

Before the
Federal Communications Commission
Washington, D.C. 20554

In re)
)
Avangrid Networks, Inc.)
)
Request for Waiver of Upfront Payment Deadline)
for Auction 105)
)

ORDER

Adopted: July 23, 2020

Released: July 23, 2020

By the Chief, Auctions Division, Office of Economics and Analytics

I. INTRODUCTION

1. In this Order, we deny a request from Avangrid Networks, Inc. asking that the Commission treat as timely an upfront payment for Auction 105 that was submitted after the deadline for doing so.¹ For the reasons set forth below, we deny Avangrid’s request for a waiver of the upfront payment deadline.

II. BACKGROUND

2. Avangrid Networks, Inc.’s (Avangrid) request arises out of its efforts to participate in Auction 105, an auction of Priority Access Licenses in the Citizens Broadband Radio Service in the 3550-3650 MHz band, for which bidding is scheduled to start on July 23, 2020.

3. The Commission’s competitive bidding rules provide that in order to be qualified to bid in a spectrum auction, an applicant must have on file a timely submitted and complete short-form application (FCC Form 175), together with any appropriate upfront payment set forth by Public Notice.² In a Public Notice released on March 25, 2020, the Office of Economics and Analytics and the Wireless Telecommunications Bureau established a deadline of 6:00 p.m. ET on June 19, 2020, for submission of upfront payments for applicants seeking to participate in Auction 105.³ Such payments were required to be made via wire transfer to the Commission’s account at the U.S. Treasury.⁴ Each applicant was also

¹ See Avangrid Networks, Inc Request for Waiver of Upfront Payment Deadline and Request for Confidential Treatment (June 25, 2020) (Waiver Request).

² See 47 CFR §1.2105(a).

³ Auction of Priority Access Licenses for the 3550-3650 MHz Band Rescheduled to Begin July 23, 2020; Auction 105 Short-Form Application Deadline Postponed to May 7, 2020, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2891 (OEA/WTB 2020). See also 47 CFR §1.2106(a) (upfront payments may be established by public notice).

⁴ See Auction of Priority Access Licenses for the 3550-3650 MHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2140, 2182 para. 132 (2020) (Auction 105 Procedures Public Notice).

required to fax an FCC Remittance Advice Form (FCC Form 159) to the Commission by the upfront deadline to accompany its upfront payment.⁵

4. In establishing the procedures for Auction 105, the Commission emphasized that each applicant was “responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that the upfront payment was timely received and that it was deposited into the proper account.”⁶ The Commission also cautioned auction applicants regarding the importance of planning ahead to account for last-minute problems; in particular, Auction 105 applicants were warned to avoid untimely payments by discussing wire transfer arrangements with their bank well in advance of the deadline and to leave sufficient time to avoid any problems.⁷ Moreover, the Commission warned applicants that failure to submit a timely upfront payment “will result in dismissal of the short-form application and disqualification from participation in the auction.”⁸

5. Avangrid timely filed a short-form application (Form 175) to participate in Auction 105. However, Avangrid did not make an upfront payment by the June 19th deadline; instead, its payment was received in the Commission’s account two business days later, on June 23rd.

6. Avangrid claims it exercised reasonable due diligence in preparing its upfront payment and promptly undertook action when it discovered multiple internal system problems that prevented it from issuing a purchase order necessary to effectuate its wire transfer payment.⁹ Avangrid is a subsidiary of Avangrid, Inc., a New York corporation and publicly traded company of which Iberdrola S.A., a Spanish corporation, owns just over 81% of the outstanding shares.¹⁰ According to its request, upon deciding to participate in Auction 105, Avangrid navigated its corporate processes and controls to obtain management approval for funds for the auction.¹¹ Avangrid asserts that when it tried to submit its upfront payment on June 19th as it had planned, it hit a corporate roadblock.¹² Avangrid had not listed the Commission as an eligible payee in its payment system that is used across its international corporate structure, so when Avangrid tried to submit its upfront payment, its own payment system prevented it from proceeding.¹³ Realizing the issue, Avangrid then worked with its Spanish parent company to obtain the necessary approvals to add the Commission as a qualified payee.¹⁴ This troubleshooting lasted past the upfront payment deadline, and Avangrid notified the Commission of the issue before the deadline.¹⁵

7. On Monday, June 22, Avangrid tried again to submit its upfront payment believing that it had fixed the issue. However, the Avangrid employee making the transfer did not have the necessary permissions to submit the upfront payment.¹⁶ By the time Avangrid identified an analyst with

⁵ See *id.* at 2182-83, paras. 131, 134.

⁶ *Id.* at 2183, para. 135. This language appears in bold in that Public Notice.

⁷ See *id.* at 2182, para. 133.

⁸ *Id.* at 2183, para. 137. See also 47 CFR § 1.2106(c).

⁹ See Waiver Request at 2-7.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2-3.

¹² *Id.* at 5.

¹³ See *id.* at 4-5.

¹⁴ See *id.* at 5-6.

¹⁵ See *id.* at 6.

¹⁶ See *id.* at 7.

authorization to submit the upfront payment, the bank that manages its account had closed.¹⁷ The next morning on Tuesday, June 23rd, Avangrid sent its upfront payment to the Commission.

8. In its Waiver Request, Avangrid asserts “that it was sufficiently diligent in making and following through on its payment arrangements” and the fact that it submitted its upfront payment two business days after the deadline shows that there “was not a deliberate effort to delay payment or because [Avangrid] needed to obtain additional time to raise the needed capital.”¹⁸

III. DISCUSSION

9. The Commission may grant a request for a waiver if the requesting party shows that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that a grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual facts of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative to seeking a waiver of the rule.¹⁹ On the basis of the record before us, we are not persuaded that Avangrid has demonstrated that application of the deadline in its case would undercut or frustrate its purpose, nor do we find that Avangrid presented unique circumstances sufficient to justify grant of its waiver request.

10. Avangrid does not explain how the purpose of the rule would not be served or would be frustrated by applying the deadline in these circumstances. The Commission has explained on multiple occasions that the upfront payment deadline is purposefully set at a point in the auction timeline to provide qualified bidders and the Commission with sufficient time to prepare for bidding to begin under the announced schedule.²⁰ Waiving the deadline to afford an applicant additional time to make an upfront payment in the absence of a sufficient showing under section 1.925(b)(3) undermines the rule’s purpose by disrupting the Commission’s auction preparations 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 and can continue their auction preparations and future applicants that rely on the certainty of the auction process, and would blur the line for determining whether an applicant is entitled to a waiver.²¹

11. Avangrid has also not shown that enforcement of the deadline would be inequitable, unduly burdensome or contrary to the public interest in view of any unique or unusual circumstances. Indeed, we are not persuaded that Avangrid has presented any unique facts or circumstances that merit waiving its obligation to submit its upfront payment by the established deadline. We disagree with Avangrid’s claims that its efforts to overcome its internal payment procedure problems with its Spanish corporate parent and within the domestic organization demonstrated the diligence expected of an auction applicant. Nor are we persuaded that its efforts over the following days to untangle its corporate payment process and obtain needed internal permissions justify waiver of the upfront payment deadline. We find that Avangrid’s apparent belated discoveries of hurdles in its internal payment processes and initiation of efforts so close to the deadline do not demonstrate that “it exercised reasonable diligence by allowing sufficient time to

¹⁷ *Id.*

¹⁸ *Id.* at 8.

¹⁹ See 47 CFR § 1.925(b)(3)

²⁰ See *Four Corners Broadcasting, LLC, Request for Waiver of Section 1.2106(a), Closed Broadcast Auction 88*, Letter Order, 25 FCC Rcd 9046, 9048-49 (WTB 2008) (*Four Corners*); *Spectrum Acquisitions, Inc. Application to Participate in Auction 73 – Request for Waiver of Upfront Payment Deadline*, Letter Order, 23 FCC Rcd 4765, 4767 (WTB 2008).

²¹ See *Four Corners*, 35 FCC Rcd at 9048-49; *Spectrum Acquisitions*, 23 FCC Rcd at 4769-70; Letter to M. Tamber Christian, from Amy J. Zoslov, Chief, Auction and Industry Analysis Division, Wireless Telecommunications Bureau, 14 FCC Rcd 4013, 4015 (WTB 1999).

initiate and complete the transfer,” nor can we conclude that “it performed sufficient due diligence to overcome any error in the submission of its payment through its attentiveness to the process,” as it claims.²²

12. Indeed, the circumstances presented by Avangrid do not meet the standard of diligence established in the various decisions that it cites.²³ In *Hayes-Bell*, the Bureau was persuaded by the applicant’s financial qualifications in conjunction with the applicant’s diligence in presenting the wire transfer instructions to the bank four days in advance of the upfront payment deadline, finding that the applicant’s circumstances were distinguishable from another case in which an applicant did not initiate its wire transfer until the day of the payment deadline, like Avangrid here.²⁴ Similarly, we find that *MPCS Wireless* is readily distinguishable as the half-hour delay in submission of the wire transfer in that case was caused by errors made by the applicant’s bank, not due to internal payment procedures within the applicant’s corporate structure and difficulties in coordinating with its foreign corporate parent.²⁵ Likewise, we are unable to conclude that Avangrid’s efforts to resolve its internal payment procedures were comparable to those in *Lynch 3G* or *Texas License Consultants* which also involved error on the part of the applicant’s bank in one case and error by an applicant’s law firm in the other.²⁶ An applicant’s inability to successfully navigate its own internal processes does not constitute unique circumstances, and last-minute adherence to its established processes does not meet the standard of diligence the Commission’s precedent requires for waiver of the upfront payment deadline.

13. In order to demonstrate the required unique circumstances which differentiate it from all others to which the deadline applies, Avangrid must also show that no reasonable alternative existed which would have allowed it to comply with rule.²⁷ In Avangrid’s case, it had the reasonable alternative of exercising due diligence sufficiently in advance of the filing deadline.²⁸

14. In short, Avangrid has failed to demonstrate that it was sufficiently diligent in making or following through on its internal corporate payment arrangements and that its particular circumstances merit waiving the upfront payment 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

²² Waiver Request at 10.

²³ *Id.* at 8-10 (citing *Application of Ramona Lee Hayes-Bell for a New FM Construction Permit On Channel 236a At Pahrump, Nevada*, Memorandum Opinion and Order, 15 FCC Rcd 14729 (WTB 2000) (*Hayes-Bell*); Letter to Lynn R. Chartyan, counsel to MPCS Wireless, Inc., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau., 15 FCC Rcd 24540 (*MPCS Wireless*); Letter to Patrick Shannon, Esq., Counsel to Lynch 3G Communications Corporation, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 11552 (WTB 2003) (*Lynch 3G*); Letter to Patrick Shannon, Esq., Counsel to Jeff Scott Cofsky d/b/a Texas License Consultants, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 9721 (WTB 2003) (*Texas License Consultants*)).

²⁴ See *Hayes-Bell*, 15 FCC Rcd at 14732.

²⁵ See *MPCS Wireless*, 15 FCC Rcd at 24541-42.

²⁶ See *Lynch 3G*, 18 FCC Rcd at 11552; *Texas License Consultants*, 18 FCC Rcd at 9721.

²⁷ See e.g., *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968; *Ted W. Austin, Jr., Application for Review of Order Denying Request for Waiver of Down Payment Deadline for Auction 62*, Memorandum Opinion and Order, 30 FCC Rcd 3486, 3488, para. 6 (2015).

²⁸ See *NBVD Investment, L.L.C. Request for Waiver of Section 1.2105 of the Commission’s Rules for Auction 101*, Memorandum Opinion and Order, 34 FCC Rcd 8507, 8511 para. 13 n.31 (2019) (upholding denial or request for waiver of auction short-form application filing deadline).

an applicant is financially qualified to participate in an auction.²⁹ The 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.³⁰ In light of the public interest in maintaining the deadline and the absence of a particularized showing of extreme circumstances here, we deny Avangrid's request for waiver of the upfront payment deadline.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to delegated authority under Sections 0.21(m) and 0.271 of the Commission's rules, 47 CFR §§ 0.21(m), 0.271, Avangrid Networks, Inc.'s Request for Waiver of Upfront Payment Deadline, dated June 25, 2020, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Jonathan M. Campbell
Chief, Auctions Division
Office of Economics and Analytics

²⁹ 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); *Delta Radio, Inc. v. FCC*, 387 F.3d 897, 899 (D.C. Cir. 2004) (*Delta Radio*) (affirming Commission denial of request for waiver of final payment deadline).

³⁰ 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.