

**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 )

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 5, 2014**

**Released: December 5, 2014**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, we address a further Petition for Reconsideration filed by Northstar Technology, LLC (Northstar),<sup>1</sup> seeking review of the Commission's decision to affirm Wireless Telecommunications Bureau decisions relating to Northstar's request for a waiver and extension of time to construct its broadband Personal Communications Service (PCS) license, Call Sign KNLG232.<sup>2</sup> Because Northstar raises arguments previously considered and rejected by the Commission, we dismiss the Petition for Reconsideration.

**II. BACKGROUND**

2. In 2002, Northstar acquired on the secondary market certain PCS licenses in Kentucky, including the subject license, Call Sign KNLG232, the F Block license in the Corbin, Kentucky Basic Trading Area (BTA), as well as the C Block license in the Corbin BTA, Call Sign KNLG370.<sup>3</sup> The construction deadline for all of Northstar's licenses except the Corbin C Block license was April 28, 2002.<sup>4</sup> Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, a PCS license will terminate automatically if the licensee fails to meet the construction requirements of section 24.203, unless the Commission grants an extension request or waives the PCS construction requirements.<sup>5</sup> On March 26, 2002, Northstar filed a request for waiver and extension of the construction deadline for its

<sup>1</sup> Northstar Technology, LLC, Petition for Reconsideration of the Request for a Waiver and Extension of the Broadband PCS Construction Requirements Regarding BTA098 Block F Authorization, filed December 9, 2004 (Petition for Reconsideration).

<sup>2</sup> See Northstar Technology, LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order on Reconsideration*, 19 FCC Rcd 22275 (2004) (November 2004 Reconsideration Order).

<sup>3</sup> In addition to the Corbin C and F Block licenses, Northstar acquired the F Block license in the Middlesboro-Harlan, Kentucky BTA, Call Sign KNLH637 (Middlesboro), the F Block license in the Somerset, Kentucky BTA, Call Sign KNLH638 (Somerset), the F Block license in the Madisonville, Kentucky BTA, Call Sign KNLH651, and the F Block license in the Paducah-Murray-Mayfield, Kentucky BTA, Call Sign KNLH653.

<sup>4</sup> The construction requirement for the Corbin C Block license was satisfied in 2001 by the prior holder of the license, Third Kentucky Cellular Corporation.

<sup>5</sup> 47 C.F.R. §§ 1.946, 1.955(a)(2), 24.203. Specifically, PCS F Block licensees are required to serve with a signal level sufficient to provide adequate service to at least one-quarter of the population of the market or demonstrate substantial service within five years of license grant. 47 C.F.R. § 24.203(b).

Middlesboro and Somerset licenses, but did not request relief for its other licenses.<sup>6</sup> On May 8, 2002, Northstar indicated for the first time that it required an extension of the construction deadline for its Corbin F Block license, 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.<sup>7</sup>

3. On January 24, 2003, the former Commercial Wireless Division (CWD)<sup>8</sup> of the Wireless Telecommunications Bureau (Bureau) denied Northstar's request and found that the Corbin F Block license had terminated automatically on April 28, 2002.<sup>9</sup> 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 Northstar merely sought additional time to apply to F Block spectrum the construction and service already existing in the C Block and grant of the request would not expand coverage or promote increased competition to the Corbin BTA.<sup>10</sup>

4. Northstar sought reconsideration of the 2003 Order, arguing that CWD: 1) discriminated against Northstar by denying relief that was provided to other licensees; 2) improperly relied upon a standard of which no notice was provided; 3) improperly penalized Northstar for having multiple licenses in the same market area; and, 4) ignored the fact that Northstar would be providing services over its F Block channel that are different than those provided over its C Block channel.<sup>11</sup> Northstar also argued that the Commission has indicated that applying the build-out rule would serve no purpose in this context, and that automatic termination of the license is in effect a license revocation that cannot occur without notice and opportunity for hearing.<sup>12</sup>

5. The Mobility Division (Division) affirmed CWD's finding that Northstar had not presented circumstances sufficient to waive Northstar's failure to construct or request relief prior to its construction deadline.<sup>13</sup> The Division found little merit in Northstar's arguments that the 2003 Order was discriminatory, 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 as compared to other licensees that had satisfactorily demonstrated that a public interest or unique circumstance existed.<sup>14</sup> Nor did the Division agree that a new standard had

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<sup>6</sup> See Northstar Technology, LLC, Request for Limited Waiver and Extension of Time to Construct, filed March 26, 2002.

<sup>7</sup> 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.

<sup>8</sup> The Commission reorganized the Wireless Telecommunications Bureau in 2003 with certain duties of the Commercial Wireless Division assumed by the Mobility Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414 (2003).

<sup>9</sup> See Northstar Technology, LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 18 FCC Rcd 800 (CWD WTB 2003) (2003 Order).

<sup>10</sup> See 2003 Order at 802 ¶ 5.

<sup>11</sup> Northstar Technology, LLC, Request for a Waiver and Extension of the Broadband PCS Construction Requirements, Regarding BTA098 Block F Authorization, filed February 24, 2003, at 4-8.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> See Northstar Technology, LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order on Reconsideration*, 19 FCC Rcd 3015 (MD WTB 2004) (February 2004 Reconsideration Order).

<sup>14</sup> See February 2004 Reconsideration Order, 18 FCC Rcd at 3021 ¶ 9.

been imposed or that CWD required Northstar to make a special showing to hold multiple spectrum blocks within a single market; instead, the Division affirmed that Northstar was required to meet the criteria for waiver found in section 1.925, the same standard that is applied to all licensees requesting waiver of the construction requirements. Further, although Northstar argued that it required both the Corbin C and F Block licenses because it would be providing different services over its F Block channels than its C Block channels,<sup>15</sup> the Division found that Northstar's alleged services were potential offerings only.<sup>16</sup> The Division also rejected Northstar's arguments that the construction 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.<sup>17</sup> Finally, 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 construction requirements) was adopted in a rulemaking proceeding after appropriate notice and comment.<sup>18</sup>

6. Northstar again sought reconsideration in March 2004.<sup>19</sup> The Commission however found no basis for reconsidering the earlier decisions to deny Northstar's request to extend and/or waive its construction obligations.<sup>20</sup> The Commission noted that Northstar reiterated the same arguments that were rejected in the February Reconsideration 2004 Order,<sup>21</sup> and declined to reconsider Northstar's previous arguments as it did not provide any new information with respect to those arguments or demonstrate that a material legal error was made on the part of the Division.<sup>22</sup>

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<sup>15</sup> Specifically, Northstar argued that to capture roaming from carriers using technologies different from that utilized by Northstar on its C Block license, some subscribers would not be able to roam efficiently in the Corbin BTA if Northstar could not operate on the F Block.

<sup>16</sup> February 2004 Reconsideration Order, 18 FCC Rcd at 3020 ¶ 8, fn.36. The Division noted that Northstar had argued in its initial request that it should not be required to expend funds to meet artificial deadlines given that there would be no public interest to be accomplished by virtue of Northstar also operating on the F Block. *Id.*

<sup>17</sup> *Id.* at 3021 ¶ 11.

<sup>18</sup> February 2004 Reconsideration Order, 18 FCC Rcd at 3022-23 ¶ 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)).

<sup>19</sup> Northstar Technology, LLC, Request for a Waiver and Extension of the Broadband PCS Construction Requirements, Regarding BTA098 Block F Authorization, filed March 25, 2004 (March 2004 Petition)

<sup>20</sup> Northstar Technology, LLC, Request for a Waiver and Extension of the Broadband PCS Construction Requirements, Regarding BTA098 Block F Authorization, *Order on Reconsideration*, 19 FCC Rcd 22275 (2004) (November 2004 Reconsideration Order). Pursuant to section 1.106(a)(1) of the Commission's rules, the March 2004 Petition was referred to the Commission. *See* 47 C.F.R. § 1.106(a)(1) ("Petitions requesting consideration 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.").

<sup>21</sup> Northstar again argued that: 1) CWD's decision to deny the extension or waiver was discriminatory because it denied Northstar the relief which was provided to other licensees in similar situations; 2) the CWD's decision improperly relied upon a standard of which no notice was provided, and improperly penalized Northstar for having multiple wireless licenses in the same market area; 3) 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; and, 4) the decision improperly ignored the fact that Northstar would be providing different services over its F Block channel. *See* March 2004 Petition at 9-19.

<sup>22</sup> November 2004 Reconsideration Order, 19 FCC Rcd at 22281 ¶ 11.

7. Further, the Commission found no merit in additional arguments advanced by Northstar. The Commission rejected Northstar's allegation that the Commission had constructively waived any termination of the F Block license by accepting a construction notification through its Universal Licensing System (ULS) and then subsequently reversing that action. The Commission noted that there was no record of the alleged ULS action, and explained that even if such ULS actions had taken place, it is well established that the Commission may correct ministerial mistakes including unintentional processing errors.<sup>23</sup> The Commission also rejected Northstar's argument that the Commission's rules do not require any showing of service and therefore CWD erred in finding that there must be service in the Corbin F Block distinct from that provided by the Corbin C Block license. It noted that the underlying rationale behind the construction requirements is to ensure the efficient use of spectrum, and a requirement mandating construction but not service does not advance that purpose.<sup>24</sup> The Commission also rejected two additional public interest rationales advanced by Northstar: that the public interest would be served in reinstating the F Block license because the Corbin C Block had been automatically cancelled due to Northstar's failure to make required installment payments,<sup>25</sup> and that a public interest basis can be found in the fact that it received funding from the Rural Utilities Service (RUS).<sup>26</sup> The Commission dismissed Northstar's contention that the automatic cancellation of the Corbin C Block constituted changed circumstances warranting a waiver, finding that it is clearly not in the public interest to allow Northstar to use its failure to comply with the Commission's installment payment requirements and the resulting loss of service as the basis for justifying relief.<sup>27</sup> The Commission further stated that, while it agreed that the RUS loan programs can be an effective vehicle in bringing telecommunications services to rural areas, being an RUS borrower alone is insufficient to warrant a waiver.<sup>28</sup>

8. Northstar subsequently filed the instant Petition for Reconsideration, arguing once again that: 1) the Commission has ignored the fact that the Corbin F Block license would provide different services than the C Block license; 2) the Commission constructively waived the license termination by accepting a construction notification in ULS; 3) the Commission rules impose a construction requirement on PCS licensees rather than a service requirement; 4) the change in situation regarding the cancellation of the Corbin C Block license negates one of CWD's basis for denying the waiver request; and, 5) the presence of an RUS loan provides a public interest basis for returning the spectrum.<sup>29</sup>

### III. DISCUSSION

9. Section 1.106(p) of the Commission's rules permits the Bureau to dismiss or deny petitions for reconsideration "that plainly do not warrant consideration by the Commission."<sup>30</sup> Specifically, section 1.106(p)(3) provides that among circumstances that do not warrant consideration are "arguments that have been fully considered and rejected by the Commission within the same

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<sup>23</sup> *Id.* at 22281-2282 ¶ 12.

<sup>24</sup> *Id.* at 22283 ¶ 15.

<sup>25</sup> The Corbin C Block license canceled automatically on February 3, 2004, due to failure by Northstar to make installment payments required by 47 C.F.R. § 1.2110(g)(4)(iii)-(iv)(2000). Northstar argued that one of CWD's bases to deny its underlying request for relief – that Northstar was merely seeking a waiver to apply its C Block construction to its F Block channels – was no longer applicable because the C Block license no longer exists.

<sup>26</sup> The Rural Utilities Service administers loans designed to facilitate the provision of telecommunications services to rural and underserved areas.

<sup>27</sup> November 2004 Reconsideration Order, 19 FCC Rcd at 22282 ¶ 13.

<sup>28</sup> *Id.* at 22283 ¶ 15.

<sup>29</sup> See December 2004 Petition at 3-8.

<sup>30</sup> 47 C.F.R. § 1.106(p). See Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, *Report and Order*, 26 FCC Rcd 1594, 1606 (2011).

proceeding.”<sup>31</sup> Further, it is established Commission precedent and policy that 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.<sup>32</sup> A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be dismissed.<sup>33</sup>

10. Here, we find that Northstar has not specified any circumstances that warrant further review by the Commission. Northstar merely reiterates the same arguments that were raised in its March 2004 Petition as well as in its February 2003 Petition to support its latest request for reconsideration. 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. Because this petition simply raises arguments previously considered and rejected by the Commission in the November 2004 Reconsideration Order, we dismiss Northstar's Petition for Reconsideration.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 405(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 405(a), and section 1.106(p) of the Commission's rules, 47 C.F.R. § 1.106(p), the Petition for Reconsideration of the Request for a Waiver and Extension of the Broadband PCS Construction Requirements Regarding BTA098 Block F Authorization, filed by Northstar Technology, LLC, on December 9, 2004 IS DISMISSED.

12. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel, Chief  
Mobility Division  
Wireless Telecommunications Bureau

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<sup>31</sup> 47 C.F.R. § 1.106(p)(3).

<sup>32</sup> 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).

<sup>33</sup> See Applications of WWIZ, Inc., Lorain, Ohio, *Memorandum Opinion and Order*, 37 F.C.C. 685, 686, ¶ 2 (1964) (reconsideration “will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoke”), *aff'd sub. nom Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). See also Fibertower Spectrum Holdings, LLC, Requests for Waiver, Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements, 94 Applications for Extension of Time to Construct 24 GHz Digital Electronic Message Service (DEMS) Licenses, 345 Applications for Extension of Time to Construct 39 GHz Economic Area Licenses, 250 Applications for Extension of Time to Construct 39 GHz Rectangular Service Area (RSA) Licenses, *Order on Reconsideration*, 29 FCC Rcd 2493, 2499-2500 ¶¶ 18-20 (2014).