



Federal Communications Commission  
Washington, D.C. 20554

January 25, 2005

DA 05-173

Mr. Ameer Flippin  
2053 Wilson Road  
Memphis, TN 38116

Re: Request for Extensions of Time To File a Short-Form Application, To Submit an Upfront Payment and To Postpone Auction No. 58

Dear Mr. Flippin:

This letter responds to your requests 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 the auction.<sup>1</sup> For reasons explained in this letter, we deny your requests.

***Extensions of time for filing short-form and for making upfront payment.*** Characterizing yourself as a “participant” in Auction No. 58, a characterization belied by the substance of your pleading, you seek a waiver of the November 30, 2004, short-form filing deadline and the December 29, 2004, upfront payment deadline for the auction. In support of your request, you point to the public importance of having smaller companies participate in spectrum auctions, particularly broadband PCS auctions where there is an entrepreneur set-aside. You also claim that the Christmas and New Year holidays should be taken into consideration, given that law libraries and universities are closed during these holidays.

A request for waiver of our rules must contain a complete explanation of why a waiver is desired.<sup>2</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>3</sup>

Your request fails to satisfy these requirements. The purpose underlying our short-form and upfront payment deadlines 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>4</sup> You have provided no reason why this purpose would be frustrated should your request be

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<sup>1</sup> Ameer Flippin, Ex-Parte Motion and Petition for a Time Extension, Waiver, Amendment, and Modification of Rules in PCS/Broadband Auction #58; Particularly 1) A Time Extension in Which to File Short Form 175, 2) A Waiver or Extension of Down Payment Deadline of December 29<sup>th</sup>, 2004, and 3) Modification of Auction Date to Be Postponed for 180 Days; and Memorandum in Support Thereof by *Pro Se* bidder, Ameer Flippin (filed Jan. 3, 2005).

<sup>2</sup> 47 C.F.R. § 1.925(b)(2).

<sup>3</sup> *Id.* § 1.925(b)(3). Additionally, the Commission may grant a waiver upon a showing of good cause. *Id.* § 1.3.

<sup>4</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).

denied. Nor, apart from alluding to the Christmas and New Year holidays – events which were entirely predictable and which succeeded our short-form deadline by 25 and 32 days, respectively – have you attempted to show the existence of any unusual circumstances that support your request.

The fact that 49 applicants – 39 of which applied as small businesses, entrepreneurs, or both – were able to file Auction No. 58 short-form applications on time suggests that our short-form filing deadline was not unduly burdensome for applicants, regardless of their size.<sup>5</sup> Moreover, there was ample public notice of the auction schedule. On June 18, 2004, the Wireless Telecommunications Bureau (“Bureau”) announced that Auction No. 58 would begin on January 12, 2005.<sup>6</sup> On September 16, 2004, the Bureau announced deadlines of November 12, 2004, for short-form applications, and December 13, 2004, for upfront payments.<sup>7</sup> In an October 15, 2004, public notice, the Bureau postponed the start date of Auction No. 58 until January 26, 2005, the short-form filing deadline until November 30, 2004, and the upfront payment deadline until December 29, 2004.<sup>8</sup> You have offered no reason why you were unaware of these announcements or otherwise unable to meet the auction deadlines.

Finally, your assertion that Auction No. 58 is of public importance does not explain why allowing you to enter the auction proceedings well after the short-form deadline would benefit the public. We believe that any arguable public benefit to be derived from our adding an additional participant, large or small, to Auction No. 58 would be far outweighed by the public benefit in affording legitimate auction applicants reasonable certainty as to the fair and predictable application of our auction rules and procedures, including enforcement of our deadlines.<sup>9</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. 58 short-form filing and upfront payment deadlines.

**Postponement of the auction.** You also request a 180-day postponement of Auction No. 58. Without comment or explanation, you quote from the October 15, 2004, public notice in which we postponed the auction start date and the deadlines for short-forms and upfront payments. Because you have emphasized language from that public notice referring to the need for adequate time for bidder preparation and planning, as well as for Commission preparation, we might interpret your reference to this public notice as an argument that you need additional preparation time and that the Bureau, having

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<sup>5</sup> See “Auction of Broadband PCS Spectrum; Status of FCC Form 175 Applications to Participate in Auction No. 58,” *Public Notice*, DA 04-3918, at 1, Att. B (WTB Dec. 16, 2004); <http://auctions.fcc.gov/>.

<sup>6</sup> “Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd 10,243 (WTB 2003).

<sup>7</sup> “Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 58,” *Public Notice*, 19 FCC Rcd 18,190, 18,201-02 (WTB 2004).

<sup>8</sup> “Broadband PCS Spectrum Auction Start Date Rescheduled for January 26, 2005,” *Public Notice*, 19 FCC Rcd 19,945 (WTB 2004) (“*Auction No. 58 Rescheduling Public Notice*”).

<sup>9</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 and upfront payment deadlines).

once postponed the auction to allow additional preparation time, can postpone it again for the same reason.

We have delayed auctions in the past only because of unresolved issues directly relating to the licenses or spectrum to be auctioned.<sup>10</sup> In the case of Auction No. 58, we decided that a postponement of the start date was warranted because requests to amend or waive the Commission's eligibility rules for certain broadband PCS licenses had created some uncertainty regarding whether such licenses would be available in open or closed bidding.<sup>11</sup> This postponement was for only two weeks. You ask for a postponement of approximately six months yet provide no rationale for such a lengthy delay, other than your discussion of the public importance of having smaller companies participate in spectrum auctions and your mention of the Christmas and New Year holidays.

We note that, in seeking the postponement, you claim to want to avoid disrupting the auction process. Despite your stated intent, postponing Auction No. 58 by 180 days would undoubtedly disrupt the auction process. As of this date, 35 applicants are qualified to participate in the bidding.<sup>12</sup> These applicants have already secured their financing and have made upfront payments totaling \$325,269,500.<sup>13</sup> Most likely, these applicants are actively planning their bidding strategies. Their pre-auction efforts have been predicated on an auction start date on or around January 26, 2005. Postponing the auction by half a year might place at risk applicants' financing arrangements, upset their strategic planning, and undermine the public benefit in having the auction at the earliest reasonable date. Such a disruption could be justified only with a very good reason. We find that your request does not provide an adequate reason to postpone the auction, and, accordingly, deny your request.

This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.<sup>14</sup>

Sincerely,

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

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<sup>10</sup> Request of Southern Communications Services, Inc. and the United Telecom Council for Postponement of Auction No. 55, *Order*, 18 FCC Rcd 25,880, 25,881-82 ¶ 5 (ASAD-WTB 2003).

<sup>11</sup> *Auction No. 58 Rescheduling Public Notice*, 19 FCC Rcd 19,945-46.

<sup>12</sup> "Broadband PCS Spectrum Auction; 35 Bidders Qualified to Participate in Auction No. 58," *Public Notice*, DA 05-51 (WTB Jan. 11, 2005).

<sup>13</sup> *Id.* at Att. A.

<sup>14</sup> 47 C.F.R. § 0.331.