

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DA 96-705

In the Matter of)
)
Waiver of Certain Provisions)
of Sections 24.720 and 24.813 of the)
Commissions's Rules --)
Audited Financial Statements and)
General Application)
Requirements for the)
Broadband Personal)
Communications Services)

ORDER

Adopted: May 8, 1996

Released: May 8, 1996

By the Chief, Wireless Telecommunications Bureau:

1. Several parties have filed requests for waiver of Sections 24.720(f) and (g) of the Commission's rules with respect to the long-form applications (FCC Form 600) to be filed for broadband Personal Communications Service (PCS) C block licenses.¹ Generally, the parties argue that the requirement that gross revenues and total assets figures disclosed on the long-form applications be evidenced by audited financial statements is unduly burdensome.² Pursuant to

¹ See, e.g., Covington and Burling Request for Waiver on behalf of unnamed investors in C block applicants, filed January 26, 1996. The following applicants (many of which are no longer active bidders in the C block auction) filed requests for waiver of Section 24.720(f) and (g) along with their short-form applications (FCC Form 175) on November 6, 1995: Adilia M. Aguilar; AirLink, L.L.C.; Airwave Telecommunications, Inc.; BC&D Partners II, L.L.C.; CHPCS, Inc.; B&P PCS, Inc.; CDL Communications, Inc.; Horsetooth Communications, Inc.; Glenn Ishihara; Global Information Technologies, Inc.; James Communications Partners, GP; Lubbock Radio Paging Service, Inc.; Mid-State Systems, Inc.; New Dakota Investment Trust; Overland Company, Inc.; PCS Spectrum Partners, L.P.; R&S PCS, Inc.; Reserve Telephone Company, Inc.; Shawn Capistrano; SPD CableTel, Inc.; South Central Communications Corporation; Teltrust PCS of the Intermountain States, Inc.; Teltrust PCS of Utah, Inc.; USA Microcellular, Inc.; Virginia PCS Alliance Consortium; Whidbey Telephone Company; William Ingram; Windkeeper Communications, Inc.; and Wireless PCS, Inc.

² See, e.g., Covington & Burling Request at 1; BC&D Partners II, LLC Request at 1.

delegated authority,³ we grant the waivers and on our own motion extend this waiver to all broadband PCS C block applicants subject to the requirements of Sections 24.720(f) and (g) of the Commission's rules.⁴ In addition, on our own motion, we waive certain ownership information disclosure requirements of Sections 24.813(a)(1) and (2) of the Commission's rules⁵ for all successful broadband PCS C block bidders filing long-form applications.

2. Section 24.709(c)(2)(i) of the Commission's rules provides that each applicant submitting a long-form application shall in an exhibit:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's *affiliates*; the applicant's *control group members*; the applicant's attributable investors; and *affiliates* of its attributable investors.

Sections 24.720(f) and (g) of the Commission's rules require that gross revenues and total assets be evidenced by audited financial statements under most circumstances:

(f) *Gross Revenues.* *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.⁶

(g) *Total assets.* *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of the property

³ 47 C.F.R. § 0.204.

⁴ 47 C.F.R. §§ 24.709(f) and (g).

⁵ 47 C.F.R. §§ 24.813(a)(1) and (2).

⁶ See Section 24.720(f) of the Commission's rules, 47 C.F.R. § 24.720(f).

owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.⁷

3. Although these rules do not require applicants to file audited financial statements with their long-form applications, they do require gross revenues and total assets reported on the applications to be supported by audited financial statements obtained by the applicants. Several parties contend that for small businesses with limited resources, obtaining audited financial statements would cause an extreme financial hardship.⁸

4. We agree that requiring broadband PCS C block applicants with limited resources to obtain audited financial statements solely for the purpose of supporting the long-form applications is excessively burdensome. Thus, we waive the audited financial statements requirement of Sections 24.720(f) and (g). With respect to the filing of long-form applications, we believe that this waiver will enable the Commission to continue to obtain timely financial data while providing applicants with some degree of flexibility in their financial reporting practices. We emphasize, however, that applicants and their affiliates shall continue to be required to certify the accuracy of all gross revenue and total assets figures submitted. We also reserve the right to require licensees to provide audited financial statements as required by Sections 24.720(f) and (g) at a later date.⁹

5. Section 24.813(a) of the Commission's rules provides that broadband PCS auction winners filing the long-form application shall include in an exhibit, *inter alia*:

(1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.¹⁰

(2) A list of the party which holds a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) in the applicant, or an entity in which a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) in

⁷ See 47 C.F.R. § 24.720(g).

⁸ See, e.g., Covington & Burling Request at 1; BC&D Partners II, LLC Request at 1.

⁹ See 47 C.F.R. § 1.65.

¹⁰ See 47 C.F.R. § 24.813(a)(1); *Fourth Memorandum Opinion and Order*, PP Docket 93-253, 9 FCC Rcd 6858, 59 Fed. Reg. 53,364 (October 24, 1994).

the applicant (*e.g.*, If company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).¹¹

6. The former Private Radio Bureau, acting on delegated authority, waived some of the information disclosure requirements of Section 24.813(a)(1) and 24.813(a)(2) for the short-form applications (FCC Form 175s) filed for the auction of the broadband PCS A and B block licenses.¹² The Wireless Telecommunications Bureau ("Bureau") later waived the same provisions for the long-form applications for the auction of the broadband PCS A and B block licenses. These same provisions also were waived for the short-form applications filed for the auction of the broadband PCS C block licenses.¹³ We find that the public interest would be served by waiving certain ownership information disclosure requirements for the long-form applications filed by the C block winning bidders. Specifically, our rules require applicants to list in their long-form applications all businesses in which each attributable stockholder owns at least five percent. This requirement necessitates reporting of interests in firms with no relation to the licenses auctioned. For many companies, particularly investment firms with diverse holdings, compliance with this requirement is extremely burdensome, especially when calculating indirect ownership interests in outside firms. We believe that, for purposes of long-form application processing, requiring stockholders in applicants to report *all* firms in which they hold an interest of five percent or more is overly burdensome.

7. The purpose of the PCS ownership disclosure requirements is to allow the Commission to determine who is the real party in interest,¹⁴ to determine compliance with the anti-collusion rules,¹⁵ the applicable spectrum caps,¹⁶ certain ownership restrictions such as the multiple and cross ownership rules,¹⁷ and the alien ownership restrictions.¹⁸ All applicants already must certify

¹¹ See 47 C.F.R. § 24.813(a)(2); *Fifth Report and Order*, PP Docket 93-253, 9 FCC Rcd 5532, 59 Fed. Reg. 37,566 (July 22, 1994) ("*Fifth Report and Order*").

¹² See Order, 9 FCC Rcd 6392 (1994).

¹³ Supplemental Bidder Package for the Broadband PCS C Block Auction at 26.

¹⁴ Compare 47 C.F.R. § 24.413; see also *Real Party in Interest Disclosure*, 55 RR 2d 1053 (1982).

¹⁵ See 47 C.F.R. § 1.2105. See also *Memorandum Opinion and Order*, PP Docket 93-253, 9 FCC Rcd 7684, 59 Fed. Reg. 64,159 (Dec. 13, 1994).

¹⁶ See 47 C.F.R. § 20.6.

¹⁷ See 47 C.F.R. §§ 24.204 and 24.229(c).

¹⁸ See 47 U.S.C. § 310(b).

that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden.

8. Consequently, we waive the information disclosure requirement of Sections 24.813(a)(1) and 24.813(a)(2) with respect to other, outside ownership interests of attributable stockholders of applicants, except that outside interests of five percent or more in other land mobile services (*i.e.*, Commercial Mobile Radio Service licensees or applicants or Private Mobile Radio Service licensees or applicants) shall be disclosed.¹⁹ Also, all direct or indirect interests in the applicant that amount to five percent or more must be reported. All indirect interests held in the applicant should be computed in accordance with the multiplier approach set forth in 47 C.F.R. § 24.204(d)(viii). Institutional investors need only disclose direct or indirect interests of ten percent or more in the applicant, and need to report all outside business interests of five percent or more in CMRS or PMRS businesses. We reserve the right to ask applicants for any additional information required by Section 24.813 of the Commission's rules at a later date.²⁰ All other long-form reporting requirements will continue to apply.

9. This *Order* is not subject to the general notice and comment requirement of the Administrative Procedure Act, because it concerns procedural rules, and we are relieving applicants of an administrative burden as opposed to imposing a reporting burden on them.²¹ In addition, good cause for the waiver is shown.²² The waiver will expedite the Commission's ability to process broadband PCS C block applications, thus expediting the delivery of service to the public.

10. Accordingly, **IT IS ORDERED** that the requirements of Sections 24.720(f) and 24.720(g), 47 C.F.R. §§ 24.720(f) and 24.720(g), **ARE WAIVED** to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

¹⁹ See 47 C.F.R. § 20.3 (defining CMRS and PMRS). See also, *Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, 9 FCC Rcd 1411, 59 Fed. Reg. 18,493 (April 19, 1994), *erratum*, Mimeo No. 92486 (Released March 30, 1994).

²⁰ See 47 C.F.R. § 1.65.

²¹ Administrative Procedure Act, 5 U.S.C. §§ 553(b)(3)(A) and 553(d)(1).

²² Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(B).

11. **IT IS FURTHER ORDERED** that the requirements of Sections 24.813(a)(1) and 24.813(a)(2), 47 C.F.R. §§ 24.813(a)(1) and 24.813(a)(2), **ARE WAIVED** to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau