

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

In the Matter of	)	
	)	
Highland Cellular, Inc.	)	File No. 0000012881
	)	
Request for Waiver of	)	
47 C.F.R. § 1.2105(b)(2)	)	

**ORDER**

**Adopted: September 2, 1999**

**Released: September 2, 1999**

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. By this Order, we deny Highland Cellular, Inc.'s (Highland Cellular) request for waiver of section 1.2105(b)(2) of the Commission's rules.<sup>1</sup> Highland Cellular, a winning bidder of four licenses in Auction 22, the C, D, E and F block broadband PCS auction that closed on April 15, 1999 (Auction 22), requests the Wireless Telecommunications Bureau (Bureau) to waive section 1.2105(b)(2) to permit Highland Cellular to change its designated entity status from "small business" to "very small business."<sup>2</sup>

2. Under the Commission's rules, two categories of small businesses were eligible to bid in Auction 22: (1) small businesses, which are entities that, together with their affiliates and persons or entities that hold interests in such entities and their affiliates, have average annual gross revenues that are not more than \$40 million for the preceding three years,<sup>3</sup> and (2) very small businesses, which are entities that, together with their affiliates and persons or entities that hold interests in such entities and their affiliates, have average annual gross revenues that are not more than \$15 million for the preceding three years.<sup>4</sup> Small businesses are eligible for a 15 percent bidding credit, while very small businesses are eligible for a 25 percent bidding credit.<sup>5</sup>

3. On its short-form application (FCC Form 175), Highland Cellular indicated that it qualified as a small business, with gross revenues of not more than \$40 million. In its waiver request, which was attached to its long-form application (FCC Form 601), Highland Cellular now argues that in calculating its gross revenues for the short-form application, it double counted the gross revenues of its major shareholder, Marz Attar, thereby

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<sup>1</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>2</sup> Highland Cellular, FCC Form 601, Exhibit G-Waiver Request, filed May 4, 1999. Highland Cellular was the winning bidder for C block licenses in markets BTA143, BTA201, BTA255, and BTA444.

<sup>3</sup> 47 C.F.R. § 24.720(b)(1).

<sup>4</sup> 47 C.F.R. § 24.720(b)(2).

<sup>5</sup> See 47 C.F.R. §§ 24.712 and 24.717.

causing its total gross revenues to exceed the \$15 million threshold.<sup>6</sup> Highland Cellular contends that when its average annual gross revenues are calculated correctly, it meets the definition of a very small business and should therefore be eligible to receive a 25 percent bidding credit.<sup>7</sup>

4. Section 1.2105(b)(2) of the Commission's rules permits auction applicants to amend or modify their short-form applications to make minor changes or correct minor errors (such as typographical errors).<sup>8</sup> Major amendments, which include changes in an applicant's size that would affect eligibility for designated entity provisions, may not be made to a short-form application after the initial filing deadline.<sup>9</sup> The Commission has previously stated that the modification of an applicant's small business status does not constitute a minor change within the meaning of section 1.2105(b)(2).<sup>10</sup> Furthermore, we do not believe that a waiver of the rule is warranted in this case. A request for waiver must include a showing that unique facts and circumstances are involved that render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.<sup>11</sup> Highland Cellular has failed to show that unique circumstances are involved here.

5. Accordingly, IT IS ORDERED that the waiver request filed by Highland Cellular, Inc., on May 5, 1999, IS DENIED. This action is taken pursuant to sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>6</sup> FCC Form 601, Exhibit G - Waiver Request, at 1.

<sup>7</sup> Waiver Request at 2.

<sup>8</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>9</sup> *Id.*

<sup>10</sup> See Two Way Radio of Carolina, Inc. Request for Waiver of 47 C.F.R. § 1.2105(b)(2), *Memorandum Opinion and Order*, FCC 99-189, ¶ 8 (rel. July 22, 1999).

<sup>11</sup> 47 C.F.R. § 1.925.