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

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DISPATCH BY

In the Matter of)
)
 AT&T Wireless PCS, Inc.)
 American Portable Telecommunications, Inc)
 Ameritech Wireless Communications, Inc.)
 Bell South Personal Communications, Inc.)
 Centennial Cellular Corp.)
 Communications International Corp.)
 Cox Cable Communications, Inc.)
 GCI Communications Corp.)
 GTE Macro Communications Corp.)
 PCS PRIMECO, L.P.)
 Pacific Telesis Mobile Services)
 PhillieCo., L.P.)
 Poka Lambro Telephone Cooperative, Inc)
 Powertel PCS Partners, L.P.)
 South Seas Satellite Communications Corp.)
 Southwestern Bell Mobile Systems, Inc.)
 Western PCS Corporation)
 WirelessCo. L.P.)

GEN Docket No. 90-314

Authorizations for A and B Block
Broadband PCS Frequencies

ORDER

Adopted: February 29, 2000

Released: March 1, 2000

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On December 11, 1995, Advanced Cordless Technologies, Inc. ("ACT") filed a Petition to Rescind or Suspend Authorizations ("Petition") for the above-captioned applications of the A and B Block auction winning bidders,¹ pending Commission action on the Sixth Circuit's remand in the case of *Cincinnati Bell Telephone Co. v. FCC*.² For the reasons discussed below, we dismiss the Petition.

¹ The Petition is directed to "all holders of authorizations for A and B block broadband PCS frequencies except (a) authorizations granted by non-auction awards to recipients of pioneer preferences and (b) authorizations for PCS systems that were constructed and commenced operation on or before November 9, 1995, the date of the decision in [*Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752 (D.C. Cir.1995)]." See Petition at 1 (¶1).

² 69 F.3d 752 (D.C. Cir.1995).

I. BACKGROUND

2. The long form applications of the A and B Block winning bidders were accepted for filing on April 12, 1995,³ and granted by the Wireless Telecommunications Bureau ("Bureau") on June 23, 1995.⁴ Following the filing of ACT's Petition, eight oppositions were filed: one each by Western PCS Corp., PCS PrimeCo, L.P., AT&T Wireless PCS, GTE Mobilnet Inc., American Portable Telecommunications, Inc., Communications International Corp., individually; one by Pacific Telesis Mobile Services and Pacific Bell Mobile Services jointly; and one by Sprint Telecommunications Venture, WirelessCo, L.P. and PillieCo, L.P., jointly. ACT is an unsuccessful applicant for a broadband PCS pioneer's preference,⁵ that, along with several others, filed for judicial review of the Commission's decision denying it a pioneer's preference. ACT lost its appeal for failure to timely file a petition for reconsideration of the Commission's denial of the preference.⁶ ACT did not file an application to participate in the A and B Block auction.⁷

II. DISCUSSION

3. We dismiss ACT's Petition because it has failed to demonstrate standing to challenge the A and B Block applicants. Only a party in interest has standing to protest an application before the Commission.⁸ To establish party in interest standing, petitioners must allege facts sufficient to demonstrate that grant of the subject application would cause them to suffer a direct injury.⁹ In addition, petitioners must demonstrate a causal link "between the claimed injury and the challenged action."¹⁰ To demonstrate a causal link, petitioners must establish that: (1) "these injuries fairly can be traced to the challenged action:"¹¹ and (2) "the injury would be prevented or redressed by the relief requested."¹²

³ See *Public Notice*, Report No. CW-95-02, (rel. April 12, 1995).

⁴ *In the Matter of Applications for A and B Block Broadband PCS Licenses*, 78 Rad. Reg. 2d (P&F) 1216 (WTB 1995).

⁵ See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 7 FCC Rcd 7794, 7806 (1992).

⁶ See *Freeman Engineering Associates Inc. v. FCC*, 103 F. 3d 169 (D.C. Cir. 1995).

⁷ See *62 Applications are Accepted to Participate in December 5, 1994 Broadband PCS Auction*, *Public Notice* (rel. Nov. 10, 1994).

⁸ 47 C.F.R. §24.830(a)(3).

⁹ See *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); *Lawrence N. Brandt*, 3 FCC Rcd 4082 (1988). See also *Martin-Trigona v. FCC*, 432 F.2d 682 (D.C. Cir.1970). Claims amounting to a "remote" or "speculative" injury are insufficient to confer standing. See *Application of KIRV Radio*, 50 F.C.C.2d 1010 (1975) ("the claim of potential economic injury by a mere applicant for a broadcast facility is too remote and speculative to show standing as a 'party in interest' "); see also *Application of Butte County Cellular License Corp.*, 8 FCC Rcd 7894 (1993).

¹⁰ *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978); see also *Matter of Warren Ache*, 9 FCC Rcd 2464, 2467 (1993); *Application of MCI for Transfer of Control*, 10 FCC Rcd 1072 (1994).

¹¹ *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. at 74; see also *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 38, 41 (1976) (Simon); *Lawrence N. Brandt*, 3 FCC Rcd at 4082.

4. We find the facts alleged by ACT to be insufficient to confer standing. ACT's claim to an interest in all of the A and B Block licenses is based on its previously pending appeal of the Commission's denial of its pioneer's preference requests. ACT alleges it would be harmed by grant of the licenses at issue to the auction winners because it could ultimately be awarded those licenses. However, these previously pending claims, do not vest ACT with standing to challenge the applications of the A and B Block auction winners. ACT did not participate in this auction and, therefore has no claim to the licenses. Thus, a grant of the licenses to the A and B Block PCS auction winners would cause ACT no direct injury. Moreover, the denial of such a grant would not redress any injury to ACT because such a denial would merely return the licenses to the Commission. Thus, ACT lacks standing to file its Petition.

5. We also find that ACT's Petition is moot. ACT has requested that the 99 licenses in the A and B block PCS auction be suspended or rescinded until such time as the Commission takes action on the Sixth Circuit's remand in the case of *Cincinnati Bell Telephone Co. v. FCC*.¹³ Since the filing of the Petition, however, the Commission has acted on remand by upholding the A and B Block license grants from which ACT claims relief. Specifically, the Commission determined that the elimination of the Cellular/PCS cross ownership restrictions on auction eligibility, the subject of the Sixth Circuit's remand, would only be applied prospectively, to future PCS auctions. Accordingly, ACT's Petition is now moot.¹⁴

V. ORDERING CLAUSE

6. Accordingly, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i) and 154(j), and Sections 24.830(a)(3) and 0.331 of the Commission's Rules, 47 C.F.R. §24.830(a)(3) and 0.331, IT IS ORDERED that the Petition filed by ACT against the A and B block applications IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



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

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¹² *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. at 81; *Lawrence N. Brandt*, 3 FCC Rcd at 4082.

¹³ 69 F.3d 752 (D.C. Cir.1995).

¹⁴ See *In the Matter of Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and The Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7869 (¶194)(1996).