

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

In re Application of)	
)	
Star Wireless, LLC)	File No. EB-02-IH-0768
)	NAL/Acct. No. 00332080021
For C Block Facilities in the)	FCC Account ID No. 0441724048
710-716 and 740-746 MHz Bands)	FRN No. 0007043409

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 26, 2003

Released: August 27, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture (the “NAL”), we find Star Wireless, LLC (“Star”) apparently liable for a monetary forfeiture in the amount of \$100,000.00. For the reasons stated below, we conclude that Star, an applicant and participating bidder in the Commission's August 27-September 18, 2002, auction of 740 Lower 700 MHz Band C and D block geographic area licenses (“Auction No. 44”), apparently violated section 1.2105(c) of the Commission's rules¹ during the auction with Northeast Communications of Wisconsin, Inc. (“Northeast”), another applicant for the same auction.

II. BACKGROUND

2. In September 2002, the Commission received information that representatives of Star and Northeast had engaged in certain communications during the course of Auction No. 44.² Subsequently, the Enforcement Bureau (the “Bureau”) conducted an investigation of those contacts. During the course of that investigation, on July 2, 2003, the Bureau sent letters of inquiry to both applicants,³ to which Star⁴ and Northeast⁵ respectively responded.

¹ 47 C.F.R. § 1.2105(c). Section 1.2105(c)(1) states, in pertinent part: “[A]fter the [FCC Form 175] short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicant's bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).” 47 C.F.R. § 1.2105(c)(1).

² See Letter from E. Ashton Johnson, Esquire and Paul W. Jamison, Esquire, counsel for Star, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 6, 2002 (the “Star Notification Letter”); Letter from Timothy E. Welch, Esquire, counsel for Northeast, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 6, 2002 (the “Northeast Notification Letter”).

³ See Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to David G. Behenna, President of PCSGP Inc., operating manager of Star, dated July 2, 2003; Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Patrick D. Riordan, President of Northeast, dated July 2, 2003.

3. The Commission's Rules. In order to enhance and ensure the competitiveness of markets for communications services, the Commission has adopted rules designed to prevent collusive conduct during auctions, facilitate the detection of such misconduct and maintain public confidence in the integrity of the auction process.⁶ If collusive conduct were permitted during the auction process, the result could be the elimination of potential participants in auctions and competitors in the marketplace.⁷ Thus, section 1.2105(c) of the Commission's rules, the anti-collusion rule, prohibits applicants for any of the same geographic license areas from communicating with each other during an auction about their own or each other's or any other competing applicant's bids or bidding strategies, or discussing settlement agreements, unless such applicants are members of a bidding consortium or other bidding arrangement that they have identified in their FCC Form 175 ("short-form") applications.⁸ The FCC Form 175 application must be submitted by all parties interested in participating in an auction in order to qualify for such participation.⁹

⁴ See Letter from David G. Behenna to Judy Lancaster, Esquire, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 16, 2003, supplemented by Letter from Mark J. Tauber, Esquire, to Judy Lancaster, Esquire, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 22, 2003 (collectively, the "Star Response"). Pursuant to 47 C.F.R. § 0.459, Star has requested confidential treatment of the Star Notification Letter and the Star Response. By Letter to E. Ashton Johnson, Esquire and Paul W. Jamieson, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, DA 03-2681 (rel. Aug. 15, 2003), the Wireless Telecommunications Bureau denied the request relating to the Star Notification Letter and that denial has become final in the absence of an application for review filed within five business days. By Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mark J. Tauber, Esquire, and Paul W. Jamieson, Esquire, DA 03-2721 (rel. August 26, 2003), the Bureau denied the request pertaining to the Star Response. In accordance with 47 C.F.R. § 0.459(g), the substance of the documents submitted by Star that are the subject of the latter confidentiality request will not be made public unless and until Star has exhausted its rights of appeal of the ruling as to that request without a reversal of the denial. Accordingly, the substance of those documents is not discussed in this NAL.

⁵ See Letter from Patrick D. Riordan to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 18, 2003 ("Northeast Response"), and Letter from Timothy E. Welch, Esquire, to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 25, 2003. ("Northeast Supplement"). Northeast requested confidential treatment only of the Northeast Notification Letter. By Letter to Timothy E. Welch, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-2682 (rel. Aug. 15, 2003), the Wireless Telecommunications Bureau denied Northeast's request and that denial has become final in the absence of an application for review filed within five business days.

⁶ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2386-88, ¶¶221-226 (1994) ("*Competitive Bidding Second Report and Order*") ("[W]e believe that the competitiveness of the auction process and of post-auction market structure will be enhanced by certain additional safeguards designed to reinforce existing laws and facilitate detection of collusive conduct.").

⁷ *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2387, ¶223; *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7687-7688, ¶10 (1994) ("Our anti-collusion rules are intended to protect the integrity and robustness of our competitive bidding process.")

⁸ See note 1, *supra*.

⁹ 47 C.F.R. § 1.2105(a).

4. The prohibition against collusive communications set forth in section 1.2105(c) takes effect on the pre-auction short-form application deadline and remains in place until the down payment deadline, after the close of the auction.¹⁰ This prohibition expressly relates to all auction applicants, which are defined by section 1.2105(c)(7)(i) to include “all controlling interests in the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of” certain ownership interests, “and all officers and directors of that entity.” Moreover, the Commission has repeatedly made clear that the prohibition against collusion contained in section 1.2105(c) applies to all entities that file a short-form application, regardless of whether they are qualified to bid.¹¹ The Commission has also stressed that any applicant found in violation of the anti-collusion rule faces the potential sanctions of license revocation or monetary forfeiture and may be prohibited from participating in future auctions.¹²

5. Section 1.2105(a)(2) of the Commission’s rules requires every auction applicant to disclose in its short-form application certain information necessary to ensure compliance with the anti-collusion

¹⁰ 47 C.F.R. § 1.2105(c)(1). See also *Amendment of Part 1 of the Commission’s Rules- Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 15923 (2000) at 15297-98, ¶¶ 7-8.

¹¹ The Public Notice announcing how parties could apply to participate in Auction No. 44 explicitly advised potential participants about the Commission’s anti-collusion rule, that the rule was applicable to all applicants, and that the rule would apply to all applicants from the deadline for filing short-form applications until the post-auction down payment deadline. See *Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002*, Public Notice, DA 02-563 (WTB rel. March 20, 2002) at 7 (“*March 20 Procedures Public Notice*”) (“[T]he Commission’s rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.”). Furthermore, the *March 20 Procedures Public Notice* directed applicants to a list of precedents applying the anti-collusion rule, several of which explicitly applied the rule to applicants that subsequently did not bid in the auction. *Id.* at Attachment G (citing, *inter alia*, Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Mark Grady, President, Communications Venture PCS Limited Partnership, from Kathleen O’Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, Federal Communications Commission, 11 FCC Rcd 10895 (WTB 1996) (“Even when an applicant has withdrawn its application during the course of the auction, the applicant may not enter into a bidding agreement with another applicant bidding on the geographic license areas from which the first applicant withdrew.”)). See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6867 ¶ 50-51 (1994) (rejecting the argument that communications prohibited by the anti-collusion rule should be permitted during auctions between active and non-active bidders); Letter to John Reardon, Secretary to the Board of Directors and General Counsel, Mobex Communications, Inc., from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 13 FCC Rcd 17877 (WTB 1998) (“When the short-form filing deadline passes, the anti-collusion rule applies to all applicants with submitted short-form applications. . . We . . . remind applicants that submitted applications, once the short-form deadline passes, trigger application of the anti-collusion rule even if they are later withdrawn.”).

¹² See, e.g., *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5570-71 (1994); *March 20 Procedures Public Notice* at 8; *Auction of Licenses for 698-746 MHz Band: Status of FCC Form 175 Applications to Participate in the Auction*, Public Notice, DA 02-1213 (WTB rel. May 24, 2002) at 4-5 (“*May 24 Status Public Notice*”); *Auction of Licenses for 698-746 MHz Band: 128 Qualified Bidders*, Public Notice, DA 02-1346 (WTB rel. June 7, 2002) at 7 (“*June 7 Qualified Bidders Public Notice*”); and *Auction No. 44- Revised Qualified Bidder Notification*, Public Notice, DA 02-1933 (WTB rel. August 7, 2002) at 8 (“*August 7 Revised Qualified Bidders Public Notice*”).

rule.¹³ For instance, an auction applicant must identify in its short-form application the licenses for which it wishes to bid¹⁴ and must disclose all parties with whom it has entered into any consortium agreements, joint ventures, partnerships or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned.¹⁵ Applicants must also certify that they have not and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified in their short-form application regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.¹⁶

6. Auction No. 44 Public Notices. Consistent with its standard practice, the Wireless Telecommunications Bureau issued a series of public notices regarding auction procedures prior to the commencement of Auction No. 44 in which it repeatedly warned auction applicants of the need to comply with the anti-collusion rule.¹⁷ For example, in its Public Notice issued on May 24, 2002, announcing the status of the short-form applications filed for the auction, the Wireless Telecommunications Bureau included a reminder that “Section 1.2105(c) of the Commission’s Rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies or settlements unless they have identified each other as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii). For Auction No. 44, this prohibition became effective at the filing deadline of short-form applications on Wednesday, May 8, 2002, and will end on the post-auction down payment deadline.”¹⁸ Other pre-auction public notices included similar reminders.¹⁹

7. On June 26, 2002, after qualified bidders for the auction had been identified, the Wireless Telecommunications Bureau issued a Public Notice that reminded parties that section 1.2105(c) applies to communications involving disqualified applicants, as well as those involving bidders in the auction: “All parties that submitted short-form applications to participate in Auction No. 44, *including but not limited to qualified bidders*, are reminded that they remain subject to the Commission’s anti-collusion rule until the post-auction down payment deadline.”²⁰ On August 7, 2002, only three weeks before the beginning of the auction, the Wireless Telecommunications Bureau’s Public Notice providing a revised list of qualified bidders contained a similar admonition: “All parties that submitted short-form applications to participate in Auction No. 44, *including but not limited to qualified bidders (regardless of whether they elected to depart from the auction)* are reminded that they remain subject to the Commission’s anti-collusion rule until the post-auction down payment deadline.”²¹

¹³ 47 C.F.R. § 1.2105(a)(2).

¹⁴ 47 C.F.R. § 1.2105(a)(2)(i).

¹⁵ 47 C.F.R. § 1.2105(a)(2)(viii).

¹⁶ 47 C.F.R. § 1.2105(a)(2)(ix).

¹⁷ *March 20 Procedures Public Notice* at 8; *May 24 Status Public Notice* at 4-5; *June 24 Qualified Bidders Public Notice* at 7; *August 7 Revised Qualified Bidders Public Notice* at 8.

¹⁸ *May 24 Status Public Notice* at 4.

¹⁹ See e.g., *March 20 Procedures Public Notice* at 7-8; *June 7 Qualified Bidders Public Notice* at 6-7.

²⁰ *Auction No. 44, Revised Schedule, License Inventory, and Procedures*, Public Notice, DA 02-1491 (WTB rel. June 26, 2002) at 2 (emphasis added).

²¹ *August 7 Revised Qualified Bidder Notification* at 7 (emphasis added).

8. FCC Forms 175 and Upfront Payments. In order to participate in Auction No. 44, each applicant was required to submit an FCC Form 175 by May 8, 2002.²² As noted in the Wireless Telecommunications Bureau's Public Notice announcing the status of applications, Star and Northeast each filed a timely FCC Form 175 to participate in the auction.²³ In its FCC Form 175 (the "Star FCC Form 175"), Star indicated that it intended to bid for all 740 available licenses and that David G. Behenna, the President of PCSGP, Inc.,²⁴ its operating manager, would serve as its authorized bidder.²⁵ The application states that Star is a Delaware limited liability corporation located in Rolling Hills Estates, California, formed to acquire and develop Commission authorizations, but that it holds no such authorizations. According to the application, the only affiliate of Star that holds a Commission authorization is PCS Partners, L.P., which holds the F-Block PCS license for the Plattsburgh, New York BTA (BTA352) and was the high bidder in Auction No. 39 for 32 Location Monitoring Service authorizations, for which its application remains pending.²⁶ The David G. Behenna Trust, of which Mr. Behenna is the Trustee, holds 97% of the membership interests in Star.²⁷ According to its FCC Form 175, neither Star nor any of its controlling interest holders had entered into any agreements, arrangements or understandings with any third party regarding Star's Auction No. 44 bidding activity or post-auction structure at the time of application.²⁸

9. In its FCC Form 175 application (the "Northeast FCC Form 175"), Northeast expressed its intention to bid for 734 of the licenses available in Auction No. 44. The application identifies Patrick D. Riordan, Robert H. Riordan and Daniel Fabry as Northeast's authorized bidders.²⁹ According to the application, Northeast is a closely held telecommunications holding company located in Green Bay, Wisconsin, owned and controlled by four siblings, Patrick D. Riordan, Robert H. Riordan, Micki Harper and Ray J. Riordan, who are each officers and directors and collectively hold over 52 percent of the stock of Northeast. Northeast has interests in entities that hold PCS, cellular and cable television authorizations in Wisconsin, Iowa and Minnesota.³⁰ In its application, Northeast certifies that it had entered into two joint bidding arrangements for the auction, one with Central Wisconsin Communications, Inc., West Wisconsin Telcom Cooperative, Inc. and Chequamegon Telephone Cooperative, Inc. and a second with Alpine Communications L.C. Northeast further certifies that "there are no joint bidding arrangements

²² See March 20 Procedures Public Notice at 14.

²³ See May 24 Status Public Notice, Attachment A at 6, Attachment B at 10.

²⁴ Mr. Behenna owns 100% of PCSGP's fully diluted shares of common stock. He is PCSGP's President, Secretary, Treasurer and sole director. See Star FCC Form 175, Exhibit A.

²⁵ See Star FCC Form 175.

²⁶ FCC File No. 0000506827.

²⁷ See Star FCC Form 175, Ex. A.

²⁸ See Star FCC Form 175, Ex. B.

²⁹ See Northeast FCC Form 175.

³⁰ See Northeast FCC Form 175, Ex. A; FCC Form 602 of Northeast Communications of Wisconsin, Inc., dated November 25, 2002. A listing of the communications-related entities in which Northeast holds an interest, based upon the entities named in the FCC Form 602 and the Commission's licensing records, is provided as Attachment A.

with any other party other than that disclosed herein.”³¹ Northeast also represented that it “will not discuss bid strategies of any of the parties discussed below with any party filing for a common market(s) unless those parties also have a joint bidding arrangement and identified [sic] in an FCC Form 175 filing.”³²

10. The date by which all applicants for Auction No. 44 were required to submit an upfront payment in order to become qualified to bid in the auction was May 30, 2002.³³ Star timely made the required payment, qualifying it to bid in the auction.³⁴ However, because Northeast failed to make such a payment due to “limited availability of funds,”³⁵ it was not qualified to bid in the auction,³⁶ which commenced on August 27, 2002.³⁷

11. Conversations Prior to Short-Form Filing Deadline. It appears that, before Auction No. 44, representatives of Star and Northeast had engaged in business discussions. In 1999, Steve Schneider, who at the time was Northeast’s Vice President of Wireless Operations,³⁸ met Mr. Behenna at the Cellular Telecommunications & Internet Association (“CTIA”) convention, at which the two men discussed the high yield debt market.³⁹ Because Northeast was interested in exploring such a financing opportunity, on December 6, 1999, Mr. Behenna met with Patrick D. Riordan, Robert H. Riordan, Mr. Schneider and Northeast Treasurer Mark Naze at Northeast’s Green Bay offices to discuss the high yield debt market.⁴⁰ As a follow-up to the meeting, Mr. Behenna prepared a 58-page document, dated December 29, 1999, entitled, “Introduction to High Yield Debt Market.”⁴¹ Although Mr. Behenna made several follow-up calls to Northeast to determine if it was interested in pursuing such funding, nothing further came of the discussions.⁴²

12. Moreover, sometime between the 1999 CTIA convention and Mr. Schneider’s departure from Northeast in July 8, 2001, Mr. Schneider contacted Mr. Behenna to see if Mr. Behenna had any interest in

³¹ See Northeast FCC Form 175, Ex. B.

³² *Id.*

³³ See *May 24 Status Public Notice* at 2; see also 47 C.F.R. § 1.2106.

³⁴ See *June 7 Qualified Bidders Public Notice*, Attachment A at 6.

³⁵ Northeast Response at A6.

³⁶ See *June 7 Qualified Bidders Public Notice*, Attachment A.

³⁷ See *Auction No. 44-Revised Schedule, License Inventory, and Procedures*, Public Notice, DA 02-1491 at 1(WTB rel. June 26, 2002).

³⁸ See Northeast Response at A4. Mr. Schneider left the employ of Northeast on July 8, 2001, but continues to provide consulting services to the organization. *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*; Northeast Response, Exhibit A.4.

⁴² See Northeast Response at A4.

acquiring Northeast's North Dakota PCS properties.⁴³ Again, nothing came of those discussions.⁴⁴

13. Communications During the Auction. As noted *supra*, Auction No. 44 commenced on August 27, 2002. On August 28, 2002, Mr. Behenna called Mr. Patrick Riordan and left a voice message for him, requesting that Mr. Riordan return the call only if Northeast was not participating in the auction.⁴⁵ According to phone records provided by Northeast, on August 29, 2002, Mr. Riordan returned Mr. Behenna's call at 7:18 a.m. Mountain Time (9:18 Eastern Time) and the two spoke for approximately six minutes.⁴⁶ Mr. Behenna asked Mr. Riordan whether Northeast was interested in any of the markets in the auction. Mr. Riordan identified four or five Wisconsin markets, including Green Bay, Appleton, Wausau and Wisconsin RSA No. 10.⁴⁷ Mr. Riordan did so "because we consider those areas to be of most interest to us in the provision of communications services on a going forward basis."⁴⁸ As he explained further in his response to the Bureau's letter of inquiry, "[w]hile we still have PCS authorizations in Iowa, and several PCS interests in South Dakota and Michigan, our area of concentration is Wisconsin, especially the area surrounding Green Bay."⁴⁹

14. Auction Conduct. According to the Commission's records of the auction,⁵⁰ prior to the August 29, 2002, call with Northeast, Star did not place bids for any licenses in Wisconsin or Iowa markets. The only bids that Star made before the call were made on August 28, for licenses in San Jose and Oxnard, California, in round 4, and for Tampa-St. Petersburg, Florida, in round 6. Star placed no additional bids for these licenses. Commencing on August 29, at 9:58:48 a.m., Eastern Time, Star began to bid actively for licenses in the Wisconsin markets in which Northeast's President Riordan had expressed an interest in the call earlier that morning. Thus, Star placed round 7 bids for Appleton, Green Bay and Wausau, Wisconsin, and a second bid, in round 9, for Appleton.⁵¹ On August 30, it placed bids in round 11 for Wausau, Wisconsin 4 (Marinette) and Wisconsin 10 (Door); on September 3, it placed bids for Wausau (rounds 13 and 15) and Appleton (round 14). On September 4, it made a round 17 bid for Wisconsin 10 (Door), for which it bid again on September 5 (round 19). It also bid on September 5 in round 19 for Green Bay and for Cedar Rapids, Iowa.

15. On September 18, after 84 bidding rounds, the auction closed. On September 20, 2002, the Commission released a Public Notice announcing the winning bidders, which indicated that Star was the

⁴³ According to Exhibit A of its FCC Form 175, Northeast held a 10% or greater interest in Redwood Wireless Wisconsin, L.L.C., cellular licensee for the Grand Forks (KNLH430) and Williston, North Dakota (WPOJ815) BTAs. Northeast has since divested its interest in the licensee. *See* Northeast Response at A1.

⁴⁴ *See* Northeast Response at A4.

⁴⁵ *See* Northeast Response at A7.

⁴⁶ *See* Northeast Response, Ex. A.7.a.; Northeast Supplemental Response, Mobile Telephone Bill, p. 16.

⁴⁷ *See* Northeast Response at A7, A16.

⁴⁸ *See* Northeast Response at A16.

⁴⁹ *Id.* As noted *supra*, according to Northeast's Form 175, its business office is in Green Bay, from which many of its businesses operate. *See* Attachment A.

⁵⁰ *See* Attachment B.

⁵¹ Star also placed a bid on August 29, during round 8 of the auction, for Denver-Boulder, Colorado. *See* Attachment B.

high bidder for Lower 700 Band C Block licenses for four geographic areas: for Green Bay, Wisconsin, Wisconsin 4 (Marinette), Wisconsin 10 (Door) and Cedar Rapids, Iowa.⁵²

16. Post-Auction Conduct. In response to the Bureau's letter of inquiry, Northeast stated that no representatives of Northeast and Star have had any discussions regarding Northeast's acquisition of any of the authorizations for which Star was the successful bidder in Auction No. 44 or regarding Northeast's participation in any business operation contemplating the use of such facilities.⁵³ However, earlier this year, Northeast inquired by voice message to Mr. Behenna whether he was interested in acquiring Northeast's PCS interests in South Dakota. According to Northeast, Mr. Behenna did not respond to that inquiry.⁵⁴

III. DISCUSSION

17. Under section 503(b)(1) of the Communications Act of 1934, as amended (the "Act"), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵⁵ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁵⁶ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.⁵⁷ As we set forth in greater detail below, we conclude under this standard that Star is apparently liable for a forfeiture for its apparent willful and repeated violation of section 1.2105(c) of the Commission's rules.⁵⁸

A. Apparent Violation of the Anti-Collusion Rule

18. The language of section 1.2105(c) of the Commission's rules, pertinent precedent, and the auction public notices issued by the Wireless Telecommunications Bureau, including those involving

⁵² See Public Notice, *Lower 700 MHz Band Auction Closes*, DA 02-2323, Attachment A at 26 (WTB rel. September 20, 2002).

⁵³ See Northeast Response at A4, A22.

⁵⁴ See Northeast Response at A4, A10, A22.

⁵⁵ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 18 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

⁵⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁵⁷ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

⁵⁸ By separate Notice of Apparent Liability for Forfeiture released concurrently herewith, we likewise find that Northeast is apparently liable for a forfeiture in the same amount for its apparent willful violation of section 1.2105(c) of the Commission's rules.

Auction No. 44 issued before the subject auction, make clear that the anti-collusion rule applies to all auction applicants, whether or not they were qualified to bid. Thus, the rule applied to both Star and Northeast, despite the fact that Northeast had been disqualified from bidding because its “limited availability of funds” had prevented it from making the required upfront payment. Further, the evidence before us indicates that Star apparently violated section 1.2105(c), the anti-collusion rule, by discussing markets with Northeast for which both entities applied in Auction No. 44 and by collaborating with Northeast with respect to bidding strategy. On August 28, 2002, Star, an applicant that had applied to bid on all of the markets that Northeast had identified in its Form 175 application, telephoned Mr. Patrick Riordan, Northeast’s President, specifically to solicit information concerning any markets available in Auction No. 44 in which Northeast might have a business interest. Rather than only reporting the incident to the Commission, Mr. Riordan returned Mr. Behenna’s call and identified for Mr. Behenna five Wisconsin markets in which the auction-disqualified Northeast had an interest, for which Star immediately and aggressively started to bid.

19. It is not necessary for us to find that a disclosure of information actually altered Star’s bidding strategy or was used to its advantage in order to issue a penalty under the anti-collusion rule. A violation of the rule results from the mere communication of prohibited information. In the instant case, however, Star completely revamped its bidding strategy after Northeast’s disclosure to it of the markets in which it was interested. The Commission’s bidding records reveal that, after Mr. Behenna and Mr. Riordan spoke early on the morning of August 29, 2002, Star began to bid actively and aggressively for Wisconsin and Iowa markets in which it had previously shown no interest in the auction, and it placed no additional bids for the markets for which it had bid before the discussion. As a result of this revised bidding strategy, Star was the winning bidder for C block licenses in three Wisconsin markets and the Cedar Rapids, Iowa, market. Although Star has no operations or licenses in those markets, Northeast has cellular and/or PCS licenses and telecommunications operations in or adjacent to each area in which Star was the successful bidder in Auction No. 44.⁵⁹ The three Wisconsin markets are situated near Green Bay, the location of Northeast’s corporate offices and its admitted “area of concentration.” Similarly, the Cedar Rapids, Iowa, market for which Star was the successful bidder is adjacent to two markets for which a Northeast affiliate is the licensee. These facts, combined with the drastic change in Star’s bidding subsequent to Mr. Behenna’s August 29 conversation with Mr. Riordan, renders completely implausible any suggestion that Star’s inquiry to Northeast and Northeast’s responding disclosure to Star was unrelated to its bidding strategy and not in violation of the anti-collusion rule, 47 C.F.R. 1.2105(c). Star’s

⁵⁹ Northeast is the licensee of PCS Station KNLF999, Green Bay, Wisconsin (BTA173). It also holds a 100 % interest in Brown County MSA Cellular Limited Partnership, licensee of Green Bay cellular Station KNKA547 (CMA186); a 55% interest in Wisconsin RSA#10 Limited Partnership, licensee of cellular Station KNKN294, Wisconsin 10 (Door) (CMA717); and a 25% interest in Wisconsin RSA No. 4 Limited Partnership, licensee of cellular Station KNKN395, Wisconsin 4 (Marinette) (CMA711). Star won the Lower 700 MHz authorizations for these CMAs in Auction No. 44. Moreover, after the August 29, 2003, telephone conversation between Mr. Behenna and Mr. Riordan, Star also bid, unsuccessfully, for the auctioned authorizations in Appleton-Oshkosh-Neehan, Wisconsin (CMA125) and Wausau, Wisconsin (CMA263), which are contiguous to Wisconsin 10 (Door) (CMA717), for which, as noted above, a Northeast affiliate is the cellular licensee. Northeast also holds interests in Iowa cellular licensees Iowa RSA #3 LLC (54.84%) (Station KNKN351, Iowa 3 (Monroe), CMA414), Iowa RSA #12 LLC (90%) (Station KNKQ388, Iowa 12 (Winneshiek), CMA423) and NSP, LC (20%) (Station KNKN314, Iowa 11 (Hardin), CMA422). CMAs 423 and 422 are contiguous to and CMA414 is situated near the Cedar Rapids geographic area (CMA195), for which Star was also high bidder in the auction. Although, in late June and early July 2003, those three Northeast-related cellular licensees filed applications with the Commission for approval of the sale of their aforementioned Iowa authorizations, Northeast held its interest in those entities at the time of the August 29, 2002, conversation between Messrs. Behenna and Riordan and throughout the course of the bidding in Auction No. 44. Northeast also wholly owns Nsighttel Wireless, LLC, which holds PCS authorizations in six other Iowa markets. See Attachments A, C and D.

bidding strategy was significantly affected by the improper contact that David G. Behenna, its controlling principal and designated bidder, initiated with Northeast, in violation of that rule.

20. The factual record also underscores the importance of enforcing the Commission's rules prohibiting the type of auction-related communications that occurred between Mr. Behenna and Mr. Riordan. Star learned of Northeast's interest in the markets which Mr. Riordan identified for Mr. Behenna and, thus, knew about potential post-auction demand for the licenses in those markets. At the same time, Northeast took advantage of an opportunity to influence Star's auction plan and strategy for its own purposes. In effect, Northeast was able to participate in the auction from which it had been disqualified to do so without providing notice to other applicants that might wish to compete against it. Indeed, Mr. Riordan's disclosure gave Star exclusive access to information concerning Northeast's interest in particular licenses that was unavailable to other auction participants bidding on the Wisconsin and Iowa markets in question.

B. Proposed Forfeiture

21. The Commission's *Forfeiture Policy Statement*⁶⁰ specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁶¹ In this case, taking all of these factors into consideration, we find that Star is apparently liable for a forfeiture of \$100,000.00.

22. Star willfully engaged in two violations of section 1.2105(c) of the Commission's rules by discussing bidding strategy with a competing applicant during Auction No. 44. The first violation was the voice message that Mr. Behenna left for Mr. Patrick Riordan on August 28, 2002, which it may be inferred that Mr. Behenna left in order to initiate a discussion concerning bidding strategy. The second violation was the August 29, 2002, telephone conversation between Messrs. Behenna and Riordan, which, as noted *supra*, concerned bidding strategy. Violations of the anti-collusion rule during an auction directly threaten the integrity and competitiveness of the auctions process. Star and Northeast intended to violate the anti-collusion rule by engaging in communications regarding bidding strategy -- precisely the type of communications that the rule was adopted to prohibit.

23. Pursuant to section 1.80 of the Commission's rules, Star may avail itself of the opportunity to present mitigating evidence showing why a forfeiture should not be imposed or why the amount should be adjusted downward. Upon receipt of such evidence, we will consider all relevant factors, including Star's overall compliance history.

IV. ORDERING CLAUSES

24. Accordingly, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Star Wireless, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of One Hundred Thousand Dollars (\$100,000.00) for its willful and repeated violation of section 1.2105(c) of the Commission's rules, 47 C.F.R. § 1.2105(c).

⁶⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

⁶¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27.

25. Therefore, IT IS HEREBY ORDERED, pursuant to section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release date of this Notice, Star Wireless, LLC SHALL PAY the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

26. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, Post Office Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) referenced above and must also note the NAL/Acct Number referenced above.

27. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) referenced above and also must note the NAL/Acct. Number referenced above.

28. The response, if any, MUST BE MAILED to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. Number referenced above.

29. The Commission will not consider reducing or canceling a 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 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.

30. Requests for payment of the full amount of the forfeiture proposed in this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.⁶²

31. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If Star qualifies as a small entity and if it wishes to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in its response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division. Its certification should indicate whether Star, including its parent entity and its subsidiaries, meets one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment E to this NAL. This information will be used for tracking purposes only. Star's response or failure to respond to this question will have no effect on its rights and responsibilities pursuant to section 503(b) of the Communications Act. If Star has questions regarding any of the information contained in Attachment E, it should contact OCBO at (202) 418-0990.

32. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability For Forfeiture shall be sent, by Certified Mail Return Receipt Requested, to Star Wireless, LLC to the attention of David G. Behenna, 4000 Palos Verdes Drive North, Suite 201, Rolling Hills Estates, California 90274-2537, and

⁶² 47 C.F.R. § 1.1914.

a copy to its counsel, Mark J. Tauber, Esquire, Piper Rudnick, 1200 19th Street, N.W., Washington, D.C. 20036-2412.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

ATTACHMENT A**NORTHEAST COMMUNICATIONS OF WISCONSIN, INC.
TELECOMMUNICATIONS INTERESTS**

Northeast Communications of Wisconsin, Inc. holds the license for PCS Station KNLF999, Green Bay, WI (BTA173). It also holds interest in the following other Commission licenses:

1. Brown County MSA Cellular Limited Partnership
Cellular Service Provider
100% Interest
Station KNKA547, Green Bay, WI (CMA 186)
2. Wisconsin RSA No. 4 Limited Partnership
Cellular Service Provider
25% Interest
Station KNKN395, Wisconsin 4 (Marinette) (CMA 711)
3. Wisconsin RSA-10 Limited Partnership
Cellular Service Provider
55% Interest
Station KNKN294, Wisconsin 10 (Door) (CMA 717)
4. Metro Southwest PCS, LLC
PCS Service Provider
50% Interest (application pending for approval to increase interest to 100%)
Station KNLF931, Appleton-Oshkosh, WI (BTA 018)
Station KNLG938, Fond du Lac, WI (BTA 148)
Station KNLG939, Iron Mountain, MI (BTA 206)
Station KNLG940, Ironwood, MI (BTA 207)
Station KNLG941, Manitowoc, WI (BTA 276)
Station KNLG942, Sheboygan, WI (BTA 417)
Station KNLG943, Wausau-Rhineland, WI (BTA 466)
5. Wausau Cellular Telephone Company Limited Partnership
Cellular Service Provider
72.48% Interest
Station KNKA619, Wausau, WI (CMA 263)
6. NTN PCS, LLC
PCS Service Provider
50% Interest
Stations KNLG962 and WPTL469, Aberdeen, SD (BTA 001)
7. Iowa RSA #3 LLC

- Cellular Service Provider
54.84% Interest (assignment application pending-File No. 0001362247)
Station KNKN351, Iowa 3 (Monroe) (CMA 414)
8. Iowa RSA #12 LLC
Cellular Service Provider
90% Interest (assignment application pending- File No. 0001362317)
Station KNKN642, Iowa 12 (Winneshiek) (CMA423)
9. NSP, LC
Cellular Service Provider
20% Interest (transfer application pending-File No. 0001365077)
Station KNKN314, Iowa 11 (Hardin) (CMA 422)
10. Nsighttel Wireless, LLC
PCS Service Provider
100% Interest
Station KNLH428, Clinton, IA-Sterling, IL (BTA 086)
Station KNLH429, Ft. Dodge, IA (BTA 150)
Station KNLH432, Marshalltown, IA (BTA 283)
Station KNLH433, Mason City, IA (BTA 285)
Station KNLH435, Ottumwa, IA (BTA 337)
Station KNLH436, Waterloo-Cedar Falls, IA (BTA 462)
Station WPOJ777, Escanaba, MI (BTA 132)
Station WPOJ778, Houghton, WI (BTA 194)
Station WPOJ779, Marquette, MI (BTA 282)
Station WPOJ780, Petoskey, MI (BTA 345)
Station WPQR272, Rochester-Austin-Albert Lea, MI (BTA 378)
Station KNLH353, Stevens Point-Marshfield, WI (BTA 432)
Station WPOJ781, Traverse City, MI (BTA 446)

Northeast Communications of Wisconsin, Inc. also owns 100% of the following other telecommunications businesses, which each operate from its Green Bay address:

1. Northeast Telephone Long Distance Co.: Interchange Carrier
2. Northeast Telephone Company: Local Exchange Carrier
3. Brown County CLEC, LLC: CLEC
4. NET LEC, LLC: CLEC
5. NET Cable, Inc.: Cable Television Provider

ATTACHMENT B

**BIDDING RECORD
AUCTION NO. 44
STAR WIRELESS, LLC**

Table I - All bids placed by Star Wireless, LLC

<u>Date</u>	<u>Round</u>	<u>Market #</u>	<u>Market Name</u>	<u>Gross Bid Amount</u>
8/28/02	4	027	San Jose, CA	\$620,000.00
8/28/02	4	073	Oxnard-Simi Valley-Ventura, CA	\$249,000.00
8/28/02	6	022	Tampa-St. Petersburg, FL	\$651,000.00
8/29/02	7	125	Appleton-Oskosh-Neenah, WI	\$105,000.00
8/29/02	7	186	Green Bay, WI	\$58,000.00
8/29/02	7	263	Wausau, WI	\$39,000.00
8/29/02	8	019	Denver-Boulder, CO	\$611,000.00
8/29/02	9	125	Appleton-Oskosh-Neenah, WI	\$161,000.00
8/30/02	11	263	Wausau, WI	\$50,000.00
8/30/02	11	717	Wisconsin 10 – Door	\$37,000.00
8/30/02	11	711	<i>Wisconsin 4 – Marinette</i>	\$34,000.00
9/03/02	13	263	Wausau, WI	\$68,000.00
9/03/02	14	125	Appleton-Oskosh-Neenah, WI	\$207,000.00 *
9/03/02	15	263	Wausau, WI	\$97,000.00
9/04/02	17	717	Wisconsin 10 – Door	\$46,000.00
9/05/02	19	186	<i>Green Bay, WI</i>	\$67,000.00
9/05/02	19	717	<i>Wisconsin 10 – Door</i>	\$59,000.00
9/05/02	19	195	<i>Cedar Rapids, IA</i>	\$51,000.00
			(Bold print denotes geographic area in which or adjacent to an area for which a Northeast affiliate, but not Star, holds cellular and/or PCS authorizations; <i>italics</i> denotes winning high bid for area)	

* Star's \$207,000 bid in Round 14 for Market #125 (Appleton-Oskosh-Neenah, WI) was subsequently withdrawn in Round 19.

Table II – All Bids Received in CMA027 (San Jose, CA)

Round	Bidder	Gross Bid Amount
1	Cavalier Group, LLC	\$449,000.00
1	Aloha Partners, L.P.	\$449,000.00
2	Aloha Partners, L.P.	\$539,000.00
4	Star Wireless LLC	\$620,000.00
5	Aloha Partners, L.P.	\$729,000.00
38	David M. Gates	\$765,000.00
39	Aloha Partners, L.P.	\$822,000.00
40	David M. Gates	\$894,000.00
43	Aloha Partners, L.P.	\$948,000.00
44	David M. Gates	\$1,024,000.00
47	Aloha Partners, L.P.	\$1,086,000.00
48	David M. Gates	\$1,173,000.00
58	Aloha Partners, L.P.	\$1,232,000.00
59	David M. Gates	\$1,324,000.00
60	Aloha Partners, L.P.	\$1,440,000.00
61	David M. Gates	\$1,575,000.00
62	Aloha Partners, L.P.	\$1,728,000.00
63	David M. Gates	\$1,898,000.00

Table III – All Bids Received in Market 073 (Oxnard-Simi Valley-Ventura, CA)

Round	Bidder	Gross Bid Amount
1	McBride Spectrum Partners I, LLC	\$221,000.00
1	Cavalier Group, LLC	\$201,000.00
4	Star Wireless LLC	\$249,000.00
6	Harbor Wireless, LLC	\$282,000.00
6	McBride Spectrum Partners I, LLC	\$282,000.00
6	Aloha Partners, L.P.	\$282,000.00
7	Aloha Partners, L.P.	\$338,000.00
26	David M. Gates	\$355,000.00
41	Aloha Partners, L.P.	\$373,000.00
42	David M. Gates	\$401,000.00
45	Aloha Partners, L.P.	\$425,000.00

Table IV – All Bids Received in Market 022 (Tampa-St. Petersburg, FL)

Round	Bidder	Gross Bid Amount
1	Aloha Partners, L.P.	\$590,000.00
6	Star Wireless LLC	\$651,000.00
7	Aloha Partners, L.P.	\$750,000.00

Table V – All Bid Received in Market 125 (Appleton-Oskosh-Neenah, WI)

Round	Bidder	Gross Bid Amount
3	3G COMM, LLC	\$95,000.00
7	Star Wireless LLC	\$105,000.00
8	3G COMM, LLC	\$137,000.00
9	Star Wireless LLC	\$161,000.00
13	3G COMM, LLC	\$179,000.00
14	Star Wireless LLC	\$207,000.00 *
20	3G COMM, LLC	\$179,000.00

* Star's \$207,000 bid in Round 14 for Market #125 (Appleton-Oskosh-Neenah, WI) was subsequently withdrawn in Round 19.

Table VI – All Bids Received in Market 186 (Green Bay, WI)

Round	Bidder	Gross Bid Amount
7	Star Wireless LLC	\$58,000.00
15	3G COMM, LLC	\$64,000.00
19	Star Wireless LLC	\$67,000.00

Table VII – All Bids Received in Market 263 (Wausau, WI)

Round	Bidder	Gross Bid Amount*
1	CENTRAL WISCONSIN COMMUNICATIONS, INC.	\$35,000.00
7	Star Wireless LLC	\$39,000.00
8	CENTRAL WISCONSIN COMMUNICATIONS, INC.	\$45,000.00
11	Star Wireless LLC	\$50,000.00
12	CENTRAL WISCONSIN COMMUNICATIONS, INC.	\$58,000.00
13	Star Wireless LLC	\$68,000.00
14	CENTRAL WISCONSIN COMMUNICATIONS, INC.	\$81,000.00
15	Star Wireless LLC	\$97,000.00
16	CENTRAL WISCONSIN COMMUNICATIONS, INC.	\$116,000.00

Table VIII – All Bids Received in Market 019 (Denver-Boulder, CO)

Round	Bidder	Gross Bid Amount
1	Aloha Partners, L.P.	\$555,000.00
8	Star Wireless LLC	\$611,000.00
9	Aloha Partners, L.P.	\$703,000.00

Table IX – All Bids Received in Market 717 (Wisconsin 10 – Door)

Round	Bidder	Gross Bid Amount
11	Star Wireless LLC	\$37,000.00
15	3G COMM, LLC	\$41,000.00
17	Star Wireless LLC	\$46,000.00
18	3G COMM, LLC	\$54,000.00
19	Star Wireless LLC	\$59,000.00

Table X – All Bids Received in Market 711 (Wisconsin 4 – Marinette)

Round	Bidder	Gross Bid Amount
11	Star Wireless LLC	\$34,000.00

Table XI – All Bids Received in Market 195 (Cedar Rapids, IA)

Round	Bidder	Gross Bid Amount
19	Star Wireless, LLC	\$51,000.00

Place Holder for Attachment C

Place Holder for Attachment D

ATTACHMENT E

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons

Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment	750 Employees or Fewer

Manufacturers	
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)