



Federal Communications Commission  
Washington, D.C. 20554  
September 18, 2001

DA 01-2175

Christine M. Crowe, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
1299 Pennsylvania Avenue, N.W.  
Tenth Floor  
Washington, DC 20004

Re: Petition for Declaratory Ruling Regarding Application of 47. C.F.R. § 24.714

Dear Ms. Crowe:

This letter responds to your petition for a declaratory ruling pursuant to Section 1.2 of the Commission's rules<sup>1</sup>, filed on behalf of Carolina PCS I Limited Partnership ("Carolina PCS").<sup>2</sup> Carolina PCS asks the Commission to clarify that, prior to the five-year anniversary of the grant of the license, a licensee may partition or disaggregate a broadband personal communication services ("PCS") license won in closed bidding to an entity not qualifying for closed bidding if the licensee has met the associated five-year construction benchmark and has so notified the Commission.

Carolina PCS won nine 30 MHz C block PCS licenses in the state of South Carolina through closed bidding (bidding restricted to those qualifying as an "entrepreneur") in Auction No. 5.<sup>3</sup> Carolina PCS subsequently completed *pro forma* assignments of the nine C block licenses to subsidiary limited liability companies it controls.<sup>4</sup> Each of these operating subsidiaries has met the five-year construction requirements for its respective licenses and has so notified the Commission.<sup>5</sup> Carolina PCS and its subsidiaries have applied to disaggregate each of these C block PCS licenses in 10 MHz blocks to Lafayette Communications Company, L.L.C. ("Lafayette"), VoiceStream PCS BTA I License Corporation ("VoiceStream"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless").<sup>6</sup>

---

<sup>1</sup> 47 C.F.R. § 1.2 (2000).

<sup>2</sup> See Petition for Declaratory Ruling Pursuant to Section 1.2 of the Commission's Rules, filed by Christine M. Crowe, Counsel for Carolina PCS, on June 11, 2001.

<sup>3</sup> See "Entrepreneurs' C Block Auction Closes," *Public Notice*, DA 96-716, Attachment A (rel. May 8, 1996). Carolina PCS qualified as an entrepreneur by meeting the financial requirements set forth in Section 24.709 of the Commission's rules. 47 C.F.R. § 24.709 (1996).

<sup>4</sup> See FCC File Nos. 0000002008, 0000002011, 0000002012, 0000002013, 0000002014, 0000002015, 0000002016, 0000002017, and 0000002018.

<sup>5</sup> See FCC File Nos. 0000083370, 0000083372, 0000083375, 0000334642, 0000370950, 0000370952, 0000370956, 0000370957, and 0000370959.

<sup>6</sup> Each assignee will receive the same 10 MHz frequency block for all nine disaggregated licenses: Lafayette (1905-1910 MHz and 1985-1990 MHz), VoiceStream (1895-1900 MHz and 1975-1980 MHz) and Verizon Wireless (1900-1905 MHz and 1980-1985 MHz). See 27 applications that Carolina PCS has filed with respect to the Lafayette (FCC File Nos. 0000365205, 0000365207, 0000365211, 0000365216, 0000365223, 0000365224, 0000365225, 0000365229, and 0000365251), VoiceStream (FCC File Nos. 0000450185, 0000450264, 0000450266, 0000450267, 0000450268, 0000450269, 0000450272, 0000450273, and 0000450274), and Verizon Wireless (FCC File Nos. 0000460489, 0000460520, 0000460522, 0000460523, 0000460524, 0000460525,

Because neither VoiceStream nor Verizon Wireless qualifies as an entrepreneur,<sup>7</sup> Carolina PCS and its operating subsidiaries now seek to apply the Commission's recently revised policies and rules permitting entrepreneurs to assign to non-entrepreneurs, prior to the fifth year anniversary of the licenses, built out spectrum acquired in closed bidding as established in the Commission's *C/F Block Sixth Report and Order*.<sup>8</sup>

Prior to the *C/F Block Sixth Report and Order*, the Commission prohibited entrepreneurs from assigning C and F block PCS licenses won in closed bidding to non-entrepreneurs before the end of a five-year holding period to ensure that C and/or F block PCS licensees did not take advantage of the eligibility set-aside by immediately assigning or transferring control of their licenses to entities not meeting the eligibility requirements.<sup>9</sup> The Commission set the holding period at five years to guarantee that a C or F block PCS licensee would hold and build out its license until the first construction benchmark,<sup>10</sup> which occurs five years after the date of licensing.<sup>11</sup> In the *C/F Block Sixth Report and Order*, the Commission carved out an exception to the holding requirement by allowing a C or F block PCS licensee to assign or transfer licenses won in closed bidding to any qualified entity, entrepreneur or not, as soon as the licensee has satisfied its first construction benchmark.<sup>12</sup> The Commission stated that permitting such assignments and transfers would encourage rapid build-out and service to the public, two objectives of Section 309(j) of the Communications Act of 1934, as amended,<sup>13</sup> while at the same time providing C and F block PCS licensees with the ability to access capital.<sup>14</sup>

---

0000460527, 0000460535, and 0000460564) transactions. The applications for disaggregation to Lafayette were granted on June 18, 2001. See *Public Notice*, DA 01-1444 (rel. June 18, 2001).

<sup>7</sup> Carolina PCS states that Lafayette qualifies as an entrepreneur under the Commission's rules.

<sup>8</sup> See In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd 16,266 (2000) ("*C/F Block Sixth Report and Order*"). To permit the transfer of C and F block PCS licenses to non-entrepreneurs prior to the end of the five-year holding period, the *C/F Block Sixth Report and Order* modified both the five-year holding period and limited transfer rule, 47 C.F.R. § 24.839 (2000), and the construction requirements rule, 47 C.F.R. § 24.203 (2000).

<sup>9</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5588-89, ¶¶ 128-29 (1994); see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 465-469, ¶¶ 117-127 (1994) and 47 C.F.R. §§ 24.839 and 24.714 (1999).

<sup>10</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket No. 90-314, *Report and Order*, 11 FCC Rcd 7824, 7863, ¶ 84 (1996).

<sup>11</sup> 47 C.F.R. § 24.203 (2000); see also 47 C.F.R. § 1.2111 (2000).

<sup>12</sup> See *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,290, ¶ 49, and 16,308-15, Appendix D.

<sup>13</sup> 47 U.S.C. § 309(j).

<sup>14</sup> See *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,290, ¶ 50.

*Letter to Christine M. Crowe, Esq.*  
*September 18, 2001*

Carolina PCS points out that, while the Commission amended Section 24.839 to codify the new rule, it did not revise Section 24.714, the partitioning and disaggregation rule, to allow for a corresponding provision for partial assignments. Accordingly, Section 24.714 does not clearly permit partial assignments of C and F Block PCS spectrum to non-entrepreneurs where the construction benchmark has been met within the first five years. Carolina PCS asks the Commission to clarify that the Commission's new policy on assignments of C and F block PCS spectrum licenses won in closed bidding, as presented in the *C/F Block Sixth Report and Order*, also extends to partial assignments.

Upon consideration of Carolina PCS' request, we clarify that the rule on assignments of C and F block PCS licenses won in closed bidding, set forth in Section 24.839(a), as amended, extends to partial assignments of C and F block PCS spectrum as described in Section 24.714(a).<sup>15</sup> We consider partial assignments to be a subset of full assignments. Section 24.839 draws no distinction between full and partial assignments. Moreover, while Section 24.714 does not expressly allow for partial assignments upon satisfaction of the first construction benchmark prior to the five-year mark, it directs entities seeking authorization for partial assignments to "request an authorization for partial assignment of a license pursuant to Section 24.839."<sup>16</sup> Accordingly, we clarify that C and F block PCS licensees that have met their five-year construction benchmark prior to the end of the five-year holding period and have notified the Commission of the satisfaction of these benchmarks, are permitted to partition or disaggregate a license won in closed bidding to a non-entrepreneur.

The Wireless Telecommunications Bureau will conduct a review of the assignment applications for the underlying transactions. This action is taken pursuant to the delegated authority under Section 0.331 of the Commission's rules.<sup>17</sup>

Sincerely,

Margaret Wiener, Chief  
Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau

---

<sup>15</sup> See 47 C.F.R. §§ 24.714(a) and 24.839(a) (2000).

<sup>16</sup> 47 C.F.R. § 24.714(a)(1) (2000).

<sup>17</sup> 47 C.F.R. § 0.331 (2000).