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Federal Communications Commission
Washington, D C 20554

December 1, 1994

In Reply Refer To:
7300-01/1700A

R. Michael Senkowski
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Senkowski:

This is written in response to your letter dated November 14, 1994 regarding the Commission's anti-collusion rules for auctioning of personal communications service licenses in the 2.5 GHz band (broadband PCS).

you ask whether the **FCC's** anti-collusion rules apply to the situation where a PCS applicant has conversations with affiliates of other applicants that provide **PCS-related services**, such as marketing, equipment procurement, network installation, site construction, engineering consulting, and/or management services. you note that negotiations with these affiliates sometimes involve market-specific information, **but that** the clarification you seek from the Commission would only cover the situation where the service company does not communicate such information to the personnel involved in bidding strategy discussions for its affiliate.

You are correct that the anti-collusion rules are intended to require disclosure of agreements that might have the effect of reducing competition in bidding for PCS licenses. It is also the case that the rule was not intended to preclude discussions among applicants that in no manner relate to bidding or bidding strategy. Discussions, however, that indirectly provide information that effects bidding strategy would be precluded by our rules. **Therefore**, to the extent the discussions do not directly or indirectly involve bidding or bidding strategy, the Commission's anti-collusion limitations generally would not prevent PCS applicants from holding negotiations with affiliates of other **applicants** that relate to the services listed above.

As we noted in the Memorandum Opinion and Order, PP Docket No. 93-253, FCC 94-295 (Rel. November 17, 1994) (MO&O), we interpret "**applicant**" to include all holders of attributable interests in the applicant. Thus, a party with a five percent or greater interest in an applicant as well as all officers and directors of the applicant are deemed an "**applicant**" for purposes of the anti-collusion rules. See 47 C.F.R. § 1.2105(a)(5)(i). If both **applicants** have filed a short-form application for at least one of the same markets, the applicants should take precautions to

void disclosure of market-specific information in the course of negotiations that could influence bidding by the other applicant. Without such precautions, a reduction in the level of competitive bidding for PCS licenses could result, and the applicant could then be deemed in violation of the anti-collusion rules.

Apart from the Commission's anti-collusion rules, you should be aware that certain PCS-related services provided by affiliates of an applicant may be considered attributable for purposes of the PCS and CMRS spectrum aggregation limits. Specifically, joint marketing agreements between competitors in the same geographic area and management agreements could be attributable to a licensee if that licensee can influence the nature, terms or pricing of the service offering. See generally Fourth Report and Order, GN Docket No. 93-252, FCC 94-270 (Rel. November 18, 1994), paras. 22-28 and 30-34.

Finally, applicants will remain subject to existing antitrust laws which would, for example, prohibit discussion regarding bid prices between any applicants who have applied for licenses in the same market. See Fourth Memorandum Opinion and Order, PP Docket No. 93-253, FCC 94-264 (Rel. October 19, 1994), n. 12s.

I hope that this explanation is helpful. Please contact Kathleen O'Brien Ham at (202) 634-2443 if you have further questions.

Sincerely,



Rosalind K. Allen
Acting Chief,
Commercial Radio Division
Wireless Telecommunications Bureau