

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

In the Matter of	)	
	)	
TRACY CORPORATION II	)	File No. 0002940082
	)	
Request for Waiver and Extension of Time to Construct	)	Call Sign: KNLH752
	)	

**ORDER**

**Adopted: June 4, 2007**

**Released: June 4, 2007**

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

**I. INTRODUCTION**

1. Tracy Corporation II (Tracy) filed a request for waiver and extension of time to construct for the above-referenced F Block broadband Personal Communications Service (PCS) license for the Scottsbluff, Nebraska Basic Trading Area (BTA411) (License).<sup>1</sup> Specifically, pursuant to section 1.946(e) of the Commission's rules,<sup>2</sup> Tracy requests a waiver of section 24.203(b) of the Commission's rules, which states that certain broadband PCS licensees, including F Block licensees, must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed.<sup>3</sup> For the reasons set forth below, we grant Tracy's Request to the extent provided herein, and extend the five-year construction period for the License for a period of fifteen months through May 26, 2008.

**II. BACKGROUND**

2. At the conclusion of Auction No. 11, Tracy was the winning bidder on two PCS F Block licenses.<sup>4</sup> As a small business, Tracy was eligible to participate in the Commission's installment payment plan available for qualifying entities that won F Block licenses in Auction No. 11.<sup>5</sup> In keeping with the

<sup>1</sup> File No. 0002940082, Tracy Corporation II Request for Waiver and Extension of Time to Construct, filed March 8, 2007 (Request).

<sup>2</sup> See 47 C.F.R. § 1.946(e).

<sup>3</sup> See 47 C.F.R. § 24.203(b).

<sup>4</sup> See "D, E, and F Block Auction Closes; Winning Bidders in the Auction of 1,479 Licenses to Provide Broadband PCS in Basic Trading Areas," *Public Notice*, DA 97-81 (rel. January 15, 1997). Tracy's net winning bid for the License was \$124,112. *Id.*, Attachment A. This bid, which represents the amount Tracy actually owed, was net of the 25 percent bidding credit for which Tracy, as a small business, qualified.

<sup>5</sup> 47 C.F.R. §§ 1.2110(e) (1996) and 24.716 (1996). Bidding on F Block licenses was limited to "entrepreneurs," *i.e.*, entities whose gross revenues for each of the preceding two years were under \$125 million and whose assets were under \$500 million at the time they filed FCC Form 175 to participate in the auction. 47 C.F.R. § 24.709(a) (1996). The specific terms of a winning bidder's installment payment plan depended on the amount of its gross revenues for the preceding two years. 47 C.F.R. § 24.716(b) (1996).

(continued...)

Commission's rules, grant of the licenses was conditioned upon Tracy's full and timely performance of its payment obligations.<sup>6</sup>

3. Tracy sold one of the two licenses it had won in Auction No. 11 (for BTA270) in 1999.<sup>7</sup> With respect to the License, which it retained, Tracy failed to pay the installment payment due on July 31, 2000, along with the required late fees, before the expiration of the two quarterly grace periods permitted under the rules.<sup>8</sup> The License therefore automatically canceled on February 1, 2001, and Tracy became subject to debt collection procedures.<sup>9</sup>

4. Tracy filed a request for waiver of the installment payment rules and reinstatement of the License on June 26, 2001.<sup>10</sup> On November 3, 2004, the Auctions and Spectrum Access Division (ASAD) denied the Waiver Request.<sup>11</sup> Tracy filed a Petition seeking reconsideration of the *ASAD Order* on December 3, 2004.<sup>12</sup> In its Petition, Tracy explained that, in an effort to remedy its delinquency, it had submitted a payment to the Commission on June 8, 2001.<sup>13</sup> According to Tracy, it had submitted this payment promptly once it was aware that a problem existed, *i.e.*, one day after it was informed that the July 31, 2000, payment was delinquent.<sup>14</sup> In December 2006, Tracy paid its remaining obligation on the debt associated with the License. Tracy then filed a supplement to its Petition, in which it argued that its circumstances were similar to those of other licensees that had recently been granted waivers of the automatic cancellation provision of Section 1.2110(g)(4).<sup>15</sup>

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<sup>6</sup> 47 C.F.R. §§ 1.2110(e)(4) (1997).

<sup>7</sup> See ULS File No. 0000010960.

<sup>8</sup> 47 C.F.R. §§ 1.2110(g)(4)(i) & (ii). The rules provide licensees with two quarters (*i.e.*, two 3-month periods) in which to submit late installment payments: licensees making their late installment payment in the first quarter grace period must pay their installment plus a 5 percent late fee, licensees who don't pay until the second quarter grace period have to pay the installment plus a 10 percent late fee. *Id.*

<sup>9</sup> 47 C.F.R. §§ 1.2110(g)(4)(iv).

<sup>10</sup> Tracy Corporation II, Petition for Reinstatement of F Block License and Request for Waiver of 47 C.F.R. § 1.2110(g)(4), filed June 26, 2001 (Waiver Request). Tracy also filed a supplement to its Waiver Request. Tracy Corporation II, Supplement to Petition for Reinstatement of F Block License and Request for Waiver of 47 C.F.R. § 1.2110(g)(4), filed September 10, 2001 (Waiver Request Supplement).

<sup>11</sup> Letter to David L. Hill and Audrey P. Rasmussen, Counsel for Tracy Corporation II, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 21991 (2004) (*ASAD Order*).

<sup>12</sup> Tracy Corporation II, Petition for Reconsideration, filed December 3, 2004 (Petition).

<sup>13</sup> Petition at 3. The payment submitted on June 8, 2001 was equal to the installments due on July 31, 2000 and October 31, 2000. Shortly thereafter Tracy submitted a payment equal to the late fees for both installments that would have been required when paying within the two automatic grace periods.

<sup>14</sup> *Id.*

<sup>15</sup> Tracy Corporation II, Supplement to Petition for Reconsideration to Notify Commission of Payment of Outstanding Installment Debt, filed January 17, 2007, at 2-3, *citing* Big Sky Wireless Partnership, *Order*, 21 FCC Rcd 10066 (WTB 2006) and SoFast Internet Services, Inc., *Memorandum Opinion and Order*, 21 FCC Rcd 10126 (WTB/ASAD 2006).

5. On February 28, 2007, the Wireless Telecommunications Bureau (Bureau) granted Tracy's Petition seeking reconsideration of the *ASAD Order*.<sup>16</sup> Given Tracy's showing under section 1.925 of the Commission's rules, including its full payment of its debt obligation, the Bureau concluded that Tracy had met the Commission's standard for a waiver of the automatic cancellation provision of Section 1.2110(g)(4)(iv) with respect to the License.<sup>17</sup> In keeping with the Commission's statutory obligations, the Bureau concluded that the preservation of the PCS license assignment to Tracy provides the best assurance that the spectrum license will be used for the development and rapid deployment of new technologies, products and services for the benefit of the public without administrative delay. The Bureau therefore concluded that a *nunc pro tunc* waiver of the automatic cancellation provision of Section 1.2110(g)(iv) with respect to the License served the public interest.<sup>18</sup>

6. Tracy now seeks a waiver and an extension of time until July 28, 2008 to construct its License. Tracy states that such an extension would give it the same amount of time from the grant date of the *nunc pro tunc* waiver of the automatic cancellation of the License (February 28, 2007) as the time between the cancellation date of the License (February 1, 2001) and the date of its five-year construction deadline (April 28, 2002).<sup>19</sup>

### III. DISCUSSION

7. To obtain a waiver of the Commission's rules, Tracy must show either that (i) the underlying purpose of the applicable rule 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) the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.<sup>20</sup> As explained below, we find that, in light of its current circumstances, Tracy has met this standard for an extension of the five-year construction deadline of the License.

8. Tracy was required to serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in its licensed area within five years of being licensed, or make a showing of substantial service in its licensed area within five years of being licensed (*i.e.*, by April 28, 2002).<sup>21</sup> However, prior to the five-year construction deadline, the License automatically canceled pursuant to Tracy's default under section 1.2110(g)(iv) of the Commission's rules. During the period that the License was canceled, Tracy was not authorized to construct facilities, and it therefore had no reasonable method of meeting its five-year construction requirement during this time. Because Tracy recently received a *nunc pro tunc* waiver of the automatic cancellation provision of section 1.2110(g)(iv) for the License, we find that it is in the public interest to provide Tracy an opportunity to meet its five-year construction requirement. Specifically, we find that the public interest will be served by giving Tracy the same amount of time to meet its five-year construction requirement as the time between the cancellation of the License and the original five-year construction deadline, which is fifteen months.<sup>22</sup>

<sup>16</sup> See Tracy Corporation II, Request for Waiver of Installment Payment Rules for Auction No. 11 and Reinstatement of License, *Memorandum Opinion and Order*, DA 07-915 (WTB 2007) (*MO&O*).

<sup>17</sup> 47 C.F.R. § 1.925; 47 C.F.R. § 1.2110(g)(4)(iv).

<sup>18</sup> *MO&O* at ¶ 20.

<sup>19</sup> Request at 2.

<sup>20</sup> 47 C.F.R. § 1.925.

<sup>21</sup> See 47 C.F.R. § 24.203(b).

<sup>22</sup> We note that Tracy requests an extension of time to construct that is equal to the time between the two dates stated above, but mistakenly calculates this time as ending on July 28, 2008.

Accordingly, we extend Tracy's five-year construction requirement through May 26, 2008.

9. Finally, we note that Tracy has filed a renewal application for the License.<sup>23</sup> Any grant of the renewal application for the License will be conditioned upon timely completion of the Commission's five-year construction requirements, as set forth in this Order. Failure to comply with the Commission's five-year construction requirements by May 26, 2008 will result in automatic termination of the License.<sup>24</sup>

#### IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that, to sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, Tracy Corporation II's Request for Waiver and Extension of Time to Construct, File No. 0002940082, filed March 8, 2007, IS GRANTED to the extent provided herein. Thus, the five-year construction deadline for Call Sign KNLH752 is extended through May 26, 2008.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>23</sup> See Tracy Corporation II, FCC Form 601, File No. 0002942508, filed March 9, 2007.

<sup>24</sup> See 47 C.F.R. §§ 1.946(c), 1.955(a)(2).