

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

In the Matter of

C.H. PCS, Inc. )  
Dismissal of Seven Broadband PCS )  
C-Block Long-Form Applications )  
for Auction Event No. 5 )

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 16, 1999**

**Released: June 16, 1999**

By the Deputy Chief, Wireless Telecommunications Bureau:

1. The Wireless Telecommunications Bureau ("Bureau") has before it a Petition For Reconsideration filed on December 7, 1998 by C.H. PCS, Inc. ("CHPCS").<sup>1</sup> CHPCS seeks reconsideration of the Bureau's Public Notice<sup>2</sup> ("*Dismissal Notice*"), which dismissed long-form applications for seven broadband Personal Communications Service ("PCS") C block licenses for which CHPCS was the winning bidder in the initial C block auction, Auction Event No. 5. For the reasons discussed below, we deny CHPCS's Petition for Reconsideration.

1. Background. CHPCS was the winning bidder for seven broadband PCS C block markets in Auction Event No. 5, which closed on May 6, 1996. CHPCS paid an initial down payment of \$1,505,812.50 for the licenses but made no further payments. In addition, CHPCS was the high bidder for one broadband PCS C block license in Auction Event No. 10, which closed on July 16, 1996. CHPCS failed to make an initial down payment on this

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<sup>1</sup> C.H. PCS, Inc., Petition For Reconsideration (filed December 7, 1998) ("Petition For Reconsideration")

<sup>2</sup> See "Wireless Telecommunications Bureau Dismisses C.H. PCS, Inc. Applications for Auction Event No. 5," *Public Notice*, 13 FCC Rcd 22,255 (1998).

license and instead filed an emergency petition for waiver of the down payment deadline.<sup>3</sup> At that time, Section 1.2109 of the Commission's rules stated that if a winning bidder failed to remit the required down payment within five business days after the Commission had declared competitive bidding closed, the bidder would be deemed in default, have its application dismissed, and be liable for the default payment specified in Section 1.2104(g)(2) of the Commission's rules.<sup>4</sup>

3. On August 9, 1996, the Bureau denied CHPCS's waiver request and dismissed its long-form application for the one C block license, license B347<sup>5</sup>, won in Auction Event No. 10. On November 4, 1996, the Bureau assessed an initial default payment with respect to CHPCS's default on that license.<sup>6</sup> Because the full default payment could not be determined until the license was won at a subsequent auction, the Bureau assessed CHPCS an initial payment of three percent of its defaulted bid amount, or \$6,414,232.50, toward the full default payment. CHPCS's upfront payment of \$1,383,000.00 was applied to this initial default amount, leaving an amount owed of \$5,031,232.50. The Bureau required payment within 30 days of release of the order and noted that if CHPCS failed to pay, this amount would be deducted from any funds on deposit with the Commission, including funds submitted as down payment on the seven licenses from Auction Event No. 5.<sup>7</sup>

4. The Bureau subsequently notified CHPCS in a letter dated February 4, 1997, that it had applied CHPCS's initial down payment of \$1,505,812.50 for the seven licenses won in Auction Event No. 5 to the \$5,031,232.50 still owed for license B347<sup>8</sup> won in Auction Event No. 10. This left a remaining default obligation for license B347 of \$3,525,420.00, in addition to an outstanding down payment obligation of \$1,505,812.50 for the seven licenses from Auction Event No. 5. The Bureau informed CHPCS in the letter of February 4, 1997 that it was required to pay the amount of \$5,031,232.50, which represented both outstanding

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<sup>3</sup> C.H. PCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules (filed July 24, 1996).

<sup>4</sup> 47 C.F.R. § 1.2109(b) (1995). Currently, § 1.2109(b) allows a winning bidder ten business days after the Commission has declared competitive bidding closed to remit the required down payment. 47 C.F.R. § 1.2109(b). See also 47 C.F.R. § 1.2104 (g), which states that a bidder that defaults on a payment due will be subject to default payments.

<sup>5</sup> In re C.H. PCS, Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules, Order, 11 FCC Rcd 9343 (WTB 1996) ("August 9, 1996 Order").

<sup>6</sup> See C.H. PCS, Inc., BTA No. 347, Frequency Block C, Order, 11 FCC Rcd. 22430 (Wireless Telecom. Bureau 1996) ("November 4, 1996 Order").

<sup>7</sup> *Id.*

<sup>8</sup> Letter from Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, to Kenneth Hobbs, C.H. PCS, DA 97-260 (February 4, 1997).

obligations, within five business days. Because CHPCS failed to pay its outstanding down payment obligation for the seven licenses won in Auction Event No. 5, the Bureau dismissed the applications by Public Notice<sup>9</sup> and assessed an initial default payment with respect to those licenses.<sup>10</sup> CHPCS was also informed that it may have additional default payment obligations following reauction of the defaulted licenses. On December 7, 1998, CHPCS filed a Petition For Reconsideration of the Bureau's *Dismissal Notice*.

5. Discussion. CHPCS argues that the dismissal of its seven long-form applications is procedurally defective because the Bureau based its decision on facts misstated in the *Dismissal Notice*. Specifically, CHPCS claims that the Bureau erroneously stated that 1) the long-form applications of CHPCS had not been accepted for filing, and 2) CHPCS failed to submit timely down payments for the seven C block licenses it won in Auction Event No. 5. We disagree with CHPCS's contentions, which misstate the reasons for dismissal of its seven long-form applications. The Bureau's error in characterizing the status of applications does not invalidate their dismissal. CHPCS's applications were dismissed because CHPCS failed to make timely down payments, regardless of whether the applications were accepted for filing.<sup>11</sup> Furthermore, even if the Bureau accepted the applications for filing, the Bureau is not prevented from subsequently dismissing the applications.<sup>12</sup> For example, an application may be dismissed where an applicant is unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment.<sup>13</sup> Specifically, the Commission's Rules provide that the failure to make a timely down payment will result in dismissal of the application.<sup>14</sup>

6. CHPCS's argument that it initially submitted its down payments in a timely manner also is misplaced. The *Dismissal Notice*, in reiterating the factual basis for the Bureau's earlier actions, noted the receipt of CHPCS's first down payment with respect to the seven licenses, but repeated the Bureau's earlier conclusion that because those funds were applied toward the default payment assessed for license B347, CHPCS had been required to replenish the down payment funds to avoid dismissal of its applications. Thus, in the *Dismissal Notice*, the Bureau took the purely administrative step of formally dismissing the seven CHPCS long-

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<sup>9</sup> See *Dismissal Notice*, 13 FCC Rcd 22,255 (1998).

<sup>10</sup> See C.H. PCS, Inc. BTA Nos. B124, B144, B222, B322, B362, B420, and B486, Frequency Block C, Order, DA 99-226 (rel. January 22, 1999) ("*1999 Payment Order*").

<sup>11</sup> See *Dismissal Notice*, 13 FCC 22,255 (1998)

<sup>12</sup> See 47 C.F.R. § 1.2109(c).

<sup>13</sup> *Id.*

<sup>14</sup> See 47 C.F.R. § 1.2109(b).

form applications for failure to meet the down payment obligation.

7. Moreover, we conclude that CHPCS's down payment arguments relate to earlier rulings which have long since become final. The Commission's rules allow any party desiring reconsideration of final action taken by the Bureau to file a petition for reconsideration or application for review within 30 days from the date of the public notice of such action.<sup>15</sup> The Commission's records show that no petitions for reconsideration or applications for review were filed by CHPCS in response to the *August 9, 1996 Order* (denying waiver of the down payment for license B347 and dismissing the application for that license) or the *November 4, 1996 Order* (assessing an initial default payment with respect to CHPCS's default on that license). Additionally, the Bureau received no response to its February 4, 1997 letter informing CHPCS that its funds on deposit with the Commission had been applied to its outstanding default payment obligation on license B347, leaving insufficient funds on deposit as first down payments for the remaining seven licenses.

8. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed December 7, 1998, by CHPCS IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham  
Deputy Chief  
Wireless Telecommunications Bureau

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<sup>15</sup> See 47 C.F.R. § 1.104(b).

