



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU APPROVES AMENDMENT TO SETTLEMENT AGREEMENT, DISMISSAL OF COMPETING APPLICATIONS, AND WITHDRAWAL OF PETITIONS FOR RECONSIDERATION

WT Docket No. 10-112

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) approves an Amendment¹ to a Settlement Agreement² and a related request to dismiss mutually exclusive (*i.e.*, competing) applications filed against nineteen 2.3 GHz Wireless Communications Service (WCS) authorizations held by Unrestricted Subsidiary Funding Company, a wholly-owned subsidiary of Sprint Corporation (collectively, Sprint and the Sprint WCS Licenses).³ We also approve a related request to withdraw two Petitions for Reconsideration.⁴

BACKGROUND

In 2007, the Competing Applicants (identified in note 2) filed applications against most 2.3 GHz WCS applications for license renewal.⁵ In May 2010, the Commission commenced a rulemaking to adopt consistent requirements for the renewal of Wireless Radio Services licenses, including the 2.3 GHz WCS

¹ The Amendment is attached to the Joint *Ex Parte* Request for Approval of Amendment to Agreement for Resolution of Competing Applications, WT Docket 10-112 (filed Nov. 11, 2014) (Joint Request).

² The Settlement Agreement is by and among Green Flag Wireless, LLC (Green Flag), CWC License Holding, Inc. (CWC), Corr Investments I, LLC (Corr, the successor-in-interest to CWC), and James McCotter (McCotter) (collectively, the Green Flag Applicants), and Snapline Communications, LLC (each, a Competing Applicant and collectively, the Competing Applicants), and BellSouth Mobile Data, Inc., New Cingular Wireless PCS, LLC, and SBC Telecom, Inc. (together with AT&T Inc., AT&T). The Settlement Agreement is attached to the Joint *Ex Parte* Request for Resolution of Competing Applications, WT Docket 10-112 (filed Aug. 31, 2012), and was approved by the Bureau on October 15, 2012. *See* Wireless Telecommunications Bureau Approves Settlement Agreement and Dismisses Competing Renewal Applications, WT Docket 10-112, *Public Notice*, DA 12-1640, 27 FCC Rcd 12940 (WTB 2012) (*October 15, 2012 Public Notice*).

³ Request to Withdraw Pleadings, Petitions & Filings, filed by the Green Flag Applicants, WT Docket 10-112 (filed Nov. 11, 2014) (Dismissal Request).

⁴ Further Request to Withdraw Pleadings, Petitions & Filings, filed by the Green Flag Applicants and NTCH-CA, Inc., WT Docket 10-112 (filed Dec. 24, 2014) (Further Dismissal Request).

⁵ ULS File Nos. 0003113283 *et al.*

band.⁶ The Commission reviewed the dispute between the WCS licensees and the Competing Applicants,⁷ and directed the Bureau to grant the renewal applications, on a conditional basis, subject to the outcome of the rulemaking.⁸ The Commission stated that if it were to adopt the rules and policies proposed in the rulemaking, it would dismiss the Competing Applications.⁹ The rulemaking is pending.

On August 28, 2012, the Bureau found that a waiver of Section 1.935 of the Commission's rules, which limits the consideration that parties may exchange to resolve mutually exclusive applications, would serve the public interest by helping resolve the Competing Applications.¹⁰

On October 15, 2012, the Bureau approved a Settlement Agreement to resolve the Competing Applications.¹¹ The Bureau found that approval of the agreement would serve the public interest by helping eliminate uncertainty regarding the WCS band, thereby removing an impediment to the significant investment needed to deploy next-generation services in the band.¹² The Bureau dismissed all Competing Applications and related filings regarding WCS authorizations then held by AT&T.

In the *October 15, 2012 Public Notice*, the Bureau also determined that its approval of the Settlement Agreement would extend to resolution of any Competing Applications that were filed in 2007 against 2.3 GHz WCS authorizations that AT&T may subsequently acquire.¹³ AT&T subsequently acquired many 2.3 GHz WCS authorizations, which were subject to Competing Applications. Acting pursuant to the *WCS Settlement Public Notice* and the *October 15, 2012 Public Notice*, the Bureau dismissed those Competing Applications.¹⁴

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) (*Notice and Wireless Radio Services Order*, respectively).

⁷ *Id.* at 7035-38 ¶¶106-111.

⁸ *Id.* at 7039 ¶113.

⁹ *Id.* at 7033-34 ¶100.

¹⁰ Wireless Telecommunications Bureau Grants Limited Waiver To Facilitate Resolution of Competing Renewal Applications, *Public Notice*, DA 12-1407, 27 FCC Rcd 10248 (WTB 2012) (*WCS Settlement Public Notice*) (waiving “the limitation on the consideration that may be offered or accepted for resolution of the competing renewal applications”). The waiver became effective for a 120-day period commencing on August 28, 2012, the Public Notice release date, and applied to settlement agreements submitted to the Bureau during that period.

¹¹ *October 15, 2012 Public Notice*, 27 FCC Rcd 12940.

¹² *Id.*, 27 FCC Rcd at 12941.

¹³ *Id.*

¹⁴ Wireless Telecommunications Bureau Dismisses Competing Application, *Public Notice*, WT Docket 10-112, DA 14-484, 29 FCC Rcd 3760 (WTB 2014); Wireless Telecommunications Bureau Dismisses Competing Applications, *Public Notice*, WT Docket 10-112, DA 13-615, 28 FCC Rcd 4332 (WTB 2013).

REVIEW AND APPROVAL OF AMENDMENT TO SETTLEMENT AGREEMENT

On November 11, 2014, the Green Flag Applicants and AT&T filed a request for approval of an Amendment to the Settlement Agreement.¹⁵ The Settlement Agreement, as approved by the Bureau in 2012, covered the resolution of Competing Applications filed against any WCS licenses AT&T then held or had contracted to acquire by December 31, 2013, and for which AT&T and the seller had filed assignment or transfer of control applications by January 31, 2014.¹⁶ The Amendment before us would extend these deadlines by four months to April 30 and May 31, 2014, respectively.¹⁷

The Green Flag Applicants and AT&T explain that they agreed to extend the period covered by the Settlement Agreement because AT&T and Sprint were still negotiating the terms of AT&T's acquisition of the Sprint WCS Licenses in early 2014.¹⁸ The 4-month extension of the Settlement Agreement provided AT&T and Sprint additional time to complete their negotiations and file an assignment application on May 6, 2014, for AT&T to acquire the Sprint WCS licenses.¹⁹ On June 2, 2014, the Bureau requested comment on the assignment application.²⁰ On August 27, 2014, the Bureau consented to AT&T's acquisition of the Sprint WCS licenses.²¹

We find that approval of the 4-month extension of the Settlement Agreement will serve the public interest by enabling resolution of the remaining Competing Applications, which have cast a pall of regulatory uncertainty over the 2.3 GHz WCS band. We therefore approve the Amendment.

REVIEW AND APPROVAL OF DISMISSAL REQUEST

We review the Dismissal Request²² under Section 1.935 of the Commission's rules.²³ 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. Section 1.935 requires moving parties to submit a copy of any related written agreement—here, the Settlement Agreement, which the Bureau approved previously, and the Amendment, which we approve above—and any related request for approval of the withdrawal or dismissal (here, the Dismissal Request).

¹⁵ Joint Request (note 1, *supra*).

¹⁶ Settlement Agreement (note 2, *supra*).

¹⁷ Amendment (note 1, *supra*).

¹⁸ Joint Request at 2 (note 1, *supra*).

¹⁹ ULS File No. 0006239595.

²⁰ AT&T and Sprint Seek FCC Consent to the Assignment of WCS Licenses, *Public Notice*, WT Docket No. 14-83, DA 14-758, 29 FCC Rcd 5879 (rel. June 2, 2014).

²¹ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, 2014 WL 4241601, Report No. 9863, at 2 (Aug. 24, 2014).

²² Dismissal Request (note 3, *supra*).

²³ 47 C.F.R. § 1.935.

As required by the Bureau's *WCS Settlement Public Notice*,²⁴ AT&T and the Green Flag Applicants: (1) state that they have not materially amended, or waived, any substantive provision of the Settlement Agreement, other than the Amendment we approve above;²⁵ (2) have enumerated each Competing Application to be dismissed;²⁶ and (3) have confirmed that they will not exchange any financial consideration for dismissal of the Competing Applications until the Bureau dismisses such applications and related filings with prejudice.²⁷

We have reviewed the Dismissal Request and find that our approval will serve the public interest by removing longstanding uncertainty regarding the Sprint WCS Licenses, and thereby promote intensive use of this valuable spectrum resource.²⁸ Accordingly, we hereby grant the Dismissal Request and dismiss, with prejudice, the Competing Applications and related filings, effective upon the assignment of the Sprint WCS Licenses to New Cingular Wireless PCS, LLC.

REVIEW AND APPROVAL OF FURTHER DISMISSAL REQUEST

On August 6, 2010, the Green Flag Applicants and NTCH-CA, Inc. filed a petition for reconsideration of the Commission's *Wireless Radio Services Order*, WT Docket 10-112. In that order, the Commission directed the Bureau to grant applications for renewal of certain wireless radio service licenses conditioned on the outcome of the rulemaking proceeding in WT Docket No. 10-112.²⁹ On October 22, 2010, the Green Flag Applicants and NTCH-CA, Inc. filed a petition for reconsideration, contesting the Bureau's conditional grant of certain applications for license renewal pursuant to the *Wireless Radio Services Order*.³⁰

On December 24, 2014, the Green Flag Applicants and NTCH-CA filed a request to withdraw, in their entirety, the petitions for reconsideration filed on August 6 and October 22, 2010, respectively.³¹ We have reviewed that withdrawal request and find that our approval will serve the public interest by removing uncertainty regarding the Bureau's grant of certain applications for license renewal pursuant to the *Wireless Radio Services Order*. We therefore dismiss with prejudice the two petitions for reconsideration and related filings, effective upon the assignment of the Sprint WCS Licenses to New

²⁴ *WCS Settlement Public Notice*, 27 FCC Rcd 10248.

²⁵ Joint Request at 3 (note 1, *supra*) ("Apart from the modified deadlines, the terms of the Agreement remain the same.").

²⁶ Dismissal Request at 4 (note 3, *supra*).

²⁷ Letter dated December 24, 2014, from Donald J. Evans, counsel for the Green Flag Applicants, and Michael P. Goggin, counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket 10-112 (filed Dec. 24, 2014).

²⁸ Joint Request at 3-4 (note 1, *supra*) ("Once the Competing Applications against the Sprint WCS licenses are dismissed, AT&T stands ready to invest significant capital to use them to provide broadband services to the public.").

²⁹ *Wireless Radio Services Order*, 25 FCC Rcd at 7038 ¶113. See also Federal Communications Commission Clarifies Conditional Grant of Renewal Licenses Pursuant to the Wireless Radio Services Order, *Public Notice*, WT Docket 10-112, FCC 11-45, 26 FCC Rcd 4173 (2011).

³⁰ See Petition for Reconsideration, ULS File No. 0002949849, *et al.*, referencing Wireless Telecommunications Bureau Market-Based Applications Action, *Public Notice*, Report No. 6273 (Oct. 6, 2010).

³¹ Further Dismissal Request (note 4, *supra*).

Cingular Wireless PCS, LLC.

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, Mobility Division, Wireless Telecommunications Bureau, taken pursuant to Sections 1, 308, and 309 of the Communications Act,³² and Sections 0.331, 1.3, and 1.935 of the Commission's rules.³³

³² 47 U.S.C. §§ 1, 308, and 309.

³³ 47 C.F.R. §§ 0.331, 1.3, and 1.935.