



Federal Communications Commission
Washington, D.C. 20554

October 22, 2001

DA 01-2467

Via Certified Mail, Return Receipt Requested

James K. Young
Awesome Paging, Inc.
3902 Houston Highway
Victoria Texas 77901

Re: Auction No. 40 - Waiver Request

Dear Mr. Young:

This letter responds to your September 26, 2001 correspondence (sent via facsimile) on behalf of Awesome Paging, Inc. ("API"). Your letter requests a waiver of the September 17, 2001 deadline for filing a short-form application (FCC Form 175) to participate in the upcoming auction of licenses for the lower and upper paging bands ("Auction No. 40").¹ For reasons discussed below, we deny the waiver request.

To obtain the requested waiver of the Commission's bidding rules,² API 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 the 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.³

The Commission set the September 17, 2001 deadline for filing short-form applications for Auction No. 40 in a Public Notice released May 25, 2001.⁴ In the same Public Notice, the Commission further announced that:

[t]he original short-form application (FCC Form 175) filing window for Auction No. 40 closed on May 14, 2001 at 6 p.m. ET. All applications will be deemed ineffective and purged from the FCC's computer system. Any party will be

¹ Letter from James K. Young to Margaret Wiener, undated ("Letter").

² 47 C.F.R. §1.2105(a).

³ 47 C.F.R. § 1.925.

⁴ Auction of Licenses for Lower and Upper Paging Bands Postponed Until October 30, 2001, *Public Notice*, DA 01-1307 (rel. May 25, 2001) ("*Postponement Public Notice*").

permitted to submit an application for Auction No. 40 in accordance with the new deadline stated above.⁵

Subsequently, in a Public Notice restating the September 17, 2001 deadline, the Commission reminded potential applicants that all short-form applications previously filed for Auction No. 40 had been deemed ineffective and purged.⁶ In a further Public Notice, the Commission announced that applications could be filed at any time beginning at noon ET on September 5, 2001 until 6:00 p.m. on September 17, 2001 and warned that late applications would not be accepted.⁷ To facilitate filing, the Commission enabled applicants to submit applications via the internet 24 hours per day.⁸

API requests that the Commission waive the September 17, 2001 deadline and permit API to file a short-form application for Auction No. 40 after that date. API asserts that it should be permitted to do so because API filed a short-form application to participate in Auction No. 40 prior to the original 6 p.m. May 14, 2001 deadline and API intended to participate in Auction No. 40.⁹

Based on the record before us, API does not satisfy the Commission's criteria for granting a waiver of the short-form application deadline. The Commission set the deadline pursuant to Section 1.2105(a)(1). That rule's underlying purpose is to establish a fixed date by which all applicants interested in participating in the auction must provide the Commission with relevant information.¹⁰ Among other things, using a fixed date both provides the Commission with sufficient time to review applications prior to the auction and identifies the pool of potential bidders. API has not shown that enforcing the deadline in this case would frustrate these purposes or even would not serve them.

Moreover, API has not demonstrated unique facts and circumstances that merit granting the waiver in this case. API has failed to provide any particular facts or other evidence that would demonstrate that it was prevented from timely submitting a short-form application by the

⁵ *Id.*

⁶ Lower and Upper Paging Bands Auction Scheduled for October 30, 2001 – Technical Modifications Regarding Acceptable Bids, Bidder Seminar Scheduled for September 5, 2001, *Public Notice*, DA 01-1961 (rel. Aug. 17, 2001)(“*Auction No 40 Technical Modifications Public Notice*”).

⁷ Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122 (rel. Sept. 10, 2001) (“*Auction No. 40 Staff Guidance Public Notice*”) at 1.

⁸ Access to the FCC's computer system was unavailable from late afternoon on Friday, September 7, 2001 until 9 a.m. on Monday, September 10, 2001 to facilitate necessary maintenance.

⁹ Letter at 1.

¹⁰ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, ¶¶161-68 (1994).

James K. Young
Awesome Paging, Inc.
October 22, 2001
Page 3

September 17, 2001 deadline. Numerous other parties filed short-form applications prior to the original deadline and, in contrast to API, filed new short-form applications in accordance with the rescheduled deadline.

Accordingly, API's request for a waiver of the short-form application filing deadline for Auction No. 40 is denied. This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.¹¹

Sincerely,

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

¹¹ 47 C.F.R. § 0.331.