

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

In the Matter of
Pine Cellular Phones, Inc.
Limited Waiver and Extension of Time to Satisfy
the Construction Requirement
File No. 0009088322

ORDER

Adopted: October 1, 2020

Released: October 1, 2020

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant, in part, the above-captioned request by Pine Cellular Phones, Inc. (Pine Cellular) for a limited waiver and an extension of time to meet the Tribal lands bidding credit (TLBC) construction requirement to deploy service to the Choctaw Nation of Oklahoma communities in Eastern Oklahoma (Choctaw Nation communities). For the reasons stated below, we grant a limited waiver of section 1.2110(f)(3)(vii) to provide one additional year for Pine Cellular to meet the TLBC construction requirement associated with Call Sign WRAM805, one of its 600 MHz licenses.

II. BACKGROUND

2. Pine Cellular was the winning bidder in Auction No. 1002 for two 600 MHz licenses, including the Texarkana, TX (PEA 181) E-Block license that is the subject of its Extension Request. On January 9, 2018, the Wireless Telecommunications Bureau (Bureau) issued Pine Cellular’s license for this market, Call Sign WRAM805, which included a TLBC of \$2,009,350 to serve Choctaw Nation communities. As a condition of receiving the TLBC, Pine Cellular is required to construct and operate a system capable of serving 75 percent of the population of Choctaw Nation communities within the Pine Cellular’s Call Sign WRAM805 service area within three years of the license grant, by January 9, 2021.

3. In April 2018, the Commission proposed adopting a rule to prohibit the use of Universal Service Fund (USF) funds to purchase equipment or services “from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain” (hereinafter “covered companies”). In November 2019, the Commission

1 Pine Cellular Phones, Inc., Request for Extension of Time, File No. 0009088322, Exhibit 1: Limited Waiver and Extension of Time to Satisfy the Construction Requirement (filed May 22, 2020) (Extension Request).

2 Incentive Auction Task Force and Wireless Telecommunications Bureau Grant 600 MHz Licenses, Auction No. 1002, Public Notice, 33 FCC Rcd 99, 100 (Attach. A) (IATF/WTB 2018); Market No. PEA 181, Texarkana, Texas, Channel Block E, File No. 0007750369.

3 47 CFR § 1.2110(f)(3)(iii), (iv), (vii).

4 Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, WC Docket No. 18-89, Notice of Proposed Rulemaking, 33 FCC Rcd 4058, 4058, para. 2 (2018) (Supply Chain Notice).

adopted the proposed rule to prospectively prohibit recipients of USF funds from using those funds for systems that use or have components of covered companies, and initially designated Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies for purposes of this rule.⁵ In June 2020, the Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE as covered companies, effective immediately.⁶ In July 2020, the Commission adopted a declaratory ruling integrating provisions of the recently enacted Secure and Trusted Communications Networks Act⁷ into the existing *Supply Chain* rulemaking proceeding, and issued the *Supply Chain Second Further Notice*, which included a proposal to establish regulations to prevent waste, fraud, and abuse in the proposed reimbursement program to remove, replace, and dispose of insecure equipment.⁸

4. On May 22, 2020, Pine Cellular filed the instant Extension Request, which seeks a waiver of section 1.2110(f)(3)(vii) to allow for additional time to meet the TLBC construction requirement associated with one of its 600 MHz Band licenses, Call Sign WRAM805.⁹ Specifically, Pine Cellular explains that, when its license was issued in January 2018, it already had wireless mobile infrastructure in place and it was well-positioned to deploy service to the Tribal area within the three-year period.¹⁰ Soon after Pine Cellular's license was issued, however, the Commission initiated a rulemaking—which it later adopted—to prospectively prohibit recipients of USF funds from using those funds for systems that use or have components of covered companies that present national security risks.¹¹ Pine Cellular receives high-cost support from the Commission's Mobility Fund Phase I and Connect American Fund Phase II programs, and Pine Cellular is an Eligible Telecommunications Carrier.¹² Pine Cellular asserts that it needs additional time to deploy its network to serve Choctaw Nation communities because its existing network in that geographic area uses Huawei equipment for the performance of core functions.¹³

5. Because Pine Cellular is prohibited from using USF funds to maintain, improve, modify,

⁵ See 47 CFR § 54.9(b); *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order and Further Notice of Proposed Rulemaking and Order, 34 FCC Rcd 11423 (2019) (*Supply Chain Order* or *Supply Chain Further Notice*).

⁶ *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604 (PSHSB 2020) (*Huawei Designation Order*); *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (PSHSB 2020).

⁷ Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (Secure Networks Act).

⁸ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, FCC 20-99, para. 23 (July 17, 2020) (*Supply Chain Second Further Notice*).

⁹ See generally Extension Request.

¹⁰ Extension Request at 12-13. Pine Cellular states that it “planned to enhance [its] infrastructure by constructing approximately 20 new antenna sites, and adding a number of new remote radio heads, at a cost of approximately \$1 million, to utilize the 600 MHz spectrum.” Extension Request at 12.

¹¹ See *Supply Chain Notice*; 47 CFR § 54.9; *Supply Chain Order*. In adopting the rule, the Commission initially designated Huawei as one of the covered companies for purposes of the rule. *Id.*; see also 47 CFR § 54.9(b). In June 2020, the determination that Huawei is a covered company was made final, effective immediately. See *Huawei Designation Order*.

¹² See Extension Request at 2.

¹³ Extension Request at 2, 13.

operate, manage, or otherwise support its Huawei equipment,¹⁴ it asserts that it cannot act without a significant cost burden until the Commission acts in the *Supply Chain* proceeding to establish a cost reimbursement program for USF recipients to replace equipment from covered companies.¹⁵ Specifically, Pine Cellular explains that if it built out its existing Huawei network to Choctaw Nation communities as originally planned, it would be using insecure equipment, and may ultimately need to rip out and replace the newly-installed network due to the *Supply Chain* restrictions.¹⁶ Further, Pine Cellular argues, if it does expand its existing Huawei network it faces penalties if it cannot prove to the Commission's satisfaction that it used non-USF funds.¹⁷ As a result, Pine Cellular claims that it is unreasonable to build out its existing network in the area to serve Choctaw Nation communities, at this time.¹⁸ Alternatively, if Pine Cellular were to construct a parallel network without using Huawei equipment¹⁹ to meet its TLBC construction deadline, Pine Cellular would not be eligible for cost reimbursement for the additional expense through the *Supply Chain* proceeding.²⁰ Consequently, Pine Cellular asserts that imposition of the rule would be inequitable and unduly burdensome, and given the complications with construction, Pine Cellular has no reasonable alternative.²¹

6. Pine Cellular seeks a construction extension to “a date not earlier than eighteen (18) months after the Commission adopts a Report and Order based upon the *Supply Chain Further Notice*.”²² On July 22, 2020, the Bureau issued a Public Notice seeking comment on Pine Cellular's Extension Request.²³ No commenters filed in response to Pine Cellular's request, and we have received no opposition from the Choctaw Nation of Oklahoma Tribal authorities.

III. DISCUSSION

7. We find that the unique circumstances described by Pine Cellular warrant a limited waiver and extension of Pine Cellular's TLBC construction requirement deadline. Pursuant to section 1.925 of the Commission's rules, a waiver may be granted if the petitioner establishes that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant

¹⁴ See 47 CFR § 54.9(a).

¹⁵ Extension Request at 18-19 (*referencing Supply Chain Further Notice*).

¹⁶ Extension Request at 21.

¹⁷ Extension Request at 24. See also *Supply Chain Order*, 34 FCC Rcd at 11452, para. 72. Although the rule does not prohibit USF recipients from using their own funds to purchase or obtain equipment or services from covered companies, the Commission stated that it “believe[s] it unlikely that many USF recipients will be able to show the detailed records necessary to demonstrate that no USF funds were used” and expressed skepticism “that any USF recipient seeking to use USF funds on an ‘eligible’ portion of such a project would will be able to establish with the necessary certainty.” *Id.*

¹⁸ Extension Request at 23-24.

¹⁹ Pine Cellular explains that its core network uses Huawei equipment that is not interoperable with other equipment, so it cannot expand its existing network using non-Huawei equipment. Extension Request at 25.

²⁰ Extension Request at 17-19, 21. Pine Cellular explains that reimbursements pursuant to the Secure Networks Act may be used to remove covered equipment only if that equipment was obtained before August 14, 2018. See 47 U.S.C. § 1603(c)(1)(A)(i). We note that Pine Cellular's net winning bid for the license at issue was approximately \$4.88 million; and it was granted a Tribal Land Bidding Credit of approximately \$2 million. See File No. 0007750369. Pine Cellular estimates that the costs of building out a parallel network using an acceptable vendor would require an investment of \$8 million. Extension Request at 19.

²¹ Extension Request at 22-23.

²² Extension Request at 2. See also *Supply Chain Further Notice*.

²³ Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Report No. 15149 (WTB July 22, 2020) at 2.

case, and that grant of the waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁴ Section 1.946 of the Commission's rules governs extensions of construction periods for stations in the wireless radio services.²⁵ The rule provides that relief may be granted for good cause if such relief is requested before the expiration of the construction period.²⁶

8. We find that a limited extension of time for Pine Cellular to meet its TLBC construction deadline is warranted. As an initial matter, we note that the Commission has recognized that "members of federally-recognized American Indian Tribes and Alaska Native Villages...and other residents of Tribal lands have lacked meaningful access to wired and wireless communications services."²⁷ In recognition of this challenge, the Commission established the TLBC program to provide incentives for wireless service providers to deploy advanced wireless services to benefit the residents and communities on Tribal lands.²⁸ In developing the requirements for TLBC recipients, however, the Commission recognized that various circumstances, including economic factors, could affect the ability of TLBC recipients to meet the TLBC requirements.²⁹ In that regard, the Commission has indicated that it "strongly encourage[s] parties to seek waivers of specific rules or file other requests for regulatory relief in those instances where greater flexibility than the rules allow would facilitate the provision of service to tribal lands."³⁰

9. In the instant case, we conclude that, in view of the unique factual circumstances that have been presented, Pine Cellular has no reasonable alternative and application of the rule would be contrary to the public interest.³¹ As Pine Cellular notes, it did not anticipate rules substantially altering its plans to build out its existing network when it received its 600 MHz license with a Tribal land bidding credit. Given those developments, Pine Cellular is presented with limited options for network deployment to the Choctaw Nation communities: build out its existing Huawei network and try to prove it used non-USF funds (recognizing that it also may need to replace this network); or build out an expensive parallel network for which it has no guarantee of reimbursement through the *Supply Chain* proceeding if it acts now. We agree that Pine Cellular's current choices for network deployment to the Choctaw Nation

²⁴ 47 CFR § 1.925(b)(3).

²⁵ 47 CFR § 1.946(e).

²⁶ *Id.* Pine Cellular's TLBC construction deadline is January 9, 2021, and it filed its request prior to that deadline, on May 22, 2020.

²⁷ *Improving Communications Services for Tribal Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623, 2624, para. 1 (2011); see also *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660, 1662, 1687-88, paras. 6, 57-58 (2018) (noting that Tribal lands continue to lag behind with respect to broadband deployment).

²⁸ See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794 (2000) (*Tribal Lands Order*). More recently, the Commission has established other initiatives to facilitate the deployment of advanced wireless services on Tribal lands. See, e.g., *In the Matter of Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446, 5463 para. 47 (2019) (establishing a Tribal priority window for Tribal entities to obtain unassigned 2.5 GHz spectrum on Tribal lands that are located in rural areas).

²⁹ *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 4775, 4783 para. 22 (2003).

³⁰ *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Third Report and Order, 19 FCC Rcd 17652, 17656, para. 8 (2004) (*citing Tribal Lands Order*, 15 FCC Rcd at 11808, para. 39).

³¹ See 47 CFR § 1.925(b)(3)(ii).

communities are not reasonable alternatives. Moreover, we find that strict application of the TLBC construction requirement, which would result in Pine Cellular's repayment of its TLBC, or if the TLBC is not repaid, automatic termination of its license, is not warranted.³² Neither the repayment of the TLBC nor the automatic termination of the license would facilitate the provision of wireless broadband service to the Choctaw Nation communities, and thus would not serve the public interest or the underlying purpose of the TLBC rule.

10. We find that grant of a waiver to Pine Cellular under these circumstances is consistent with prior TLBC waivers granted by the Bureau. For example, the Bureau has recognized that granting a limited extension of the TLBC construction deadline may be warranted "to overcome the possible economic hurdles associated with constructing additional sites..."³³ In addition, the Bureau has granted extensions due to lack of available equipment that meets regulatory requirements.³⁴ We also find that grant of an extension in this instance is consistent with the Commission's recognition that economic factors can affect the timely satisfaction of TLBC requirements and the Commission's encouragement of the consideration of TLBC waivers where greater flexibility than the rules allow would facilitate the provision of service to Tribal lands.³⁵

11. With respect to the length of the extension, we determine that extending Pine Cellular's TLBC construction deadline one year, until January 9, 2022, is sufficient. We disagree with Pine Cellular's request to extend its TLBC buildout date "to a date not earlier than eighteen (18) months after the Commission adopts a Report and Order based upon the *Supply Chain Further Notice*."³⁶ Pursuant to the Secure Networks Act, the Commission must complete the *Supply Chain* rulemaking no later than March 12, 2021.³⁷ We believe that, with the one-year extension, Pine Cellular will have sufficient time to determine how it can serve the Choctaw Nation communities while meeting the *Supply Chain*

³² 47 CFR § 1.2110(f)(3)(viii). Any licensee that fails to provide the post-construction certification demonstrating it met its TLBC buildout obligation in a timely manner must repay the bidding credit amount in its entirety, plus interest, within 30 days of the deadline, or face automatic termination of its license. With imposition of these penalties, a licensee's commitment to serve the Tribal land is no longer applicable.

³³ *Ronan Telephone Company Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement for a Lower 700 MHz Band Licensee*, Order, WT Docket No. 06-231, 22 FCC Rcd 972, 975, para. 10 (WTB-MD 2007). See also *Ronan Telephone Company Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement for a Lower 700 MHz Band Licensee*, Order, WT Docket No. 06-231, 23 FCC Rcd 845 (WTB-MD 2008); *Ronan Telephone Company Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement for a Lower 700 MHz Band Licensee*, Order, WT Docket No. 06-231, 24 FCC Rcd 983 (WTB-MD 2009).

³⁴ See *LL License Holdings, LLC Waiver Request for Extension of Time for Wireless Services, Call Signs WQKH490 and WQKH491 (File Numbers 0005204801 and 0005204802)*, Order, 30 FCC Rcd 1937 (2015) (granting additional time for TLBC buildout due to lack of available interoperable 700 MHz equipment); *Space Data Spectrum Holdings, LLC, AWS Station WQIA880, A Block, Alaska 1-Wade Hampton CMA, Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement*, Memorandum Opinion and Order, 29 FCC Rcd 3523 (2014) (granting additional time for TLBC buildout due to lack of suitable Advanced Wireless Services equipment).

³⁵ See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4783 para. 22 (2003); *Tribal Lands Order*, 15 FCC Rcd at 11808, para. 39.

³⁶ Extension Request at 2. Pine Cellular notes that pursuant to the Secure Networks Act, the Commission is required to adopt a Report and Order implementing the prohibitions enacted by Congress by September 8, 2020. Extension Request at 9 (*citing* Secure Networks Act, 47 U.S.C. § 1601(b)).

³⁷ Secure Networks Act, 47 U.S.C. § 1603(g)(2) ("The Commission shall complete the rulemaking under paragraph (1) [the reimbursement program] not later than 1 year after March 12, 2020.").

requirements.

IV. CONCLUSION

12. Pine Cellular has demonstrated that an extension of its TLBC construction deadline is warranted under the standards contained in sections 1.925 and 1.946 of the Commission's rules. We grant Pine Cellular a waiver of section 1.2110(f)(3)(vii) of the Commission's rules and extend the TLBC construction deadline until January 9, 2022, for Call Sign WRAM805. Notification that such construction has been completed must be filed with the Commission within fifteen (15) days of the deadline, by January 24, 2022.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 1.925, 1.946, and 1.2110(f)(3) of the Commission's Rules, 47 CFR §§ 1.925, 1.946, and 1.2110(f)(3), the Limited Waiver and Extension of Time to Satisfy the Construction Requirement, Call Sign WRAM805, filed by Pine Cellular Phones, Inc. on May 22, 2020, is GRANTED to the extent described herein.

14. 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.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau