

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)	
)	
PCS PARTNERS, L.P.)	File No. EB-01-IH-0084
)	NAL/Acct. No. 200132080021
Applicant for Wireless Telecommunications)	
Bureau Radio Service Authorization)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 14, 2001

Released: March 16, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that PCS Partners, L.P. (“PCS Partners”) failed to timely file its “long-form” application (FCC Form 601) and accompanying ownership report (FCC Form 602) following completion of the Commission’s C and F Block Broadband PCS Auction, in apparent willful and repeated violation of Sections 1.2107(c) and 1.2107(f) of the Commission's rules.¹ We conclude that PCS Partners is apparently liable for a forfeiture in the amount of \$3,000.

II. BACKGROUND

2. On January 26, 2001, the Commission staff completed the auction of 422 licenses in the C and F Block Broadband PCS Auction. PCS Partners was among the participants in that auction. On January 29, 2001, the Wireless Telecommunications Bureau issued a Public Notice that provided detailed information concerning specific post-auction obligations of winning bidders.² The Public Notice established February 12, 2001, as the deadline for winning applicants to submit their ownership and long-form applications. The Public Notice also announced that PCS Partners was a winning bidder in Auction 35.³

3. PCS Partners acknowledges that it received a copy of the Public Notice on January 30, 2001.⁴ On February 13, 2001, Commission staff telephoned David G. Behenna, PCS Partners’ sole

¹ 47 C.F.R. §§ 1.2107(c), 1.2107(f).

² Public Notice, C and F Block Broadband PCS Auction Closes, DA 01-211 (WTB, released January 29, 2001).

³ *Id.* at Attachment A.

⁴ See Waiver Request, dated February 15, 2001, from Mark J. Tauber, Piper Marbury Rudnick & Wolfe, counsel for PCS Partners, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (“Waiver Request”). The Wireless Telecommunications Bureau subsequently granted the Waiver Request. See *In re Application of PCS Partners, L.P.*, Order, DA 01-518 (WTB, released Feb. 27, 2001).

authorized bidder and only employee, to notify him that the Commission staff had not received PCS Partners' long-form application by the February 12, 2001, deadline.⁵ Thereafter, on February 14, 2001, PCS Partners manually filed its ownership report, and, on February 16, 2001, it submitted a Waiver Request and electronically filed its long-form application. In its Waiver Request, PCS Partners explained that Mr. Behenna had not retained legal counsel in connection with post-auction filings. PCS Partners also stated that because Mr. Behenna was involved "in numerous other matters," his failure to meet the long-form filing deadline was inadvertent.⁶

III. DISCUSSION

4. Section 1.2107(c) of the Commission's rules provides that:

a high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder.

This section further provides that long-form applications must be filed electronically. Additionally, Section 1.2107(f) requires applicants to file an ownership report with its long-form application. The ownership form must be filed manually.

5. The purpose of the long-form application is to provide vital information concerning winning bidders and their qualifications to be Commission licensees. Public notice of acceptance of a winning bidder's long-form application triggers the establishment of the pleading cycle for petitions to deny.⁷ The timely filing of a long-form application is thus essential to the efficiency of the competitive bidding licensing process.

6. On October 5, 2000, the Commission staff released a Public Notice announcing the upcoming C and F Block Broadband PCS Auction.⁸ Therein, auction participants were informed of their post-auction filing obligations in the event they were winning bidders. Thus, PCS Partners was on notice even before the auction commenced that, if it were a winning bidder, it would have to electronically submit a properly completed long-form application within ten business days after release of the auction closing notice. In addition, PCS Partners acknowledges receiving the January 29, 2001, post-auction Public Notice establishing February 12, 2001 as the filing deadline and describing in detail the long-form application and ownership report filing requirements. Nevertheless, PCS Partners failed to file its long-form application and ownership report on time. In light of these facts, we conclude that PCS Partners failed to file its

⁵ See Waiver Request.

⁶ See Waiver Request.

⁷ See 47 C.F.R. § 1.2108(b).

⁸ Public Notice, C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000, DA 00-2259 (WTB, released October 5, 2000).

ownership report and long-form application by the established and well publicized deadline, in willful and repeated violation of Sections 1.2107(c) and 1.2107 (f) of the Commission's rules.⁹

7. Section 503(b)(1)(B) of the Communications Act of 1934, as amended, provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty.¹⁰ The guidelines contained in the Commission's *Forfeiture Policy Statement* specify a base forfeiture amount of \$3,000 for failure to file required information.¹¹ The guidelines also permit the Commission to issue a higher or lower forfeiture amount based on such factors as the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, history of any prior offenses, ability to pay, and such other matters as justice may require. PCS Partners does not dispute that it received actual notice of the filing requirements and that it failed to timely file the necessary forms. We believe a forfeiture is appropriate in this case, and see no basis for departing from the base forfeiture amount. Thus, we propose a forfeiture in the amount of \$3,000. This amount is consistent with at least one other case involving a similar transgression.¹²

IV. ORDERING CLAUSES

8. ACCORDINGLY, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules, PCS Partners, L.P. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$3,000 for willfully and repeatedly violating Sections 1.2107(c) and 1.2107(f) of the Commission's rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, PCS Partners SHALL PAY the full amount of the proposed forfeiture, or SHALL FILE a written response seeking reduction or cancellation of the proposed forfeiture.¹³

⁹ The Commission has held that an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991)(definition of willfulness contained in 47 U.S.C. § 312(f) applies equally to 47 U.S.C. § 503). Furthermore, a continuing violation is "repeated" if it lasts more than one day. *Id.*, 6 FCC Rcd at 4388.

¹⁰ 47 U.S.C. § 503(b)(1)(B).

¹¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17114 (1997)(*"Forfeiture Policy Statement"*); *recon denied* 15 FCC Rcd 303 (1999).

¹² See e.g., *In the Matter of Application of PinPoint Communications, Inc., Notice of Apparent Liability for Forfeiture*, 14 FCC Rcd 6427 (WTB, 1999) (proposing a \$3,000 forfeiture against winning bidder that filed its long-form application six days late because of administrative oversight).

¹³ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must reference the Acct. No. identified above. The response, if any, must reference the File No. identified above and be directed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington DC 20554. The Commission will not consider reducing or canceling the forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted (continued....)

10. IT IS FURTHER ORDERED that copies of this Notice shall be sent, by Certified Mail -- Return Receipt Requested, to PCS Partners, L.P., Attn. David G. Behenna, 111 North Sepulveda Boulevard, Suite 250, Manhattan Beach, CA, 90266-6850; and to counsel for PCS Partners, L.P., Piper Marbury Rudnick & Wolfe, Attn. Mark J. Tauber, Esq., 1200 19th Street, NW, Washington, DC, 20036-2412.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the

respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.