

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

In the Matters of)	
)	
AST Telecom, LLC)	File No. 0002774539
)	
Public Service Wireless Services, Inc.)	File No. 0002772572
)	
Cavalier Wireless, LLC)	File No. 0002765730
)	

ORDER

Adopted: October 26, 2006

Released: October 26, 2006

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

1. Three winning bidders in Auction No. 66 for licenses in the Advanced Wireless Services (“AWS-1”) – AST Telecom, LLC (“AST”); Public Service Wireless Services, Inc. (“Public Service”); and Cavalier Wireless, LLC (“Cavalier”) (collectively “Applicants”) – individually filed requests for waiver of the long-form application deadline specified in section 1.2107(c) of the Commission’s rules.¹ The three Applicants request that the Commission allow them to complete submission of their long-form applications, FCC Form 601s, after the October 4, 2006 deadline for filing applications in Auction No. 66.² AST and Public Service also request that the Commission not disqualify them from holding AWS licenses and otherwise not hold them in default under section 1.2104 of the Commission’s rules.³ The Applicants submitted their 601 applications and requests for waiver on October 6, 2006.⁴ For the reasons set forth below, we grant all three of the Applicants’ waiver requests.

2. Background. In their respective waiver requests, the Applicants argue that good cause exists for a waiver of section 1.2107(c) of the Commission’s rules.⁵ All of the applicants timely submitted the FCC Form 601 electronically through the Commission’s Universal Licensing System (“ULS”) and obtained electronic confirmation thereof. AST and Public Service each indicates that it subsequently went back into ULS to print out a reference copy of its application and exited the ULS computer program without resubmitting the application.⁶ As a result of this oversight, ULS converted the

¹ 47 C.F.R. § 1.2107(c). See AST Telecom, LLC Waiver Request; Public Service Wireless Services, Inc. Waiver Request; and Cavalier Wireless, LLC Waiver Request.

² *Id.*

³ 47 C.F.R. § 1.2104. See AST Telecom, LLC Waiver Request; Public Service Wireless Services, Inc. Waiver Request.

⁴ See AST Telecom, LLC Waiver Request; Public Service Wireless Services, Inc. Waiver Request; and Cavalier Wireless, LLC Waiver Request.

⁵ 47 C.F.R. § 1.2107(c).

⁶ AST Telecom, LLC Waiver Request at 1 and Public Service Wireless Services, Inc. Waiver Request at 1-2.

filed applications from the status of “submitted” to “saved.”⁷ Cavalier’s application also reverted to “saved” status, although Cavalier states in its waiver request that it has been unable to determine how that happened.⁸ The Applicants submitted with their waiver requests copies of ULS receipts confirming the original submission dates of their applications with dates prior to the October 4 deadline.

3. The Applicants argue that the Commission has previously granted waivers of the long-form application filing deadline, citing the following cases: *Silver Palm Communications, Inc.*,⁹ *City Page & Cellular Services, Inc.*,¹⁰ and *PinPoint Communications, Inc.*¹¹ They further assert that the public interest will be served by grant of a waiver of the long-form application deadline. They argue that, under the circumstances, strict application of the long-form filing deadline would be inequitable, burdensome, and contrary to the public interest. In support, the Applicants state that they actively participated in Auction No. 66, timely made all payments required by the Commission’s rules, initially timely submitted the FCC Forms 601 and 602, and were unaware that they subsequently inadvertently converted their prior Form 601 submissions to an incomplete stage.¹² Moreover, they note, they correctly resubmitted their applications immediately after discovering the error.

4. Discussion. A request for waiver of the Commission’s rules must affirmatively show that either: (i) the underlying purpose of the rule would not be served or would be frustrated by application in a particular case, and that a grant of the requested waiver would be in the public interest; or (ii) the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome, or contrary to the public interest.¹³ One of the primary purposes underlying the post-auction application filing deadline is to ensure that a bidder meets the Commission’s qualification and eligibility requirements in order to “avoid delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.”¹⁴

5. The fact that the filing error of all three Applicants appears to be inadvertent does not automatically excuse their failure to meet the long-form application filing deadline. Nonetheless, we believe that the three Applicants have presented sufficient facts that, when considered in their totality, demonstrate unique circumstances that meet the standard for waiver of the Commission’s rules. The record indicates that, prior to the late filing of the long-form applications, each of the three applicants had complied with all previous filing requirements in Auction No. 66 and was found to be a qualified bidder.¹⁵

⁷ When an applicant uses the update link for its application in ULS, as AST and Public Service assert they did, *id.*, ULS converts the application from submitted to saved status (for a period of 30 days) in order to allow further changes by the applicant. If the applicant fails to resubmit and recertify the application (by choosing the final Submit Application button), the application is not deemed submitted.

⁸ Cavalier Wireless, LLC Waiver Request.

⁹ *Silver Palm Communications, Inc.*, Order, 17 FCC Rcd 6606 (WTB, CWD 2002) (*Silver Palm*).

¹⁰ *City Page & Cellular Services, Inc.*, Order, 17 FCC Rcd 26109 (WTB, CWD 2002) (*City Page*).

¹¹ *PinPoint Communications, Inc.*, Order, 14 FCC Rcd 6421 (WTB, PSPWD 1999) (*PinPoint*).

¹² AST Telecom, LLC Waiver Request; Public Service Wireless Services, Inc. Waiver Request; and Cavalier Wireless, LLC Waiver Request.

¹³ 47 C.F.R. § 1.925(b)(3).

¹⁴ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2382 ¶ 197 (1994).

¹⁵ See *Auction of Advanced Wireless Services Licenses—168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures*, Public Notice, DA 06-1525 (rel. July 28, 2006); *Auction of Advanced Wireless Services Licenses Closes—Winning Bidders Announced for Auction No. 66*, Public Notice, DA 06-1882 (rel. Sep. 20, 2006).

Additionally, each of the three applicants had, by virtue of its upfront payment, sufficient funds on deposit with the Commission to satisfy its payment obligations at the time the long-form applications were due.¹⁶

6. In light of the record before us, we conclude that the public interest would be served by waiver of section 1.2107(c) of the Commission's rules. Denial of Applicants' requests and rejection of the applications as untimely would delay the deployment of needed advanced wireless services in the markets covered by the Applicants' winning bids. Because each of the three applicants timely met its down payment requirements and submitted its long-form application immediately after the filing deadline, the post-auction licensing process for Auction No. 66 was not significantly delayed or materially adversely affected. Thus, under the circumstances, we believe that grant of the waiver requests is appropriate for these three applicants. As we are granting waivers of section 1.2107(c), we need not address the merits of AST's and Public Service's requests for waiver of section 1.2104, and accordingly we dismiss that portion of their respective waiver requests as moot.

7. Our decision here comports with Bureau precedent wherein spectrum auction applicants were granted relief for inadvertent post-auction delinquencies that did not disrupt the auction process or undermine the Commission's policy of facilitating rapid implementation of reliable communications service to the public. In addition to the cases cited by the Applicants, other Bureau precedent demonstrates that relief is appropriate in this case. For example, in *McLeod USA, Inc.*, the winning bidder requested and received a waiver of the filing deadline where for three hours it attempted to timely submit its long-form application electronically.¹⁷

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), and sections 0.331 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.925, the waiver requests filed on October 6, 2006 by AST Telecom, LLC, Public Service Wireless Services, Inc., and Cavalier Wireless, LLC are HEREBY GRANTED to the extent indicated above, AND ARE OTHERWISE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joel D. Taubenblatt
Chief, Broadband Division
Wireless Telecommunications Bureau

¹⁶ We note that at this time all three applicants have timely made all payments required to cover their net winning bids.

¹⁷ *McLeod USA, Inc.*, Order, DA 99-2215 (WTB, PSPWD 1999); *see also PCS Partners*, Order, 16 FCC Rcd 4738 (WTB, CWD 2001); *Bruce A. Enoch*, Letter, 20 FCC Rcd 16191 (WTB, PSCID 2005).