



FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

DA 01-2202  
September 20, 2001

Frederick M. Joyce, Esq.  
Christine McLaughlin, Esq.  
Alston & Bird LLP  
601 Pennsylvania Avenue  
North Building, Eleventh Floor  
Washington, DC 20004

**Re: Auction No. 41- Waiver Request**

Dear Mr. Joyce and Ms. McLaughlin:

This letter responds to the Waiver Request filed on behalf of your client, Codecom, Inc. ("Codecom"), seeking waiver of the upfront payment deadline of September 13, 2001, 6:00 p.m. (ET) for Auction No. 41.<sup>1</sup> In the Waiver Request, Codecom contends that a waiver is warranted because its attention was diverted by the extraordinary circumstances that occurred during the week of September 10, 2001.<sup>2</sup> For the reasons cited below, we deny the waiver request.

To obtain a waiver of the Commission's competitive bidding rules,<sup>3</sup> Codecom must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.<sup>4</sup>

On July 9, 2001, the Commission first notified applicants for Auction No. 41 that the deadline for submission of upfront payments was 6:00 p.m. (ET) on September 13, 2001.<sup>5</sup> The Commission also warned applicants that "[f]ailure to deliver the upfront payment by the

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<sup>1</sup> Application of Codecom, Inc. for Participation in Auction No. 41, Request for Rule Waiver and Request for Expedited Action, filed September 13, 2001 ("Waiver Request").

<sup>2</sup> *Id.*

<sup>3</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>4</sup> 47 C.F.R. § 1.925.

<sup>5</sup> "Narrowband PCS Spectrum Auction Scheduled for October 3, 2001, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues," *Public Notice*, DA 01-1592, at Section III.D. (rel. July 9, 2001), 66 Fed. Reg. 38690 ("*Auction No. 41 Procedures Public Notice*").

September 13, 2001, deadline will result in dismissal of the application and disqualification from participation in the auction.”<sup>6</sup>

Codecom contends that its failure to timely submit its upfront payment was due to the fact that its attention was diverted by the tragic circumstances of the week of September 10, 2001.<sup>7</sup> Codecom contends that on the morning of September 13, 2001, it was reminded that the upfront payment was due on that same date.<sup>8</sup> Codecom further contends that its bank in Puerto Rico requires that wire transfers be submitted before mid-day in order to be dispatched on that business day.<sup>9</sup>

Based on the record before us, we are not persuaded that Codecom has demonstrated circumstances sufficient to justify the grant of a waiver in this case. By its own admission, Codecom initiated processing of the wire payment on the day of the payment deadline, leaving little time for Codecom to become familiar with the requirements of the process in general or the particular deadlines imposed by its bank. The Commission has repeatedly cautioned auction participants regarding the importance of planning ahead to account for unforeseen last-minute difficulties. In particular, applicants were warned to avoid untimely payments by “discuss[ing] arrangements (including bank closing schedules) with their banker several days before they plan to make a wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.”<sup>10</sup> Finally, Codecom has failed to provide any particular facts or other evidence that would demonstrate how the events that occurred on September 11, 2001, directly prevented it from timely submission of the upfront payment. Standing alone, the fact that Codecom’s attention was diverted by the tragic events of last week is insufficient to warrant a waiver of the deadline.<sup>11</sup> Accordingly, Codecom’s request is denied.

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<sup>6</sup> *Auction No. 41 Procedures Public Notice* at Section III.D.

<sup>7</sup> Waiver Request at 1. It is our understanding that Codecom is referring to the acts of terrorism that occurred on September 11, 2001.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Auction No. 41 Procedures Public Notice* at Section III.D.1.

<sup>11</sup> We also note that all the other bidders in Auction No. 41 complied with the requirement to submit upfront payments by 6:00 pm (ET) on September 13, 2001.

*Frederick M. Joyce, Esq.*  
*Christine McLaughlin, Esq.*  
*September 20, 2001*

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This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.<sup>12</sup>

Sincerely,

Margaret W. Wiener  
Chief, Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau

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<sup>12</sup> 47 C.F.R. § 0.331.