent to which systems have actually been constructed and deployed in the marketplace.⁶⁷ Accordingly, BizCom asserts it would be contrary to the public interest for the Commission to grant the requested waiver of its buildout requirements without a more specific quantitative basis for its decision as to whether substantial service has been achieved.⁶⁸

22. *Discussion.* Under the *Access Waiver Order*, we required Access to satisfy the Phase II nationwide construction requirements of rule section 90.769 to renew each of its two Phase I nationwide licenses.⁶⁹ As discussed herein, we affirmed in the *Access Waiver Order* that Access remained subject to

⁶² *Id.* at 37.

⁶³ Motorola Comments at 2-4.

⁶⁴ BizCom Reply at 14-28.

⁶⁵ *Id.* at 20. Citing orders in 37.0-38.6 GHz band and in the 36.5-37 GHz band, BizCom notes that the Commission has consistently required demonstrations of "construction" of facilities and "coverage" of populations. *Id.* at 20-21 (*citing* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18625-18626 ¶ 46 (1997) and Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band, *First Report and Order and Second Notice of Proposed Rulemaking*, 15 FCC Rcd 20488, 20523-20524 ¶ 83 (2004) (*36.5-37 GHz Band R&O*)).

⁶⁶ BizCom Reply at 21-22. For example, BizCom notes the safe harbor "substantial service" provisions adopted by the Commission in the 36.5-37 GHz band each incorporated some level of construction. *Id.* at 20-21 (*citing 36.5-37 GHz Band R&O*, 15 FCC Rcd at 20524 ¶ 83).

⁶⁷ BizCom Reply at 24. In response to BizCom's assertion, Access notes that it has described numerous systems that have been constructed and deployed by its customers under their SUAs and that the geographies covered by those agreements include parts of Florida, Illinois, Indiana, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, and West Virginia. Access Reply at 16.

⁶⁸ BizCom Reply at 25. BizCom notes a claim by Access that it should get some credit for making short term spectrum available and that short-term services have actually been provided with such spectrum. However, the availability of such short term services does not, in BizCom's view, warrant waiver of all construction requirements for 15 years. Instead, BizCom asserts that this issue should be addressed in a rulemaking proceeding. *Id.*

⁶⁹ See *supra* n.13 and accompanying text.

applicable interim and renewal construction obligations, but we made clear that it could satisfy these requirements through the construction activities of its customers,⁷⁰ as well as through its own activities.⁷¹ In light of applicable Commission rules and policies and the record before us, including the reported utilization of this spectrum by Access' customers or Access affiliates, we do not find Access has provided substantial service warranting a ten-year renewal for either of its Phase I licenses. We also do not find that the spectrum marketing, equipment development, and other reported activities of Access to date are sufficient to meet its construction obligations for these two Phase I nationwide licenses even under our more flexible substantial service standard.

23. For the reasons discussed below, however, we partially grant Access' request for a waiver of rule section 90.769 and conditionally grant renewal of these two Phase I nationwide licenses for a five-year period. In particular, we note a number of unique or otherwise unusual factual circumstances that, taken together, justify a limited conditional renewal of these two Phase I nationwide licenses because strict enforcement of the existing performance requirements would be contrary to the public interest.⁷² First, Access is the sole 220 MHz band manager, has made contributions to the development of 220 MHz equipment through efforts with Motorola and presently makes its spectrum available both nationwide and locally to those who need that spectrum, but do not have the necessary licenses or a desire to obtain a license.⁷³ As a band manager, Access is uniquely situated to customize spectrum to the spectral, temporal, and geographic needs of its customers and to make that spectrum rapidly available, even on a temporary basis. Further, authorization of band managers is part of an on-going Commission test in spectrum management,⁷⁴ and we find it in the public interest to allow Access at this time to continue to make all of its spectrum and its related band management services available to customers in a flexible manner to meet demands for spectrum use. We also note that Access reports it has entered into SUAs with a number of customers including private system operators, utilities and railroads deploying specialized data solutions, and municipalities seeking frequencies for emergency use.⁷⁵ We observe that Access obtained these two nationwide licenses with approximately two years remaining to the license term⁷⁶ and we believe the limited relief provided here, combined with Access' equipment development

⁷⁰ See *Access Waiver Order*, 17 FCC Rcd at 20473 ¶ 22.

⁷¹ In the *Access Waiver Order*, the Bureau did not prohibit Access from meeting its interim and renewal standards through its own construction activities, only that "the predominant portion of the 220 MHz spectrum licensed to Access" be leased to third parties. See *Access Waiver Order*, 17 FCC Rcd at 20473 ¶ 22.

⁷² See Section 1.925(b) of the Commission's rules. 47 C.F.R. § 1.925(b).

⁷³ See n.39 and ¶ 19, *supra*.

⁷⁴ For example, in the 700 MHz Guard Band proceeding, the Commission declared it was "licens[ing] a new class of commercial user . . . called a Guard Band Manager" and it referred to this new entity as "a 'next generation' frequency coordinator." *700 MHz Second Report and Order*, 15 FCC Rcd at 5311-5312 ¶ 2, 5321 ¶ 45. However, the Commission acknowledged the experimental nature of this new user class by noting one objective was to "conduct a useful test of the Band Manager concept and obtain the full benefits of this new licensing approach." *Id.* at 5325 ¶ 59.

⁷⁵ See Petition at 32-33, Access Supplemental Reply at 16. Access notes the areas covered by these SUAs include parts of Florida, Illinois, Indiana, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, and West Virginia. *Id.* See also the last two annual reports filed by Access as a band manager in the 220 MHz band. Letter from John F. Bruno, Access Spectrum, LLC, to John Muleta, Chief, Wireless Telecommunications Bureau, not dated, and Letter from Andrew J. Rein, Access Spectrum, LLC, to Catherine Seidel, Acting Chief, Wireless Telecommunications Bureau, dated Feb. 28, 2006 (see <http://wireless.fcc.gov/services/guard700/data/reports>).

⁷⁶ Access obtained its two Phase I nationwide licenses from Intek in August 2002, almost eight years into the license term.

and marketing efforts, could result in efficient use of this spectrum in the near term. Finally, as recognized in the *Havens Extension Order* applicable to Access' Phase II licenses, the 220 MHz band continues to present licensees with various technical and equipment challenges.⁷⁷ As the Bureau has noted, "the small amount of narrowband spectrum made available in non-contiguous blocks presents unique challenges to certain 220 MHz licensees"⁷⁸ and a "large number of licensees face equipment availability problems" due to such technical constraints.⁷⁹ Accordingly, the Bureau found "a unique situation" in the 220 MHz band with "widespread equipment availability difficulties facing licensees and confining technical characteristics."⁸⁰ Therefore, we are satisfied that sufficient challenges remain in this band to warrant limited relief with regard to the two Phase I nationwide licenses held by Access and note that Access appears to have made progress in addressing the equipment and other challenges at 220 MHz. We reiterate, however, that spectrum marketing and equipment development efforts alone do not constitute substantial service and that we will continue to evaluate the extent to which facilities have been constructed and the extent to which service is actually provided using Access' spectrum, consistent with the terms of the *Access Waiver Order*.

24. The five-year renewal of Access' two Phase I nationwide licenses⁸¹ is subject to the following conditions. First, on or before November 5, 2007 (the deadline for satisfaction of interim requirements for substantially all of its Phase II licenses), Access must file a report which includes details of its SUAs regarding use of its Phase I license spectrum.⁸² This report shall be separate from the annual report required to be filed on or before March 1 of each year, and shall include the following information regarding SUA's that authorize use of frequencies associated with Access' Phase I licenses: the commencement date, duration, and the geographic area covered; the frequencies authorized and the license(s) from which those frequencies are drawn; the name and address of customer and its anticipated use of the authorized frequencies; the extent to which each customer has constructed facilities or otherwise provided communications services using the authorized frequencies; any provisions for renewal of such SUAs; and such other information as Access believes will aid the Commission in understanding the nature and significance of the use being made of the subject spectrum. Second, consistent with the *Access Waiver Order*, Access must comply with the Phase II construction requirements set forth in 90.769 for each of its Phase I licenses, which provides the option of constructing a sufficient number of base stations to meet applicable construction requirements or, as an alternative, provision of substantial service. These Phase I construction requirements must be met on or before September 19, 2009, for call sign WFP444 and on or before September 23, 2009, for call sign WFR284 or such Phase I licenses are subject to automatic cancellation without further Commission action. Third, Access must notify the Commission in accordance with rule 1.946, 47 C.F.R. § 1.946, of its compliance with these construction requirements for each Phase I license.

⁷⁷ In that *Order*, the fact that 23 licensees sought relief led the Bureau to conclude that "technical and equipment challenges in this band" were "widespread." *Havens Extension Order*, 19 FCC Rcd at 13002 ¶ 19.

⁷⁸ *Havens Extension Order*, 19 FCC Rcd at 13001 ¶ 16.

⁷⁹ *Id.* at 13002 ¶ 18.

⁸⁰ *Id.* at 13001 ¶ 16.

⁸¹ Under this conditional renewal, Call Sign WFP444 is scheduled to expire on September 19, 2009, and Call Sign WFR284 is scheduled to expire on September 23, 2009.

⁸² In its October 2002 Order, the Bureau required Access to file annual reports regarding its progress in obtaining SUAs. Specifically, the Bureau required that Access include the following: (1) the total number of spectrum users and the number of those users that are affiliates of Access 220; (2) the amount of Access 220's spectrum being used by its affiliates in any part of the licensed area; (3) the amount of Access 220's spectrum being used pursuant to agreements with unaffiliated third parties; (4) the nature of the spectrum use of Access 220's customers; and (5) the length of the term of each spectrum use agreement. *Access Waiver Order*, 17 FCC Rcd at 20470 ¶ 17.

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4 (j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155(c), and 303 (r) , and sections 0.331, 1.925, 1.945, and 1.946, of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, 1.945, and 1.946:

a. that the joint request of Access Spectrum, LLC, and Access 220, LLC, for consolidation into a single license of certain Phase I and Phase II licenses held by Access 220, LLC, in the 220 MHz band, for the assignment of a single call sign to such a consolidated license, for the waiver of certain applicable construction requirements, and for other relief with regard to those licenses, filed on September 16, 2004, IS HEREBY DENIED;

b. that the joint request of Access Spectrum, LLC, and Access 220, LLC, for a ten-year renewal of the two Phase I nationwide licenses held by Access 220, LLC, in the 220 MHz band, call signs WFP444 and WPFR284, filed on September 16, 2004, IS HEREBY DENIED;

c. that the joint request of Access Spectrum, LLC, and Access 220, LLC, for a wavier of Commission rule 90.769, 47 C.F.R. § 90.769, is hereby granted in part and, accordingly, the renewal applications for call sign WFP444 (ULS File No. 0001873639) and call sign WPFR284 (ULS File No. 0001873671) are hereby granted for a period of five years, until September 19, 2009, subject to the terms and conditions specified herein; and

d. that Access 220, LLC, SHALL FILE with the Commission on or before November 5, 2007, a report described herein regarding its two Phase I nationwide licenses in the 220 MHz band, call signs WFP444 and WPFR284.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief
Mobility Division
Wireless Telecommunications Bureau

APPENDIX A: Comments and Other Filings

A. Initial Comments

Industrial Telecommunications Association (ITA)
Motorola, Inc. (Motorola)
American Association of Railroads (AAR)
CSX Transportation (CSX)
Day Wireless Systems (Day)
Dataradio (Dataradio)
Cyber Communications, Inc. (Cyber Comm)

B. Reply Comments

American Mobile Telecommunications Association (AMTA)
BizCom USA (BizCom)
Northeast Utilities System (Northeast)

C. Ex Parte and Other Filings by Access Spectrum, LLC

November 9, 2004 -- Notice of Oral Ex Parte Presentation
December 8, 2004 – Supplemental Reply of Access Spectrum
February 11, 2005 – Notice of Oral Ex Parte Presentation
February 22, 2005 – Notice of Oral Ex Parte Presentation
April 20, 2005- Notice of Written Ex Parte Presentation
May 11, 2006 – Notice of Oral Ex Parte Presentation

APPENDIX B: Licenses Covered By Access Petition

Call Sign	Phase-Geographic Area	Market Code	Market Desc	Buildout Type	Deadline	Expired Date
WFPF444	Phase I - Nationwide	National	U.S. and Possessions		09/19/2004	09/19/2009
WPFR284	Phase I - Nationwide	National	U.S. and Possessions		09/23/2004	09/23/2009
WPOI501	Phase II - EA	BEA014	Salisbury, MD-DE-VA	First	11/05/2007	03/22/2009
		BEA014	Salisbury, MD-DE-VA	Second	03/22/2009	03/22/2009
WPOI502	Phase II - EA	BEA017	Roanoke, VA-NC-WV	First	11/05/2007	03/22/2009
		BEA017	Roanoke, VA-NC-WV	Second	03/22/2009	03/22/2009
WPOI695	Phase II - EA	BEA003	Boston-Worcester-Lawrence-Lowe	First	11/05/2007	03/22/2009
		BEA003	Boston-Worcester-Lawrence-Lowe	Second	03/22/2009	03/22/2009
WPOI696	Phase II - EA	BEA003	Boston-Worcester-Lawrence-Lowe	First	11/05/2007	03/22/2009
		BEA003	Boston-Worcester-Lawrence-Lowe	Second	03/22/2009	03/22/2009
WPOI701	Phase II - Nationwide	NWA255	U.S. and Possessions	First	11/05/2007	03/22/2009
		NWA255	U.S. and Possessions	Second	03/22/2009	03/22/2009
WPOI702	Phase II - Regional	EAG001	Northeast	First	09/16/2002	03/22/2009
		EAG001	Northeast	Second	11/05/2007	03/22/2009
WPOI703	Phase II - Regional	EAG002	Mid-Atlantic	First	09/16/2002	03/22/2009
		EAG002	Mid-Atlantic	Second	11/05/2007	03/22/2009
WPOI704	Phase II - Regional	EAG003	Southeast	First	09/16/2002	03/22/2009
		EAG003	Southeast	Second	11/05/2007	03/22/2009
WPOI705	Phase II - Regional	EAG004	Great Lakes	First	09/16/2002	03/22/2009
		EAG004	Great Lakes	Second	11/05/2007	03/22/2009
WPOI706	Phase II - Regional	EAG005	Central/Mountain	First	09/16/2002	03/22/2009
		EAG005	Central/Mountain	Second	11/05/2007	03/22/2009
WPOI707	Phase II - Regional	EAG006	Pacific	First	09/16/2002	03/22/2009
		EAG006	Pacific	Second	11/05/2007	03/22/2009
WPOI708	Phase II - Regional	EAG006	Pacific	First	09/16/2002	03/22/2009
		EAG006	Pacific	Second	11/05/2007	03/22/2009
WPOI709	Phase II - EA	BEA003	Boston-Worcester-Lawrence-Lowe	First	11/05/2007	03/22/2009
		BEA003	Boston-Worcester-Lawrence-Lowe	Second	03/22/2009	03/22/2009
WPOI710	Phase II - EA	BEA003	Boston-Worcester-Lawrence-Lowe	First	11/05/2007	03/22/2009
		BEA003	Boston-Worcester-Lawrence-Lowe	Second	03/22/2009	03/22/2009
WPOI711	Phase II - EA	BEA005	Albany-Schenectady-Troy, NY	First	11/05/2007	03/22/2009
		BEA005	Albany-Schenectady-Troy, NY	Second	03/22/2009	03/22/2009
WPOI712	Phase II - EA	BEA005	Albany-Schenectady-Troy, NY	First	11/05/2007	03/22/2009
		BEA005	Albany-Schenectady-Troy, NY	Second	03/22/2009	03/22/2009

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WPOI713	Phase II - EA	BEA006	Syracuse, NY-PA	First	11/05/2007	03/22/2009
		BEA006	Syracuse, NY-PA	Second	03/22/2009	03/22/2009
WPOI714	Phase II - EA	BEA007	Rochester, NY-PA	First	11/05/2007	03/22/2009
		BEA007	Rochester, NY-PA	Second	03/22/2009	03/22/2009
WPOI715	Phase II - EA	BEA007	Rochester, NY-PA	First	11/05/2007	03/22/2009
		BEA007	Rochester, NY-PA	Second	03/22/2009	03/22/2009
WPOI716	Phase II - EA	BEA008	Buffalo-Niagara Falls, NY-PA	First	11/05/2007	03/22/2009
		BEA008	Buffalo-Niagara Falls, NY-PA	Second	03/22/2009	03/22/2009
WPOI717	Phase II - EA	BEA008	Buffalo-Niagara Falls, NY-PA	First	11/05/2007	03/22/2009
		BEA008	Buffalo-Niagara Falls, NY-PA	Second	03/22/2009	03/22/2009
WPOI718	Phase II - EA	BEA008	Buffalo-Niagara Falls, NY-PA	First	11/05/2007	03/22/2009
		BEA008	Buffalo-Niagara Falls, NY-PA	Second	03/22/2009	03/22/2009
WPOI719	Phase II - EA	BEA009	State College, PA	First	11/05/2007	03/22/2009
		BEA009	State College, PA	Second	03/22/2009	03/22/2009
WPOI720	Phase II - EA	BEA011	Harrisburg-Lebanon-Carlisle, P	First	11/05/2007	03/22/2009
		BEA011	Harrisburg-Lebanon-Carlisle, P	Second	03/22/2009	03/22/2009
WPOI721	Phase II - EA	BEA013	Washington-Baltimore, DC-MD-VA	First	11/05/2007	03/22/2009
		BEA013	Washington-Baltimore, DC-MD-VA	Second	03/22/2009	03/22/2009
WPOI722	Phase II - EA	BEA015	Richmond-Petersburg, VA	First	11/05/2007	03/22/2009
		BEA015	Richmond-Petersburg, VA	Second	03/22/2009	03/22/2009
WPOI723	Phase II - EA	BEA018	Greensboro-Winston-Salem-High	First	11/05/2007	03/22/2009
		BEA018	Greensboro-Winston-Salem-High	Second	03/22/2009	03/22/2009
WPOI724	Phase II - EA	BEA020	Norfolk-Virginia Beach-Newport	First	11/05/2007	03/22/2009
		BEA020	Norfolk-Virginia Beach-Newport	Second	03/22/2009	03/22/2009
WPOI725	Phase II - EA	BEA021	Greenville, NC	First	11/05/2007	03/22/2009
		BEA021	Greenville, NC	Second	03/22/2009	03/22/2009
WPOI726	Phase II - EA	BEA022	Fayetteville, NC	First	11/05/2007	03/22/2009
		BEA022	Fayetteville, NC	Second	03/22/2009	03/22/2009
WPOI727	Phase II - EA	BEA025	Wilmington, NC-SC	First	11/05/2007	03/22/2009
		BEA025	Wilmington, NC-SC	Second	03/22/2009	03/22/2009
WPOI728	Phase II - EA	BEA028	Savannah, GA-SC	First	11/05/2007	03/22/2009
		BEA028	Savannah, GA-SC	Second	03/22/2009	03/22/2009
WPOI729	Phase II - EA	BEA029	Jacksonville, FL-GA	First	11/05/2007	03/22/2009
		BEA029	Jacksonville, FL-GA	Second	03/22/2009	03/22/2009
WPOI730	Phase II - EA	BEA032	Fort Myers-Cape Coral, FL	First	11/05/2007	03/22/2009
		BEA032	Fort Myers-Cape Coral, FL	Second	03/22/2009	03/22/2009

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WPOI731	Phase II - EA	BEA033	Sarasota-Bradenton, FL	First	11/05/2007	03/22/2009
		BEA033	Sarasota-Bradenton, FL	Second	03/22/2009	03/22/2009
WPOI732	Phase II - EA	BEA033	Sarasota-Bradenton, FL	First	11/05/2007	03/22/2009
		BEA033	Sarasota-Bradenton, FL	Second	03/22/2009	03/22/2009
WPOI733	Phase II - EA	BEA035	Tallahassee, FL-GA	First	11/05/2007	03/22/2009
		BEA035	Tallahassee, FL-GA	Second	03/22/2009	03/22/2009
WPOI734	Phase II - EA	BEA035	Tallahassee, FL-GA	First	11/05/2007	03/22/2009
		BEA035	Tallahassee, FL-GA	Second	03/22/2009	03/22/2009
WPOI735	Phase II - EA	BEA035	Tallahassee, FL-GA	First	11/05/2007	03/22/2009
		BEA035	Tallahassee, FL-GA	Second	03/22/2009	03/22/2009
WPOI737	Phase II - EA	BEA038	Macon, GA	First	11/05/2007	03/22/2009
		BEA038	Macon, GA	Second	03/22/2009	03/22/2009
WPOI738	Phase II - EA	BEA042	Asheville, NC	First	11/05/2007	03/22/2009
		BEA042	Asheville, NC	Second	03/22/2009	03/22/2009
WPOI739	Phase II - EA	BEA042	Asheville, NC	First	11/05/2007	03/22/2009
		BEA042	Asheville, NC	Second	03/22/2009	03/22/2009
WPOI740	Phase II - EA	BEA043	Chattanooga, TN-GA	First	11/05/2007	03/22/2009
		BEA043	Chattanooga, TN-GA	Second	03/22/2009	03/22/2009
WPOI741	Phase II - EA	BEA043	Chattanooga, TN-GA	First	11/05/2007	03/22/2009
		BEA043	Chattanooga, TN-GA	Second	03/22/2009	03/22/2009
WPOI742	Phase II - EA	BEA044	Knoxville, TN	First	11/05/2007	03/22/2009
		BEA044	Knoxville, TN	Second	03/22/2009	03/22/2009
WPOI743	Phase II - EA	BEA044	Knoxville, TN	First	11/05/2007	03/22/2009
		BEA044	Knoxville, TN	Second	03/22/2009	03/22/2009
WPOI745	Phase II - EA	BEA047	Lexington, KY-TN-VA-WV	First	11/05/2007	03/22/2009
		BEA047	Lexington, KY-TN-VA-WV	Second	03/22/2009	03/22/2009
WPOI750	Phase II - EA	BEA049	Cincinnati-Hamilton, OH-KY-IN	First	11/05/2007	03/22/2009
		BEA049	Cincinnati-Hamilton, OH-KY-IN	Second	03/22/2009	03/22/2009
WPOI751	Phase II - EA	BEA050	Dayton-Springfield, OH	First	11/05/2007	03/22/2009
		BEA050	Dayton-Springfield, OH	Second	03/22/2009	03/22/2009
WPOI752	Phase II - EA	BEA051	Columbus, OH	First	11/05/2007	03/22/2009
		BEA051	Columbus, OH	Second	03/22/2009	03/22/2009
WPOI753	Phase II - EA	BEA052	Wheeling, WV-OH	First	11/05/2007	03/22/2009
		BEA052	Wheeling, WV-OH	Second	03/22/2009	03/22/2009
WPOI754	Phase II - EA	BEA053	Pittsburgh, PA-WV	First	11/05/2007	03/22/2009
		BEA053	Pittsburgh, PA-WV	Second	03/22/2009	03/22/2009
WPOI755	Phase II - EA	BEA054	Erie, PA	First	11/05/2007	03/22/2009
		BEA054	Erie, PA	Second	03/22/2009	03/22/2009
WPOI756	Phase II - EA	BEA054	Erie, PA	First	11/05/2007	03/22/2009
		BEA054	Erie, PA	Second	03/22/2009	03/22/2009
WPOI757	Phase II - EA	BEA054	Erie, PA	First	11/05/2007	03/22/2009
		BEA054	Erie, PA	Second	03/22/2009	03/22/2009
WPOI758	Phase II - EA	BEA055	Cleveland-Akron, OH-PA	First	11/05/2007	03/22/2009
		BEA055	Cleveland-Akron, OH-PA	Second	03/22/2009	03/22/2009
WPOI759	Phase II - EA	BEA056	Toledo, OH	First	11/05/2007	03/22/2009
		BEA056	Toledo, OH	Second	03/22/2009	03/22/2009
WPOI760	Phase II - EA	BEA056	Toledo, OH	First	11/05/2007	03/22/2009
		BEA056	Toledo, OH	Second	03/22/2009	03/22/2009
WPOI761	Phase II - EA	BEA057	Detroit-Ann Arbor-Flint, MI	First	11/05/2007	03/22/2009
		BEA057	Detroit-Ann Arbor-Flint, MI	Second	03/22/2009	03/22/2009
WPOI762	Phase II - EA	BEA063	Milwaukee-Racine, WI	First	11/05/2007	03/22/2009

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WPOI763	Phase II - EA	BEA063	Milwaukee-Racine, WI	Second	03/22/2009	03/22/2009
		BEA063	Milwaukee-Racine, WI	First	11/05/2007	03/22/2009
WPOI764	Phase II - EA	BEA063	Milwaukee-Racine, WI	Second	03/22/2009	03/22/2009
		BEA064	Chicago-Gary-Kenosha, IL-IN-WI	First	11/05/2007	03/22/2009
		BEA064	Chicago-Gary-Kenosha, IL-IN-WI	Second	03/22/2009	03/22/2009
WPOI765	Phase II - EA	BEA065	Elkhart-Goshen, IN-MI	First	11/05/2007	03/22/2009
		BEA065	Elkhart-Goshen, IN-MI	Second	03/22/2009	03/22/2009
WPOI766	Phase II - EA	BEA066	Fort Wayne, IN	First	11/05/2007	03/22/2009
		BEA066	Fort Wayne, IN	Second	03/22/2009	03/22/2009
WPOI767	Phase II - EA	BEA066	Fort Wayne, IN	First	11/05/2007	03/22/2009
		BEA066	Fort Wayne, IN	Second	03/22/2009	03/22/2009
WPOI768	Phase II - EA	BEA067	Indianapolis, IN-IL	First	11/05/2007	03/22/2009
		BEA067	Indianapolis, IN-IL	Second	03/22/2009	03/22/2009
WPOI769	Phase II - EA	BEA068	Champaign-Urbana, IL	First	11/05/2007	03/22/2009
		BEA068	Champaign-Urbana, IL	Second	03/22/2009	03/22/2009
WPOI770	Phase II - EA	BEA070	Louisville, KY-IN	First	11/05/2007	03/22/2009
		BEA070	Louisville, KY-IN	Second	03/22/2009	03/22/2009
WPOI772	Phase II - EA	BEA071	Nashville, TN-KY	First	11/05/2007	03/22/2009
		BEA071	Nashville, TN-KY	Second	03/22/2009	03/22/2009
WPOI774	Phase II - EA	BEA073	Memphis, TN-AR-MS-KY	First	11/05/2007	03/22/2009
		BEA073	Memphis, TN-AR-MS-KY	Second	03/22/2009	03/22/2009
WPOI775	Phase II - EA	BEA078	Birmingham, AL	First	11/05/2007	03/22/2009
		BEA078	Birmingham, AL	Second	03/22/2009	03/22/2009
WPOI776	Phase II - EA	BEA078	Birmingham, AL	First	11/05/2007	03/22/2009
		BEA078	Birmingham, AL	Second	03/22/2009	03/22/2009
WPOI777	Phase II - EA	BEA079	Montgomery, AL	First	11/05/2007	03/22/2009
		BEA079	Montgomery, AL	Second	03/22/2009	03/22/2009
WPOI778	Phase II - EA	BEA079	Montgomery, AL	First	11/05/2007	03/22/2009
		BEA079	Montgomery, AL	Second	03/22/2009	03/22/2009
WPOI779	Phase II - EA	BEA080	Mobile, AL	First	11/05/2007	03/22/2009
		BEA080	Mobile, AL	Second	03/22/2009	03/22/2009
WPOI785	Phase II - EA	BEA085	Lafayette, LA	First	11/05/2007	03/22/2009
		BEA085	Lafayette, LA	Second	03/22/2009	03/22/2009
WPOI792	Phase II - EA	BEA090	Little Rock-North Little Rock,	First	11/05/2007	03/22/2009
		BEA090	Little Rock-North Little Rock,	Second	03/22/2009	03/22/2009
WPOI796	Phase II - EA	BEA093	Joplin, MO-KS-OK	First	11/05/2007	03/22/2009
		BEA093	Joplin, MO-KS-OK	Second	03/22/2009	03/22/2009
WPOI797	Phase II - EA	BEA094	Springfield, MO	First	11/05/2007	03/22/2009
		BEA094	Springfield, MO	Second	03/22/2009	03/22/2009
WPOI799	Phase II - EA	BEA096	St. Louis, MO-IL	First	11/05/2007	03/22/2009
		BEA096	St. Louis, MO-IL	Second	03/22/2009	03/22/2009
WPOI800	Phase II - EA	BEA096	St. Louis, MO-IL	First	11/05/2007	03/22/2009
		BEA096	St. Louis, MO-IL	Second	03/22/2009	03/22/2009
WPOI801	Phase II - EA	BEA097	Springfield, IL-MO	First	11/05/2007	03/22/2009
		BEA097	Springfield, IL-MO	Second	03/22/2009	03/22/2009
WPOI802	Phase II - EA	BEA098	Columbia, MO	First	11/05/2007	03/22/2009
		BEA098	Columbia, MO	Second	03/22/2009	03/22/2009
WPOI803	Phase II - EA	BEA098	Columbia, MO	First	11/05/2007	03/22/2009
		BEA098	Columbia, MO	Second	03/22/2009	03/22/2009
WPOI804	Phase II - EA	BEA099	Kansas City, MO-KS	First	11/05/2007	03/22/2009
		BEA099	Kansas City, MO-KS	Second	03/22/2009	03/22/2009

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WPOI805	Phase II - EA	BEA099	Kansas City, MO-KS	First	11/05/2007	03/22/2009
		BEA099	Kansas City, MO-KS	Second	03/22/2009	03/22/2009
WPOI806	Phase II - EA	BEA100	Des Moines, IA-IL-MO	First	11/05/2007	03/22/2009
		BEA100	Des Moines, IA-IL-MO	Second	03/22/2009	03/22/2009
WPOI807	Phase II - EA	BEA107	Minneapolis-St. Paul, MN-WI-IA	First	11/05/2007	03/22/2009
		BEA107	Minneapolis-St. Paul, MN-WI-IA	Second	03/22/2009	03/22/2009
WPOI808	Phase II - EA	BEA118	Omaha, NE-IA-MO	First	11/05/2007	03/22/2009
		BEA118	Omaha, NE-IA-MO	Second	03/22/2009	03/22/2009
WPOI809	Phase II - EA	BEA119	Lincoln, NE	First	11/05/2007	03/22/2009
		BEA119	Lincoln, NE	Second	03/22/2009	03/22/2009
WPOI810	Phase II - EA	BEA122	Wichita, KS-OK	First	11/05/2007	03/22/2009
		BEA122	Wichita, KS-OK	Second	03/22/2009	03/22/2009
WPOI811	Phase II - EA	BEA123	Topeka, KS	First	11/05/2007	03/22/2009
		BEA123	Topeka, KS	Second	03/22/2009	03/22/2009
WPOI812	Phase II - EA	BEA123	Topeka, KS	First	11/05/2007	03/22/2009
		BEA123	Topeka, KS	Second	03/22/2009	03/22/2009
WPOI847	Phase II - EA	BEA147	Spokane, WA-ID	First	11/05/2007	03/22/2009
		BEA147	Spokane, WA-ID	Second	03/22/2009	03/22/2009
WPOI848	Phase II - EA	BEA147	Spokane, WA-ID	First	11/05/2007	03/22/2009
		BEA147	Spokane, WA-ID	Second	03/22/2009	03/22/2009
WPOI849	Phase II - EA	BEA152	Salt Lake City-Ogden, UT-ID	First	11/05/2007	03/22/2009
		BEA152	Salt Lake City-Ogden, UT-ID	Second	03/22/2009	03/22/2009
WPOI857	Phase II - EA	BEA160	Los Angeles-Riverside-Orange C	First	11/05/2007	03/22/2009
		BEA160	Los Angeles-Riverside-Orange C	Second	03/22/2009	03/22/2009
WPOI858	Phase II - EA	BEA160	Los Angeles-Riverside-Orange C	First	11/05/2007	03/22/2009
		BEA160	Los Angeles-Riverside-Orange C	Second	03/22/2009	03/22/2009
WPOI859	Phase II - EA	BEA161	San Diego, CA	First	11/05/2007	03/22/2009
		BEA161	San Diego, CA	Second	03/22/2009	03/22/2009
WPOI860	Phase II - EA	BEA162	Fresno, CA	First	11/05/2007	03/22/2009
		BEA162	Fresno, CA	Second	03/22/2009	03/22/2009
WPOI861	Phase II - EA	BEA163	San Francisco-Oakland-San Jose	First	11/05/2007	03/22/2009
		BEA163	San Francisco-Oakland-San Jose	Second	03/22/2009	03/22/2009
WPOI862	Phase II - EA	BEA163	San Francisco-Oakland-San Jose	First	11/05/2007	03/22/2009
		BEA163	San Francisco-Oakland-San Jose	Second	03/22/2009	03/22/2009
WPOI863	Phase II - EA	BEA164	Sacramento-Yolo, CA	First	11/05/2007	03/22/2009
		BEA164	Sacramento-Yolo, CA	Second	03/22/2009	03/22/2009
WPOI877	Phase II - EA	BEA169	Richland-Kennewick-Pasco, WA	First	11/05/2007	03/22/2009
		BEA169	Richland-Kennewick-Pasco, WA	Second	03/22/2009	03/22/2009
WPOI880	Phase II - EA	BEA174	Puerto Rico & Virgin Isl.	First	11/05/2007	03/22/2009
		BEA174	Puerto Rico & Virgin Isl.	Second	03/22/2009	03/22/2009

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WPOK730	Phase II - EA	BEA005	Albany-Schenectady-Troy, NY	First	11/05/2007	10/07/2009
		BEA005	Albany-Schenectady-Troy, NY	Second	10/07/2009	10/07/2009
WPOK731	Phase II - EA	BEA007	Rochester, NY-PA	First	11/05/2007	10/07/2009
		BEA007	Rochester, NY-PA	Second	10/07/2009	10/07/2009
WPOK736	Phase II - EA	BEA056	Toledo, OH	First	11/05/2007	10/07/2009
		BEA056	Toledo, OH	Second	10/07/2009	10/07/2009
WPOK767	Phase II - EA	BEA123	Topeka, KS	First	11/05/2007	10/07/2009
		BEA123	Topeka, KS	Second	10/07/2009	10/07/2009
WPOK779	Phase II - Regional	EAG002	Mid-Atlantic	First	09/16/2002	10/07/2009
		EAG002	Mid-Atlantic	Second	11/05/2007	10/07/2009
WPOK943	Phase II - EA	BEA004	Burlington, VT-NY	First	11/05/2007	10/07/2009
		BEA004	Burlington, VT-NY	Second	10/07/2009	10/07/2009
WPOL367	Phase II - EA	BEA170	Seattle-Tacoma-Bremerton, WA	First	11/05/2007	03/22/2009
		BEA170	Seattle-Tacoma-Bremerton, WA	Second	03/22/2009	03/22/2009
WPOL368	Phase II - EA	BEA167	Portland-Salem, OR-WA	First	11/05/2007	03/22/2009
		BEA167	Portland-Salem, OR-WA	Second	03/22/2009	03/22/2009
WPVL859	Phase II - EA	BEA058	Northern Michigan, MI	First	07/11/2007	07/11/2012
		BEA058	Northern Michigan, MI	Second	07/11/2012	07/11/2012
WPVL860	Phase II - EA	BEA160	Los Angeles-Riverside-Orange C	First	07/11/2007	07/11/2012
		BEA160	Los Angeles-Riverside-Orange C	Second	07/11/2012	07/11/2012
WPVL861	Phase II - Regional	EAG001	Northeast	First	07/11/2007	07/11/2012
		EAG001	Northeast	Second	07/11/2012	07/11/2012
WPVL862	Phase II - Regional	EAG004	Great Lakes	First	07/11/2007	07/11/2012
		EAG004	Great Lakes	Second	07/11/2012	07/11/2012