



Federal Communications Commission
Washington, D.C. 20554

July 30, 1996

David A LaFuria, Esquire
Pamela Gaary, Esquire
Lukas, McGowan, Nace & Gutierrez
1111 Nineteenth Street, N.W., Suite 1200
Washington, DC 20036

Dear Mr. LaFuria and Ms. Gaary:

This letter is in reference to the "Petition for Leave to Amend" filed by PCS National Wireless, Inc. ("PCS National"). PCS National, a winning bidder for licenses YSM025R and YSM047H in the 900 MHz Specialized Mobile Radio ("SMR") auction, requests that the Wireless Telecommunications Bureau permit PCS National to claim eligibility as a small business with gross revenues of not more than \$3 million.

The Commission's rules provide for two categories of small businesses in the 900 MHz SMR auction -- (1) those with average gross revenues of not more than \$3 million for the three preceding years and (2) those with average gross revenues of not more than \$15 million for the three preceding years.¹ Bidders in the first category are eligible for a larger bidding credit and a more favorable installment payment plan than those in the second category.² PCS National filed its long-form (FCC Form 600) applications as a non-small business applicant. Although it did not include gross revenue calculations in its Form 600 applications, PCS National now requests to amend its applications to claim status of a small business with average gross revenues of not more than \$3 million for the preceding three years.

PCS National claims that the Commission has traditionally permitted supplemental data that confirms and clarifies information on file supporting an applicant's qualifications under *Intercontinental Communications/Cellular, Inc.*³ PCS National maintains that the financial information that it has provided with its Petition for Leave to Amend is supplemental and, hence, should be accepted. Specifically, PCS National claims that the new information confirms and clarifies the information already on file for its sister company, National Telecom PCS ("National Telecom"), which had identical information on file for its broadband PCS C block auction application.

We believe that *Intercontinental* is distinguishable from the case at hand. In *Intercontinental*, the Commission held that amendments providing information that confirmed

¹ 47 C.F.R. § 90.814.

² See 47 C.F.R. §§ 90.810 & 90.812.

³ 4 FCC Rcd 2702 (1989) ("*Intercontinental*").

and clarified a bank's firm intention to make a loan available are acceptable application amendments.⁴ In that instance, the applicant had submitted all the information required by the Commission's rules and was simply submitting additional information as a "further showing" of financing.⁵ In contrast, PCS National did not submit any information indicating its status as a small business, as required by Section 90.815 of the Commission's rules.⁶ Although the gross revenues information provided for National Telecom's application may be identical to that for PCS National, such information may not be considered for the purposes of PCS National's application because PCS National made no reference to such information in either its short-form application (FCC Form 175) or its FCC Form 600. Hence, the information it now provides is not "supplemental" under *Intercontinental* because it does not confirm and clarify existing information concerning the applicant's qualifications as a small business. Moreover, in light of the significant benefits that the two small business categories confer on winning bidders, we do not think that modification of an applicant's small business status is a minor change.

PCS National also cites as authority Section 1.65 of the Commission's rules, which requires applicants to amend their applications whenever information furnished in a pending application is no longer substantially accurate and complete.⁷ Section 1.65 was intended to allow applicants to demonstrate a change of circumstances pertaining to basic qualifications. It was not intended as a means for applicants to improve their applicant status.⁸ Because the amendments sought in the petition do not reflect a change in circumstance but, rather, a correction of an initial omission,⁹ Section 1.65 does not apply in this instance.

⁴ *Intercontinental*, 4 FCC Rcd at 2704.

⁵ *Id.* at 2702, 2705, n.21.

⁶ 47 C.F.R. § 90.815 (requiring that each applicant which qualifies as a small business append a calculation of its gross revenues to both the short-form (FCC Form 175) and long form (FCC Form 600) applications).


⁷ Petition at 3 (citing 47 C.F.R. § 1.65). We note that Section 24.813(b), also cited by Petitioners, is inapplicable because it applies only to broadband PCS.

⁸ Amendment of Part 1 Rules of Practice and Procedure, 3 Rad. Reg. 2d 1622, 1624-25 (1964).

⁹ PCS National contends that it has "always been a very small business." Petition at 2.

For the reasons stated above, PCS National's Request for Leave to Amend IS
HEREBY DENIED.

Sincerely,



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