

Federal Communications Commission
Washington, D.C. 20554

DA 07-2328

June 5, 2007

Warren C. Havens
AMTS Consortium LLC
2649 Benvenue Avenue, # 2-6
Berkeley, CA 94705

Re: Request for Declaratory Ruling Concerning Implementation of Section
1.2105(b)(2)'s Definition of "Major Modification" for Auction No. 72

Dear Mr. Havens:

This letter responds to your request for declaratory ruling submitted on behalf of AMTS Consortium LLC ("AMTS"), an applicant for Auction No. 72 (Phase II 220 MHz Service), which is to begin on June 20, 2007.¹ Your request seeks clarification concerning the Commission's implementation of the prohibition in Section 1.2105(b)(2) on "major amendments" to short-form applications (FCC Form 175).² Specifically, you ask whether the Commission's policy of considering a change that results in a claim for a lesser bidding credit to be a permissible "minor amendment," is in conflict with the terms of section 1.2105(b). You seek confirmation of the Commission's interpretation as expressed in the *Auction No. 72 Procedures Public Notice*, and request that we explain the basis for the Commission's implementation of Section 1.2105(b)(2) provisions concerning major amendments to short-form applications.³

The *Auction No. 72 Procedures Public Notice* established the procedures governing short-form applications of entities seeking to participate in Auction No. 72. Among other things, the *Auction No. 72 Procedures Public Notice* provides that applicants may make minor changes to their applications following the filing deadline.⁴ Consistent with the purposes underlying section 1.2105(b), applicants may report that they are not entitled to a claimed level of bidding credit eligibility and request a lower bidding credit, with the result that such changes are treated

¹ Warren C. Havens and AMTS Consortium LLC, Declaratory Ruling Request under Section 1.2 and Request for Expedited Action (submitted by electronic mail on April 20, 2007, pursuant to FCC 01-345) (the "Request").

² See 47 C.F.R. § 1.2105(b)(2).

³ See "Auction of Phase II 220 MHz Spectrum Scheduled for June 20, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 72," *Public Notice*, 22 FCC Rcd 3404 (2007) ("*Auction No. 72 Procedures Public Notice*"). You also request that we identify the Commission staff responsible for "placing" the language concerning modifications into the *Auction No. 72 Procedures Public Notice*. We note that the procedures described in the *Auction No. 72 Procedures Public Notice* were adopted pursuant to authority delegated to the Chief of the Wireless Telecommunications Bureau. See 47 C.F.R. §§ 0.131(c), 0.331; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997).

⁴ *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3426-7 ¶ 73.

as minor amendments.⁵ As you acknowledge, the Wireless Telecommunications Bureau (the “Bureau”) recently issued an order in a proceeding to which you and entities under your control were parties in which it addressed the definition of “minor amendment” for purposes of section 1.2105(b).⁶ In *MC/LM*, the Bureau confirmed that, “[i]n the absence of a change of ownership, an amendment reducing an applicant’s bidding credit eligibility is minor.”⁷ The Bureau also noted that the Commission’s interpretation of section 1.2105, under which certain changes in size that result in a reduction or loss of eligibility for a bidding credit are considered “minor amendments” that do not disqualify an applicant from participation in an auction, has been upheld by the United States Court of Appeals for the District of Columbia Circuit.⁸ Such changes are permitted to ensure that applicants do not obtain small business bidding credits when they are no longer qualified, or are unable to demonstrate eligibility, for such benefits.⁹

This ruling is issued pursuant to authority delegated pursuant to Section 0.331 of the Commission’s rules.¹⁰

Sincerely,

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

⁵ For example, such amendments have been seen during the resubmission period of the short-form review process when applicants are provided with an opportunity to correct deficiencies in their applications. *See, e.g.*, “Auction of Advanced Wireless Services Licenses; 168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures Announced,” *Public Notice*, 21 FCC Rcd 8585, 8586 n.4 (2006) (noting that certain applicants were no longer seeking or had not demonstrated eligibility for certain levels of bidding credit); *see also, e.g.*, “Auction of Broadband PCS Spectrum Licenses; 23 Bidders Qualified to Participate in Auction No. 71; Limited Information Disclosure Procedures to be Used,” *Public Notice*, DA 07-1921 at 2 n.6 (rel. May 2, 2007) (noting that applicant had amended its short-form application to reflect a change in size consistent with a 15% credit, rather than the 35% credit it had originally claimed).

⁶ *See* Maritime Communications/Land Mobile LLC, *Order on Reconsideration*, DA 07-1196 (rel. March 9, 2007), petition for reconsideration and application for review pending (“*MC/LM*”). AMTS’s disagreement with the decision in *MC/LM* is not a sufficient basis on which to issue a declaratory ruling.

⁷ *Id.* at 7 ¶ 10.

⁸ *Id.* at ¶¶ 10-11, citing *Biltmore Forest Broadcasting FM, Inc. v. FCC*, 321 F.3d 155, 162 (D.C. Cir. 2003), affirming *Liberty Productions, Memorandum Opinion and Order*, 16 FCC Rcd 12061, 12079 ¶ 39 (2001).

⁹ *See* 47 U.S.C. § 309(j)(3)(C).

¹⁰ *See* 47 C.F.R. § 0.331.