

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

In the Matter of
AMERICAN WIRELESS, L.L.C.
Request for Extension/Waiver of Personal
Communications Services (PCS) Buildout
Requirement
File No. 0000128335

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2000

Released: June 23, 2000

By the Deputy Chief, Commercial Wireless Division:

1. The Commercial Wireless Division of the Wireless Telecommunications Bureau has before it an application by American Wireless, L.L.C. ("American Wireless"), filed May 11, 2000, requesting through our waiver process a one-year extension of time for meeting the Commission's Personal Communications Services ("PCS") construction ("build-out") requirements with respect to a 30 MHz license that covers two Basic Trading Areas ("BTAs") - Hattiesburg, MS (BTA 186) and Laurel, MS (BTA 246).1 American Wireless was assigned this license from Bay Springs Telephone Company, Inc. ("Bay Springs"), which in 1995 had acquired the license from PrimeCo, L.P. ("PrimeCo") by partitioning the BTAs from PrimeCo's PCS B Block license for the New Orleans-Baton Rouge Metropolitan Trading Area ("MTA"). The deadline for meeting the five-year construction requirements for this license is June 23, 2000.2 For the reasons discussed below, we grant American Wireless a six-month extension to

1 See Application for Extension of Time, FCC File No. 0000128335 (submitted May 11, 2000) ("Application for Extension"). On March 27, 2000, American Wireless's counsel wrote Paul D'Ari, Chief of the Policy and Rules Branch of the Commercial Wireless Division, a letter requesting waiver/extension of the five-year construction requirement. See March 27, 2000 letter from Thomas Gutierrez to Paul D'Ari ("March 27, 2000 letter"), filed as an attachment to the Application for Extension. On May 5, 2000, American Wireless's counsel submitted an additional letter explaining its request for the waiver/extension. See May 5, 2000 letter from Mr. Gutierrez to William Kunze, Commercial Wireless Division ("May 5, 2000 letter"), filed as an attachment to the Application for Extension.

2 See March 27, 2000 letter at 1; American Wireless's license authorization for call sign WPOH940.

December 23, 2000.

2. American Wireless only recently acquired this license through assignment. In early 1999, it and Bay Springs initiated negotiations that ultimately resulted in an asset purchase agreement. The application to assign the license from Bay Springs to American Wireless was filed before the Commission on October 27, 1999, and amended on January 13, 2000.<sup>3</sup> The Commission approved the application on February 23, 2000,<sup>4</sup> and on April 4, 2000, the parties consummated the assignment agreement.<sup>5</sup>

3. Upon assignment of the license, American Wireless became obligated to fulfill the construction requirements that Bay Springs earlier had assumed. In acquiring its partitioned license from PrimeCo in 1995, Bay Springs agreed to assume responsibility for meeting the Commission's applicable construction requirements,<sup>6</sup> pursuant to Commission Rule 24.203(a).<sup>7</sup> That required Bay Springs, as licensee, to provide service in its license area to at least one-third of the population within five years of originally being licensed, and two-thirds within ten years.<sup>8</sup> Accordingly, when American Wireless was assigned Bay Springs's license, American Wireless assumed responsibility for meeting those same "build-out" requirements by the June 23, 2000 deadline for PCS B Block licenses.

4. Pursuant to Commission rule 1.925, waiver may be granted 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) in view of the 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 alternative.<sup>9</sup> Alternatively, under Commission rule 1.3, the Commission has authority to waive its rules if there is "good cause" to do so.<sup>10</sup>

5. American Wireless asserts three basic reasons as grounds for granting its waiver request. First, it asserts that prolonged negotiations with Bay Springs, as well as the additional time involved in

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<sup>3</sup> See Application for Assignment of Authorization from Bay Springs to American Wireless, FCC File No. 0000040146 (submitted October 27, 1999); Amendment to Application, FCC File No. 0000040146 (submitted January 13, 2000). The application sought assignment of Bay Springs's license covering these two BTAs, as well as two other PCS licenses (which Bay Springs had acquired through auction in 1997).

<sup>4</sup> See March 27, 2000 letter at 2; Wireless Telecommunications Bureau, Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report Number 461 (dated February 23, 2000), at 6.

<sup>5</sup> See May 5, 2000 letter at 1.

<sup>6</sup> See Application for Assignment of Authorization from PrimeCo to Bay Springs, FCC File No. 00102CWAL95 (submitted July 7, 1995). In this application, Bay Springs certified that it, and not PrimeCo, would be responsible for meeting the construction coverage requirements for its partitioned license area, pursuant to 47 C.F.R. § 24.714 (1995). *Id.* and Exhibit C.

<sup>7</sup> 47 C.F.R. § 24.203(a).

<sup>8</sup> Section 24.203(a) provides that "[f]ailure by any licensee to meet [the construction requirements applicable to 30 MHz Block licensees] will result in forfeiture or non-renewal of the license and the licensee will be ineligible to regain it." *Id.*

<sup>9</sup> 47 C.F.R. § 1.925(3).

<sup>10</sup> 47 C.F.R. § 1.3.

obtaining Commission consent to the assignment (nearly four months in this instance), prevented American Wireless from initiating build-out until it ultimately closed the transaction in early April, 2000.<sup>11</sup> Second, American Wireless argues that granting the extension will ensure deployment within these two rural BTAs in the near future, and do so more rapidly than would be likely had the New Orleans/Baton Rouge MTA never been partitioned in the first instance, because American Wireless will be responsible for meeting the five- and ten-year build-out requirements within its smaller license area, which covers only two rural BTAs.<sup>12</sup> Third, American Wireless contends that the build-out requirements that it will meet for these two BTAs, *i.e.*, coverage of one-third of the population in the near future and two-thirds within ten years, will exceed the coverage requirement for most other BTA licensees since they are only required to serve one-quarter of the population, or provide substantial service, within five years.<sup>13</sup>

6. Since acquiring the license on April 4 of this year, American Wireless has taken significant steps toward providing PCS service within its license area.<sup>14</sup> On April 10, 2000, it placed an equipment work order with Lucent Technologies (“Lucent”). According to Lucent, this equipment will be shipped during the first week of August, 2000.<sup>15</sup> Also, Lucent has informed American Wireless that under standard timetables, and barring unforeseen difficulties or delays in site acquisition, American Wireless reasonably can anticipate being able to offer commercial service – sufficient to meet the PCS build-out requirements for covering one-third of the population – within the two BTAs by the end of October, 2000.<sup>16</sup>

7. Under the circumstances presented to us, we determine that the public interest will best be served by granting, in part, American Wireless’s request. We will require that American Wireless meet the build-out requirement within six months after the original deadline for the license, by December 23, 2000, instead of within a year after that deadline, as it requested. We find that American Wireless acted with dispatch to order equipment once it had acquired the license. Given the representations made to American Wireless by Lucent, an extension of this limited duration should enable American Wireless to initiate service sufficient to comply with this interim build-out requirement. In addition, grant of this waiver is likely to result in the reasonably rapid provision of PCS service to the population in these rural BTAs, who might otherwise go unserved.

8. 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 sections 0.131, 0.331, 1.3, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, 1.925, the Application for Waiver/Extension of the Five-Year Construction Requirement filed by American Wireless, L.L.C., IS HEREBY GRANTED IN PART by

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<sup>11</sup> March 27, 2000 letter at 2-3.

<sup>12</sup> *Id.* at 3-4. Under PrimeCo’s original PCS license, these build-out requirements applied to the entire MTA, not to smaller areas such as BTAs.

<sup>13</sup> *Id.* at 4-5. The latter requirement applies to the D, E, F, and the 15 MHz C block PCS licensees (but not 30 MHz C block licensees). *Id.*; *see also* Section 24.203.

<sup>14</sup> For instance, American Wireless represents that it has designed a preliminary and secondary tier system, has initiated an extensive site-leasing process, and has “staged” much of the equipment necessary for initial construction. *See* May 5, 2000 letter at 2.

<sup>15</sup> *See* April 13, 2000 letter from Lucent Technologies’s Kathy Long to American Wireless’s Wirt Yerger, filed as an attachment to the Application for Extension.

<sup>16</sup> *Id.*

extending the time for complying with the PCS construction requirements for a period of six months, until December 23, 2000.

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William W. Kunze  
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Wireless Telecommunications Bureau