



PUBLIC NOTICE

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DA No. 04-752
March 22, 2004

**WIRELESS TELECOMMUNICATIONS BUREAU
MOBILITY DIVISION
APPROVES WITHDRAWAL OF PETITION TO DENY
AND RELATED SETTLEMENT AGREEMENT**

WT Docket No. 03-217

This Public Notice approves a Request to Withdraw a Petition to Deny and for Approval of a Settlement Agreement filed on March 18, 2004, by Eldorado Communications, LLC and NY Telecom, LLC (collectively, Petitioners).

On November 5, 2003, Petitioners filed a Petition to Deny the application of NextWave Personal Communications and NextWave Power Partners, Inc. (collectively, NextWave) and Cingular Wireless LLC (Cingular) requesting FCC consent for the assignment of 34 broadband Personal Communication Service licenses from NextWave to Cingular. NextWave and Cingular each filed Oppositions on November 17, 2003, and Petitioners filed a Reply on November 24, 2003. On February 11, 2004, the Commission adopted an order approving the assignment of licenses and denying the Petition to Deny (Assignment Order).¹ On February 23, 2004, Petitioners filed a Notice of Appeal and a Petition for Review of the Assignment Order with the United States Court of Appeals for the District of Columbia Circuit, Case Nos. 04-1067 and 04-1068, respectively.²

Pursuant to the terms of the Settlement Agreement, Petitioners will file motions to dismiss, with prejudice, their Notice of Appeal and Petition for Review of the Assignment Order. Petitioners and NextWave filed certifications in support of Petitioners' Request to Withdraw the Petition to Deny and for Approval of the Settlement Agreement pursuant to section 1.935 of the Commission's rules.³ The Mobility Division has reviewed the Request to Withdraw the Petition to Deny and for Approval of the Settlement Agreement and finds that it raises no substantial or material questions of fact under Section

¹ In The Matter Of Applications For Consent To The Assignment Of Licenses Pursuant To Section 310(d) Of The Communications Act From NextWave Personal Communications, Inc., Debtor-In-Possession, And NextWave Power Partners, Inc., Debtor-In Possession, To Subsidiaries Of Cingular Wireless LLC, *Memorandum Opinion & Order*, WT Docket 03-217, File No. 0001461949, et. al., FCC 04-26, 2004 WL 299088 (F.C.C.) (rel. Feb. 12, 2004).

² NextWave and Cingular intervened in each proceeding. On February 26, 2004, the court consolidated these cases on its own motion.

³ 47 C.F.R. § 1.935.

309(d) of the Communications Act of 1934, as amended.⁴ Pursuant to sections 0.331 and 1.935 of the Commission's rules,⁵ and the statements contained in the Request to Withdraw the Petition to Deny and for Approval of the Settlement Agreement and in the related certifications of Petitioners and NextWave, the Mobility Division hereby approves the Settlement Agreement.

In view of the foregoing, the Petition to Deny filed by Eldorado Communications, LLC and NY Telecom, LLC on November 5, 2003 is hereby dismissed with prejudice, effective upon the United States Court of Appeals for the District of Columbia Circuit's approval of Petitioners' motions to dismiss, with prejudice, their Notice of Appeal and Petition for Review of the Assignment Order, Case Nos. 04-1067 and 04-1068, respectively. Upon such approval, all other pleadings filed in this matter before the Commission shall become moot and the proceeding shall terminate.

Action by the Deputy Chief, Mobility Division.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Chief Counsel, Mobility Division at (202) 418-0920 or Richard.Arsenault@fcc.gov.

⁴ 47 U.S.C. § 309(d).

⁵ 47 C.F.R. §§ 0.331 and 1.935.