

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

In the Matter of)
)
INTEK LICENSE ACQUISITION CORP.)
)
Request for Waiver and Consolidation of 220 MHz)
Construction Requirements)

MEMORANDUM OPINION AND ORDER

Adopted: September 12, 2001

Released: September 13, 2001

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

I. Introduction

1. On August 22, 2000, Intek License Acquisition Corp. (“ILAC”) and its parent company, Securicor Wireless Holdings Inc. (“Securicor”), filed a request seeking waiver of Sections 90.725, 90.767, and 90.769 of the Commission’s rules in order to consolidate the various construction requirements for its licensed 220 MHz facilities.¹ By this Order, we grant ILAC’s Waiver Request, as described below.

II. Background

2. Securicor, through its subsidiaries ILAC and Roamer One, Inc. (“Roamer One”), has acquired 220 MHz spectrum through assignment, lottery, and auction. ILAC’s waiver request concerns the construction requirements for three types of 220 MHz licenses: Phase I nationwide, Phase II Regional Economic Area Grouping (“REAG”), and Phase II nationwide.² In its Waiver Request, ILAC states that it plans to use these authorizations to construct a nationwide 220 MHz system, to compete effectively with other wireless service providers, and to develop band management services in the 220 MHz band.³

3. The Phase I nationwide, Phase II nationwide, and Phase II REAG licenses held by ILAC are currently subject to different construction requirements. Under Section 90.725 of the Commission’s rules, Phase I nationwide licensees must construct base stations having a minimum of five assigned nationwide channels, and must place those base stations into operation: (1) in at least ten percent of the geographic areas designated in the application within two years of the initial license grant, including base stations in at least seven urban areas listed in Section 90.741; (2) in at least forty percent of the geographic

¹ See Request of Intek License Acquisition Corp. for Waiver and Consolidation of 220 MHz Construction Requirements filed August 22, 2000 (“Waiver Request”).

² The stations involved are WFPF444 and WPF284 (Phase I Nationwide); WPOI702, WPOI703, WPOI704, WPOI705, WPOI706, WPOI708, WPOI707, and WPOK779 (Phase II REAG); and WPOI701 (Phase II Nationwide).

³ Waiver Request at 1-2.

areas designated in the application within four years of the initial license grant, including base stations in at least twenty-eight urban areas listed in Section 90.741; (3) in at least seventy percent of the geographic areas designated in the application within six years of the initial license grant, including base stations in at least twenty-eight urban areas listed in Section 90.741; and (4) in all geographic areas designated in the application within ten years of the initial license grant, including base stations in at least twenty-eight urban areas listed in Section 90.741.⁴ The sites to be selected under Section 90.741 of the Commission's Rules are the "Top 100 Urban Areas for Phase I Nationwide Systems."⁵

4. ILAC acquired one Phase I nationwide licenses from Global Cellular Communications, Inc. (call sign WFPF444) and one from ComTech Nationwide Communications (call sign WPFR284). The initial grant date for WFPF444 was September 16, 1994, and the initial grant date for WPFR284 was September 23, 1994. ILAC's six-year construction deadlines were on September 16 and September 23, 2000. Because the licenses had only recently been assigned to ILAC,⁶ the Commercial Wireless Division of the Wireless Telecommunications Bureau agreed to hold the six-year construction deadlines for the two Phase I nationwide licenses in abeyance pending action on ILAC's Waiver Request. The ten-year construction deadlines for the licenses are on September 16 and September 23, 2004, respectively.

5. Section 90.767 of the Commission's rules requires a Phase II REAG licensee to construct a sufficient number of base stations to provide coverage to: (1) at least one-third of the population of the licensee's REAG within five years of the initial license grant; and (2) at least two-thirds of the population of the REAG within ten years of the initial license grant.⁷ Thus, the Phase II REAG requirements are based solely on population covered. ILAC's six 8-channel REAG licenses and one 15-channel REAG license were all granted on March 22, 1999. Another 15-channel REAG license was granted on October 7, 1999. The five-year deadlines applicable to ILAC's Phase II REAG licenses are therefore on March 22, 2004 and October 7, 2004, respectively. The ten-year deadlines are on March 22, 2009 and October 7, 2009, respectively.

6. Section 90.769 of the Commission's rules requires a Phase II nationwide licensee to construct a sufficient number of base stations to provide coverage to: (1) either a composite area of at least 750,000 square kilometers or 37.5 percent of the United States population within five years of the initial license grant; and (2) either a composite area of at least 1,500,000 square kilometers or 75 percent of the United States population within ten years of the initial license grant.⁸ There is no requirement that the sites

⁴ 47 C.F.R. § 90.725.

⁵ 47 C.F.R. § 90.741.

⁶ The Commission consented to the assignment of the Phase I nationwide license for WFPF444 from Global Cellular Communications, Inc. to ILAC on July 5, 2000. The final closing date was August 15, 2000. The Commission consented to the assignment of the Phase I nationwide license WPFR284 from ComTech Nationwide Communications to ILAC on August 1, 2000. The assignment was consummated on September 11, 2000.

⁷ 47 C.F.R. § 90.767. If a REAG licensee offers fixed services as part of its system or has one or more incumbent Phase I licenses within its licensed service area, it may meet the construction requirements by demonstrating an appropriate level of "substantial service" at its five- and ten-year deadlines. 47 C.F.R. § 90.767(2)(b).

⁸ 47 C.F.R. § 90.769. Phase II nationwide licensees offering fixed services as part of their system may meet the construction requirements by demonstrating an appropriate level of "substantial service" at their five- and ten-year deadlines. 47 C.F.R. § 90.769(2)(b).

used to satisfy the Phase II requirements be selected from a pre-determined list. ILAC's Phase II nationwide license (call sign WPOI701) was issued on March 22, 1999. The five- and ten-year deadlines applicable to ILAC's Phase II nationwide license are therefore March 22, 2004 and March 22, 2009, respectively.

7. In its Waiver Request, ILAC seeks a waiver of the construction requirements applicable to its Phase I nationwide and Phase II REAG and nationwide licenses to the extent necessary to consolidate its 220 MHz construction requirements.⁹ ILAC asks that, with respect to its Phase I nationwide channels, it be given the option of applying either the six- and ten-year Phase I construction benchmark requirements, or the Phase II nationwide construction benchmarks and timetable.¹⁰ ILAC agrees to meet an interim construction benchmark for its Phase I nationwide channels.¹¹ With regard to its Phase II REAG licenses, ILAC requests that it be allowed to meet its construction obligations by either population coverage or geographic coverage.¹²

8. ILAC maintains that waiver of the construction requirements is appropriate for three primary reasons. First, the various requirements create an unnecessary and unduly burdensome regulatory regime that hinders ILAC's efforts to develop an effective nationwide business plan.¹³ Second, ILAC contends that waiver relief will place it on a more level playing field with other wireless service providers and will foster regulatory parity.¹⁴ Third, ILAC suggests that the construction requirements for its 28-channel nationwide 220 MHz system should be harmonized into a uniform construction obligation, which would allow it to develop a band manager plan while effectively deploying the spectrum.¹⁵

III. Discussion

9. Pursuant to section 1.925 of the Commission's rules, a 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) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶ Alternatively, under section 1.3 of the Commission's rules, the Commission has authority to waive its rules if there is "good cause" to do so.¹⁷

10. On the facts before us, we find that a partial waiver of our 220 MHz construction

⁹ Waiver Request at 11.

¹⁰ *Id.*

¹¹ Waiver Request at 12.

¹² *Id.*

¹³ Waiver Request at 7-8.

¹⁴ Waiver Request at 8-9.

¹⁵ Waiver Request at 9-11.

¹⁶ 47 C.F.R. § 1.925(3).

¹⁷ 47 C.F.R. § 1.3.

requirements is warranted.¹⁸ On a nationwide basis, ILAC holds a total of 28 channels in the 220 MHz service, but because these channels fall into three different licensing categories, and were granted at different times, they are subject to different construction requirements and timetables. The rules for Phase I nationwide licenses require phased construction of a set number of individual base stations and focus on a designated list of urban areas.¹⁹ The Phase II REAG license construction rules require coverage of a specified percentage of the population in each of the seven REAGs.²⁰ The Phase II nationwide rules give licensees the option of meeting coverage benchmarks based either on population or on geographic area.²¹ In light of the fact that ILAC is using its licensed facilities to build a single nationwide system, application of the various construction rules would be unduly burdensome. Further, implementation of ILAC's band manager approach may bring more diverse service offerings to this spectrum band. Accordingly, we conclude that it is reasonable under these circumstances to apply a more uniform set of construction requirements to ILAC's system as a whole. Specifically, we waive the construction requirements for ILAC's Phase I nationwide and Phase II REAG licenses to the extent described below. The construction requirements and deadlines for ILAC's Phase II nationwide licenses remain unchanged.

11. With respect to each of the two Phase I nationwide licenses, ILAC may either satisfy the remaining six- and ten-year construction requirements set forth in Section 90.725²² of the Commission's rules, or satisfy the construction requirements set forth in Section 90.769²³ (*i.e.*, the Phase II nationwide deadlines and benchmarks). The construction requirements must be satisfied independent of the Phase II licenses, and independently for each of the two licenses. Because the six-year deadline for these two licenses has already passed, we are extending this deadline until 30 days from the release of this Order.

12. With respect to each of the eight Phase II REAG licenses, ILAC may either satisfy the construction requirements set forth in Section 90.767,²⁴ or it may use the following geographic coverage benchmarks as an alternative: in each REAG, ILAC may satisfy its construction obligation by constructing a sufficient number of base stations to provide coverage to: (1) either a composite area of at least 100,000 square kilometers or one-third of the population of the REAG within five years of the initial license grant; and (2) either a composite area of at least 200,000 square kilometers or two-thirds of the population of the REAG within ten years of the initial license grant. Note that the construction deadlines for these licenses remain unchanged, and the construction requirements must be satisfied independently for each of the seven REAG licenses.

13. In return for this relief, and to ensure that ILAC proceeds expeditiously with construction

¹⁸ The Commercial Wireless Division granted a similar waiver request to the National Rural Telecommunications Cooperative, LLC ("NRTC"). See *In the Matter of National Rural Telecommunications Cooperative, LLC Request for Waiver and Consolidation of 220 MHz Construction Requirements*, *Memorandum Opinion and Order*, DA 00-1762 (rel. Aug. 4, 2000).

¹⁹ 47 C.F.R. § 90.725.

²⁰ 47 C.F.R. § 90.767.

²¹ 47 C.F.R. § 90.769.

²² 47 C.F.R. § 90.725.

²³ 47 C.F.R. § 90.769.

²⁴ 47 C.F.R. § 90.767.

of its proposed system, we also require ILAC to meet an additional interim coverage benchmark of 250,000 square kilometers or 12.5% of the United States population by September 16, 2002. This represents one-third of the coverage required at the five-year benchmark for Phase II nationwide licenses.²⁵ This interim construction requirement may be satisfied with respect to all the licenses referenced above, in the aggregate. ILAC may therefore meet this requirement by demonstrating compliance for the entire group of licenses, rather than satisfying the requirement independently with respect to each license.

14. In addition, because one of the bases for this waiver is ILAC's intent to build a nationwide 220 MHz system using its various sets of licenses, this waiver applies to the subject licenses only so long as ILAC or a successor in interest operates the licenses as an integrated 28-channel system. This waiver will not apply to any smaller subset of these licenses transferred or assigned to another licensee.

IV. Ordering Clause

15. 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 request filed by ILAC for waiver of the Phase I Nationwide and Phase II REAG construction requirements IS HEREBY GRANTED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

²⁵ 47 C.F.R. § 90.769.