

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

In the matter of
Direct Connect USA, Inc.
File No. 0000704275

Order

Adopted: July 12, 2002

Released: July 12, 2002

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

I. Introduction

1. On April 17, 2002, JPJ Electronic Communications, Inc. Rene Matthew Corporation ("JPJ") filed a Petition to Deny ("Petition") against the above-captioned long-form application (FCC Form 601) of Direct Connect USA, Inc. ("Direct Connect"). Direct Connect, which was among the winning bidders of the Lower and Upper Paging Bands Auction No. 40 ("Auction No. 40"), was granted a bidding credit as a very small business entity. In its Petition, JPJ argues that Direct Connect failed to disclose the names of all of its officers as required by section 1.2112(b)(1)(i) of the Commission's rules for purposes of determining whether Direct Connect qualified for the bidding credit. JPJ requests, in the alternative, that the Commission reconsider its decision to deny JPJ bidding credits and apply such credits to the licenses acquired by JPJ in Auction No. 40. For the reasons discussed below, we dismiss the Petition for lack of standing. As further discussed below, we would deny the Petition even if we addressed the merits.

II. Discussion

2. We find that JPJ 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. 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 direct injury. The petition must further demonstrate a causal link between the claimed injury and the challenged action.

1 See 47 C.F.R. § 1.2110(f)(2)(i) (setting forth bidding credit criteria).

2 See Petition at 4-5.

3 47 U.S.C. § 309(d)(1).

4 See Minnesota PCS Limited Partnership, Order, 17 FCC Rcd. 126, 128 (CWD 2001); Black Crow Wireless, L.P., Order, 16 FCC Rcd. 15,643, 15,644-45 (CWD 2001) ("Black Crow Wireless").

5 See Americatel Corp., Memorandum Opinion, Order, Authorization and Certificate, 9 FCC Rcd. 3993, 3995 (1994); Black Crow Wireless, 16 FCC Rcd. at 15,644-45.

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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.⁶ JPJ was not a qualified bidder in any of the markets that Direct Connect won.⁷ Accordingly, we dismiss the Petition for lack of standing.

3. Even if JPJ had demonstrated standing, we would deny its Petition on the merits. JPJ contends that Direct Connect was ineligible to receive bidding credits because its short-form application (FCC Form 175) was incomplete.⁸ JPJ claims that Direct Connect did not disclose the names of all of its controlling interests, as required by Commission rules,⁹ for purposes of determining whether an applicant qualifies for a bidding credit. We disagree. Direct Connect's Form 175 Exhibit A contained two categories identifying its controlling interest holders. One category was titled "Responsible Officer or Director," and the other was titled "Controlling Interests of the Applicant." Under each category, the name of Michael W. Schmidt ("Schmidt") was listed, and he was designated as the corporation's President.¹⁰ In footnote 1 to Exhibit A, Direct Connect affirmatively stated that the application "provides a complete list of relevant parties."¹¹ After reviewing Direct Connect's short-form application, Commission staff determined that Direct Connect disclosed the identity of all of its controlling interests and was eligible for bidding credits.

4. JPJ argues that Direct Connect's disclosure statements concerning its controlling interest holders were insufficient because Direct Connect, a New Jersey corporation, was required to have a "president, a secretary, a treasurer, and if desired a chair of the board, one or more vice president's and other officers."¹² The only officer identified on Direct Connect's application was its President, Schmidt.¹³ In its Opposition to JPJ's Petition, Direct Connect states that Schmidt holds all of the offices in the corporation.¹⁴ As JPJ acknowledges, the New Jersey State Code permits one person to hold all of the offices in a corporation.¹⁵ JPJ does not dispute that Schmidt is the sole controlling interest holder and holds all of the offices in the corporation, but instead argues that Direct Connect's failure to list all of the offices that Schmidt held in the corporation violated the Commission's disclosure requirements of section 1.2112(b)(1)(i) of the rules. That section states that applicants seeking bidding credits must "[l]ist the

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⁶ In the matter of Alaska Native Wireless, LLC, *Order*, 17 FCC Rcd. 4231, 4235-4236 (WTB 2002); In re the Applications of Radiofone Nationwide PCS, LLC and Harbor Wireless LLC, *Order*, 16 FCC Rcd. 792, 793 (CWD 2001).

⁷ Direct Connect sought 26 licenses in Basic Economic Area ("BEA") 12. *See* Direct Connect FCC Form 175, submitted October 4, 2001 ("Direct Connect Form 175"). JPJ sought 308 licenses in BEA4, BEA5, BEA6, BEA7, BEA8, BEA9 and BEA10. *See* JPJ FCC Form 175, submitted October 3, 2001.

⁸ Petition at 4-5.

⁹ *See* 47 C.F.R. 1.2112(b)(1)(i).

¹⁰ *See* Direct Connect Form 175, Exhibit A.

¹¹ *Id.* *See also* Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, Public Notice, DA 01-2122, 3-4 (rel. Sept. 10, 2001) ("To avoid any uncertainty, applicant should state that the application provides a complete list of relevant parties.").

¹² *See* Petition at 4. Direct Connect is organized under the laws of the State of New Jersey. *See also* NJ Code § 14A:6-15.

¹³ *See* Direct Connect Form 175, Exhibit A.

¹⁴ *See* Direct Connect Opposition to Petition to Deny, filed April 26, 2002, at 3.

¹⁵ *See* Petition at 4-5. *See also* NJ Code § 14A:6-15.

name, address and citizenship of all officers, directors and other controlling interests of the applicant, as described in section 1.2110.”¹⁶ Direct Connect disclosed all of its officers and controlling interest holders and affirmatively stated that its short-form application provided a complete list of all relevant parties. Accordingly, even if we were to consider the Petition, we would not conclude that the fact that Direct Connect did not list in its short-form application all of the offices held by Schmidt was sufficient grounds for denying Direct Connect’s long-form application.

5. JPJ’s arguments and alternative request for relief in its Petition suggest that its main complaint is the denial of its claim for bidding credits. A petition to deny another entity’s application is not the appropriate vehicle for requesting reconsideration of the denial of the petitioner’s request for a bidding credit. In this case, even if we were to consider JPJ’s alternative request for reconsideration, we would dismiss it as untimely. Section 1.106(f) of the Commission’s rules requires that petitions for reconsideration be filed within 30 days from the date of public notice of the challenged action.¹⁷ JPJ was notified that its request for bidding credits was denied on October 17, 2001.¹⁸ The instant Petition was filed on April 17, 2002, six months after that action and well after the 30-day deadline for filing a petition for reconsideration.

III. Ordering Clause

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 0.331 and 1.939 of the Commission’s Rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by JPJ Electronic Communications, Inc. Rene Matthew Corporation on April 17, 2002 IS HEREBY DISMISSED.

Federal Communications Commission

Paul D’Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

¹⁶ 47 C.F.R. § 1.2112(b)(1)(i).

¹⁷ See 47 C.F.R. § 1.106(f).

¹⁸ Letter from Kathy Garland, Chief, Auctions Operations Branch, Wireless Telecommunications Bureau to Joseph Rositano, President, JPJ Electronic Communications, dated October 17, 2001; Auction of Licenses for Lower and Upper Paging Bands; 193 Qualified Bidders, DA 01-2418, *Public Notice*, 16 FCC Rcd. 18,575 (2001) (rel. Oct. 17, 2001).