



Federal Communications Commission
Washington, D.C. 20554

DA 08-95
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Bernard E. Klein
761 E Coco Plum Circle #6
Plantation, FL 33324-3744

Re: Sonar Radio Corporation Application to Participate in Auction 73 –
Request for Waiver of Upfront Payment Deadline

Dear Mr. Klein:

This letter responds to a submission made by Sonar Radio Corporation (“Sonar”) on January 4, 2008 in connection with its short-form application to participate in the Commission’s upcoming auction of 700 MHz Band licenses (Auction 73).¹ To the extent that submission can be construed as a request for waiver of the upfront payment deadline for Auction 73, it is denied.

Sonar filed its Application initially by December 3, 2007, which was the deadline for all interested parties to file an application to participate in Auction 73.² Sonar’s Application, as initially submitted, was determined to be incomplete.³ Following discussions with Commission staff concerning questions raised by its Application, Sonar revised and resubmitted its application on January 4, 2008, prior to the 6:00 PM deadline for making corrections to incomplete applications.⁴

¹ FCC Form 175 application of Sonar Radio Corporation to Participate in Auction 73, as resubmitted on January 4, 2008 (“Application”).

² See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 73 and 76, *Public Notice*, 22 FCC Rcd 18,141 (2007) (“*Auction 73/76 Procedures Public Notice*”).

³ See “Auction of 700 MHz Band Licenses, Upfront Payment Deadline Rescheduled for January 4, 2008; Mock Auction Rescheduled; Status of Short-Form Applications to Participate in Auction 73,” *Public Notice*, DA 07-5030 (rel. Dec. 18, 2007).

⁴ See Application.

The deadline for making upfront payments was 6:00 PM on January 4, 2008. Pursuant to Section 1.2106(a) of its rules,⁵ on October 5, 2007, the Commission established a deadline of December 28, 2007 for submission of upfront payments by applicants seeking to participate in Auction 73.⁶ That deadline was subsequently extended to January 4, 2008, providing all applicants, including Sonar, with additional time to undertake the necessary preparations for the auction and make the required payment.⁷ Section 1.2106(c) provides that if an applicant fails to submit an upfront payment by the announced deadline, it will be ineligible to bid.⁸

Sonar's Application, as resubmitted on January 4, 2008, states: "On Jan 4, 2008 at 5:15 PM Klein learned that the Trustee has filed to dismiss or conclude Sonar's Chapter 7 case, which will allow Sonar to make its deposit and bid. Therefore, we seek (above) a waiver of the 1/4/2008 6:00 PM[.]" The Application also contains an attachment entitled "Email to Trustee Dec 29, 2007." The attachment is a copy of an email from you directed to another individual. In that email, which is dated December 28, 2007, you express your understanding that Sonar lacks appropriate authorization from the U.S. Trustee or the Bankruptcy Court to participate in the auction, seeks authorization for Sonar to participate in the auction, and requests immediate dismissal of Sonar's Chapter 7 bankruptcy proceeding. The Application and the attachment contain no other explanation of the circumstances justifying a waiver. Sonar's Application contains no description of any efforts it made other than its December 28th email to obtain apparently necessary authorizations or approvals in order to submit an upfront payment by the deadline of 6:00 PM ET on January 4, 2008.

In light of the public interest in predictable and consistent application of Commission rules and procedures, we deny the requested waiver. Pursuant to Section 1.925, 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.⁹ As discussed below, applying the deadline in the instant case serves the relevant rule's purpose of maintaining the integrity of the auction process and the auction schedule, and the facts presented do not demonstrate that applying the deadline is inequitable or contrary to the public interest, or that Sonar had no reasonable alternative by which it could have complied with the rule.

⁵ See 47 C.F.R. §1.2106(a).

⁶ Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 73 and 76, *Public Notice*, 22 FCC Rcd 18,141 ("Auction 73/76 Procedures Public Notice").

⁷ Auction of 700 MHz Band Licenses; Upfront Payment Deadline Rescheduled For January 4, 2008; Mock Auction Rescheduled; Status Of Short-Form Applications to Participate in Auction 73, *Public Notice*, DA 07-5030 (rel. Dec 18, 2007) ("Auction 73 Status Public Notice").

⁸ See 47 C.F.R. § 1.2106(c).

⁹ 47 C.F.R. § 1.925.

The Commission set the Auction 73 upfront payment deadline as one in a series of pre-auction deadlines established to enable the auction to begin before the statutorily-mandated auction start date of January 28, 2008.¹⁰ The amount of an upfront payment determines each applicant's initial bidding eligibility in the auction.¹¹ Following the upfront payment deadline, the Commission completes review of applications and announces in advance of the auction which applicants are qualified to bid.¹² The upfront payment deadline must be set so as to allow the timely announcement of qualified bidders, both to enable qualified bidders sufficient time to finalize their bidding plans and to provide the Commission with sufficient time to complete preparations for a timely commencement of the auction – in this auction, before January 28, 2008, as mandated by statute.

You have not provided information in Sonar's application or elsewhere that would meet the Commission's standard for waiver of the requirement that applicants timely submit upfront payments. With respect to the upfront payment deadline in particular, the Commission has waived the deadline for certain applicants only in extremely limited circumstances, not present here.¹³ Sonar has not come close to demonstrating that its particular circumstances merit waiving the upfront deadline. The upfront deadline is not simply a matter of administrative convenience. Among other purposes, timely submission of an upfront payment assists in establishing that an applicant is financially qualified to participate in an auction.¹⁴ 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. In addition, waiving the deadline for any single applicant inherently raises questions of fairness to other applicants who met the deadline. The

¹⁰ See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd 18,141 at ¶ 10; see also 47 U.S.C. § 309(j)(15)(v).

¹¹ See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd 18,141, 18,175-76 at ¶¶ 122-125

¹² *Id.*, 21 FCC Rcd at 4598 ¶ 123.

¹³ 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).

¹⁴ See *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2377 ¶ 169 (1994) ("*Competitive Bidding Second Report and Order*"); *Delta Radio, Inc. v. FCC*, 387 F.3d 897, 899 (D.C. Cir. 2004) (affirming Commission denial of request for waiver of final payment deadline).

Commission has determined that a policy of strict adherence to payment deadlines is necessary to serve the public interests of integrity, fairness, and efficiency of the auction process.¹⁵ In light of the public interest in maintaining the deadline and statutorily-mandated auction schedule and the absence of a particularized showing of extreme circumstances here, we deny Sonar's request for waiver of the upfront payment deadline.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.¹⁶

Sincerely,

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

¹⁵ See *Delta Radio*, 387 F.3d at 901. "Entering the auction unprepared to pay on schedule is precisely the kind of conduct the FCC rules are designed to deter." *Id.* at 903.

¹⁶ 47 C.F.R. § 0.331.