

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

In the Matter of )  
 )  
NEW ENGLAND WIRELESS PARTNERS )  
 )  
Extended Implementation for Licenses )  
Participating in Wide-Area 800 MHz SMR System )  
 )

**ORDER**

**Adopted: December 29, 1999**

**Released: December 30, 1999**

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

1. This Order addresses a petition filed by the participating licensees in New England Wireless Partners' (NEWP) wide-area 800 MHz Specialized Mobile Radio (SMR) system requesting reconsideration of the cancellation of licenses for failure to construct. For the reasons discussed below, we dismiss NEWP's petition for reconsideration as untimely.

2. NEWP was granted extended implementation authority to construct a wide-area SMR system in the northeast United States. Originally, NEWP was given five years to construct all frequencies at all authorized sites within its wide-area footprint, or lose the unconstructed frequencies.<sup>1</sup> In 1995, the Commission accelerated the extended implementation of all incumbent wide-area licensees, including NEWP, in light of a new, geographic-area (Economic Area, or EA) based licensing scheme for the 800 MHz SMR service.<sup>2</sup> The incumbent licensees were required to rejustify their extended implementation authorities and, if successful, were given either the remainder of their original five-year construction periods or two years from the action on their rejustification showings, whichever was shorter.<sup>3</sup> NEWP successfully rejustified its extended implementation and was given the remainder of its original extended implementation period to construct its wide-area system, *i.e.*, by July 11, 1998.<sup>4</sup> On November 4, 1998,

<sup>1</sup> See 47 C.F.R. § 90.629.

<sup>2</sup> Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act – Regulatory Treatment of Mobile Services, GN Docket No 93-252, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 1463, 1524-25, ¶ 110 (1995).

<sup>3</sup> *Id.* at 1525, ¶ 111.

<sup>4</sup> See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the

and again on January 5, 1999, the Licensing and Technical Analysis Branch (Branch) sent correspondence to NEWP requesting that NEWP confirm whether or not the licensed sites comprising their wide-area system had been constructed by the July 11, 1998 deadline. After receiving no response, the Branch informed NEWP in separate letters dated April 14, 1999 that the frequencies listed in the letters were presumed to be unconstructed and therefore had been automatically cancelled.

3. On April 30, 1999, NEWP filed the present petition for reconsideration, arguing that cancellation of its unconstructed licenses was premature given the decision announced on April 15, 1999 by the Wireless Telecommunications Bureau (Bureau) to suspend temporarily the construction timetable for wide-area 800 MHz SMR licensees pending the remand proceeding instigated by *Fresno Mobile Radio, Inc., et al. v. Federal Communications Commission*.<sup>5</sup> We note, however, that NEWP's construction period had lapsed approximately ten months before the Bureau temporarily suspended the construction timetable for 800 MHz SMR licensees. Section 90.629(c) of the Commission's rules states that extended implementation authorizations granted under this section are conditioned upon the licensee constructing and placing its system into operation within the authorized implementation period and in accordance with an approved implementation plan of up to five years.<sup>6</sup> The same section continues to state that "[a]t the end of any licensee's extended implementation period, authorizations for all stations not constructed and placed into operation will be cancelled."<sup>7</sup> NEWP's extended implementation deadline was established in the *800 MHz Rejustification Orders* as July 11, 1998.<sup>8</sup> NEWP's request to reconsider cancellation of its unconstructed licenses was filed on April 30, 1999. Under section 1.106 of the Commission's rules, a petition for reconsideration must be filed within 30 days from the date of the public notice of the final Commission action.<sup>9</sup> In this case, the final Commission action was the automatic cancellation of NEWP's unconstructed licenses at the deadline of its extended implementation period.<sup>10</sup> Therefore, NEWP would have had to request reconsideration within 30 days of the cancellation of its unconstructed licenses on July 11, 1998. Because the petition was filed over ten months later, NEWP's petition is dismissed as untimely.

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Communications Act – Regulatory Treatment of Mobile Services, GN Docket No 93-252, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Order*, 13 FCC Rcd. 1533 (WTB 1997), *recon.*, 12 FCC Rcd. 18349 (WTB 1997) (collectively, *800 MHz Rejustification Orders*).

<sup>5</sup> *Fresno Mobile Radio, Inc., et al. v. Federal Communications Commission*, 165 F. 3d 965 (D.C. Cir., Feb. 5, 1999).

<sup>6</sup> 47 C.F.R. § 90.629(e).

<sup>7</sup> *Id.*

<sup>8</sup> *800 MHz Rejustification Orders*, 13 FCC Rcd. at 1538, n. 27, 1546 (Appendix A).

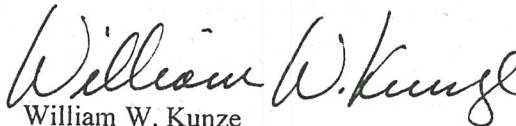
<sup>9</sup> 47 C.F.R. § 1.106.

<sup>10</sup> We note that the Wireless Telecommunications Bureau routinely sends out form letters (Forms 800A, 800B and 800H) when it has not been notified as to the construction status of a particular license. These letters serve only to update or correct the Commission's database and do not constitute Commission action.

4. 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 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by the participating licensees in New England Wireless Partners' wide-area 800 MHz Specialized Mobile Radio system on April 30, 1999, IS DISMISSED.

5. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



William W. Kunze

Deputy Chief

Commercial Wireless Division

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# PUBLIC NOTICE

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**DA-99-3025  
December 30, 1999**

**Comments Sought on AT&T Communications Construction of Fiber  
Optic Signal Regeneration Facility Near Burkittsville, MD - Re: Compliance  
with Section 214 and Environmental and Historic Preservation  
Requirements Under NEPA and NHPA**

**NSD File No: NSD-L-99-103**

**Comments Due: January 28, 2000**

The Common Carrier Bureau is seeking comments (1) on whether a purported project by AT&T Communications to construct a signal regeneration facility for fiber optic cables in the vicinity of Burkittsville, MD, is subject to the Commission's jurisdiction under section 214(a) of the Federal Communications Act of 1934, 47 U.S.C § 214(a), and, if so, whether AT&T has complied with the Commission's regulations regarding the project, and (2) on a petition dated September 27, 1999, from wireless.org asking the Bureau to require AT&T to prepare an Environmental Assessment for the project. The Bureau invites comments from the public and, in particular, from the Maryland State Historic Preservation Officer, Wireless.org, and AT&T.

The Commission's regulations at 47 C.F.R § 63.01 confer blanket authority for domestic new line constructions under section 214(a), but they require that the carrier must first comply with the Commission's environmental regulations, which govern compliance with the National Environmental Protection Act of 1969 and the National Historic Preservation Act. The environmental regulations, at 47 C.F.R § 1.1301 et seq., require, among other things, that the carrier "initially ascertain whether the proposed facility may have a significant environmental impact" and, if so, prepare an Environmental Assessment (EA). The regulations specify actions that are excluded from environmental processing and actions for which EAs must be prepared. 47 C.F.R §§ 1.1306, 1.1307, and 1.1312.

Wireless.org submitted its petition for an Environmental Assessment on behalf of itself, the South Mountain Heritage Society, the Mid-Maryland Land Trust Association, Friends of Gathland, the Town of Burkittsville, and the Brunswick Regional Planning Committee. The petition seeks to show that AT&T's proposed facility is likely to have significant adverse impacts on historic places and adverse visual and aesthetic impacts. Other documents have also been filed with the Commission. Wireless.org submitted a copy of a letter dated September 30, 1999, transmitting a copy of its petition to AT&T. The Maryland State Historic Preservation