

DA 00-892
May 8, 2000

Mr. David E. Beyerle
331 S. Gill Street
State College, PA 16801-3963

Dear Mr. Beyerle:

This will respond to your April 14, 2000 letter¹ seeking permission to amend your FCC Form 175 (“short-form application”) to participate in Auction No. 30. Specifically, you request a waiver of Section 1.2105(b)(2) of the Commission’s rules to permit you to amend your short-form application to add 39 GHz license frequency blocks B through N within the market service areas identified in your application.² You initially requested such a waiver by letter dated April 6, 2000.³ On April 11, 2000, the Auctions and Industry Analysis Division (“Division”) denied your request.⁴ Upon consideration of your April 14 Letter, the Division affirms its denial of your request for a waiver of Section 1.2105(b)(2).

In the *April 11 Division Letter*, the Division denied your request for waiver because you did not contact the Commission regarding your selection of licenses in a timely manner. In your April 14 Letter, you contend that your request for waiver was timely because the *Auction No. 30 Status Public Notice*⁵ did not indicate that you were limited to bidding on the A block licenses in the five markets you designated. The *Auction No. 30 Status Public Notice* did not list the specific licenses on which you had applied to bid because, at that time, your short-form application was incomplete. The *Auction No. 30 Status Public Notice* nevertheless included the precise frequencies related to license blocks within the spectrum to be auctioned. Thus, we continue to believe that you were on notice of the frequencies related to the separate license blocks within each market area for the 39 GHz band. Moreover, there was also sufficient time after the *Auction*

¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Mr. David E. Beyerle (April 14, 2000) (“April 14 Letter”).

² 47 C.F.R. § 1.2105(b)(2).

³ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Mr. David E. Beyerle (April 6, 2000) (“April 6 Letter”).

⁴ See Letter to Mr. David E. Beyerle from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA00-818 (April 11, 2000) (“*April 11 Division Letter*”).

⁵ See “Auction of Licenses for Fixed Point-to-Point Microwave Service in the 38.6 to 40.0 GHz (39 GHz) Band; Status of Applications to Participate in the Auction,” *Public Notice*, DA 00-615 (rel. March 17, 2000) (“*Auction No. 30 Status Public Notice*”).

No. 30 Status Public Notice and before issuance of the *Qualified Bidders Public Notice*⁶ for you to confirm the status of your application and the licenses selected in your application. Therefore, we continue to believe that you did not exercise reasonable diligence in confirming your selection of licenses.

As explained in the *April 11 Division Letter*, applicants have a duty to confirm the status of their applications and the licenses selected in their applications. Your duty in this regard was independent of the *Auction No. 30 Status Public Notice* and therefore was not diminished by the fact that you did not discern your error from that document.

On the basis of the record before us, including both your April 6 Letter and your April 14 Letter, we are not persuaded that you have demonstrated unique circumstances to justify the grant of a waiver of Section 1.2105(b)(2), which prohibits applicants from adding licenses to their short-form applications.⁷

This action is taken pursuant to delegated authority under Section 0.331 of the Commission's rules.⁸

Sincerely,

Mark Bollinger
Acting Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

⁶ See "Auction of Licenses for Fixed Point-to-Point Microwave Service in the 38.6 to 40.0 GHz (39 GHz) Band; 35 Qualified Bidders," *Public Notice*, DA 00-724 (rel. March 31, 2000) ("*Qualified Bidders Public Notice*").

⁷ See 47 C.F.R. § 1.925. Section 1.925 of the Commission's rules requires that to obtain a waiver of the Commission's Rules, a petitioner must demonstrate either (a) that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and grant of the requested waiver would be in the public interest; or (b) that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

⁸ 47 C.F.R. § 0.331.