

Schedule for Waiver
Request for Extension of Time for Wireless Services

1) Purpose

The purpose of this submission: Enter one purpose only - 1, 2, 3, 4, I, or S (2) See below and refer to instructions.

Buildout/Coverage Requirements (Market-based services and State License Radio Service (SL) only)

- 1 Extension of Time to meet 1st buildout/coverage requirements. (List call signs in 3a)
- 2 Extension of Time to meet 2nd buildout/coverage requirements. (List call signs in 3a)
- 3 Extension of Time to meet 3rd buildout/coverage requirements. (List call signs in 3a)
- 4 Extension of Time to meet 4th buildout/coverage requirements. (List call signs in 3a)
- I Extension of Time to meet tribal lands buildout/coverage requirements. (List call signs in 3a)

Construction Requirements (Site-licensed services only)

- S Extension of Time to meet construction requirements (List, as applicable, call signs, locations or paths, and frequencies in Item 3.)

2) New Buildout/Coverage/Construction Expiration Date

Enter date (mm/dd/yy) requested: 01/01/2007	Attach exhibit describing circumstances/justification.
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3) Call Signs/Locations or Paths/Frequencies

3a) Call Sign	3b) Location Number	3c) Path Number (Microwave only)	3d) Center (Assigned) or Lower Frequency (MHz)	3e) Upper Frequency (MHz)
WPRQ941				

Attachment(s):

Type	Description	Date Entered
P	<u>Request for Waiver</u>	05/16/2006
Q	<u>Supplemental Response of Sprint Nextel Corporation</u>	02/13/2006
W	<u>Waiver Supplement</u>	12/22/2005
W	<u>Request for Waiver</u>	12/14/2005

EXHIBIT 1

JUSTIFICATION FOR GRANT OF REQUESTED WAIVER

A. SPECIFIC SCOPE OF WAIVER REQUEST.

Preferred Acquisitions, Inc. ("Preferred") herein requests that the Commission waive the requirements of Section 90.685 of the Commission's Rules to extend the current construction period specified therein as it applies to each of Preferred's Economic Area ("EA") 800 MHz Specialized Mobile Radio ("SMR") licenses ("Licenses") to and until (a) six (6) months after the Transition Administrator ("TA") has allocated new channels to Preferred for the License, if those channels can be used, in advance of band configuration in the region, without causing interference or (b) if Preferred's newly-allocated channels cannot be activated without interference to other systems, six (6) months after the completion of band reconfiguration in the NPSPAC Region in which Preferred's License is located. All of Preferred's Licenses are subject to rebanding under the terms of the Commission's *Rebanding Orders*.¹ The construction deadline for those Licenses is currently December 20, 2005. To date Preferred has received no new channel assignments from the TA in accordance with those *Orders* for any of its Licenses.

In support of this request for waiver, Preferred sets out the following justifications.

B. BACKGROUND ON PREFERRED AND ITS LICENSES.

Preferred acquired its Licenses in FCC Auction No. 34 (800 MHz General Category (851-854 MHz) and Upper Band (861-865 MHz)) for a total of \$31.67 million. All of its Licenses are in the D, E, F, DD, EE and FF Blocks of the 800 MHz SMR band. The Commission granted Preferred the Licenses on December 20, 2000.²

Preferred's Licenses are subject to the construction requirements set forth in Section 90.685 of the Commission's Rules. In accordance with Section 90.685(b), Preferred notified the Commission on January 7, 2004 of its "election to make a showing of substantial service on the fifth anniversary of its authorization" (i.e., by December 20, 2005).

¹ In *the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004), as amended by *Erratum*, released September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, 19 FCC Rcd. 21818, released October 29, 2004, *appeal pending* ("*Initial Report and Order*"); *Supplemental Order and Order On Reconsideration*, 19 FCC Rcd. 25120 (2004), *appeal pending* ("*Supplemental Order*"); *Memorandum Opinion and Order*, FCC 05-174, 20 FCC Rcd. 16015, released October 5, 2005, as amended by *Erratum*, DA 05-3061, released November 25, 2005 ("*Reconsideration Order*") (collectively, "*Rebanding Orders*").

² Attachment A, FCC Public Notice, *Wireless Telecommunications Bureau Grants 800MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses*, 16 FCC Rcd. 1427 (2000).

In March 2002, the Commission released the initial NPRM in Docket 02-55, which would ultimately result in the *Rebanding Orders*. The NPRM solicited comments on two specific band reconfiguration proposals put forth in late 2001 by Nextel Communications, Inc. ("Nextel") and the National Association of Manufacturers ("NAM"), respectively.³ Since the release of the NPRM through the present date, all of Preferred's Licenses have been and remain subject to the rebanding process. Under the terms of the *Rebanding Orders*, all of the Licenses must be relocated to new frequencies/channels providing "comparable facilities."

Preferred is currently negotiating with Nextel concerning the planning for relocation of Preferred's Wave 1 Licenses, which Preferred has elected to relocate to the so-called ESMR Band established by the *Rebanding Orders*. On September 27, 2005, the TA confirmed that those Licenses would be "scheduled for relocation" to that Band. However, the TA reserved decision on Preferred's election to move its Wave 2 Licenses (in BEA 174) to the ESMR band and has not yet agreed that such Licenses will be scheduled for relocation to the ESMR band.

As noted above, Preferred has received no new channel assignments from the TA for any of its Licenses and has no reason to believe that it would receive any by December 20, 2005.

C. THE REBANDING ORDERS SPECIFICALLY ENVISION A WAIVER IN SUCH CIRCUMSTANCES.

The *Rebanding Orders* specifically envisioned the circumstances that are presented by Preferred's request for waiver. In the *Initial Report and Order* the Commission explicitly stated the following:

"205. Since the 800 MHz band reconfiguration process will take place incrementally in fifty-one geographic regions, some site-based incumbent 800 MHz licensees may face construction deadlines prior to their being scheduled for relocation. To resolve this issue we will allow licensees which are ready to construct and waiting only for assignment of their new channel to submit a waiver request demonstrating that they have commenced construction, e.g., have on hand, or placed a firm order for, non frequency-sensitive equipment, have erected a tower, obtained a commitment for tower space, etc.

206. If the Transition Administrator has specified said licensee a new channel and the licensee can immediately use the channel without causing interference to other systems, it must construct within its currently applicable deadline. Otherwise, the licensee may submit a waiver request for extension of the construction period

³An overview of the lengthy, 4-year course of the development, consideration and adoption of the current 800 MHz rebanding plan is set forth in the *Initial Report and Order*, ¶61.

until: (a) six months after the Transitions Administrator has specified it a channel, if that channel can be used, in advance of band configuration in the region, without causing interference; or (b) if its channel cannot be activated without interference to other systems, six months after the completion of band reconfiguration in its NPSPAC region. The Commission's waiver rules will apply and the waiver requests will be evaluated on a good cause basis e.g. *on a showing by the licensee that it would have constructed but for the fact that band reconfiguration would affect its proposed facilities.* Licensees whose construction deadline passed before the release of this *Report and Order*, and which do not have an extension of time request already pending, will have a particularly high evidentiary standard to meet when they submit a waiver request. *These provisions also apply to EA licensees facing construction deadlines pursuant to Section 90.685 of the Commission's Rules.*⁴

The Commission's waiver rule cited in this discussion in the *Initial Report and Order* is Section 1.925, which states in relevant part:

"(3) The Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁵

As demonstrated below, Preferred squarely meets the requirements for waiver of the construction deadline set forth in the *Initial Report and Order*.

D. THE LACK OF NEW CHANNEL ASSIGNMENTS COMPELS GRANT OF THE WAIVER TO OBLIATE NEEDLESS EXPENDITURES ON RETUNING OF CHANNELS AND RECONFIGURATION OF SYSTEMS FOR LICENSES THAT WILL BE RELOCATED.

There is no question that "band reconfiguration would affect [Preferred's] facilities."

As previously noted, as of the date of this request, Preferred has received no new channel assignments from the TA pursuant to the *Rebidding Orders* for any of its Licenses. Therefore, any systems that Preferred would complete to operate on its currently licensed channels would only have to be retuned or otherwise revamped once those new channels are agreed upon and finally assigned

⁴ *Initial Report and Order*, ¶¶ 205-206 (footnotes omitted and emphasis supplied).

⁵ 47 C.F.R. §1.925(b)(3).

by the TA. Customer equipment would also have to be returned.⁶ Sites might have to be physically moved. For example, Preferred has been told by lessors at many of the sites for which it has already negotiated leases that when the new channels are assigned Preferred will have to repeat intermodulation studies for each of those sites. In addition, some lessors have indicated that structural analyses required for placement of antennas may have to be repeated once the new channels are assigned.

Although Nextel might be responsible for some of these costs under the terms of the *Rebanding Orders*, at this point Preferred and Nextel have not agreed that would be the case. Even if Nextel were to be responsible for some or all of the costs, they are costs that can be avoided by in effect only requiring Preferred to construct its systems once, rather than, at least in part, twice.

Further, there is no assurance that by completing its systems on its currently licensed channels and beginning operation Preferred would not cause or create the very interference that the rebanding process is intended to prevent or minimize. At this point, that is an unknown.

Under such circumstances, it would not serve the public interest to require that Preferred meet the current construction deadline.⁷ Indeed, this is the very set of circumstances that the Commission recognized in the *Initial Report and Order* justified the submission of a waiver.⁸ Moreover, requiring Preferred in a relatively short period of time to construct, initiate operations and then have to go through the retuning and related processes associated with changing channels is unduly burdensome and unnecessary.⁹

⁶ *FCI 900, Inc. Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements and Newworld License Holdings, Inc. request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling, Memorandum, Opinion and Order*, 16 FCC Rcd. 11072, (Wireless Tel. Bur. 2001) (The FCC granted a sixteen (16) month extension of the construction requirements to Nextel and all 900 MHz licensees because digital equipment was unavailable. In its decision, the FCC noted that the construction of an analogue network that would be replaced by a digital network once equipment became available was not in the public interest because consumers would be required to purchase new handsets and the cost of rebuilding would lead to higher prices to the public.), *recon. denied*, 17 FCC Rcd. 16092 (Wireless Tel. Bur. 2002).

⁷ See *Pacific Communications LLC and Coral Wireless LLC, Request for a Waiver and Extension of the Broadband PCS Construction Requirements, Memorandum Opinion and Order*, 19 FCC Rcd. 15574, ¶ 6 (Wireless Tel. Bur. 2004) (hereinafter "*Coral*") (concluding "[t]he public interest and the underlying purpose of the rule will be better served by granting a nine-month extension of time to allow Coral to construct a commercially viable, technologically advanced system, which will put the spectrum to a more competitive and efficient use" rather than Coral constructing a "bare-bones" system simply to meet its construction deadline).

⁸ *Initial Order*, ¶ 206.

⁹ *Coral*, ¶ 8 (stating Coral was prepared to construct a "bare-bones" system in order to meet its construction deadline but the system would have to be rebuilt with new technology to effectively complete in the highly competitive Honolulu, Hawaii market). Similarly, Preferred must construct a technologically advanced system in order not to cause potentially harmful interference to other licensees in the 800 MHz band in similarly competitive markets. If Preferred continues forward with its planned construction on its existing licensed channels rather than waiting for its new channels from the TA, Preferred's system will most likely cause harmful interference to other users, will be unable to operate and might be placed in a harmful competitive situation by having to construct an inferior system.

The ongoing rebanding process is clearly a unique and unusual factual circumstance over which Preferred has no control. Preferred cannot unilaterally dictate which new channels it will employ in connection with its Licenses. It first must negotiate with Nextel, as it is currently doing, and then the TA must finally designate those channels for use by Preferred, which has no alternative to obtaining the assignment of new channels other than through the rebanding process established by the Commission. Under such circumstances it would be inequitable to require Preferred to complete construction and initiate operations on channels that it knows that it will have to give up.

The underlying purpose of Section 90.685 is to prevent spectrum warehousing. That goal is consistent with the Commission's requirement that licensees seeking a waiver based on the lack of new channels demonstrate that they have met the standard for waiver set out in the *Initial Report and Order* outlined above. Preferred has commenced construction as envisioned by that standard. It has the necessary frequency radio neutral equipment on hand or on firm order. It has the necessary commitments for tower site locations. To date Preferred has expended or committed some \$3,700,000 in connection with the design, engineering, site leases, legal and preparation for construction of its systems throughout its ten (10) EAs. This includes \$2,376,000 for equipment and site preparation, including site identification, acquisition, permitting and preliminary construction. At this point Preferred expects to be able to co-locate all of its sites at existing tower facilities. Preferred has submitted firm orders for all equipment needed to meet its obligation to demonstrate "substantial service" based on its calculation of its "white area" in each of its EAs.

In further support of this waiver Preferred is providing as an attachment hereto the Declaration of its President Charles M. Austin of the pre-construction steps that it will have taken in each of its licensed areas by December 20, 2005, the current construction deadline.¹⁰ Preferred respectfully submits that this showing establishes that it was prepared to and had the equipment and sites available to construct "but for the fact that band reconfiguration would affect its facilities."

The facts and factors presented demonstrate that Preferred has satisfied the requirements for a waiver, as outlined in the *Initial Report and Order*, because it has no new channel assignments in accordance with the *Rebanding Orders*, but has taken substantial concrete steps so that it can meet its EA system construction obligations when it does receive those assignments, assuming that it can do so prior to the completion of rebanding in its NPSPAC areas.

¹⁰ *Trustee in Bankruptcy for Magnacom Wireless, LLC and Telecom Wrap Up Group LLC, Petition for Waiver and Extension of Broadband PCS Construction Requirements, Order*, 17 FCC Rcd. 9535, ¶¶ 8-11 (Wireless Tel. Bur. 2002) (granted limited waiver of construction requirements based on Telecom's plans to service rural and tribal areas and its efforts to complete construction, such as "performing market surveys and research, identifying specific transmitter sites, and seeking local zoning approvals"). Preferred's Licenses only permit Preferred to provide service to white or underserved areas and Preferred has undertaken many of the same activities as Magnacom that the Commission accepted as the basis for a limited waiver of Magnacom's construction requirements.

E. THE WAIVER REQUESTED IS ALSO JUSTIFIED ON OTHER GROUNDS.

Although Preferred submits that it has justified a waiver based on the lack of new channel assignments from the TA, there are other supporting bases for grant of the requested waiver.

1. Preferred Lacks Accurate Information On Its Remaining Licensed Areas.

Under the terms of the *Rebanding Orders* Preferred's remaining EA licensed areas when it moves to the ESMR band consists of the "white areas" in each of its EAs as of November 22, 2004, the date that a summary of the *Initial Report and Order* was published in the Federal Register ("Publication Date").¹¹ This restriction results from Preferred's failure to have constructed an ESMR system by the Publication Date. The "white area" was defined as "the same unencumbered area that it had before it relocated" and which it had on the Publication Date.¹²

Preferred's unencumbered area as of the Publication Date is determined by Section 90.693 of the Commission's Rules which sets out the "Grandfathering provisions for incumbent licensees." That rule defined the areas served by "800 SMR licensees who obtained licenses or filed applications on or before December 15, 1995." Those were the incumbents that the Commission intended to protect to the extent of their "originally licensed" contours as defined in Section 90.693. Thereafter, there was to be no further encroachment by these incumbents, or other licensees, on the spectrum purchased at auction by Preferred or other similarly situated EA licensees. What remains after these incumbents are protected in accordance with Section 90.693 is the "white area" that Preferred obtained at auction in the year 2000.

In light of the requirements of the *Supplemental Order*, having an accurate understanding of the extent of that "white area" is essential to satisfying the construction requirements of Section 90.685, even for a "substantial service" showing. The lack of reliable data as to the extent of white area is itself a circumstance beyond the control of Preferred and other licensees. In the intervening years since the Commission granted Preferred's Licenses, despite the restrictions imposed by Section 90.693 on the incumbents, their service areas expanded even further, which has affected the amount of white area. That cannot be the FCC's intent. Nor was it the case when Preferred did its pre-auction due diligence as the FCC cautioned that all participants in auctions for encumbered spectrum should do.¹³

¹¹ *Supplemental Order*, ¶ 79.

¹² *Id.*

¹³ *Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851-854 MHz) and Upper Band (861-865 MHz)*, Public Notice, 15 FCC Rcd. 5568, 5576 (Wireless Tel. Bur. 2000) ("Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 34 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction."). As noted above, the consumption of the white area occurred after the auction and licensing of channels to Preferred.

To determine accurately the protected "originally licensed" contours, Preferred has sought data from the FCC through a Freedom of Information Act request first made in June of 2005.¹⁴ The Commission responded by providing incomplete data in late August of 2005. That response is subject to a pending Application For Review, but Preferred has still not received the data requested.

It is clearly inequitable and unduly burdensome to require an EA licensee like Preferred to construct EA systems limited to its "white areas" when the data reasonably necessary to determine accurately the boundaries of those areas are not made available to the licensee. It also is clearly inequitable and unduly burdensome to require an EA licensee like Preferred to attempt to make a substantial service showing based on a "white area" that is unknown or, according to the FCC's database, is in certain EAs seemingly non-existent. Indeed, the TA or the Commission, or both, who are charged with administering the implementation of rebanding, should be responsible for providing a set of approved data that reflect the requirements of Section 90.693. The lack of any such accurate data is another substantive reason justifying the requested waiver.

2. The Rebanding Rules And Processes Have Only Recently Completed Agency Reconsideration And Are Still Subject To Judicial Review And, Thus Are Not Final.

Although the Commission has issued the *Rebanding Orders*, the exact terms of the rebanding process are not yet truly final. The Commission's *Reconsideration Order*, although issued almost two months ago, has still not yet been formally published in the Federal Register and could still itself be the subject of even further petitions at the Commission or judicial review. The Commission's *Initial Report and Order* and *Supplemental Order* are already the subject of a pending, broad-based appeal in the United States Court of Appeals for the District of Columbia Circuit,¹⁵ which is now scheduled to be argued on February 3, 2006. The results of that appeal could bring yet another round of changes to the rebanding process and its requirements. Separate and apart from inevitable adjustments associated with the new channel assignments, the prospect for further modifications of the rules on which rebanding is based also support the requested waiver.

The *Rebanding Orders* amount to an effective modification of the licenses of companies like Preferred, but a modification that has been, until the issuance of the Reconsideration Order at the Commission, and until the completion of appeals of the *Rebanding Orders* before the courts, subject to administrative and judicial review, respectively.¹⁶ In the case of construction permits in other

¹⁴ Freedom of Information Act Request 2005-433.

¹⁵ *Mobile Relay Associates et al. v F.C.C et al.*, Case No. 04-1413, (D.C. Cir. filed December 6, 2004), oral argument scheduled for February 3, 2006.

¹⁶ See *Southern Company, Request for Waiver of Section 90.629 of the Commission's Rules, Memorandum, Opinion and Order*, 14 FCC Rcd. 1851, ¶ 17 (Wireless Tel. Bur. 1998) (extending the implementation period for Southern Company's Business and Industrial/Land Transportation (I/LT) channels for use in its wide-area SMR network until "final rules regarding licensing of the Industrial/Land transportation frequencies in the context of the Commission's rulemaking proceeding to implement the Balanced Budget Act take effect"); *Nextel Communications, Inc., Order*, 15 FCC Rcd. 93, 95 (¶ 6) (Wireless Tel. Bur. 1999) (granting Nextel "additional time to construct its B/ILT frequencies until the effective date of final rules

services, such as the radio broadcast services, the Commission tolls construction permits that are subject of such administrative and judicial appeals of initial authorizations.¹⁷ This is done to prevent having licensees bear the risks and burdens of construction of facilities that might be altered or even denied by the ultimate decision of the reviewing entity. Further, the Commission expressly will toll construction where, as here, there is a failure of a Commission-imposed condition related to construction, i.e., the failure to complete the new channel assignment process.¹⁸ The Commission should consider similar equities in the case of the Preferred Licenses, which are effectively subject to the same regulatory uncertainty as a result of the *Rebanding Orders* and rebanding process.

F. IN THE EVENT OF A DENIAL PREFERRED SHOULD BE GIVEN ADDITIONAL TIME.

Preferred has satisfactorily demonstrated that a waiver of its current construction deadline is justified by the lack of channel assignments, supported by the other reasons given. Preferred has taken extensive concrete steps toward meeting its construction obligations and is "ready to construct" its systems. The requested waiver should be granted.

However, if the Commission determines that it will not grant the requested waiver, it should still grant an extension of time for Preferred to make its substantial service showing. Preferred paid substantial value for its Licenses. The fact is that the entire rebanding process, extending over 4 years, has served as a cloud of regulatory and legal uncertainty that has created significant barriers to the implementation of the business plan of a small business licensee like Preferred. The Congress has charged the Commission with ensuring that regulatory barriers to the involvement of small businesses in the telecommunications and information services markets are removed.¹⁹ Although seeking to address a legitimate problem, the rebanding process has created, and will continue to create until the rules are finalized, substantial uncertainty that was never part of the original bargain when Preferred originally paid for its Licenses. In other situations, where the Commission has adjusted 800 MHz licenses to accommodate new rules (e.g., auctions), the Commission has given licensees who had done far less toward constructing them, additional time to construct even when the Commission disagreed with the basis of the request. That same relief - 6 months beyond the denial of this waiver - is warranted here.²⁰

regarding the licensing of the Industrial/Land Transportation frequencies in the context of the Commission's rulemaking proceeding to implement the Balanced Budget Act").

¹⁷ *Report and Order in MM Dockets Nos. 98-43 and 94-149*, 13 FCC Rcd. 23056 (1998), *recon.* 14 FCC Rcd. 17525 (1999) (tolling of permit when authorization is subject to administrative or judicial reconsideration or review).

¹⁸ *Texas Grace Communications*, 16 FCC Rcd. 19167, 19171-19172 (2001) (circumstances for tolling include failure of a Commission-imposed condition precedent to commencement of construction). In *Texas Grace*, the Commission also noted the distinction between a channel change initiated by the permittee and one imposed on it. *Id.* at 19170 (¶9).

¹⁹ 47 U.S.C. §257.

²⁰ *In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate the Future Development of SMR Systems in the 800 MHz Frequency Band*, 13 FCC Rcd. 1533 (Wireless Tel. Bur. 1997) (granting additional 6 months to licensees denied continuation of their extended implementation period because they failed to take steps to construct).

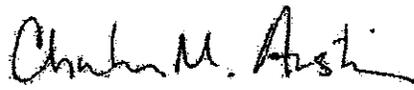
G. REQUEST FOR EXPEDITED TREATMENT.

Preferred requests expedited treatment of this waiver request. Preferred has filed its request when it became apparent that it would not receive its new channel assignments prior to its current construction deadline (i.e., December 20, 2005). Preferred has provided substantial information demonstrating that it qualifies for the waiver in accordance with the terms laid out in the *Initial Report and Order*. Preferred has also provided additional grounds for grant of the waiver request. Therefore, Preferred requests that the request be expeditiously acted on in advance of the current construction deadline.

DECLARATION

1. I, Charles M. Austin, am the President of Preferred Communications Systems, Inc. and its license-holding subsidiary, Preferred Acquisitions, Inc. (collectively, "Preferred"). The foregoing FCC Form 601 and accompanying Exhibits were prepared under my supervision and control.
2. As President I am thoroughly familiar with the status of the construction of all of the Preferred Licenses. Preferred has executed contracts with experienced companies to provide engineering drawings (Clark Nexsen) and construction services (SiteMaster) for each of the sites in its proposed systems. Information on the status of site leases and equipment for each of its 10 EA markets is as follows:
 - a. BEA 13 (Washington/Baltimore) - Preferred's final system design includes four (4) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - b. BEA 15 (Richmond/Petersburg) - Preferred's final system design includes four (4) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - c. BEA 16 (Staunton) - Preferred's final system design includes two (2) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - d. BEA 17 (Roanoke) - Preferred's final system design includes four (4) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - e. BEA 48 (Charleston, WV) - Preferred's final system design includes three (3) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.

- f. BEA 162 (Fresno) - Preferred's final system design includes four (4) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - g. BEA 163 (San Francisco) - Preferred's final system design includes four (4) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - h. BEA 164 (Sacramento)- Preferred's final system design includes eight (8) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - i. BEA 165 (Redding) - Preferred's final system design includes five (5) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
 - j. BEA 174 (Puerto Rico and U.S. Virgin Islands) - Preferred's final system design includes four (4) sites. Preferred has negotiated and finalized site leases for each of these sites. All leases have been or will be executed by both parties as of December 20, 2005. Preferred has submitted firm purchase orders and/or has on hand all radios, antennas, cabinets, cabling and other construction related material necessary to construct each of the four sites as provided in Preferred's final system.
3. I declare under penalty of perjury that the statements and representations in the Form 601, Exhibit 1 and this Declaration are true and correct to the best of my knowledge and belief.



Charles M. Austin

Dated: December 1, 2005

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December 19, 2005

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BY ELECTRONIC MAIL AND HAND DELIVERY

Mr. Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
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RECEIVED - FCC

DEC 19 2005

**Federal Communication Commission
Bureau / Office**

**Re: Application for Waiver of Construction Deadline
Preferred Acquisitions, Inc.
File Nos. 0002408877, et al.**

Dear Roger:

This follows our call of this afternoon. I appreciate your prompt response to my message.

As we discussed, on December 2, 2005 our client, Preferred Acquisitions, Inc. ("Preferred"), filed a waiver request pursuant to (a) Paragraphs 205-206 of the *Initial Report and Order* in Docket WT-02-55¹ and, as instructed therein (b) Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, seeking an extension of the December 20, 2005 construction deadline for Preferred's Economic Area ("EA") 800 MHz Specialized Mobile Radio ("SMR") licenses ("Licenses"). On December 13, 2005, we met with the Chief, Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau, to discuss the request in light of the fact that it was based on the *Rebanding Orders*. However, I now understand that your Division will be handling this matter.

¹*In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004), as amended by *Erratum*, released September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, 19 FCC Rcd. 21818, *appeal pending* ("Initial Report and Order"); *Supplemental Order and Order On Reconsideration*, 19 FCC Rcd. 25120 (2004), *appeal pending* ("Supplemental Order"); *Memorandum Opinion and Order*, FCC 05-174, 20 FCC Rcd. 16015, released October 5, 2005, as amended by *Erratum*, DA 05-3061, released November 25, 2005 ("Reconsideration Order") (collectively, "Rebanding Orders"). Preferred originally filed the request on paper on December 2, 2005. However, it was refiled on December 14, 2005 after the ULS processing staff advised Preferred that instead of being filed as a paper application, which Preferred initially understood was acceptable, the filing needed to be made through the ULS system. Note also that the ULS required that Preferred insert a specific date being requested for the extension. Preferred inserted January 1, 2007, but is requesting a waiver extension of time in accordance with the principles outlined Paragraphs 205-206 of the *Initial Report and Order*.

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All of Preferred's Licenses are subject to rebanding under the terms of the Commission's *Rebanding Orders*. In accordance with Paragraphs 205 and 206 of the *Initial Report and Order*, Preferred has sought an extension to and until (a) six (6) months after the Transition Administrator ("TA") has allocated new channels to Preferred for the Licenses, if those channels can be used, in advance of band configuration in the region, without causing interference, or (b) if Preferred's newly-allocated channels cannot be activated without interference to other systems, six (6) months after the completion of band reconfiguration in the NPSPAC Region in which Preferred's License is located. Although as noted above the construction deadline is December 20, 2005, to date Preferred has received no new channel assignments from the TA in accordance with the *Rebanding Orders* for any of its Licenses.

Given the impending construction deadline, Preferred requests that the request for waiver be treated as one to be granted *nunc pro tunc* in the event that action has not been taken by December 20, 2005. The status of the Licenses should be treated as continuing to be valid after December 20 insofar as there was a timely sought waiver of the construction deadline for the reasons permitted under the *Initial Report and Order*. See generally *Radio Longview, Inc.*, 19 FCC 2d 966, 969 (1969) (where authorization was not previously cancelled and timely request for extension filed, authorization continued in effect). Furthermore, Preferred filed the request under Section 1.925 of the Commission's Rules, and not under Section 1.948, because the *Initial Report and Order* specifically made reference thereto. So do the instructions on the Commission's web site relating to seeking a construction extension for this reason.² Preferred has made specific showings under the terms of the waiver standards in Section 1.925. However, it is clear that Preferred has no control over the timing of the assignment of new channels by the TA and as such is a circumstance beyond the licensee's control within the scope of Section 1.946(e)(4) of the Commission's Rules, which envisions automatic extension of licenses for which an extension of time to construct is sought, pending action on the extension request.

Accordingly, Preferred asks that the Division consider the Licenses as remaining in full force and effect after December 20, 2005 in the event that action has not been completed on the request for waiver by that date. Finally, in view of the unique circumstances, although Preferred strongly believes that it has fully satisfied the waiver standard as outlined in the *Initial Report and Order*, for the reasons set forth in Exhibit 1, Section F. of the waiver request, Preferred should be given additional time to make its construction showing in the event of any denial of the waiver request.

As per our original filing, Preferred requests expedited action on its waiver request.

² See <http://wireless.fcc.gov/publicsafety/800MHz/bandreconfiguration/faq-licensing.html#q4>



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Please call me with any questions. I have sent an electronic copy of this letter to Thomas Derenge as well.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Paul C. Besozzi', with a long horizontal line extending to the right from the end of the signature.

Paul C. Besozzi

cc: Thomas Derenge (via electronic mail)
Michael Wilhelm (via electronic mail)
Mr. Charles Austin
Stephen Díaz Gavin

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CERTIFICATE OF SERVICE

Kerri Johnson, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 5th day of September, 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents to Preferred Acquisitions, Inc." to:

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Irving, Texas 75039

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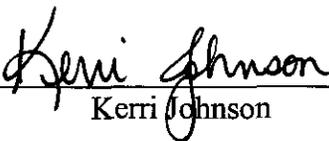
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Administrative Law Judge Arthur I. Steinberg*
Federal Communications Commission
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Kerri Johnson

* Hand-Delivered