



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITION OF DENALI SPECTRUM LICENSE SUB, LLC FOR FORBEARANCE FROM UNJUST ENRICHMENT PROVISIONS OF 47 C.F.R. § 1.2111(d)(2)(i)

WT Docket No. 09-64

Comments Due: June 18, 2009

Reply Comments Due: July 6, 2009

On March 12, 2009, Denali Spectrum License Sub, LLC (“Denali”) filed a petition for forbearance pursuant to section 10(c) of the Communications Act of 1934, as amended, and section 1.53 of the Commission’s rules.¹ In its Petition, Denali asks the Commission to forbear from applying the unjust enrichment provisions of section 1.2111(d)(2)(i) of the Commission’s rules to Denali.²

To ensure that small business benefits such as auction bidding credits are available only to bona fide small businesses, the Commission has adopted unjust enrichment rules, which require a designated entity (“DE”) that has benefited from bidding credits to return some or all of those benefits if it transfers its license to a non-DE or otherwise loses its eligibility for such benefits.³ In the *Designated Entity Second Report and Order* the Commission revised its unjust enrichment rules, extending from five years to ten years the period during which a DE will have to repay some or all of its bidding credits if it loses eligibility for those benefits.⁴ Section 1.2111(d)(2)(i) provides a prorated schedule for licensees that

¹ 47 U.S.C. § 160(c); 47 C.F.R. § 1.53. Petition of Denali Spectrum License Sub, LLC for Forbearance Under 47 U.S.C. § 160(c) from Application of 47 C.F.R. § 1.2111(d)(2)(i), WT Docket No. 09-64, filed March 12, 2009 (“Petition”).

² 47 C.F.R. § 1.2111(d)(2)(i). Petition at 1, 7.

³ See 47 C.F.R. § 1.2111. The Commission also adopted this safeguard to “provide a deterrent to speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use bidding credits to obtain a license at a discount and later to sell it at the full market price for a windfall profit.” See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2394 ¶ 259 (1994). See also Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753, 4766 ¶ 36 (2006) (“*Designated Entity Second Report and Order*”).

⁴ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4766-67 ¶ 37.

received a bidding credit and were initially granted their licenses after April 25, 2006, to repay the bidding credit for which they have lost eligibility.⁵

According to Denali, it seeks to raise capital to fund its continued construction of its network by securing new debt or equity investments in the company and/or by geographically partitioning and selling portions of its Advanced Wireless Service license, which it acquired in 2007 through auction, using a bidding credit it obtained as a very small business. Denali states that it wishes to explore partitioning one or more geographic portions of its license, but notes that if it partially assigns its license to an entity that does not qualify as a DE, Denali would be required under section 1.2111(d)(2)(i) to make an unjust enrichment payment, including repayment of its bidding credit in full during the first five years of the license term.⁶ Denali further notes that the amount of its required unjust enrichment payment would decrease the amount of the proceeds from the sale of the partitioned licensed area that Denali could use for network construction and service deployment.⁷

Denali asks that the Commission forbear from applying section 1.2111(d)(2)(i) to it “[i]n light of the prevailing economic conditions, Denali’s need for additional capital to fund network deployment, and the opportunity for Denali to create jobs and extend its state-of-the-art network to under-served low income and other segments of the population.”⁸ Denali asserts that forbearance from applying the unjust enrichment provisions would be consistent with recent federal initiatives intended to “stimulate the national economy and promote investment.”⁹ Denali also states that as a condition on the grant of its forbearance request, it will adhere to the less stringent unjust enrichment provisions that apply to licenses granted prior to April 25, 2006.¹⁰

We seek comment on Denali’s Petition. Interested parties may file comments on or before **June 18, 2009**, and reply comments on or before **July 6, 2009**. All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Comments may be filed under WT Docket No. 09-64 using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.¹¹ Parties that choose to file by paper must file an original and four copies of each filing. Commenters must also send a copy to Best Copy and Printing, Inc., 445 12th St, SW, Suite CY-B402, Washington, DC 20554, by telephone at 800-378-3160 or 202-488-5300, fax at 202-488-5563, or e-mail at fcc@bcpiweb.com.

⁵ 47 C.F.R. § 1.2111(d)(2)(i). For licenses granted after April 25, 2006, a loss of eligibility in the first five years results in a 100 percent forfeiture of the bidding credits; in years six and seven, 75 percent; in years eight and nine, 50 percent; and in year ten, 25 percent. *Id.*

⁶ 47 C.F.R. § 1.2111(d)(2)(i). Petition at 1, 4.

⁷ Petition at 11.

⁸ *Id.* at 5.

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 15. See 47 C.F.R. § 1.2111(d)(2)(ii) (for licenses granted before April 25, 2006, a loss of eligibility in the first two years results in a 100 percent forfeiture of the bidding credits; in year three, 75 percent; in year four, 50 percent; and in year five, 25 percent).

¹¹ Instructions for filing paper copies can be found at <http://www.fcc.gov/osec/guidelines.html> or by calling the Office of the Secretary at 202-418-0300. For help filing electronically, see *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998) and <http://www.fcc.gov/cgb/ecfs>.

Denali's Petition and comments filed in response to this Public Notice will be available via the ECFS, in the Commission's Reference Center,¹² or from Best Copy and Printing, Inc.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³

FOR FURTHER INFORMATION, CONTACT: Scott Mackoul of the Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, at (202) 418-7498, scott.mackoul@fcc.gov. All press inquiries should be directed to Matthew Nodine, at (202) 418-1646.

Action by the Acting Chief, Wireless Telecommunications Bureau

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¹² The Commission's Public Reference Center is located at Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554.

¹³ See 47 C.F.R. §§ 1.1200, 1.1206. *Ex parte* presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of 47 C.F.R. § 1.1206(b).