



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU GRANTS LIMITED WAIVER TO FACILITATE RESOLUTION OF COMPETING RENEWAL APPLICATIONS

WT Docket No. 10-112

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) grants a limited waiver of Section 1.935 of the Commission's rules to facilitate the resolution of certain long-pending competing renewal applications.¹ Section 1.935 limits the consideration that may be exchanged among parties to resolve mutually exclusive applications. The Bureau finds that the public interest will be served by temporary waiver of this limitation to foster resolution of mutually exclusive (*i.e.*, competing) applications for certain 2.3 GHz Wireless Communications Service licenses, which are identified in Appendix C of the Commission's *Wireless Radio Services NPRM and Order*.² This waiver shall be effective for a period of 120 days commencing on the release date of this Public Notice, and will only apply to settlement agreements submitted to the Bureau during that 120-day period.

Section 1.935 of the Commission's rules provides that parties that have filed mutually exclusive applications and subsequently enter into an agreement to resolve that mutual exclusivity by withdrawing or seeking dismissal of one or more applications must first obtain Commission approval.³ The rule also provides that parties withdrawing or requesting dismissal in exchange for consideration must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of any written agreement, and an affidavit certifying that the parties will not exchange any consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application and related pleadings.⁴

¹ 47 C.F.R. § 1.935. The Commission may waive any provision of its rules on its own motion. *See* 47 C.F.R. § 1.3. Further, the Commission may waive its rules where it finds that "(i) the underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances . . . application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest . . ." 47 C.F.R. § 1.925(a)(3).

² Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996 (2010) (*Wireless Radio Services NPRM and Order*). In the *Wireless Radio Services NPRM and Order*, the Commission directed the Bureau to hold the competing renewal applications in abeyance to protect the applicants' rights. Our actions in this Public Notice today in no way impair any competing applicant's rights and are thus consistent with the Commission's stated purpose.

³ *See* 47 C.F.R. § 1.935.

⁴ *Id.*

The Bureau has waived the Section 1.935 restriction on the amount of consideration that may be exchanged to resolve mutually exclusive applications in specific circumstances, where it has found that the public interest would be served by waiver of that limitation.⁵ Here, the long-pending competing renewal applications have clouded the status of licenses in the 2.3 GHz Wireless Communications Service. The Bureau believes that a limited waiver of Section 1.935 will advance the public interest by helping eliminate the uncertainty that has encumbered these spectrum licenses. Moreover, a limited waiver of Section 1.935 will serve the public interest by enabling resolution of the competing renewal applications without the cost and delay attendant to potentially protracted litigation. Perhaps most importantly, a limited waiver of Section 1.935 to foster resolution of the competing applications will serve the public interest by helping spur the significant investment needed to deploy valuable, next-generation broadband services to the American public in the affected spectrum.

This Public Notice waives the limitation on the consideration that may be offered or accepted for resolution of the competing renewal applications and the related certification requirements of Section 1.935. Interested parties thus will not be required to certify that they have not received or will not receive consideration in excess of legitimate and prudent expenses in exchange for seeking a withdrawal of a competing application. No financial consideration may be exchanged until the Bureau releases a public notice approving a proposed settlement. The Bureau reserves the right to deny a request for approval of a proposed settlement if it finds that its implementation would not serve the public interest.

For further information, please contact Richard Arsenault, Chief Counsel, Wireless Telecommunications Bureau, Mobility Division, at (202) 418-0920 or Richard.Arsenault@fcc.gov, or Paul Powell, Attorney Advisor, Mobility Division, at (202) 418-1613 or Paul.Powell@fcc.gov.

Action by the Chief, Wireless Telecommunications Bureau, taken pursuant to Sections 0.331, 1.3, 1.925, and 1.935 of the Commission's rules.⁶

⁵ See Settlement Agreement and Request for Waiver of Section 1.935 of the Commission's Rules, *Order*, 22 FCC Rcd 4027 (WTB MD 2007); Wireless Telecommunications Bureau Waives Limitations on Payments in Settlement Agreements Among Parties in Contested Licensing Cases, *Public Notice*, 14 FCC Rcd 6551 (WTB 1999).

⁶ 47 C.F.R. §§ 0.331, 1.3, 1.925, and 1.935.