

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

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| In the Matter of |) | |
| |) | |
| Pacific Commex, Inc. |) | ULS File No. 0007759874 |
| |) | |
| Tradewinds Wireless Holdings, LLC |) | ULS File No. 0007752492 |
| |) | |
| Nova Wireless, LLC |) | ULS File No. 0007751705 |
| |) | |

ORDER

Adopted: July 25, 2017

Released: July 25, 2017

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order addresses the waiver requests filed by Pacific Commex, Inc. (Pacific Commex),¹ Tradewinds Wireless Holdings, LLC (Tradewinds),² and Nova Wireless, LLC (Nova),³ regarding their applications to license spectrum in the new 600 MHz Band pursuant to the forward auction of the broadcast incentive auction (Auction 1002). These three applicants failed to timely file one or more of the required forms by the deadline established in the *Closing and Channel Reassignment Public Notice*⁴ and each therefore seeks a waiver of the deadline to allow for the late filings of the delinquent forms. For the reasons discussed below, we grant these waiver requests and accept the applicants' late-filed submissions.

II. BACKGROUND

2. On April 13, 2017, the Commission released the *Closing and Channel Reassignment Public Notice*, announcing the winning bidders in Auction 1002 and establishing post-auction procedures and deadlines.⁵ By 6:00 p.m. ET on April 27, 2017, winning bidders in Auction 1002 were required to

¹ The waiver request was attached to Pacific Commex's long-form application. See ULS File No. 0007759874 (Pacific Commex Waiver Request).

² The waiver request was attached to Tradewinds's long-form application as Exhibit F. See ULS File No. 0007752492, Exhibit F (Tradewinds Waiver Request).

³ The waiver request was attached to Nova's long-form application. See ULS File No. 0007751705 (Nova Waiver Request).

⁴ *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017) (*Closing and Channel Reassignment Public Notice*). See also 47 CFR §§ 1.919(b)(1), 1.2107(c), 1.2107(f).

⁵ See generally *Closing and Channel Reassignment Public Notice*.

have on deposit with the Commission enough funds to cover the down payment on their winning bids.⁶ By the same deadline, winning bidders were required to submit the long-form application for authorization (FCC Form 601)⁷ and ensure that a current ownership disclosure information report (FCC Form 602) was on file with the Commission.⁸

3. All three applicants made their requisite down payments by the deadline. Each of the bidders also timely submitted their final payments by the May 11, 2017, deadline.⁹ However, Pacific Commex failed to timely file FCC Form 601 and FCC Form 602. Tradewinds and Nova timely filed their FCC Form 601 long-form applications, but failed to have a current FCC Form 602 on file with the Commission by the deadline. These three bidders subsequently filed the required forms along with requests to waive the filing deadline.¹⁰

A. Pacific Commex, Inc.

4. Pacific Commex states that good cause exists for waiver of the filing deadline for submission of its FCC Form 601.¹¹ The applicant also requests waiver for late submission of FCC Form 602 pursuant to Section 1.925(b)(3).¹² In its waiver request, Pacific Commex argues that strict application of the rule in the present circumstances is not necessary to serve the rule's underlying purpose, and that denial of the waiver would be both inequitable and contrary to the public interest.¹³ The applicant asserts that it gained no advantage in filing its long-form application late, and that no party would be disadvantaged or harmed by grant of the requested waiver.¹⁴ Pacific Commex states its late filing was the result of an "inadvertent misreading of the Commission's requirements,"¹⁵ explaining that because it had already met its financial down payment obligation before April 27, 2017, it mistakenly concluded no further action was required until the final payment deadline on May 11, 2017.¹⁶

B. Tradewinds Wireless Holdings, LLC

5. In support of its waiver request, Tradewinds argues that waiver of the Form 602 filing date is warranted under both waiver provisions of Section 1.925(b)(3).¹⁷ Tradewinds asserts that strict application of Section 1.2107(f) in this instance would frustrate the rule's purpose and run counter to the

⁶ See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2797, paras. 23-24. Applicants were required to submit final payments by 6:00 p.m. ET on May 11, 2017. *Id.* at 2797, para. 26.

⁷ *Id.* at 2801, paras. 45-47.

⁸ *Id.* at 2802, para. 51 ("Pursuant to sections 1.913, 1.919 and 1.2112 of the Commission's rules, an applicant for a license offered at auction must, at the time of submitting its FCC Form 601, have on file with the Commission a current ownership disclosure information report (FCC Form 602) providing the applicant's complete and accurate ownership information.").

⁹ See *id.* at 2797, para. 26.

¹⁰ See Pacific Commex Waiver Request; Tradewinds Waiver Request; Nova Waiver Request.

¹¹ Pacific Commex Waiver Request at 1; see also 47 CFR §§ 1.3, 1.2107(c).

¹² Pacific Commex Waiver Request at 1; see also 47 CFR § 1.925(b)(3).

¹³ See Pacific Commex Waiver Request at 4.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 2.

¹⁷ Tradewinds Waiver Request at 2; see also 47 CFR § 1.925(b)(3).

public interest.¹⁸ Tradewinds explains its late filing was “inadvertent” and the result of its mistaken belief that it already had a current Form 602 on file.¹⁹ Tradewinds also highlights that it timely filed all other required forms, and that it filed Form 602 without delay after learning of its delinquency.²⁰

C. Nova Wireless, LLC

6. Nova also requests waiver of the FCC Form 602 deadline pursuant to Section 1.925(b)(3).²¹ The applicant argues that the underlying purpose of the deadline, which is to ensure the Commission and interested third parties have complete and accurate information about the ownership of the applicant, will be served by granting the requested waiver.²² The applicant states that the missed deadline was “minor, inadvertent, and without prejudice to any party seeking full and accurate information regarding Nova’s ownership.”²³ Nova further asserts that grant of this request is in the public interest and is consistent with Bureau precedent.²⁴

III. DISCUSSION

7. One of the underlying purposes of post-auction application deadlines is to ensure that winning bidders satisfy the Commission’s qualification and eligibility requirements in a timely manner to avoid delays in the deployment of new services.²⁵ As stated above, the Commission required each winning bidder in Auction 1002 to submit its FCC Form 601 and to have a current FCC Form 602 on file by 6 p.m. ET on April 27, 2017.²⁶ Unless good cause is shown,²⁷ a winning bidder that fails to timely file FCC Form 601 is deemed to have defaulted, its application is dismissed, and it is subject to the default payment set forth in Section 1.2104(g).²⁸ However, the Commission may waive specific requirements if applicants affirmatively show that either: (a) the underlying purpose of the rule would not be served by

¹⁸ Tradewinds Waiver Request at 2.

¹⁹ *Id.* Specifically, Tradewinds states that it “reviewed an Ownership Disclosure Filing that was already in the Commission’s Ownership Information Filing system based on the [short-form] Form 175 filing . . . [and because] a ‘preview’ copy of the short form ownership information formatted into a Form 602 appeared in the ownership information module, it seemed that the short-form ownership information had automatically populated into a Form 602 ownership report that was already on file with the Commission.” *Id.* at 1.

²⁰ *Id.* at 2.

²¹ Nova Waiver Request; *see also* 47 CFR § 1.925(b)(3).

²² Nova Waiver Request.

²³ *Id.* Specifically, Nova asserts that in its FCC Form 601 Application: “Nova stated that its ownership information is set forth in ULS File No. 0007134833, filed July 18, 2016. Nova also certified in the Application that it had current ownership information on file with the Commission, relying on the July 18, 2016 [short-form] submission and the fact that there had been no changes in the ownership information filed on that date.” *Id.*

²⁴ *Id.* (citing *Pinpoint Communications, Inc.*, Order, 14 FCC Rcd 6421, 6424-25, para. 10 (PSPWD 1999) (granting “partial relief for minor, inadvertent post-auction delinquencies that did not disrupt the auction process nor undermine the Commission’s policy of facilitating rapid implementation of reliable communications service to the public.”)).

²⁵ *Implementation of Section 309(j) of the Communications Act, Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2382 para. 197 (1994).

²⁶ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2801-02, paras. 45-47, 51. *See also* 47 CFR §§ 1.919(b)(1), 1.2107(c), 1.2107(f).

²⁷ *See* 47 CFR §§ 1.3, 1.2107(c).

²⁸ 47 CFR §§ 1.2104(g), 1.2107(c).

strict application to the instant case and waiver of the rule would be in the public interest; or (b) the unique facts and circumstances of the case render strict application of the rule “inequitable, unduly burdensome, or contrary to the public interest.”²⁹ Considering the record before us, and Commission precedent wherein waivers were granted for minor post-auction filing delinquencies,³⁰ we determine that the three applicants have demonstrated circumstances that justify waiver of the deadline in this instance.

A. Waiver to Permit Late Submission of FCC Form 601

8. The Commission may, for good cause, waive its deadline for submission of FCC Form 601 if the underlying purpose of the rule would not be served by its application and the waiver is otherwise in the public interest.³¹ In Pacific Commex’s case, we find that waiver of the long-form application deadline is warranted. Because Pacific Commex timely met both its down payment and final payment obligations, and submitted its long-form application within three business days after the filing deadline, the post-auction licensing process for Auction 1002 has not been significantly delayed or materially adversely affected. Furthermore, there is nothing in the record that indicates the applicant’s error was part of a deliberate effort to delay the processing of its long-form application, or was the result of bad faith on the part of Pacific Commex.

9. We further conclude the public interest would not be served by strict enforcement of the long-form filing deadline in this case. Given that Pacific Commex complied with all auction filing requirements before the filing deadline, and that its failure to timely file the long-form application had no major adverse effects on the post-auction licensing process, grant of the subject waiver request is in the public interest. Accordingly, we grant Pacific Commex’s waiver request and accept its long-form application for processing.

B. Waivers to Permit Late Submission of FCC Form 602

10. The Commission may, for good cause, waive its deadline for submission of FCC Form 602 if the underlying purpose of the rule would not be served by its application and the waiver is otherwise in the public interest.³² We are satisfied the applicants’ late filings of Form 602 will not unduly delay deployment of services to the public, and thus do not undermine or frustrate the purpose of the post-auction licensing process. The record indicates that, notwithstanding the subject late filings, each of the three applicants has complied with all previous auction-related requirements. Additionally, each of the applicants had sufficient funds on deposit with the Commission to satisfy their respective payment obligations at the time the down payments were due.

11. Given that the late filings of Form 602 did not disrupt the post-auction licensing process, or undermine the Commission’s policy of facilitating rapid implementation of reliable communications service to the public, we find that it is in the public interest to grant the requested waivers. For those reasons, we grant the three applicants’ waiver requests and accept their FCC Forms 602 for processing.

IV. CONCLUSION

12. For the foregoing reasons, we determine that it is in the public interest to waive certain of

²⁹ 47 CFR § 1.925(b)(3).

³⁰ See, e.g., *Paging Systems, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 450, 450-451, para. 2 (2010) (affirming waiver of long-form application deadline because the post-auction licensing process was not adversely affected, thus the underlying purpose of the rule would not be served by denying the waiver and a waiver would serve the public interest).

³¹ See 47 C.F.R. §§ 1.3, 1.925(b)(3), 1.2107(c).

³² See 47 CFR § 1.925(b)(3).

the Auction 1002 application filing deadlines. In reaching this conclusion, we give considerable weight to the applicants' prior records of compliance in Auction 1002 and their prompt action to remedy their delinquencies. We therefore grant Pacific Commex, Tradewinds, and Nova the requested waivers and accept their applications for processing.

13. We nonetheless note that our decision to waive these rules in this instance should not suggest that such waivers will be routine. The timely filing of required forms is important to the efficiency of the competitive bidding licensing process, and the applicants' noncompliance imposes additional administrative burden on the Commission. The fact that applicants' errors appear inadvertent does not excuse their failure to meet the filing deadline, and the Commission reserves the right to take any enforcement action it deems appropriate at a later time.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331, 1.925, and 1.2107(c) of the Commission's rules, 47 CFR §§ 0.331, 1.925, and 1.2107(c), the waiver request filed by Pacific Commex, Inc., is HEREBY GRANTED.

15. IT IS FURTHER ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.925(b)(3) of the Commission's rules, 47 CFR §§ 0.331 and 1.925(b)(3), the waiver requests filed by Tradewinds Wireless Holdings, LLC, and Nova Wireless, LLC, are HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division
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