

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

In re Application of)	
)	
CLUB 42 CM LIMITED PARTNERSHIP)	Report No. AUC 78
)	ULS File No. 0003573589
For New Licenses in the Broadband Personal)	
Communications Service)	

ORDER

Adopted: June 10, 2013

Released: June 10, 2013

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address a petition filed on October 20, 2008 by Alpine PCS, Inc. (“Alpine”)¹ to deny the “long form” application of Club 42 CM Limited Partnership (“Club 42”)² for six of the Broadband Personal Communications Service (“PCS”) licenses included in the Application – the licenses for Channel Blocks C3, C4, and C5 in Basic Trading Areas (“BTAs”) 405 – San Luis Obispo, CA, and 406 – Santa Barbara-Santa Maria, CA (“Licenses”). We also address the Informal Objection filed by Stephen Kaffee³ (“Kaffee”) and Kaffee’s related Motion for Leave to Dismiss Informal Objection.⁴ For the reasons set forth below, we dismiss the Alpine Petition and grant the Kaffee Withdrawal Motion.

2. *Background.* Alpine won licenses in Auction 5 for the same PCS spectrum in BTAs 405 and 406 (“Alpine Licenses”)⁵ as Club 42 won in Auction 78.⁶ Alpine participated in the Commission’s

¹ Alpine PCS, Inc. Petition to Deny (filed Oct. 20, 2008) (“Alpine Petition”). Club 42 CM Limited Partnership filed an opposition to the Alpine Petition. *See* Club 42 CM Limited Partnership Opposition to Petition to Deny (filed Oct. 27, 2008). Alpine filed a reply. *See* Alpine PCS, Inc. Reply (filed Nov. 3, 2008).

² Application of Club 42 CM Limited Partnership for New Licenses in the Broadband Personal Communications Service, ULS File No. 0003573589 (filed Sept. 9, 2008, amended Sept. 22, 2008, Oct. 29, 2008, Mar. 20, 2012, Dec. 28, 2012, and Jan. 30, 2012) (“Application”). The Application seeks grant of authority for a total of eight Personal Communications Service (“PCS”) licenses. Club 42 filed a separate application for five Advanced Wireless Services (“AWS-1”) licenses it won in Auction 78. Application of Club 42 CM Limited Partnership for New Licenses in the Advanced Wireless Services, ULS File No. 0003573597 (filed Sept. 9, 2008, amended Sept. 22, 2008, Oct. 29, 2008, Mar. 20, 2012, Dec. 28, 2012, and Jan. 30, 2013). No petitions to deny or other objections were filed against that application.

³ Stephen Kaffee Informal Objection (filed Oct. 20, 2008) (“Kaffee Informal Objection”). Club 42 filed an opposition to the Kaffee Informal Objection. *See* Club 42 CM Limited Partnership Opposition to Informal Objection (filed Oct. 27, 2008) (“Club 42 Informal Objection Opposition”). Kaffee filed a reply. *See* Stephen Kaffee Reply to Opposition to Informal Objection (filed Nov. 3, 2008) (“Kaffee Reply”).

⁴ Stephen Kaffee Motion for Leave to Dismiss Informal Objection (filed July 6, 2010) (“Kaffee Withdrawal Motion”). Club 42 filed declarations in connection with the Kaffee Withdrawal Motion. *See* Club 42 CM Limited Partnership Declarations Supporting Motion for Leave to Dismiss Informal Objection (filed July 8, 2010) (“Club 42 Declarations”).

⁵ Entrepreneurs’ C Block Auction Closes, *Public Notice*, DA 96-716 (rel. May 8, 1996). Auction 5 closed on May 6, 1996. Alpine had net winning bids of \$9,891,000 (BTA 405) and \$19,200,750 (BTA 406), reflecting the 25 percent bidding credit for which Alpine, as a small business, qualified.

installment payment plan then available to qualified designated entities, and the grant of the Alpine Licenses was conditioned on full and timely payment of all installment obligations.⁷ Alpine began making its installment payments under the Commission's original installment payment rules, but failed to make the interest-only installment payments for the Alpine Licenses due on January 31, 2002, along with the required late fees, before the expiration of the two-quarter grace period permitted under the rules.⁸ On July 24 and 29, 2002, rather than make the required payments, Alpine filed a request for debt restructuring with regard to its installment payment obligations,⁹ which was returned by the Commission's Office of the General Counsel without action on January 30, 2004.¹⁰ On December 18, 2007, Alpine filed a second restructuring request,¹¹ which was dismissed without prejudice by the Commission's Office of Managing Director on April 29, 2008.¹²

3. Pursuant to the Commission's rules, the Alpine Licenses automatically canceled on August 1, 2002.¹³ Alpine accordingly became subject to debt collection procedures.¹⁴ On July 31, 2002, one day before the effective date of the automatic cancellation, Alpine filed a request for waiver of the Commission's automatic cancellation rules.¹⁵ The Commission's Wireless Telecommunications Bureau

(...continued from previous page)

⁶ The licenses Alpine won in Auction 5 were for 30 megahertz of PCS C Block spectrum in each of BTAs 405 and 406. When that same spectrum was offered in Auction 78, it was divided into 10 megahertz licenses in each of the two BTAs. See Alpine PCS, Inc. Request for Stay of Auction 78 for the Broadband PCS C Block Licenses in the San Luis Obispo, CA and the Santa Barbara-Santa Maria, CA Basic Trading Areas, *Order*, 23 FCC Rcd 10485, 10486 ¶ 5 (WTB ASAD 2008) ("*Alpine Denial of Stay Order*"); Auction of AWS-1 and Broadband PCS Licenses Scheduled for July 29, 2008; Comment Sought on Competitive Bidding Procedures For Auction 78, *Public Notice*, AU Docket No. 08-46, 23 FCC Rcd 5484, 5507 (2008) ("*Auction 78 Comment Public Notice*").

⁷ The then effective version of section 1.2110(e)(4) of the Commission's rules expressly provided that "[a] license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan." 47 C.F.R. § 1.2100(e)(4) (1996). Grant of the Alpine Licenses was announced in FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block BTA Licenses, *Public Notice*, 11 FCC Rcd 11316 (1996).

⁸ Alpine PCS, Inc. Request for Waiver of Automatic Cancellation Rule for Auction No. 5 C Block Licensees for Santa Barbara (Mkt. No. 406-C) and San Luis Obispo (Mkt. No. 405-C), *Order*, 22 FCC Rcd 1492, 1495 ¶ 8 (WTB 2007) ("*Alpine Automatic Cancellation Order*"). Alpine was scheduled to make interest-only payments for the first six years of the ten-year term of the Alpine Licenses. *Id.* at 1495 ¶ 7.

⁹ Letter from Robert F. Broz, President, Alpine PCS, Inc., to Regina Dorsey, Office of Managing Director, dated July 24, 2002; Letter from Robert F. Broz, President, Alpine PCS, Inc., to Regina Dorsey, Office of Managing Director, dated July 29, 2002.

¹⁰ Letter from Paul K. Cascio, Office of the General Counsel, to Robert F. Broz, President, Alpine PCS, Inc., dated Jan. 30, 2004.

¹¹ Letter from Frederick M. Joyce, Christine McLaughlin, Counsel for Alpine PCS, Inc., to Anthony Dale, Office of Managing Director, dated December 18, 2007.

¹² Letter from Regina Dorsey, Deputy Chief Financial Officer, to Frederick M. Joyce, Counsel for Alpine, PCS, Inc., dated April 29, 2008.

¹³ *Alpine Automatic Cancellation Order*, 22 FCC Rcd at 1495 ¶ 8.

¹⁴ *Id.*

¹⁵ In Re the Matter of Alpine PCS, Inc., For a Waiver of Section 1.2110(g)(iv) of the Rules Relating to the Payment Due on July 31, 2002 Regarding Its Santa Barbara (Mkt. No. 406-C) and San Luis Obispo (Mkt. No. 405-C) C Block Licenses, Request for Waiver, filed July 31, 2002.

denied Alpine's waiver request on January 29, 2007,¹⁶ which was affirmed at the Commission level and by the United States Court of Appeals for the District of Columbia Circuit.¹⁷

4. On April 4, 2008, the Wireless Telecommunications Bureau released a public notice announcing Auction 78.¹⁸ The inventory of licenses to be auctioned included six 10 megahertz C block licenses for the spectrum on which Alpine previously had been licensed to operate.¹⁹ On April 18, 2008, Alpine filed a request to stay the auction or revise the *Auction 78 Comment Public Notice* to remove the six C block licenses for BTAs 405 and 406 from the auction, which was dismissed by the Commission's Auction and Spectrum Access Division of the Wireless Telecommunications Bureau on July 7, 2008.²⁰ The spectrum and service areas covered by the licenses formerly held by Alpine remained in the auction, which commenced on August 13, 2008, and was completed on August 20, 2008.²¹ The long-form application of Club 42 for, among others, the broadband PCS licenses in BTAs 405 and 406, Channel Blocks C3, C4, and C5, was found, upon initial review, to be acceptable for filing.²²

5. On August 12, 2008, Alpine filed a petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Columbia.²³ Alpine also filed a motion with the Bankruptcy Court, seeking a declaration that an automatic stay under 11 U.S.C. § 362(a)²⁴ bars the Commission from concluding the auction of the licenses in question, which was denied.²⁵ The United States Court of Appeals for the District of Columbia Circuit affirmed the decision on December 21, 2010.²⁶

6. On October 20, 2008, Alpine filed a petition to deny the Application, arguing that the application should be held in abeyance during the pendency (at that time) of Alpine's appeals before the Commission (i.e., the automatic cancellation waiver request) and the Bankruptcy Court (i.e., the motion to stay the auction).²⁷ Also on October 20, 2008, Kaffee filed his informal objection to the Application, alleging that Club 42 has made misrepresentation about its ownership and its qualifications for bidding credits and to participate in bidding on "closed" licenses available only to entities meeting certain size standards.²⁸ Kaffee concluded that grant of the Application would not serve the public interest.²⁹

¹⁶ See generally *Alpine Automatic Cancellation Order*.

¹⁷ *Alpine PCS, Inc., et al. Requests for Waiver of the Installment Payment Rules and Reinstatement of Licenses, Memorandum Opinion and Order*, 25 FCC Rcd 469, 478 ¶ 13 (2010), *aff'd* *Alpine PCS, Inc. v. FCC*, 404 Fed. App'x 508 (D.C. Cir. 2010), *reh. denied*, No. 10-1020 (D.C. Cir. Feb. 10, 2011).

¹⁸ See generally *Auction 78 Comment Public Notice*.

¹⁹ *Id.*, 23 FCC Rcd at 5507.

²⁰ See generally *Alpine Denial of Stay Order*.

²¹ *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78, Public Notice*, 23 FCC Rcd 12749 (WTB 2008).

²² *Wireless Telecommunications Bureau Announces That Applications for Broadband PCS Licenses Are Accepted for Filing, Public Notice*, 23 FCC Rcd 14773 (rel. Oct. 10, 2008).

²³ Case No. 08-00543.

²⁴ 11 U.S.C. § 362(a).

²⁵ *In re Alpine PCS, Inc.*, 2008 WL 5076983 (Bankr. D. Dist. Col. Oct 10, 2008) (No. 08-00543).

²⁶ *In re Alpine PCS, Inc.*, 404 Fed. App'x 504 (D. C. Cir. Dec 21, 2010), *reh. denied*, No. 09-5293 (D.C. Cir. Feb. 10, 2011).

²⁷ See *Alpine Petition* at 6-7.

²⁸ See *Kaffee Informal Objection* at 3-11.

Following the conclusion of the pleading cycle with respect to the Application, on July 6, 2010, Kaffee filed a motion to withdraw his Informal Objection.³⁰

7. *Discussion.* We dismiss the Alpine Petition for lack of standing. Section 1.939(f) of the Commission's Rules requires that a petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.³¹ To establish standing as a party in interest, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.³² In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action,³³ and that any injury would be redressable by the relief requested.³⁴ When evaluating standing, the Commission applies the same test that courts employ in determining whether a person has standing under Article III to appeal a court order: the person must show "(a) a personal injury-in-fact that is (2) 'fairly traceable' to the defendant's conduct and (3) redressable by the relief requested."³⁵

8. To show standing, Alpine asserts that it continues to have interests in the licenses it won in Auction 5 for the same spectrum Club 42 applied for and won in Auction 78, because Alpine's (1) petition for reconsideration of the Commission's denial of Alpine's automatic cancellation rules waiver request, and (2) appeal of the Bankruptcy Court's denial of Alpine's motion to enforce the automatic stay against the Commission were still pending at the commencement of this proceeding.³⁶ As stated above, however, both of these proceedings have now been concluded, and the original decisions denying the waiver request and motion to stay have been affirmed. The fact remains that, upon the automatic cancellation of Alpine's licenses in 2002, i.e. six years prior to the commencement of Auction 78, the licenses ceased to exist, along with Alpine's interest in the spectrum for which the licenses were issued.³⁷

9. Cancellation of Alpine's licenses has no connection with the conduct of Club 42, and the Commission's denial of Club 42's "long-form" application in Auction 78 could not result in the

(...continued from previous page)

²⁹ *Id.* at 13.

³⁰ See generally Kaffee Withdrawal Motion.

³¹ 47 C.F.R. § 1.939(f).

³² See, e.g., Petition for Reconsideration of Various Auction 87 Public Notices, *et al.*, 27 FCC Rcd 4374, 4382 ¶ 21 (WTB MD & ASAD 2012 ("Auction 87 Order"); AT&T PCS Wireless PCS, Inc., *Order*, 15 FCC Rcd 4587, 4588 ¶ 3 (WTB CWD 2000) ("AT&T Wireless"), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); Lawrence N. Brandt, *Memorandum Opinion and Order*, 3 FCC Rcd 4082 (1988).

³³ *Auction 87 Order*, 27 FCC Rcd at 4382 ¶ 21; *AT&T Wireless*, 15 FCC Rcd at 4588 ¶ 3, citing *Duke Power v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978).

³⁴ *Auction 87 Order*, 27 FCC Rcd at 4382 ¶ 21; Weblink Wireless, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 24642 ¶ 11 (2002).

³⁵ See *SunCom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386, 1387-88 (D.C. Cir. 1996) (quoting *Branton v. FCC*, 993 F.2d 906, 908 (D.C. Cir. 1993) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)), *cert. denied*, 511 U.S. 1052 (1994)).

³⁶ See Petition at 6-7.

³⁷ See, e.g., *Thacker v. FCC*, 503 F.3d 984, 990 (9th Cir. 2007), *cert. denied* 553 U.S. 1004 (2008) ("[O]nce [FCC] licenses are cancelled for nonpayment, the licenses cease to exist along with any interest in the spectrum for which the license was issued.")

reinstatement of Alpine's licenses or its interests therein. Therefore, Alpine does not have standing to file its petition against the Application, and we will dismiss it.

10. As noted above, Kaffee filed his Withdrawal Motion on July 6, 2010. The Withdrawal Motion explains that the Kaffee Informal Objection is being withdrawn pursuant to the terms of a "*Qui Tam* Settlement Agreement," dated June 16, 2010, in the federal False Claims Act case styled *Stephen Kaffee, et al. v. Raveesh K. Kumra, et al.*, Case No 07-0857 (United States District Court for the District of Columbia).³⁸ The Kaffee Withdrawal Motion states that Kaffee is not receiving any payments for the withdrawal of his Informal Objection.³⁹ In addition, in a Declaration accompanying the Kaffee Withdrawal Motion, Kaffee declares, in accordance with the requirements of section 1.935 of the Commission's rules,⁴⁰ that he is not receiving any payment for the withdrawal of the Informal Objection. Also as required by section 1.935, Club 42 submitted declarations supporting Kaffee's request to dismiss his Informal Objection.⁴¹ In particular, Puneet Wadhwa and Raveesh K. Kumra each declare that Kaffee is not receiving any payment from them or any other entity (specifically including Club 42) for dismissing the Informal Objection. Based upon our review of the Kaffee Informal Objection, the Club 42 Informal Objection Opposition, the Kaffee Reply, the Kaffee Withdrawal Request and Kaffee's related declaration under section 1.935, and the Club 42 Declarations also submitted pursuant to section 1.935, we find that withdrawal of the Kaffee Informal Objection will further the public interest, and we will approve the withdrawal.

11. *Conclusion.* For the reasons set forth above, we conclude that Alpine does not have standing in this proceeding. Therefore, we will dismiss Alpine's Petition. Also for the reasons set forth above, we approve the withdrawal of the Kaffee Informal Objection.

12. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the petition to deny filed by Alpine PCS, Inc. on October 20, 2008, IS DISMISSED.

13. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and sections 1.41 and 1.935 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.935 that the informal objection filed by Stephen Kaffee on October 20, 2008, IS DISMISSED.

14. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the staff of the Mobility Division of the Wireless Telecommunications Bureau SHALL PROCESS application ULS File No. 0003573589 consistent with this Order and the Commission's Rules.

³⁸ Kaffee Withdrawal Motion at 1. The Kaffee Withdrawal Motion further states that the settlement agreement was approved by the Department of Justice and the Federal Communications Commission on or about June 25, 2010. *Id.*

³⁹ *Id.* at 3.

⁴⁰ 47 C.F.R. § 1.935.

⁴¹ *See* Club 42 Declarations.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau