

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

In the Matter of)
)
 Pine Cellular Phones, Inc.)
) File No. 0010253218
 Limited Waiver and Further Extension of Time to)
 Satisfy the Construction Requirement)
)

ORDER

Adopted: January 4, 2023

Released: January 4, 2023

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant the above-captioned request by Pine Cellular Phones, Inc. (Pine Cellular) for a limited waiver and further 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 this Third Extension Request.¹ 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 the Choctaw Nation communities.² As a condition of receiving the TLBC, Pine Cellular was initially required to construct and operate a system capable of serving 75 percent of the population of the Choctaw Nation communities within the relevant service area within three years of the license grant, by January 9, 2021.³

3. *Supply Chain Proceeding.* 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”⁴ (covered companies), and initially designated Huawei Technologies Company (Huawei) and ZTE

¹ Pine Cellular Phones, Inc., Request for Extension of Time, File No. 0010253218, Exhibit 3: Request for Limited Waiver and Further Extension of Time to Satisfy the Construction Requirement (filed Oct. 25, 2022) (Third 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 47 CFR § 54.9(a).

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 the *Supply Chain Second Report and Order*,⁷ the Commission promulgated rules for the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) to reimburse eligible providers of advanced communications service for costs reasonably incurred in the removal, replacement, and disposal of communications equipment/services.⁸ The *Supply Chain Third Report and Order*, adopted on July 13, 2021, amended the rules for the Reimbursement Program to be consistent with the Consolidated Appropriations Act, 2021, passed on December 27, 2020.⁹

4. *Initial Extension Request.* On May 22, 2020, Pine Cellular filed its Initial Extension Request,¹⁰ which sought a waiver of section 1.2110(f)(3)(vii) to allow for additional time to meet the TLBC construction requirement.¹¹ Pine Cellular explained that, when its license was issued in January 2018, it already had wireless mobile infrastructure in place and was well-positioned to deploy service to the Choctaw Nation communities within the three-year period.¹² Soon after Pine Cellular's license was issued, however, the Commission initiated the *Supply Chain* proceeding and later adopted the rule to prospectively prohibit use of USF funds to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by covered companies.¹³ Pine Cellular receives high-cost support from the Commission's Mobility Fund Phase I and Connect America Fund Phase II programs, and Pine Cellular is an Eligible Telecommunications Carrier.¹⁴ Pine Cellular asserted that it needed additional time to deploy its network to serve the Choctaw Nation communities because its existing network in that geographic area uses Huawei equipment for the performance of core functions.¹⁵

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, 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).

⁷ *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*).

⁸ See generally *Supply Chain Second Report and Order*.

⁹ *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).

¹⁰ 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) (Initial Extension Request).

¹¹ See generally Initial Extension Request.

¹² *Id.* at 12-13. In this request, Pine Cellular stated 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.” *Id.* at 12.

¹³ 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*.

¹⁴ See Initial Extension Request at 2.

¹⁵ *Id.* at 2, 13.

5. Specifically, because Pine Cellular is prohibited from using USF funds to maintain, improve, modify, operate, manage, or otherwise support its Huawei equipment,¹⁶ it asserted that it could not act without a significant cost burden until the Commission acted in the *Supply Chain* proceeding to establish a cost reimbursement program for USF recipients to replace equipment from covered companies.¹⁷ Further, Pine Cellular argued, if it did expand its existing Huawei network it faced penalties if it could not prove to the Commission's satisfaction that it used non-USF funds.¹⁸ As a result, Pine Cellular claimed that it was unreasonable to build out its existing network in the area to serve the Choctaw Nation communities at that time.¹⁹ Pine Cellular asserted that imposition of the rule would have been inequitable and unduly burdensome, and given the complications with construction, Pine Cellular had no reasonable alternative.²⁰ Pine Cellular sought 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*."²¹ On October 1, 2020, the Bureau partially granted Pine Cellular's request, extending the construction deadline by one year to January 9, 2022.²²

6. *Second Extension Request.* On July 27, 2021, Pine Cellular filed its Second Extension Request, which sought waiver of section 1.2110(f)(3)(vii) to allow Pine Cellular an additional year to meet its TLBC construction requirement.²³ Pine Cellular explained that its TLBC construction progress had been affected by the continued development of the Reimbursement Program and uncertainty as to what extent it would be reimbursed for costs associated with its removal of Huawei equipment it installed before June 30, 2020, if it took action before it could participate in the Reimbursement Program.²⁴ Pine Cellular also stated that, in order to meet the extended January 9, 2022 deadline, it would have to complete a significant number of steps and expressed doubt that such efforts could be completed in time

¹⁶ See 47 CFR § 54.9(a).

¹⁷ Initial Extension Request at 18-19 (*referencing Supply Chain Further Notice*). Specifically, Pine Cellular explained that if it built out its existing Huawei network to the 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. *Id.* at 21.

¹⁸ See 47 CFR § 54.9; Initial 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.*

¹⁹ Initial Extension Request at 23-24.

²⁰ *Id.* at 22-23. Pine Cellular argued that if it had constructed a parallel network without using Huawei equipment to meet its TLBC construction deadline, it would not be eligible for cost reimbursement for the additional expense, estimated at \$8 million, through the *Supply Chain* proceeding. *Id.* at 17-19, 21. Pine Cellular's net winning bid for the license at issue was approximately \$4.88 million; and it was granted a Tribal lands bidding credit of approximately \$2 million. See File No. 0007750369.

²¹ Initial Extension Request at 2. See also *Supply Chain Further Notice*.

²² *Pine Cellular Phones, Inc. Limited Waiver and Extension of Time to Satisfy the Construction Requirement*, Order, File No. 0009088322, 36 FCC Rcd 10677 (WTB BD 2020) (*Pine Cellular Order*).

²³ See generally Pine Cellular Phones, Inc., Request for Extension of Time, File No. 0009638398, Exhibit 1: Further Limited Waiver and Extension of Time to Satisfy the Construction Requirement (filed July 27, 2021) (Second Extension Request).

²⁴ *Id.* at 7.

to meet the deadline.²⁵ On December 14, 2021, the Bureau granted Pine Cellular's request, extending the construction deadline by one year to January 9, 2023.²⁶

7. Since Pine Cellular's Second Extension Request was granted, the Reimbursement Program application window closed.²⁷ Pine Cellular's applications for reimbursement have been approved by the Commission and it has received allocations from the Reimbursement Program.²⁸

8. *Third Extension Request.* On October 25, 2022, Pine Cellular filed the instant Third Extension Request, which seeks waiver of Section 1.2110(f)(3)(vii) to allow additional time to meet the TLBC construction requirement.²⁹ Pine Cellular argues that it needs additional time to construct because it faces "unique and unusual circumstances" and "ongoing equipment supply chain issues, related in part to the COVID-19 pandemic, have undermined Pine Cellular's efforts to move forward with the deployment of facilities utilizing 600 MHz spectrum to serve the Choctaw Nation communities."³⁰ Pine Cellular requests that the Bureau further extend its deadline to meet its TLBC construction obligation "so that this deadline is the same as the one-year deadline for the Company's completion of the permanent removal, replacement, and disposal of covered communications equipment pursuant to the Reimbursement Program."³¹

9. On November 30, 2022, the Bureau issued a Public Notice seeking comment on Pine Cellular's Third Extension Request.³² No commenters filed in response to Pine Cellular's request, and we have received no opposition from the Choctaw Nation of Oklahoma.

III. DISCUSSION

10. 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 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

²⁵ *Id.* at 10. Specifically, Pine Cellular stated that, in order to meet the extended January 9, 2022 deadline, it would have to (1) complete construction of a parallel mobile wireless broadband network in the areas served by its current network; (2) switch its operations over to this parallel network; (3) remove its old network facilities, including facilities serving Choctaw Nation communities, which had relied on Huawei equipment for core functions; and (4) complete the extension of the newly-built parallel network to serve the Choctaw Nation communities, in compliance with the TLBC construction requirements. *Id.* at 6-7.

²⁶ *Pine Cellular Phones, Inc. Further Limited Waiver and Extension of Time to Satisfy the Construction Requirement*, Order, File No. 0009638398, DA 21-1553 (WTB BD 2021) (*Second Pine Cellular Order*).

²⁷ *See generally Reimbursement Program Extension Order.*

²⁸ Third Extension Request at 10; *see also Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Public Notice, DA 22-131, WC Docket 18-89 (rel. Feb. 9, 2022); *see also Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Public Notice, DA 22-774, WC Docket 18-89 (rel. July. 18, 2022).

²⁹ *See generally* Third Extension Request.

³⁰ *Id.* at 6-7.

³¹ *Id.* at 16. For example, if Pine Cellular were to submit its initial Reimbursement Program reimbursement claim on December 15, 2022, and the Commission issued an initial draw down disbursement to Pine Cellular on January 15, 2023, then Pine Cellular's TLBC construction deadline would be January 15, 2024, the same date as its Reimbursement Program deadline for the removal of covered communications equipment. In addition, Pine Cellular argues, if the Commission extends the one-year Reimbursement Program deadline by six months for all recipients, pursuant to section 1.50004(h)(1) of its rules, this extension should also apply to Pine Cellular's TLBC construction deadline. *Id.*

³² Public Notice, Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, Report Number 17305 (Nov. 30, 2022).

alternative.³³ Section 1.946 of the Commission's rules governs extensions of construction periods for stations in the wireless radio services.³⁴ The rule provides that relief may be granted for good cause if such relief is requested before the expiration of the construction period.³⁵ As described in more detail below, we find that the unique circumstances described by Pine Cellular warrant a third limited waiver and further extension of Pine Cellular's TLBC construction requirement deadline.

11. 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."³⁶ 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.³⁷ The Commission recognized that various circumstances, including economic factors, could affect the ability of recipients to meet the TLBC requirements,³⁸ and "strongly encourage[d] 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."³⁹

12. For the reasons discussed below, we conclude that Pine Cellular has no reasonable alternative to meet its TLBC construction requirement, and that application of the deadline set by section 1.2110(f)(3)(vii) of the Commission's rules would be contrary to the public interest.⁴⁰ As Pine Cellular noted in its prior extension requests, it already had wireless mobile infrastructure in place in this service area and did not anticipate that the *Supply Chain* rules would substantially alter its plans to build out its existing network when it received its 600 MHz license with a Tribal land bidding credit.⁴¹ Pine Cellular explains that its TLBC construction progress has since been further affected by equipment supply chain issues, related in part to the COVID-19 pandemic.⁴² Specifically, Pine Cellular explains that its efforts to meet the January 9, 2023 TLBC construction deadline have been negatively impacted by the global

³³ 47 CFR § 1.925(b)(3).

³⁴ 47 CFR § 1.946(e).

³⁵ *Id.* Pine Cellular's TLBC construction deadline is January 9, 2023, and it filed its request prior to that deadline, on October 25, 2022.

³⁶ *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).

³⁷ *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).

³⁸ *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).

³⁹ *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).

⁴⁰ *See* 47 CFR § 1.925(b)(3)(ii).

⁴¹ Second Extension Request at 2; *see also generally* Initial Extension Request.

⁴² Third Extension Request at 7.

semiconductor shortage, and that it lacks any reasonable alternatives for meeting the deadline.⁴³ Pine Cellular explains that it “cannot add covered communications equipment to its existing network in order to enable deployment of 600 MHz broadband service in the Choctaw Nation communities, because the Commission’s rules prohibit such use of covered communications equipment.”⁴⁴ Further, Pine Cellular states that, even if it could obtain all of the needed compliant equipment in a timely manner—which it asserts it cannot—it could not add this compliant equipment to its network because it would not be compatible with Huawei equipment still in use in its existing network.⁴⁵ Pine Cellular notes that its only alternative is to first remove and replace all Huawei equipment in its existing network, and then to construct a new network with compliant equipment.⁴⁶ Pine Cellular asserts that, unfortunately, this alternative has not been (and is not currently) viable by the January 9, 2023 deadline.⁴⁷

13. We agree that Pine Cellular’s current choices for network deployment to the Choctaw Nation communities are not reasonable alternatives. Moreover, we find that strict application of the TLBC construction requirement, which would result in either Pine Cellular’s repayment of its TLBC or automatic termination of its license, is not warranted.⁴⁸ 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. We also find that grant of a waiver to Pine Cellular under these circumstances is consistent with prior TLBC construction deadline waiver requests granted by the Bureau.⁴⁹

14. With respect to the length of the extension, we determine that extending Pine Cellular’s construction deadline one year, until January 9, 2024, is sufficient and decline to extend its TLBC buildout date “so that this deadline is the same as the one-year deadline for the Company’s completion of the permanent removal, replacement, and disposal of covered communications equipment pursuant to the

⁴³ *Id.* at 11. Although Pine Cellular began placing orders in January 2022 for needed replacements for the Huawei equipment throughout its existing network, it states that it had received only 80 percent of the orders as of October 2022 because of “the unprecedented demand for semiconductors and the vendors’ inability to obtain semiconductors in sufficient quantities to construct equipment and fill pending orders in a timely fashion.” *Id.* at 10-11.

⁴⁴ *Id.* at 11, citing 47 CFR § 54.9 (prohibiting use of Universal Service funds for covered equipment). We further note that since the filing of Pine Cellular’s Third Extension Request, the Commission has adopted its proposal to prohibit authorization of equipment that has been identified on the Commission’s Covered List. See generally *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program, Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*; ET Docket No. 21-232, EA Docket No. 21-233; Report and Order, Order, and Further Notice of Proposed Rulemaking; FCC 22-84 (2022).

⁴⁵ Third Extension Request at 11.

⁴⁶ *Id.* at 11-12.

⁴⁷ *Id.* at 12.

⁴⁸ 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.

⁴⁹ For example, the Bureau has granted extensions due to lack of available equipment that meets regulatory requirements. 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).

Reimbursement Program,” including any related extensions.⁵⁰ At the time Pine Cellular filed this Third Extension Request, it expected that by the end of 2022 it would have received sufficient compliant equipment from its suppliers to enable the removal, replacement, and disposal of covered communications equipment, and committed to giving first priority to its existing network facilities in the Choctaw Nation communities.⁵¹ We believe that, with this one-year extension, Pine Cellular will have sufficient time to determine how it can navigate equipment supply chain issues and serve the Choctaw Nation communities while meeting Commission requirements.

IV. CONCLUSION

15. 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, 2024, 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, 2024.

V. ORDERING CLAUSES

16. 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 Request for Limited Waiver and Further Extension of Time to Satisfy the Construction Requirement, Call Sign WRAM805, filed by Pine Cellular Phones, Inc. on October 25, 2022, is GRANTED to the extent described herein.

17. 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

⁵⁰ See Third Extension Request at 16. Pine Cellular further asks that “if the Commission extends the one-year Reimbursement Program deadline by six months for all recipients, pursuant to Section 1.50004(h)(1) of its rules, this extension should also apply to the Company’s TLBC construction deadline.” *Id.*

⁵¹ *Id.* at 15-18.