

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

In re Applications of )  
 )  
**RADIOFONE NATIONWIDE PCS, L.L.C.** ) FCC File Nos. 0000234903  
 )  
and ) and  
 )  
**HARBOR WIRELESS L.L.C.** ) 0000235351

**ORDER**

**Adopted: January 10, 2001**

**Released: January 11, 2001**

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

1. On November 17, 2000, Small Business in Telecommunications ("SBT") filed substantively identical Petitions to Deny ("Petitions") against the above-captioned long form applications (FCC Form 601) of, respectively, Harbor Wireless L.L.C. ("Harbor") and Radiofone Nationwide PCS, L.L.C. ("Radiofone") (jointly, "Applicants"). Applicants, who were among the winning bidders of the 700 MHz Guard Band Auction,<sup>1</sup> each claimed that they qualified for a bidding credit as a very small business entity.<sup>2</sup> In the Petitions, SBT argues that the personal income of the individual controlling interest holders of Applicants should have been disclosed and attributed to Applicants for purposes of determining whether Applicants qualify for a bidding credit as a very small business entity.<sup>3</sup> For the reasons discussed below, we deny the Petitions.

2. As an initial matter, we find that SBT has failed to demonstrate the requisite standing to file a Petition to Deny. Section 309(d)(1) of the Communications Act, as amended, permits any "party in interest" to file a petition to deny an application.<sup>4</sup> In general, to establish standing, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a

<sup>1</sup> See "700 MHz Guard Band Auction Closes, Winning Bidders Announced," *Public Notice*, DA 00-2154 (rel. September 25, 2000) ("Closing PN").

<sup>2</sup> See FCC File Nos. 0000234903, 0000235351, FCC Form 601. On November 6, 2000, the Wireless Telecommunications Bureau issued a Public Notice announcing Applicants' long form applications as accepted for filing. See "700 MHz Guard Band Auction, Applications Accepted for Filing," *Public Notice*, DA 00-2463 (rel. November 6, 2000).

<sup>3</sup> On November 27, 2000, Harbor filed an Opposition to SBT's Petition to Deny. On November 22, 2000, Radiofone filed a Request for Extension of Time until November 30, 2000 and, on November 30, 2000, an Opposition to SBT's Petition to Deny. Based on our disposition of SBT's Petitions, we need not address Radiofone's request for an extension of time.

<sup>4</sup> 47 U.S.C. § 309(d)(1).

direct injury.<sup>5</sup> The petition must further demonstrate a causal link between the claimed injury and the challenged action.<sup>6</sup> In the auctions context, the Wireless Telecommunications Bureau has adopted the general rule that a petitioner, to establish standing to challenge an application or license in a particular market, must demonstrate that it was qualified and eligible to bid in that market.<sup>7</sup>

3. SBT has failed to establish standing to challenge the instant applications by demonstrating that it is a “party in interest.” SBT has not shown that it, or any of its members, was a qualified bidder in any of the markets that Applicants won. It is insufficient for purposes of standing in the auctions context merely to state, as SBT does, that “several of [its] members have participated in past auctions.”<sup>8</sup>

4. Even if SBT had demonstrated standing, its Petitions lack merit. SBT argues that each Applicant should have disclosed the personal income of its controlling interest holders for purposes of determining whether the Applicant qualifies for a bidding credit as a very small business. SBT further contends that it is not the intent of the Commission’s Rules to differentiate between the gross revenues of an entity and the personal income of an individual.<sup>9</sup> We disagree. Under the Commission’s Rules, a very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>10</sup> As the Commission has explained when addressing this issue previously, the personal income of an individual is a part of personal net worth and therefore is not attributable for inclusion in the gross revenues of the entity seeking a bidding credit.<sup>11</sup>

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<sup>5</sup> See *Los Angeles Cellular Telephone Co.*, 13 FCC Rcd 4601, 4603-4604, ¶ 5 (CWD 1998), citing *AmericaTel Corp.*, 9 FCC Rcd 3993, 3995 (1994), citing *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).

<sup>6</sup> See *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

<sup>7</sup> See *In re Applications of Nextwave Personal Communications, Inc.*, *Memorandum Opinion and Order*, 12 FCC Rcd 2030 (WTB 1997) (“[a] Petitioner has standing to challenge the licenses for markets another applicant won at auction only if Petitioner was qualified to bid in those markets.”); *In re Applications of DCR PCS, Inc.*, *Memorandum Opinion and Order*, 11 FCC Rcd 16949 (WTB 1996) (finding that petitioner failed to demonstrate standing to challenge applications in multiple markets because it was not eligible to bid in all of the markets at issue).

<sup>8</sup> Petitions at 1. SBT states that it is a trade organization comprised of small telecommunications business owners. *Id.*

<sup>9</sup> See Petitions at 2.

<sup>10</sup> See 47 C.F.R. § 27.502.

<sup>11</sup> See, e.g., Amendments of Parts 1, 2, 87 and 101 of the Commission Rules to License Fixed Services at 24 GHz, WT Docket No. 99-238, *Report and Order*, FCC 00-272, at ¶ 88 (rel. August 1, 2000); Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 at 10086, ¶ 100 (1999) (“Part 22 Revision”); “Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction,” *Public Notice*, 13 FCC Rcd 342, 346 (1998); *In the Matter of Implementation of Section 309(j) of the Communications Act--Competitive Bidding*, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 421, ¶ 30 (1994).

SBT further suggests that any distinction between non-attributable personal income and the gross revenues of an entity allows wealthy individuals to create entities and obtain bidding credits without meriting such treatment. Petitions at 3. We note that the Commission, in a previous discussion of the affiliation rules, considered the issue raised by SBT and concluded that “the affiliation rules make the personal net worth rules largely unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business.” *Part 22 Revision*, 14 FCC Rcd at 10086, ¶ 100. The Commission pointed out that the definition of “affiliate” causes all affiliates of a controlling interest of an applicant to be considered affiliates of the applicant. Accordingly, although the personal income of an individual with controlling interests in an applicant is not

Accordingly, Applicants need not disclose the personal income of any of their individual members with controlling interests, and we therefore deny SBT's Petitions.

6. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331, 1.2108 of the Commission's rules, 47 C.F.R. §§ 0.331, and 1.2108, the Petitions to Deny filed by Small Business in Telecommunications on November 17, 2000 in the above-captioned proceedings ARE HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray  
Deputy Chief, Policy and Rules Branch  
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attributable, if that individual has a controlling interest in another entity, our affiliation rules would make the gross revenues of that entity attributable to the applicant. *See id.*