

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

In re Application of)
)
PCS Partners, L.P.) File No. 0000369312
)

ORDER

Adopted: February 27, 2001

Released: February 27, 2001

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. Introduction

1. On February 16, 2001, PCS Partners, L.P. (PCS Partners) filed a request for waiver of section 1.2107(c) of the Commission's Rules,¹ asking the Commission to allow it to submit its long-form application, FCC Form 601, after the deadline of February 12, 2001 for filing long-form applications in the C and F Block Personal Communications Services (PCS) Auction (Auction No. 35) (C&F Block PCS Auction). For the reasons discussed below, we grant PCS Partners' waiver request.

II. Background

2. PCS Partners, a winning bidder in the C&F Block PCS Auction, was required to file its long-form application, FCC Form 601, no later than February 12, 2001, pursuant to section 1.2107(c) of the Commission's Rules and the *Closing PN*.² PCS Partners filed its long-form application, which included the waiver request, on February 16, 2001, four days after the long-form application filing deadline.³

3. In its waiver request, PCS Partners argues that good cause exists for a waiver of section 1.2107(c) of the Commission's Rules.⁴ PCS Partners contends that it missed the long-form filing deadline due to an "administrative oversight."⁵ PCS Partners states that it is a very small company and that David G. Behenna is its only employee and is generally responsible for all of PCS Partners' operational responsibilities.⁶ PCS Partners notes that because its upfront payment exceeded the amount of its down

¹ 47 C.F.R §1.2107(c).

² See Public Notice, "C and F Block Broadband PCS Auction Closes, Winning Bidders Announced," DA 01-211 (rel. Jan. 29, 2001) (*Closing PN*).

³ The waiver request was attached as Exhibit G to PCS Partners long-form application. See File No. 0000369312, Exhibit G (Waiver).

⁴ 47 C.F.R § 1.2107(c).

⁵ See Waiver at 1.

⁶ See *id.* at 4.

payment, it was not required to make a down payment on February 12, 2001. It explains that while Mr. Behenna knew that no payment was due, he did not realize that the application deadline had passed.⁷ PCS Partners' further states that, upon discovering that it had missed the long-form filing deadline, it took immediate action to correct its error and expeditiously prepared and filed its application.⁸

4. PCS Partners represents that entities run by Mr. Behenna have successfully participated in auctions in the past, currently hold licenses, and previously have always complied with the Commission's rules.⁹ It further argues that PCS Partners did not exhibit bad faith because Mr. Behenna focused on ensuring that PCS Partners' financial obligations with the Commission were satisfied, and was aware that he had sufficient funds on deposit such that no additional payments were due until the license is granted.¹⁰

5. PCS Partners urges, finally, that strict application of the filing deadline would be inequitable and contrary to the public interest.¹¹

III. Discussion

6. A request for waiver of the subject rule must affirmatively show that either: (a) the underlying purpose of the rule would not be served in a particular case and that grant of the waiver is otherwise in the public interest; or (b) the "unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest."¹² One of the primary purposes underlying the post-auction application filing deadlines is to ensure that a bidder meets the Commission's qualification and eligibility requirements in order to "avoid delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction."¹³

7. We believe that PCS Partners has presented sufficient facts that, when considered in their totality, demonstrate unique circumstances that meet the standard for a waiver of the subject rules. The record indicates that, prior to the late filing of its long-form application, PCS Partners had complied with all previous C&F Block PCS Auction filing requirements.¹⁴ Additionally, PCS Partners had, by virtue of its large upfront payment, timely submitted its required down payment. There is no indication in the record that PCS Partners' error was part of a deliberate effort to delay the processing of its long-form application, or was the result of bad faith on the part of PCS Partners. On the contrary, we note that upon discovering

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.* at 5.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 6.

¹² 47 C.F.R § 1.925(b)(3).

¹³ "Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, PP Docket No. 93-252, 9 FCC Rcd 2348, 2382 (1994).

¹⁴ See Public Notice, "Auction Of Licenses For The C And F Block Broadband PCS Spectrum , 87 Qualified Bidders," DA 00-2725 (rel. Dec. 1, 2000).

that it had missed the filing deadline, PCS Partners immediately prepared and filed its application. Accordingly, PCS Partners' actions demonstrate that, but for its inadvertent error, PCS Partners likely would have timely filed its long-form application.

8. Under the circumstances presented by PCS Partners, we conclude that the public interest would not be served by dismissal of this application. In reaching this conclusion, we give considerable weight to PCS Partners' prior record of compliance in the C&F Block PCS Auction and its prompt action to remedy its delinquency. We also recognize that, because PCS Partners had timely met its down payment requirements, and had submitted its long-form application within days of the filing deadline, the post-auction licensing process for the C&F Block PCS Auction has not been significantly delayed or materially adversely affected. Thus, we believe some flexibility is appropriate in this instance. Accordingly, we will hereby grant PCS Partners' waiver request and accept its application for processing. This decision comports with Bureau precedent wherein spectrum auction applicants were granted partial relief for minor, inadvertent post-auction delinquencies that did not disrupt the auction process or undermine the Commission's policy of facilitating rapid implementation of reliable communications service to the public.¹⁵

9. Although we grant PCS Partners a waiver of the rules requiring dismissal of a late-filed long-form application and associated imposition of default payment obligations, we nonetheless note that PCS Partners failed to comply with the Commission's rules when it filed its long-form application four days late. PCS Partners admits that its late filing was the result of its own error. PCS Partners was on notice that it was responsible for complying with the Commission's processing rules, and that it would be subject to default payments if it failed to timely file its Form 601.¹⁶ PCS Partners' failure to timely submit its Form 601 imposed an additional administrative burden on the Division. The timely filing of long-form applications is important to the efficiency of the competitive bidding licensing process. Consequently, the fact that PCS Partners' error appears inadvertent does not excuse its failure to meet the long-form application filing deadline. Accordingly, we will refer this matter to the Commission's Enforcement Bureau.

IV. Conclusion and Ordering Clauses

10. For the foregoing reasons, we believe that the public interest would not be served by strictly applying the Commission's long-form filing deadline in this instance. Therefore, PCS Partners' waiver request is granted to the extent that we will accept its application for processing. We further believe that our acceptance of the application in this case will not undermine the policies served by the rules that are the subject of PCS Partners' waiver request or disrupt the C&F Block PCS Auction process and post-auction licensing.

¹⁵ See, e.g., In the Matter of Application of Pinpoint Communications, Inc., *Order*, 14 FCC Rcd 6421 (PSPWD 1999).

¹⁶ See *Closing PN*, DA 01-211; C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000, Notice and Filing Requirements for 422 License in the C and F Block Broadband PCS Spectrum Auction, *Public Notice*, DA 00-2259 (rel. Oct. 5, 2000).

11. Accordingly, IT IS ORDERED that pursuant to sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the waiver request filed by PCS Partners on February 16, 2001 is **HEREBY GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau