

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

In the Matter of)	
)	
Personal Communications Service)	File No. 0000012900
Beckley, West Virginia Basic Trading)	
Area No. 35, C Block License)	
Auction No. 22)	
)	

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 OPM Auction Co.'s (OPM) Petition for Emergency Relief (Petition) in the form of the immediate reinstatement of a pre-final round bid as the winning bid in Auction 22, the C, D, E and F block broadband PCS license auction that closed on April 15, 1999 (Auction 22).¹ OPM requests that we reinstate a pre-final bid amount as the winning bid because, it argues, the competing bidder was ineligible to bid on the market in question. For the reasons set forth below, we deny OPM's requested relief.

2. OPM was the high bidder for the 30 MHz C block license in the Beckley, West Virginia Basic Trading Area (BTA35) in Auction No. 22.² OPM's winning bid, placed in round 33, was \$487,000.³ OPM was also the high bidder for this license in round 25, with a bid of \$113,000.⁴ For the next eight rounds, *i.e.* rounds 26 through 33, OPM and Highland Cellular, Inc. (Highland Cellular) took turns as the high bidder for the C block license in BTA35.⁵ OPM argues that because Highland Cellular would have violated the Commission's spectrum cap rules had it won the license for BTA35, it was ineligible to bid on that market.⁶ Therefore, OPM contends,

¹ Petition for Emergency Relief, filed by OPM, April 12, 1999.

² *See Public Notice*, "C, D, E, and F Block Broadband PCS License Auction Closes," DA 99-757 (rel. Apr. 20, 1999) (Closing PN), Attachment A.

³ Closing PN, Attachment A.

⁴ Petition at 2-3.

⁵ *Id.* at 3.

⁶ *Id.* at 7.

the bids made by Highland Cellular in rounds 26 through 33 should be eliminated and OPM's bid of \$113,000 in round 25 should be reinstated as the winning bid.⁷

3. We do not agree with OPM that Highland Cellular was ineligible to bid on BTA35. Section 20.6 of the Commission's rules, the spectrum cap rule, states that no licensee in the broadband PCS, cellular, or SMR services regulated as CMRS shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.⁸ At the time it bid on BTA35, Highland Cellular held an attributable interest in 25 MHz of cellular spectrum overlapping BTA35. However, the act of bidding on BTA35 did not make the PCS spectrum attributable to Highland Cellular during the auction. If Highland Cellular had won the BTA35 license, it would not have been attributed with the additional 30 MHz of spectrum, and thus would not have been in potential violation of the spectrum cap, until grant of the license. Moreover, if it had won the BTA35 license, Highland Cellular could have complied with the spectrum cap by divesting its cellular license prior to grant of the PCS license. As OPM notes in its petition, Highland Cellular notified the Commission of a potential spectrum cap problem if it won BTA35, and stated in its Form 175 application for Auction 22 that it would come into compliance with the Commission's rules if it won the license for BTA35.⁹ Based on this record, we find that Highland Cellular was eligible to bid on BTA35, and therefore deny OPM's Petition.

4. Accordingly, IT IS ORDERED that the Petition for Emergency Relief filed by OPM Auction Co. on April 12, 1999, IS DENIED. 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

⁷ *Id.* at 9.

⁸ 47 C.F.R. § 20.6(a).

⁹ Petition at 2, citing Highland Cellular's FCC Form 175 application filed February 12, 1999.