

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

In the Matter of )  
)  
Carolina PCS I Limited Partnership )  
Request for Waiver of )  
Section 24.711(a)(2) of the )  
Commission's Rules Regarding )  
Market Nos. B016, B072, B091, )  
B147, B177, B178, B312, B335, )  
and B436. )

ORDER

Adopted: April 28, 1997

Released: April 28, 1997

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this *Order*, we deny the Petitions for Waiver<sup>1</sup> of Section 24.711(a)(2) of the Commission's rules<sup>2</sup> filed by Carolina PCS I Limited Partnership ("CPCSI"), the winning bidder for nine licenses in the Broadband C Block Personal Communications Services (PCS) auction.<sup>3</sup>

---

<sup>1</sup> Emergency Petition for Waiver Section 24.711(a)(2) of the Commission's Rules, *Emergency Petition for Waiver*, filed September 24, 1996 ("Petition"); Supplement to Emergency Petition for Waiver Section 24.711(a)(2) of the Commission's Rules, *Supplement to Emergency Petition for Waiver*, filed October 4, 1996 ("Supplemental Petition").

<sup>2</sup> 47 C.F.R. § 24.711(a)(2).

<sup>3</sup> CPCSI was the successful bidder for the following markets: Andersen, SC (B016), Charleston, SC (B072), Columbia, SC (B091), Florence, SC (B147), Greenville-Spartanburg, SC (B177), Greenwood, SC (B178), Myrtle Beach, SC (B312), Orangeburg, SC (B335), and Sumter, SC (B436).

## II. BACKGROUND

2. On May 6, 1996, the Commission concluded the broadband PCS C block auction. CPCSI was the winning bidder for Licenses B016, B072, B091, B147, B177, B178, B312, B335, and B436. Pursuant to Section 24.711(a)(2) of the Commission's rules, winning bidders who are small businesses are required to submit a 10 percent down payment on licenses won at auction. Each winning bidder must bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, with the remainder of the down payment (five percent) to be paid within five business days after the application required by § 24.809(b) is granted. CPCSI made the first 5 percent down payment on the required 1996 due date.<sup>4</sup> Pursuant to a September 17, 1996 Public Notice, the second 5 percent down payment for CPCSI was due on September 24, 1996.<sup>5</sup> In lieu of making this payment, however, CPCSI filed a waiver petition seeking additional time to secure its financing to make the payment. CPCSI requests an extension of time to submit the second 5 percent down payment until such time as all C Block licensees are subject to the same down payment deadline. Alternatively, CPCSI requests a thirty-day extension of time to make its down payment.

3. On October 18, 1996, the Wireless Telecommunications Bureau ("Bureau") issued a Public Notice seeking comment on how to treat auction winners who missed their second down payment deadline in connection with licenses won in the C block PCS auction, the 900 MHz Specialized Mobile Radio auction, and the Multipoint and Multichannel Distribution Service auction.<sup>6</sup> All parties identified in this Public Notice sought waivers of the down payment rule, and comments were solicited on all aspects of each request. In response, we received 32 comments and 10 reply comments. CPCSI alone filed comments specifically in support of its waiver request.

## III. DISCUSSION

---

<sup>4</sup> See *Public Notice*, "Entrepreneurs' C Block Auction Closes: FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas," DA 96-716 (May 8, 1996). CPCSI paid \$2,133,004.57 covering its first down payment on all of the licenses won.

<sup>5</sup> *Public Notice*, "FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block BTA Licenses; Final Down Payment Due by September 24, 1996," DA 96-1553 (September 17, 1996). CPCSI owed a total of \$4,633,005.00 as its second down payment.

<sup>6</sup> See *Public Notice*, Pleading Cycle Established for Waivers of Down Payment Rules in the Broadband Personal Communication Services C Block, 900 MHz Specialized Mobile Radio, and Multipoint Distribution Service Auctions, 11 FCC Rcd 13145 (released October 18, 1996).

4. In support of its waiver request, CPCSI contends that applying a different down payment deadline to five C block licensees with contested applications significantly promotes one class of C block licenses to the detriment of the others.<sup>7</sup> CPCSI also contends that the following events initiated by the Commission during the pendency of CPCSI's applications created an unfavorable investment climate with respect to financing C block entities and has significantly impacted CPCSI's ability to secure its financing: (1) the Commission's alteration of the PCS-cellular spectrum cap to allow incumbent cellular carriers to obtain 20 MHz of broadband PCS spectrum; (2) the three month delay in granting uncontested C block applications after these applications were ripe for grant; and (3) the commencement of the D, E, and F block auction during this delay. CPCSI further contends that a waiver of the second down payment deadline for C block licensees is distinguishable from waivers of the first down payment deadline because all C block winners were subject to the same rules in effect when the auction began, whereas some C block entities now have more time than others to raise capital. CPCSI also contends that absent a waiver, CPCSI will be in default and the Commission will be forced to conduct a reauction of its licenses, delaying the introduction of PCS to the South Carolina markets. Further CPCSI argues that if it is subject to default payments, it may be forced into bankruptcy.<sup>8</sup>

5. A waiver of the broadband PCS rules is appropriate only when a party demonstrates either "that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest" or "that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest." *See* 47 C.F.R. § 24.819(a)(1)(i) and (ii). We find unpersuasive CPCSI's claim that unique facts or circumstances exist here to warrant a waiver of our down payment rule. Rather, we believe that the circumstances here constitute the type of situation that the Commission specifically intended to avoid when it adopted a strict down payment rule, *i.e.*, having bidders win licenses and then proceed to shop those licenses in order to obtain financing.<sup>9</sup> Recently, the Commission confirmed that the "upfront and down payment provisions in Section 24.711 of the Commission's rules are designed to ensure that the ultimate purpose of the auction -- encouraging and facilitating the provision of reliable service to the public -- is not undermined by winning bidders who lack the

---

<sup>7</sup> Petition at 2. Five applicants (Nextwave Personal Communications, Inc., Pocket Communications Inc., PCS 2000 L.P., GWI PCS, Inc., and Meretel Communications, L.P.) with contested applications were excluded from the first wave of C block licensing, pending resolution of petitions to deny.

<sup>8</sup> Supplemental Petition at 4.

<sup>9</sup> *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-252, Second Report and Order, 9 FCC Rcd 2348, 2382 (1994).

financial capability to pay for the license . . . ."<sup>10</sup> Timely payments are a necessary indicator to the Commission that the winning bidder is financially able to meet its obligations on the license and intends to use it for the provision of services to the public.

6. We reject CPCS's contention that it is entitled to a waiver because various actions on the part of the Commission have created an unfavorable investment environment. CPCS's claims are unsupported, and in any event, CPCS's financing should not have been dependent on future events. We note that the Commission recently has denied a bidder's request to waive the down payment deadline premised upon the failure of a third party financial arrangement.<sup>11</sup> The Commission has stated that the ability to make timely payments is the responsibility of auction winners, and "the failure of a third party to perform its contractual obligations in dealing with an auction applicant cannot constitute a special circumstance justifying a waiver of the Commission's down payment rules."<sup>12</sup> The Commission has also made clear that it is not responsible for the private business arrangements that an applicant has made to finance its successful bid.<sup>13</sup>

7. CPCS's attempt to differentiate its failure to make a second down payment from those applicants who failed to make a first down payment is also unpersuasive. The Commission has consistently denied requests for waiver of first down payment deadlines.<sup>14</sup> The Commission believes that the bona fide ability to pay demonstrated by a timely first down payment is essential to a fair and efficient auction process.<sup>15</sup> The overall effect of waiving down payment deadlines for parties that do not have the funds to meet such deadlines would be a disruption to the auction process and a delay in service to the public generally. Indeed, we have not granted a request for an extension of a down payment deadline for a license won through competitive bidding in any case where the party requesting the extension did not have the funds on hand on the date of the payment deadline. We have granted partial relief to licensees only when a delayed payment was

---

<sup>10</sup> BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum Opinion and Order*, FCC 96-498 (Released Jan. 6, 1997) at ¶ 7 ("*BDPCS Order*").

<sup>11</sup> See *BDPCS Order*.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> In the Matter Requests for Waivers in the First Auction of 594 Interactive Video and Data Service License, *Order*, 9 FCC Rcd 6384, ¶ 11 (1994).

<sup>14</sup> See, e.g., *BDPCS Order*, *supra* n. 12; C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Order*, 11 FCC Rcd. 9343 (1996).

<sup>15</sup> Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 (released Feb. 28, 1997) at ¶ 61.

made and the reason for delay was either inadvertence, miscalculation, or administrative complications.<sup>16</sup> CPCSI's failure to make its payment resulted from a lack of time to secure financing, as acknowledged in its waiver request, not miscalculation, inadvertence or administrative complications. In addition, CPCSI's contention that a waiver is justified here because of advantages enjoyed by other C block applicants, whose applications were subject to petitions to deny, is also misplaced. We do not believe that such petitions place applicants in advantageous positions. To the contrary, they may raise issues that could disqualify the applicant, or at a minimum, impair an applicant's ability to maintain and/or secure financing.

8. Finally, we reject CPCSI's contention that its waiver request is warranted in order to avoid default and reauction, which, it argues, would result in a delay in the deployment of PCS services to the public.<sup>17</sup> As noted above, our payment rules are designed to ensure that auction winners have the necessary resources to deploy services quickly. CPCSI's failure to make the required payments indicates that it is not in a position to provide new services expeditiously. CPCSI further states that if it is subject to default payments that it likely will go into bankruptcy. We are not insensitive to CPCSI's dilemma. However, to ensure that small businesses have opportunities to participate in the provision of spectrum-based services, and that such services are rapidly deployed, we must require that winning bidders are able to meet their payment obligations in a timely manner. The integrity of the auction process depends on this. Thus, absent circumstances justifying a waiver under 47 C.F.R. § 24.819(a), we must insist on timely down payments.

---

<sup>16</sup> See, e.g., RFW, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B230, *Order*, DA 97-254 (rel. February 4, 1997); MFRI, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B435, *Order*, DA 97-255 (rel. February 4, 1997); Roberts-Roberts & Associates, LLC, Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Various BTA Markets, *Order*, DA 97-252 (rel. February 4, 1997); Southern Communications Systems, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B085, *Order*, DA 97-253 (rel. February 4, 1997); Wireless Telecommunications Company, Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B411, *Order*, DA 97-256 (rel. February 4, 1997); Longstreet Communications International, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market No. B012, *Order*, DA 97-257 (rel. February 4, 1997).

<sup>17</sup> We have generally succeeded in rapidly reauctioning defaulted C block licenses. See *Public Notice*, "18 Defaulted PCS Licenses to be Reauctioned," DA 96-872 (rel. May 30, 1996).

9. For the reasons stated above, CPCSI's Waiver Petition IS HEREBY DENIED. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon  
Acting Chief, Wireless Telecommunications Bureau