

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

In re Matter of)
)
U.S. Airwaves, Inc.) File No. 0000011568, *et al.*
)

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 U.S. Airwaves, Inc.'s (U.S. Airwaves) informal objection (Objection) against numerous long-form applications¹ (FCC Form 601) filed in connection with Auction 22, the C, D, E and F block broadband PCS license auction that closed on April 15, 1999 (Auction 22).² U.S. Airwaves requests that the grant of the subject licenses be conditioned on the outcome of *U.S. Airwaves v. FCC*.³ For the reasons set forth below, we dismiss U.S. Airwaves' Objection as moot.

2. U.S. Airwaves participated in the original C block auction, which closed on May 6, 1996, but withdrew after the bids exceeded the maximum prices U.S. Airwaves was willing to pay for the licenses.⁴ In *U.S. Airwaves v. FCC*, U.S. Airwaves seeks judicial review of two Commission decisions regarding the payment obligations of winning bidders in the original C block auction.⁵ Specifically, U.S. Airwaves objects to the Commission's suspension of C block licensees' payment obligations and its subsequent decision to alter the terms of payment for C block licenses.⁶ On June 23, 1998, the Commission filed a Motion to Hold in Abeyance, which the Court granted on August 20, 1998.⁷ In its

¹ See Appendix for complete list of long-form applications against which U.S. Airwaves filed its Objection.

² Informal Objection filed by U.S. Airwaves, Inc., June 25, 1999.

³ *U.S. Airwaves v. FCC*, D.C. Cir. No. 98-1266 (filed June 8, 1998).

⁴ *U.S. Airwaves v. FCC*, Petition for Review filed by U.S. Airwaves, June 8, 1998 (Petition for Review).

⁵ The two decisions are: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 16436 (1997); and Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd. 8345 (1998) (*Order on Reconsideration*).

⁶ Petition for Review at 2.

⁷ *U.S. Airwaves v. FCC*, D.C. Cir. No. 98-1266 (August 20, 1998). The Commission filed its request because a petition for reconsideration was filed against the *Order on Reconsideration*. See *U.S. Airwaves v. FCC*,

Objection, U.S. Airwaves argues that if its challenge to the Commission's Orders is successful, the Auction 22 winning bidders may be required to return their licenses to the Commission.⁸

3. In the Wireless Telecommunications Bureau's (Bureau) *December 23 Public Notice*, 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.⁹ In a *February 24 Public Notice*, the Bureau advised auction participants that, in formulating their business strategies, they must take into account the risk that a pending proceeding might ultimately displace a winning bidder.¹⁰ Thus, the Bureau has made clear that where licenses are the subject of pending proceedings, such licenses will be granted conditioned on the outcome of the proceedings. Moreover, in the Bidder Information Package for Auction 22, the Commission specifically lists *U.S. Airwaves v. FCC* as one of a number of pending proceedings that may ultimately affect the availability of spectrum.¹¹ Therefore, we dismiss U.S. Airwaves' request as moot.¹²

Motion to Hold in Abeyance, D.C. Cir. No. 98-1266 (June 23, 1998).

⁸ Objection at 4.

⁹ Auction of C, D, E and F Block Broadband PCS Licenses, *Public Notice*, 13 FCC Rcd. 24540, 24544 (1998) (*December 23 Public Notice*).

¹⁰ See Auction of C, D, E and F Block Broadband PCS Licenses, *Public Notice*, DA 99-375 (rel. Feb. 24, 1999) (*February 24 Public Notice*) at 4-5.

¹¹ Bidder Information Package for the C, D, E, and F Broadband PCS Auction scheduled for March 23, 1999, at 105.

¹² In keeping with our decision to grant licenses conditioned on the outcome of pending proceedings, we are today issuing a Public Notice announcing that we are prepared to grant the license applications listed in the Appendix 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).

4. 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 section 0.331 of the Commission's rules, 47 C.F.R. . 0.331, the Informal Objection filed by U.S. Airwaves, Inc., on June 25, 1999, IS HEREBY DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX

<u>File No.</u>	<u>Applicant</u>
0000011568	Vincent McBride
0000012126	Patel, Chandu
0000012291	Ishihara, Glenn W.
0000012325	Pine Belt PCS, Inc.
0000012341	Adams Telcom, Inc.
0000012377	PinPoint Wireless, Inc.
0000012600	West Enfield Communications, Inc.
0000012679	CFW Communications Company
0000012688	BRK Wireless Company, Inc.
0000012703	IT&E Overseas, Inc.
0000012724	Elkhart Telephone Co., Inc.
0000012725	Redwood Wireless Corporation
0000012726	RTSC Communications, Inc.
0000012728	Comet Wireless Inc.
0000012745	Wireless II, L.L.C.
0000012747	Northeast Communications of Wisconsin, Inc.
0000012881	Highland Cellular, Inc.
0000012882	Eliska Wireless, Inc.
0000012888	Iowa Network Services, Inc.
0000012889	Denton County Electric Cooperative, Inc.
0000012892	New Mexico RSA 6-III Partnership
0000012893	Wireless Communications Venture
0000012894	C.T. Cube, Inc.
0000012897	S & S Communications
0000012900	OPM Auction Co.
0000012901	Entertainment Unlimited, Inc.
0000012902	Pegasus PCS Partners, L.P.
0000012922	CorrComm, LLC
0000012930	Cherokee PCS, Inc.
0000012932	Shenandoah Mobile Company
0000012939	American Wireless, LLC
0000012940	Telepak, Inc.
0000012946	Cross Telephone Company
0000012948	TLA Spectrum, LLC
0000012949	Cook Inlet/VoiceStream PCS, LLC
0000012951	Conestoga Wireless Company, Inc.
0000012953	VMN Consortium
0000012954	ABC Wireless, LLC
0000012955	Alpine PCS, Inc.
0000012956	Viper Wireless, Inc.
0000012957	GW Wireless, Inc.

<u>File No.</u>	<u>Applicant</u>
0000012960	Zuma PCS, Inc.
0000012961	MCG PCS, Inc.
0000012962	Comcell, Inc.
0000012963	Midwest Wireless Communications, LLC
0000012966	BCN Communications, LLC
0000012967	Pioneer Telephone Association, Inc.
0000012968	Global Telecommunications International, Inc.
0000012969	Personal Communications Services, Inc.
0000012971	ComScape Communications, Inc.
0000012974	Leap Wireless International, Inc.
0000012977	Beta Communications, LLC
0000012978	OPCS Three, LLC
0000012981	Chariton Valley Communications Corporation
0000012984	Westel, L.P.
0000012985	ConnectBid, LLC
0000012988	Chariton Valley Communications Corporation, Inc.
0000012989	Chariton Valley Communications Corporation, Inc.