



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU APPROVES SETTLEMENT AGREEMENT

WT Docket No. 10-112¹

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) approves a Settlement Agreement and takes related actions to resolve mutually exclusive (*i.e.*, competing) applications for a Cellular Radiotelephone Service authorization currently held by Sagir, Inc. (“Sagir”), Call Sign KNKN383, Nebraska 1 – Sioux Cellular Market Area (“Sagir Authorization”).²

Background

The dispute leading to the Settlement Agreement began September 29, 2000, when NECC filed an application directly competing with Sagir’s application to renew its cellular authorization (“NECC Competing Application” and “Sagir Renewal Application,” respectively).³ NECC filed a Petition to Deny the Sagir Renewal Application (“NECC First Petition to Deny”) and Sagir filed a Petition to Deny the NECC Competing Application.

On April 3, 2001, Sagir filed an application for a *pro forma* transfer of control of Sagir (“*Pro Forma* Transfer of Control Application”), which was granted on April 4, 2001.⁴ On April 17, 2001, NECC filed a Petition for Reconsideration of the *Pro Forma* Transfer of Control Application (“NECC Petition for Reconsideration”).

On May 16 and 20, 2008, Sagir, Three LLC (“Three”), and AT&T filed a complementary set of applications for consent to a *pro forma* assignment of the Sagir Authorization from Sagir to Three and a substantive transfer of control of Three to AT&T (“Two Transfer Applications”).⁵ NECC filed a Petition

¹ ULS File Nos. 0000212826; 0000230425, 0000416477; 0003439497; 0005530465; 0005530495; and 50010CLTC08.

² The Settlement Agreement is by and among AT&T Mobility II LLC (“AT&T”), New Cingular Wireless PCS, LLC (“New Cingular”), Sagir, and N.E. Colorado Cellular, Inc. (“NECC”). In this Public Notice, we may refer to AT&T, New Cingular, Sagir, and NECC individually as a “Party” or collectively as the “Parties.” The Settlement Agreement is attached to the Joint Request for Waiver, Approval of Settlement Agreement, Dismissal of Pleadings and Certain Applications, and Grant of Applications, WT Docket 10-112 (filed Dec. 12, 2012) (“Joint Request”).

³ File Nos. 0000230425 (“NECC Competing Application”) and 0000212826 (“Sagir Renewal Application”).

⁴ File No. 0000416477 (“*Pro Forma* Transfer of Control Application”).

⁵ File Nos. 0003439497 (*pro forma* assignment application) and 50010CLTC08 (transfer of control application).

to Deny the Two Transfer Applications on June 18, 2008 (“NECC Second Petition to Deny”). The Sagir Renewal Application, the NECC Competing Application, and the Two Transfer Applications are pending.

In May 2010, the Commission commenced a rulemaking to adopt consistent requirements for the renewal of Wireless Radio Services licenses.⁶ The Commission noted the dispute between Sagir and NECC,⁷ and stated that if it decided to adopt the rules and policies proposed in the rulemaking, it would dismiss pending competing applications.⁸ The rulemaking is pending.

Review and Approval of the Settlement Agreement

On October 19, 2012, the Parties executed the Settlement Agreement. The Parties have agreed to resolve their dispute pursuant to the Settlement Agreement and seek: (1) approval of the Settlement Agreement; (2) grant of the Sagir Renewal Application and the Two Transfer Applications; (3) grant of two separate FCC applications seeking assignment of spectrum from AT&T to NECC;⁹ and (4) dismissal of the NECC Competing Application, the NECC First Petition to Deny, the NECC Second Petition to Deny, and the NECC Petition for Reconsideration.

We review the Settlement Agreement pursuant to Section 1.935 of the Commission’s rules.¹⁰ Section 1.935 requires parties that enter into an agreement to resolve mutually exclusive applications by withdrawing or seeking dismissal of one or more applications to first obtain Commission approval.¹¹ Section 1.935 requires moving parties to submit a copy of any related written agreement (here, the Settlement Agreement), and any related request for approval of the withdrawal or dismissal (here, the Joint Request). We have reviewed the Settlement Agreement and the Joint Request. We find that approval of the Settlement Agreement will serve the public interest by bringing to closure litigation spanning 12 years, thereby removing the cloud over the Sagir Authorization.

The Parties have requested a limited waiver of Section 1.935’s limit on the consideration that parties may exchange to resolve mutually exclusive applications and adversary pleadings.¹² The Parties have certified that they have not, and will not, exchange any consideration for dismissal of the NECC Competing Application or adversary pleadings other than as specified in the Settlement Agreement.¹³ The Bureau has previously found that “waiver of Section 1.935 is in the public interest [where] it would permit the resolution of a long-standing and litigious dispute.”¹⁴ Waiver of the rule here will enable

⁶ 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).

⁷ *Id.* at 7034 ¶ 104.

⁸ *Id.* at 7033-34 ¶ 100.

⁹ File Nos. 0005530465 and 0005530495.

¹⁰ 47 C.F.R. § 1.935.

¹¹ *Id.*

¹² *Id.*

¹³ Joint Request at 3-4; Supplement to Joint Request, WT Docket 10-112 (filed Feb. 14, 2013).

¹⁴ See Settlement Agreement and Request for Waiver of Section 1.935 of the Commission's Rules, *Order*, 22 FCC Rcd 4027 (WTB MD 2007). In 1999, the Bureau issued a limited waiver of Section 1.935 to enable parties to resolve certain contested cases, stating “[w]e are taking this action because of the many cases currently pending before the Bureau, some of which are more than five years old.” See Wireless Telecommunications Bureau Waives

resolution of a more than decade-old dispute. Based on the unique facts and circumstances before us, we find that a limited waiver of Section 1.935's provisions regarding the exchange of consideration would serve the public interest and is hereby granted.¹⁵

Consistent with the foregoing, we hereby grant the Sagir Renewal Application, the Two Transfer Applications, and the applications seeking assignment of spectrum from AT&T to NECC, which are unopposed. We also hereby dismiss, with prejudice and effective immediately, the NECC Competing Application, the NECC First Petition to deny, the NECC Second Petition to Deny, the NECC Petition for Reconsideration, and all pleadings related to the foregoing.

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

Action by the Chief, Wireless Telecommunications Bureau, taken pursuant to Sections 1, 308, and 309 of the Communications Act, and Sections 0.331, 1.3, 1.925, and 1.935 of the Commission's rules.¹⁶

Limitations on Payments in Settlement Agreements Among Parties in Contested Cases, *Public Notice*, DA 99-745 1999 WL 221820 (WTB 1999).

¹⁵ Our action today is consistent with the Bureau's recent finding that a temporary waiver of Section 1.935 would serve the public interest by helping facilitate resolution of long-pending competing applications filed against applications for renewal of certain 2.3 GHz Wireless Communications Service licenses. *See* Wireless Telecommunications Bureau Grants Limited Waiver To Facilitate Resolution of Competing Renewal Applications, *Public Notice*, DA 12-1407, 27 FCC Rcd 10248 (WTB 2012).

¹⁶ 47 U.S.C. §§ 151, 308, and 309, 47 C.F.R. §§ 0.331, 1.3, 1.925, and 1.935.