



Federal Communications Commission
Washington, D.C. 20554

DA 08-40

Adopted: January 4, 2008
Released: January 7, 2008

Walter Iwachiw
48-39 41 Street
Sunnyside, New York 11104

Re: World Network International Services, Inc. –
Request for Waiver of Sections 1.2106 and 1.2109(c) of the Commission's Rules

Dear Mr. Iwachiw:

This letter responds to the Petition for Waiver - Expedited Action Requested submitted on January 2, 2008, by you on behalf of Word Network International Services Inc. (“WNIS”) in connection with WNIS’s application to participate in Auction 73.¹ The Petition requests a waiver of Commission auction rules requiring (1) that each applicant make a sufficient upfront payment to become a qualified bidder and (2) liability for default payments by a winning bidder that defaults or is disqualified after the close of an auction. For the reasons described below, we deny the Petition.

The Petition describes a series of events that allegedly have prevented the “emergence of a competitor in the telecommunications marketplace, namely WNIS.”² Specifically, the Petition alleges that WNIS was the “target[] of a successful extortion” in 1996, became “eligible for a disaster declaration” in 2001, 2006 and 2007, but received no relief based on its applications, and applied for and was denied a grant for rural telemedicine in 2007. In addition, the Petition asserts that you were involved in a “pedestrian car accident” in 2007.³

To obtain a waiver of the Commission’s competitive bidding rules,⁴ 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.⁵

¹ Petition for Waiver – Expedited Action Requested, submitted January 2, 2008 (“Petition”).

² Petition at 2.

³ Petition at 1-2.

⁴ 47 C.F.R. § 1.2106 (c).

⁵ 47 C.F.R. § 1.925.

You argue that the Petition satisfies both prongs of the waiver standard. First, the Petition asserts that the underlying purposes of both the upfront payment and default payment rules would not be served by their application. In particular, it states that the purpose of the auction is to get the highest possible price for the benefit of the public and that the only way to achieve the “full potential price” is to grant the emergency waiver.⁶ Second, the Petition argues that grant of the waiver would be in the public interest because a waiver would help address emergency situations by allowing multiple winning bidders with varied tactics for deployment of wireless priority access capability.⁷ Finally, the Petition argues that WNIS has no reasonable alternative because recent events in the credit markets have reduced the credit facilities available to it.⁸

We find that the Petition fails to demonstrate that applying the upfront payment and default payment rules in this case will not serve the purposes of those rules. The Petition neither accurately identifies the purposes of those rules, nor shows how those purposes would be frustrated by application of the rules in this case.

The Commission adopted the upfront payment requirement, found at section 1.2106 of the rules,⁹ to ensure that only serious qualified bidders participate in Commission auctions.¹⁰ In order to become qualified to bid, an applicant must submit an upfront payment to purchase enough bidding eligibility to place a bid on at least one of the licenses selected on its short-form auction application.¹¹ An applicant that does not submit a sufficient upfront payment will be ineligible to bid.¹² The upfront payment requirement ensures the validity of the information generated during auctions and increases the likelihood that licenses will be awarded to those qualified bidders who value them the most, thus promoting the rapid deployment of new technology.¹³ Upfront payments also provide the Commission with a source of available funds in

⁶ Petition at 5-6.

⁷ Petition at 6.

⁸ *Id.*

⁹ 47 C.F.R. § 1.2106.

¹⁰ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2378 ¶ 171 (1994); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245, 7266 ¶ 125 (1994).

¹¹ See “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, 18,174-75 ¶¶ 120-23 (“*Auction 73/76 Procedures Public Notice*”).

¹² 47 C.F.R. § 1.2106(c).

¹³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order* at ¶ 125.

the event that a bid withdrawal payment must be assessed.¹⁴ While the Petition asserts without foundation that the purpose of the auction is to “get the highest possible price,” it does not identify the purpose of the upfront payment rule or demonstrate that enforcing the upfront payment requirement would frustrate or not serve the purposes as discussed above.

The Commission adopted the default payment requirement, found at sections 1.2109(b) and (c) of the rules,¹⁵ to deter frivolous bids or unqualified bidders.¹⁶ The Commission found that imposing substantial payments on bidders that default or are found not qualified to hold the licenses they win “is critically important to the success of our system of competition bidding.”¹⁷ In particular, the Commission found that such payments “will provide strong incentives for potential bidders to make certain of their qualifications and financial capabilities before the auction so as to avoid delays in the deployment of new services to the public.”¹⁸ The Petition fails to identify the purpose of the default payment rule or make any showing that applying that rule in this case would frustrate or not serve the purpose of the rule as discussed above.

We also find that the Petition does not provide any support for its claim that grant of the waiver requested would serve the public interest by allowing multiple winning bidders that would help address emergency situations. The Petition’s bare assertion that grant of a waiver to WNIS would help address emergency situations is not sufficient to justify the waiver of rules whose adoption was found by the Commission to be in the public interest.¹⁹

Finally, the Petition does not demonstrate unique circumstances or the absence of any reasonable alternatives to justify waiver of these two rules. Indeed, the Petition’s claim that WNIS has been affected by disasters and has reduced access to credit facilities only underscores the need for application of the upfront payment and default payment rules to assure that WNIS has adequate qualifications and financial capabilities not only to participate in the auction but to deploy services on any licenses it may win.

¹⁴ *Id.* While the Commission has, on a few occasions, waived the deadline for submitting an upfront payment, it has never waived the payment requirement itself. *See* Letter to Douglas Thomas from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, 18 FCC Rcd. 25,159, 25,160 n.11 (WTB 2003) (waiver of upfront payment requirement where applicant was unable to submit the necessary amount would lead to an inconsistent application of the Commission rules and would not serve the public interest).

¹⁵ 47 C.F.R. §§ 1.2109(b) & (c).

¹⁶ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order* at ¶ 195.

¹⁷ *Id.* at ¶ 197.

¹⁸ *Id.*

¹⁹ Letter to Gregory M. Schmidt, Vice President, Banks Broadcasting, Inc. from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, 18 FCC Rcd 10431 (WTB 2003) (“The Commission fulfills competitive bidding statutory mandates and policy goals with appropriate rule provisions; not by forbearing from enforcing its competitive bidding rules.”).

Accordingly, your request for a waiver of the upfront payment requirement and the default payment rule is denied. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.²⁰

Sincerely,

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

²⁰ 47 C.F.R. § 0.331.