



Federal Communications Commission
Washington, D.C. 20554 DA 96-1406

August 29, 1996

Mr. Mickey Sims
President
Poka Lambro PCS, Inc.
11.5 Miles North of Tahoka on US HWY 87
Tahoka, TX 79373

RE: Poka Lambro PCS, Inc. Request for Waiver in Auction No. 11

Dear Mr. Sims:

This is in response to the waiver request filed by Poka Lambro PCS, Inc. ("Poka Lambro") which was attached as Exhibit E to its short-form application to participate in the D, E, and F block broadband Personal Communications Services ("PCS") auction. Poka Lambro requests a waiver of the Commission's Commercial Mobile Radio Service ("CMRS") spectrum cap limitation in Section 20.6 of the Commission's rules to allow it to bid for the Lubbock, Texas, Basic Trading Area ("BTA") in the broadband D, E, and F block auction. For the reasons stated below, we deny Poka Lambro's request.

Poka Lambro, a winning bidder for a broadband PCS C block license in Lubbock, Texas seeks a waiver of the 45 MHz spectrum cap because of its cellular affiliates which provide service to portions of the Lubbock BTA. Poka Lambro has filed a similar waiver request in connection with its long-form application for the C block license. The decision on this waiver request has no affect on Poka Lambro's pending waiver request for the C block license.

A licensee in broadband PCS, cellular or SMR services regulated as CMRS is limited to an attributable interest in no more than 45 MHz of licensed broadband, PCS, cellular, and Specialized Mobile Radio ("SMR") services regulated as CMRS in any geographical area. 47 C.F.R. § 20.6(a). If the geographic area covered by an affiliated cellular service provider overlaps at least 10 percent of the PCS licensed service area, that cellular license is attributable for the purposes of spectrum aggregation. 47 C.F.R. § 20.6(c).

To receive a waiver of a licensing rule for broadband PCS, a waiver request must be made which demonstrates either "that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that a grant of the waiver is otherwise in the public interest;" or "that unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest." 47 U.S.C. § 24.819(a)(i) and (ii).

Poka Lambro asserts that a waiver of the spectrum aggregation limit is appropriate

because the extent of its affiliates' overlapping service area is 16 percent of the BTA, a percentage only slightly larger than the 10 percent threshold for attribution under Section 20.6(c). Further, Poka Lambro claims that because its affiliates' cellular service covers only 16 percent of the population in the Lubbock BTA, and not the major population area, it has no ability to suppress competition. Poka Lambro also argues that permitting it, a small business, and its parent, a rural telephone company, to both operate in the Lubbock BTA will serve the public interest by allowing it to bring advanced telecommunications to rural areas.

Poka Lambro does not specify whether it seeks waiver of the attribution rule of Section 20.6(c) or waiver of the spectrum cap for a geographic area prescribed by Section 20.6(a). Nonetheless, Poka Lambro fails to offer unique facts that would justify a waiver of either rule subsection. Poka Lambro alleges that the overlay between the Lubbock BTA and its affiliates' cellular service area is "minimally" over 10 percent. The situation it describes, however, is specifically contemplated by the rules as one in which divestiture is available. 47 C.F.R. § 20.6(e). The Commission noted when it reconsidered the 45 MHz spectrum cap that raising the 10 percent overlap restriction or the 45 MHz CMRS spectrum cap might lead to anti-competitive practices.¹ Poka Lambro has offered no evidence to the contrary or any evidence supporting its claim that it and its affiliates will not be able to suppress competition for CMRS services in the Lubbock BTA. Thus, a waiver under these circumstances is not justified under Section 24.819.

For the reasons stated above, Poka Lambro's request IS HEREBY DENIED. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.

Sincerely,



Kathleen O'Brien Ham
Chief, Auctions Division
Wireless Telecommunications Bureau

¹ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Radio Service Spectrum Cap, WT Docket No. 96-59, FCC 96-278, *Report and Order*, ¶¶ 86-107 (released June 24, 1996).