

Independent PCS Corporation ("Georgia"). By this Order, we hereby resolve Georgia's request. Specifically, this Order reduces Georgia's bid withdrawal payment to the minimum bid increment for License B-076 (Chattanooga, TN) in Round 37 of the broadband Personal Communications Services (PCS) C block auction, or \$569,898.

2. *Background.* On March 6, 1995, Georgia filed a request for waiver of the bid withdrawal payment provisions applicable to the broadband PCS C block auction. Under the Commission's rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. On May 3, 1996, the Commission issued an Order partially waiving the bid withdrawal payment provisions applicable to the 900 MHz Specialized Mobile Radio (SMR) and broadband PCS C block auctions. The Order resolved the waiver requests of two applicants who submitted erroneous bids which were later withdrawn. The Order also delegated authority to resolve requests for waiver of the bid withdrawal payment provisions involving similar factual circumstances to the Wireless Telecommunications Bureau ("Bureau"). The Order indicated that for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. In addition, the Bureau was directed to consider such requests on a case-by-case basis.

4. *Georgia Waiver Request.* In its request, Georgia alleges that due to a clerical or typographical error, it submitted a bid of \$119,720,000 for License B-076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia further alleges that the error may have been due in part to a "flaw" in the Commission's remote bidding software. Georgia states that it intended to submit the minimum accepted bid for that round and license, or \$11,972,000. Georgia attempted to withdraw its \$119,720,000 bid during the bid withdrawal period for Round 37 by contacting the FCC telephonically. Due in part to technical problems with the FCC's wide-area network, Georgia claims it was not able to withdraw its erroneous bid until Round 38. The final high bid on this market at the close of the auction was \$21,288,000. Consequently, if the bid withdrawal

payment requirement were fully enforced, Georgia would be subject to a bid withdrawal payment of \$73,824,000. Affidavits by A.J. Paserella, and Robert L. Swearingen, Jr., two of Georgia's authorized bidders, and Mr. Swearingen's secretary, Wanda Queen, describe the events surrounding the erroneous bid submission.

5. Georgia argues that imposition of the bid withdrawal payment for its erroneous bid would be unduly burdensome and contrary to the public interest. Georgia contends that there is established case law governing mistaken bids that prohibit the requirement of any payment for bids resulting from typographical or clerical errors. It observes that Section 24.822 of the Commission's rules allows for the correction of typographical errors on applicants' short-form applications (FCC Form 175s) and that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors. Finally, Georgia argues that the most that the Commission should require from bidders who submit erroneous bids is the forfeiture of a single activity rule waiver.

6. *Decision.* In the May 3, 1996, Order, the Commission considered the same issues presented here and indicated that full application of the bid withdrawal payment provisions in instances of erroneous bids would cause an extreme and unnecessary hardship on most bidders. On the other hand, the Commission also indicated that a full waiver of these provisions could threaten the economic efficiency of the auction process. The Commission therefore decided to reduce the bid withdrawal payments substantially, taking into consideration the round and stage in which the mistaken bids were submitted and withdrawn.

7. Among other things, the Commission decided specifically that if a mistaken bid is withdrawn in the same round in which it was submitted, the withdrawal payment should be the greater of (a) the minimum bid increment during the round in which it was submitted or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. The Commission applied this calculation to reduce the bid withdrawal payment of MAP Wireless, L.L.C., who withdrew its erroneous bid in the same round in which it was submitted.

8. Under the facts presented, Georgia has demonstrated that it submitted an erroneous bid of \$119,720,000 for License B-076 (Chattanooga, TN) in Round 37 of the broadband PCS C block

auction. Georgia has further demonstrated that it attempted to withdraw its erroneous bid in Round 37. Georgia submitted a request for waiver accompanied by sworn affidavits attesting to the veracity of the factual circumstances surrounding the erroneous bid. We find that full enforcement of the bid withdrawal payment against Georgia in this instance would not serve the purpose of this rule and would be contrary to the public interest. In accordance with the Commission's May 3 Order, we find that a partial waiver of Section 24.704(a)(1) of the Commission's rules is warranted. Specifically, because Georgia attempted to withdraw its erroneous bid in the same round in which it was submitted, we will reduce Georgia's required bid withdrawal payment to the minimum bid increment for License B-076 in Round 37 of the broadband PCS C block auction, or \$569,898.

9. Accordingly, *it is ordered* that the waiver request submitted by Georgia Independent PCS Corporation is granted to the extent indicated above.

10. *It is further ordered* that Georgia Independent PCS Corporation is subject to a bid withdrawal payment requirement of \$569,898.

Federal Communications Commission.  
Michele C. Farquhar,  
Chief, Wireless Telecommunications Bureau.  
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## 47 CFR Part 24

[DA 96-705]

### Waiver of Audited Financial Statements and General Application Requirements for the Broadband Personal Communications Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; waiver.

**SUMMARY:** 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. The parties argued that the requirement that gross revenues and total assets figures disclosed on the long-form applications be evidenced by audited financial statement is unduly burdensome. The Commission granted the waivers and on our own motion extended the waiver to all broadband PCS C block applicants subject to the requirements of Sections 24.720 (f) and (g) of the rules. In

addition, on our own motion, we waived certain ownership information disclosure requirements of Section 24.813(a) (1), and (2) of the Commission's rules for all successful broadband PCS C block bidders filing long-form applications.

**EFFECTIVE DATE:** May 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** James Hedlund at 202-418-0660.

**SUPPLEMENTARY INFORMATION:** This Order, adopted May 8, 1996 and released May 8, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington D.C. 20037 (202) 857-3800.

#### Order

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. *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. 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. Pursuant to delegated authority, 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. 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 rules 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.

(g) Total assets. Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of the property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

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.

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) of the Commission's rules. 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) of the Commission's rules at a later date.

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.

(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 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).

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. 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. We find that the public interest would be served by waiving certain ownership information disclosure requirements for the long-form applications filed by the 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, to determine compliance with the anti-collusion rules, the applicable spectrum caps, certain ownership restrictions such as the multiple and cross ownership rules, and the alien ownership restrictions. All applicants already must certify 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) of the Commission's rules 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. 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 CFR § 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. 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. In addition, good cause for the waiver is shown. 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) of the Commission's rules, 47 CFR §§ 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.

11. *It is further ordered* That the requirements of Sections 24.813(a)(1) and 24.813(a)(2), 47 CFR §§ 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.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

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## 47 CFR Parts 24 and 90

[FCC 96-203]

### Waiver of Bid Withdrawal Payment Provisions

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; waiver.

**SUMMARY:** The Commission has before it requests for waiver of the rules governing bid withdrawal payments associated with spectrum auctions. On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. This Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P

in Round 9 of the 900 MHz SMR auction, or \$45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B-380 in Round 10 of the broadband PCS C block auction, or \$206,400.

**EFFECTIVE DATE:** May 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** James Hedlund at 202-418-0660.

**SUPPLEMENTARY INFORMATION:** This Order, adopted May 2, 1996, and released May 3, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037 (202) 857-3800.

## ORDER

### I. Introduction

1. The Commission has before it Requests for Waiver of its rules filed by Atlanta Trunking Associates, Inc. ("ATA") and MAP Wireless, L.L.C. ("MAP"). Specifically, ATA and MAP request waivers of the rules governing bid withdrawal payments associated with spectrum auctions. By this Order, we hereby resolve ATA's and MAP's Requests. Specifically, this Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9 of the 900 MHz SMR auction, or \$45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B-380 in Round 10 of the broadband PCS C block auction, or \$206,400.

### II. Background

2. *Waiver Requests.* On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. In its request, ATA alleges it erroneously submitted a bid of \$125,025,000 for license 11P (Atlanta, GA) in Round 9 of the 900 MHz SMR auction. Pursuant to our auction procedures, the minimum acceptable bid for that license in Round 9 was \$121,000. According to ATA, it had intended to submit a bid of \$125,025, but inadvertently added three extra