standing as a party in interest in another proceeding in the FM broadcast service); WIBF Broadcasting, 17 FCC 2d 876, 877 (1969) (same).

8. In their Application for Review, Petitioners rely on the holding in United Church of Christ v. FCC, 359 F.2d 994, 1005 (D.C. Cir. 1966) (''UCC''). for the proposition that they have standing as representatives of the public interest. As Pacific Telesis points out, in UCC there were specific allegations by the party filing the petition to deny that the broadcast station in question was ignoring the needs of a major segment of the listening audience. In this case, Petitioners make no allegations and no party has submitted any evidence that the A and B block licensees will fail to provide adequate service to any segment of the population. Petitioners' major complaint appears to be that they would have preferred entities other than the successful bidders to have received the A and B block licenses. This is not sufficient to support a petition to deny. Petitioners fail to demonstrate how they will be harmed, either as consumers or potential bidders, by the granting of licenses to the A and B block winners. Accordingly, we conclude, as did the Bureau, that Petitioners have not alleged sufficient facts in this case to demonstrate that it has standing to challenge the A and B block licenses. We agree with the Bureau that a potential PCS bidder could allege facts sufficient to establish standing to challenge another PCS application by showing that grant of that application would cause them demonstrable injury. See A & B Block Order at 5.

9. Petitioners repeat the argument previously made to the Bureau that the Commission failed to adopt specific provisions in the A and B block auction, which Petitioners contend is a violation of Section 309(j) of the Act. Pacific Telesis points out in opposition that Petitioners fail to address the Bureau's holding that this argument constitutes an untimely petition for reconsideration of the Commission's broadband PCS auction rules rather than a valid basis for a petition to deny. We agree. The Bureau properly concluded that the purpose of the petition to deny process is to assess challenges to applicants' qualifications to be Commission licensees. Petitioners' statutory argument does not address licensee qualifications, however, but challenges the structure of the A and B block auction itself. We agree with the Bureau that Petitioners' argument was not a valid petition to deny, but was instead a belated attempt to revisit the Commission's auction rules for licensing of the A and B blocks. In the Fifth Report and Order in Docket No. 93–253, 59 FR 37566 (July 22, 1994), the Commission decided against making special provisions for designated entities on the A and B blocks. We determined that this approach fully complied with Section 309(j) and affirmed this conclusion on reconsideration more than ten months before Petitioners filed their petition. Petitioners' attempt to challenge the rules again through the petition to deny process is therefore untimely and procedurally improper.

10. Petitioners also reiterate their allegation that the dominant carriers have divided the PCS licenses in an unlawful territorial allocation. We agree with the Bureau that Petitioners have failed to provide evidence supporting this allegation or otherwise to demonstrate that a grant of the A and B block applications would be inconsistent with the public interest. Under Section 309(d)(1) of the Communications Act, 47 U.S.C. § 309 (d)(1), parties filing a petition to deny must make specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity. Except where official notice may be taken, such allegations must be supported by affidavits of persons with personal knowledge of the facts alleged. Section 309(d)(2) states that if the pleadings and affidavits fail to raise substantial and material questions of fact and the Commission concludes that grant of the application would be in the public interest, the Commission shall deny the petition. 47 U.S.C. § 309(d)(2).

11. In support of their claim of territorial allocation both before the Bureau and now before the Commission, Petitioners allege only that three companies—AT&T Wireless PCS, PCS Primeco, and WirelessCo—won 61% of the A and B block licenses. Petitioners suggest that this constitutes ''circumstantial evidence'' that is not only enough to support a petition to deny, but ''a jury verdict finding a conspiracy which violates antitrust laws.'' A petition to deny must ''contain specific allegations of fact sufficient to show * * * that a grant of the application would be prima facie inconsistent with [the public interest].'' Where the Commission finds that such a showing has not been made, it may refuse the petition to deny on the basis of ''a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition.'' In this instance, we find that petitioners' allegation of territorial allocation does not constitute a showing that the grant to the A and B block winners was prima facie inconsistent with the public interest. We agree with the Bureau that Petitioners have failed to raise a substantial or material question of fact based on these allegations. First, Petitioners offer no grounds for denying the applications of the fifteen auction winners other than AT&T, PCS Primeco, and WirelessCo. Second, with respect to these latter three applicants, Petitioners fail to provide any factual evidence of collusion. Contrary to Petitioners' contention that the Bureau improperly required a ''smoking gun,'' we agree with the Bureau's conclusion that Petitioners must provide a modicum of a factual showing that collusion occurred—particularly in an auction that lasted over three months and resulted in aggregate winning bids of nearly $8 billion by 18 different parties. Petitioners introduce no evidence showing that AT&T, PCS Primeco, WirelessCo, or any other A or B block winner has violated any of the Commission's rules, including the collusion rules or the rules regarding aggregation of PCS spectrum. We also agree with Western that the bidding patterns were determined to a large degree by the desire of individual applicants to acquire national wireless footprints and/or to acquire markets complementing their existing telecommunications holdings. We therefore find Petitioners' allegation of collusion to be without merit.

V. Conclusion

12. For the reasons discussed above, we are dismissing Petitioners' Application for Review for failure to comply with Section 1.115(b)(2) of our rules. Although our action renders further discussion unnecessary, we agree with the Bureau's disposition of the issues Petitioners raised in their original Petition to Deny.

V. Ordering Clause

13. Accordingly, it is ordered pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.115(b)(2) of the Commission's Rules, 47 CFR § 1.115(b)(2), that the Application for Review filed by Petitioners on July 21, 1995, is denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–10615 Filed 5–01–96; 8:45 am]

BILLING CODE 6712–01–P

[PP Docket No. 93–253; ET Docket No. 92–100; FCC 96–139]

Deferral of Licensing of MTA Commercial Broadband PCS

AGENCY: Federal Communications Commission.

ACTION: Determination on application for review.

SUMMARY: The Commission released this Memorandum Opinion and Order (MO&O) to address an Application for Review filed by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People. This MO&O denies the application. The MO&O is necessary to answer the issues addressed in the application. The intended affect of this action is to resolve the issues set forth in the application.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: John Greenspan, (202) 418–0620, Wireless Telecommunications Bureau, Commercial Wireless Division.

SUPPLEMENTARY INFORMATION: This is the text of the MO&O, adopted March 28, 1996, released April 1, 1996. This order is available for inspection and copying during normal business hours at the Commercial Wireless Division Legal Branch, Room 7130, 2025 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Memorandum Opinion and Order

I. Introduction

1. The Commission has before it an Application for Review filed on July 21, 1995 by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People (collectively ''Petitioners''). Petitioners seek review of a June 23, 1995 Order by the Chief, Wireless Telecommunications Bureau (''the Bureau'') denying two previous requests, one filed by Petitioners, to delay the licensing of all MTA license winners in the Commission's PCS A and B block auction until the future C block auction winners were ready to be licensed.

II. Background

2. On April 12, 1995, the Wireless Telecommunications Bureau issued an Order denying the ''Emergency Motion to Defer MTA PCS Licensing'' filed by Communications One., Inc. (''CommOne''), which sought to delay issuance of the 99 A and B block licenses in the 2 GHz Personal Communications Service (''broadband PCS''). Two pleadings sought review of the CommOne Order and a stay of some or all grants of A and B block licenses until the conclusion of the broadband PCS C block auction. First, on May 12, 1995, CommOne, joined by GO Communications Corporation (''GO''), filed a petition for reconsideration of the CommOne Order and requested a stay of licensing of the three largest A and B block auction winners: AT&T Wireless PCS, Inc. (''AT&T Wireless''), PCS Primeco, L.P. (''PCS Primeco''), and WirelessCo, L.P. (''WirelessCo''). Second, on May 12, 1995, Petitioners filed an application for review of the CommOne Order and a stay of all A and B block licensing. The Bureau denied both requests for relief. Petitioners have also filed an Application for Review of the A and B Block Order. We are dismissing the Application for Review of the A and B Block Order in a separate Order adopted today. Although both parties sought Commission review, the Bureau determined that because CommOne/GO presented arguments not previously considered by the Bureau, Commission review would be inappropriate. In addition, the Bureau felt that it should reevaluate the arguments of all parties in light of the decision by the United States Supreme Court in Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995).

3. In the Stay Denial Order, the Bureau rejected Petitioners' claim that the decision to hold the C Block auction after the A and B block auction, combined with the absence of specific provisions for women and minorities in the A and B block auction, violated 47 U.S.C. § 309(j). The Bureau deemed Petitioners' stay request an untimely attempt to seek reconsideration of the Commission's rules adopted in PP Docket No. 93–253 with respect to the structure and sequencing of the PCS auctions. The Bureau noted that these rules were adopted in the Fifth Report and Order, 59 FR 37566 (July 22, 1994), and reviewed on reconsideration in the Fourth Memorandum Opinion and Order, 59 FR 53364 (October 24, 1994), in that docket, and that the deadline for reconsideration had long since passed. Finally, in addressing the stay request, the Bureau held that Petitioners and CommOne/Go failed to satisfy the Holiday Tours test for determining whether a stay is appropriate. The test includes four elements: (1) likelihood of success on the merits; (2) the probability of irreparable harm in the absence of relief; (3) the probability of harm to third parties if a stay is granted; and (4) whether a stay would serve or disserve the public interest. Washington Metropolitan Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977)).

4. First, the Bureau determined that the parties were unlikely to prevail on the merits. It rejected the contention that licensing of the A and B Block winners should be delayed until the C Block winners were ready to be licensed. The Bureau concluded that the statute did not require the Commission ''to promote diversity at the cost of delaying much needed service that could otherwise be provided to the public.'' The Bureau also rejected an economic analysis submitted by CommOne/GO purporting to show excessive concentration of PCS licenses. The Bureau determined that the study was flawed because, inter alia, it improperly assumed that the relevant product market was PCS, thus excluding the potential competitive impact of cellular and other wireless services from the model. The Bureau also found that the analysis ignored the fact that licensing of the A and B blocks would substantially increase competition while staying the license grants would perpetuate a more highly concentrated market. Second, the Bureau disagreed with Petitioners' claim of irreparable harm resulting from a headstart given to the A and B block winners. It noted that the Commission's decision to license the A and B blocks before the C block was not contingent upon any particular timetable or date for the C block auction. It also noted that the C block bidders could adjust their bids to account for any impact on the value of the C block licenses as a result of prior licensing of the A and B blocks. Third, the Bureau concluded that a stay would significantly harm the A and B block winners. The Bureau noted that at the time of the Stay Denial Order, the A and B block winners had already paid $1.4 billion to the United States Treasury as a downpayment (they paid the balance of approximately $5.6 billion on June 30, 1995) and did not earn interest on their deposits. The Bureau further found that the winners had already invested significant funds in start-up costs. Finally, the Bureau concluded that the public interest would best be served by not delaying a new service to the public. It found that ''rapidly providing new competitive sources of wireless services outweighs any possible competitive harm that might result from the A and B block winners being licensed ahead of auction winners in other PCS blocks.''

Accordingly, it refused to stay the licensing of the A and B block winners.

5. Petitioners filed the instant Application for Review on July 21, 1995. On August 24, 1995, Petitioners filed an Erratum to their application. On August 3, 1995, Petitioners filed an Emergency Motion for Stay with the United States Court of Appeals for the District of Columbia Circuit asking the court to stay issuance of the A and B block licenses (which had, in fact, been issued six weeks earlier) until the Commission was ready to license the winners in the C block auction as well. The Court denied the stay request on August 10, 1995.

III. Contentions of the Parties

6. In their Application for Review, Petitioners repeat the same arguments rejected by the Bureau in the Stay Denial Order. They claim that the Commission failed to comply with its statutory mandate under 47 U.S.C. § 309(j) to provide adequate opportunities for minorities. The failure to provide specific incentives for minorities in the A and B blocks, according to Petitioners, has resulted in an unlawful territorial allocation. Petitioners also assert that they have met all of the requirements for obtaining a stay. They allege irreparable harm in the absence of a stay, including loss of access to capital, loss of base station cell sites, loss of access to distributors and retailers, and loss of market share. They also allege that the A and B block auction winners would not be harmed by issuance of a stay. Initially, Petitioners based this argument on the erroneous assumption that the A and B block winners had not received their licenses, and therefore would not be required to pay the 80% balance of their bids while a stay was in effect. In their Erratum Petitioners acknowledge that the Commission granted licenses to the A and B block winners on June 23, 1995 and that all of the auction winners timely paid their balances on June 30, 1995. Nevertheless, Petitioners continue to assert that this does not constitute irreparable harm to the A and B block winners. Petitioners also allege that all of the A and B block winners were on notice that the legality of their licenses was subject to challenge. Petitioners further assert that they are likely to prevail on the merits of their claim that the Commission violated its statutory mandate to disseminate licenses to and promote economic opportunity for minorities. Finally, Petitioners assert that a stay would serve the public interest by furthering the statutory obligation of the FCC to promote participation in PCS by minorities and other designated entities.

7. In a Supplement filed on August 4, 1995, Petitioners note that on July 27, 1995, the United States Court of Appeals for the District of Columbia Circuit stayed the C block auction. Omnipoint Corporation v. FCC, No. 95–1374 (D.C. Cir., July 27, 1995). Omnipoint Corporation objected to the Commission's extension of the 50.1% equity option to all applicants rather than to just women and minority applicants. This meant that the applicant's control group must hold at least 50.1% of the applicant's equity, and a single investor could hold the remaining 49.9% equity. Omnipoint argued that despite the facial neutrality of the rule, it violated the equal protection guarantee because business not owned by women or minorities did not have adequate time to take advantage of the rule change prior to the filing deadline for C block bidders. Petitioners cite a statement by Chairman Hundt that this delay could push back the start of the C block auction for at least six months. Petitioners allege that ''[T]he longer the time period between the date of the A and B block licenses are issued and the date the C block licenses are issued, the greater and more profound this irreparable injury will become.'' The court dissolved the stay on September 28, 1995, and the C block auction began on December 18, 1995. Omnipoint Corp. v. FCC, No. 95–1374 (D.C. Cir., September 28, 1995).

8. All of the parties filing oppositions allege that Petitioners have not satisfied the four prong test for a stay as set forth in Holiday Tours. Western PCS Corporation (''Western'') asserts that Petitioners would not succeed on the merits because they ''misread the Congressional directives of 309(j).'' PCS PRIMECO, L.P. (''Primeco'') disputes Petitioners' claim of excessive harm. It contends that the granting of a stay of the A and B block licensing would not remove the uncertainty concerning the timing of the C block auction nor would it remedy the problem of losing base station cell sites if indeed such a problem did exist. Primeco argues that it is unclear how the A and B block licensees could preclude the eventual C block licensees from entering into distribution, resale, or other agreements and that Petitioners' claim of loss of market share was ''purely speculative and unsupported by the facts.'' WirelessCo, L.P. and PhillieCo, L.P. (''WirelessCo'') dispute Petitioners' claim that a stay would not harm other parties. WirelessCo submits that it already paid over $2.1 billion and PhillieCo paid $85 million to the United States Treasury. WirelessCo indicates that it has taken significant steps toward providing PCS service, including entering into negotiations with equipment manufacturers for subscriber equipment, network equipment, switching equipment and cell sites. It also submits that it has hired employees in more than 20 cities and is presently negotiating facility leases in multiple locations. Finally, WirelessCo argues that a stay would harm the public interest by delaying the realization by potential customers of the benefits of a new and innovative technology that would provide needed competition to incumbent cellular providers. Western raises the additional argument that Petitioners failed to comply with Section 1.115(b)(2) of the Commission's rules, 47 CFR § 1.115(b)(2), pertaining to the requirements for filing applications for review by not stating the grounds upon which review should be granted and then citing the appropriate section.

IV. Discussion

9. We agree with Western that Petitioners' Application for Review is procedurally defective and must be dismissed. Section 1.115(b)(2) of the Commission's rules, 47 CFR § 1.115(b)(2), requires applications for review to:

> specify with particularity, from among the following, the factors which warrant Commission consideration of the questions presented:
>
> (1) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.
>
> (ii) The action involves a question of law or policy which has not previously been resolved by the Commission.
>
> (iii) The action involves application of precedent or policy which should be overturned or revised.
>
> (iv) An erroneous finding as to important or material question of fact.
>
> (v) Prejudicial or procedural error.

As we indicate in the companion order we are adopting today, Petitioners' pleading is defective because it fails to ''specify with particularity'' any of the above subsections as grounds for granting its Application for Review. See Chapman S. Root Revocable Trust, 59 FR 44340 (August 29, 1994), where we held that procedurally defective applications for review will be dismissed. Petitioners' statement of general disagreement with the Bureau's Stay Denial Order will not suffice. Accordingly, we will dismiss petitioners' Application for Review. Although we are dismissing Petitioners' pleading, we also conclude on the merits that the Bureau correctly determined that Petitioners failed to

meet the strict standards for obtaining a stay as requested here.

A. Likelihood of Success on the Merits

10. Petitioners' assertion that they will ultimately prevail on the merits is based upon their erroneous contention that the Commission has failed to comply with its statutory mandate. That mandate includes, according to Petitioners, the obligation to disseminate licenses to a wide variety of applicants, including businesses owned by minorities. Petitioners state that only way under Section 309(j)(3)(B) of the Act to implement this goal in a meaningful way is to delay licensing the A and B block auction winners until the Commission is ready to license the eventual C block auction winners. Otherwise, according to Petitioners, the value of the C block licenses will decrease as a result of the headstart granted to the A and B block licensees. Nothing in the statute or legislative history requires such a result. In directing the Commission to establish bidding rules for PCS, Congress enumerated three other objectives in Section 309(j)(3) besides the one Petitioners cite: (1) development and rapid deployment of services with a minimum of administrative and judicial delay; (2) recovery for the public of a portion of the value of the spectrum; and (3) promoting efficient and intensive use of the spectrum. In its auction rules, the Commission has properly balanced these objectives with the Section 309(j)(3)(B) goal of diversity of ownership by establishing PCS frequency blocks of varying sizes and service areas, reserving certain of these blocks for entrepreneurs, and creating special provisions for designated entities to bid for licenses in those blocks. We do not believe the statute further requires the Commission to promote diversity at the cost of delaying much needed service that could otherwise be provided to the public. A stay would serve the individualized interest of Petitioners rather than the broader public interest. The Commission is not at liberty to subordinate the public interest to the interest of ''equalizing competition.'' SBC Communications, Inc. v. FCC, 56 F.3d 1484, 1491 (D.C. Cir. 1995) quoting Hawaiian Telephone v. FCC , 498 F.2d 771, 776 (D.C. Cir. 1974). The Bureau correctly rejected Petitioners' argument that minorities will be unable to enter the PCS market because of illegal and unfair ''territorial allocations'' in violation of the antitrust laws by the A and B block bidders. In our companion order, we find that the Bureau correctly concluded that these allegations were too vague to meet the requirements of a petition to deny. We conclude here that Petitioners have not shown any likelihood of success on the merits.

B. Irreparable Harm

11. We agree with the Bureau that Petitioners' allegations of irreparable harm are speculative, and that Petitioners have overstated the ''headstart'' advantage of the A and B block winners over prospective C block winners. First, the A and B block winners themselves will have to compete with well-entrenched cellular companies, who enjoy a ten-year headstart over all broadband PCS in terms of business arrangements, market share, and investment in infrastructure. Furthermore, Petitioners' alleged injuries from loss of cell sites, loss of access to distributors, and difficulty in obtaining market share do not constitute ''irreparable'' harm of the type that would warrant grant of a stay. Nothing prevents Petitioners and other prospective C block bidders from entering into agreements that are contingent upon their winning the auction. As the Bureau noted, to the extent that late entry in fact disadvantages C block winners, that disadvantage will translate into lower prices at auction as bids are adjusted downward to compensate for any such detriment. Finally, C block entrants may actually benefit from late entry because they will be able to evaluate the business strategies and performances of the A and B block winners.

C. Harm to Others

12. The third prong of the Holiday Tours test is the potential harm a stay would cause to others. Petitioners acknowledge that the A and B block winners have paid over $7 billion to the United States Treasury for their PCS licenses. Since winning the licenses, A and B block winners have also invested significant funds to cover start-up and development costs which they cannot begin to recoup until they are able to use their licenses to provide service. In light of these considerations, we believe that a stay would cause significant harm to other parties.

D. Public Interest

13. Finally, we conclude that a stay of A and B block licensing would not be in the public interest. The Bureau correctly found that besides imposing a financial burden on the A and B block winners themselves, a stay would delay the introduction of new competition and new services to the public. Conversely, granting the licenses will further the Congressional directive to promote the development and rapid deployment of PCS for the benefit of the public with a minimum of administrative or judicial delay. 47 U.S.C. § 309(j)(3)(A) We continue to believe that the public interest in rapidly providing new competitive sources of wireless services outweighs any possible competitive harm that might result from the A and B block licensees being licensed ahead of auction winners in other PCS blocks.

V. Conclusion

14. For the reasons discussed above, we are dismissing Petitioners' Application for Review for failure to comply with Section 1.115(b)(2) of our rules. Although our action renders further discussion unnecessary, we agree with the Bureau's disposition of the issues Petitioners raised in their original stay request.

VI. Order Clauses

15. 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 47 CFR § 1.115(c)(2), the Application for Review filed by Petitioners on July 21, 1995, is denied

16. It is further ordered that pursuant to Section 4 (i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) the Motion for Leave to File Supplement to Application for Review filed by Petitioners on August 4, 1995, is granted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–10614 Filed 5–01–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE AND TIME: Tuesday, May 7, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, May 9, 1996 at 10:00 a.m.