



Federal Communications Commission
Washington, D.C. 20554

August 26, 2002

DA 02-2089

Office of the Chief Technology Officer
Government of the District of Columbia
441 4th Street, N.W., Suite 930
Washington, DC 20001
Attn: Mr. A. Richard Burke
Executive Manager, Special Wireless Projects

Dear Mr. Burke:

This order denies the request filed by the Office of the Chief Technology Officer of the Government of the District of Columbia ("OCTO") for waiver of the Auction No. 44 short-form filing deadline.¹

Background. On March 8, 2002, OCTO filed a petition for reconsideration² of the Commission's report and order, released January 18, 2002, adopting allocation and service rules for the Lower 700 MHz Band.³ In its petition, OCTO argued that, pursuant to the public safety radio services auction exemption of Section 309(j)(2)(A) of the Communications Act, as amended,⁴ it should be permitted to obtain Lower 700 MHz band licenses without competing in an auction.⁵ On March 20, 2002, the Wireless Telecommunications Bureau ("Bureau") released a public notice announcing the procedures, including the May 8, 2002, short-form filing deadline, for Auction No. 44, an auction of licenses in the Lower 700 MHz band.⁶ On June 4, 2002, OCTO filed the instant waiver request, seeking permission to file a short-form application for Auction No. 44 after the short-form filing deadline.⁷ On June 14, 2002, the Commission released a memorandum opinion and order, which, *inter alia*, denied OCTO's petition

¹ Request for Waiver of Rules for Auction No. 44, Office of the Chief Technology Officer, Government of District of Columbia, filed via electronic mail on June 4, 2002 ("OCTO Waiver Request").

² Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-69), GEN Docket No. 01-74, Petition for Reconsideration or Clarification of the Office of the Chief Technology Officer, Government of the District of Columbia, filed March 8, 2002 ("OCTO Petition").

³ Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-69), GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022 (2002).

⁴ 47 U.S.C. § 309(j)(2)(A).

⁵ OCTO Petition.

⁶ Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment and Other Auction Procedures, *Public Notice*, 17 FCC Rcd 4935 (2002) ("*Auction No. 44 Procedures Public Notice*"). In response to the enactment of relevant Federal legislation, this public notice was updated on June 26, 2002; however, the June 26 public notice did not alter the already-passed short-form filing deadline. See Auction No. 44, Revised Schedule, License Inventory, and Procedures, *Public Notice*, DA 02-1491, 2 (rel. June 26, 2002).

⁷ OCTO refers to this deadline as the registration deadline.

for reconsideration.⁸

Discussion. In its waiver request, OCTO explains that its failure to meet the May 8 short-form filing deadline “occurred due to [OCTO’s] expectation that the Commission would respond to its [petition for reconsideration] in advance of the registration deadline passing.”⁹ OCTO explains further that when it realized that this expectation would not be fulfilled, it determined that “its best interest, as well as that of the citizens of the District of Columbia . . . would be best served if OCTO participated as a direct bidder in [Auction No. 44].”¹⁰

To obtain a waiver of the Commission’s competitive bidding rules, an applicant 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.¹¹

OCTO has failed to show why enforcing the short-form filing deadline would frustrate the deadline’s underlying purpose or how grant of the waiver would be in the public interest. As the Commission has stated, strict enforcement of the short-form filing deadline “is necessary to ensure that applicants are treated fairly and equally; in addition, a strict standard permits the Commission, at a specific time, to begin processing a given, defined group of applications without the specter of facing numerous waiver requests.”¹²

Nor has OCTO demonstrated how unique circumstances would make enforcement of the short-form filing deadline inequitable in this case. The lack of any attempt by OCTO to meet the short-form filing deadline indicates that OCTO believed not just that the Commission would address OCTO’s petition for reconsideration in advance of the deadline, but also that the Commission would grant its petition. There is no reasonable basis for these expectations. In the *Auction No. 44 Procedures Public Notice*, released several weeks before the short form filing deadline, the Bureau cautioned potential bidders that pending administrative and judicial proceedings concerning Auction No. 44 might not be resolved by the time of the auction.¹³ Moreover, the possibility always exists that the Commission will deny any given petition, as it eventually did OCTO’s. We do not regard OCTO’s unfounded expectations as unique circumstances that warrant waiver of the filing deadline.

Further, we note that under the Auction Reform Act of 2002,¹⁴ OCTO is not eligible to participate

⁸ Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-69), GN Docket No. 01-74, *Memorandum Opinion and Order*, 17 FCC Rcd 11,613 ¶¶ 2, 32-39 (2002).

⁹ OCTO Waiver Request at 1.

¹⁰ *Id.* at 2.

¹¹ 47 C.F.R. § 1.925.

¹² First Auction of Interactive Video and Data Service (IVDS) Licenses, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 ¶ 7 (1996) (quoting the lower Wireless Telecommunications Bureau order). While earlier filing of OCTO’s waiver request would not have changed our decision, we note that OCTO waited almost a month after the short-form filing deadline before filing its request.

¹³ *Auction No. 44 Procedures Public Notice*, 17 FCC Rcd 4935, 4948-49 (2002).

¹⁴ Pub. L. No. 107-195, 116 Stat. 715 (2002) (“Auction Reform Act”) (codified in part at 47 U.S.C. § 309(j)(15)).

Mr. A. Richard Burke
August 26, 2002

in Auction No. 44. Among other things, the Auction Reform Act required that the Commission alter the auction schedule for Lower 700 MHz band licenses.¹⁵ For the rescheduled auction of the C and D block licenses in that band, the Auction Reform Act defines the entities that are eligible to bid:

The entities that shall be eligible to bid in the auction of the C-block and D-block licenses . . . shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.¹⁶

Pursuant to this language, the Bureau announced that previously identified qualified bidders among the entities that submitted applications to participate in Auction No. 44 by May 8, 2002, would be the only parties eligible to participate in the rescheduled Auction No. 44.¹⁷ OCTO failed to submit a short-form application by May 8, and did not become a qualified bidder. Accordingly, OCTO is not eligible to participate in Auction No. 44.

Conclusion. For the above reasons, OCTO's waiver request is denied. This action is taken pursuant to authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

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

¹⁵ See Auction No. 44 Revised Schedule, License Inventory, and Procedures, *Public Notice*, DA 02-1491 (rel. June 26, 2002) ("*Auction No. 44 Revised Schedule Public Notice*").

¹⁶ 47 U.S.C. § 309(j)(15)(C)(ii).

¹⁷ *Auction No. 44 Revised Schedule Public Notice* at 2.