

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

In the Matter of)
Triangle Communication System, Inc.) ULS File Nos. 0009485845; 0009485846
Northern Valley Communications, LLC) 0009485847; 0009485848; 0009485849
Request for Waiver of Interim Buildout Deadline) ULS File No. 0009804405
Penalties)

ORDER

Adopted: April 14, 2023

Released: April 14, 2023

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant, in part, the requests for relief submitted by Triangle Communication System, Inc. ("Triangle") and Northern Valley Communications, LLC ("NVC") (collectively "the Companies") for failing to meet the interim construction deadlines for their AWS-3 licenses. For the reasons discussed below, we find that the unique circumstances described by Triangle and NVC warrant waiving the penalties associated with section 27.14(s)(3) of the Commission's rules. As a result, the 12-year license term and final buildout deadline for the Companies' AWS-3 licenses at issue will not be accelerated.

II. BACKGROUND

2. In 2015, the Wireless Telecommunications Bureau (WTB) granted Triangle and NVC their AWS-3 licenses. Under the AWS-3 licensing rules, a licensee must meet an interim buildout requirement in which the licensee must provide reliable signal coverage and offer service within six years

1 See ULS File Nos. 0009485845, 0009485846, 0009485847, 0009485848, 0009485849; Attachment A: Request for Extension of Time to Meet Buildout Requirements, Triangle Communication System, Inc. (filed Apr. 7, 2021) (Triangle Extension Request); see also File Nos. 0009485845, 0009485846, 0009485847, 0009485848, 0009485849; Attachment A: Request for Waiver of Two Year License Term Penalty, Triangle Communication System, Inc. (filed Jan. 20, 2022) (Triangle Waiver Request).

2 NVC originally filed its extension application and waiver request on November, 19, 2021. ULS File No. 0009804405, Request for Limited Waiver and Extension of Time (NVC Waiver Request, Nov. 19, 2021 filing). It subsequently amended its waiver request on October 28, 2022 (NVC Waiver Request, Oct. 28, 2022 filing), and November 7, 2022 (NVC Waiver Request, Nov. 7, 2022 filing).

3 See 47 CFR § 27.14(s)(3).

4 See Wireless Telecommunications Bureau Grants AWS-3 Licenses in the 1755-1780 MHz AND 2155-2180 MHz Bands, Public Notice, 30 FCC Rcd 2952 (WTB Apr. 8, 2015) (Call Signs WQVP460, WQVP461, WQVP462, WQVP463, and WQVP464); Wireless Telecommunications Bureau Grants AWS-3 Licenses in the 1755-1780 MHz AND 2155-2180 MHz Bands, Public Notice, 30 FCC Rcd 13325 (WTB Nov. 19, 2015) (Call Sign WQWU317).

from the date of the initial license to at least 40 percent of the population in each of its licensed areas.⁵ In addition, a licensee must provide reliable signal coverage and offer service within 12 years from the date of the initial license to at least 75 percent of the population in each of its licensed areas.⁶ If a licensee fails to meet the 40 percent interim buildout requirement, its license term and final buildout deadline to provide 75 percent coverage shall be accelerated from 12 to 10 years.⁷

3. *Supply Chain Proceeding.* Triangle and NVC, both recipients of Universal Service Fund (USF) funds, initially planned to build out their AWS-3 licenses using their existing Huawei core and accompanying network equipment.⁸ In November 2019, the Commission adopted a rule to prospectively prohibit recipients from using USF funds “to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain”⁹ (covered companies), and initially designated Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies for purposes of this rule.¹⁰ In June 2020, the Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE as covered companies, effective immediately.¹¹

4. In the *Supply Chain Second Report and Order*,¹² the Commission promulgated rules for the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) to reimburse eligible providers of advanced communications service—such as Triangle and NVC—for costs reasonably incurred in the removal, replacement, and disposal of communications equipment/services.¹³ The *Supply Chain Third Report and Order*, adopted on July 13, 2021, amended the rules for the Reimbursement Program to be consistent with the 2021 Consolidated Appropriations Act, passed on December 27, 2020.¹⁴ The Wireline Competition Bureau released a *Supply Chain Public Notice* on August 3, 2021, that provided final Reimbursement Program application procedures and reimbursement processes, a cost catalog, and replacement list.¹⁵ The filing window for the

⁵ See 47 CFR § 27.14(s)(1).

⁶ See 47 CFR § 27.14(s)(2).

⁷ See 47 CFR § 27.14(s)(3).

⁸ Triangle Waiver Request at 1; NVC Waiver Request, Nov. 19, 2021 filing at 2.

⁹ 47 CFR § 54.9(a).

¹⁰ 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*).

¹¹ *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, 6631 para. 63 (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, 6646-47 para. 29 (PSHSB 2020).

¹² *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, WC Docket 18-89, 35 FCC Rcd 14284 (rel. Dec. 11, 2020) (*Supply Chain Second Report and Order*).

¹³ See generally *Supply Chain Second Report and Order*.

¹⁴ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Third Report and Order, WC Docket 18-89 (rel. July 14, 2021) (*Supply Chain Third Report and Order*); see also Pub. L. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet access Service, §§ 901, 906, 134 Stat. 1182 (2020) (2021 Consolidated Appropriations Act or CAA).

¹⁵ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Public Notice, WC Docket 18-89 (rel. Aug. 3, 2021) (*Reimbursement Program Procedures Public Notice*). See also (continued....)

Reimbursement Program opened on October 29, 2021, and closed on January 28, 2022.¹⁶ Both Triangle and NVC¹⁷ filed applications to participate in the Reimbursement Program, and their applications were granted in July 2022.¹⁸

5. *Triangle Request.* On April 7, 2021, Triangle submitted a request for extension of time to meet the interim construction requirement for each of its five AWS-3 licenses.¹⁹ On January 20, 2022, Triangle amended its applications to submit the waiver request at issue in this *Order*.²⁰ In its request, Triangle notes that the “Huawei-related national security issues arose after Triangle had acquired the subject AWS3 licenses in April 2015 and those security issues arose many years after Triangle had already invested significant sums of money in securing and installing Huawei-based telecommunications core and related equipment and software.”²¹ Triangle states that the “[core] equipment of one manufacturer does not work with the transmission equipment produced by another manufacturer” and that its decision to invest a significant sum of money in securing and installing Huawei-based telecommunications equipment locks it into a manufacturer-based dependency.²² Triangle seeks a waiver of the interim benchmark penalty, asserting that such a waiver “would not advantage Triangle over other licenses, but would ensure that Triangle had the same opportunity to meet the final buildout benchmark as other licensees who were not affected by the national security concern.”²³ Triangle states that it “envisions that it can complete the 75% final AWS3 buildout with a waiver of the two year license term penalty rule.”²⁴

6. *NVC Request.* NVC filed its application for extension of time and initial waiver request on November 19, 2021, seeking a limited extension to meet the interim construction requirement for its AWS-3 license in South Dakota (BEA 114).²⁵ NVC notes that soon after it acquired its license, it ordered Radio Access Network (“RAN”) equipment from Huawei “to deploy AWS-3 network infrastructure in BEA114, in order to deploy service and cover 40 percent of the population well in advance of its

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Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, Public Notice, WC Docket 18-89 (rel. Sept. 27, 2021) (*Reimbursement Program Filing Window Public Notice*) (announcing a Reimbursement Program filing window opening on October 29, 2021, and closing on January 14, 2022). The Wireline Competition Bureau later extended the Reimbursement filing window closing date to January 28, 2022. See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Order, WC Docket 18-89 (rel. Dec. 29, 2021) (*Reimbursement Program Extension Order*).

¹⁶ *Reimbursement Program Filing Window Public Notice* at 1; see also *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Order, WC Docket 18-89, DA 21-1648 (rel. Dec. 29, 2021) (extending the window closing date from January 14, 2022 to January 28, 2022).

¹⁷ Northern Valley Communications, LLC is a wholly-owned subsidiary of James Valley Cooperative Telephone Company, which filed to participate in the Reimbursement Program.

¹⁸ See *Wireline Competitive Bureau Announced the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at Appendix (WCB, Jul. 18, 2022).

¹⁹ See generally Triangle Extension Request. The subject AWS-3 licenses (WQVP460, WQVP461, WQVP462, WQVP463, and WQVP464) were granted on April 8, 2015.

²⁰ See generally Triangle Waiver Request.

²¹ Triangle Waiver Request at 1.

²² Triangle Waiver Request at 1.

²³ Triangle Waiver Request at 3.

²⁴ Triangle Waiver Request at 2.

²⁵ NVC Waiver Request at 1. NVC’s AWS-3 license, WQWU317, was granted on November 19, 2015.

November 19, 2021 interim buildout deadline.”²⁶ NVC explains that subsequent to its acquisition and installation of Huawei equipment in its service area, the Commission adopted the *Supply Chain Order*, causing NVC to “immediately suspend[] any further deployment of [Huawei] network infrastructure and equipment, including further AWS-3 deployment in its BEA114 area.”²⁷ At its November 19, 2021 deadline, NVC indicated that it provided coverage to just over 35 percent of its license area.²⁸ On October 28, 2022, NVC filed a construction notification demonstrating 62.73 percent coverage within its license area, and amended its waiver request to seek an extension for the time period NVC required to meet its interim construction benchmark.²⁹ NVC subsequently amended its extension application on November 7, 2022.³⁰

7. Triangle and NVC each seek a waiver of section 27.14(s) of the Commission’s rules, with respect to the interim buildout requirements for their AWS-3 licenses. Specifically, Triangle seeks a waiver of the penalties imposed by section 27.14(s)(3) of the Commission’s rules, which provides that if an AWS-3 licensee fails to meet the interim buildout requirement, its license term and final buildout deadline for each license area in which it fails to meet the interim buildout requirement shall be accelerated by two years (from twelve to ten years). NVC requests a limited waiver of Section 27.14(s)(1) of the Commission’s rules to extend its deadline to allow for the additional time needed to meet its interim construction benchmark.³¹ No petitions to deny or oppositions were filed against either request.

8. *Equipment Updates.* Since filing their respective waiver requests, both Triangle and NVC have provided updates to the Commission on their progress toward replacing their Huawei equipment as part of the Secure and Trusted Communications Networks Reimbursement Program.³² Specifically, Triangle notes that it “ha[s] been engaged in the preparation and execution of a plan to install the new replacement equipment that will be used to replace like Huawei equipment” and that “installations are underway.”³³ Triangle also notes, however, that “[f]inding experienced contractors and staff to perform the work required has been a real challenge.”³⁴ NVC, through its wholly-owned parent, James Valley Cooperative Telephone Company, notes that it “has successfully installed almost all of the replacement equipment on all 27 sites, including replacing some towers that needed replacing due to structural capacity” but that “the deployment of the replacement equipment . . . took much longer than expected due to crew shortages, equipment supply chain issues, and technology compatibility difficulties.”³⁵ In a subsequent update, James Valley notes that it is “still awaiting a handful of

²⁶ NVC Waiver Request, Nov. 19, 2021 filing at 1.

²⁷ NVC Waiver Request, Nov. 19, 2021 filing at 2.

²⁸ NVC Waiver Request, Nov. 19, 2021 filing at 4.

²⁹ ULS File No. 0010260011; NVC Waiver Request, Oct. 28, 2022 filing.

³⁰ NVC Waiver Request, Nov. 7, 2022 filing.

³¹ NVC Waiver Request, Nov. 7, 2022 filing.

³² See FCC, *Secure and Trusted Communications Networks Reimbursement Program – Status Updates*, <https://www.fcc.gov/supplychain/reimbursement> (last visited Mar. 1, 2023).

³³ See Triangle Communication Systems, Inc., *Secure and Trusted Communications Networks Reimbursement Program Oct. 13, 2022 Status Update*.

³⁴ *Id.*

³⁵ See James Valley Cooperative Telephone Company, *Secure and Trusted Communications Networks Reimbursement Program Oct. 13, 2022 Status Update*.

replacement equipment for multiple sites, which have been delayed for months due to supply chain issues.”³⁶

III. DISCUSSION

9. As described in more detail below, we find that the unique circumstances described by Triangle and NVC warrant a waiver of the penalties associated with section 27.14(s)(3) of the Commission’s rules. A request for a waiver may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of 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.³⁷

10. Here, we find that Triangle’s and NVC’s situation meet the second prong of the Commission’s waiver standard because the unique circumstances in which the Companies found themselves would make application of the rule inequitable, and because the Companies had no reasonable alternative. When the Commission adopted the *Supply Chain* rules, it substantially altered the Companies’ ability to build out their existing networks with Huawei equipment.³⁸ Not only would the Companies ultimately need to rip out and replace any newly-installed Huawei network equipment due to the *Supply Chain* restrictions, they could also face penalties if they could not prove to the Commission’s satisfaction that they used non-USF funds to deploy that network.³⁹ Even prior to the Commission’s adoption of these rules, Triangle stated that the regulatory uncertainty created by the *Supply Chain* proceeding created “a huge question mark” with respect to investments to build out their AWS-3 licenses.⁴⁰ In addition, the Companies stated that they were unable to invest resources in equipment from an alternative manufacturer because that equipment would not have been interoperable with their existing infrastructure.⁴¹

11. As Triangle notes, when it won its AWS-3 licenses at auction it “was locked into the Huawei equipment/services ecosystem” and believed that it could purchase Huawei equipment to build out its AWS-3 license areas using its Huawei core network.⁴² To this end, Triangle states that it invested “significant sums of money in securing and installing Huawei-based telecommunications core and related

³⁶ See James Valley Cooperative Telephone Company, Secure and Trusted Communications Networks Reimbursement Program Jan. 11, 2023 Status Update.

³⁷ 47 CFR § 1.925(b)(3).

³⁸ Triangle Waiver Request at 1 (“The Huawei-related national security issues arose after Triangle had acquired the subject AWS3 licenses in April 2015 and those security issues arose many years after Triangle had already invested significant sums of money in securing and installing Huawei-based telecommunications core and related equipment and software.”); NVC Waiver Request, Nov. 19, 2021 filing at 2 (“But for the equipment replacement delays prompted by the national security issues and Commission response relating to Huawei equipment, NVC would have the coverage necessary to meet the Interim Buildout Requirement as of November 19, 2021.”).

³⁹ 47 CFR § 54.9 (prohibiting use of Universal Service funds for covered equipment). 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.*

⁴⁰ Triangle Waiver Request at 2.

⁴¹ See Triangle Waiver Request at 1; NVC Waiver Request, Nov. 19, 2021 filing at 2.

⁴² Triangle Waiver Request at 2.

equipment and software.”⁴³ Three years into Triangle’s license term (and with three years remaining to meet its interim buildout requirement), however, the Commission initiated the *Supply Chain* proceeding, which significantly affected Triangle’s ability to continue with its construction plans. Triangle indicates that “installations are underway”⁴⁴ but that “[f]inding experienced contractors and staff to perform the work required has been a real challenge.”⁴⁵

12. Similarly, NVC states that it was forced to suspend “any further deployment of its network infrastructure and equipment, as a result of the *Supply Chain* proceeding . . . [b]ecause non-Huawei equipment is not interoperable with Huawei equipment that NVC had already deployed.”⁴⁶ In addition, NVC notes that it faced “lengthy delivery delays of the compliant equipment,” and “the limited availability of tower crews during the construction season[.]”⁴⁷ NVC indicates that, as of October 28, 2022, it provides 62.73 percent coverage within its license area,⁴⁸ up from over 35 percent as of November 19, 2021.⁴⁹

13. In view of these unique factual circumstances, we conclude that Triangle and NVC had no reasonable path to meet their AWS-3 interim construction requirements, and that imposing the penalties associated with missing the interim construction requirements would be inequitable in these unique circumstances.⁵⁰

14. Further, granting Triangle and NVC relief in this instance is consistent with the Bureau’s approach regarding other construction extension requests involving the *Supply Chain* proceeding.⁵¹ In 2020, WTB partially granted Pine Cellular’s request for an extension of time to meet its Tribal lands bidding credit (TLBC) construction requirement under similar circumstances, in which Pine Cellular used Huawei equipment for its core network.⁵² Likewise, in 2021, the Bureau granted Northern Michigan University (NMU) a six-month extension to meet its construction deadline where NMU stated that its network used Huawei technology and it had not anticipated rules that would substantially alter its plans to build out its existing network when it licenses were granted.⁵³

⁴³ Triangle Waiver Request at 1.

⁴⁴ See Triangle Communication Systems, Inc., Secure and Trusted Communications Networks Reimbursement Program Oct. 13, 2022 Status Update.

⁴⁵ *Id.*

⁴⁶ NVC Waiver Request, Nov. 19, 2021 filing at 2.

⁴⁷ NVC Waiver Request, Nov. 7, 2022 filing.

⁴⁸ NVC Waiver Request, Oct. 28, 2022 filing; ULS File No. 0010260011.

⁴⁹ NVC Waiver Request, Nov. 19, 2021 filing at 4.

⁵⁰ See 47 CFR § 1.925(b)(3)(ii).

⁵¹ *Pine Cellular Phones, Inc. Further Limited Waiver and Extension of Time to Satisfy the Construction Requirement*, Order, ULS File No. 0009638398, DA 21-1553, (WTB BD 2021) (*Pine Cellular Further Order*); *Pine Cellular Phones, Inc. Limited Waiver and Extension of Time to Satisfy the Construction Requirement*, Order, ULS File No. 0009088322, 35 FCC Rcd 10677 (WTB BD 2020) (*Pine Cellular Order*).

⁵² See generally *Pine Cellular Order*, 35 FCC Rcd 10677. Subsequently, WTB granted Pine Cellular a further one-year extension in 2021 because the Commission’s implementation of the Reimbursement Fund was still ongoing. *Pine Cellular Further Order* at para. 14.

⁵³ See ULS File Nos. 0009467720 and 0009467747, Limited Waiver and Extension of Time to Satisfy the Construction Requirement, Northern Michigan University (filed Mar. 24, 2021).

15. Finally, granting the waiver will help ensure that equipment that could pose a national security risk is not introduced into the supply chain, even as the Companies remain obligated to provide the prescribed level of service by the final construction deadline.

16. For these reasons, we grant the Companies waivers of the penalty for failure to meet their interim construction deadlines, such that the license term and final buildout deadline for their AWS-3 licenses will remain the same, and will not be accelerated by two years.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(c), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 309(a), and Section 1.925(b)(3) of the Commission's Rules, 47 CFR § 1.925(b)(3), that the waiver request filed by Triangle Communication System, Inc. on April 7, 2021, as amended, IS GRANTED, and Section 27.14(s)(3) of the Commission's rules IS WAIVED such that the license term and final buildout deadline for Call Signs WQVP460, WQVP461, WQVP462, WQVP463, and WQVP464 will remain April 8, 2027, and will not be accelerated by two years.

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 303(c), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 309(a), and Section 1.925(b)(3) of the Commission's Rules, 47 CFR § 1.925(b)(3), that the waiver request filed by Northern Valley Communications, LLC on November 19, 2021, as amended, IS GRANTED to the extent described herein, and Section 27.14(s)(3) of the Commission's rules IS WAIVED such that the license term and final buildout deadline for Call Sign WQWU317 will remain November 19, 2027, and will not be accelerated by two years.

19. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 27.14 of the Commission's rules, 47 CFR § 27.14, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by Triangle Communication System, Inc. and Northern Valley Communications, LLC in accordance with this *Order* and the Commission's rules and policies.

20. This action is 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