

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

In the Matter of
Phase II Cellular
Unserved Area Application of
TWIGGS COUNTY
CELLULAR PARTNERSHIP
For the Macon-Warner Robins,
Georgia MSA, Market 138B
File No. 0000200787

ORDER

Adopted: September 14, 2001

Released: September 17, 2001

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

1. On September 8, 2000, American Cellular Communications Corporation ("American") filed a petition to dismiss or deny ("Petition") the above-captioned application ("Application") of Twiggs County Cellular Partnership ("Twiggs"). For the reasons discussed below, we grant American's Petition and dismiss the Application.

2. On June 18, 1999, the Commission granted Twiggs' Phase I cellular unserved area application ("Phase I application") to serve part of the Macon-Warner Robins, Georgia MSA ("Macon MSA") under call sign KNKR235. On May 23, 2000, Twiggs filed a Phase II application ("Phase II application") to modify its Phase I license. This application appeared on Public Notice as accepted for filing on May 31, 2000. Subsequently, on June 30, 2000, American, licensee of station KNKA424, filed a Phase II application to expand its existing CGSA by adding a new cell site in the Macon MSA. American's Phase II application was mutually exclusive with Twiggs' Phase II application and was filed within the 30-

1 File No. 10120-CL-P1-93.

2 File No. 0000137297.

3 See 47 C.F.R. § 22.949. Initial cellular system licensees were given a five-year period during which to expand their systems within the areas in which they are licensees. The Commission's application processing scheme has two phases for all cellular markets in which the five-year build-out period has expired. Phase I is a one-time process that provides an opportunity for eligible parties to file competing applications for authority to operate a new cellular system in, or to expand an existing cellular system into, unserved areas as soon as these areas become available. Phase II is an ongoing process that allows eligible parties to apply for any unserved areas that may remain in a market after the Phase I process is complete. See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket 93-253, and Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, Ninth Report and Order, 11 FCC Rcd 14769 (1996).

4 Public Notice, Report No. 547 (rel. May 31, 2000).

5 File No. 0000180493.

day filing window triggered by Twiggs' Phase II application.⁶

3. On July 27, 2000, the Policy and Rules Branch of the Commercial Wireless Division of the Wireless Telecommunications Bureau dismissed Twiggs' Phase II application as moot because Twiggs' authorization had automatically terminated on June 18, 2000 for failure to commence service.⁷ Subsequently, on August 4, 2000, Twiggs filed a second Phase II application⁸ ("second Phase II application"), which is mutually exclusive with American's Phase II application⁹ and which is the subject of American's Petition.

4. In its Petition, American argues that Twiggs' second Phase II application should be dismissed because it is untimely and is thus in violation of Commission rules and procedures for handling mutually exclusive applications, specifically section 22.131.¹⁰ American states that Twiggs' second Phase II application is untimely because it was not filed within 30 days of the Public Notice listing Twiggs' first Phase II application as acceptable for filing.¹¹ Twiggs argues that its second Phase II application was timely filed because it was filed within the 30-day filing window triggered by American's Phase II application, which, according to Twiggs, became the "first-filed application" after the July 27, 2000 dismissal of Twiggs' first Phase II application.¹²

5. We agree with American. In *Plaincom*, the Commission stated that "[t]he first-filed application, even if subsequently dismissed, establishes the cut-off period for all later competing applications."¹³ The Commission has concluded that the cut-off period established by the first-filed application applies "to all mutually-exclusive filings, including additional facilities proposed by the original applicant."¹⁴ The dismissal of the first-filed application does not affect the filing window. In the present situation, the first-filed application was Twiggs' first Phase II application, which appeared on Public Notice as accepted for filing on May 31, 2000.¹⁵ Thus, in accordance with section 22.131(b)(3), in order to be given concurrent consideration, any other mutually exclusive applications must have been filed by June 30,

⁶ See 47 C.F.R. § 22.131(b)(3). This rule section provides that applications that are mutually exclusive and filed within thirty days of the Public Notice listing the first-filed application as acceptable for filing will be processed as part of a single filing group and given concurrent consideration.

⁷ See Letter from Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to Twiggs County Cellular Partnership, dated July 27, 2000; 47 C.F.R. §§ 1.946(c), 22.946. These rule sections provide that Phase I unserved area licensees must at least partially construct their systems and begin providing service within one year from the date their authorization is granted or the license automatically terminates.

⁸ File No. 0000200787.

⁹ See 47 C.F.R. § 22.131(b)(3).

¹⁰ Petition at 4-5; see 47 C.F.R. § 22.131.

¹¹ Petition at 5, citing *In the Matter of Plaincom, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 11889 (2000) (*Plaincom*); see 47 C.F.R. § 22.131(b)(3).

¹² Twiggs County Cellular Partnership Opposition to Petition to Dismiss or Deny, File No. 0000200787 (filed on Sept. 27, 2000), at 2.

¹³ *Plaincom*, 15 FCC Rcd 11889, 11890, citing William G. Bowles, Jr. d/b/a Mid Missouri Mobilfone, *Memorandum Opinion and Order*, 61 Rad. Reg. 2d (P & F) 20, 24 (CCB 1986) (*Bowles*).

¹⁴ *Bowles*, 61 Rad. Reg. 2d (P & F) at 23.

¹⁵ See fnote. 4, *supra*.

2000.¹⁶ American's Phase II application was filed on June 30, 2000, while Twiggs' second Phase II application was filed on August 4, 2000. Because Twiggs' application was filed after the June 30, 2000 cut-off date, it is not eligible for concurrent consideration as a mutually exclusive application.

6. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 0.331, 22.131(b), and 22.949(b) of the Commission's rules, 47 C.F.R. §§ 0.331, 22.131(b), and 22.949(b), the petition to dismiss or deny filed by American Cellular Communications Corporation on September 8, 2000, IS GRANTED, and the Phase II unserved area application, File No. 0000200787, filed by Twiggs County Cellular Partnership on August 4, 2000, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

¹⁶ 47 C.F.R. § 22.131(b)(3).