



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU DISMISSES COMPETING APPLICATION

WT Docket No. 10-112

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) dismisses a mutually exclusive (*i.e.*, competing) application filed by Green Flag Wireless, LLC (Green Flag), against a 2.3 GHz Wireless Communications Service (WCS) authorization now held by AT&T Mobility Spectrum LLC, call sign KNLB243.¹

Background

In 2007, the Competing Applicants (identified in note 1) filed applications against most WCS applications for license renewal.² 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 band.³ The Commission reviewed the dispute between the WCS licensees and the Competing Applicants,⁴ and directed the Bureau to grant the renewal applications, on a conditional basis, subject to the outcome of the rulemaking.⁵ The Commission stated that if it were to adopt the rules and policies proposed in the rulemaking, it would dismiss the Competing Applications.⁶ The rulemaking is pending.

¹ ULS File No. 0003090867. *See* Request to Withdraw Pleadings, Petitions & Filings, filed by Green Flag, CWC License Holding, Inc. (CWC), Corr Investments I, LLC (Corr, the successor-in-interest to CWC), James McCotter (McCotter) and AT&T, Inc., on behalf of AT&T Mobility Spectrum LLC, WT Docket 10-112 (filed June 13, 2013) (Dismissal Request). We collectively refer to Corr, CWC, Green Flag, and McCotter as the Competing Applicants and to AT&T, Inc. and AT&T Mobility as AT&T.

² ULS File Nos. 0003113283 *et al.*

³ 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).

⁴ *Id.* at 7035-38 ¶¶106-111.

⁵ *Id.* at 7039 ¶113.

⁶ *Id.* at 7033-34 ¶100.

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.⁷

On October 15, 2012, the Bureau approved a Settlement Agreement to resolve the Competing Applications.⁸ 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.⁹ The Bureau dismissed all Competing Applications and related filings regarding WCS authorizations then held by AT&T.

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 WCS authorizations that AT&T may subsequently acquire.¹⁰ On April 19, 2013, the Commission consented to AT&T's acquisition of WCS license KNLB243 held by NTELOS.¹¹ The parties consummated that transaction on June 5, 2013.¹²

Review and Approval of the Dismissal Request

We review the Dismissal Request under Section 1.935 of the Commission's rules. 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 any related request for approval of the withdrawal or dismissal (here, the Dismissal Request).

As required by the Bureau's *WCS Settlement Public Notice*, AT&T and the Competing Applicants: (1) state that they have not materially amended, or waived, any substantive provision of the Settlement Agreement; (2) have enumerated each Competing Application to be dismissed; and (3) have confirmed that they will not exchange any financial consideration for dismissal of the Competing Application until the Bureau dismisses such application and related filings with prejudice.¹³ We have reviewed the Dismissal Request and find that our approval will serve the public interest by removing

⁷ 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).

⁸ The Settlement Agreement is by and among 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).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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, Report No. 8636, at 11 (Apr. 24, 2013).

¹² ULS File No. 0005809573.

¹³ *See* Dismissal Request.

uncertainty regarding WCS license KNLB243, and thereby promote intensive use of the spectrum. Accordingly, we hereby grant the Dismissal Request and dismiss, with prejudice and effective immediately, the Competing Application and related filings.

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, and Sections 0.331, 1.3, and 1.935 of the Commission's rules.¹⁴

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