

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

In the Matter of)	
)	
NBVDS Investment, L.L.C.)	WT Docket No. 17-79
)	
Request for Waiver of Section 1.2105 of the Commission's Rules for Auction 101)	WT Docket No. 17-84
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2019

Released: September 20, 2019

By the Commission:

I. INTRODUCTION

1. In this decision, we affirm an Order by the Auctions and Spectrum Access Division (Division) of the Wireless Telecommunications Bureau (Bureau) that denied NBVDS Investment, L.L.C.'s (NBVDS) request for waiver of the deadline for filing a short-form application to participate in Auction 101.¹ NBVDS filed an application for review challenging the Division Order.² For the reasons set forth below, we conclude that NBVDS fails to meet the Commission's standard for granting an application for review.

II. BACKGROUND

2. On August 3, 2018, the Commission established application and bidding procedures for the auction of 3,072 Upper Microwave Flexible Use Service (UMFUS) licenses in the 27.5–28.35 GHz (28 GHz) band (Auction 101).³ At the same time, the Commission established the procedures for the auction of licenses in the 24 GHz band (Auction 102).⁴ The Commission announced that the windows for electronically filing a separate short-form application to participate in Auction 101 and/or 102 would run concurrently and open at 12:00 p.m. Eastern Time (ET) on September 5, 2018 and close at 6:00 p.m. ET on September 18, 2018.⁵

3. NBVDS submitted its short-form application to participate in Auction 102 prior to the close of the window on September 18, 2018, but did not submit an application for Auction 101.⁶

¹ *NBVDS Investment, L.L.C.; Request for Waiver of Section 1.2105 of the Commission's Rules for Auction 101*, Memorandum Opinion and Order, 33 FCC Rcd 9857 (WTB/ASAD 2018) (Division Order).

² Application for Review by NBVDS Investment, L.L.C. (Oct. 15, 2018) (Application for Review).

³ *See Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, Public Notice, 33 FCC Rcd 7575 (2018) (*Auctions 101 and 102 Procedures Public Notice*).

⁴ *Id.*

⁵ *Id.* at 7586-87, 7623, paras. 24-25, 27, 137-38.

⁶ *See Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Status of Short-Form Applications to Participate in Auctions 101 (28 GHz) and 102 (24 GHz)*, Public Notice, 33 FCC Rcd 9810, Attachs. A-B, D (WTB 2018).

4. On September 28, 2018, NBVDS filed a request for a waiver of section 1.2105 to permit the submission of an application for Auction 101 and sought expedited action.⁷ In support of its Request, NBVDS asserted that its Auction 101 Form 175 application was “completed” prior to the 6:00 p.m. ET deadline on September 18, but it could not certify and submit its application because a “widespread” and “unprecedented” Distributed Denial of Service event on NBVDS’s network disrupted its ability to access its application between 5:55 p.m. ET and the 6:00 p.m. deadline.⁸ The Request included an attachment containing the signed certifications that were required to be submitted with Form 175 before the filing deadline.⁹

5. On October 10, 2018, the Division denied the Request, concluding that it did not meet the waiver standard set forth in the Commission’s rules and that a departure from the Commission’s longstanding policy of strict enforcement of auction deadlines would undermine the Commission’s ability to meet its policy objectives in future auctions.¹⁰ The Division further found that the Request failed to present any unique facts or circumstances that merited a waiver.¹¹

6. On October 15, 2018, NBVDS filed its Application for Review requesting that the Commission reverse the Division Order. The Application for Review asserts that the Division Order conflicts with case precedent and established Commission policy pertaining to waivers.¹² Specifically, NBVDS asserts that the Division should have recognized the network disruption as an unusual and compelling circumstance that would support a waiver grant.¹³ NBVDS also submits that the denial of the waiver frustrates the policy objective of the application deadline of the short-form application.¹⁴ Additionally, NBVDS disagrees with the Division concerning the import of NBVDS failing to plan ahead, a uniform deadline for all auction applicants, and the availability of licenses in the 24 GHz band in Auction 102 (for which NBVDS filed a timely application).¹⁵

7. On October 31, 2018, the Bureau announced the qualified bidders for Auction 101 and declared that bidding would commence on November 14, 2018.¹⁶

8. On January 24, 2019, bidding concluded in Auction 101, and a public notice announced the closing of the auction on January 31, 2019.¹⁷

⁷ Request for Waiver of NBVDS Investment, L.L.C. (Sept. 28, 2018) (Request).

⁸ *Id.* at 2-4. Absent the required certifications, an auction application is not considered complete. 47 CFR § 1.2105(a)-(b).

⁹ Request at Attach. A.

¹⁰ Division Order, 33 FCC Rcd at 9859, para. 8.

¹¹ *Id.* at 9860, para. 10.

¹² Application for Review at 1.

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6-8.

¹⁶ *Auction of 28 GHz Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; 40 Applicants Qualified to Bid in Auction 101*, Public Notice, 33 FCC Rcd 10968 (WTB 2018).

¹⁷ *Auction of 28 GHz Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services Closes; Gross Winning Bid Amounts Announced for Auction 101*, 34 FCC Rcd 75 (OEA/WTB 2019).

III. DISCUSSION

9. NBVDS predicates its Application for Review on the assertion that the Division's Order conflicts with statute, regulation, precedent, or established Commission policy.¹⁸ For the reasons set forth below, we conclude that NBVDS has neither demonstrated that any such conflict in fact exists nor identified any other ground for overturning the Division Order. Accordingly, the Application for Review is denied.

10. We find that the Division Order fully accords with Commission rules and policy governing waivers of auction deadlines. Section 1.925 of the Commission's rules requires that a petitioner seeking a waiver demonstrate that: (1) 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 waiver would be in the public interest, or (2) in view of the unique or unusual factual circumstances 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 The Division properly found that NBVDS failed to meet either prong of this standard.

11. First, the Commission has consistently explained that uniform deadlines for various stages of the auction application process provide applicants with certainty and give the Commission time for orderly application review and auction preparation.²⁰ The underlying purpose of rules establishing deadlines is best served by their consistent application, which serves the public interest by providing fair and equal treatment to applicants by subjecting them to the same timeframes for making auction-related decisions.²¹

12. As the Division Order describes, the auction process includes multiple succeeding deadlines, including application filing deadlines, the upfront payment deadline, and deadlines at the end of each round of bidding, which must be strictly observed to assure that an auction is fair and objective to all participants.²² Moreover, the auction process must proceed expeditiously and predictably. Petitioners

¹⁸ NBVDS cites such conflict as the factor, under 47 CFR § 1.115(b)(2)(i), that warrants Commission consideration of its contention that the Division Order should be overturned. While section 1.115(b)(2) of the Commission's rules lists a number of other factors upon which an application for review may be predicated (*see* 47 CFR § 1.115(b)(2)(ii)-(v)), NBVDS relies exclusively on the factors listed in subparagraph (i) of section 1.115(b)(2).

¹⁹ *See* 47 CFR § 1.925(b)(3)(i)-(ii).

²⁰ *See, e.g., First Auction of Interactive Video and Data Service (IVDS) Licenses: Request for Waiver of Applications Deadline*, Memorandum Opinion and Order, 11 FCC Rcd 1134 (1996) (Commission decision affirming denial of waiver of short-form filing deadline and emphasizing importance of strictly enforcing deadlines), *affirming First Auction of Interactive Video and Data Service (IVDS) Licenses: Request for Waiver of Applications Deadline*, Order, 10 FCC Rcd 5415 (WTB 1995); *see also Vero Beach Broadcasting, LLC – Request for Waiver of Short-Form Deadline for FM Broadcast Auction No. 62*, Letter Order, 20 FCC Rcd 19346 (WTB 2005) (*Vero Beach*) (short-form deadline provides reasonable certainty to applicants of fair and predictable application of auction rules and procedures, including enforcement of deadlines; deadlines allow applicants to plan for auction and a deadline waiver would undermine Commission's ability to review short-form applications in timely manner because it would encourage similar requests); *Ideas for Business, Inc. – Request for Waiver of Short-Form Deadline for FM Broadcast Auction No. 37*, Letter Order, 19 FCC Rcd 20517, 20517-19 (WTB 2004) (*Ideas for Business*) (denying waiver request when short-form application was not timely submitted due to an alleged "break in the transmission").

²¹ *See, e.g., Vero Beach*; 20 FCC Rcd at 19348; *Ideas for Business*, 19 FCC Rcd at 20519; *see also Request for Extensions of Time to File a Short-Form Application and Submit Down Payment in Auction No. 59*, Letter Order, 20 FCC Rcd 8750 (WTB 2005); *Request for Waiver of Short-Form Deadline for Auction No. 44*, Letter Order, 17 FCC Rcd 16301 (WTB 2002).

²² Division Order, 33 FCC Rcd at 9859, para. 8.

that seek a waiver of an auction deadline “face[] a high hurdle even at the starting gate”²³ because of the potential harm to the public interest from delaying or otherwise impeding the auction process while staff fully investigates and adjudicates the merits of one potential applicant’s or bidder’s reason for missing a deadline—something that occurs in nearly every auction—even if such a request were characterized as seeking “limited” relief or “expedited action” as NBVDS does here.²⁴ Where the prospective applicant has not demonstrated diligence that would have helped to prevent and/or to promptly correct its mistake, or that the problem was caused by a Commission failure, it is not inequitable to apply the deadline; in fact, it would be inequitable to the other applicants that met the deadline to waive it. Potential applicants for Auctions 101 and 102 were repeatedly warned about ensuring that they submit their short-form applications prior to the deadline.²⁵ The Commission “strongly urged” applicants to “file early” and affirmed that applicants “are responsible for allowing adequate time for filing their applications.”²⁶

13. We disagree with NBVDS that the Commission’s policy objectives would be thwarted in the absence of a waiver of the short-form application deadline. We are troubled by NBVDS’s failure to plan ahead and take the necessary steps to certify and submit its Auction 101 application prior to 5:55 p.m. ET on September 18.²⁷ NBVDS makes the specious argument that because a directive to plan ahead could apply to all waiver requests, no waiver would be granted “under any circumstance” if we were to fault NBVDS for failing to plan ahead and deny its waiver request.²⁸ It is axiomatic that we can only rule on the specific facts before us. And those facts—which include, *inter alia*, NBVDS attempting to certify and submit an application *five minutes* before the deadline—do not overcome our policy of strict enforcement of auction deadlines. In these regards, we note that, when applicants or bidders encounter individual difficulties, we expect that they will attempt to resolve such difficulties with all due diligence by, e.g., deploying appropriate countermeasures²⁹ or implementing backup plans, rather than relying on the possibility of a waiver. While the question of what efforts an applicant or bidder could have made to resolve such difficulties will turn on the facts of the case, here NBVDS has failed to point to anything specific it did at the time the purported network disruption prevented it from submitting its application on a timely basis,

²³ *Barry P. Lunderville et al.*, Memorandum Opinion and Order, 28 FCC Rcd 665, 671-72, para. 14 (2013) (quoting *WAIT Radio v. FCC*, 897 F.2d 1153, 1157 (D.C. Cir. 1969)).

²⁴ Application for Review at 6. We note that NBVDS’s attempt to minimize the impact of granting a waiver in this circumstance falls flat. Because NBVDS failed to sufficiently plan ahead for situations that might hinder its ability to meet the short-form application deadline and then filed a formal request for waiver 10 days after the deadline, granting any relief would have effectively required us to suspend the pre-auction process and postpone the start of bidding. As the Division has previously observed in the context of a challenge to its auction procedures, if we were to delay Commission auctions or refrain from offering licenses at auction each time a challenge arose, it “would undermine our ability to promote the policy objectives of Section 309(j) of the Communications Act.” *MetroPCS Communications, Inc. Petition for Reconsideration of Public Notice Announcing Procedures for Auction of AWS-1 and Broadband PCS Licenses (Auction 78)*, Order on Reconsideration, 25 FCC Rcd 2209, 2215, para. 17 (WTB 2010) (after the close of bidding, denying request to reconsider Bureau’s adoption of procedures and license inventory for Auction 78).

²⁵ In the *Auctions 101 and 102 Procedures Public Notice*, the Commission stated: “Late applications will not be accepted.” *Auctions 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7623, para. 137; *see also Short-Form Application (FCC Form 175) Filing Instructions for Auction 101 and Auction 102* at 1, 27, paras. 2, 110 (Aug. 6, 2018), <https://www.fcc.gov/auction/101/education> (“Applications must be submitted and confirmed prior to 6:00 p.m. ET on September 18, 2018. . . . Late applications or unconfirmed submissions will not be accepted.”); *Auctions 101 and 102 Application Tutorial*, http://wireless.fcc.gov/auctions/101/Tutorial_101_102/presentation.html.

²⁶ *Auctions 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7590, para. 37.

²⁷ Application for Review at 6-7.

²⁸ *Id.* at 7.

other than calling Division staff three minutes before the application deadline and again six minutes later.³⁰ Moreover, NBVDS's failure to cite any steps that it took in advance to prepare for the possibility of last-minute technical filing problems, notwithstanding the Commission's clear warning to "file early," casts significant doubt on its due diligence in meeting the deadline.³¹ And this apparent lack of due diligence carried over to the manner in which NBVDS decided to pursue its waiver request—by waiting 10 days before submitting the request, notwithstanding its knowledge that the auction procedures include multiple succeeding deadlines and that any delay at one stage could easily disrupt the remaining steps in the process.

14. NBVDS further asserts that the Division Order "shifted the goal post" for the short-form application window because NBVDS did not have the same amount of time to file its short-form application as other applicants.³² We disagree with this characterization. The deadline for *all* applicants was 6:00 p.m. ET on September 18, 2018, and the Division accepted no applications after that time. Given that NBVDS submitted its waiver request and required application certifications to the Division 10 days later, we reject NBVDS's argument that a waiver would give all applicants the same opportunity to file their applications to participate in the auction.³³ Even if we were inclined to accept NBVDS's premise, at most, NBVDS would have missed out on *five* minutes—out of a *two-week* short-form application filing window—that other applicants had available. Notably, no other applicants sought to utilize that short interval in the waning minutes of the filing window to file an application, nor did any other party complain to the Division about missing out on any five-minute period that the filing window was open.

15. Furthermore, we are not persuaded that NBVDS's asserted intent to deliver enhanced broadband services using 28 GHz spectrum to current and future customers in rural areas outweighs the benefit in consistent enforcement of the Commission's auction-related deadlines.³⁴ This very argument could be asserted whenever an auction deadline is missed. For that reason, the Commission has routinely rejected such arguments in declining to grant other requests for waiver of its competitive bidding rules,³⁵ and we do the same here. Further, we are not convinced that the difference in the geographic area sizes of

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²⁹ Although NBVDS cites various articles describing network defense strategies, Application for Review at nn.12, 15, NBVDS does not indicate whether it took such measures here nor if so, whether they were successful.

³⁰ See Declaration of Jacob E. Baldwin, Attach. to Request, paras. 8, 10 (describing call at 5:57 p.m. ET discussing issues uploading attachments with application and call at 6:03 p.m. ET discussing NBVDS's inability to submit its application for Auction 101).

³¹ While NBVDS claims that it had "no reasonable alternative" except to apply for a waiver "at the time the need for seeking a waiver arose (i.e., after the filing window closed)" (Application for Review at 7), this argument proves too much; once a filing window has closed, a waiver is the only alternative for every applicant that has missed the filing deadline. The relevant inquiry is whether NBVDS had no reasonable alternative by which it could have complied with the rule. See *Ted W. Austin, Jr.*, Memorandum Opinion and Order, 30 FCC Rcd 3486, 3488, para. 6 (2015). We agree with the Division that NBVDS had the reasonable alternative of exercising due diligence prior to the filing deadline. See Division Order, 33 FCC Rcd at 9860, para. 12. This treatment is also consistent with other Bureau-level decisions, which, while not binding on the Commission, see *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008), help to confirm that a waiver denial is appropriate in this situation. See *Spectrum Acquisitions, Inc. Application to Participate in Auction 73*, Letter Order, 23 FCC Rcd 4765, 4767-68 (WTB 2008) (denying waiver of deadline because "[r]easonable diligence would include leaving additional time"); *Sierra Tel Internet Application to Participate in Auction No. 66*, Letter Order, 21 FCC Rcd 8635, 8636-38 (WTB 2006) (denying waiver when applicant "had sufficient opportunity to plan ahead to meet deadline").

³² Application for Review at 5-6.

³³ *Id.* at 7-8. We note that each of the examples of deadlines extended by the Commission cited by NBVDS (*id.* at 6 n.19) concerned events that impacted Commission systems and operations, which justified providing additional time uniformly to all potential applicants and commenters, and were not instances where only an individual applicant had encountered a problem with its own system.

³⁴ See Division Order, 33 FCC Rcd at 9859-60, para. 9.

the licenses being offered in Auctions 101 and 102 compels a different result.³⁶ The Division's analysis does not rely on the assumption that those two auctions offered perfect substitutes. Rather, the Division correctly concluded that the Commission's longstanding policy of strict enforcement of auction deadlines is not outweighed by NBVDS's asserted intent to deliver enhanced broadband services using 28 GHz spectrum, particularly when it is speculative that NBVDS would have become a winning bidder in Auction 101 or successfully built out its network. The availability of licenses for 24 GHz spectrum in Auction 102 simply provided another avenue for NBVDS to deploy service using UMFUS bands in the absence of a waiver. Indeed, Auction 102 bidding started less than two months following the close of Auction 101, NBVDS's short-form application was deemed complete,³⁷ and NBVDS became a qualified bidder in that auction.³⁸

16. Second, we are not convinced that the purported network disruption that allegedly prevented NBVDS from certifying and submitting its Auction 101 application was an "unusual and compelling circumstance"³⁹ that would justify a waiver.⁴⁰ Unfortunately, network disruptions are not uncommon, and network providers should have appropriate mitigation plans. Yet NBVDS fails to describe any such mitigation efforts that it undertook and whether that conduct would be expected to overcome NBVDS's waiting until the final minutes before the deadline to attempt to submit its short-form application.

17. We concur with the Division that *FCC Overrules Caldwell Television* is best read to support denying a waiver here,⁴¹ rather than granting one as NBVDS claims.⁴² In *FCC Overrules Caldwell Television*, the Commission declared that it would only consider "clearly unforeseeable circumstances" as grounds for a waiver and that it would no longer consider circumstances that are "reasonably foreseeable," such as claims related to copying machines, delivery services, inclement weather, or illness.⁴³ We cannot see how the network disruption alleged here—i.e., one with a 43-minute duration that was not severe enough to prevent NBVDS from successfully filing its Auction 102

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³⁵ See, e.g., *Application of The ERIE Radio Co., LLC for a Construction Permit for a New FM Broadcast Station at Westfield, NY; Informal Request for Extension of Time*, Memorandum Opinion and Order, 32 FCC Rcd 3890, 3896 & n.51, para. 17 (MB/WTB 2017) (rejecting argument that waiver was in the public interest because re-auctioning construction permit would cause a multi-year delay in a local broadcaster serving Westfield, NY); *Southern Communications Systems, Inc.*, Second Memorandum Opinion and Order, 16 FCC Rcd 18357, 18361, para. 9 (2001) ("[E]nforcing the Commission's payment rules . . . serves the public interest better than relying on the wholly unsubstantiated possibility that [petitioner] might have provided service in its license area sooner than the successor licensees will."); see also *Aircom Consultants, Inc.*, Order on Reconsideration, 18 FCC Rcd 1806, 1810-11, paras. 12-13 (WTB 2003) (following Commission precedent in rejecting the petitioner's argument that the down payment and default rules should be waived to provide communications services to underserved tribal lands and rural areas).

³⁶ Application for Review at 8.

³⁷ See *Auction of 24 GHz Upper Microwave Flexible Use Service Licenses for Next-Generation Wireless Services; Applications of 58 Applicants for Auction 102 Deemed to Be Complete*, Public Notice, 33 FCC Rcd 10985, Attach. A (WTB 2018).

³⁸ See *Auction of 24 GHz Upper Microwave Flexible Use Service Licenses for Next-Generation Wireless Services; 38 Applicants Qualified to Bid in Auction 102*, 34 FCC Rcd 933, Attach. A (OEA/WTB 2019).

³⁹ Application for Review at 4.

⁴⁰ Cf. *Ideas for Business*, 19 FCC Rcd at 20519 ("Applicants are responsible for ensuring that their computer systems are adequate to connect and interface with the Commission's filing software.")

⁴¹ Division Order, 33 FCC Rcd at 9860, paras. 11-12.

⁴² Application for Review at 4-5.

⁴³ *FCC Overrules Caldwell Television Associates, Ltd.*, Public Notice, FCC 85-534, 58 R.R. 2d 1706 (1985) (*FCC Overrules Caldwell Television*).

application—would be “clearly unforeseeable” to a seasoned Internet service provider like NBVDS and its affiliated companies.

18. We reject NBVDS’s assertion that the Commercial Wireless Division’s grant of a waiver in *Metricom* is relevant here.⁴⁴ To the contrary, the Division properly concluded that NBVDS’s reliance on *Metricom* is misplaced.⁴⁵ While it is not binding on the Commission,⁴⁶ the *Metricom* case arose in the context of the electronic delivery of a post-auction long-form license application by a winning bidder where the auction winner immediately undertook corrective efforts and its actions did not risk delay of the then-concluded bidding process or prejudice to other applicants nor jeopardize the Commission’s ability to satisfy the applicable statutory requirement to complete the auction and license the subject spectrum by a date certain.⁴⁷ The instant matter involves a pre-bidding auction application deadline where the consequences of delays in fully investigating and resolving such a claim potentially risk prejudice to all auction applicants and the public. Notably, NBVDS fails to cite a single precedent in which the Commission granted a waiver of a pre-auction short-form application deadline.

19. In any event, we must consider all the factual circumstances of the instant case, and those clearly weigh against granting a waiver. We endorse the Commission’s warning in *FCC Overrules Caldwell Television*:

[A]pplicants who wait until the eleventh hour to meet Commission deadlines will be held to assume the risk for almost all events which may occur to prevent timely filing. To minimize the risk, applicants should build into their schedules a reasonable margin of error in anticipation of circumstances which may cause delay.⁴⁸

20. There is no dispute that NBVDS did not heed this direction, which the Commission repeated in the *Auctions 101 and 102 Procedures Public Notice*.⁴⁹ By waiting until 5:55 p.m. ET on the last day of the two-week filing window to attempt to certify and submit its short-form application for Auction 101,⁵⁰ NBVDS assumed the risk that the certification and submission of the application would not be completed within the next five minutes. Five minutes can in no way be considered a “reasonable margin of error,” particularly when the short-form application filing window was open for two weeks.⁵¹

21. NBVDS cannot extricate itself from the Commission’s warning in *FCC Overrules Caldwell Television* by arguing that the Commission used the term “almost all,” rather than “all.”⁵² Given its placement in the same paragraph, the Commission intended the qualifier “almost” to exclude those “clearly unforeseeable circumstances” (e.g., earthquake or city-wide power outage) that the Commission had just indicated would be considered as grounds for a waiver. The Commission’s warning about the perils of waiting until the “eleventh hour” would thus apply to “reasonably foreseeable” circumstances, which we have found the network disruption to be here.

⁴⁴ See Application for Review at 8 n.24, citing *Application of Metricom, Inc.*, 12 FCC Rcd 15157 (WTB Commercial Wireless Div. 1997) (*Metricom*).

⁴⁵ See Division Order, 33 FCC Rcd at 9861, para. 13 n.27.

⁴⁶ See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008).

⁴⁷ See *Application of Metricom, Inc.*, 12 FCC Rcd at 15157, 15159-60, paras. 1, 6.

⁴⁸ *FCC Overrules Caldwell Television* at 1-2.

⁴⁹ See *supra* para. 12.

⁵⁰ See Declaration of Rachel Looney, Attach. to Request, para. 9.

⁵¹ As the Division noted, NBVDS’s Auction 102 application was the last one submitted, and only two other applicants submitted applications in the last 30 minutes before the 6:00 p.m. ET deadline on September 18. See Division Order, 33 FCC Rcd at 9860, para. 10.

⁵² Application for Review at 7.

22. In sum, none of the arguments presented by NBVDS merits reversal of the Division Order. Accordingly, we conclude that the Application for Review does not demonstrate that the Division Order conflicts with statute, regulation, precedent, or established Commission policy.⁵³ We therefore deny NBVDS's request that we reverse the Division Order denying NBVDS's request for waiver.

IV. ORDERING CLAUSES

23. For the reasons discussed above, we hereby deny the Application for Review of the Division Order denying NBVDS's Request for Waiver in connection with NBVDS's failure to timely file its short-form application for Auction 101.

24. Accordingly, it is ORDERED, pursuant to sections 4(i), 5(c)(4), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(4), and 309(j) and section 1.115 of the Commission's rules, 47 CFR § 1.115, that NBVDS's Application for Review filed on October 15, 2018, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵³ 47 CFR § 1.115(b)(2)(i).