

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

In the Matter of
PCS Partners, L.P., Petition for Waiver and
Request for Refund

ORDER

Adopted: March 1, 2007

Released: March 1, 2007

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, we deny the request of PCS Partners, L.P. ("PCS Partners") for a waiver of Section 1.2109(a) of the Commission's rules, which required PCS Partners to pay the outstanding balance of its winning bids for 32 Multilateration Location and Monitoring Service ("MLMS") licenses it won at auction (the "Licenses"). Section 1.2109(a) of the Commission's rules requires a winning bidder to pay the balance of its winning bids by the established deadline or within ten days after the deadline if it also pays a late fee. A winning bidder that fails to pay the balance of its winning bid by the late payment deadline is considered to be in default and subject to the default payments set forth in Section 1.2104.

2. PCS Partners won the Licenses in Auction No. 39. It made full payment of the balance of its winning bids by the payment deadline and submitted its Waiver Request on the

1 47 C.F.R. § 1.2109(a).

2 Petition for Waiver and Request for Refund in re PCS Partners, LP of PCS Partners, L.P., filed on November 19, 2002 (the "Waiver Request"). The Licenses at issue are: BEA005 (Albany-Schenectady-Troy, NY), BEA006 (Syracuse, NY-PA), BEA007 (Rochester, NY-PA), BEA020 (Norfolk-Virginia Beach-Newport News, VA-NC), BEA022 (Fayetteville, NC), BEA025 (Wilmington, NC-SC), BEA026 (Charlestown-North Charleston, SC), BEA042 (Asheville, NC), BEA046 (Hickory-Morganton, NC-TN), BEA049 (Cincinnati-Hamilton, OH-KY-IN), BEA050 (Dayton-Springfield, OH), BEA051 (Columbus, OH), BEA059 (Green Bay, WI-MI), BEA060 (Appleton-Oshkosh-Neenah, WI), BEA067 (Indianapolis, IN-IL), BEA070 (Louisville, KY-IN), BEA074 (Huntsville, AL-TN), BEA087 (Beaumont-Port Arthur, TX), BEA096 (St. Louis, MO-IL), BEA097 (Springfield, IL-MO), BEA099 (Kansas City, MO-KS), BEA104 (Madison, WI-IA-IL), BEA105 (La Crosse, WI-MN), BEA106 (Rochester, MN-IA-WI), BEA107 (Minneapolis-St. Paul, MN-WI-IA), BEA108 (Wausau, WI), BEA109 (Duluth-Superior, MN-WI), BEA125 (Oklahoma City, OK), BEA132 (Corpus Christi, TX), BEA133 (McAllen-Edinburg-Mission, TX), BEA135 (Odessa-Midland, TX), and BEA157 (El Paso, TX-NM).

3 47 C.F.R. § 1.2109(a).

4 Id.; see also id. at § 1.2104.

following day, November 19, 2002. PCS Partners argues that its obligations as the winning bidder for the Licenses should be voided, that it should not have been required to pay the balance of its winning bids, and that it should be refunded the total amount of its payments for the Licenses.⁵ On July 25, 2003, subsequent to the filing of the Waiver Request, the Commission granted the Licenses. PCS Partners remains the current licensee. For the reasons set forth below, we find all of PCS Partners' arguments to be without merit.

II. BACKGROUND

3. On February 23, 2001, the Commission announced that beginning on June 6, 2001, it would auction 16 VHF public coast licenses and 241 MLMS licenses in Auction No. 39.⁶ PCS Partners timely filed an FCC Form 175 ("short-form application") to participate in Auction No. 39, certifying its eligibility for bidding credits as a very small business. PCS Partners listed its annual gross revenues for calendar years 1997, 1998, and 1999 in its short-form application. The Commission announced on May 11, 2001, that the short-form application of PCS Partners had been accepted for filing.⁷ On May 25, 2001, following the upfront payment deadline, the Commission identified PCS Partners as qualified to participate in Auction No. 39 as a very small business.⁸ Telesaurus Holdings GB, LLC ("Telesaurus"), also a participant in Auction No. 39, then filed a June 4, 2001, petition seeking either reconsideration of PCS Partners' status as a qualified bidder or a stay of the auction.⁹

4. The Telesaurus Petition claimed that the short-form application of PCS Partners should be rejected on the grounds that it used the annual gross revenues for calendar years 1997, 1998, and 1999, rather than calendar years 1998, 1999, and 2000. In the alternative, the Telesaurus Petition requested that PCS Partners not receive the bidding credit available to very small businesses. It further asked that the Commission stay Auction No. 39 until relief could be granted.¹⁰

5. Bidding in Auction No. 39 began on June 6, 2001, and concluded on June 13, 2001.¹¹ PCS Partners submitted winning bids on 32 licenses, with total gross bids of \$813,600

⁵ Voiding in full the obligations of PCS Partners as the winning bidder for the Licenses would entail return of the Licenses to the Commission.

⁶ "Auction of Licenses for the VHF Public Coast and Location and Monitoring Services Spectrum Scheduled for June 6, 2001," *Public Notice*, 16 FCC Rcd 4575 (2001).

⁷ "Auction of Licenses for VHF Public Coast and Location and Monitoring Services Spectrum Auction: Status of FCC Form 175 Applications to Participate in the Auction, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues," *Public Notice*, 16 FCC Rcd 9529 (2001).

⁸ "Auction of Licenses for VHF Public Coast and Location and Monitoring Service Spectrum Auction, 7 Qualified Bidders," *Public Notice*, 16 FCC Rcd 11566 (2001).

⁹ Petition for Reconsideration and Request for Stay of Telesaurus Holdings GB, LLC, filed on June 4, 2001 (the "Telesaurus Petition"). In response PCS Partners filed the Opposition to Petition for Reconsideration and Request for Stay of PCS Partners, L.P. on June 12, 2001. Telesaurus then filed the Reply to Opposition of Telesaurus on June 19, 2001.

¹⁰ Telesaurus Petition at 2-7, 19, and 20-22.

¹¹ "VHF Public Coast and Location and Monitoring Service Spectrum Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 12509 (2001) ("*Auction No. 39 Closing Public Notice*").

and total net bids of \$522,840. Telesaurus was the winning bidder on 79 licenses.¹² The FCC Form 601 (“long-form application”) of PCS Partners was accepted on August 8, 2001, on which date the period for filing petitions to deny, provided for under Section 1.2108 of the Commission’s rules, began.¹³ Telesaurus subsequently filed a petition to deny the long-form application of PCS Partners.¹⁴ The Telesaurus Petition to Deny asserted that PCS Partners was a speculative investor and had applied for MLMS licenses only for mobile radio services and not for the radiolocation service that is required of MLMS. The Telesaurus Petition to Deny claimed that PCS Partners had violated the Commission’s gross revenue disclosure rules by not including revenue information for the year 2000, as well as for its controlling interest holder and several affiliates. It requested that the Wireless Telecommunications Bureau (the “Bureau”) either deny the long-form application of PCS Partners or refuse to allocate any bidding credits to PCS Partners and audit its reported gross revenues.¹⁵

6. On October 11, 2002, the Bureau denied the Telesaurus Petition. The Bureau found that PCS Partners had met the threshold requirements to participate in Auction No. 39.¹⁶ It deferred consideration of whether PCS Partners had properly disclosed its annual gross revenues until review of the Petition to Deny filed against PCS Partners’ long-form application.¹⁷ On October 29, 2002, the Bureau rejected the Telesaurus Petition to Deny, finding that an audit of the reported gross revenues of PCS Partners would be unnecessary. The Bureau also determined that there were no grounds on which to deny either the long-form application of PCS Partners or its bidding credit request.¹⁸

7. The Bureau announced on November 1, 2002, that it was prepared to grant PCS Partners’ application for the Licenses upon full and timely receipt of the balance of the winning bids.¹⁹ The Bureau required that payment be received by November 18, 2002, and allowed a late payment to be made by December 3, 2002, provided that it was accompanied by a late fee of five percent.²⁰ On November 12, 2002, Telesaurus filed an Application for Review of the October 11,

¹² *Id.* at Attachment A.

¹³ “VHF Public Coast and Location and Monitoring Service Spectrum Auction: Applications Accepted for Filing; Auction Event No. 39; Pleading Cycle Established,” *Public Notice*, 16 FCC Rcd 15135 (2001).

¹⁴ Petition to Deny the Form 601 Application of PCS Partners, L.P. for New Licenses for LMS Spectrum, filed by Telesaurus Holdings GB, LLC, dated August 20, 2001 (“Telesaurus Petition to Deny”). In response PCS Partners filed the Opposition to Petition to Deny the FCC Form 601 Applications of PCS Partners, L.P. for New Licenses for LMS Spectrum, dated August 27, 2001.

¹⁵ Telesaurus Petition to Deny at 1-2.

¹⁶ Auction of Licenses for VHF Public Coast and Location and Monitoring Service Spectrum, *Order*, 17 FCC Rcd 19746 (2002) (“*October 11, 2002 Order*”).

¹⁷ *Id.* The Bureau further found that there was no basis for Telesaurus’s request to stay the auction.

¹⁸ PCS Partners, L.P., *Order*, 17 FCC Rcd 21419 (2002) (“*October 29, 2002 Order*”).

¹⁹ “Wireless Telecommunications Bureau Announces It Is Prepared to Grant Location and Monitoring Service Licenses Upon Full and Timely Payment,” *Public Notice*, 17 FCC Rcd 21683 (2002).

²⁰ *Id.*

2002 Order.²¹ PCS Partners paid its outstanding balance for the Licenses on November 18, 2002, and filed its Waiver Request on November 19, 2002.²² The Waiver Request asks that the Bureau waive Section 1.2109(a) of the Commission's rules by granting PCS Partners "a refund of the entirety of its deposit and balance of winning bids in Auction No. 39 and relief from all of its obligations associated with its winning bids in Auction No. 39."²³

8. Subsequent to the filing of the Waiver Request, the Commission granted the Licenses to PCS Partners on July 25, 2003. Telesaurus filed a Request for Approval to Withdraw with prejudice the Application for Review and Petition for Reconsideration on December 30, 2003. On January 13, 2004, the Bureau approved this Request for Approval to Withdraw and dismissed with prejudice the Application for Review and Petition for Reconsideration.²⁴ The Licenses are currently on active status, and PCS Partners remains the licensee.

III. DISCUSSION

9. PCS Partners seeks relief from its obligation to pay for the Licenses it won in Auction No. 39, without having to make the default payment required by Section 1.2109(a) of the Commission's rules. To obtain a waiver of the Commission's rules, an applicant must show either that (i) the underlying purpose of the applicable rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) the unique factual circumstances of the particular case render application of the rule inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative.²⁵

10. In support of its request for a waiver, PCS Partners makes four main arguments. First, it claims that a decline in the value of the Licenses during the pendency of the pleadings filed by Telesaurus justifies a waiver.²⁶ It cites, second, the relief granted by the Commission to

²¹ Application for Review of Telesaurus Holdings GB, LLC, dated November 12, 2002 (the "Application for Review"). In response PCS Partners filed an Opposition to the Application for Review dated November 27, 2002. Telesaurus then filed a Reply to the Opposition to the Application for Review on December 11, 2002. On November 29, 2002, Telesaurus had filed a Petition for Reconsideration of the October 29, 2002 Order (the "Petition for Reconsideration"). PCS Partners filed an Opposition to the Petition for Reconsideration on December 12, 2002, and Telesaurus filed a Reply to the Opposition to the Petition for Reconsideration on December 24, 2002. Telesaurus filed a Request for Leave to Supplement and a Supplement to the Reply to the Opposition to the Petition for Reconsideration on January 8, 2003. PCS Partners filed an Opposition to the Request for Leave and Supplement on January 21, 2003.

²² The Commission's rules allow it to demand final payment for the Licenses notwithstanding that Telesaurus's Application for Review and Petition for Reconsideration were pending. *See, e.g.*, Delta Radio, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 16889 ("Delta Radio").

²³ Waiver Request at 1.

²⁴ In addition to the Application for Review and the Petition for Reconsideration, the Bureau dismissed all related filings (the filings of Telesaurus are collectively identified as the "Telesaurus Pleadings"). "Wireless Telecommunications Bureau Mobility Division Approves Withdrawal of Application for Review and Petition for Reconsideration," *Public Notice*, 19 FCC Rcd 390 (2004).

²⁵ 47 C.F.R. § 1.925.

²⁶ Waiver Request at 3.

certain winning bidders in Auction No. 35 as applicable precedent for the Waiver Request.²⁷ The third argument of PCS Partners is that the delay in the award of the Licenses has voided its payment obligations for them.²⁸ Finally, PCS Partners asserts that the Telesaurus Pleadings are strike pleadings that abused the Commission's processes, therefore warranting the grant of the Waiver Request.²⁹ For the reasons discussed below, we find that PCS Partners has not made a sufficient showing to meet the standard for a waiver.

11. Considering the first prong of the waiver standard, we find that PCS Partners has failed to establish that the underlying purpose of the Commission's rules would not be served by enforcement of PCS Partners' payment obligations in this instance. The Commission's competitive bidding rules are designed to maintain a fair and efficient license assignment process that promotes a number of statutory purposes, including the rapid deployment of new technologies and services to the public and the efficient and intensive use of spectrum.³⁰ The payment requirements and default provisions of Section 1.2109 function, *inter alia*, to deter insincere bidding by entities that are not prepared to use the spectrum efficiently and effectively. As the Commission has also explained, the default payment rules deter winning bidders from waiting until after the close of an auction to decide whether to accept the assignment of the licenses they have won.³¹ If auction participants were allowed to decide after the close of an auction that they did not wish to pay their winning bids and accept the assignment of the licenses they had won, the Commission's ability to assign licenses efficiently by auction would be severely undermined. Moreover, if the Commission were to allow such post-auction decisions without imposing any consequences, its auctions would no longer be fair to all participants, including those who win licenses and those who do not. PCS Partners has not demonstrated that the underlying purpose of Section 1.2109(a) would be frustrated by its application in this instance. Indeed, we find that the grant of a waiver of the rule in this instance would undermine the Commission's ability to conduct fair and efficient auctions for the benefit of the public, contrary to the Commission's statutory obligation.

12. PCS Partners argues that it should be relieved of its payment obligations for the Licenses because of the delay between the conclusion of Auction No. 39 and the grant of the Licenses.³² As noted previously, the Licenses were granted to PCS Partners in July of 2003. PCS Partners maintains that it had an expectation that the Licenses would be granted more quickly, but

²⁷ *Id.* at 4. As discussed more fully below, on November 14, 2002, based on the specific circumstances related to Auction No. 35, the Commission allowed certain winning bidders in that auction to request dismissal of their long-form applications and refund of their associated down payments.

²⁸ Waiver Request at 8.

²⁹ *Id.* at 10.

³⁰ 47 U.S.C. §§ 309 (j)(3)(A) & (D). *See also* H.R. Rep. No. 103-111, at 253 (1993), reprinted in 1993 U.S.C.A.N. 378, 580 (finding that "a carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves.").

³¹ *See* Winstar Broadcasting Corp., *Memorandum Opinion and Order*, 17 FCC Rcd 6126, 6132 ¶ 15 (2002) ("*Winstar*").

³² Waiver Request at 9.

that the Commission's consideration of the Telesaurus Pleadings prevented this from occurring.³³ PCS Partners claims that the resolution of the Telesaurus Pleadings required only the "simple application of established Commission rule and precedent and no factual discovery."³⁴ It contends that a licensing delay of more than fifteen months, due to the consideration of pleadings like those of Telesaurus, should void its obligations as a winning bidder to purchase the Licenses. However, PCS Partners offers no precedent that supports this position.³⁵ The relationship between the Commission and winning bidders of spectrum licenses is governed by the Communications Act, the Commission's competitive bidding regulations, and Public Notices setting forth specific conditions on particular auctions. Participants in Auction No. 39 were informed of the obligation to fully familiarize themselves with the Commission's rules,³⁶ including the licensing process rules, which provide the opportunity for interested persons to file petitions to deny.³⁷ Thus, in deciding to participate in Auction No. 39, PCS Partners knew or should have known about the possibility of delay resulting from the filing of petitions to deny. As noted above, one of the principal purposes of our payment rules is to deter winning bidders, such as PCS Partners, from waiting until the time of the license grant to decide whether to accept a license.³⁸ Voiding the obligations of PCS Partners to pay its winning bids for the Licenses would encourage bidders to engage in precisely such a strategy in future auctions.

13. With respect to the second prong of the waiver standard, we are not persuaded that PCS Partners has presented any unique facts or circumstances that merit waiving its obligation to pay for the licenses on which it was the winning bidder in Auction No. 39. PCS Partners' cited business problems do not amount to unique circumstances. PCS Partners contends that the Licenses declined in value during the pendency of the Telesaurus Pleadings, in part because of a generalized "gradual worsening of conditions in the telecommunications sector."³⁹ It further asserts that competitive substitutes for MLMS services were deployed during the

³³ Telesaurus filed its Petition to Deny on August 20, 2001. We note that both Telesaurus and PCS Partners continued to submit filings on the issues raised in the Petition to Deny until January 21, 2003, when PCS Partners filed its Opposition to Telesaurus's Request for Leave and Supplement. *See supra* notes 14 and 21.

³⁴ Waiver Request at 10. As subsequently discussed, PCS Partners maintains that the Telesaurus Pleadings are "strike pleadings" that abused the Commission's processes. However, it fails to provide sufficient evidence to meet the stringent threshold applied to strike pleading allegations. *See infra* ¶¶ 19-21.

³⁵ PCS Partners cites one Commission decision. This decision in fact undermines the arguments of PCS Partners in its conclusion that a winning bidder has "the binding obligation to pay for its licenses." Waiver Request at 9; *see also* BDPCS, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 17,590, 17,600 ¶ 16 (2000), *petition for review denied*, *BDPCS, Inc. v. FCC*, 351 F.3d 1177 (D.C. Cir. 2003). PCS Partners also cites certain legal memoranda filed in litigation concerning the NextWave/Urban Comm Spectrum. Such sources have no precedential value. Waiver Request at 9.

³⁶ "VHF Public Coast and Location and Monitoring Service Spectrum Auction Scheduled for June 6, 2001; Notice and Filing Requirements for 16 Licenses in the VHF Public Coast and 241 Licenses in the Location and Monitoring Service Auction; Minimum Opening Bids, Upfront Payments and Other Procedural Issues," *Public Notice*, 16 FCC Rcd 6986, 6991-92 (2001) ("*Auction No. 39 Procedures Public Notice*").

³⁷ 47 C.F.R. § 1.939; *see also id.* § 1.2108

³⁸ *Winstar*, 17 FCC Rcd at 6132 ¶ 15.

³⁹ Waiver Request at 3.

pendency of the Telesaurus Pleadings. PCS Partners also claims that it was prevented during this period of time from investing in the development of the Licenses due to the uncertainties associated with the outcome of the Telesaurus Pleadings.⁴⁰ It states that the combination of these factors has “substantially impaired” the value of the Licenses.

14. Each Commission licensee faces such risks as the decline in the market value of its business assets. All business entities, not merely those involved in the telecommunications industry, must accept the potential for unwanted legal disputes and downturns in the marketplace. The Commission has repeatedly determined that ordinary business risks, such as difficulties in obtaining financing or unfavorable market conditions, do not constitute unique factual circumstances that would justify a waiver.⁴¹ The Commission also warned prospective Auction No. 39 participants that an “FCC auction does not constitute an endorsement by the FCC of any particular services . . . nor does an FCC license constitute a guarantee of business success.”⁴² PCS Partners cites a general decline in the telecommunications sector and the deployment of substitutes for MLMS services as factors in the asserted loss in value of the Licenses. However, PCS Partners has not shown that it would have faced a different business environment absent the Commission’s consideration of Telesaurus’s Petition to Deny and subsequent pleadings.

15. We also decline to grant a waiver of the auction payment rules based on PCS Partners’ assertion that it is similarly situated to certain winning bidders in Auction No. 35.⁴³ In Auction No. 35, the Commission made available, *inter alia*, many Broadband PCS licenses for spectrum in the C and F blocks that had been previously licensed to NextWave Personal Communications Inc., NextWave Power Partners Inc. (collectively “NextWave”) and Urban Comm-North Carolina, Inc. (“Urban Comm”). NextWave’s and Urban Comm’s licenses had cancelled for non-payment after the parties had filed for bankruptcy in 1998 and were the subject of ongoing litigation when they were made available in Auction No. 35. Of the 35 winning bidders in Auction No. 35, 22 won licenses for spectrum that was associated with NextWave’s and Urban Comm’s licenses, with net bids accounting for \$16.3 billion of the \$16.9 billion in total net winning bids for all licenses in the auction. After the close of Auction No. 35, the United States Court of Appeals for the District of Columbia Circuit, in *NextWave v. FCC*, ruled that the Bankruptcy Code prevented the cancellation of the NextWave/Urban Comm licenses.⁴⁴

⁴⁰ *Id.* at 4.

⁴¹ Letter to John Jung from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 14,427, 14,431-32 (2003); *see also* Letter to Mr. Kurt Schueler, President, New England Mobile Communications, Inc., from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 16 FCC Rcd 19,355, 19,359 (2001); Letter to Messers. Stephen Diaz Gavin and Paul C. Besozzi, Counsel for U.S. Telemetry Corporation, from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 17 FCC Rcd 6442, 6448 (2002).

⁴² *Auction No. 39 Procedures Public Notice*, 16 FCC Rcd at 6993.

⁴³ Waiver Request at 4.

⁴⁴ *NextWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001), *cert. granted*, 535 U.S. 904 (2002) (“*NextWave v. FCC*”). *But see NextWave Personal Communications Inc. and NextWave Power Partners Inc. v. FCC*, Nos. 00-1402 and 00-1403 (D.C. Cir. Nov. 13, 2000) (denial of NextWave’s motion for stay of Auction No. 35). *See also FCC v. NextWave Personal Communications Inc.*, 537 U.S. 293 (2003), *aff’g* 254 F.3d 130 (D.C. Cir. 2001) (The U.S. Supreme Court affirmed the D.C. Circuit’s decision that because NextWave was under protection of Chapter 11 of the United States Bankruptcy Code its licenses did not automatically cancel for nonpayment while it was in bankruptcy.).

At the request of a number of Auction No. 35 winning bidders, and after seeking comment and compiling an extensive record, the Commission allowed Auction No. 35 bidders that had won licenses for NextWave and/or Urban Comm spectrum to request dismissal of their pending license applications and obtain a refund of associated Auction No. 35 payments.⁴⁵

16. We are not persuaded by PCS Partners' claim that it is similarly situated to the Auction No. 35 winning bidders of licenses for spectrum that had been previously licensed to NextWave and/or Urban Comm. PCS Partners cites purported harm to consumers and worsening capital availability problems as justifying the same type of relief granted in the *Auction No. 35 Order*.⁴⁶ It also compares the delays associated with the Telesaurus Pleadings to the problems posed by the complex litigation involving NextWave.⁴⁷ However, in making these claims, PCS Partners misreads the grounds for the Commission's offer of relief in the *Auction No. 35 Order*. There the Commission based its decision on "the concurrence of a unique situation where capital and spectrum were tied up for more than two years by litigation, and the worsening economic conditions in the wireless industry have had a substantial adverse effect on consumers."⁴⁸ The Commission noted that the circumstances arising out of Auction No. 35 affected a "broad segment of the nation's wireless companies"⁴⁹ as well as other related companies, and that the impact on the telecommunications sector affected "the economy as a whole."⁵⁰

17. In contrast, PCS Partners provides only unsubstantiated assertions of consumer harm based on "expected" LMS services that it might provide.⁵¹ In addition, PCS Partners asserts hypothetical injury based on its lack of capital for what it admits is a "service in its infancy."⁵² Moreover, the petition to deny process to which PCS Partners was subjected directly pertained to its status as an applicant and did not make the licenses unavailable the way that Auction No. 35 licenses were unavailable to the winning bidders based on a court ruling that was entirely beyond their control. Finally, although PCS Partners acknowledges the difference in scale between its circumstances and the circumstances of the 22 Auction No. 35 winning bidders, which accounted for \$16.3 billion in net bids, it fails to recognize, as noted above, that the large scale of the Auction No. 35 circumstances was critical to the Commission's decision to offer relief in the *Auction No. 35 Order*. Accordingly, the *Auction No. 35 Order* does not provide grounds to grant relief to PCS Partners.

18. We also reject the argument that we should relieve PCS Partners of its

⁴⁵ Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35; Requests for Refunds of Down Payments Made In Auction No. 35, *Order and Order on Reconsideration*, 17 FCC Rcd 23354 (2002) ("*Auction No. 35 Order*").

⁴⁶ Waiver Request at 5-6.

⁴⁷ *Id.* at 7.

⁴⁸ *Auction No. 35 Order*, 17 FCC Rcd at 23360-61 ¶ 10.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Waiver Request at 5.

⁵² *Id.* at 6.

obligations as a winning bidder based on its assertion that the Telesaurus Pleadings are “strike pleadings” that abused the Commission’s processes. We find that the Telesaurus Pleadings do not meet the standard for strike pleadings. In addition, we conclude that even if we were to find that the Telesaurus Pleadings are strike pleadings, the appropriate remedy would be to impose sanctions on Telesaurus and not to waive PCS Partners’ obligations to pay the full amount of its winning bids.

19. The Commission defines a strike pleading as one “filed in bad faith for the primary purpose of blocking, impeding, or delaying the grant of an application.”⁵³ To support its claim that Telesaurus had an obstructive purpose and that the Telesaurus Pleadings lacked a reasonable basis, PCS Partners cites a statement by Telesaurus describing its business plans, and an alleged statement by Telesaurus that it had been counseled that its effort to exclude PCS Partners from Auction No. 39 would be unsuccessful.⁵⁴ Despite its assertions, the evidence offered by PCS Partners does not in fact include any actual admission of an obstructive purpose to the Telesaurus Pleadings.⁵⁵ The economic motivation to delay a proceeding alone is not enough to establish a prima facie case that pleadings were filed with the sole purpose of doing so.⁵⁶ Even where an entity “may have gained some benefit from normal processing delays,” the Commission has refused to infer a strike motive from the filing of an informal objection.⁵⁷

20. We also disagree with PCS Partners’ argument that our previous decisions that the Telesaurus Petition and the Telesaurus Petition to Deny lacked “substantiated evidence of wrongdoing” and included an “incorrect” interpretation of our rules indicate that these were strike pleadings.⁵⁸ The Commission has found that a petition can fail “to raise a substantial and material question of fact,” but nonetheless not be “so frivolous as to constitute a ‘strike’ pleading.”⁵⁹ The

⁵³ In re Application of High Plains Wireless, L.P., *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 4620, 4623 ¶ 7 (2000) (“*High Plains Wireless*”); see also Application of Hispanic Information and Telecommunications Network, Inc., *Order on Reconsideration*, 19 FCC Rcd 2829, 2833-34 ¶ 11 (2004). The principal factors considered as significant indications that a petition to deny was filed primarily or substantially for the purpose of delay are: (1) statements by the petitioner's principals or officers admitting the obstructive purpose; (2) the withholding of information relevant to the disposition of the requested issues; (3) the absence of any reasonable basis for the adverse allegations in the petition; (4) economic motivation indicating a delaying purpose; and (5) other conduct of the petitioner. William P. Johnson and Hollis P. Johnson, d/b/a Radio Carrollton, *Decision*, 69 FCC 2d 1138, 1145 ¶ 24 (1978), *clarified*, 69 FCC 2d 424 (1978), *recon. denied*, 72 FCC 2d 264 (1979), *aff'd mem. sub nom. Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), *cert. denied*, 450 U.S. 1041 (1981).

⁵⁴ Waiver Request at 11.

⁵⁵ *Id.*

⁵⁶ In re Applications of Utica Telephone Company, *Memorandum Opinion and Order*, 5 FCC Rcd 2791, 2793 ¶ 20 (1990) (“*Utica Telephone Company*”) (finding that a petition contained “frivolous” arguments, but had not been demonstrated to be a strike pleading).

⁵⁷ In re Applications of Lint Co. (Assignor) *et alia*, *Memorandum Opinion and Order*, 15 FCC Rcd 18130, 18136-37 ¶ 12 (2000).

⁵⁸ Waiver Request at 12; see also *October 11, 2002 Order*, 17 FCC Rcd at 19752; *October 29, 2002 Order*, 17 FCC Rcd at 21421.

⁵⁹ In Re Application of American Mobilephone, Inc. and Ram Technologies, Inc., *Order*, 10 FCC Rcd 12,297, 12,299 ¶ 12 (1995). See also *Utica Telephone Company*, 5 FCC Rcd at 2793 ¶ 20.

claim that “there was an absence of any reasonable basis” for the allegations of a filing is insufficient to raise the issue of a strike petition.⁶⁰ We therefore find no basis to conclude that the Telesaurus Pleadings are strike pleadings.⁶¹

21. Moreover, even if we were to decide that the Telesaurus Pleadings are strike pleadings, we think the appropriate remedy for such an abuse of process would be to impose sanctions on Telesaurus, rather than grant PCS Partners’ waiver request. PCS Partners cites no authority to support its assertion that such pleadings warrant granting it relief from its obligation to pay its winning bids. Such a remedy would not serve as a deterrent to future abuses of process and, as explained above, would undermine the Commission’s ability to conduct fair and efficient auctions. Thus, the Telesaurus Pleadings provide us with no basis upon which to grant PCS Partners’ Waiver Request. Nonetheless, we caution all parties with business before the Commission to avoid filing petitions and other pleadings which contain arguments having little or no factual or legal basis.⁶²

IV. CONCLUSION

22. PCS Partners has presented no reasons justifying a waiver of its payment obligations as the winning bidder for the Licenses. We reject its request for a waiver of the Commission’s payment rules and the refund of its payments for the Licenses. In denying this request, we find that the application of the rules in this case will not frustrate their underlying purpose, is not contrary to the public interest, and is not inequitable, unduly burdensome, or otherwise contrary to the public interest.

V. ORDERING CLAUSE

23. Accordingly, IT IS ORDERED that, pursuant to authority granted in Section 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 309(j), the Petition for Waiver and Request for Refund of PCS Partners, L.P., is DENIED. This action is taken under authority delegated pursuant to Section 0.331 of the Commission’s rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

⁶⁰ Letter to Mr. Steven Wendell in re: Long Island Multimedia, LLC from Peter H. Doyle, Chief, Audio Division, Media Bureau, 21 FCC Rcd 8665, 8667-68 ¶ 5 (2006).

⁶¹ PCS Partners briefly suggests that the Telesaurus Pleadings should justify its requested relief, even if they do not constitute strike pleadings. As grounds for this argument, which is contained in a single sentence, PCS Partners claims that the Telesaurus Pleadings caused an unreasonable delay, relied on misapplied law and precedent, and did not require factual inquiry beyond the Commission’s public files. However, it provides no legal authority for its position. Accordingly, we decline to provide such unprecedented relief. Waiver Request at 13.

⁶² See, e.g., Applications of Mobex Network Services, *Order on Reconsideration*, DA 07-148, 2007 WL 162500 ¶ 16 (rel. January 23, 2007).