
**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re: Applications of)
)
JAMESTOWN MANUFACTURING) WT Docket No. 07-136
CORPORATION)
)
For Waiver and Extension of Time to)
Construct Stations in the Paging and)
Radiotelephone Service)

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF USA MOBILITY, INC.

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SUMMARY

Jamestown's request for a three year extension of the "substantial service" deadline for the paging licenses it acquired in Auction No. 40 should be denied.

Jamestown's claims that the exit of equipment manufacturers from the paging sector prevented it from meeting its construction obligations are not supported by the facts.

Other paging licensees subject to the same market conditions have managed to build out their networks, and to introduce novel, value-added services to their traditional messaging services within the construction period imposed by the FCC's rules.

Jamestown's decisions to engage in no construction until a customized amplifier could be made, and to remain with the same manufacturer even when it should have been clear that a non-defective amplifier would not be available in time to permit build-out under more than 600 licenses, were business decisions wholly within Jamestown's control. Such business judgments are not grounds for extensions of the construction period.

Moreover, difficulties in procuring equipment were eminently foreseeable. Decreases in demand for paging services and in sources of paging equipment were already evident at the time of Auction No. 40; yet, Jamestown choose to bid to win more than 600 licenses. Granting Jamestown an additional three years would be inequitable to all the high bidders in Auction No. 40 who, faced with the same marketplace challenges, built their networks in a timely fashion.

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COMMENTS OF USA MOBILITY, INC.

USA Mobility, Inc. (“USAM”), by its attorneys and pursuant to the Wireless Telecommunications Bureau’s (the “Bureau”) Public Notice of July 2, 2007,¹ hereby submits these Comments in opposition to the above-referenced applications for a three-year extension of time and requests for waiver of the five-year construction deadline filed by Jamestown Manufacturing Corporation (“Jamestown”).² For the reasons stated herein, the requested extension of the “substantial service” requirement is unwarranted, and should be denied. Nonetheless, USAM would not object to the Bureau providing Jamestown with a brief, limited period of time, such as ninety (90) days, within which to comply with the “substantial service” requirement of 47 C.F.R. § 22.503(k)(3). In support hereof, the following is respectfully shown:

I. Statement of Interest.

USAM, through its licensed commercial mobile radio service (“CMRS”) subsidiaries Metrocall USA, Inc. and Arch Wireless License Co., Inc., provides one-way

¹ *Wireless Telecommunications Bureau Seeks Comment on Request By Jamestown Manufacturing Corporation for Waiver and Extension of Time to Construct Part 22 Paging Licenses*, Public Notice, DA 07-2924 (rel. July 2, 2007) (the “Notice”).

² ULS File Nos. 0003079448, *et al.*, and Exhibit One thereto (the “Extension Request”).

and two-way paging services throughout the United States. USAM, a publicly-traded company (NASDAQ symbol USMO), is the largest provider of wireless paging services in the U.S. USAM's subsidiaries have constructed thousands of facilities throughout the nation and hold hundreds of paging licenses, many of which were acquired through the competitive bidding process - including some acquired in Auction No. 40, the proceeding in which Jamestown acquired the licenses at issue here. *See Lower And Upper Paging Bands Auction Closes, Public Notice*, DA 01-2858 at Attachment A (rel. Dec. 11, 2001). As a competitor of the applicant in this proceeding, USAM has standing to file these Comments.

II. USAM and the Paging/Messaging Industry.

Despite the well-publicized difficulties that have confronted paging in recent years, it remains the most competitive subsector of the wireless telecommunications industry. The Commission's ULS database shows that there are hundreds of paging licensees, holding more than 13,000 "active" licenses in the Paging and Radiotelephone Service and Private Carrier Paging Service; and, those figures do not take into account commercial paging systems on the shared Business/Industrial frequencies, nor do they include Narrowband Personal Communications Service licensees. USAM, the largest paging carrier in the Nation, has nearly 4 million units in service.³ Paging service continues to be favored by enterprise customers, the healthcare sector, public safety organizations and others who need the low-cost, ubiquitous coverage that is unique to paging services. Hence, while the paging industry may not be as robust as it was at its peak in the late 1990s, the implication that Jamestown requires a waiver of the

³ USA Mobility, Inc., Form 10-Q for the quarterly period end March 31, 2007 (filed May 16, 2007) at 14, available at <http://www.sec.gov/Archives/edgar/data/1289945/000095013307002389/w34719e10vq.htm>.

“substantial service” deadline due to some sudden downturn in the paging industry is entirely unsupported in fact. The paging industry is very much alive, and, difficulties cited by Jamestown such as the decrease in the number of paging manufacturers were already apparent at the time of Auction No. 40.⁴

In addition to traditional messaging services, USAM and other paging carriers already provide a number of creative wireless services and solutions to a wide variety of customers. For instance, USAM provides telemetry services through its subsidiary GTES, and directly through its own network operations. In concert with its strategic alliance partners, USAM’s network is used for remote utility metering services, security, Automatic Vehicle Location applications and other “M2M” (machine-to-machine, machine-to-man, and man-to-machine) offerings. USAM provides a wide array of enterprise communications products and services especially targeted to the healthcare industry, including a USAM-created, software-based resource management product that can integrate messaging services with scheduling, e-mail, group notifications and other functionalities. The paging industry continues to work on a variety of other new uses for narrowband wireless spectrum, including parking meter services, emergency alert systems and a variety of monitoring and data solutions. In short, while the industry welcomes any new or novel products and services that Jamestown may be willing to deploy, the paging industry has not heretofore required any special waivers from the FCC in order to create these products for consumers.

⁴ See Section IV, *infra*.

**III. Jamestown's Choice of Technology was Within its Control
and is Not Justification for a Three-Year Extension.**

Jamestown claims that its inability to provide "substantial service" under the more than 600 licenses it acquired in Auction No. 40 is due to causes beyond its control; most particularly, failures by the equipment manufacturer and the unavailability of paging equipment from other sources. *Extension Request* at 2. To the contrary, the factors cited by Jamestown in support of its *Extension Request* are the results of Jamestown's own business judgments.

Jamestown states that it planned to deploy a paging network enabled with a GPS function for the provision of positioning services. *Id.* at 2-3. Whatever value-added functionalities Jamestown's "RTK GPS" may have, it is hardly as unique a service as the *Extension Request* implies. Other paging carriers, including USAM, already provide telemetry services over their paging networks, and have timely constructed those networks with commercially-available equipment. Jamestown's decision to use equipment manufactured by its parent, and to seek the creation of a custom amplifier to use with that equipment, was entirely within its control. The Commission has historically declined to grant extensions of its construction deadlines due to a licensee's business decision to use a particular technology. *See, e.g., Eldorado Communications, L.L.C.*, 17 FCC Rcd. 24613 (Wir. Tel. Bur. 2002).

Granting a three-year extension for the deployment of Paging & Radiotelephone Service networks on grounds of "equipment unavailability," as Jamestown requests, would be particularly inappropriate. Technology for paging services, for which the subject frequencies were allocated and licensed, has existed for decades. Although many

manufacturers have left the paging sector, both new and used equipment is still commercially available. That was not the case for the 220 MHz and WCS licensees cited by Jamestown in support of its desired extension. *See Extension Request* at 8.

WCS was first created by the FCC's 1997 reallocation of spectrum in the 2.3 GHz band. *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785 (1997) ("*WCS R&O*"); *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses*, 21 FCC Rcd. 14134, ¶ 2 (Wir. Tel. Bur. 2006) ("*WCS Coalition Order*"). Not only was WCS a new service, but, the spectrum between the two WCS bands is allocated to the Satellite Digital Audio Radio Service, for which terrestrial repeater rules had not yet been adopted. *Id.* at ¶ 4. At the time the WCS rules were adopted, "no equipment [had] yet been developed for use in [the WCS] band[.]" *WCS R&O* at ¶ 53. Little had changed by the time the original WCS licensees faced their build-out deadline. Among the arguments made by the WCS Coalition in seeking an extension, it stated that equipment for the 2.3 GHz band was either proprietary or had proven unsuccessful in deployment. *WCS Coalition Order* at ¶ 5. In other words, for all practical purposes, there was still no equipment available for WCS as the construction deadline approached. The Commission was persuaded that unusual technical difficulties had prevented successful deployments, and that "the technical and equipment challenges in this band are widespread." *Id.* at ¶ 10.

Similarly, with respect to 220 MHz, the limited transmission equipment usable in the band either did not permit the offering of voice services, or required operation on channels larger than those licensed to 220 MHz licensees. *Request of Warren C. Havens*

for Waiver or Extension of The Five-Year Construction Requirement For 220 MHz Service Phase II Economic Area and Regional Licensees, 19 FCC Rcd. 12994, ¶ 7 (Wir. Tel. Bur. 2004) (“*Havens Order*”). No company manufactured portable units for end users of the 220 MHz band, which had been allocated to be a mobile service. *Id.* at ¶ 9. Noting the “unique challenges” of its particular narrowband allocation for 220 MHz, *id.* at ¶ 16, and the loss of the only two companies that had manufactured voice equipment for the channel size established by the Commission, *id.* at ¶ 15, the Commission determined that an extension of the construction period was warranted for *all* Phase II 220 MHz licensees who had requested relief. *Id.*

The 900 MHz Specialized Mobile Radio (“SMR”) proceeding also fails to support Jamestown’s requested extension. As in the WCS and 220 MHz proceedings, the Bureau granted a 16-month extension of the construction deadline for *all* 900 MHz Specialized Mobile Radio (“SMR”) licensees due to the dearth of digital equipment for the band. *See FCI 900, Inc.*, 16 FCC Rcd. 11072, ¶¶ 1, 11, 14 (Wir. Tel. Bur. 2001). The Bureau there found that requiring 900 MHz licensees to install “stopgap legacy analog systems” while competing services in the mobile telephony market were migrating to digital would not serve the public interest and would inconvenience consumers. *Id.* at ¶ 9.

In no case cited in the *Extension Request* did the Commission grant additional time to a single licensee in a mature service who preferred to install developmental equipment, or to await construction of its entire licensed network until equipment for a value-added service was perfected. In *Monet Mobile Networks, Inc.*, the single case cited by Jamestown in which the Commission granted an extension of the construction deadline due to an individual licensee’s inability to timely obtain delivery of advanced-

technology equipment, the Commission relied not merely on the rural character of the markets to be served (the proposition for which Jamestown cites the case), but also the licensee's recent acquisition of the licenses. *See Monet Mobile Networks, Inc.*, 17 FCC Rcd. 6452, ¶ 6 (Wir. Tel. Bur. 2002). The licensee had acquired the unconstructed PCS licenses at issue there in the secondary market, a mere 18 months prior to construction deadline, and, it had begun working with equipment vendors *before* its application to acquire the licenses was granted. *Id.*

In contrast, Jamestown chose to bid on more than 600 licenses, in every Economic Area ("EA"), knowing at the time of its bids that the customized amplifier it desired for its chosen business model did not exist and without any reasonable assurance that the desired component would ever be manufactured. Unlike the licensee in *Monet Networks*, Jamestown waited until after the grants of its Auction No. 40 licenses to "investigat[e] the vendor options available" for the manufacture of that amplifier and several months after those grants to commence negotiations with the manufacturer it selected. *Extension Request* at 3.

Moreover, as the years of its construction period passed, Jamestown chose not to deploy any networks with commercially available equipment, but to delay all construction activities until its customized, untried equipment was completed. Jamestown continued to hold out for the development of its customized amplifier, as well as to continue using the same manufacturer, even after it should have been abundantly clear that the desired component could not be perfected in time to institute any service, let alone "substantial service" under multiple licenses in all of its 172 markets. *Cf., id.* at 5-6.

Even if the initial problems with its equipment vendor and that vendor's successors are deemed "beyond Jamestown's reasonable control," by the time of Jamestown's "extended negotiations" with Sonik in 2006,⁵ Jamestown must surely have known that time was growing very short to complete construction under all of its licenses and provide a level of service sufficient to qualify as "substantial service." By that time (if not earlier), Jamestown was faced with a choice of building out telemetry systems with commercially-available equipment options, or to delay all construction activities until it had resolved the contractual and technical problems associated with its chosen vendor. Jamestown chose to delay, and that choice is the very type of business decision for which the Commission has consistently declined to extend its construction periods. *See, e.g., Wendell & Associates*, 17 FCC Rcd. 18576, ¶ 15 (2002) ("[m]arket changes and vendor problems, whatever their cause, are ordinary risks for which businesses should prudently plan, and would not generally form the basis for a waiver of our broadcast construction rules"); *AAT Electronics Corporation*, 93 FCC 2d 1034, ¶ 46 (1983) (SMR licensee's "decision not to vigorously pursue marketing of its 20 channel system because of equipment uncertainties was an independent business judgment and its failure to meet the requisite loading and construction standards is attributable to circumstances under its control"). *See also, Redwood Wireless Minnesota, L.L.C. and Redwood Wireless Wisconsin, L.L.C. Request for a Waiver and Extension of the Broadband PCS Construction Requirements*, 17 FCC Rcd. 22416, ¶ 7 (Wir. Tel. Bur. 2007) (business decisions that "prove misguided" generally not grounds for extension; as contractual disputes regarding financing and management continued, licensee should

⁵ *Id.* at 5.

have “anticipated that they would have difficulties in satisfying the construction requirement and should have taken measures to ensure timely construction”).⁶

In summary, Jamestown’s business plan to deploy customized equipment, the development of which only began after its licenses were issued, and to continue with that business plan even after it became plain that there were significant problems with its proposed equipment, were matters of Jamestown’s own choosing and entirely within its control. Jamestown’s adherence to its business plan does not constitute grounds for an extension of the “substantial service” deadline, and certainly not an extension of three years’ duration.

IV. A Grant of the Extension Request Would Give Jamestown an Unfair Advantage Over Other Paging Licensees.

A grant of Jamestown’s Extension Request would be fundamentally unfair to the hundreds of paging licensees who have met their coverage benchmarks or provided substantial service to their licensed markets in a timely fashion. Jamestown’s situation is not comparable to the cases cited in the *Extension Request*, in which the Bureau granted extensions of the applicable construction deadlines for *all* similarly-situated licensees due to the dearth of digital equipment options. *See WCS Coalition Order, supra*, at ¶ 10; *Havens Order, supra*, at ¶ 15; and *FCI 900, Inc., supra*, at ¶ 11. Here, paging equipment is available, and other paging licensees faced with the same limited pool of manufacturers as Jamestown have managed to timely comply with the Commission’s construction rules.

⁶ In addition to its business decision not to proceed with installing a conventional paging network capable of telemetry functions, there is no indication in the Extension Request that Jamestown has undertaken any other activities toward constructing and commencing service in most of its EAs. For example, in *Monet*, the Commission noted that the licensee had “finalized (or was in the process of finalizing) leases for all the locations” it required to serve its licensed markets. *See Monet Mobile Networks, Inc., supra*, at ¶ 6. Other than its operations in EA 141 and site agreements in EA 34, there is no indication that it has obtained or has been actively negotiating for sites in the remainder of the 172 EAs. That lack of progress toward constructing the majority of Jamestown’s markets is another factor that weighs against the grant of relief sought by Jamestown. *See, e.g., Eldorado Communications, L.L.C., supra*, 17 FCC Rcd 24613 at ¶ 8.

The difficulties that are and have been confronted by paging licensees are not unique to Jamestown, and have been readily apparent for years. By the time of Auction No. 40,⁷ any reasonable party would have known that demand for paging was declining, and that the number of manufacturers serving this industry sector was decreasing. By the time Auction No. 40 closed, the two largest manufacturers of paging equipment in the United States had announced their exit from that business; and, one of them had done so several months before the October 2001 commencement of that Auction. *See* Motorola, Inc., *Press Release*, “New PCS Strategy Will Support and Expand Wireless Messaging Opportunities” (Dec. 3, 2001)⁸; Glenayre Technologies, Inc., *Press Release*, “Glenayre Announces Licensing and Repair Agreements with I.S.C. Technologies; Agreement Provides Long-Term Repair Solutions For Paging Network Operators” (May 30, 2003)⁹ (referencing May 23, 2001 announcement to discontinue paging product lines).

By the time of this Auction, some of the largest paging companies in the U.S. had already been through the bankruptcy process. *See Implementation of Section 6002 (b) of the Omnibus Budget Reconciliation Act of 1993, Fifth Report*, 15 FCC Rcd. 17660, 17720-21 (2000) (PageNet, then the Nation’s largest paging carrier, filed in Chapter 11 on July 24, 2000); *MobileMedia Corporation*, FCC 99-15, ¶5 (rel. Feb. 5, 1999) (MobileMedia, then fourth-largest paging carrier, filed for bankruptcy protection on January 30, 1997). During the course of Auction No. 40, the creditors of Arch Wireless

⁷ Auction No. 40 was held from October 30, 2001 through December 5, 2001. *See* http://wireless.fcc.gov/auctions/default.htm?job=auCTION_summary&id=40.

⁸ Available at http://www.motorola.com/mediacenter/news/detail.jsp?globalObjectId=832_581_23&page=archive.

⁹ Available at <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/05-30-2003/0001956437&EDATE=>.

Communications, Inc.,¹⁰ acquirer of PageNet and MobileMedia and then-largest paging carrier in the nation, instituted an involuntary Chapter 11 case against Arch and its subsidiaries; that proceeding was subsequently converted to a voluntary reorganization. *See* ULS File Nos. 0000701479, *et al.*

Each high bidder in Auction No. 40 took its licenses subject to those marketplace realities, and agreed to comply with the Commission's build-out rules despite them. As demonstrated by the more than 2,000 Required Notifications for auctioned VHF/UHF paging licenses entered into the ULS just in the past two months, the majority of paging licensees have overcome the shortage of paging equipment manufacturers to timely meet obligations imposed by their licenses and the FCC's rules. Jamestown alone seeks an additional period, equal to the first construction benchmark period complied with by its competitors,¹¹ within which to complete its networks. Equity demands that Jamestown not be excused from the regulatory obligations imposed upon all other paging licensees and given a construction period more than 50% longer than that allowed to its competitors, simply because of Jamestown's business decisions.

¹⁰ The reorganized parent of the Arch corporate family was subsequently a party to the merger that created USAM. The other party was Metrocall Holdings, Inc., the then-second largest paging carrier in the U.S. and the parent entity created upon the October 2002 emergence of Metrocall, Inc. and its subsidiaries from Chapter 11.

¹¹ *See* 47 C.F.R. § 22.903(k)(1).

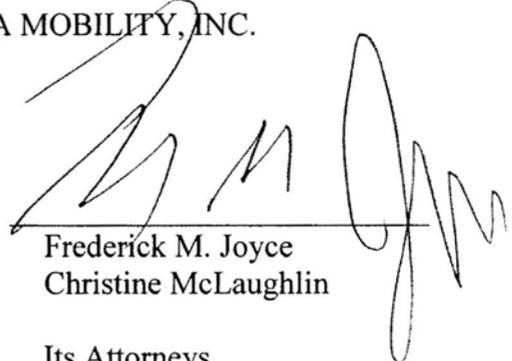
CONCLUSION

For the foregoing reasons, USAM respectfully requests that the Bureau deny the *Extension Request*, and permit Jamestown a brief period, not to exceed ninety (90) days after the date of the Commission's decision, within which to either comply with Section 22.903(k)(3) of the Commission's rules or to surrender any license with respect to which it does not comply.

Respectfully submitted,

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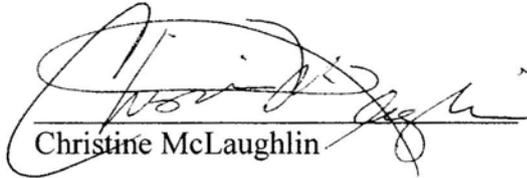
August 1, 2007

CERTIFICATE OF SERVICE

I, Christine McLaughlin, an attorney in the law firm of Venable LLP, do hereby certify that on this 1st day of August, 2007, copies of the foregoing Comments of USA Mobility, Inc. were sent first class mail, postage prepaid, to the following:

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