



Federal Communications Commission  
Washington, D.C. 20554

October 25, 2004

DA 04-3359

Shannon W. Conway, Esq.  
Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037

Re: Friends of IVDS, L.L.C. – Request for Refund of Installment Payments

Dear Ms. Conway:

This letter responds to a filing made on behalf of Friends of IVDS, L.L.C. (“Friends”) seeking the refund of installment payments paid to the Commission after the automatic cancellation of two licenses.<sup>1</sup> For the reasons set forth below, we deny the Refund Request.

Friends was the high bidder in Auction No. 2 for the two 218-219 MHz Service<sup>2</sup> licenses that are the subject of its request.<sup>3</sup> As a small business, Friends was eligible to pay for its winning bids through the Commission’s installment payment plan.<sup>4</sup> Grant of the licenses was conditioned upon Friends’s full and timely performance of all installment payment obligations.<sup>5</sup>

On September 17, 1998, the Commission issued the *218-219 MHz Flex Order*, which, among other measures, re-designated IVDS as the 218-219 MHz Service and proposed a financial restructuring scheme for the service.<sup>6</sup> Subsequently, on September 10, 1999, the Commission issued the *218-219 MHz*

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<sup>1</sup> Withdrawal of Request for Rule Waiver and Request for Additional Relief of Friends of IVDS, L.L.C., filed January 31, 2002 (“Refund Request”).

<sup>2</sup> Formerly known as the Interactive Video and Data Service or IVDS.

<sup>3</sup> “Interactive Video And Data Service (IVDS) Applications Accepted For Filing,” *Public Notice*, 9 FCC Rcd 6227 (1994). Friends submitted the winning bids for 218-219 MHz Service licenses in Worcester, Massachusetts, License No. IVM055B, and Hartford, Connecticut, License No. IVM032B. Friends was also the high bidder for several other 218-219 MHz Service licenses not at issue in the instant proceeding.

<sup>4</sup> 47 C.F.R. § 1.2110(d) (1994).

<sup>5</sup> 47 C.F.R. § 1.2110(d)(4) (1994); “Wireless Telecommunications Bureau Staff Clarifies Grace Period Rule for IVDS Auction Licensees Paying By Installment Payments,” *Public Notice*, 10 FCC Rcd 10724 (WTB 1995).

<sup>6</sup> Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service and Amendment of Part 95 of the Commission’s Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services, *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 19064 (1998) (“*218-219 MHz Flex Order*”).

*Order*, which modified the regulations governing the licensing of this service<sup>7</sup> and adopted a financial restructuring plan for “Eligible Licensees.”<sup>8</sup> Eligible Licensees could choose between (i) reamortization of principal and interest installment payments over the remaining term of the license (“resumption option”); (ii) an amnesty option, in which Eligible Licensees could have all of the outstanding debt forgiven on any of the licenses that they chose to surrender to the Commission for reauction; or (iii) license prepayment, in which Eligible Licensees could retain or return as many licenses as they desired, as long as the licensees prepaid the outstanding principal owed for the retained licenses.<sup>9</sup> Each Eligible Licensee was obligated to make its election by the Election Date.<sup>10</sup>

In the *218-219 MHz Order*, the Commission also indicated that for those Eligible Licensees that elected resumption, the first quarterly installment payment was due at the end of the third month after the Election Date, *i.e.*, April 30, 2001.<sup>11</sup> Thereafter, additional installment payments were due every quarter for the remaining years of the 10 year term of the license. The licensees electing resumption were also subject to the Commission’s installment payment rules that allow a licensee to use up to two quarterly grace periods, subject to late payment fees, if the licensees require additional time to submit an installment payment.<sup>12</sup> Under the Commission’s installment payment rules, if a licensee fails to make a quarterly installment payment with the associated late fees within the two quarterly grace periods, it will be in default, its license will automatically cancel, and it will be subject to debt collection procedures.<sup>13</sup>

Friends, as an Eligible Licensee, chose to forgo the opportunity to obtain amnesty, and instead, selected the payment resumption option.<sup>14</sup> However, Friends failed to make the April 30, 2001 quarterly

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<sup>7</sup> Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (2000) (“*218-219 MHz Order*”); Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Order on Reconsideration*, 14 FCC Rcd 21078 (1999).

<sup>8</sup> Eligible Licensees are licensees that: (i) were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rule. *218-219 MHz Order*, 15 FCC Rcd at 1499-1500 ¶ 4.

<sup>9</sup> *Id.* at 1519-1529 ¶¶ 34-53.

<sup>10</sup> *Id.* at 1529 ¶ 54. The Election Date was established as the last day of the third month following publication of the *218-219 MHz Order* in the Federal Register. *Id.* at 1524 n.155. *See also* “Implementation Procedures for the Report and Order and Memorandum Opinion and Order Addressing the 218-219 MHz Services (Formerly Known as Interactive Video and Data Services (IVDS)),” *Public Notice*, 15 FCC Rcd 7329, 7330-31 (WTB 2000) (“*Implementation PN*”); “Federal Communications Commission Announces Change to The Election Date For 218-219 MHz Service,” *Public Notice*, 16 FCC Rcd 4007 (2001); “Wireless Telecommunications Bureau Announces Revised Election Date (January 31, 2001) and Amended Eligibility List For 218-219 MHz Service,” *Public Notice*, 16 FCC Rcd 5937 (WTB 2001).

<sup>11</sup> *218-219 MHz Order*, 15 FCC Rcd at 1523-24 ¶¶ 43-44; *Implementation PN*, 15 FCC Rcd at 7333.

<sup>12</sup> 47 C.F.R. § 1.2110(g)(4)(i)-(iv).

<sup>13</sup> *Id.*

<sup>14</sup> *Implementation PN*, 15 FCC Rcd at 7333.

installment payment for its Worcester and Hartford licenses within the time required by the rules.<sup>15</sup> As a result, these two licenses cancelled by operation of the Commission's rules. After cancellation of the licenses, Friends made a payment on the licenses in the amount of \$113,907.96. Subsequently, Friends filed a request for waiver seeking the Commission's acceptance of its late installment payment and waiver of the automatic cancellation provisions primarily asserting that its untimely installment payment was due to an administrative error on its part.<sup>16</sup> Shifting its approach, Friends withdrew its Waiver Request explaining that it had lost the financing for its licenses.<sup>17</sup> At the same time, Friends sought the return of funds paid to the Commission after the cancellation of its licenses.<sup>18</sup>

In support of its Refund Request, Friends contends that because the licenses cancelled automatically, the Commission could not apply the untimely payment to the cancelled licenses or any other account.<sup>19</sup> Friends argues that there is no language in Section 1.2110(g), or other provisions of the Commission's rules, which provides the Commission with authority to retain untimely payments after a license has cancelled.<sup>20</sup> Friends's argument ignores the clear language of the Commission's rules and applicable orders. In the *Order on Reconsideration of the Third Report and Order*, the Commission specifically stated that "when a licensee defaults on an installment payment, its license automatically cancels without any action by the Commission and the *entire* outstanding debt obligation becomes subject to debt collection procedures."<sup>21</sup> Similarly, Section 1.2110(g)(iv) indicates that if a licensee fails to make a quarterly installment payment with the associated late fees within the two quarterly grace periods, "it will be in default, its license will automatically cancel, and it will be subject to debt collection procedures."<sup>22</sup> Having forgone the opportunity to obtain amnesty for its debt obligation, Friends cannot now be relieved of its debt or impede the Commission's ability to collect on the debt by retaining the untimely installment payment. Thus, the Commission has the authority to retain the entire \$113,907.96 amount deposited by Friends.

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<sup>15</sup> Request for Rule Waiver of Friends of IVDS, L.L.C. at 3, filed November 7, 2001 ("Waiver Request"); Refund Request at 3. Because Friends has withdrawn the Waiver Request, there is no need to act on it. See Refund Request at 4.

<sup>16</sup> Waiver Request.

<sup>17</sup> Refund Request at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15317 ¶ 43 (2000) (in relevant part, "*Order on Reconsideration of the Third Report and Order*") (emphasis added); see also 47 C.F.R. § 1.2110(g)(4); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Order on Reconsideration of the Third Report and Order*, 19 FCC Rcd 2551 (2004).

<sup>22</sup> 47 C.F.R. 1.2110(g)(4)(iv); see also *Implementation PN*, 15 FCC Rcd at 7333.

Shannon W. Conway, Esq.  
October 25, 2004  
Page 4

For the foregoing reasons, the Refund Request filed by Friends of IVDS, L.L.C. on January 31, 2002 is denied and its Request for Waiver is dismissed. This action is taken under the delegated authority pursuant to Section 0.331 of the Commission's rules.<sup>23</sup>

Sincerely,

Gary Michaels  
Deputy Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

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<sup>23</sup> 47 C.F.R. § 0.331.