



# PUBLIC NOTICE

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## **Wireless Telecommunications Bureau Announces Deployment Of “Auto-Term,” the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses**

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces it has enhanced the Universal Licensing System (ULS) to include an automated feature, “Auto-Term,”<sup>1</sup> for certain Wireless Radio Services.<sup>2</sup> Auto-Term identifies licenses, and license locations and frequencies (license components) subject to construction or coverage requirements for which a notice of construction<sup>3</sup> or a request for an extension of time to meet the requirements has not been filed by the applicable deadline.<sup>4</sup> This enhancement to our electronic licensing system will increase the accuracy of our licensing records and expedite reassignment of unused spectrum to those who will provide service, thereby improving the quality of wireless service to the public. The Bureau announced last month that it is deploying Auto-Term on February 1, 2006.<sup>5</sup> This Public Notice provides information regarding implementation of the automated feature.

### **Background and Overview**

For certain Wireless Radio Services, absent a timely filed notice of construction or extension request, an authorization is presumed under this process to have not been constructed, or the coverage requirement to have not been met.<sup>6</sup> In these instances, ULS, with the deployment of Auto-Term, will

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<sup>1</sup> On January 21, 2005, the Bureau issued a Public Notice and a Declaratory Ruling announcing it had initiated the development of the Auto-Term feature and explaining some of the details of the process. Wireless Telecommunications Bureau to Enhance its Universal Licensing System to More Accurately reflect Termination of Unconstructed Licenses, 20 FCC Rcd 1455 (WTB 2005) (*January Public Notice*); In the Matter of Clarification of Reconsideration Period and Effective Date for Terminations of Wireless Radio Service Authorizations, 20 FCC Rcd 1494 (WTB 2005) (*Declaratory Ruling*).

<sup>2</sup> Wireless Radio Services are listed in Section 1.901 of the Commission’s Rules, and include certain services under Parts 13, 20, 22, 24, 27, 74 (Subparts D, E, F, and H), 80, 87, 90, 95, 97, and 101 of Title 47. See 47 C.F.R. § 1.901.

<sup>3</sup> The term “notice of construction” refers to the filing that a site-based or market-based licensee makes to notify the Commission that an authorization’s construction or coverage requirements have been met.

<sup>4</sup> See Attachment A for detailed description of the timeline and milestones for the Auto-Term process.

<sup>5</sup> Wireless Telecommunications Bureau Announces February 1, 2006, as the Implementation Date for the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, DA 05-3143 (rel. Dec. 20, 2005) (*December Public Notice*).

<sup>6</sup> Section 1.946 of the Commission’s rules sets forth the procedures for requesting an extension of a construction or coverage requirement deadline and the requirements for notifying the Commission that a licensee has met its construction or coverage deadline. 47 C.F.R. § 1.946(a) and (b). The Commission’s Rules also provide that failure

place the license, location, or frequency in “Termination Pending” status; generate a weekly public notice issued by the Commission listing the authorizations that entered Termination Pending status for that week; and generate an automated letter to notify the licensee that its authorization is in “Termination Pending” status. If within 30 days after the public notice is released, the licensee files a petition for reconsideration showing that it in fact met its construction or coverage requirements in a timely manner, and that petition is granted by the Bureau, the status of the authorization will be changed to “Active.” If, however, by the end of that 30-day period the licensee does not rebut the presumption that it did not timely meet its construction or coverage requirement, ULS will change the status of the license, location, or frequency to “Terminated,” effective the date of the construction or coverage deadline. Auto-Term is being deployed on a prospective basis, i.e., the procedures described above will apply to construction and geographic area coverage deadlines that fall on or after February 1, 2006.

## **Changes to ULS**

The status “Termination Pending” is represented in ULS with the icon “TP.” The Bureau has added this icon in several places to alert the public to the fact that either an entire license or one or more components to a license is in Termination Pending status. In addition, ULS now contains full-statement warning messages to alert licensees to the same issue. The following describes where many of those icons and warning statements will appear.

### *License Manager*

- If a licensee tries to file an application associated with a geographic area license that is in Termination Pending status, the licensee will see a warning stating that the only application it can file is a request for cancellation of the license.
- If a licensee tries to amend a pending application associated with a geographic area license that is in Termination Pending status, the licensee will be unable to file the amendment; the licensee will only be able to withdraw the application.
- If a licensee files an application associated with a site-based license and some components are in Termination Pending status, the licensee will see a warning stating that one or more components is in Termination Pending status. Any application will be processed only with regard to the active components. If a license is granted with some components still in Termination Pending status, the license will exclude those components.
- Similarly, if a licensee amends an application associated with a site-based license and some components are in Termination Pending status, the licensee will see a warning stating that one or more components is in Termination Pending status and will be able to file the amendment with regard to active components, but will be unable to file the amendment with regard to components in Termination Pending status.

### *License Search*

- The TP icon appears next to the Call Sign on the Search Results page for any license, whether market-based or site-based.
- As explained on the Main Page of the License Search for both market-based and site-based licenses, the TP icon denotes “[t]his license contains a license or license component(s) in a termination pending status for failure to meet the build-out requirement.”
- If the license is market-based, the Termination Pending status always applies to the entire license.
- Termination Pending status, however, applies to the components of site-based licenses. If, for example, one of four frequencies is placed in Termination Pending status and the remaining frequencies on the license are active, the TP icon appears on the Frequency Page of the License Search next to the frequency

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to meet those deadlines results in automatic termination of the station license, without specific Commission action, on the date the construction or coverage period expires. 47 C.F.R. § 1.946(c) and 1.955(a)(2)

in Termination Pending status. If all four frequencies are in Termination Pending status, the TP icon appears next to each frequency.

- The release date for the weekly “Termination Pending” Public Notice listing a frequency on a site-based license as placed in Termination Pending status appears on the individual page for that frequency, *i.e.*, “[f]requency 12.30 Term Pending 9/7/2005.” The same would apply if a cellular location were in Termination Pending status, except the information would be available from the License Search Location Page.

#### *Application Search*

- The TP icon appears next to the Call Sign on the Search Results page for any license, whether market-based or site-based.
- As explained on the Main Page of the Application Search for both market-based and site-based licenses, the TP icon denotes “[t]his application contains a license or license component(s) in a termination pending or a terminated status for failure to meet the build-out requirement.”
- If the license associated with a filed application is a market-based license, the Application Search Admin Page includes in the Comments Section a statement explaining that the particular call sign entered the Auto-Term process and the date on which the weekly “Termination Pending” Public Notice was released, *i.e.*, “XYZ123 has entered the auto termination process on 9/7/2005.”
- If the license is a site-based license, the Application Search Admin Page includes in the Comments Section a statement explaining which component(s) are in Termination Pending status and the date on which the weekly “Termination Pending” Public Notice was released, *i.e.*, “XYZ123 Location 1 Frequency 12.30 has entered the auto termination process on 9/7/2005.” If all of the components on a site-based license are in Termination Pending status, the Comments Section will list each component together with the explanatory statement.

#### *Reference Copies of Licenses*

- If a market-based license is in Termination Pending status, the Reference Copy includes a comment under the Special Conditions section stating that the entire license is in a Termination Pending status for failure to meet the build-out requirements.
- If all of the components on a site-based license are in Termination Pending status, the Special Conditions section of the Reference Copy lists each component explaining that the component is in Termination Pending status for failure to meet the build-out requirements.
- If some of the components on a site-based license are in Termination Pending status, the Special Conditions section of the Reference Copy lists only those components explaining that each is in Termination Pending status for failure to meet the build-out requirements. For example, a Reference Copy would show that a renewal application has been granted, but the Special Conditions section would list the components that are not part of the license, *i.e.*, “[t]he following frequency is in a termination pending status for failure to meet the build-out requirements and, therefore, is not reflected on the authorization: frequency 12.30, antenna 1, location 2, ANYWHERE, USA.”

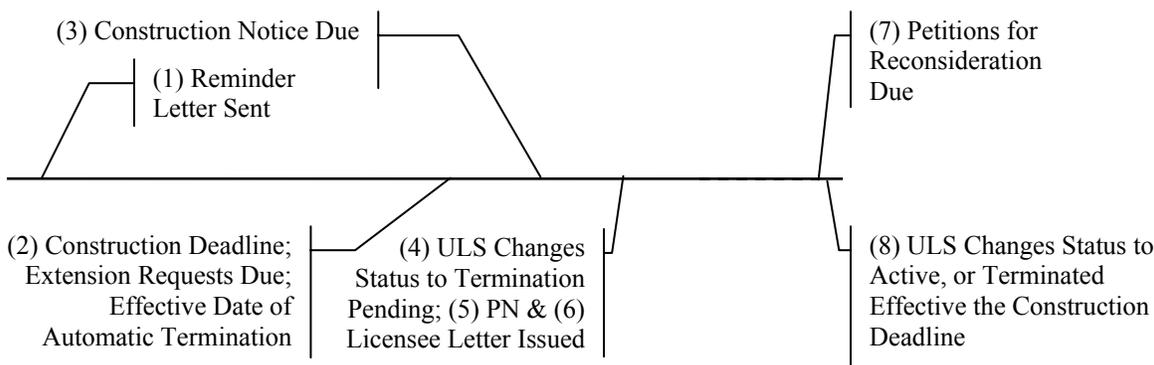
#### **Contact Information**

For information on construction or coverage requirements or how to file a construction notice or extension request, visit our website at <http://wireless.fcc.gov/licensing/const-req>. If you have questions, visit our website at <http://esupport.fcc.gov> or call the FCC Support Center at (877) 480-3201, TTY (717) 338-2824 and select Option 2, Forms or Licensing Assistance. Hours for the FCC Support Center are 8:00 a.m. to 7:00 p.m. Eastern Time, Monday through Friday (except Federal Holidays). To provide quality service and to ensure security, all telephone calls are recorded.

## Attachment A

### The Auto-Term Timeline and Its Milestones

The Auto-Term process includes eight milestones in the timeline, each milestone marking either the point at which a deadline occurs or a notice is issued. A sketch of the timeline looks like the following:



These milestones create the skeleton for the Auto-Term process. The following describes the details of each milestone.

#### *(1) Construction Reminder Letter – 90 Days Prior to the Construction or Coverage Deadline*

The Bureau began sending ULS-automated reminder letters in May 2002, by mail, approximately 90 days prior to the relevant deadline to notify wireless licensees of upcoming construction and coverage deadlines.<sup>7</sup> As the Commission has emphasized, however, this notification procedure is a courtesy service and is not intended to replace the basic construction and coverage requirements set forth in its rules. Even if a licensee does not receive a reminder letter, it remains obligated to meet its construction and coverage benchmarks and to file required notifications. Lack of or failure to receive a reminder letter is not an excuse for noncompliance. We again reiterate that a licensee is solely responsible for complying with its construction and coverage requirements.<sup>8</sup>

#### *(2) Construction and Coverage Requirement Deadlines*

Request for Extension of Time: A licensee must file a request to extend a construction or coverage period before the expiration of the construction or coverage period by submitting an FCC Form 601, Main Form and Schedule L, through ULS.<sup>9</sup> The Commission's rule section explicitly states that filing the Request does not automatically extend the construction or coverage period, and further provides that the Request may be granted if the licensee shows that failure to meet the relevant deadline stems from the involuntary loss of a site or other causes beyond its control.<sup>10</sup> We note that if an extension is granted,

<sup>7</sup> In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21075, ¶ 104 (1998) (*ULS Report and Order*).

<sup>8</sup> *ULS Report and Order*, 13 FCC Rcd at 21075, ¶ 106.

<sup>9</sup> 47 C.F.R. § 1.946(e).

<sup>10</sup> *Id.* § 1.946(e)(2) and (4).

the licensee remains obligated to comply with all Commission rules and must file a construction notification based on the extended construction or coverage deadline.

Automatic Termination: If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.<sup>11</sup>

*(3) Required Notification of Construction (NT) – 15 Days After the Construction or Coverage Deadline*

A licensee that has met its construction or coverage deadline must notify the Commission by filing FCC Form 601, Main Form and Schedule K (NT), through ULS no later than 15 days after the expiration of the applicable construction or coverage period.<sup>12</sup> Any late-filed construction notification must include a request for waiver of Section 1.946(d) and any other applicable rule section(s) setting out the requirements for filing notifications. The waiver request must certify that while the licensee did not timely file its NT with the Commission, it did meet the construction or coverage requirement and provide the date by which the licensee met that requirement. Once ULS places the license, location, or frequency into “Termination Pending” status, however, a licensee will be unable to file construction notifications or applications associated with the license, location, or frequency as discussed in detail below. At this point, the licensee will be unable to submit a late-filed construction notification and is limited to the Petition for Reconsideration process described in detail below if it wants to show that it did timely meet the construction or coverage requirement.

*(4) ULS Changes the Status to Termination Pending*

Once ULS identifies a license or license component for which the licensee has not filed an NT or an extension request, ULS places the license or component in Termination Pending status. If a licensee constructed or met the coverage requirements in a timely manner, that licensee must file a petition for reconsideration within 30 days of the weekly “Termination Pending” Public Notice showing that it timely met the construction or coverage requirement to have the Termination Pending status removed from the entire license as described below.

New or Modification Applications: Once ULS has placed a market-based license in Termination Pending status, the licensee will be unable to file an application in ULS associated with that license for any reason, except to cancel the license. If a location or frequency on a site-based license is in Termination Pending status and there are other active locations or frequencies on the license, the licensee will be unable to file an application to modify those individual locations or frequencies that are in Termination Pending status. The licensee may file applications to modify the other individual active locations or frequencies on the license, however, or it may file certain applications that pertain to the full license, including administrative updates or requests for duplicate licenses. A licensee may also file a renewal application, for example, but any location or frequency that is in Termination Pending status will not appear on any updated license until a Petition for Reconsideration is filed in a timely manner and the request to remove the Termination Pending status for that location or frequency is granted.

Pending Applications: ULS will also identify any applications that are pending associated with a license or license component that is placed in Termination Pending status and will initially remove the application from processing. Specifically, if an application is pending associated with a market-based license that is placed in Termination Pending status, that application will be removed from processing and no action will be taken on the application until the license is returned to Active or Terminated status, unless the applicant withdraws the application. If an application is pending associated with a site-based license when one or all of the license components is placed in Termination Pending status, the entire

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<sup>11</sup> 47 C.F.R. § 1.946(c).

<sup>12</sup> 47 C.F.R. § 1.946(d). Some licensees in certain services file manually.

application will be removed from processing. No action will be taken unless one of the situations described in the previous paragraph is applicable and some part of the application can be processed.

*(5) Weekly Public Notice of Termination Pending Status*

Each week, ULS will generate two Public Notices listing licenses, locations, and frequencies that were placed into Termination Pending status that week. One Public Notice will list site-based licenses and license components, and the other will list market-based authorizations. These are the only Public Notices that are issued under the Auto-Term process. As explained below, no additional public notice will be generated if ULS changes an authorization's status from Termination Pending to Terminated.

The Public Notices explain that licensees that did meet their construction requirements, but failed to submit an NT, have 30 days from the date of the Public Notice to file a Petition for Reconsideration showing that they timely met the construction or coverage requirement deadline. In filing a Petition for Reconsideration, the licensee must include the actual date when construction was completed or when the coverage requirement was met. Petitions for Reconsideration may be filed electronically through ULS or by paper through the Office of the Secretary. The Public Notices explain how to file a Petition electronically and we highly encourage licensees to take advantage of this feature. Doing so expedites processing of the Petitions and, where appropriate, returning authorizations to Active status. If the licensee files manually, the Public Notices ask licensees to include on the first page of their Petitions the name of the Licensing Division reviewing the petition, the license Call Sign, and its Radio Service. All of this information is provided in the tables next to the license or license component listed in the Public Notice. Including the name of the Licensing Division and other information also expedites processing of the Petitions.

*(6) Licensee Letter Notification of Termination Pending Status*

In addition to the weekly "Termination Pending" Public Notices, ULS will generate automated letters to the licensee to be sent to the address of record listed in ULS for the station license at about the same time the Public Notice is released. We again emphasize the importance of keeping administrative information, such as a licensee's address of record current for each station in ULS. The letters include more information about the Auto-Term process than that provided in the Public Notices, describing in summary form the entire Auto-Term process. The letters explain that if the licensee met its construction or coverage requirement, it has 30 days from the date of the Public Notice to file a Petition for Reconsideration showing that it timely met the construction or coverage deadline. In filing its Petition, the licensee must include the actual date when construction was completed or the coverage requirement was met. As explained in the Public Notices, Petitions may be filed electronically or manually. We again highly encourage licensees to file petition electronically to expedite processing. If filed manually, the letters ask licensees to provide on the first page of the Petition the Licensing Division, Call Sign, and Radio Service, information that the licensee can obtain directly from the letter itself. Again, including the name of the Licensing Division and other information expedites processing of the petitions and, where appropriate, returning authorizations to Active status.

*(7) Deadline for Filing Petitions for Reconsideration – 30 Days After Release Date of Weekly Public Notice*

As the Commission explained in its *ULS Report and Order*, if the licensee does not confirm that it met its deadline, the license termination becomes final at the end of the confirmation process.<sup>13</sup> In the absence of a timely filed Petition for Reconsideration, the license termination becomes final and the Auto-Term process ends on the 30<sup>th</sup> day following release of the weekly "Termination Pending" Public Notice for those licenses, locations, and frequencies listed in the public notice that were placed into Termination Pending status that week.

*(8) ULS Changes the Status from Termination Pending to Active, or Terminated as of the Construction or Coverage Deadline*

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<sup>13</sup> *ULS Report and Order*, 13 FCC Rcd at 21076, ¶ 106.

One of two actions will occur once the 30-day period for Petitions for Reconsideration has expired. If a licensee files a Petition before the end of the 30-day reconsideration period showing that it fully met its construction or coverage requirements in a timely manner and the Bureau grants the petition, the “Termination Pending” status for the license or license component status will be removed in ULS and returned to “Active” status. If, however, no Petition is filed by the end of the 30-day period, or if a timely filed Petition is denied by the Bureau, ULS will change the status of the license or license component to “Terminated,” effective the date of the construction or coverage deadline. This action, changing the status of the authorization from Termination Pending to Terminated is part of the automated process. The Bureau will not release a public notice listing authorizations that have undergone the status change to Terminated under Auto-Term. As already explained, the only public notice generated under this process is the weekly “Termination Pending” Public Notice listing licenses or license components that have been placed in Termination Pending status.