

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

In re Applications of )  
 )  
ABC Wireless, L.L.C. ) File No. 0000012954  
 )  
For Various C Block PCS Licenses )

ORDER

Adopted: September 8, 1999

Released: September 8, 1999

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

1. In this Order, we dismiss Mountain Solutions Ltd., Inc.'s (Mountain Solutions) Petition to Deny (Petition) the long-form application (FCC Form 601) filed by ABC Wireless, L.L.C. (ABC Wireless), a winning bidder in Auction 22, the C, D, E and F block broadband PCS license auction that closed on April 15, 1999.<sup>1</sup> Mountain Solutions argues that ABC Wireless has not demonstrated that it is eligible to hold C block licenses because it failed to disclose non-attributable equity investments.<sup>2</sup> For the reasons set forth below, we dismiss Mountain Solutions's Petition.

2. ABC Wireless was the high bidder in Auction 22 for two licenses for Lawrence, Kansas (B247), and Manhattan, Kansas (B275). Mountain Solutions had been the high bidder for these licenses in the original PCS C block auction that concluded on May 6, 1996.<sup>3</sup> However, Mountain Solutions failed to make its second down payment for these licenses as required by section 24.711(a)(2) of the Commission's rules.<sup>4</sup> On October 1, 1998, the Commission denied an Application for Review filed by Mountain Solutions, which sought review of a Wireless Telecommunications Bureau Order denying Mountain Solutions's Emergency Petition for Waiver of the Commission's down payment deadline rule.<sup>5</sup> Following

<sup>1</sup> Petition to Deny filed by Mountain Solutions Ltd., Inc., June 3, 1999.

<sup>2</sup> Petition at 4.

<sup>3</sup> See "Entrepreneurs' C Block Auction Closes: FCC Announces Winning Bidders in the Auction of 493 Licenses to Provide Broadband PCS in Basic Trading Areas," *Public Notice*, DA 96-716 (rel. May 8, 1996).

<sup>4</sup> 47 C.F.R. . 24.711(a)(2). *See also* "FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block BTA Licenses; Final Down Payment Due by September 24, 1996," *Public Notice*, 11 FCC Rcd. 11316 (1996).

<sup>5</sup> *See* Mountain Solutions, Ltd., Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Various BTA Markets in the Broadband Personal Communications Services C Block Auction, *Memorandum Opinion and Order*, 13 FCC Rcd. 21983 (1998) (seeking review of Mountain Solutions, Ltd., Inc., Request for Waiver of Section 24.711(a)(2) of the Commission's Rules Regarding Market Nos. B053, B168, B172, B187, B188, B224, B247, B275, B366, and B381, *Order*, 12 FCC Rcd. 5904, 5905, . 2 (Wireless Tel. Bur. 1997)).

the release of the Commission's October 1998 Order, Mountain Solutions filed a Notice of Appeal with the U.S. Court of Appeals for the District of Columbia Circuit, which is currently pending.<sup>6</sup>

3. Mountain Solutions argues that it has standing to file its Petition against ABC Wireless's long-form application because grant of this application will trigger the Commission's default payment rules, causing Mountain Solutions direct economic harm.<sup>7</sup> Pursuant to section 1.2104(g)(2) of the Commission's rules, Mountain Solutions is required to pay to the U.S. Government the difference between its winning bids and ABC Wireless's winning bids for the licenses at issue.<sup>8</sup> Mountain Solutions argues that by bidding on licenses formerly held by Mountain Solutions, ABC Wireless has triggered this substantial default payment, which would not attach absent a grant of the ABC Wireless long-form application.<sup>9</sup>

4. In its Opposition, ABC Wireless argues that Mountain Solutions has failed to demonstrate injury sufficient to confer standing.<sup>10</sup> ABC Wireless argues that Mountain Solutions's alleged injury is not one that is fairly traceable to ABC's conduct or qualifications as a licensee.<sup>11</sup> ABC Wireless argues that "causation, or traceability, examines whether it is substantially probable that the challenged acts of the defendant, not of some absent third party, will cause the particularized injury of the plaintiff."<sup>12</sup> ABC Wireless contends that because the injury alleged by Mountain Solutions would have been caused by any winning bid on the licenses, there is no nexus between the alleged harm to the petitioner and the qualifications of ABC Wireless.<sup>13</sup> Thus, according to ABC Wireless, Mountain Solutions's alleged injury is merely a result of the application of the Commission's default payment rules and occurred when Mountain Solutions defaulted on the licenses.<sup>14</sup>

5. We agree. Pursuant to section 1.2109 of the Commission's rules, Mountain Solutions was in default after it failed to make its second down payment. As a result, it is subject to the Commission's default payment provisions in section 1.2104(g)(2). The payment for which Mountain Solutions is liable is a result of its default, not of any action taken by ABC Wireless or a grant of licenses to ABC Wireless. The fact that ABC Wireless bid a certain amount to win the above-captioned licenses reflects their current market value and does not make any injury to Mountain Solutions traceable to actions taken by either ABC Wireless or the Commission.

6. Even if we were to assume that Mountain Solutions has standing, we find no merit in Mountain Solutions's argument that ABC Wireless has failed to demonstrate that it is eligible to hold C block licenses. Mountain Solutions argues that ABC Wireless has failed to disclose certain non-

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<sup>6</sup> *Mountain Solutions, Ltd., Inc. v. FCC*, No. 98-1503 (D.C. Cir. filed Oct. 30, 1998).

<sup>7</sup> Petition at 3.

<sup>8</sup> 47 C.F.R. . 1.2104(g)(2).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Opposition of ABC Wireless, L.L.C., filed June 10, 1999 (ABC Wireless Opposition) at 2.

<sup>11</sup> ABC Wireless Opposition at 3.

<sup>12</sup> ABC Wireless Opposition at 3, citing *Florida Audobon Society v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996) (*en banc*).

<sup>13</sup> ABC Wireless Opposition at 3-4.

<sup>14</sup> *Id.*

attributable equity investments that may cause ABC Wireless to exceed the \$500 million asset limit set forth in section 24.709(a) of the Commission's rules.<sup>15</sup> Mountain Solutions also argues that the fact that two of ABC Wireless's three principals constituted the control group for an entity which bid in the original C block auction does not establish that its eligibility may be "grandfathered" for Auction 22.<sup>16</sup> ABC Wireless states in its Opposition that it is merely in discussions with additional financial investors, some of whom may invest as non-attributable equity holders.<sup>17</sup> We find that Mountain Solutions's argument is speculative in nature. The fact that ABC Wireless is in discussions for potential additional financing does not trigger a requirement for it to disclose additional assets. Moreover, we need not consider the issue of grandfathered eligibility because we conclude that ABC Wireless's total assets are below \$500 million and it, therefore, meets our eligibility criteria.<sup>18</sup>

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<sup>15</sup> Petition at 4. *See* 47 C.F.R. . 24.709(a).

<sup>16</sup> Petition at 5.

<sup>17</sup> Opposition at 6.

<sup>18</sup> In light of the fact that Mountain Solutions lacks standing and has failed to demonstrate that ABC Wireless is ineligible to hold C block licenses, we are today issuing a Public Notice announcing that we are prepared to grant the above-captioned license application following the full and timely payment of the remaining balance of ABC Wireless's winning bids, pursuant to section 1.2109(a) of the Commission's rules. 47 C.F.R. . 1.2109(a).

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7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. .. 154(i), 309(d)(1), and sections 0.331, 1.2108 and 24.830 of the Commission's rules, 47 C.F.R. .. 0.331, 1.2108 and 24.830, the Petition to Deny filed by Mountain Solutions Ltd., Inc., on June 3, 1999, IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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