



Federal Communications Commission  
Washington, D.C. 20554

DA 05-1282

Adopted: April 25, 2005

Released: May 12, 2005

Mr. Ameer Flippin  
2053 Wilson Road  
Memphis, TN 38116

Re: Request for Extensions of Time To File a Short-Form Application and Submit Down Payment in Auction No. 59

Dear Mr. Flippin:

This letter responds to your April 20, 2005, e-mail requesting reconsideration of, and extensions of time in which to comply with, the short-form application and down payment deadlines for Auction No. 59.<sup>1</sup> For reasons explained in this letter, we deny your requests.

Your e-mail was submitted over six weeks after the March 4, 2005 deadline for electronically submitting short-form applications through the Commission's automated FCC Form 175 system and less than one week before the April 26, 2005, auction start date. In support of your requests, you cite the "Public Importance" of the licenses being auctioned and your "case load" as a *pro se* bidder.<sup>2</sup> You argue that Commission precedent "allows an interested party to implement Constitutional and legal rights where in the public interest, specifically in the deployment of wireless technology."<sup>3</sup> You state that your motion

---

<sup>1</sup> On April 20, 2005, an e-mail from Ameer Flippin was sent to Margaret Weiner, Chief, Auctions and Spectrum Access Division, through the Auction No. 59 e-mail account. E-mail from Ameer Flippin to Margaret Weiner, Chief, Auctions and Spectrum Access Division (submitted April 20, 2005) ("*E-mail Motion*"). Attached to that e-mail was a cover letter that purported to "give notice of [Mr. Flippin's] participation in Auction No. 59" and referenced an "attached Short Form 175 and 'Ex Parte Motion for an Extension of Time, Waiver, and Amendment...,' which consisted of four .jpg image files. *Id.* One of the four .jpg files was not legible. To be eligible to participate in Auction No. 59, you must have timely submitted an electronic short-form application together with an appropriate upfront payment as set forth in the *Auction No. 59 Procedures Public Notice*. See 47 C.F.R. § 1.2105(a); "Multiple Address Systems Spectrum Auction Scheduled for April 26, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 59," *Public Notice*, 19 FCC Rcd 24,445, 24,456-57 (2004) ("*Auction No. 59 Procedures Public Notice*"). Your *E-mail Motion* does not comply with the deadlines and requirements set forth in the *Auction No. 59 Procedures Public Notice* and the Commission's rules.

<sup>2</sup> Section 1.2107 of the Commission's Rules governs the due date for down payments. 47 C.F.R. § 1.2107. A down payment is the additional amount owed by a winning bidder after the close of an auction as may be necessary to bring the bidder's total deposits up to 20 percent of the high bid. Because we find that you have not established eligibility to bid in Auction No. 59, your request for extension of the down payment deadline is moot.

<sup>3</sup> *E-mail Motion*, .jpg attachment "Extension page 2 of 2."

is filed “pending a *Motion for Installment Payments*.”<sup>4</sup> You also assert that “Multiple Address Systems spectrum will be important in the build-out of a PCS network,” and contend that “spectrum assets auctioned in Broadband PCS Auction No. 58 are on appeal in the U.S. Circuit Court of Appeals in the District of Columbia.”<sup>5</sup>

As we pointed out in denying your similar request with regard to Auction No. 58,<sup>6</sup> a request for waiver of our rules must contain a complete explanation of why a waiver is desired.<sup>7</sup> Grant of the request is warranted if the explanation establishes that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application in the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative.<sup>8</sup>

Your request fails to satisfy these requirements. The purpose underlying our short-form deadline is to make sure that our auctions proceed in a timely, organized, predictable, and, thus, fair fashion so that we can best further the statutory goals of promoting, without administrative or judicial delays, the rapid deployment of new technologies, products, and services for the benefit of the public.<sup>9</sup> You have provided no reason why this purpose would be frustrated should your request be denied. Nor have you attempted to show the existence of any unusual circumstances that support your request.

The fact that 38 applicants were able to file Auction No. 59 short-form applications on time demonstrates that our short-form filing deadline was not unduly burdensome for applicants.<sup>10</sup> Moreover, there was ample public notice of the auction schedule. On November 15, 2004, the Wireless Telecommunications Bureau (“Bureau”) announced that Auction No. 59 would begin on April 26, 2005.<sup>11</sup>

---

<sup>4</sup> *Id.* Further, the *E-mail Motion* maintains that “[t]hese documents were filed in an effort to comply with the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure and the Rules of the Supreme Court.” *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Ameer Flippin, DA 05-173 (Jan. 25, 2005) (denying Mr. Flippin’s request for extensions of time to file a short-form application and to make an upfront payment for Auction No. 58, as well as for a 180-day postponement of that auction).

<sup>7</sup> *See* 47 C.F.R. § 1.925(b)(2).

<sup>8</sup> 47 C.F.R. § 1.925(b)(3). Additionally, the Commission may grant a waiver upon a showing of good cause. 47 C.F.R. § 1.3.

<sup>9</sup> 47 U.S.C. § 309(j)(3)(A); *Motions for Stay of Auction No. 57 and Requests for Dismissal or Disqualification*, *Order*, 19 FCC Rcd 20,482, 20,489 ¶ 20 (ASAD-WTB 2004).

<sup>10</sup> *See* “Auction of Multiple Address Systems Spectrum; Status of FCC Form 175 Applications to Participate in Auction No. 59,” *Public Notice*, DA 05-693, at 1, Attachments A and B (March 21, 2005); <http://wireless.fcc.gov/auctions>.

<sup>11</sup> “Multiple Address Systems Spectrum Auction Scheduled for April 26, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd 22449 (2004).

On December 21, 2004, the Bureau announced deadlines of March 4, 2005, for short-form applications, and April 1, 2005, for upfront payments.<sup>12</sup> You have offered no circumstances to explain why you were unable to meet those auction deadlines.

Finally, your assertion that Auction No. 59 is of public importance does not explain why allowing you to enter the auction proceedings well after the short-form deadline and just six days prior to the start of the auction would benefit the public. We believe that any arguable public benefit to be derived from our adding you as an additional participant to Auction No. 59 would be far outweighed by the public benefit of denying your request, thereby affording other auction applicants reasonable certainty as to the fair and predictable application of our auction rules and procedures, including enforcement of our deadlines.<sup>13</sup> Such certainty enables applicants to, among other things, strategically plan for the auction. Accordingly, we deny your request for waiver of the Auction No. 59 short-form filing and down payment deadlines. Because you did not electronically submit a short-form application pursuant to the established deadline and procedures,<sup>14</sup> you are not eligible to participate in Auction No. 59.<sup>15</sup>

This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.<sup>16</sup>

Sincerely,

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

---

<sup>12</sup> *Auction No. 59 Procedures Public Notice*, 19 FCC Rcd 24,445.

<sup>13</sup> *See, e.g.*, Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to F. Scott Fistel, Esq., Law Office of Fistel & Associates, P.A., 19 FCC Rcd 20,517, 20,518-19 (ASAD-WTB 2004) (“The . . . underlying purpose [of the short-form application deadline] is to establish a fixed date by which all applicants interested in participating in the auction must submit relevant information necessary to establish applicants’ qualifications to participate in an auction. Among other things, using a fixed date also provides the Commission with sufficient time to review applications prior to the auction and identifies the pool of potential bidders. . . . The Commission’s rules are best served by applying auction deadlines in a fair and consistent manner.”) (citation omitted); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2375-81 ¶¶ 161-88 (1994) (purpose of short-form application deadlines).

<sup>14</sup> *See Auction No. 59 Procedures Public Notice*, 19 FCC Rcd 24,445.

<sup>15</sup> Further, we find that the expense of time and resources to address what appear to be frivolous arguments is a detriment to the public interest. A filing may be deemed frivolous under 47 C.F.R. § 1.52 if there is no “good ground to support it.” *See* “Commission Taking Tough Measures against Frivolous Pleadings,” *Public Notice*, 11 FCC Rcd 3030 (1996).

<sup>16</sup> 47 C.F.R. § 0.331.