

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

In the Matter of)	
)	
Pioneer Telephone Association, Inc.)	File No. 0000012967
(Market B163))	
)	
TLA Spectrum, L.L.C.)	File No. 0000012948
(Market B391))	
)	
Midwest Wireless Communications, L.L.C.)	File No. 0000012963
(Market B378))	
)	
Chariton Valley Communication Corporation, Inc.)	File Nos. 0000012988 and 0000012989
(Markets B090 and B230))	
)	
OPCS Three, L.L.C.)	File No. 0000012978
(Markets B112 and B145))	
)	
Requests for Waiver of Section 20.6)	
of the Commission's Rules)	

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 conditionally grant the requests for waiver filed by Pioneer Telephone Association, Inc. (Pioneer), TLA Spectrum, L.L.C. (TLA Spectrum), Midwest Wireless Communications, L.L.C. (Midwest), Chariton Valley Communication Corporation, Inc. (Chariton Valley), and OPCS Three, L.L.C. (OPCS Three) (collectively, Petitioners).¹ The Petitioners, winning bidders in Auction 22, the C, D, E and F block broadband PCS license auction that closed on April 15, 1999, filed waiver requests to exceed the 45 MHz spectrum cap set forth in section 20.6 of the Commission's rules.² For the reasons discussed herein, we conditionally grant the waiver requests.

2. Section 20.6 of the Commission's rules governs the amount of Commercial Mobile Radio Services (CMRS) spectrum that can be licensed to a single entity within a particular geographic area. Pursuant to section 20.6, a single entity may acquire attributable interests in the licenses of broadband PCS, cellular, and Specialized Mobile Radio (SMR) services that cumulatively do not exceed 45 MHz of

¹ Pioneer, Form 601, Exhibit G, filed May 5, 1999; TLA Spectrum, Form 601, Exhibit G, filed May 5, 1999; Midwest, Form 601, Exhibit G, filed May 5, 1999; Chariton Valley, Form 601, Exhibit G, filed May 5, 1999; and OPCS Three, Form 601, Exhibit G, filed May 5, 1999.

² 47 C.F.R. . 20.6.

spectrum within the same geographic area.³ In adopting the spectrum cap, the Commission found that if licensees were to aggregate sufficient amounts of spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers.⁴ The Commission also concluded that the imposition of a cap on the amount of spectrum that a single entity can control in any one geographic area would limit its ability to increase prices artificially.⁵

3. The spectrum currently held by each of the Petitioners is as follows: (1) Pioneer currently holds two 10 MHz PCS licenses, for frequency blocks D and E, in the Garden City, Kansas BTA (BTA163); (2) TLA Spectrum's affiliate, RCC Minnesota, Inc., is the cellular licensee (25 MHz) for the Minnesota 6 - Hubbard RSA; (3) Midwest is the cellular licensee (25 MHz) for the Rochester, Minnesota MSA; (4) Chariton Valley, through a wholly owned subsidiary, Chariton Valley Cellular RSA No. 2 Corporation, holds a 75 percent ownership interest in the cellular licensee (25 MHz) for the Missouri 5 - Linn RSA; and (5) OPCS Three currently holds the E and F block PCS licenses for the Detroit, Michigan BTA and Flint, Michigan BTA, for a total of 20 MHz in each market. Because each Petitioner was the high bidder for a 30 MHz license in Auction 22,⁶ grant of those licenses will cause each Petitioner to exceed the 45 MHz spectrum cap. Therefore, each Petitioner has requested a waiver of section 20.6.

4. As Pioneer, TLA Spectrum, Midwest, and OPCS Three note, the Commission is currently re-evaluating section 20.6 as part of its biennial review of its regulations.⁷ The Commission has sought comment on whether to retain, modify, or repeal section 20.6, given the changes brought about by the deployment of digital wireless services to mass market consumers.⁸ Given the specific facts presented in this case, and the likelihood that the Commission will act in the near future in the CMRS spectrum cap proceeding, we find good cause to grant conditionally the waiver requests, pending the outcome of the Commission's re-evaluation of section 20.6.⁹

5. Accordingly, IT IS ORDERED that the requests of Pioneer Telephone Association, Inc.,

³ *Id.*

⁴ Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8104, . 248 (1994) (*CMRS Third Report and Order*).

⁵ *CMRS Third Report and Order*, 9 FCC Rcd at 8104, . 248.

⁶ Petitioners were the high bidders in the following markets: (1) Pioneer was the high bidder for the C block license in the Garden City, Kansas BTA; (2) TLA Spectrum was the high bidder for the C block license in the St. Cloud, Minnesota BTA; (3) Midwest was the high bidder for the C block license for the Rochester, Minnesota BTA; (4) Chariton Valley was the high bidder for the C block licenses in the Columbia, Missouri BTA and Kirksville, Missouri BTA; and (5) OPCS Three was the high bidder for the C block licenses in the Detroit, Michigan BTA and Flint, Michigan BTA.

⁷ 1998 Biennial Regulatory Review -- Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket 98-205, *Notice of Proposed Rulemaking*, 13 FCC Rcd. 25132 (1998).

⁸ *Id.* at 25147, . 30.

⁹ We are today releasing an Order disposing of the petition filed against the long-form application of Chariton Valley. In light of the removal of these petitions and the fact that the grant of all of the licenses will be conditioned on the outcome of the Commission's re-evaluation of section 20.6, we are today issuing a Public Notice announcing that we are prepared to grant the above-captioned license applications, except that of OPCS Three, following the full and timely payment of the remaining balance of the winning bids for the licenses, pursuant to section 1.2109(a) of the Commission's rules. 47 C.F.R. . 1.2109(a).

TLA Spectrum, L.L.C., Midwest Wireless Communications, L.L.C., Chariton Valley Communication Corporation, Inc., and OPCS Three, L.L.C. for waiver of section 20.6 of the Commission's rules, 47 C.F.R. . 20.6, to allow Petitioners to hold more than 45 MHz of spectrum within the same geographic area ARE GRANTED, subject to the outcome of the Commission's pending rulemaking in WT Docket 98-205. Should Petitioners' respective spectrum holdings be inconsistent with the result in that proceeding, Petitioners shall, within 90 days from the release of the final order in WT Docket 98-205, take such actions as necessary to come into compliance with the rules provided in the final order in that proceeding and notify the Chief of the Wireless Telecommunications Bureau, in writing, of their actions to come into compliance.

6. This action is taken pursuant to authority delegated by section 0.331 of the Commission's rules, 47 C.F.R. . 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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