

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

In re Investigation of )  
 )  
AT&T WIRELESS PCS, INC. )  
 )  
Licensee of Certain Authorizations in the )  
Personal Communications Service )

ORDER

Adopted: July 17, 1998

Released: July 17, 1998

By the Chief, Wireless Telecommunications Bureau:

1. AT&T Wireless PCS, Inc. ("AWS") participated in the Commission's D, E, and F Block PCS auction, which commenced on August 26, 1996, and closed on January 14, 1997. After the auction was completed, AWS brought to the Wireless Telecommunications Bureau's attention information about certain auction-related activities by AWS personnel. Thereafter, the Bureau's Enforcement and Consumer Information Division commenced an investigation to determine whether AWS had violated Section 1.2105(c) of the Commission's Rules by allegedly disclosing bidding information to another auction participant during a luncheon meeting in Puerto Rico on September 19, 1996.<sup>1</sup> Pursuant to Section 1.2105(c), after the filing of FCC Form 175, auction participants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder has made the required down payment.

2. The Bureau's Enforcement and Consumer Information Division has reached an agreement with AWS that will resolve this proceeding. The terms and conditions of the agreement are contained in the attached executed Settlement Agreement.

3. We have reviewed the Settlement Agreement and evaluated the circumstances of this proceeding. We believe that the public interest would be served by approving the attached

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<sup>1</sup> On December 20, 1996, AWS terminated the employment of the AWS employee who directed that Puerto Rico Telephone Company be told of AWS' bidding plans.

Settlement Agreement and terminating this proceeding. This is an instance where the one-year statute of limitations for the issuance of a forfeiture contained in Section 503 of the Communications Act of 1934, as amended, has expired. AWS and the Division have agreed to the attached Settlement Agreement in recognition of the importance of protecting the integrity and competitiveness of the Commission's auctions process.<sup>2</sup>

4. During the pendency of this proceeding, certain conditional language was included in D and E block PCS licenses issued to AWS. The conditional language stated: "Grant of this license is without prejudice to any future enforcement action the Commission may determine is appropriate regarding the bidding activities of AT&T Wireless PCS, Inc. in the D, E, and F block PCS auction." In light our decision herein to adopt the Settlement Agreement and terminate this proceeding, we believe it would be in the public interest to remove this conditional language from each of AWS' D and E block PCS authorizations.

5. ACCORDINGLY, IT IS HEREBY ORDERED, pursuant to delegated authority, that the Settlement Agreement IS ADOPTED.

6. IT IS FURTHER ORDERED, that the above-captioned proceeding IS TERMINATED.

7. IT IS FURTHER ORDERED that the conditional language referenced in paragraph 4 above and contained in each of AWS' D and E block PCS licenses IS REMOVED from each such authorization.

**FEDERAL COMMUNICATIONS COMMISSION**



**Daniel B. Phythyon**  
Chief, Wireless Telecommunications Bureau

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<sup>2</sup> We note that AWS' voluntary contribution is consistent with the forfeiture amount proposed in *US West Communications, Inc. (Notice of Apparent Liability)*, 13 FCC Rcd 8286 (1998) and *Western PCS BTA I Corp. (Notice of Apparent Liability)*, 13 FCC Rcd 8305 (1998), for their apparent violations of Section 1.2105(c) of the Commission's Rules, 47 C.F.R. § 1.2105(c).

## Settlement Agreement

1. This Settlement Agreement ("Agreement") is between the Enforcement and Consumer Information Division ("Division") of the Wireless Telecommunications Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") and AT&T Wireless PCS, Inc., its affiliates, successors and assigns ("AWS").

2. AWS participated in the Commission's broadband PCS D, E, and F Block auction (the "Auction"), which commenced on August 26, 1996, and closed on January 14, 1997, after 276 rounds of simultaneous, multiple-round bidding. Each Block consisted of 493 Basic Trading Area ("BTA") licenses for 10 MHz spectrum blocks. As required of all auction participants, AWS timely submitted an FCC Form 175 indicating the licenses for which it desired to be eligible to place bids. In its FCC Form 175, AWS indicated that it intended to bid for all licenses in the broadband PCS D and E blocks. Pursuant to Section 1.2105(c) of the Commission's Rules, 47 C.F.R. § 1.2105(c), after the filing of FCC Form 175, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to Section 1.2105(a)(2)(viii). AWS did not identify in its FCC Form 175 any bidding consortia or other joint bidding arrangements of which it was a member.

3. On January 28, 1997, AWS voluntarily disclosed to the Bureau that a discussion of bids or bidding strategy between an AWS representative and an executive of Puerto Rico Telephone Company ("PRTC"), a competing auction participant, may have occurred during the Auction. AWS stated that no such disclosure had been authorized by AWS. Thereafter, the Division initiated an investigation.

4. In response to the Division's investigation, AWS disclosed that the then-AWS vice president responsible for the build-out of the Puerto Rico PCS market during this period was at all relevant times privy to AWS' auction and bidding strategies. The AWS vice-president was aware that in markets where AWS already owned a 30 MHz PCS license, such as Puerto Rico, AWS did not have the need for any further spectrum and therefore would not be seeking additional spectrum in the Auction. The AWS vice-president is no longer an employee of AWS.

5. AWS further disclosed that a lawyer retained by AWS for local matters in Puerto Rico stated he had been instructed by the AWS vice-president in mid-September 1996 to advise the PRTC's then-President and CEO that AWS was not interested in bidding on the licenses for the BTAs in Puerto Rico. The lawyer subsequently asked another AWS local consultant to arrange a meeting with the PRTC President/CEO.

6. On September 19, 1996, the lawyer, the consultant and the PRTC President/CEO met for lunch. According to AWS, the lawyer told AWS that he told the PRTC President/CEO that AWS was not interested in continuing to bid on the BTAs in Puerto Rico.

7. On September 24, 1996, the lawyer wrote a letter to the AWS vice-president stating, among other things, that he had informed the PRTC President/CEO that AWS had decided not to continue bidding on the BTAs in Puerto Rico. In the letter, the lawyer also purported to convey the PRTC President/CEO's appreciation for the information. The AWS vice-president forwarded a copy of the letter to AWS' in-house regional counsel.

8. The regional counsel is uncertain when he first received and read the letter. However, according to AWS, he believes it may have been as late as October or early November 1996. The regional counsel subsequently tried to contact the lawyer, but was not successful in speaking with him until January 10, 1997. In the interim, the regional counsel had contacted AWS' general counsel and commenced an internal inquiry into the matter. On December 23, 1996, AWS retained outside counsel to investigate the matter. On January 25, 1997, the first meeting among the lawyer, regional counsel and outside counsel was held. AWS voluntarily brought the matter to the Bureau's attention on January 28, 1997.

9. In the Division's view, if further adjudicatory proceedings were to show that the facts set forth in paragraphs 2-8 were true, then the incident would constitute a violation of Section 1.2105(c) of the Commission's Rules.

10. For the purposes of this Agreement, the following definitions shall apply:

(a) "Order" means an order of the Bureau adopting this Agreement;

(b) "Final Order" means an Order of the Bureau no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

11. AWS acknowledges that it is and has been represented by counsel in connection with the preparation and execution of this Agreement, that it fully understands each and every provision contained in this Agreement, and that it has entered into and executed this Agreement voluntarily.

12. AWS acknowledges the jurisdiction of the Commission over it and the subject matter of this action for purposes of this Agreement and the Order.

13. AWS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of the Order.

14. AWS waives any right it may have to seek relief pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504.

15. AWS and the Division agree that upon executing this Agreement the provisions of this Agreement shall be incorporated into the Order.

16. AWS and the Division agree that this Agreement is for settlement purposes only. AWS does not admit, and the Division does not find on the part of AWS, any violation of the Commission's rules or liability for the matters described in this Agreement.

17. In consideration for the representations contained in this Agreement and in express reliance thereon, AWS agrees unconditionally to the following terms:

(a) Acknowledgment. AWS acknowledges that if AWS bidding information was in fact disclosed to PRTC in the manner and under the circumstances described above, that such conduct would constitute a violation of AWS' policies.

(b) Voluntary Contribution. AWS shall make a voluntary payment to the United States Treasury in the amount of \$100,000 within 15 calendar days after the Bureau's release of the Order. Payment shall be made by check or similar instrument made payable to the "Federal Communications Commission" and mailed to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482; or sent by FedEx to: First National Bank of Chicago, Lock Box No. 73482, 525 West Monroe, 7th Floor Mailroom, Chicago, Illinois 60661. This amount reflects the Division's acknowledgment of, and takes into consideration, AWS' voluntary disclosure of the matters described in this Agreement.

(c) Implementation of Compliance Program. AWS shall implement a formal, comprehensive compliance program ("Compliance Program") for the education of all officers, employees, contractors, consultants and any other persons or entities associated with AWS who have or will have auction-related responsibilities for or on behalf of AWS ("Auctions Personnel"). The purpose of the Compliance Program shall be to ensure future compliance by AWS with all applicable auction-related rules and regulations and prompt reporting of violations thereof. The Compliance Program shall provide for the designation of a representative to administer the Compliance Program ("Administrator"). The Administrator shall establish and maintain a monitoring and evaluation scheme to oversee mandatory participation in the Compliance Program prior to the assumption of the auction-related duties by Auctions Personnel. The Administrator shall further maintain auditable records and shall produce such records within 10 calendar days upon a written request of the Commission. The Administrator shall also report in writing any probable violations of Section 1.2105(c) of Commission's Rules within 10 calendar days of learning of the probable misconduct to the Division.

(d) Submission of Compliance Program. AWS shall submit to the Division, within 60 days from the date on which the Order becomes a Final Order, a copy of AWS' Compliance Program (with instructional

materials appended thereto) for consideration and approval by the Division.

(e) Future Compliance. AWS shall refrain from engaging in any conduct, behavior, or activities that is/are not in compliance with Section 1.2105(c) of the Commission's Rules.


18. In consideration of the representations contained in this Agreement and in express reliance thereon, the Division agrees to terminate its investigation of AWS' conduct discussed in paragraphs 2 through 8, above.

19. AWS agrees that any violation of the Order shall constitute a separate violation of a Commission order, entitling the Commission to exercise any and all rights and remedies for enforcement of a Commission order.

20. AWS and the Division jointly and severally recognize that if this Agreement is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any matter in any legal proceeding.


21. AWS agrees that if the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order, AWS shall not contest the validity of the Order.

**AT&T Wireless PCS, Inc.**

By:   
Douglas I. Brandon  
Vice President -  
External Affairs & Law

Date: 6/24/98

**Enforcement and Consumer Information Division**

By:   
Howard C. Davenport  
Chief, Enforcement and Consumer Information Division  
Wireless Telecommunication Bureau

Date: 6-25-98