

DA 98-1526

Adopted: July 29, 1998

Released: July 31, 1998

Ms. Elisabeth H. Ross
Counsel for Anishnabe Communications Enterprise, Inc.
Birch, Horton, Bittner and Cherot
1155 Connecticut Ave., N.W., Suite 1200
Washington, D.C. 20036

Re: Waiver of June 8, 1998 Election Date for PCS C Block Licensees
to Submit Elections

Dear Ms. Ross:

This letter responds to Anishnabe Communications Enterprise, Inc.'s ("Anishnabe") request for a waiver of the June 8, 1998 payment option election deadline for PCS C block licensees.¹ Anishnabe requests this waiver of the June 8, 1998 deadline to make a submission under the Commission's guidelines. We find that the facts and circumstances presented by Anishnabe are sufficient to merit a waiver of the deadline. We also will allow Anishnabe to begin its repayment obligations ten (10) business days from the release date of this letter, instead of on July 31, 1998. We are not extending the 90-day non-delinquency period beyond the October 29, 1998 date and all other terms of the *Reconsideration Order* remain in effect.² We discuss the specific rationale for this waiver below.

Anishnabe holds three C block licenses in Michigan: Lansing, Mt. Pleasant, and Saginaw. On June 8, 1998, Anishnabe failed to file an election specifying any of the payment options outlined in the Commission's *Reconsideration Order*. Accordingly, Anishnabe would retain all three of its C block licenses. It would be responsible for the resumption of installment payments

¹See Amendment of the Commission's Rules Regarding Installment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, FCC 98-46, 13 FCC Rcd 8345 (1997) (hereinafter "*Reconsideration Order*"); see also "Wireless Telecommunications Bureau Announces June 8, 1998 Election date for Broadband PCS C Block Licensees," *Public Notice*, DA-98-741 (rel. April 17, 1998).

²*Reconsideration Order* at ¶¶ 25-26.

on the full amount owed for all three licenses under the terms of its existing loan documents. Any interest accrued since April 1, 1998 would be due by July 31, 1998, along with all Suspension Interest.

On July 20, 1998, Anishnabe filed a "Petition for Waiver" of the June 8, 1998 deadline with the Commission.³ Therein, Anishnabe states that its technical advisors, Associated Communications & Research Services, Inc., had failed to provide sufficient expertise in the auctions process, leading to their termination shortly before the June 8, 1998 election date. Anishnabe argues that as a small business primarily associated with a Native American tribe, it was ill-equipped to make an informed decision in this matter. Thus, the primary basis for Anishnabe's waiver request is that it lacked competent legal and/or technical assistance with respect to the election date on the filing date. It indicates that it intended to request the Commission's "Resumption of Payments Option."

Pursuant to Section 24.819 of the Commission's Rules (47 C.F.R. 24.819), waiver of a provision of the PCS rules is appropriate only when a party demonstrates either that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest, or that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.⁴

We find that the facts and circumstances cited here are of sufficient novelty to warrant a waiver of the June 8, 1998 election date. First, the C block election process is a unique occurrence which is unlikely to repeat itself in any other context. Second, Anishnabe's lack of technical assistance at this juncture caused a sudden, temporary lack of ability to adhere to the *Reconsideration Order's* timeline. Anishnabe's representatives travelled to Washington, D.C., met with the Commission's staff and then immediately obtained legal assistance in this matter. Third, we do not believe that the lack of a submission was intended to enhance Anishnabe's position *vis-a-vis* the other licensees, nor do we find that Anishnabe intended to delay its ultimate election by failing to make its election on June 8, 1998. In fact, Anishnabe's lack of a submission poses serious financial hardship for it in that it resulted in its inability to make its suspension payments in eight quarterly installments.

³"Petition of Anishnabe Communications Enterprise, Inc. For A Waiver Of The June 8, 1998 Personal Communications Services C Block Date To Elect Resumption Of Payments Option," July 20, 1998.

⁴47 C.F.R. § 24.819(a)(1)(i) and (ii). *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

Anishnabe's waiver request is distinguishable from instances where a waiver would affect the integrity and efficient functioning of the auctions process.⁵ A waiver of the election date to allow Anishnabe's July 20, 1998 submission and a brief delay in the July 31, 1998 repayment deadline still will permit timely closure in this matter and encourage the licensee to meet its obligations to the Commission. A strict application of the election date here would be unduly burdensome for Anishnabe and cause extreme financial hardship. Although we find that rigid enforcement of the June 8, 1998 deadline would not serve the public interest, we caution Anishnabe that in the future, it should obtain proper legal and/or technical assistance prior to proceeding in important licensing matters.

Accordingly, we hereby grant Anishnabe's request for a waiver of the June 8, 1998 election date, and we will permit the submission contained in Anishnabe's July 20, 1998 waiver request. We further order that Anishnabe begin its repayment obligations ten (10) business days from the release date of this letter. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's Rules. 47 C.F.R. 0.331.

Sincerely,

E. Rachel Kazan, Chief
Auction Finance and Market Analysis Branch
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

⁵See, e.g., BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum, Opinion and Order*, 12 FCC Rcd 3230, 3235 ¶ 7 (1997) (*Petition for Review* granted in part for other reasons), 12 FCC Rcd 15341 (1997).