



Federal Communications Commission
Washington, D.C. 20554

August 7, 2018

DA 18-819

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555 12th St. NW
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RE: Request for Extension of Time and Waiver (Call Signs WQNF697, WQNF698, WQNF699, WQNF700, WQNF703, and WQNF705)

Dear Mr. Lin, Mr. Martin, and Mr. Platt:

This letter addresses the above-referenced request for extension of time and waiver filed by American Samoa Telecommunications Authority (ASTCA) in order to meet its construction requirements for the above-referenced PCS licenses (Licenses).¹ On August 7, 2017, the Mobility Division (Division) of the Wireless Telecommunications Bureau granted ASTCA a waiver of section 24.203² and reinstated its Licenses, concluding that unique circumstances existed in this case.³ In the Order, the Division required that ASTCA file notifications of construction in ULS demonstrating specific levels of coverage by March 7, 2018.⁴ In the timely-filed Request, ASTCA asks for an additional four months until July 7, 2018 in order to meet its build-out requirements because of the effects that Cyclone Gita has had on American Samoa.⁵ For the reasons discussed herein, we find that Cyclone Gita has exacerbated the unique circumstances present in this situation and that it is in the public interest to modify ASTCA's existing waiver by granting the requested additional time to meet its construction requirements.

Background. Pursuant to section 24.203 of the Commission's rules, PCS licensees must demonstrate that they are providing service sufficient to serve either one-third (for licensees of 30 megahertz blocks)⁶ or one-fourth (for all other licensees)⁷ of the population in their licensed market areas within five years of the initial license grant. Alternatively, licensees may make a substantial service

¹ American Samoa Telecommunications Authority Request for Extension of Time and Waiver, Call Signs WQNF697, WQNF698, WQNF699, WQNF700, WQNF703, and WQNF705 (filed March 6, 2018) (Request).

² 47 CFR § 24.203(a), (b). The build-out requirements for PCS licensees are located in this rule section, as described herein.

³ See Letter to Mr. Alex Sene, Acting CEO, ASTCA from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, Letter Order, 32 FCC Rcd 6436 (WTB MD 2017) (Order). The Licenses had been in Termination Pending status because of ASTCA's failure to file construction notifications or a request for waiver or extension of time by its original build-out deadline.

⁴ Order at 8.

⁵ See Request.

⁶ 47 CFR § 24.203(a). Section 24.203(a) also requires licenses of 30 megahertz PCS blocks to demonstrate that they are serving with a signal level sufficient to provide service to at least two-thirds of the population in the applicable license area within ten years of license grant. *Id.*

⁷ 47 CFR § 24.203(b).

showing.⁸ A PCS license will automatically terminate as of the construction deadline if the licensee fails to meet the requirements of section 24.203 unless the Commission grants an extension or waives the applicable construction requirement.⁹ Failure to construct as required results in forfeiture of the license or non-renewal, and the licensee is ineligible to regain the license.¹⁰

As explained in the Order, ASTCA was required to serve either one-third of the population of American Samoa for its 30 MHz license¹¹ and one-fourth of the population for its 10 MHz licenses,¹² or demonstrate substantial service in each licensed area by January 24, 2016.¹³ On March 2, 2016, as a result of ASTCA's failure to file construction notifications or a request for waiver or extension of time to meet its build-out deadline, the Licenses entered termination pending status. On April 1, 2016, ASTCA filed a petition for reconsideration, request for waiver, and request for extension of time (Petition) seeking reconsideration of the Licenses' termination pending status and requesting an extension of less than one year to meet its five-year build-out deadlines.¹⁴ In support of its request, ASTCA argued that grant of its petition was warranted because: (1) it had been diligent in constructing its system through its involvement in the Broadband Linking the American Samoa Territory (BLAST) project,¹⁵ and the preparations it made at its cell sites, including upgraded backhaul capability as well as power systems and transmitter relocation;¹⁶ (2) delays to construction were beyond its control and resulted from "financial uncertainty and cash flow issues;"¹⁷ and (3) grant would further the rules and advance the public interest in that ASTCA is poised to use its spectrum to provide high-speed LTE service to the people of American Samoa.¹⁸ On January 7, 2017, ASTCA filed a Supplement providing further support for its petition, including details regarding the challenges to construction arising from American Samoa's geographic isolation and the company's efforts in upgrading necessary communications infrastructure.¹⁹ ASTCA argued that the replacement of deteriorating legacy copper infrastructure with a fiber network was "a necessary precursor to 4G LTE deployment," and this process was completed "only a few months prior to the January 2016 construction deadline."²⁰

In the Order, the Division found that the geographic and environmental challenges associated with providing coverage to American Samoa constituted unique circumstances such that strict application

⁸ See 47 CFR §§ 24.203(a), (b).

⁹ *Id.*

¹⁰ See 47 CFR §§ 1.946(c), 1.955(a)(2), and 24.203(a), (b).

¹¹ Call Sign WQNF700.

¹² Call Signs WQNF697, WQNF698, WQNF699, WQNF703, and WQNF705.

¹³ Order at 2.

¹⁴ See American Samoa Telecommunications Authority Petition for Reconsideration, Request for Waiver, and Request for Extension of Time (filed Apr. 1, 2016) (Petition).

¹⁵ *Id.* at 2-3.

¹⁶ See *id.* at 3-4.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 7-9.

¹⁹ See American Samoa Telecommunications Authority, Supplement (filed Jan. 7, 2017) (Supplement).

²⁰ *Id.* at 4-5.

of the Commission's construction rules in this case would be contrary to the public interest.²¹ In addition, we concluded that granting relief to ASTCA in this situation would result in significant benefit to the American Samoa community.²² Accordingly, we granted ASTCA a waiver pursuant to section 1.925(b)(3) of the Commission's rules in order to permit the company to provide 4G LTE service to a remote, underserved area that has, to date, lacked advanced broadband services.²³ We found that the challenges faced by ASTCA in providing service to the islands, combined with the significant public benefit to be achieved from the deployment of advanced wireless services, are unique circumstances that support relief in this case.²⁴ Consistent with benchmarks identified in ASTCA's request, we required that ASTCA file construction notifications by March 7, 2018, demonstrating that it is providing coverage to 60.42 percent of the American Samoa population on the A and D block channels and to 34.34 percent of the population on the C and F block channels, with a combined coverage to more than 80 percent of the population.²⁵

Prior to the March 7, 2018 deadline, ASTCA filed the Request, asking for a brief extension of four months until July 7, 2018 in order to meet its construction build-out requirements for the Licenses, claiming that additional difficulties, particularly Cyclone Gita, which struck the American Samoa islands on February 9, 2018, have prevented ASTCA from meeting the March 7, 2018 deadline.²⁶ In the Request, ASTCA describes the catastrophic impact of Gita, which left many areas without power or water, including approximately 90 percent of Tutuila (the largest and main island), downing half of ASTCA's cell sites, power lines, and communications infrastructure.²⁷ ASTCA explains that Gita impeded its ability to meet the construction deadline because ASTCA (1) devoted resources to basic communications services as opposed to furthering its LTE deployment; (2) devoted resources to assist with power restoration at the government's request; (3) experienced limited access to critical infrastructure for the deployment; and (4) experienced delays in receiving LTE system equipment shipments because the islands were prioritizing emergency supplies.²⁸

In its Request, ASTCA further describes the progress it has made toward meeting its build-out requirements in the months leading up to Cyclone Gita.²⁹ Importantly, ASTCA contracted with Ericsson for equipment needed for its LTE network, a vendor change that was required in order to meet AT&T's FirstNet requirements and which will benefit American Samoa first responders, government entities, and citizens.³⁰ ASTCA also contracted with UNICOM for antennas.³¹ ASTCA claimed that once it received necessary equipment, which was delayed by Cyclone Gita, it would be in position to begin operation of

²¹ See Order at 4-6.

²² *Id.* at 6-7.

²³ *Id.* at 4.

²⁴ *Id.* at 7.

²⁵ *Id.* at 7-8.

²⁶ Request at 1.

²⁷ *Id.* at 3.

²⁸ *Id.* at 3-4.

²⁹ *Id.* at 4-6.

³⁰ *Id.*

³¹ *Id.* at 4-5.

its LTE network in less than one week and satisfy its build-out requirements.³² Given the possibility that unexpected events might prolong the islands' recovery from Gita and that there could be transportation delays, ASTCA requested a modified build-out deadline of July 7, 2018.³³

On July 2, 2018, ASTCA filed notifications of construction, which were subsequently amended on July 24, 2018,³⁴ indicating that ASTCA is providing the required levels of coverage specified in the 2017 Order.³⁵ Division Staff is currently reviewing the notifications to determine compliance with the coverage conditions.

Discussion. The Commission may grant a waiver pursuant to section 1.925(b)(3) when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the 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.³⁶ As we explained in the Order, waiver requests must meet a high hurdle at the outset and are evaluated on a case-by-case basis.³⁷ After evaluating the geographic and environmental challenges associated with providing coverage to American Samoa, we found the unique circumstances in this case to be sufficient to warrant relief in 2017.³⁸ After a careful review of the new facts in this case, we find that Cyclone Gita has compounded the unique circumstances and challenges that exist for ASTCA in meeting its coverage requirements in American Samoa. Moreover, ASTCA resources were diverted to assist with basic community power and communications needs following the cyclone.³⁹ The delays caused by this unforeseen weather event justify modifying ASTCA's build-out deadline.⁴⁰

Accordingly, we grant the requested relief, conditioned on ASTCA's satisfactory demonstration that, as of July 7, 2018, it is providing the required level of coverage for each of its Licenses. Consistent with the conditions set forth in the Order, ASTCA's notifications of construction must demonstrate that it is providing coverage to 60.42 percent of the American Samoa population on the A and D block channels and to 34.34 percent of the population on the C and F block channels, with a combined coverage to more than 80 percent of the population.⁴¹ We also reiterate that ASTCA must demonstrate at renewal that, for each of its licenses, it has maintained or increased the level of service coverage identified in the

³² *Id.* at 5.

³³ *Id.* at 7.

³⁴ See ULS File Nos. 0008270872, 0008270878, 0008270882, 0008270884, 0008270887, and 0008270889.

³⁵ Order at 7-8.

³⁶ 47 CFR § 1.925(b)(3).

³⁷ See Order at 4.

³⁸ *Id.* at 4-6.

³⁹ Request at 3-4.

⁴⁰ As we noted in the Order, this waiver applies only to the interim deadline for ASTCA's A Block license, Call Sign WQNF700, and does not affect the final construction deadline for that license. Therefore, ASTCA must demonstrate that it is providing coverage sufficient to serve at least two-thirds of the population applicable to Call Sign WQNF700 by January 24, 2021.

⁴¹ Order at 7-8.

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construction notifications.⁴² We remind ASTCA that the failure to demonstrate the requisite construction, or to maintain or exceed its July 7, 2018 level of service at renewal, will result in automatic termination or non-renewal, respectively, of the Licenses.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925(b)(3)(ii) of the Commission's rules, 47 CFR § 1.925(b)(3)(ii), the waiver of section 24.203(a) and (b) of the Commission's rules, 47 CFR § 24.203(a)-(b), granted to American Samoa Telecommunications Authority on August 7, 2017, IS MODIFIED as set forth herein.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

⁴² Order at 8.