

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

In the Matter of)
)
 NORTHSTAR TECHNOLOGY, LLC)
)
 Request for a Waiver and Extension of the)
 Broadband PCS Construction Requirements)
 Regarding BTA098 Block F Authorization)

ORDER ON RECONSIDERATION

Adopted: October 26, 2004

Released: November 9, 2004

By the Commission:

I. INTRODUCTION

1. On February 25, 2004, the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) denied a Petition for Reconsideration filed by Northstar Technology, LLC (“Northstar”),¹ which sought reconsideration of the denial² of Northstar’s request for a waiver and an extension of time to meet the construction requirements for one of its broadband Personal Communications Services (“PCS”) licenses. On March 25, 2004, Northstar filed the instant Petition for Reconsideration (“Petition”).³ For the reasons stated below, we deny the Petition.

II. BACKGROUND

2. In 2002 and 2003, Northstar acquired several broadband PCS licenses in Kentucky. It acquired four licenses in a transaction which was consummated on March 15, 2002.⁴ These licenses included the subject license, call sign KNLG232, the F Block broadband PCS license in the Corbin, Kentucky Basic Trading Area, BTA098 (“Corbin BTA”), and the C Block broadband PCS license in the Corbin BTA, call sign KNLF370.⁵ Also included in this transaction were the F Block license in the Middlesboro-Harlan, KY BTA (“Middlesboro BTA”), call sign KNLH637, and the F Block license in the

¹ See Northstar Technology, LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order on Reconsideration*, DA 04-526 (Mobility Div. 2004) (“2004 Order”).

² See Northstar Technology, LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 18 FCC Rcd 800 (Comm. Wir. Div. 2003) (“2003 Order”).

³ Petition for Reconsideration filed by Northstar Technology, LLC (March 25, 2004) (“Petition”). See 47 C.F.R. § 1.106(a)(1) “Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission.”

⁴ The Commission consented to the assignment of the licenses from Third Kentucky Cellular Corporation on December 21, 2001, and the parties consummated the assignment of the licenses on March 15, 2002. See File Nos. 0000606759 (assignment application) and 0000836534 (notice of consummation).

⁵ This license, call sign KNLF370, canceled Feb. 3, 2004 for failure to make installment payments, pursuant to 47 C.F.R. § 1.2110(g)(4)(iii)-(iv)(2000).

Somerset, KY BTA (“Somerset BTA”), call sign KNLH638. Northstar acquired two additional broadband PCS licenses on February 4, 2003,⁶ the F Block license in the Madisonville, KY BTA (“Madisonville BTA”), call sign KNLH651, and the F Block license in the Paducah-Murray-Mayfield, KY BTA (“Paducah BTA”), call sign KNLH653. Pursuant to section 24.203(b) of the Commission’s rules, 10 MHz broadband PCS licensees are required to provide service to at least one-quarter of the population of their BTAs or otherwise make a showing of substantial service within five years of initial license grant.⁷ The construction deadline for all of the licenses except the Corbin BTA C Block license was April 28, 2002.⁸ On March 26, 2002, Northstar filed a request for waiver and extension of the construction deadline for its licenses for the Middlesboro BTA and the Somerset BTA.⁹ In this extension request, Northstar indicated that it expected to meet the construction deadline for its licenses in the Madisonville BTA and the Paducah BTA, and that the construction requirement for its C Block license in the Corbin BTA had been satisfied.¹⁰ We note that, although Northstar referenced its Corbin BTA F Block license, it specifically stated that it was seeking an extension for only its licenses in the Middlesboro BTA and the Somerset BTA.¹¹

3. On May 8, 2002, after the construction deadline for all of its licenses had passed, Northstar submitted a letter apprising the Commission of its progress in completing construction of its Middlesboro/Harlan and Somerset licenses.¹² In this letter, Northstar mentioned for the first time that it required an extension of the construction deadline for its F Block license in the Corbin BTA, but provided no explanation as to why it was unable to meet the construction deadline, or why it did not request an extension before the expiration of the deadline.¹³ Northstar subsequently filed four supplements to its initial request, including a May 17, 2002 request for waiver of rule section 1.946(e).¹⁴ In its supplements, Northstar asserted that it could not use its existing C Block facilities in order to meet its F Block deadline because it “would” have to install various equipment, such as new base station transceivers, antennas, and amplifiers, in order to transmit over both the C and F Blocks.¹⁵ Northstar otherwise provided no other information as to why it failed to construct timely. Instead, Northstar stated that, because it “is already operating on the C Block in the Corbin market, there is no [p]ublic [i]nterest to be accomplished by virtue

⁶ The Commission consented to the assignment of the licenses from Banana Communications, LLC on February 8, 2001, and the parties consummated the assignment of the licenses on February 4, 2003. See File Nos. 0000557822 (assignment application) and 0001183813 (notice of consummation).

⁷ 47 C.F.R. § 24.203(b).

⁸ The construction deadline for the Corbin C Block license was September 17, 2001, which was timely met. See File No. 0000604331 (construction notification).

⁹ See FCC Form 601 filed by Northstar on March 26, 2002, “Exhibit 1 – Limited Waiver and Extension of Time to Construct” (“Middlesboro/Somerset Extension Request”).

¹⁰ See Middlesboro/Somerset Extension Request at 1.

¹¹ *Id.* at 6.

¹² See Letter to Scott Mackoul, Esq., Federal Communications Commission, Wireless Telecommunications Bureau, from Thomas Gutierrez and Todd Slamowitz, counsel for Northstar, dated May 8, 2002 and supplemented May 17, 2002 (“May Supplement”), June 6, 2002 (“June Supplement”), September 13, 2002 (“September Supplement”) and December 18, 2002 (“December Supplement”) (collectively, “Extension Request”).

¹³ See 47 C.F.R. § 1.946(e), which provides that extension requests “must be filed before the expiration of the construction or coverage period.”

¹⁴ See May Supplement; June Supplement; September Supplement; and December Supplement.

¹⁵ See May Supplement at 1.

of Northstar also operating on the F Block.”¹⁶ On September 9, 2002, Northstar filed a notification of construction for the Corbin F Block license.

4. The former Commercial Wireless Division (“CWD”)¹⁷ of the Wireless Telecommunications Bureau granted Northstar’s Middlesboro/Somerset Extension Request,¹⁸ but subsequently denied Northstar’s request to extend the deadline for its F Block license in the Corbin BTA.¹⁹ CWD found that Northstar failed to satisfy the criteria for grant of a waiver and/or an extension of time to satisfy its construction requirement. Northstar argued that it had secured leases for numerous sites to provide coverage well above the 25 percent requirement but that it had experienced a setback when its equipment vendor refused to sign a contract involving Rural Utilities Service (“RUS”) financing,²⁰ thereby necessitating that Northstar find another equipment vendor just months prior to its construction deadline.²¹ While CWD recognized that Northstar had taken these steps toward constructing its F Block PCS system prior to its construction deadline, it stated that such actions alone were insufficient to warrant an extension of time to satisfy the construction requirement.²² In the Middlesboro/Somerset Order, CWD found that Northstar had adequately demonstrated that an extension of the deadline in the Middlesboro and Somerset markets would result in greater competition and service. In contrast, CWD found that, while many of the facts underlying Middlesboro/Somerset were the same as those presented with respect to its Corbin BTA, the critical aspects of Middlesboro/Somerset -- specifically, increased service and the promotion of vigorous competition in rural areas representing public interests sufficient to warrant the grant of a waiver -- are absent from this case.²³ Instead, upon review of the record, including Northstar’s September 2002 construction notification, CWD determined that Northstar sought the additional time to replicate coverage that already existed on its C Block.

5. Upon reconsideration, the Mobility Division (“Division”) affirmed CWD’s decision to deny Northstar’s request to extend its construction period and/or waive its construction obligations. The Division affirmed the earlier finding that Northstar had not shown that grant of a waiver would promote competition or expand service coverage in rural areas.²⁴ Northstar had argued that the 2003 Order was discriminatory because it denied Northstar the relief which was provided to other licensees in similar situations, *i.e.*, licensees serving rural areas or experiencing unique circumstances.²⁵ Northstar also argued that the 2003 Order improperly relied upon a standard of which no notice was provided, and

¹⁶ See June Supplement at 1

¹⁷ On November 13, 2003, the Commission reorganized the Wireless Telecommunications Bureau and most of the duties of the Commercial Wireless Division were assumed by the Mobility Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

¹⁸ See Northstar Technology, LLC, Request for Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 10908, 10911 (Comm. Wir. Div 2002) (“Middlesboro/Somerset Order”).

¹⁹ See 2003 Order.

²⁰ The U.S. Department of Agriculture’s Rural Utilities Service provides low interest loans to qualified wireless providers.

²¹ See Middlesboro/Somerset Extension Request.

²² See 2003 Order at 802 ¶ 5.

²³ *Id.* In contrast to the detailed filing submitted by Northstar demonstrating the public interest benefits in extending the construction deadline for the Middlesboro and Somerset markets, Northstar provided little support for an extension for its Corbin F Block license.

²⁴ See 2004 Order at ¶ 9.

²⁵ See Petition for Reconsideration filed by Northstar Technology, LLC (Feb. 24, 2003) (“2003 Petition”).

improperly penalized Northstar for having multiple licenses in the same market area.²⁶ In addition, Northstar argued that application of the construction requirement served no purpose in this instance, stating that the construction requirement “was not promulgated in order to mandate build-out for the sake of build-out itself.”²⁷ Northstar also argued that the automatic termination of the subject license for failure to construct disserved the public interest because the underlying rule²⁸ at issue is inconsistent with section 312 of the Communications Act and therefore unenforceable.²⁹ Finally, Northstar argued that the decision in the 2003 Order ignored the fact that it would be providing services over its F Block channel that are different than those provided over its C Block channel.³⁰

6. The Division found little merit in Northstar’s arguments that the 2003 Order was discriminatory and relied upon a standard of which no notice was provided, stating that “the underlying issue in the [2003 Order] was that Northstar failed to show that a public interest existed that was sufficient to warrant a waiver of section 24.203 given Northstar’s failure to comply with its obligation to timely construct its facilities in the Corbin market.” In light of Northstar’s failure to demonstrate that a public interest exists, the Division found that its treatment of Northstar was not discriminatory vis-à-vis other licensees that had satisfactorily demonstrated that a public interest or unique circumstance existed.³¹ Nor did the Division agree that a new standard had been imposed. Instead, the Division affirmed that the burden Northstar had to overcome was not to show whether it had merely constructed facilities, but whether it had met the criteria for waiver pursuant to section 1.925, the same standard that is applied to all licensees requesting waiver of the construction requirements. The Division also rejected Northstar’s arguments that the build-out rule served no purpose in this instance, stating that the construction requirements were promulgated pursuant to the Communications Act and serve worthwhile public policy purposes, such as the timely and efficient use of spectrum, which are applicable in cases in which the licensee fails to construct and fails to establish a public interest basis for the extension or waiver of the construction rules. Moreover, the Division disagreed with Northstar’s assertion that automatic termination constitutes a license revocation that cannot occur without a hearing under section 312 of the Communications Act. The Division explained that the Commission’s authority to impose license conditions is firmly grounded in statutory law, and that the license condition at issue (automatic termination upon failure to meet buildout requirements) was adopted in a rulemaking proceeding after proper notice and comment periods.³²

7. Finally, the Division found no factual basis for Northstar’s argument that it would be providing different services over its F Block channels than its C Block channels. In its 2003 Petition, Northstar stated that due to “residential and highway service needs,” the Corbin BTA requires more spectrum to adequately serve it. Northstar also stated that the F Block channel is “critical to permitting

²⁶ See 2003 Petition at 5-6. Here, Northstar argued that the Division, in denying its request, imposed a new “standard” that required Northstar to serve a different part of the Corbin BTA with its F Block license than it was serving with its C Block license.

²⁷ *Id.* at 7-8.

²⁸ 47 C.F.R. § 24.203(b). Section 24.203(b) provides that “[f]ailure by any licensee to meet [the build-out] requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.”

²⁹ See 2003 Petition at 9-13. Northstar argued that Congress has spoken directly to the issue in this instance, stating that section 312(c) of the Communications Act directs the Commission to afford a licensee notice and a hearing before revoking a license. See 47 U.S.C. § 312(c).

³⁰ See 2003 Petition at 8.

³¹ See 2004 Order at ¶ 9

³² *Id.* at ¶ 14, citing Glendale Electronics, Inc., Regarding the License of SMR Station WNGQ365, Santiago Peak and Mount Lukens, California, *Memorandum Opinion and Order*, 19 FCC Rcd 2540 (2004).

Northstar's efficient offering of data service, and to capture roaming from carriers using technologies different from that utilized by Northstar on its C Block license," and if it could not operate on the F Block channel, some subscribers would not be able to "roam efficiently" in the Corbin BTA.³³ However, the Division found that Northstar had failed to adequately explain or provide a showing regarding any capacity constraints that it might be experiencing. The Division found that Northstar's offerings appear to be potential offerings only; beyond this statement, Northstar provided no showing, either in its petitions, its underlying extension request and supplements, or in its September 2002 construction notification, that it is now providing services on its F Block channel which are different than those offered over its C Block channels, whether in the form of serving roamers using a "different" technology or with respect to data service offerings. To the contrary, the Division stated that, in arguing why it should not be required to "expend funds to meet artificial deadlines," Northstar itself stated in its underlying extension request that because "Northstar's is (sic) already operating in the C Block in the Corbin market, there is no Public Interest to be accomplished by virtue of Northstar also operating on the F Block" and that it "already offers service to the very persons who would be potential candidates for service were it to offer service over F Block channels."³⁴

8. The request for waiver or extension was denied because Northstar failed to show that granting its waiver would provide a public interest rationale sufficient to justify its failure to comply with its construction requirement. As explained in the 2004 Order,³⁵ in deciding whether to waive a construction requirement, circumstances, such as the increase in service or competition to rural, underserved areas, are taken into consideration, and we affirm the finding that granting a waiver would not support any public policy goals because the service Northstar sought to provide on its F Block license would not expand service coverage or promote increased competition to the Corbin BTA.³⁶

III. DISCUSSION

9. Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, a broadband PCS license will terminate automatically as of the construction deadline if the licensee fails to meet the requirements of section 24.203, unless the Commission grants an extension request or waives the PCS construction requirements.³⁷ Northstar has acknowledged that it did not timely satisfy the construction benchmarks set forth in section 24.203(b) of the Commission's rules for 10 MHz PCS licenses. Accordingly, without grant of extension of time or a waiver of the PCS construction rule, Northstar's F Block license for the Corbin BTA automatically terminated as of the April 28, 2002 construction deadline. Waiver may be granted, pursuant to section 1.925 of the Commission's rules, if the petitioner establishes either 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) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.³⁸ An extension of time to complete construction may be granted, pursuant to sections 1.946(e) and 24.843(b) of the Commission's rules, if the licensee shows that the failure to complete

³³ See 2003 Petition at 8-9.

³⁴ See June Supplement at 1.

³⁵ See 2004 Order at ¶ 6.

³⁶ See 2003 Order at 802.

³⁷ 47 C.F.R. §§ 1.946, 1.955(a)(2), 24.203.

³⁸ 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3, the Commission has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

construction is due to causes beyond its control.³⁹ In recognizing that compliance with the broadband PCS construction requirements may be difficult at times, the Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving the PCS construction requirements on a case-by-case basis.⁴⁰

10. Upon review of Northstar's petition, we find that it contains no basis for reconsidering the two earlier decisions to deny its request to extend its construction period and/or waive its construction obligations. First, Northstar reiterates the same arguments that the Division rejected in the 2004 Order. As noted, Northstar argues that the Division's decision to deny the extension or waiver is discriminatory because it denies Northstar the relief which was provided to other licensees in similar situations,⁴¹ the Division's decision improperly relies upon a standard of which no notice was provided, and improperly penalizes Northstar for having multiple wireless licenses in the same market area;⁴² application of the build-out rule serves no purpose in this instance, and the automatic termination of the subject license disserves the public interest because the underlying rule at issue is inconsistent with the Communications Act and is unenforceable;⁴³ and, finally, Northstar argues that the decision which has been affirmed in the 2004 Order improperly ignored the fact that it would be providing different services over its F Block channel.⁴⁴

11. Reconsideration is appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.⁴⁵ We decline to reconsider Northstar's previous arguments as it has not provided any new information or shown that a material legal error was made on the part of the Division. As noted in the 2003 Order and affirmed by the 2004 Order, CWD concluded that Northstar had not met its burden of showing a public interest existed that warranted the waiver of the Commission's construction requirements, and granting a waiver would not advance any public policy goals because the service Northstar sought to provide on its F Block license merely replicated services already available and would not expand service coverage or promote increased competition to the Corbin BTA.⁴⁶

12. We are also unpersuaded by the additional arguments that Northstar advances in the instant Petition. First, we find no merit in Northstar's argument that the Commission has constructively waived any cancellation of the F Block license at issue. Northstar alleges that the Commission granted the construction notification at issue through its Universal Licensing System ("ULS") and subsequently revised its records to undo the grant.⁴⁷ Commission staff has researched the ULS as well as other

³⁹ 47 C.F.R. §§ 1.946, 24.843. Section 1.946(e) also states specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. § 1.946(e)(2)-(3).

⁴⁰ See Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁴¹ Petition at 9.

⁴² *Id.* at 11-13.

⁴³ *Id.* at 14-19.

⁴⁴ *Id.* at 13.

⁴⁵ See Complaint of Lankenau Small Media Network, Inc. Against Ohio Cablevision Network, Inc. d/b/a TCI Cablevision of Ohio, CSR 5030-M, Request for Carriage of WDFM-LP, Defiance, Ohio, *Memorandum Opinion and Order*, 13 FCC Rcd 4497 (Cable Bur. 1998); 47 C.F.R. § 1.106(c)(1).

⁴⁶ See 2003 Order at 802 ¶ 5.

⁴⁷ Northstar Petition at 5. Northstar alleges that this occurred between October 2002 and December 2002.

databases and finds no record of such action, nor has Northstar provided any documentation in its instant petition that such “grant” appeared in ULS in 2002.⁴⁸ Accordingly, we can find no action on the part of the Commission that would have caused Northstar to believe that the construction notification was granted. Moreover, Northstar states that the “grant” was reversed. Even if ULS did erroneously indicate that the notification had been granted, Northstar itself suggests that the Commission corrected any error. Although Northstar argues that the “subsequent changing of records has no impact on [the] grant,” it is well established that the Commission may correct ministerial mistakes including unintentional processing errors.⁴⁹

13. Northstar also argues that the factual premise for the Commission’s decision not to grant relief to Northstar has changed, and that public interest benefits now exist that justify a waiver. This argument is based on the fact that Northstar’s authorization for the Corbin BTA C Block license automatically cancelled in February 2004 because Northstar failed to make a required installment payment.⁵⁰ Northstar argues that the basis underlying the decision to deny the waiver, *i.e.* that it would be providing the same service on its F Block channels as it was providing on its C Block channels, is no longer valid because the C Block license cancelled. We find this rationale insufficient to reconsider the termination of Northstar’s F Block license. It is clearly not in the public interest to allow Northstar to use the cancellation of its C Block license and the attendant loss of service as the basis to justify an extension or waiver of the construction deadline. As noted, extensions of construction deadlines may be granted pursuant to section 1.946(e) and 24.843(b) of the Commission’s rules if the licensee demonstrates that failure to construct is due to circumstances beyond the control of the licensee. Here, Northstar itself caused the cancellation of its C Block license by failing to comply with its installment payment obligations, and for this reason we find that the loss of the C Block license does not provide a basis for an extension of time. We also find that this “changed circumstance” does not rise to the unique or unusual circumstance to satisfy the criteria for grant of a waiver pursuant to section 1.925. While there may be a public interest in ensuring continued service to the Corbin market,⁵¹ we find that any loss of service is due directly to Northstar’s own actions in failing to comply with its installment payment and construction obligations. Further, the reasons which necessitated Northstar’s waiver request (acquisition of the license less than two months before the deadline, and problems related to equipment and financing) are specifically identified in the Commission’s rules as circumstances for which an extension request will generally not be granted.⁵²

14. Similarly, we do not find merit in Northstar’s argument that its request should be granted because Commission rules impose on PCS licensees⁵³ a construction requirement, rather than a service requirement. Northstar argues that the Commission’s rules do not require any showing of service, much

⁴⁸ We note that Northstar did not raise this issue in its previous petition for reconsideration.

⁴⁹ *See e.g.* Stale or Moot Docketed Proceedings, 1993 Annual Access Tariff Filings Phase I, CC Docket No. 93-193, 1994 Annual Access Tariff Filings, CC Docket No. 94-65, AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462, and 5464 Phase II, CC Docket No. 93-193, Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690, CC Docket No. 94-157, NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328, *Order*, 19 FCC Rcd 2527 (2004) (“The courts have long recognized that administrative agencies such as the Commission have ‘inherent power to rectify ministerial mistakes,’ [citation omitted] including unintentional processing errors in administrative decisions.”)

⁵⁰ *See* 47 C.F.R. § 1.2110(g)(iii)-(iv) (2000). The cancellation was effective on February 3, 2004.

⁵¹ Even without the presence of Northstar, the four counties that comprise the Corbin BTA each receive coverage from at least two cellular carriers, and multiple PCS carriers also provide service to that market.

⁵² *See supra*. n. 30.

⁵³ *See* 47 C.F.R. § 24.203(b).

less a different form or area of service and therefore erred in requiring Northstar to provide in its F Block market service of a different type or in a different area than that provided in its C Block market. Again, Northstar misunderstands the point of the underlying decisions: Northstar failed to provide a public interest rationale, whether it was increased service or competition, or other circumstance constituting a public interest, sufficient to justify waiver of its obligation to timely construct. The Division did not impose a “new” service requirement. Moreover, Northstar is also incorrect that the Commission’s rules do not require PCS licensees to provide service. Northstar suggests that section 24.203 merely requires some type of construction without the attendant requirement that the system be used for any purpose.⁵⁴ As the Commission has repeatedly stated, the underlying rationale behind our construction requirements is to ensure the efficient use of spectrum.⁵⁵ Clearly, a requirement mandating construction but not service does not advance the underlying purpose of the Commission’s buildout requirements.

15. Finally, we do not find persuasive Northstar’s assertion that proof that it is serving the public interest can be found in the fact that it received funding from the Rural Utilities Service. Northstar argues that, because RUS loans are aimed at facilitating the provision of wireless service to rural areas, the grant of a waiver would advance such public interest. We agree that the RUS loan programs can be an effective vehicle in bringing telecommunications services to rural and underserved areas. Further, we are committed to working with RUS to encourage greater access and deployment of wireless services throughout rural America.⁵⁶ In this case, however, we do not agree that being a RUS borrower alone confers a public interest benefit which is sufficient to warrant grant of a waiver. As the Division noted in the 2004 Order, there is a public interest in promoting wireless service to rural areas because such areas are more likely to be underserved. However, simply alleging that an entity is serving a rural area is insufficient by itself to warrant a waiver. A petitioner must make a showing as to how the public interest will be served. For example, the Division noted that in *PinPoint*, the petitioner provided a detailed showing of a combination of factors sufficient to support a limited extension of time to complete construction.⁵⁷ In addition to establishing that it served certain rural areas having limited coverage by other wireless carriers, *PinPoint* also effectively demonstrated that it would provide needed seamless wireless service across a multi-BTA area, and that as a locally-based carrier in an area with a rural and regional focus, *PinPoint* would be uniquely positioned to meet the particularized needs of the area’s consumers.⁵⁸ The Division found that these factors, along with *PinPoint*’s provision of enhanced 911 services as well as the discontinuance of wireless service to certain areas in the absence of a waiver or

⁵⁴ We note that Northstar cites Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 18 FCC Rcd 6490 (2003) (“*Northcoast Order*”) to support its contention that Commission rules do not impose a service requirement on PCS licensees. See Petition at 7. However, the *Northcoast Order* does not state that Commission construction rules do not require licensees to provide service.

⁵⁵ See e.g. Amendment of the Commission’s Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700 (1993); Amendment of the Commission’s Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957 (1994); Eldorado Communications, L.L.C., Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 24613 (WTB 2002); Redwood Wireless Minnesota, L.L.C. And Redwood Wireless, Wisconsin, L.L.C., Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 22416 (WTB 2002).

⁵⁶ For example, the Bureau partnered with RUS to sponsor the “Federal Rural Wireless Outreach Initiative,” and the Commission has recently taken steps to allow RUS to hold security interests in the licenses of borrowers as a means to facilitate greater access to capital.⁵⁶

⁵⁷ See *PinPoint Wireless, Inc.*, Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order on Reconsideration*, 19 FCC Rcd 2686 (Mobility Div. 2004) (*PinPoint*).

⁵⁸ See *PinPoint* at ¶ 6.

extension together warranted a short extension of PinPoint's construction deadline. In contrast, Northstar merely asserts that grant of the requested relief will further the public interest associated with RUS loans, but otherwise provides very little detail in support of its request for extension/waiver.

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 1.925 and 1.946 of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946, that the Petition for Reconsideration filed by Northstar Technology, LLC, on March 25, 2004 IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary