



Federal Communications Commission  
Washington, D.C. 20554

DA 97-2209

October 15, 1997

Mr. John Reardon  
Keller and Heckman, LLP  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001

RE: Mobex Petition for Waiver in Auction No. 16  
Released October 16, 1997

Dear Mr. Reardon:

This letter responds to the September 29, 1997 request of Mobex Communications, Inc. ("Mobex") for waiver of the Commission's Rules to allow it to qualify to bid as a small business in the 800 MHz Specialized Mobile Radio (SMR) auction, scheduled to begin on October 28, 1997. Specifically, Mobex requests the waiver of the affiliation rules set forth in Section 90.912(d)(5) or, alternatively, 90.912(d)(9) of the Commission's Rules, so that the gross revenues of three companies recently acquired by Mobex would not be attributable for purposes of determining small business status. For the reasons stated below, we deny Mobex's request, as was explained to John Reardon, attorney for Mobex, in prior telephone conversations with FCC staff.

Section 90.912 defines a small business, for purposes of the 800 MHz SMR auction, as "an entity that, together with its affiliates and controlling principals, has average annual gross revenues that do not exceed \$15 million for the preceding three years." Section 90.912(b)(3) requires that gross revenues, for purposes of 90.912, shall be considered on a cumulative basis and aggregated. A request for waiver of an 800 MHz SMR auction rule must "set forth reasons in support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative within existing rules." 47 C.F.R. § 90.151(a).

Mobex requests waiver of the affiliation rules on the grounds it believes that it is unfair to include the gross revenues of three companies recently acquired by Mobex in the determination of its status as a small business. We disagree. Section 90.912(d) sets forth the Commission's definition of "affiliate" for purposes of the 800 MHz SMR auction:

- (1) Basis for affiliation. An individual or entity is an affiliate of an applicant or of

a person holding an attributable interest in an applicant if such individual or entity:

- (i) Directly or indirectly controls or has the power to control the applicant, or
- (ii) Is directly or indirectly controlled by the applicant, or
- (iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or
- (iv) Has an "identity of interest" with the applicant.

Section 90.912(d)(2) sets forth a number of circumstances in which control can arise over an applicant. In all cases, the Commission's rules require an applicant to include its gross revenues, as well as that of its controlling principals and affiliates, for the preceding three years in the computation for determining small business status. This rule does not create any kind of exception that would allow Mobex to exclude the gross revenues of the three companies it acquired in 1997. Furthermore, Mobex has not indicated how the facts and circumstances of its particular case are unique and render application of the rule inequitable or unduly burdensome, and we are unable to assess, with the information provided, whether a grant of waiver regarding any of the entities associated with Mobex would be in the public interest.

For the reasons stated above, Mobex's request for waiver of the affiliation rules set forth in Section 90.912 of the Commission's Rules 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 and Industry Analysis Division  
Wireless Telecommunications Bureau