

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

In the Matter of
URBAN COMM-NORTH CAROLINA, INC.
Request for Tolling of Ten-Year Construction
Period
Call Sign: KNLF373

ORDER

Adopted: September 28, 2006

Released: September 29, 2006

By the Associate Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Urban Comm-North Carolina, Inc. (Urban Comm), filed a request for tolling of its ten-year construction period for the above-referenced C Block Personal Communications Service (PCS) license. For the reasons set forth below, we grant Urban Comm's Petition to the extent provided herein, and toll the ten-year construction period for Urban Comm's Burlington, North Carolina BTA C Block license (KNLF373) for a period of eighteen months through March 17, 2008.

II. BACKGROUND

2. Urban Comm is the licensee of certain PCS C Block licenses. These licenses, which the Commission conditionally granted to Urban Comm on September 17, 1996, were financed pursuant to

1 Urban Comm is a wholly owned subsidiary of Urban Comm Mid-Atlantic (Urban- MA), which is wholly owned by Urban Communicators PCS Limited Partnership (Urban LP).

2 Urban Comm filed a request for tolling on March 15, 2006, and subsequently revised the request on September 18, 2006, to significantly narrow the scope of relief sought. See Urban Comm-North Carolina, Inc., Request for Tolling of Ten-Year Construction Period, filed March 15, 2006; Urban Comm-North Carolina, Inc., Third Revised Request for Tolling of Ten-Year Build-out Requirement, filed September 18, 2006 (Petition).

3 Urban Comm originally won ten PCS C Block licenses in Auction No. 5 and thirteen PCS F Block licenses in Auction No. 11. In June 2005, the Wireless Telecommunications Bureau consented to the assignment of certain full and disaggregated Urban Comm PCS C Block licenses to Verizon Wireless. See Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc. Debtor-in-Possession, to Cellco Partnership d/b/a/ Verizon Wireless, WT Docket No. 05-169, Memorandum Opinion and Order, 20 FCC Rcd 10440 (WTB 2005). Urban Comm and Verizon Wireless consummated the assignment of these licenses in July 2005. Further, on September 19, 2006, the Wireless Telecommunications Bureau (Bureau) consented to the assignment of certain of Urban Comm's F Block licenses and certain disaggregated C Block licenses to Cricket Licensee (Reauction) Inc. See Applications for Assignment of Licenses of Urban Comm-North Carolina, Inc., Debtor-in-Possession, to Cricket Licensee (Reauction) Inc., WT Docket No. 05-169, File Nos. 0002526701 and 0002526699, Memorandum Opinion and Order, DA 06-1883 (WTB rel. Sep. 19, 2006). The C Block licenses were disaggregated pursuant to 47 C.F.R. § 24.714(a), (e)(2).

4 See "FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block BTA License, Final Down Payment Due by September 24, 1996," Public Notice, 11 FCC Rcd 11316 (1996).

the Commission's installment payment program.<sup>5</sup> In 1997, the Commission suspended installment payments for PCS C Block licenses pending resolution of requests filed by certain PCS licensees to restructure their installment payment obligations.<sup>6</sup> The Commission subsequently offered various debt restructuring options for C Block licensees,<sup>7</sup> and required licensees to resume payments by the late payment deadline of October 29, 1998.<sup>8</sup> On October 28, 1998, Urban Comm filed for bankruptcy protection under chapter 11 of the United States Bankruptcy Code (Chapter 11).<sup>9</sup> Following the first of two decisions by the Second Circuit Court of Appeals,<sup>10</sup> the Commission took the position that PCS licenses involved in various bankruptcies had canceled for failure to make timely payment, pursuant to section 1.2110 of the Commission's rules.<sup>11</sup> The Commission subsequently took the position that Urban Comm's licenses had canceled as well.<sup>12</sup> In 2001, the Commission conducted an auction that included the spectrum held by Urban Comm under the licenses the Commission asserted had canceled.<sup>13</sup>

3. Subsequently, however, the United States Supreme Court determined that the Commission's rule providing for automatic cancellation of a license for failure to make timely payment is ineffective with respect to a licensee in Chapter 11.<sup>14</sup> On July 24, 2003, Urban Comm filed a Petition for

<sup>5</sup> See 47 C.F.R. §§ 1.2110, 24.711, 24.716 (1999).

<sup>6</sup> See Installment Payments for PCS Licenses, *Order*, 12 FCC Rcd 17325 (1997); "FCC Announces Grant of Broadband Personal Communications Services D, E & F Block Licenses," *Public Notice*, 13 FCC Rcd 1286 (1997).

<sup>7</sup> See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order*, 12 FCC Rcd 16436 (1997) (*Restructuring Second Report and Order*); Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998); Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 6571 (1999) (*Restructuring Second Order on Reconsideration*).

<sup>8</sup> *Restructuring Second Order on Reconsideration*, 14 FCC Rcd at 6584-6585 ¶¶ 25-26.

<sup>9</sup> See *In re Urban Communicators PCS Limited Partnership*, Case Nos. 98-B-47996, 98-B-47997, 98-B-10086 (Bankr. S.D.N.Y. 1998) (Jointly Administered).

<sup>10</sup> See *In re FCC*, 200 F.3d 43 (2d Cir. 1999), *cert. den.*, 531 U.S. 1029 (2000).

<sup>11</sup> See FCC Informs Court That NextWave Licenses Have Cancelled and Sets Date for Auction, *News Release*, (January 12, 2000); Auction of C and F Block Broadband PCS Licenses; Notice of Auction Scheduled for July 26, 2000, *Public Notice*, 15 FCC Rcd 693 (WTB Jan. 12, 2000). Section 1.2110 of the Commission's rules provides that a license will automatically cancel if a licensee fails to make payment as required.

<sup>12</sup> See Letter from Mary Jo White, U.S. Attorney, to Charles E. Simpson, Esq., Windels Marx Lane & Mittendorf, LLP, dated June 29, 2000.

<sup>13</sup> See C and F Block Broadband PCS Auction Closes; Winning Bidders announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period," *Public Notice*, 16 FCC Rcd 2339 (WTB 2001). As in the case for all auctions, the Commission advised that potential bidders are solely responsible for conducting due diligence to identify associated risks, and evaluating the degree to which such matters might affect their ability to bid on or otherwise acquire licenses. See e.g. Auction of Licenses for C and F Block Broadband PCS Spectrum: Status of FCC Form 175 Applications to Participate in the Auction, Report No. AUC-35-F (Auction No. 35), *Public Notice*, 15 FCC Rcd 22466 (WTB 2000).

<sup>14</sup> See *Federal Communications Commission v. NextWave Personal Communications, et al.*, 537 U.S. 293, 123 S.Ct. 832 (2003) (*NextWave*). The Commission later dismissed FCC Form 601 long form applications and refunded down payments to eligible Auction No. 35 winning bidders of spectrum associated with licenses held by Urban Comm. See Disposition of Down Payment and Pending Applications by Certain Winning Bidders in Auction No. 35; Requests for Refund of Down Payments Made in Auction No. 35, *Order and Order on Reconsideration*, 17 FCC Rcd 23354 (2002); Requests for Refunds of Down Payments Made in Auction No. 35, *Order*, 17 FCC Rcd 6283 (2002).

Reinstatement of Licenses (Reinstatement Petition),<sup>15</sup> in which it sought "reinstatement" of its PCS licenses, tolling of its construction requirements,<sup>16</sup> and various other forms of tolling relief.

4. On September 23, 2003, the Wireless Telecommunications Bureau (Bureau) clarified that, in light of the U.S. Supreme Court's *NextWave* opinion, the Commission's automatic cancellation rule was ineffective because Urban Comm was under the protection of Chapter 11 at the time it defaulted on its installment payment obligation.<sup>17</sup> Urban Comm subsequently filed a petition (Five-Year Tolling Petition) on December 6, 2004, seeking to separate its request for tolling of its buildout deadlines from the other relief sought in the Reinstatement Petition,<sup>18</sup> and requesting relief identical to that provided in the *NextWave Tolling Order*.<sup>19</sup> On June 1, 2005, the Bureau's Mobility Division (Division) granted the Five-Year Tolling Petition and accepted Urban Comm's five-year construction notifications.<sup>20</sup>

5. Urban Comm now seeks tolling of its ten-year construction deadline for a period of eighteen months for a single C Block license. In its petition, Urban Comm argues, *inter alia*, that tolling of the ten-year construction period is a logical extension of the relief previously granted, and is consistent with the rationale of the *Urban Comm Tolling Order*.

### III. DISCUSSION

6. We conclude that, to the extent necessary, it is appropriate to provide Urban Comm limited relief with respect to its ten-year construction obligations for its Burlington, North Carolina BTA C Block License (Call Sign KNLF373) similar to that granted with respect to its five-year construction obligations in the *Urban Comm Tolling Order*. In that Order, informed by the precedent established in the *Nextwave Tolling Order*, the Division found that it would be inequitable to hold Urban Comm to its original five-year PCS buildout deadlines in light of the Commission's assertion of license cancellation.<sup>21</sup> Accordingly, the Division tolled Urban Comm's five-year buildout period beginning on June 29, 2000, when Urban Comm was informed that its licenses had cancelled for nonpayment, and ending on

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<sup>15</sup> See Urban Comm-North Carolina, Inc., For Reinstatement of Licenses and Tolling of Certain License Requirement Time Schedules, Petition for Reinstatement of Licenses, filed July 24, 2003.

<sup>16</sup> Entities holding 30 MHz C Block PCS licenses must provide service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within ten years of being licensed. 47 C. F. R. § 24.203(a).

<sup>17</sup> Urban Comm-North Carolina, Inc., Petition for Reconsideration of Public Notice Announcing Auction of C and F Block PCS Spectrum; Petition for Stay, *Order*, 18 FCC Rcd 18791 (WTB 2003) (*Urban Comm Clarification Order*).

<sup>18</sup> On April 4, 2005, the United States Bankruptcy Court for the Southern District of New York approved a settlement agreement between the Commission and Urban Comm regarding claims pending in Urban Comm's Chapter 11 bankruptcy case. See *Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving and Authorizing Terms and Conditions of the Proposed Settlement Agreement with the Federal Communications Commission*, rel. April 4, 2005, Case Nos. 98-B-47996, 98-B-47997, 98-B-10086 (Bankr. S.D.N.Y. 1998) (Jointly Administered) ("Settlement Agreement"). Because the settlement agreement resolved the additional issues raised in the Reinstatement Petition, Urban Comm subsequently sought withdrawal of the remaining requests on April 19, 2005. See Letter to Marlene H. Dortch, FCC, from James K. Winston, Counsel for Urban Comm-North Carolina, Inc., filed April 19, 2005.

<sup>19</sup> See generally Five-Year Tolling Petition, citing NextWave Personal Communications Inc. and NextWave Power Partners Inc., File Nos. 0000855872 et. al, *Order*, 18 FCC Rcd 3235 (WTB 2003) (tolling petitioners' five-year construction deadline) (*Nextwave Tolling Order*).

<sup>20</sup> Urban Comm-North Carolina, Inc., Request for Tolling of Construction Period, *Order*, 20 FCC Rcd 9993 (WTB 2003) (*Urban Comm Tolling Order*).

<sup>21</sup> *Id.* at 9995 ¶ 5, citing *NextWave Tolling Order*, 18 FCC Rcd at 3237 ¶ 6-7.

September 23, 2003, when the Bureau issued the *Urban Comm Clarification Order*, confirming that the *NextWave* decision had rendered the automatic cancellation rule ineffective as applied to Chapter 11 debtors like Urban Comm. In the *Urban Comm Tolling Order*, the Division found that, as of June 29, 2000, 445 days remained on the five-year construction period for Urban Comm's C Block PCS licenses, and that Urban Comm had filed timely construction notifications within the 445 days remaining in its five-year buildout period.<sup>22</sup>

7. Applying a similar analysis here, we find that it is equitable to grant tolling of the ten-year construction deadline for Call Sign KNLF373 for the eighteen month period that Urban Comm has requested. Accordingly, we toll the ten-year construction period for Call Sign KNLF373 for eighteen months until March 17, 2008.

8. Finally, we note that Urban Comm has filed a renewal application for Call Sign KNLF373.<sup>23</sup> Any grant of the renewal application for Call Sign KNLF373 will be conditioned upon timely completion of the Commission's ten-year construction requirements, as set forth in this Order. Failure to comply with the Commission's ten-year construction requirements by March 17, 2008 will result in automatic termination of the license.

#### IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED that, pursuant to authority delegated under sections 0.331 of the Commission's rules, 47 C.F.R. § 0.331, Urban Comm-North Carolina, Inc.'s Third Revised Request for Tolling of Ten-Year Build-out Requirement, filed September 18, 2006, IS GRANTED to the extent provided herein. Thus, the ten-year construction deadline for Urban Comm-North Carolina's PCS C Block license – Call Sign KNLF373 – is tolled for eighteen months through March 17, 2008.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Chang  
Associate Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>22</sup> Urban Comm submitted construction notifications on November 16, 2004, 420 days after the September 23, 2003 release of the *Urban Comm Clarification Order*.

<sup>23</sup> See Urban Comm – North Carolina, Inc., FCC Form 601, File No. 0002714427, filed August 15, 2006.