



Federal Communications Commission
Washington, D.C. 20554

DA 08-100
Released: January 23, 2008

January 14, 2008

[REDACTED]

Re: Request for Waiver

Dear [REDACTED]:

This responds to the Request for Waiver, submitted January 4, 2008 on behalf of [REDACTED] along with a letter requesting confidential treatment.¹ [REDACTED] Request for Waiver will be accorded confidential treatment in accordance with our rules and procedures. Accordingly, this letter will not be publicly disclosed in full by the Commission until the Commission discloses all non-public information relating to Auction 73.

[REDACTED] requests a waiver of section 1.2105(b)(2) of the Commission's auction rules in order to allow [REDACTED] to participate in Auction 73 so that it can participate in that auction and [REDACTED] participate [REDACTED].² For the reasons described below, we [REDACTED] deny [REDACTED] Request [REDACTED] to enable [REDACTED] to participate in bidding [REDACTED] in Auction 73.

Background

Auction 73 is an auction of 1099 spectrum licenses in five blocks (Blocks A – E) of the 700 MHz Band, which is scheduled to start on January 24, 2008.³ Auction 76 is the designation for a contingent subsequent auction of alternative licenses in Blocks A, B, C, and/or E of the 700 MHz Band that will be held promptly after Auction 73 if the reserve price established for any of these four license blocks is not satisfied by the results of Auction 73.⁴ If the reserve price

¹ [REDACTED] Confidential Request for Waiver of Section 1.2105(b)(2) of the Commission's Rules, *Request for Waiver*, filed January 4, 2008 ("Request"); Letter from [REDACTED], to Marlene H. Dortch, Secretary, Federal Communications Commission, filed January 4, 2008 ("Confidential Treatment Letter"). [REDACTED] states that it seeks confidential treatment because the Request discusses [REDACTED] the disclosure of which would violate the Commission's procedures for anonymous bidding in Auction 73 and the anti-collusion rule. Confidential Treatment Letter at 1. Request at n 3.

² See 47 C.F.R. § 1.2105(b)(2).

³ See generally, "Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, and other Procedures for Auctions 73 and 76," *Public Notice*, 22 FCC Rcd 18,141 ("*Auction 73/76 Procedures Public Notice*").

⁴ See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,141, 18,146, 18,212 ¶¶ 1, 7-9, 271-73; see also Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-

established for the D Block of the 700 MHz Band is not satisfied by the results of Auction 73, the Commission may decide to re-offer that license subject to the same service rules or reconsider the rules applicable to that block.⁵

Consistent with direction from the Commission, the Wireless Telecommunications Bureau (“Bureau”), under its delegated authority, announced on October 5, 2007, the procedures for Auctions 73 and 76. More specifically, the Bureau announced procedures, among other things, for anonymous bidding (under which disclosures of auction-related information are limited until after the close of bidding in Auction 73 and Auction 76, if the latter becomes necessary), for aggregate reserve prices for each spectrum block of license(s), and for other aspects of the auction process such as requirements and deadlines for applications and upfront payments to purchase of bidding eligibility, as well as for the design and structure of the bidding itself. Pursuant to these procedures, [REDACTED] the provisions of the anti-collusion rule should apply without interruption through both the initial and subsequent auctions until the down payment deadline in the subsequent auction.⁷

[REDACTED] seeks a waiver [REDACTED] its short-form application [REDACTED] According to [REDACTED] grant of the requested waiver would allow [REDACTED]

[REDACTED]

Discussion

To obtain a waiver of the Commission’s competitive bidding rules, an applicant must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.⁸

For the reasons described below, we [REDACTED] deny [REDACTED] Request to [REDACTED] participate in bidding [REDACTED] in Auction 73.

[REDACTED]

Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Second Report and Order, FCC 07-132, ¶¶ 298-317 (2007) (“700 MHz Second Report and Order”), recon. pending.

⁵ Auction 73/76 Procedures Public Notice, 22 FCC Rcd at 18,146 ¶ 7; see also *id.* at 18,212-13 ¶¶ 271, 275, 276 (providing for possible re-auction of D Block in Auction 76); 700 MHz Second Report and Order at ¶ 314.

⁷ 700 MHz Second Report and Order at ¶ 316.

⁸ 47 C.F.R. § 1.925.

As described above, the gravamen of [REDACTED] Request is that the current rules and procedures should be waived to [REDACTED] allow [REDACTED] opportunity to participate [REDACTED].¹⁷ [REDACTED] seeks a waiver of [REDACTED] qualify to bid in Auction 73 [REDACTED].¹⁸

[REDACTED]

[REDACTED] we deny [REDACTED] Request [REDACTED] a waiver to [REDACTED] enable it to participate in bidding [REDACTED] in Auction 73. [REDACTED]

With respect to the first prong of the waiver standard, [REDACTED] claims that the underlying purpose of section 1.2105(b)(2) [REDACTED] would not be served by its application in this case. [REDACTED] asserts that the purpose of this rule is [REDACTED]

As a threshold matter, [REDACTED] Request fails to explain how application of the rule [REDACTED] would not serve the underlying purpose of setting a uniform deadline [REDACTED] Uniform deadlines for various stages of the auction application process provide applicants with certainty and give the Commission time for orderly application review and auction preparation.²³ The need for uniform deadlines and timely submission of information is especially critical for Auction 73, which is subject to a congressionally mandated deadline.²⁴ The underlying purpose of rules establishing deadlines is best served by their consistent application, which provides fair and equal treatment to applicants by subjecting them to the same timeframes for making auction-related decisions.²⁵

¹⁷ [REDACTED]

¹⁸ [REDACTED]

²³ See, e.g., In the Matter of First Auction of Interactive Video and Data Service (IVDS) Licenses: Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1,134 (1996) (Commission decision affirming denial of waiver of short-form filing deadline and emphasizing importance of strictly enforcing deadlines), *affirming* In the Matter of First Auction of Interactive Video and Data Service (IVDS) Licenses: Request for Waiver of Applications Deadline, *Order*, 10 FCC Rcd 5,415 (WTB 1995); [REDACTED] see also Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to James K. Davis, Vero Beach Broadcasting, LLC, 20 FCC Rcd 19,346 (WTB 2005) (short-form deadline provides reasonable certainty to applicants of fair and predictable application of auction rules and procedures, including enforcement of deadlines; deadlines allow applicants to plan for auction and a deadline waiver would undermine Commission's ability to review short-form applications in timely manner because it would encourage similar requests)(*Vero Beach Letter*).

²⁴ See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA"). Title III of the DRA is the Digital Television Transition and Public Safety Act of 2005 ("DTV Act"). The provisions of the DTV Act establishing deadlines relating to the auction of 700 MHz Band licenses are codified in 47 U.S.C. § 309(j)(15)(C)(v).

²⁵ See, e.g., *Vero Beach Letter*; see also Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Ameer Flippin, 20 FCC Rcd 8,750 (WTB 2005); Letter from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, to Office of the Chief Technology Officer, Government of the District of Columbia, 17 FCC Rcd 16,301 (WTB 2002).

[REDACTED] assertion that waiver is justified on the grounds that [REDACTED] after the filing deadline [REDACTED] that the underlying purpose of the rule would be served by its application to this case, not the opposite. [REDACTED] In effect, [REDACTED] argues that grant of a waiver is justified to accommodate a change in its strategy [REDACTED] that occurred after the short-form filing deadline had passed. Granting a waiver in this circumstance would render the deadline meaningless. [REDACTED] on these grounds would jeopardize the Commission's ability to conduct auctions in a timely manner, and in Auction 73 specifically, could prevent the Commission from commencing the bidding by the statutory deadline of January 28, 2008. All auction applicants, [REDACTED] are responsible for [REDACTED] in time to meet auction-related deadlines.

We also find unpersuasive [REDACTED] argument that we should grant its waiver because it would have no harmful impact. According to [REDACTED] granting the waiver would not cause harm [REDACTED] Such a circumstance is not unique to [REDACTED] however, and would be equally applicable to other applicants.²⁸ Thus, permitting [REDACTED] would be unfair to other [REDACTED] that remain bound by the deadline [REDACTED] only certain [REDACTED] after the short-form filing deadline, but not others – potentially unfairly favoring certain [REDACTED] over others. Accordingly, in addition to adversely affecting the Commission's procedures as noted above, [REDACTED] waiver would disadvantage other [REDACTED] who would not be able to take advantage of [REDACTED] waiver. We decline [REDACTED] offer [REDACTED]

More broadly, we find unpersuasive [REDACTED] argument [REDACTED] contrary to the Commission's anti-collusion and anonymous bidding rules [REDACTED]

In addition, we note that [REDACTED] arguments regarding the second prong of the waiver standard – that the unique facts and circumstances of this particular case render application of the rule inequitable – [REDACTED]

Finally, we note that [REDACTED] Request does not rely on any of the reasons justifying waivers of the prohibition [REDACTED] in the very few cases where such waivers have been granted – where applicants were able to demonstrate that information provided by the Commission or its systems contributed to [REDACTED]

Conclusion

As discussed above, [REDACTED] Request fails to justify a waiver that would permit [REDACTED] to become qualified to bid in Auction 73, and is denied. [REDACTED]

²⁸ [REDACTED]

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.³³

Sincerely,

Fred B. Campbell, Jr., Chief
Wireless Telecommunications Bureau

³³ C.F.R. § 0.331.