

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

In the Matter of)	
)	
Black Crow Wireless, L.P. (C Block PCS License for Cleveland, TN (BTA085)))	File No. 0000365273
)	
Scott D. Reiter (C Block PCS License for Cleveland, TN (BTA085)))	File No. 0000359119
)	
Salmon PCS LLC (C Block PCS License for Cleveland, TN (BTA085)))	File No. 0000365189
)	

ORDER

Adopted: August 17, 2001

Released: August 21, 2001

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

I. Introduction

1. In this Order, we address three substantively-identical Petitions to Deny (“Petitions”), which were filed by Southern Communications Systems, Inc. (“Southern”) on March 9, 2001 against the above-captioned applications of winning bidders in the C and F block broadband Personal Communications Services (“PCS”) auction (“Auction No. 35”). In its Petitions, Southern requests that we deny these applications until the Commission resolves Southern’s pending Petition for Further Reconsideration¹ of the denial of its requested waiver of installment payment deadlines and the automatic cancellation of its licenses.² For the reasons set forth below, we dismiss Southern’s Petitions for lack of standing. We will, however, condition any grant of the above-captioned applications upon the outcome of Southern’s Petition for Further Reconsideration.

II. Background

2. Southern won the license that is the subject of its Petitions in Auction No. 5, the Commission’s initial broadband PCS C Block auction.³ After Southern failed to make its required

¹ Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, Petition for Further Reconsideration (filed Jan. 22, 2001) (“Petition for Further Reconsideration”).

² Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, Order, DA 99-2375 (rel. Oct. 29, 1999) (“Waiver Order”).

³ See “Entrepreneur’s C Block Auction Closes: FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas,” *Public Notice*, DA 96-716 (rel. May 8, 1996).

installment payments, the license cancelled automatically on April 29, 1999. On the same day, Southern filed a waiver request seeking a suspension of the Commission's installment payment rules.⁴ In October 1999, the Auctions and Industry Analysis Division denied Southern's waiver request.⁵ On November 29, 1999, Southern filed a petition for reconsideration of the *Waiver Order*.⁶ On September 6, 2000, the Wireless Telecommunications Bureau released a Public Notice concerning the auction of C and F block PCS licenses in Auction No. 35.⁷ The Commission denied Southern's Reconsideration Petition and affirmed the *Waiver Order* in a Memorandum Opinion and Order released December 21, 2000.⁸ On January 22, 2001, Southern filed a Petition for Further Reconsideration.

3. The above-captioned winning bidders in Auction No. 35 submitted long-form license applications on February 12, 2001. Southern filed the subject Petitions on March 9, 2001, asking the Commission to deny these applications until after the final resolution of Southern's pending Petition for Further Reconsideration. Oppositions and Responses were filed on March 16, 2001.⁹

III. Discussion

4. Southern requests that we deny these applications until after the resolution of Southern's pending Petition for Further Reconsideration of the Commission's decision denying its requested waiver of installment payment deadlines and automatic cancellation of its licenses.¹⁰ As an initial matter, Southern has failed to establish standing to challenge the instant applications by demonstrating that it is a "party in interest,"¹¹ because it has not set forth specific allegations of fact sufficient to show that grant of the

⁴ See Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA (filed Apr. 29, 1999) ("Waiver Request").

⁵ *Waiver Order*, *supra* note 2.

⁶ Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, Petition for Reconsideration (filed Nov. 29, 1999), and Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, Supplement for Petition for Reconsideration (filed Jan. 6, 2000) (jointly, "Reconsideration Petition").

⁷ "C and F Block Broadband PCS Spectrum Auction Scheduled for November 29, 2000, Rescheduled for December 12, 2000," *Public Notice*, 15 FCC Rcd 17,251 (2000). Auction No. 35 began on December 12, 2000 and concluded on January 26, 2001. See "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period," *Public Notice*, DA 01-211 (rel. Jan. 29, 2001).

⁸ Southern Communications Systems, Inc., Request for Limited Rule Waiver to Comply with PCS Installment Payment for C Block License in the Cleveland, TN BTA, *Memorandum Opinion and Order*, FCC 00-433 (rel. Dec. 21, 2000) ("*Southern MO&O*").

⁹ Opposition of Salmon PCS LLC ("Salmon"); Response of Black Crow Wireless L.P.

¹⁰ Petitions at 1.

¹¹ See 47 U.S.C. § 309(d)(1). See also 47 C.F.R. § 24.830(a)(3) (a petition must "[c]ontain specific allegations of fact . . . sufficient to demonstrate that the petitioner . . . is a party in interest and that a grant of, or other Commission action regarding, the application would be *prima facie* inconsistent with the public interest."). We note that in its Opposition, Salmon argues that Southern's Petitions should be dismissed due to lack of standing. See Opposition of Salmon at 7.

subject applications would cause it to suffer a “direct injury”¹² and to demonstrate “a causal link between the claimed injury and the challenged action.”¹³ Any interest that Southern may have in the subject licenses will be protected because, as discussed below, any grant of these licenses will be conditioned upon the outcome of Southern’s Petition for Further Reconsideration. We therefore dismiss the instant Petitions as procedurally defective.

5. We will discuss the issues raised by these Petitions, however, in light of their importance. Southern argues that grant of the subject applications would create additional claims to Southern’s automatically-cancelled licenses, and that delays resulting from these claims will complicate financing and construction of the licenses.¹⁴ Southern also argues that denying grant of Auction No. 35 licenses until after the resolution of its Petition for Further Reconsideration would save the Commission’s administrative resources.¹⁵ We find no merit in Southern’s arguments.

6. The Commission afforded bidders with ample notice that the Auction No. 35 licenses were subject to pending proceedings and that the award of those licenses would be conditioned on the outcome of those proceedings. Specifically, the Commission stated in a Public Notice that “potential bidders should be aware that certain of the licenses included in Auction No. 35 are or may become the subject of Commission or judicial proceedings initiated by parties claiming to have continuing interests in the licenses.”¹⁶ This Public Notice also specifically provided that in the event that final determinations reached in pending proceedings required winning bidders to surrender licenses won in Auction No. 35 to prior license holders, the Commission would return payments made by the winning bidders.¹⁷ Moreover, we note that the existence of various proceedings during and after an auction is not unusual. Rather, pending administrative and judicial appeals are often associated with licenses that are being offered at auction.¹⁸ As a general matter, the Commission does not defer grant of license applications until pending proceedings are complete. Instead, in order to serve the public interest in prompt implementation of telecommunications services, the Commission conditions the grant of such licenses on the outcome of pending proceedings. This is the

¹² See *In re Applications of ABC Wireless, L.L.C. and American Wireless, L.L.C.*, Order, 15 FCC Rcd 6787 ¶ 4 (1999); *In re Application of Los Angeles Cellular Telephone Company*, Order, 13 FCC Rcd 4601, 4603-4604, ¶ 5 (1998); *In the Matter of AmericaTel Corporation*, Memorandum Opinion, Order, Authorization and Certificate, 9 FCC Rcd 3993, 3995 (1994); *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

¹³ See *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

¹⁴ Petitions at 4-5.

¹⁵ *Id.* at 1.

¹⁶ “C and F Block Broadband PCS Spectrum Auction Scheduled for November 29, 2000, Rescheduled for December 12, 2000,” *Public Notice*, 15 FCC Rcd 17,251, 17,256 (2000).

¹⁷ *Id.*

¹⁸ See, e.g., *Bachow Communications, Inc. v. Federal Communications Commission*, 237 F.3d 683 (D.C. Cir. 2001) (applicants for licenses in the 39 GHz band sought review of FCC interim procedures adopted during transition from comparative to competitive application process); *PLMRS Narrowband Corp. v. Federal Communications Commission*, 182 F.3d 995 (D.C. Cir. 1999) (applicants for licenses in the 220 MHz band sought review of FCC decision to assign licenses by auction rather than lottery); *Fresno Mobile Radio, Inc. v. Federal Communications Commission*, 165 F.3d 965 (D.C. Cir. 1999) (incumbent licensees sought review of FCC decision to allocate licenses in the 800 MHz band by auction).

approach that was followed in the other auctions.¹⁹ Consistent with this approach, the grant of any of the above-captioned licenses will be conditioned on the outcome of Southern's Petition for Further Reconsideration.

7. Southern fails to show that grant of the licenses will create conflicting claims or will cause delays in service. Because all parties were on notice about pending litigation involving these licenses prior the start of the auction,²⁰ and because all parties willingly assumed the risk of participating in the auction and becoming a winning bidder for the subject licenses, there is no more uncertainty today than there was on the day that bidders filed their short-form applications or placed their winning bids.

8. Southern provides no support to justify its assertion that deferring grant of the applications would save the Commission's resources. In accordance with Section 309(j) of the Telecommunications Act, the Commission must ensure "the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays,"²¹ and promote the "efficient and intensive use of the electromagnetic spectrum."²² These goals can best be met by moving forward with the Auction No. 35 licensing process. Contrary to Southern's contentions, proceeding with licensing should ensure that the spectrum is utilized and service is provided to the public in the most expeditious and effective manner possible.²³ Deferring grant of the licenses pending the final outcome of Southern's Petition for Further Reconsideration would only frustrate the public's interest in the efficient deployment of telecommunications services in this spectrum, contrary to the statutory objectives.

¹⁹ See, e.g., "Auction of C, D, E, and F Block Broadband PCS Licenses, Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Scheduled for March 23, 1999, Minimum Opening Bids and Other Procedural Issues," Public Notice, 13 FCC Rcd 24,540 (1998), citing Application of Wireless Co., L.P. for a License to Provide Broadband PCS Service on Block A in the San Francisco Major Trading Area, Order, 10 FCC Rcd 13,233, 13,236 (1995) (denying petitions to deny applications for A and B block PCS licenses in the San Francisco and Boston major trading areas pending resolution of litigation addressing petitioners' pioneer preference requests for these markets).

²⁰ See "C and F Block Broadband PCS Spectrum Auction Scheduled for November 29, 2000, Rescheduled for December 12, 2000," Public Notice, 15 FCC Rcd 17,251, 17,255-57 (2000).

²¹ 47 U.S.C. § 309(j)(3)(A).

²² 47 U.S.C. § 309(j)(3)(D).

²³ A winning bidder's failure to pay on time and in full may demonstrate that the entity does not have the financial ability to pay for its licenses and deploy services to the public. See, e.g., Mountain Solutions Ltd., Inc., Emergency Petition for Waiver of Section 24.711(A)(2) of the Commission's Rules Regarding Various BTA Markets in the Broadband Personal Services (PCS) C Block Auction, *Memorandum Opinion and Order*, 13 FCC Rcd 21,983, 21,992-93, ¶¶ 17-18 (1998) (payment rules ensure financial viability of winning bidder and provide an indication of its capability to actually build out its system); *Southern MO&O*, *supra* note 8, at ¶ 11 (requiring winning bidders to pay on time and in full preserves the reliability and integrity of the Commission's auction and licensing process by ensuring that applicants have the necessary financial qualifications and thus providing expeditious service to the public). *But see* Petition for Further Reconsideration, *supra* note 1 (pending request for reconsideration of *Southern MO&O*).

IV. Ordering Clause

9. Accordingly, IT IS ORDERED that, pursuant to Sections (4)(i), 309(d)(1) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d)(1), 309(j), and sections 0.331, 1.2108 and 24.830 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2108, 24.830, the Petitions to Deny filed by Southern Communications Systems, Inc. on March 9, 2001 ARE HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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