



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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PR Docket No. 93-61
GN Docket No. 96-228

COMMENT SOUGHT ON SMALL BUSINESS SIZE STANDARDS

In accordance with a recent ruling by the Small Business Administration (SBA), the Commission is seeking further comment on small business size standards adopted for the auction of Location and Monitoring Service (LMS) and Wireless Communications Service (WCS) spectrum. This ruling is detailed in the attached letter from the Administrator of the Small Business Administration. We seek comment on these issues for purposes of obtaining SBA approval of the LMS and WCS size standards. This action will not affect the outcome of the WCS auction or the payment obligations of WCS licensees.

The LMS auction is scheduled to begin on February 23, 1999.¹ In our rules for that auction, we adopted small business size standards and associated bidding credits for LMS to remove entry barriers and ensure the participation of small businesses in the LMS auction and in the provision of service.² We sought comment, in general, on small business size standards for LMS, and one party commented on this issue. This commenter, Comtrak, recommended that the Commission adopt two small business categories in the LMS auction: (1) a "small business" category, for businesses with average gross revenues not to exceed \$10 million; and (2) a "very small business" category, for businesses with average gross revenues not to exceed \$3 million.³ Comtrak also recommended that the Commission rely solely on gross revenues,

¹ See Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licenses, *Public Notice*, DA 98-2246 (November 10, 1998).

² Amendment of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, FCC 98-157, ¶ 20 (rel. July 14, 1998), 63 Fed. Reg. 40,659 (July 30, 1998) ("*LMS Second Report and Order*"). See also Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket No. 93-61, 12 FCC Rcd 13942, ¶ 75 (1997) ("*LMS Further Notice*").

³ Comtrak Comments at 4.

and not the number of employees, for the purpose of determining an entity's eligibility for small business incentives, as it has done in previous auctions.⁴ None of the commenters addressed capital requirements supporting the suggested small business thresholds.

The rules we adopted for LMS define a "small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$15 million.⁵ They define a "very small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$3 million.⁶ Thus, in accordance with the Part 1 rules concerning competitive bidding, small businesses will receive a 25 percent bidding credit and very small businesses will receive a 35 percent bidding credit.⁷

The WCS auction closed on April 25, 1997.⁸ In the expedited rulemaking proceeding for this service, the Commission adopted tiered small business size standards and associated bidding credits.⁹ The Commission took this action to ensure that small businesses have the opportunity to participate in the provision of spectrum-based services, as required by Section 309(j) of the Communications Act.¹⁰ The record in the WCS proceeding supported the establishment of small business provisions. Several commenters urged the Commission to use tiered definitions, with levels similar to those employed for broadband PCS.¹¹ As was the case with LMS, none of the commenters discussed capital requirements supporting the suggested small business thresholds.

⁴ Comtrak Comments at 5.

⁵ *LMS Second Report and Order* at ¶ 20.

⁶ *Id.*

⁷ *Id.* See also 47 C.F.R. 1.2110(e).

⁸ WCS Auction Closes; Winning Bidders in the Auction of 128 Wireless Communications Services Licenses, *Public Notice*, DA 97-886 (April 28, 1997).

⁹ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, 12 FCC Rcd 10785 (1997) at ¶¶ 193, 194 ("*WCS Report and Order*"). See also Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Notice of Proposed Rulemaking* 11 FCC Rcd 21713 (1996) at ¶¶ 62, 63 ("*WCS Notice*").

¹⁰ 47 U.S.C. § 309(j)(4)(D). See also 47 U.S.C. §§ 309(j)(3)(B) and (j)(4)(A).

¹¹ See Comments filed by Rural Telecommunications Group and Cook Inlet Region, Inc., and Reply Comments filed by Total Telecommunications Services, Inc. For broadband PCS, a "small business" is defined as an entity with average annual gross revenues of not more than \$40 million for the preceding three years; a "very small business" is defined as an entity with average annual gross revenues of not more than \$15 million for the preceding three years. See 47 C.F.R. § 24.720.

The Commission adopted the same small business definitions for WCS as it did for broadband PCS.¹² Thus, it defined a "small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$40 million.¹³ The Commission defined a "very small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$15 million.¹⁴ The Commission established bidding credits of 25 percent for small businesses and 35 percent for very small businesses.¹⁵

The SBA recently informed the Commission that the SBA is unable to approve the LMS and WCS definitions because the Commission did not seek comment on specific small business proposals in the *LMS Further Notice* and the *WCS Notice*.¹⁶ See Section 3(a)(2)(C) of the Small Business Act. Herein, we take this opportunity to solicit comments on the specific small business size standards that we adopted for LMS and WCS. Comments are due on or before January 20, 1999. To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments will be available for public inspection during regular business hours in the Wireless Telecommunications Bureau Public Reference Room, Room 5608, 2025 M Street N.W., Washington, D.C. 20554.

Action by the Commission on January 12, 1999.

For further information concerning this proceeding, contact Ken Burnley or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

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¹² *WCS Report and Order* at ¶ 194.

¹³ 47 C.F.R. § 27.210(b).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 27.209.

¹⁶ See Letters to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration (December 2, 1998), at Attachments A and B.

Attachment A

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

December 2, 1998

Amy Zoslov
Chief (Acting), Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, 5th Floor
Washington, DC 20554

Re: Request for Approval of Small Business Size Standard – Competitive Bidding Rules for VHF
Public Coast Service and Location Monitoring Service

Dear Ms Zoslov:

This is in response to your letter of July 31, 1998, requesting Small Business Administration (SBA) approval of small business size standards for use in the auction of licenses for the two captioned services. The Federal Communication Commission (the Commission) adopted the following size standards for both services:

- ◆ “Small Business” – one with average annual gross revenues that do not exceed \$15 million for the preceding 3 years.
- ◆ “Very Small Business” – one with average annual gross revenues that do not exceed \$3 million for the preceding 3 years.
- ◆ “Small Business Consortium” – a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

SBA’s decisions:

The SBA hereby approves the size standards for use in the Maritime Communications: Public Coast VHF Stations (VPC) auction. Along with your letter you provided copies of the *Third Report and Order and Memorandum Opinion and Order* together with the relevant comments received on your proposal to adopt a \$15 million size standard for small business and a \$3 million size standard for very small business. Your staff also provided supplemental information on this service to the Office of Size Standards at a meeting on October 11, 1998, when they explained your basis for selecting these size standards. According to your staff, VPC is a very small spectrum and the industry consists primarily of very small businesses. Commenters supported lower standards, though not these specifically, and one supported tiered size standards, similar to those used in other auctions. To be consistent with the size standards established for other services associated with

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small spectrums (e.g., 800MHz Specialized Mobile Radio (SMR) Services and Interactive Video and Data Services), you selected the lowest size standards established by the Commission for any service. We agree that the lowest size standard established by the Commission are appropriate for VPC.

The SBA does not approve the size standards for use in the Location Monitoring Services (LMS) auction. Section 3(a)(2)(C) of the Small Business Act requires that "Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard - (i) is proposed after an opportunity for public notice and comment;" Neither the *Federal Register* notice or the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (adopted August 28, 1997 and released September 16, 1997), for the LMS auction, proposed any specific size standards; rather, they merely contained a general description of the subjects and issues involved. A general description does not satisfy the requirements of the Small Business Act for a "proposed size standard" offered for public comment.

Your letter explained why the Commission adopted these size standards. With the letter were copies of the *Second Report and Order* together with the relevant comments received to your proposal to establish bidding credits for small business. To supplement this information and to further support adopting these standards, members of your staff met with the Office of Size Standards on October 1, 1998. They explained that you had compared the size standards established for other license areas, particularly the 800 MHz and 900 MHz SMR Services and for Broadband Personal Communications Services (PCS). According to your staff, the technology for LMS has some similarities with the 800 MHz and 900 MHz SMR Services, and the site and equipment costs for these three services are about the same. They also stated that Broadband PCS, with a higher size standard, has capital costs that are substantially higher than for LMS.

Although public comments supported the establishment of tiered size standards for small business and very small business, we lack authority to approve the LMS special size standards.

We are pleased to assist you in this process, and are happy to work with you and the Commission to assist small businesses. If you have any questions on this matter or need additional information concerning size standards, please contact Gary Jackson, Assistant Administrator for Size Standards, at (202) 205-6618.

Sincerely,


Aida Alvarez
Administrator

cc: Dr. Richard L. Hayes

Attachment B



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

December 2, 1998

Amy J. Zoslov
Chief (Acting), Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, DC 20554

Re: The FCC's Request for Approval of Small Business Size Standards – Competitive Bidding Rules for the following auctions:
Broadband Personal Communications Services (C, D, E and F Blocks)
Wireless Communications Services
Narrowband PCS – Phase III
Paging Services

Dear Ms. Zoslov:

This letter responds, in part, to your requests of May 8, 1997, and of August 27, 1998, that the U.S. Small Business Administration (SBA) approve (1) 10 small business size standards proposed by the Federal Communications Commission ("the Commission") and (2) a very small business category to the scheduled re-auction of Broadband C Block. This letter specifically addresses the small business size standards the Commission adopted for Broadband Personal Communications (PCS) Services (C, D, E and F Blocks), Wireless Communications Services and Paging Services, and proposed for Narrowband PCS – Phase III. With this letter, therefore, SBA has provided the Commission with a decision on its requested size standards for all spectrums addressed in your May 8, 1997, letter.

A. Broadband Personal Communications Services (C, D, E and F Blocks)
Wireless Communications Services
Narrowband PCS – Phase III

Requested Size Standards:

For Broadband PCS and Wireless Communications Services the Commission adopted and for Narrowband PCS – Phase III it proposed a two-tiered definition of "small business," as follows:

- a small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding 3 years.

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- a very small business is an entity that together with its affiliates and persons or entities that hold interests in such entities and their affiliates, has average annual gross revenues that are not more than \$15 million for the preceding 3 years.

In addition, the Commission's size standards for the 3 services include a consortium of small businesses and very small businesses as an eligible small business. The Commission defined a consortium as a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business or very small business.

Broadband PCS C, D, E and F Blocks:

The \$40 million small business size standard for Broadband PCS D, E and F Block is the same standard the Commission adopted for the Broadband PCS C Block auction, and which the SBA approved on November 4, 1994. The Commission adopted the same size standard because they have similar capital costs. Moreover, adopting the same size standard avoids disruptions to the business plans of potential bidders, particularly participants in the Broadband PCS C Block auction. Most of the commenters on the proposed rule that addressed the size standards also supported the continued use of the C Block size standard for the Broadband PCS D, E and F Block auction. The Commission added the "very small business" category to encourage even smaller businesses to participate in this auction than in the C Block auction. For the same reason, the Commission on August 27, 1998, requested approval to add a very small business category to the scheduled re-auction of C Block.

Wireless Communications Services:

For the Wireless Communications Services auction, the Commission adopted the same size standards as for the Broadband PCS auctions. The Commission states that it is mostly large firms that operate nationally in this spectrum that will realize scale efficiencies. Establishing bidding credits for smaller firms, however, will help them compete in regional markets, particularly those smaller service areas of a size to make it easy for small and very small businesses to acquire licenses. All but one of the parties commenting on the Commission's proposed rule also agreed with the use of the PCS size standards.

Narrowband PCS - Phase III:

In the Narrowband Phases I and II auctions, the Commission used a single \$40 million small business size standard that SBA approved on April 20, 1994. For the upcoming Narrowband license auction, the Commission proposes two tiers of small businesses. While \$40 million defines a "small business," the Commission recognizes the need to provide increased benefits to bidders significantly under \$40 million. The Commission proposes, therefore, to define a "very small business" with a \$15 million standard. Narrowband capital requirements are similar to those for the Broadband F Block and the Broadband C Block, and these two-tiered size standards are consistent with those SBA is approving for those auctions. The Commission sought comments specifically on the

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necessity and appropriateness of these standards, and what types of companies may benefit. While some commenters suggest other benefits for small business bidders, they all support adopting the size standards.

SBA Decision:

SBA approves the \$40 million "small business" and \$15 million "very small business" definitions for use in the Broadband PCS C, D, E and F Block and the Narrowband PCS - Phase III auctions. We note that for these services the Commission's rules on affiliation are the same as those SBA approved for previous auctions. The only substantial difference between these affiliation rules and the SBA's is the addition of a special category for a small business consortium.

SBA recently liberalized its affiliation rule, to provide greater opportunity for small businesses to joint venture on large Government procurements. We support the Commission's effort to similarly broaden the opportunities for small businesses to obtain licenses for these services. However, we recommend that in the future the Commission consider clarifying its affiliation rules. Under the existing language, members of a joint venture are affiliated, as are those who share an identity of interest, common management, common facilities and contractual relationships. This affiliation rule does not indicate that small businesses that form a consortium, when approved for bidding at auctions, are not considered affiliated with one another, and we believe the Commission should modify its affiliation rule to explicitly state an exception from its affiliation provisions for conglomerate organizations.

SBA does not approve the \$40 million "small business" and \$15 million "very small business" definitions for use in the Wireless Communications Services auction. Section 3(e)(2)(C) of the Small Business Act requires that "Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard - (i) is proposed after an opportunity for public notice and comment;" The Notice of Proposed Rulemaking for the Wireless Communications Services, published in the *Federal Register* on November 20, 1996, did not, however, propose any specific size standards; rather, it contained a general description of the subjects and issues involved. A general description does not satisfy the requirements of the Small Business Act for a "proposed size standard" offered for public comment. Therefore, we lack authority to approve the Wireless special size standards.

B. Paging Services

Requested Size Standards:

For Paging Services, the Commission requested approval of the following adopted definitions:

- "Small Business" - an entity with average gross revenues that do not exceed

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- \$15 million for the preceding 3 years.
- \$3 million for the preceding 3 years.
- "Small Business Consortium" - a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

Approval:

SBA approves the size standards requested for use in this auction. The size standards selected by the Commission rest on considerations regarding spectrum characteristics and the capital requirements for Paging Services. The Commission sought comments on the capital requirements of the paging service in comparison to other wireless services and whether small businesses face barriers to entry into paging service based on lack of access to capital. Comments varied from those advocating no credits to those advocating higher credits. The Commission concluded that there are possibly significant capital costs, and that such barriers do exist. The Commission therefore adopted the proposed size standards and credits, that are the same as SBA approved for use in the 900 MHz Specialized Mobile Radio (SMR) services auction. We conclude from this information that for this auction these small business definitions are acceptable. Further, these size standards are consistent with those we have already approved for other services, such as the 800 MHz SMR and Phase II 220 MHz.

We are pleased to assist you in this process, and are happy to work with you and the Commission to assist small businesses. If you have any questions on this matter or need additional information concerning size standards, please contact Gary M. Jackson, Assistant Administrator for Size Standards, at (202) 205-6618.

Sincerely,



Aida Alvarez
Administrator

cc: Ms. Catherine J. Sandoval
Honorable Jere W. Glover
Dr. Richard L. Hayes