

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Bell Mountain Communications, Inc. )  
Request for Waiver of Upfront )  
Payment Deadline in Auction No. 30 )

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2002

Released: April 26, 2002

By the Commission:

I. INTRODUCTION

1. In this Order, we deny an Application for Review filed by Bell Mountain Communications, Inc. ("Bell Mountain"),<sup>1</sup> an applicant to participate in Auction No. 30.<sup>2</sup> Bell Mountain challenges a decision by the Wireless Telecommunications Bureau ("Bureau") affirming the Auctions and Industry Analysis Division's (the "Division") denial of Bell Mountain's request for waiver of the Commission's upfront payment deadline for Auction No. 30.<sup>3</sup> Specifically, Bell Mountain requests that we waive the upfront payment deadline of March 27, 2000.

<sup>1</sup> Application for Review of Bell Mountain Communications, Inc., filed April 2, 2001 ("Application for Review").

<sup>2</sup> See "Auction of Licenses for Fixed Point-to-Point Microwave Service in the 38.6 to 40.0 GHz (39 GHz) Band; 35 Qualified Bidders," *Public Notice*, 15 FCC Rcd 5748, 5769 (2000) (Bell Mountain found not qualified to participate in Auction No. 30).

<sup>3</sup> See Bell Mountain Communications, Inc. Request for Waiver of Upfront Payment Deadline in Auction No. 30, *Memorandum Opinion and Order*, DA 01-555 (rel. March 2, 2001) ("*Bell Mountain MO&O*"); see also Letter from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Messrs. Thomas Gutierrez and Todd Slamowitz, Lukas Nace Gutierrez & Sachs, Counsel for Bell Mountain Communications, Inc., 15 FCC Rcd 6217 (2000) ("*Letter Ruling*"); also Letter to Margaret Wiener, Chief, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Messrs. Thomas Gutierrez and Todd Slamowitz, Counsel for Bell Mountain Communications, Inc., Re: Waiver of Upfront Payment Deadline (April 5, 2000) ("*Waiver Request*").

## II. BACKGROUND

2. On January 21, 2000, the Commission released a Public Notice notifying applicants for Auction No. 30<sup>4</sup> that the deadline for submission of upfront payments was 6:00 p.m. (EST) on March 27, 2000.<sup>5</sup> The Commission also warned applicants “[f]ailure to deliver the upfront payment by the March 27, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.”<sup>6</sup> On the upfront payment deadline date, Bell Mountain authorized its bank, Riggs & Company (“Riggs”), to transfer funds from the personal account of its president to the Commission’s account at Mellon Bank.<sup>7</sup> Bell Mountain failed to meet the Commission’s March 27, 2000 deadline for submission of upfront payments.<sup>8</sup> Bell Mountain subsequently filed a request for waiver of the upfront payment deadline alleging that a failure on the part of Riggs constituted adequate grounds for waiver.<sup>9</sup> The Division denied Bell Mountain’s request.<sup>10</sup> It concluded that Bell Mountain did not provide itself with adequate time to successfully complete the wire transfer and that it did not perform enough due diligence to overcome its error.<sup>11</sup> Bell Mountain subsequently filed a petition for reconsideration of the Division’s letter.<sup>12</sup>

3. The Bureau denied Bell Mountain’s petition for reconsideration, concluding that Bell Mountain failed to exercise reasonable diligence because it initiated the wire transfer on the day the upfront payment was due, failed to provide complete wire transfer instructions to its bank, and failed to confirm receipt of the wire transfer through its bank.<sup>13</sup> The Bureau also concluded that the facts in this case were distinguishable from those in other cases in which the Bureau or the Division had granted a waiver of the

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<sup>4</sup> Auction No. 30 began on April 12, 2000 and closed in round 73 on May 8, 2000. “39 GHz Band Auction Closes; Winning Bidders of 2,173 Licenses Announced,” *Public Notice*, DA 00-1035 (rel. May 10, 2000).

<sup>5</sup> See “Auction of Licenses for Fixed Point-to-Point Microwave Service in the 38.6 to 40.0 GHz (39 GHz) Band; Auction Notice and Filing *Requirements* for 2,450 Licenses in the 39 GHz Band Scheduled for April 12, 2000: Minimum Opening Bids and Other Procedural Issues,” *Public Notice*, 15 FCC Rcd 850 (2000) (“*Auction No. 30 Public Notice*”).

<sup>6</sup> *Auction No. 30 Public Notice* at Section III.D.

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> See *Auction No. 30 Qualified Bidders Public Notice*, 15 FCC Rcd at 5769.

<sup>9</sup> Waiver Request at 1.

<sup>10</sup> *Letter Ruling* at 1.

<sup>11</sup> *Id.* generally.

<sup>12</sup> Petition for Reconsideration of Bell Mountain Communications, Inc., filed May 11, 2000 (“Petition”).

<sup>13</sup> *Bell MO&O* at ¶ 5.

upfront payment deadline.<sup>14</sup> Bell Mountain filed an Application for Review of the Bureau's order. In its Application for Review, Bell Mountain argues that the Bureau's decision conflicts with previous orders granting waivers of the upfront payment deadline.

### III. DISCUSSION

4. In its Application for Review, Bell Mountain proffers the same arguments that it advanced in prior pleadings before the Division and the Bureau. The Bureau thoroughly addressed each of these arguments in its order, including Bell Mountain's contentions that its circumstances are similar to those of other applicants that received waivers of the upfront payment deadline. We find nothing in the arguments Bell Mountain has made in its Application for Review that would lead us to change the Bureau's decision. We therefore affirm the Bureau's order for the reasons stated therein.

### IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission's rules, 47 U.S.C. § 1.115(g), the Application for Review filed by Bell Mountain Communications, Inc. in the above-captioned proceeding is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>14</sup> *Id.* at ¶ 9-10.