



Federal Communications Commission
Washington, D.C. 20554

DA 06-1534

July 28, 2006

Via Facsimile

Cindy A. Huber
Sierra Tel Internet
Sierra Tel Communications Group
49150 Road 426
Oakhurst CA 93644

Re: **Sierra Tel Internet Application to Participate in Auction No. 66**

Dear Ms. Huber,

This letter denies the request for waiver of the upfront payment deadline for Auction No. 66 made on behalf of Sierra Tel Internet in your letter dated July 18, 2006.¹ The request claims that Sierra Tel Internet would have submitted its upfront payment “if not for all of the extenuating circumstances in [your] personal life.”² We find that Sierra Tel Internet had adequate opportunity to comply with the deadline. In light of the public interest in predictable and consistent application of Commission rules and procedures, we deny the requested waiver.

Pursuant to Section 1.2106(a) of its rules,³ the Commission released a Public Notice on May 19, 2006, establishing a July 17, 2006, 6 pm ET deadline for payments by wire transfer of upfront payments by applicants to participate in Auction No. 66.⁴ The Commission stated that “[t]hose wishing to participate in Auction No. 66 must: . . . [s]ubmit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, July 17, 2006.”⁵ In addition to publishing the Public Notice on its web site, in the FCC Record, and in the Federal Register, the Commission transmitted copies of the Public Notice to all parties that had previously submitted applications to participate in Auction No. 66, including Sierra Tel Internet. Commission records reflect that Sierra Tel Internet received a copy on May 23, 2006,

¹ Letter, Cindy A. Huber to Federal Communications Commission, July 18, 2006 (“Letter”).

² *Id.*

³ See 47 C.F.R. §1.2106(a).

⁴ Auction of Advanced Wireless Services Licenses Rescheduled For August 9, 2006; Revised Schedule, Filing Requirements and Supplemental Procedures for Auction No. 66, FCC 06-71, *Public Notice*, 21 FCC Rcd 5598 (2006), 71 Fed. Reg. 32089 (June 2, 2006) (“*Supplemental Procedures Public Notice*”).

⁵ *Id.*, 21 FCC Rcd at 5599 ¶ 4.

which was more than seven weeks prior to the July 17th deadline. Section 1.2106(c) provides that if an applicant fails to submit an upfront payment, it will be ineligible to bid.⁶

Pursuant to Section 1.925, the Commission may grant a waiver of its rules if (i) it is shown that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative.⁷ As discussed below, applying the deadline in the instant case serves the relevant rule's purpose of maintaining the auction schedule and the facts presented do not demonstrate that applying the deadline is inequitable or that Sierra Tel Internet had no reasonable alternative by which it could have complied with the rule.

The Commission set the Auction No. 66 upfront payment deadline as one in a series of pre-auction deadlines established to enable the auction to begin as scheduled on August 9, 2006.⁸ The amount of an upfront payment determines each applicant's initial bidding eligibility in the auction.⁹ Following the upfront payment deadline, the Commission completes review of applications and announces in advance of the auction which applicants are qualified to bid and what their initial bidding eligibility will be.¹⁰ Delay in this process may interfere with the ability of qualified bidders to prepare for the bidding. Moreover, in Auction No. 66, the modified aggregate initial bidding eligibility of all qualified bidders will determine the extent of information that the Commission will release before and during the auction.¹¹ Therefore, any delay in the submission of upfront payments delays the availability of information critical to the Commission's determination of the specific information procedures to be implemented for Auction No. 66.

In the July 18th letter requesting the waiver, you advise that you were the only person handling the Sierra Tel Internet application.¹² You further state that you were unable to arrange for Sierra Tel Internet to meet the July 17th deadline due in part to a July 12th death in your

⁶ See 47 C.F.R. § 1.2106(c).

⁷ 47 C.F.R. § 1.925.

⁸ See *Supplemental Procedures Public Notice*, 21 FCC Rcd at 5599 ¶ 3.

⁹ See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, FCC 06-47, *Public Notice*, 21 FCC Rcd 4562, 4594-97 ¶¶ 109-121 (2006) ("*Procedures Public Notice*").

¹⁰ *Id.*, 21 FCC Rcd at 4598 ¶ 123.

¹¹ *Id.*, 21 FCC Rcd at 4601 ¶¶ 142-43.

¹² Letter at 1.

extended family.¹³ Finally, you acknowledge that Sierra Tel Internet has not submitted an upfront payment, but assert that it would do so upon notification of grant of a waiver.¹⁴ None of the justifications alleged meet the Commission's standard for waiver.

As a general matter, applicants such as Sierra Tel Internet bear the responsibility of completing relevant forms and submitting them pursuant to established deadlines and, accordingly, applicants bear the consequences when personal circumstances limit the availability of key employees.¹⁵ For example, when the absence of a school superintendent who was "the only person directly involved in" a Commission program "due to the illness and death of a family member" prevented an applicant from meeting a Commission deadline, the circumstances did not constitute special circumstances warranting a deviation from the Commission's rules.¹⁶ Similarly, an emergency trip out of town to visit a gravely ill relative did not justify grant of a waiver of the short-form filing deadline.¹⁷ With respect to the upfront payment deadline in particular, the Commission has waived the deadline only in extremely limited circumstances, such as where an applicant's proven diligent and repeated efforts to transmit funds prior to the deadline prove insufficient.¹⁸ Moreover, the Commission has denied requests for waiver when applicants attempted unsuccessfully to initiate fund transfers prior to the deadline but did not demonstrate sufficient diligence in their efforts.¹⁹ Sierra Tel Internet has not shown that it took

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See, generally*, Request for Waiver by Dermott Special School District, Dermott, Arkansas; Hoven School District, Hoven, South Dakota; Mastics-Moriches-Shirley Community Library, Shirley, New York; Mounds Public Schools, Mounds, Oklahoma; Reading-Muhlenberg Area Vocational-Technical School, Reading Pennsylvania; Versailles Exempted Village Schools, Versailles, Ohio; Westbrook School Department, Westbrook Massachusetts; Wilcox County Schools, Camden, Alabama, DA 02-643, *Order*, 17 FCC Rcd 5091 (2002) ("*Schools Waiver Order*").

¹⁶ *Schools Waiver Order*, 17 FCC Rcd at 5096-97 ¶ 10.

¹⁷ *See* Letter to Mr. Jerome Vigil, Partner, Loraleen PCS LLC from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 99-492, *Letter*, 14 FCC Rcd 8512 (1999).

¹⁸ *See, e.g.*, Letter to Patrick Shannon, Esq. from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-1944, *Letter*, 18 FCC Rcd 11,552 (2003) (granting waiver request where applicant made repeated attempts prior to deadline to submit its funds after funds initially were returned, including contacting the Commission prior to deadline to seek guidance); Letter to Sara F. Leibman, Esq., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-1581, *Letter*, 18 FCC Rcd 9721 (2003) (granting waiver request where notwithstanding efforts by applicant's agent to monitor transfer process, funds submitted prior to the deadline were returned by the Commission's bank shortly before deadline); Letter to Ms. Lynn R. Charytan from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2760, *Letter*, 15 FCC Rcd 24,540 (2000) (granting waiver request where bank employee's last minute action prior to deadline interfered with submission of a portion of upfront payment, notwithstanding repeated efforts by applicant to effect submission).

¹⁹ Letter to Sylvia Lesse, Esq., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 02-2085, *Letter*, 17 FCC Rcd 16,285 (2002) (denying waiver request notwithstanding applicant's authorization of funds transfer before deadline where the transfer was not made until the

any action to submit funds prior to the deadline.²⁰ In light of Commission precedent, Sierra Tel Internet has not demonstrated that its circumstances merit waiving the upfront deadline. The upfront deadline is not simply a matter of administrative convenience. As discussed above, waiving the deadline to afford an applicant additional time to make an upfront payment undermines the rule's purpose by disrupting the auction preparations of the Commission and qualified bidders and potentially delaying the entire auction.

Finally, we note that the Commission simply cannot take into account the individualized circumstances of the personnel of every applicant when applying its pre-auction deadlines, notwithstanding the justification any individual applicant may have for relief, without risking significant delays in its auction schedule. In summary, extenuating, and at times tragic, circumstances sometimes befall individuals responsible for applications filed on behalf of corporate entities. However, the applicant itself, and not the Commission, is responsible for taking reasonable precautions to assure that the applicant is able to fulfill its obligations pursuant to the Commission's rules and procedures. In this case, Sierra Tel Internet had sufficient opportunity to plan ahead to meet the deadline. In light of the public interest in maintaining the deadline and auction schedule, we deny the waiver requested on Sierra Tel Internet's behalf.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.²¹

Sincerely,

Margaret W. Wiener, Chief
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

day after the deadline); Letter to Mr. Todd Slamowitz from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-817, *Letter*, 15 FCC Rcd 6217 (2000) (denying waiver request notwithstanding applicant's authorization of funds transfer before deadline where the transfer was not made). Honest error cannot excuse the failure to exercise appropriate diligence to comply with the deadline. *See* Letter to Ms. M. Tamber Christian, Esq., Kraskin, Lesse & Cosson, LLP from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 99-515, *Letter*, 14 FCC Rcd 4013 (1999) (denying waiver request where the applicant's upfront payment was submitted two days after the deadline due to the principal's confusion over the applicable deadline).

²⁰ *See* Letter.

²¹ 47 C.F.R. § 0.331.