

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Radiofone, Inc.)	
)	CWD 97-2
Request for Waiver of Sections 20.6)	
And 24.204 of the Commission's Rules)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 29 , 2000

Released: March 1, 2000

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we address a Request for Waiver filed by Radiofone, Inc (Radiofone) on July 27, 1995 requesting that the Commission waive sections 20.6 and 24.204 of the Commission's rules.¹ For the reasons discussed below, we dismiss Radiofone's request as moot.

2. On July 27, 1995, Radiofone and its affiliates requested a waiver of sections 20.6 and 24.204 of the Commission's rules so that Radiofone could be eligible to bid for licenses in the PCS "C block" auction for the New Orleans, Baton Rouge, and Houma-Thibodaux, Louisiana Basic Trading Areas.² Section 20.6 restricts aggregation of the spectrum cap in the Commercial Mobile Radio Service (CMRS). Section 24.204 restricts the common ownership of cellular and PCS interests with overlapping service areas. Under these rules, Radiofone's cellular interests would have prevented it from bidding in the above "C block" auction.

3. On November 9, 1995, the U.S. Court of Appeals for the Sixth Circuit required the Commission to consider the PCS/Cellular cross-ownership rule and the cellular ownership attribution of sections 20.6 and 24.204.³ As a result, on November 13, 1995, the Wireless Telecommunications Bureau issued a public notice allowing applicants that filed timely applications and waiver requests of these rules to participate in the C block auction on a conditional basis.⁴ The Commission issued a public notice on May 31, 1996, listing the winners of the C block auction.⁵ Radiofone was not one of the winning bidders.

¹ 47 C.F.R. §§ 20.6, 24.204 (1994). Section 24.404 was removed from the rules by *Cellular\PCS Ownership Rule*, Report and Order, 11 FCC Rcd 7824 (1996).

² Letter from Lawrence D. Garvey, Officer of Radiofone, Inc. to Rosalind K. Allen, Chief, Commercial wireless Division, dated July 27, 1995.

³ *Cincinnati Bell Telephone, et al. v. FCC*, 69 F.3d 752 (6th Cir. 1995).

⁴ *Public Notice*, FCC Will Proceed with C Block Auction on Schedule, 11 FCC Rcd 1164 (1995).

⁵ *Public Notice*, Report No. CW-96-5 (rel. May 31, 1996).

Therefore, we dismiss Radiofone's waiver request as moot.

4. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and sections 0.331 and 24.819 of the Commission's rules, 47 C.F.R. §§ 0.331, 24.819, that the waiver request filed by Radiofone, Inc. on July 27, 1995 IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
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