

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

In re Request of	)	
	)	
Western PCS III License Corporation	)	File No. CWD 96-14
PCS Station KNLF244	)	
Denver, Colorado MTA (Market No. 22B)	)	
	)	
For Expedited Limited Waiver of Sections	)	
24.204 and 20.6 of the Commission's Rules	)	

**ORDER**

**Adopted:** November 4, 1996;

**Released:** November 4, 1996

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. By this Order, we grant Western PCS III License Corporation ("Western")<sup>1</sup> an extension of time to come into compliance with Section 20.6 of the Commission's Rules, 47 C.F.R. § 20.6, the CMRS spectrum aggregation limit. This extension will remain in effect for a period of either (1) six months, or (2) ninety days after adoption of a Report and Order in the Commission's PCS Partitioning and Disaggregation proceeding, whichever is earlier.<sup>2</sup>

2. On June 14, 1996 Western filed a Request for Expedited, Limited Waiver of Sections 24.204 and 20.6 of the Commission's Rules. Western holds the PCS "B" Block license for the Denver, Colorado Major Trading Area (MTA).<sup>3</sup> Western seeks a temporary waiver of the CMRS spectrum aggregation limit because its PCS license for the Denver MTA overlaps with cellular licenses it owns in the same area, causing it to exceed the 45 MHz spectrum cap of Section 20.6.<sup>4</sup> Specifically, Western submits that it holds, through its parent

<sup>1</sup> Western PCS III is a subsidiary of Western Wireless corporation, a publicly traded company.

<sup>2</sup> See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, *Notice of Proposed Rule Making*, WT Docket No. 96-148, FCC 96-287 (released July 15, 1996).

<sup>3</sup> "B" block broadband PCS Station KNLF244, Denver, Colorado MTA (Market No. 22B).

<sup>4</sup> Section 20.6(c) provides that significant overlap occurs when at least 10 percent of the population of the PCS licensed service area is within the CGSA. Western had initially requested a waiver of Sections 20.6 and 24.204. Section 24.204, the cellular/PCS cross-ownership rule, was subsequently eliminated. See Amendment of Parts 20 and 24 of the Commission's Rules--Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, WT Docket No. 96-59, FCC 96-278 (released June 24, 1996). Accordingly, On August 13, 1996, Western withdrew its request for waiver of Section 24.204. See Western PCS III License

company and affiliates, "A" block cellular licenses for cellular geographic service areas ("CGSAs") in the following markets that fully or partially overlap the Denver MTA: the Colorado 5, 7, 8 and 9 rural service areas ("RSAs"), the Pueblo metropolitan statistical area ("MSA"), the Nebraska 4 RSA, the South Dakota 1, 5 and 6 RSAs, the Rapid City MSA, the Wyoming 2 RSA, and the Casper MSA. Western also holds interim operating authority for the Wyoming 4 and 5 RSAs.<sup>5</sup>

3. Pursuant to Section 20.6(e)(4)(i), parties holding interests that conflict with the 45 MHz CMRS spectrum aggregation limit must come into compliance within 90 days of final grant of the license that causes it to exceed the limit. Because Western PCS III acquired the Colorado MSA license on June 3, 1996, its 90-day divestiture deadline was September 4, 1996. In its June 14, 1996 request for waiver, Western PCS III sought an extension of time for divestiture until 90 days after the Commission's release of an order in its rulemaking regarding cross-ownership limitations and any other forthcoming rulemakings that might affect its divestiture actions. On August 9, 1996, Western PCS III filed a request for an interim 60-day extension of time to comply with the divestiture requirement. That request was granted, extending the divestiture deadline until November 4, 1996.<sup>6</sup> Further, in a supplemental pleading, Western PCS III modified its request to extend the divestiture deadline until 90 days following the effective date of new rules adopted in response to the Partitioning and Disaggregation rulemaking proceeding.<sup>7</sup>

4. We are persuaded that an extension of the divestiture period is appropriate with respect to Western. The Commission's Partitioning and Disaggregation rulemaking may have a material impact on Western's plans to accomplish divestiture and thereby come into compliance with the 45 MHz CMRS spectrum cap. Specifically, the rules adopted in that proceeding may make available new divestiture options for Western and other CMRS licensees. As such, we conclude that it is consistent with the public interest to grant Western an extension of time to comply with the divestiture requirements of Section 20.6 until 90 days after adoption of a Report and Order in the Partitioning and Disaggregation proceeding, or six months from adoption of this Order, whichever is earlier.

5. Accordingly, **IT IS ORDERED** the Limited Waiver Request for Section 20.6 filed by Western PCS III **IS GRANTED** to the extent stated herein.

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Corporation, Supplement to Request for Expedited Limited Waiver of Sections 24.204 and 20.6, filed August 13, 1996.

<sup>5</sup> Western Waiver Request at 3.

<sup>6</sup> Letter from David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, to Louis Gurman, Esq., dated August 28, 1996.

<sup>7</sup> See Western PCS III License Corporation, Supplement to Request for Expedited Limited Waiver of Sections 24.204 and 20.6, filed August 13, 1996.

6. IT IS FURTHER ORDERED that the foregoing extension is limited to a period of six months, or ninety days after the adoption of a Report and Order in WT Docket No. 96-148, whichever is shorter.

7. This action is taken pursuant to authority delegated by Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau