

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

In the Matter of)
)
Richard Hodson — Request for Waiver of)
Section 1.2106(a) of the Commission's Rules)

MEMORANDUM OPINION AND ORDER

Adopted: November 1, 2004

Released: November 2, 2004

By the Commission:

1. In this order, we deny the Application for Review filed by Richard Hodson (dba Hodson Broadcasting) on October 4, 2004. Mr. Hodson seeks reversal of a decision of the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division (Division).¹ The Division denied his request for waiver of Section 1.2106(a) of the Commission's rules, which requires an auction applicant that previously has been delinquent on any non-tax debt owed to any Federal agency to submit an upfront payment equal to 50 percent more than that set for each particular license.²

2. Mr. Hodson applied to participate in FM Broadcast Auction No. 37.³ In his short-form application, Mr. Hodson explained that he had defaulted on a Federal student loan which is a non-tax debt owed to a Federal agency, and requested a waiver to exempt him from the requirement of Section 1.2106(a).⁴ By letter dated September 14, 2004, the Division denied his waiver request.⁵ In its decision, the Division explained that the Commission had adopted this rule because "the integrity of the auctions program and the licensing process dictates requiring a more stringent financial showing from applicants with a poor Federal financial track record."⁶ The Division ruled that "[w]aiver of the upfront payment requirement in this instance would lead to an inconsistent application of [competitive bidding] rules and would not serve the public interest. The Commission's rules and the integrity of the competitive bidding process are best served by applying the upfront payment requirement in a fair and consistent manner."⁷ By operation of Section 1.2106(a), Mr. Hodson was required to make an upfront payment of 150 percent

¹ Letter to Richard Hodson from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Div., Wireless Telecommunications Bur., DA 04-2975 (Sept. 14, 2004) (Division Decision).

² 47 C.F.R. § 1.2106(a).

³ Auction No. 37 is scheduled to begin on November 3, 2004. Hodson requested a Commission decision on his Application for Review before November 3, 2004. Hodson Application for Review at 11 (filed Oct. 4, 2004).

⁴ Hodson Broadcasting Short-Form Application (FCC Form 175), Waiver Request Attachment, filed July 26, 2004.

⁵ Division Decision at 3.

⁶ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15316-17 (2000).

⁷ Division Decision at 3.

of the number of bidding units of eligibility that he wished to purchase.⁸ In his Application for Review, Mr. Hodson presents several arguments for why the Commission should reverse the Division's waiver denial.⁹

3. We have reviewed the Division's decision and find that the Division properly denied Hodson's waiver request.¹⁰ Aside from his suggestions that certain statutory provisions and a Commission rule intended to provide opportunities for small businesses support his request for waiver, Mr. Hodson provides no cogent explanation of why he should be treated differently than other bidders who previously were delinquent on a single non-tax debt owed to a Federal agency. He cites no other instances in which we have granted waivers to former defaulters of the requirement of Section 1.2106(a) to make an upfront payment of 150 percent. Moreover, while he discusses how his private interests would be served by a grant of the requested waiver, Hodson never states how the interests of the public would be served by a grant of a waiver in this instance.¹¹ Hodson presents no facts or arguments in his Application for Review that would persuade us to change the Division's decision. We conclude that the Division's ruling was correct and that there is no reason to disturb it.¹² For this reason, we affirm the denial of Hodson's waiver request.

4. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. §§ 154(i) and 309(j) and 47 C.F.R. § 1.115, that the Application for Review filed by Richard Hodson on October 4, 2004 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸ Hodson submitted \$65,000 as an upfront payment. Hodson's upfront payment is sufficient for eligibility to bid on 26 of 35 construction permits designated on his short-form application (but not all at the same time). The Division calculated eligibility by dividing \$65,000 by 1.5 and rounding the result up to the nearest bidding unit.

⁹ In support of his arguments, many of which were considered by the Division, Mr. Hodson makes the following points. Hodson argues that grant of his requested waiver would not affect any other Auction No. 37 participant. Hodson Application for Review at 2, 9. Mr. Hodson complains that Wireless Telecommunications Bureau staff should have amended Section 1.2106(a) by public notice, as he suggested, because it is an "inflexible blanket requirement." *Id.* at 3. Hodson argues that a waiver of the 150 percent requirement should be granted each time a former defaulter has cured a default or delinquency and demonstrated rehabilitation by remaining debt free for a minimum of ten years. *Id.* Hodson claims his waiver request was "unique," "extraordinary," and "distinguishable and novel from any other waiver request" because he was unemployed for three and a half years, and has earned below the poverty level for at least 23 years. *Id.* at 5, 7. Hodson also argues that the Commission staff would not have discovered his former default if he had not disclosed it in his short-form application. *Id.* at 6-7.

¹⁰ Mr. Hodson complains also about two minor typographic errors in the Division decision. These typographic errors are of no decisional significance and therefore are harmless error. *See North Florida MMDS Partners*, 10 FCC Rcd 11593, 11599 n. 19 (1995), quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923, 91 S.Ct. 2233 (1971).

¹¹ *See* 47 C.F.R. §§ 1.3 and 1.925.

¹² *See WAMC, Inc.*, 10 FCC Rcd 12219 (1995) (denying an application for review raising essentially the same arguments as in a petition for reconsideration).