



Federal Communications Commission
Washington, D.C. 20554

December 26, 2007

DA 07-5100

Via Facsimile (330) 723- 2581

Lori Kalani
Frontier Wireless LLC.
9601 S. Meridian Blvd.
Englewood, Colorado 80112

Re: **Frontier Wireless LLC. Application to Participate in Auction No. 73, Request for Waiver**

Dear Ms. Kalani,

This letter denies Frontier Wireless LLC's ("Frontier") request for waiver of Section 1.2106(a) of the Commission's rules.¹ Frontier claims that good cause exists for the grant of the requested relief, and that denial of the request would harm the public interest and would constitute a perverse result in light of the underlying purpose of the rule. For the reasons discussed below, we deny the requested waiver.

Under section 1.2106(a) of the Commission's rules, "[a]ny auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license."² Accordingly, an applicant that has cured each default on a Commission license and has cured each outstanding non-tax delinquency owed to a Federal agency prior to the deadline for filing a short-form application to participate in an auction may be eligible to bid as a "former defaulter," provided that the applicant is otherwise qualified,³ and provided that it submits upfront payments that are fifty percent more than the normal upfront payment amount established for each particular license.⁴ Furthermore, the Commission has explained that the "applicant" is considered a former defaulter if any one of its affiliates, controlling interests or their affiliates as defined by Section 1.2110 has been in default or delinquent on such a debt, but has made the requisite payment.⁵

¹ Frontier's waiver request ("Waiver") is attached to its FCC Form 175 filed for Auction 73. See Short-form application of Frontier Wireless, LLC (filed Dec. 3, 2007) ("Frontier Short Form"). Short-form applications of all Auction 73 applicants may be viewed online at: <https://auctionfiling.fcc.gov/form175/search175/index.htm>.

² 47 C.F.R. §1.2106(a).

³ Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, *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, 15316-17 ¶ 42 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) ("*Part 1 Fifth Report and Order*").

⁴ *Id.*

⁵ *Id.*

In its request, Frontier explains that its former defaulter status is attributable to its parent company, EchoStar Communications Corporation's ("EchoStar") acquisition of a paging company by the name of Spaceway in 2004.⁶ "Due to integration problems and the misdirection of bills from the Universal Service Administrative Company ("USAC") to an outdated company mailing address," Frontier contends that EchoStar failed to make three timely payments to the USAC within the prescribed time period.⁷ These delinquent payments, totaling \$75,738.80, were eventually paid, along with \$1,161.24 in late fees.⁸ Frontier argues that EchoStar is not a company with "poor financial history or a blemished credit history" and that applying the former defaulter rule to these three "small" late payments, which it asserts occurred within a confined time period, would be contrary to the underlying purpose of the rule, and would be unduly burdensome and inequitable. It further maintains that, given the fact that upfront payments paid to the Commission are held without interest paid to the applicant and that in this particular auction such funds may be held until the conclusion of any contingent subsequent auctions, imposing the former defaulter rule in circumstances such as those presented by Frontier's request may deter applicants from fully participating in the auction and would not serve the public interest.⁹

In the context of examining the facts and arguments presented by Frontier's request for waiver, it has become apparent that the USAC delinquencies disclosed by Frontier are not the only USAC delinquencies that are relevant to Frontier's status as a former defaulter. USAC has provided the Commission with documentation of a delinquent debt in the amount of \$27,295.15 owed by EchoStar Acquisition, LLC in 2007, which was subsequently paid with a late payment fee.¹⁰ This delinquent payment was something of which Frontier should have been aware, but was not part of Frontier's waiver request. Because Frontier has not sought a waiver for this delinquency, a grant of Frontier's request for waiver would not alone cure its status as a former defaulter. Accordingly, we deny its request without reaching the merits.

⁶ Waiver at 2. Notably, neither the applicant's ownership disclosures in its Auction No. 73 short form application nor the Commission or USAC's records contain information regarding a paging company connected to EchoStar licensed under the name "Spaceway." USAC reports, however, that EchoStar assumed the filing and payment obligations of an entity named Space Com in January 2005, and EchoStar became delinquent on USAC payments related to Space Com.

⁷ *Id.*

⁸ *Id.* at 2, fn.9.

⁹ *Id.*

¹⁰ The debt was owed by EchoStar Acquisition, LLC, which, like Frontier, is wholly-owned by EchoStar Communications Corp. *See* Frontier Short Form.

We take this opportunity to remind Frontier of its responsibility to submit accurate information to the Commission in connection with its applications, including when it presents such information for the purpose of obtaining a Commission decision.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.¹¹

Sincerely,

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

¹¹ 47 C.F.R. § 0.331.