

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

In the Matter of)	
)	
Small Ventures USA, LP and Cellco Partnership)	WT Docket No. 12-373
d/b/a Verizon Wireless Request for Waiver and)	Call Sign WQJQ798
Applications for Assignment of 700 MHz C Block)	File Nos. 0005501846 and 0005501481
License)	

MEMORANDUM OPINION & ORDER

Adopted: May 10, 2013

Released: May 10, 2013

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. This Memorandum Opinion and Order (Order) addresses applications seeking Commission approval for the assignment of the 700 MHz C Block license under call sign WQJQ798 from Small Ventures USA, LP (Small Ventures) to Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless), the partition of the license into two areas, and an associated request for waiver regarding compliance with the population benchmark for build-out of this license pursuant to Commission rule Section 27.14 (h).¹ As discussed below, we find it in the public interest to grant the applications for assignment, including a partition of the license, and the requested waiver.

I. BACKGROUND

2. On December 3, 2012, Small Ventures and Verizon Wireless (together, the Applicants) filed applications for assignment of call sign WQJQ798, a 700 MHz C Block license in the Gulf of Mexico (REA012), from Small Ventures to Verizon Wireless, subject to certain requested conditions discussed below.²

3. *License Partition.* The Applicants request that the Bureau first approve an assignment from Small Ventures to Verizon Wireless of the spectrum covering the portion of the Gulf of Mexico closest to the shore line through partition (Shoreside License), then subsequently approve an assignment from Small Ventures to Verizon Wireless for the remainder of the spectrum offshore (Offshore License).³ Verizon Wireless plans to provide signal coverage to the Shoreside License partition area with Long Term Evolution (LTE) using land-based sites resulting in service to “commercial shipping, pleasure

¹ 47 C.F.R. § 27.14(h).

² ULS File Nos. 0005501846 and 0005501481. The Applicants first filed their applications and associated request for waiver on December 3, 2012. On December 18, 2012, the Applicants filed an amendment to File Nos. 0005501846 and 0005501481 with corrected data/exhibits, including a map depicting the two prospective license areas in the Gulf.

³ ULS File Nos. 0005501846, Exh. 1, Amended Description of Transaction, Public Interest Statement and Request for Waiver at 1 (filed Dec. 18, 2012). The coordinates for each partitioned license area are set forth in Schedule G of the respective Form 603 applications. We note that File No. 0005501846 is the application for assignment from Small Ventures to Verizon Wireless regarding the Shoreside License partition, and File No. 0005501481 is the successive application requesting assignment of call sign WQJQ798 which, after processing of the assignment of the Shoreside License partition application, would consist solely of the Offshore License area.

boaters, and oil and gas drilling platforms.”⁴ Verizon Wireless states that the provision of service to the Shoreside License area will also reduce the potential for harmful interference to Verizon Wireless’s LTE network in the Gulf states from Gulf-based operations provided by an entity other than Verizon Wireless.⁵

4. With respect to the Offshore License, Verizon Wireless asserts that it will make it available for leasing by any qualified entity through its LTE in Rural America (LRA) program, and has committed to file a lease application with the Commission reflecting an arrangement with an LRA participant.⁶ Verizon Wireless notes that if it is unable to lease the Offshore License, it will cancel the Offshore License, making it available for re-licensing or other usage by the Commission.⁷ Additionally, Verizon Wireless notes that because call sign WQJQ798 was originally awarded to Small Ventures with bidding credits within the last five years, and Verizon Wireless does not meet the eligibility criteria for a bidding credit, Small Ventures will make any required unjust enrichment payments to the Commission upon consummation of the transaction.⁸

5. The Applicants contend that grant of their application would serve the public interest, allowing Verizon Wireless (which currently holds no spectrum in the Gulf) to provide broadband data and other wireless products in a new service area while increasing competition.⁹ Meanwhile, according to the applicants, Small Ventures has not begun to provide service and thus there will be no reduction in service or customer transition issues as a result of the requested assignment.¹⁰

6. Waiver Regarding Population Benchmark. The Applicants note that Section 27.14(h) of the Commission’s rules for the 700 MHz C Block requires signal coverage and offering of service to at least 40 percent of the population in each Economic Area (EA) of the Regional Economic Area Grouping (REAG) license by June 13, 2013, and 75 percent by the end of the license term.¹¹ However, the rule part also requires the measurement of population to be based upon the most recently available U.S. Census Data, and there are no permanent residents in the Gulf to be counted by the U.S. Census. The Applicants therefore seek a waiver of Section 27.14(h), proposing that the Wireless Telecommunications Bureau (Bureau) instead use oil and gas drilling platforms as a proxy for population to determine build-out compliance in this case.¹² In other words, Verizon Wireless, as the proposed assignee, seeks to meet the Commission’s build-out requirements by providing coverage and offering service to 40 percent of the oil and gas drilling platforms in the license area in active service as of June 13, 2013, and 75 percent as of the end of the license term, for both the Shoreside License and the Offshore License.

7. On December 21, 2012, the Bureau sought comment on the Applicants’ request for waiver and applications for assignment.¹³ The American Petroleum Institute (API) filed comments in

⁴ Waiver Request at 1.

⁵ *Id.*

⁶ *Id.* Verizon commits to filing a lease application reflecting an LRA arrangement the later of January 31, 2013 or 30 days after approval of the requested assignment. *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 1, 2.

⁹ *Id.* at 2.

¹⁰ *Id.* The Applicants also represent that there are no related international Section 214 or other wireless authorizations involved in the proposed transaction. *Id.* at 1.

¹¹ *Id.* at 2 (citing 47 C.F.R. § 27.14(h)).

¹² *Id.*

¹³ Wireless Telecommunications Bureau Seeks Comment on Request for Waiver and Applications for Assignment of 700 MHz C Block License from Small Ventures USA, LP to Cellco Partnership d/b/a Verizon Wireless, WT (continued....)

support of the request for flexible treatment of population in the Gulf compared to land, while seeking a more expansive and precise definition of the offshore structures that can be counted toward build-out obligations – one that would include more than just drilling platforms.¹⁴ Robert L. Lindsey, IV (Lindsey) filed supporting reply comments,¹⁵ and Verizon Wireless filed reply comments agreeing with API's suggestion that an expansive and more precise definition of offshore structures eligible to be counted toward build-out obligations was warranted, while also observing that no objections to the requested relief had been raised in the proceeding.¹⁶

II. DISCUSSION

8. We find that it is in the public interest to grant the Applicants' requests to partition the license into the Shoreside License and the Offshore License through assignment to Verizon Wireless. We agree with commenters that authorization of the proposed transaction would allow Verizon Wireless to provide radio services to pleasure craft, commercial ships, and oil and gas drilling platforms in the Gulf of Mexico, which is "vastly underserved by communication infrastructure."¹⁷ We agree that there does not appear to be any potential disruption of service caused by the partitioning and assignment, given a current lack of customers or international authorizations associated with the existing Small Ventures license. Additionally, we find that this grant is further justified by the Applicants' commitment to the LRA program, resulting in a secondary markets opportunity for a rural entrant into this underserved market, or renewed availability of the spectrum for Commission re-licensing for additional communication infrastructure and service in the Gulf. We therefore condition the grant to Verizon Wireless of the Offshore License upon Verizon Wireless filing with the Commission, within 60 days after the release date of this Order, a lease application seeking approval of a lease arrangement with any entity qualified by the LRA program for operation. We believe that a 60-day period for filing the LRA lease application will promote prompt service to the Offshore License area. Moreover, a 60-day period will permit adequate time for securing and processing the required unjust enrichment payment, as well as both the assignment applications and consummation notification after finality,¹⁸ thereby permitting Verizon Wireless to file an application in the Commission's Universal Licensing System (ULS) as licensee/lessor of the Offshore License. Failure to file the requisite lease application within 60 days after the release date of this Order will result in automatic termination of the Offshore License without further Commission

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Docket No. 12-373, *Public Notice*, 27 FCC Rcd 15933 (WTB 2012). Comments were due January 22, 2013, and reply comments were due February 6, 2013.

¹⁴ Comments of the American Petroleum Institute in WT Docket No. 12-373 (filed Jan. 22, 2013) (API Comments). API is a national trade association representing more than 500 companies involved in all phases of the petroleum and natural gas industries. *Id.* at 2.

¹⁵ Robert L. Lindsey IV's Reply to The American Petroleum Institute in WT Docket No. 12-373 (filed Feb. 1, 2013) (Lindsey Reply). Lindsey is a Commission licensee in the Global Maritime Distress Safety System (GMDSS) service, call sign RG00000018. *Id.* at 1 n.1.

¹⁶ Response of Verizon Wireless in WT Docket No. 12-373 (filed Feb. 6, 2013) (Verizon Wireless Reply).

¹⁷ Lindsey Reply at 1. Lindsey states that utilization of mobile radio and point-to-point microwave communication systems in the Gulf has increased significantly. *Id.* Lindsey further notes that the Commission allocated the Broadband Radio Service in the Gulf of Mexico in response to an API petition. *See* Provision of Fixed and Mobile Broadband Access (Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands), *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, 23 FCC Rcd 5992 (2008).

¹⁸ The Commission may on its own motion review any action taken on delegated authority within 40 days of public notice. *See* 47 C.F.R. § 1.117.

action.¹⁹

9. Regarding the applicable population benchmark, we also find that a grant of the Applicants' request for waiver is in the public interest. As explained above, Section 27.14(h) of the Commission's rules for the 700 MHz C Block requires signal coverage and offering of service to at least 40 percent of the population in each EA of the REAG license by its mid-term benchmark (for this license, June 13, 2013), and 75 percent by the end of the license term.²⁰ However, the rule also requires population to be based upon the most recently available U.S. Census Data, and there are no permanent residents in the Gulf itself to be counted by the U.S. Census. As the Applicants note, since the population is mobile at best, there is no meaningful way to count it in the Offshore License's coverage area.²¹

10. Under Section 1.925 of the Commission's rules, waiver is appropriate where: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and 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.²²

11. We conclude that the Applicants' request for waiver meets both of these criteria. The purpose of the rule is to stimulate an efficient and productive use of the radio spectrum, while a conventional reading of "population" would frustrate that purpose against the public interest. Additionally, because of the unique circumstances of the Gulf of Mexico—a body of water—application of Section 27.14(h) to require conventional "population" would be infeasible. We agree with the Applicants and supporting commenters that waiver is appropriate in this circumstance to permit the Applicants to demonstrate build-out compliance by utilizing offshore platforms "as a proxy for population in the [G]ulf" with respect to both the partitioned Shoreside License and the remaining Offshore License.²³

12. We note that in its comments, API qualifies its support of the Applicants' waiver request, arguing that the applicable population benchmark should include all off-shore platforms, including production, manifold, compression, pumping and valving platforms—not just "drilling platforms" as the Applicants originally requested.²⁴ API also argues that the quantity of such general off-shore platforms should be derived from the Bureau of Ocean Energy Management's Technical Information Management System database.²⁵ In its reply comments, Verizon Wireless clarifies that it agrees with API, intending that the Commission include not just "drilling platforms" but all off-shore platforms for calculating

¹⁹ We note that the Commission's rules permit a licensee/lessor to attribute to itself the build-out or performance activities of its spectrum lessee for purposes of complying with any applicable performance or build-out requirement. See 47 C.F.R. § 1.9020(d)(5)(i) (spectrum manager leasing arrangements); 47 C.F.R. § 1.9030(d)(5)(i) (long-term *de facto* leasing arrangements).

²⁰ See 47 C.F.R. § 27.14(h).

²¹ See Waiver Request at 3.

²² See 47 C.F.R. § 1.925(b)(3).

²³ Lindsey Reply at 2.

²⁴ API Reply at 4, 5. We note that API's support of the waiver request is restricted to the factual circumstances of this case, given the Applicants' offer to return the off-shore partition to the Commission if it cannot find a lessee within the 30-day deadline. *Id.* at 5. API is concerned about a licensee otherwise attempting to demonstrate coverage of the entire Gulf using on-shore transmitters that provide little off-shore service. *Id.*

²⁵ *Id.* at 5. The database is accessible at <<http://www.boem.gov/Company-Qualification-Financial-Assurance-and-Bonding>> (visited May 8, 2013).

compliance with the respective applicable population benchmarks.²⁶ We find that relief is appropriate under these mutually agreed terms, consistent with the waiver standard in Section 1.925 of our rules, and that the scope of this waiver includes the cited offshore platforms (not just drilling platforms) in demonstrating compliance, according to the proposed database/measurement criteria.

13. We note, as discussed earlier, the obligation of Small Ventures to remit an unjust enrichment payment as a necessary step in the approval and effectuation of this transaction. We also reiterate that in order to avoid automatic termination of the Offshore License, Verizon Wireless must secure a lessee qualified by the LRA program and file an associated lease application in ULS within 60 days of the release of this Order.

III. ORDERING CLAUSES

14. Accordingly IT IS ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.925 and 27.14(h) of the Commission's Rules, 47 C.F.R. §§ 1.925 and 27.14(h), the applications for assignment from Small Ventures USA, LP to Cellco Partnership d/b/a Verizon Wireless, File Nos. 0005501846 and 0005501481, together with the associated Requests for Waiver of Section 27.14(h), ARE GRANTED.

15. IT IS FURTHER ORDERED THAT, authorization for the Offshore License under call sign WQJQ798 SHALL AUTOMATICALLY TERMINATE without further Commission action, if Verizon Wireless fails to file with the Commission, within 60 days from the date of release of this Order, a lease application using FCC Form 608 seeking Commission approval of Verizon Wireless's lease arrangement with any entity qualified by the LTE in Rural America program for operation in the Offshore License area, according to the terms of that program.

16. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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²⁶ Verizon Wireless Reply at 1, 2.