

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

In re Applications of)	
)	
ABC Wireless, L.L.C.	)	File No. 0000012954
(Markets B190 and B245))	
)	
American Wireless, L.L.C.	)	File No. 0000012939
(Markets B192 and B219))	
)	
Chariton Valley Communication	)	File No. 0000012989
Corporation, Inc.)	
(Market B090))	
)	
Cook Inlet/VoiceStream PCS L.L.C.	)	File No. 0000012949
(Markets B071, B078, B101, B109, B225,)	
B260, B294, B332, B355, B380, B419,)	
B426, B443 and B452))	
)	
Highland Cellular, Inc.	)	File No. 0000012881
(Markets B255 and B444))	
)	
Iowa Network Services, Inc.	)	File No. 0000012888
(Market B243))	
)	
IT&E Overseas, Inc.	)	File No. 0000012703
(Market B490 and B493))	
)	
OPCS Three, L.L.C.	)	File No. 0000012978
(Markets B005, B033, B112, B145, B169,)	
B209, B223, B308, B310, B394 and B403))	
)	
OPM Auction Co.	)	File No. 0000012900
(Market B046))	
)	
Viper Wireless, Inc.	)	File No. 0000012956
(Markets B195 and B320))	
)	

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 in part, and deny in part, Pacific Eagle Investments, Ltd.'s, Pacific Eagle Investment (L) Limited's, and Masa Telecom, Inc.'s (collectively, Pacific Eagle) Petitions to Defer or, in the Alternative, to Condition Grant (Petitions) of the above-captioned long-form applications

(FCC Form 601) filed by winning bidders in Auction 22, the C, D, E and F block broadband PCS license auction that closed on April 15, 1999 (Auction 22).¹ Pacific Eagle, a secured creditor of the C block PCS licensee DCR PCS, Inc. (DCR PCS), requests that we defer grant of the above-captioned applications until pending litigation is complete or condition the grant on the outcome of the litigation. For the reasons set forth below, we dismiss in part, and deny in part, Pacific Eagle's Petitions.

2. On November 4, 1996, the Commission conditionally granted forty-three C block PCS licenses to DCR PCS.² On March 31, 1997, DCR PCS, and its parent company, Pocket Communications Inc. (collectively, Debtors), filed Chapter 11 petitions in the Bankruptcy Court for the Northern District of Maryland (bankruptcy court).³ Pacific Eagle, as a secured creditor of the Debtors, is a participant in the Chapter 11 proceedings.⁴ In an effort to provide limited relief for C block licensees having difficulty meeting their financial obligations to the Commission, the Commission released the *C Block Second R&O* on October 16, 1997.⁵ Pursuant to the *C Block Second R&O*, the Debtors elected to retain all or part of twelve of DCR PCS's C block licenses and relinquish the remainder of the licenses, including those at issue here.⁶ The bankruptcy court approved the Debtors' conditional election⁷ on June 4, 1998, over the objections of Pacific Eagle.⁸ On October 16, 1998, the Debtors filed an emergency motion for authority to make their conditional election effective, which the bankruptcy court granted on October 29, 1998 (Election Order).⁹ On November 6, 1998, Pacific Eagle filed with the court a motion for reconsideration of the Election Order.¹⁰ On March 3, 1999, the bankruptcy court released an order denying Pacific Eagle's motion for reconsideration, which Pacific Eagle appealed to the United States District Court for the District of Maryland on March 11, 1999.¹¹ On March 12, 1999, the bankruptcy court stayed its order denying the motion for reconsideration pending appeal.¹² Pacific Eagle's appeal of the Election Order is still pending.

¹ Petitions to Defer or, in the Alternative, to Condition Grant filed by Pacific Eagle Investments, Ltd., Pacific Eagle Investment (L) Limited, and Masa Telecom, Inc. on June 3, 1999. All eleven Petitions are identical, other than the name of the winning bidder.

² Applications of DCR PCS, Inc. for Broadband PCS C Block Licenses, *Order*, 11 FCC Rcd. 16849 (1996).

³ Additional Information Regarding Broadband PCS Spectrum Included in the Auction Scheduled for March 23, 1999, *Order*, DA 99-56 (rel. Apr. 5, 1999) at . 2 (*April Order*).

⁴ Petitions at 2.

⁵ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licenses, *Second Report and Order*, 12 FCC Rcd. 16436 (1997) (*C Block Second R&O*).

⁶ *April Order*, DA 99-56 at . 2.

⁷ DCR PCS's elections were accepted pursuant to Pocket Communications, Inc., Waiver of C Block Option Election Requirements, *Memorandum Opinion and Order*, FCC 98-103 (rel. June 1, 1998). See "Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block Elections, *Public Notice*, DA 98-1168 (rel. June 16, 1998).

⁸ Petitions at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

3. On June 3, 1999, Pacific Eagle filed its Petitions. Because Pacific Eagle's appeal of the Election Order is pending, Pacific Eagle argues that the Wireless Telecommunications Bureau (Bureau) should defer grant of the above-captioned licenses, or, at a minimum, conditionally grant the license applications subject to the possible return of the licenses to the Debtors' Chapter 11 estate, or as otherwise may be directed by the courts as a result of Pacific Eagle's pending Election Order appeal.¹³

4. In a public notice regarding Auction 22 released on December 23, 1998, the Bureau stated that in situations in which auctioned licenses are involved in a pending proceeding, such licenses will be granted at the close of the auction in order to serve the public interest in prompt implementation of PCS service, and that the grant of such licenses will be conditioned on the outcome of pending proceedings.¹⁴ In addition, in its *February 24 Public Notice*, the Bureau advised participants in Auction 22 that, in formulating their business strategies, they must take into account the risk that a pending proceeding might ultimately displace a winning bidder.¹⁵ Because the Bureau has already indicated in its *December 23 Public Notice* and *February 24 Public Notice* that it would condition the grant of licenses on the outcome of pending proceedings, we dismiss Pacific Eagle's request as moot. Furthermore, because the grants will be conditioned on the outcome of outstanding proceedings, and all parties are on notice that this is the case, we see no need to defer grant of the above-captioned licenses and we, therefore, deny Pacific Eagle's request that we do so.¹⁶

¹³ *Id.* at 5.

¹⁴ Auction of C, D, E and F Block Broadband PCS Licenses, *Public Notice*, 13 FCC Rcd. 24540, 24544 (1998) (*December 23 Public Notice*).

¹⁵ Auction of C, D, E and F Block Broadband PCS Licenses, *Public Notice*, DA 99-375 (rel. Feb. 24, 1999) at 4-5 (*February 24 Public Notice*).

¹⁶ In keeping with our decision to grant the licenses conditioned on the outcome of pending proceedings, we are today issuing a Public Notice announcing that we are prepared to grant the above-captioned license applications, except that of OPCS Three, L.L.C., following the applicants' full and timely payment of the remaining balance of their winning bids, pursuant to section 1.2109(a) of the Commission's rules. 47 C.F.R. . 1.2109(a). With respect to Chariton Valley Communication Corporation, Inc. and OPCS Three, L.L.C., today we are issuing an order conditionally granting its request for waiver of 47 C.F.R. . 20.6.

5. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. . 154(i), 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 Petitions to Defer or, in the Alternative, to Condition Grant of the above-captioned long-form applications filed by Pacific Eagle Investments, Ltd., Pacific Eagle Investment (L) Limited, and Masa Telecom, Inc., on June 3, 1999, in the above-referenced proceedings, ARE HEREBY DISMISSED in part and DENIED in part.

FEDERAL COMMUNICATIONS COMMISSION

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