



FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

DA 00-699  
March 30, 2000

Mr. John Prendergast  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, N.W.  
Washington, DC 20037

Dear Mr. Prendergast:

This letter responds to the Request for Waiver and Request for Leave to Amend that you filed on March 27, 2000 on behalf of your client, Landmark Site Development, LLC ("Applicant").<sup>1</sup> Applicant is seeking permission to amend its FCC Form 175 ("short-form application") for participation in Auction No. 30 to add 39 GHz license frequency blocks B through N within the market service areas specified in its application.<sup>2</sup> Specifically, Applicant requests a waiver of Section 1.2105 (b)(2) of the Commission's rules to permit a change to frequencies within the market service areas identified in its short-form application.<sup>3</sup> According to Applicant, it intended to select all the 39 GHz license blocks for the market service areas in which it actually selected only one license block. Absent a waiver, Applicant would be ineligible to bid on all 39 GHz license blocks in those market service areas because all of those licenses were not properly selected on its short-form application. For the reasons discussed below, we grant Applicant's Request.

To obtain a waiver of the Commission's competitive bidding rules,<sup>4</sup> Applicant must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.<sup>5</sup>

In support of its Request, Applicant argues that it intended to select all 39 GHz frequency blocks for those market service areas specified in its short-form application to create the maximum opportunity to win enough spectrum blocks to accommodate broadband services (*i.e.*, frequency blocks A through N, corresponding to 39 GHz channels 1 through 14). Specifically, Applicant contends that

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<sup>1</sup> See Request for Waiver by Landmark Site Development, LLC and Request for Leave to Amend, filed March 28, 2000 (Request).

<sup>2</sup> Landmark Site Development, LLC selected the following market service areas in its short-form application: BEA002, Portland, ME and BEA005, Albany-Schenectady-Troy, NY.

<sup>3</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>4</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>5</sup> 47 C.F.R. § 1.925.

when Applicant submitted its short-form application using the Commission's submission software, it believed it had selected all fourteen 39 GHz frequency blocks for the designated BEA markets. Applicant contends that, because of the confusing format of the auction software, compounded by the format of the license list in the related *Auction No. 30 Public Notice*,<sup>6</sup> Applicant's choice of frequencies was not reflected in the final submission.

In particular, Applicant claims that when a representative of the Applicant reviewed this listing of 39 GHz licenses prior to preparing for the electronic filing, he saw that the licenses corresponding to 39 GHz frequency blocks A-N were listed in a single block corresponding to each market number and license name, and mistakenly concluded that this "all frequency block" grouping was similarly reflected in the short-form application submission software. Applicant contends that it did not affirmatively select frequency block "A" when composing the markets for bidding eligibility, believing that all frequency blocks would be included by its choice of a particular BEA market. Applicant claims that it was only after it reviewed the release of the *Auction No. 30 Status Public Notice*<sup>7</sup> that it realized that the software automatically defaults to frequency block A when a particular BEA is selected. Accordingly, Applicant argues that it should be permitted to correct its application to specify all of the frequency blocks for which it intends to bid. Applicant contends that a prohibition against correcting its application would be fundamentally unfair since its application was already accepted for filing, and such action would not be prejudicial to any other party. Applicant further argues that allowing it to amend its application will serve the public interest, as it will create greater competition.

We note that the *Auction No. 30 Public Notice* did include precise frequencies related to license blocks within spectrum to be auctioned.<sup>8</sup> Therefore, Applicant was on notice of the frequencies related to the separate license blocks within each market area for the 39 GHz band. Nevertheless, we note that the software selection format and instruction mechanisms for the 2,450 licenses in the 39 GHz band were complex and may have contributed to Applicant's misunderstanding. We find that Applicant's explanation of its mistake is credible and that granting this waiver will not undermine the purpose of the rule.

Section 1.2105(b)(2) states that a major amendment cannot be made after the initial filing deadline, and this includes changes in license service areas identified on an applicant's short-form application. We continue to interpret this rule to prohibit applicants from adding licenses to their short form applications, unless a waiver of the rules is warranted. The facts presented in Applicant's Request show unique circumstances supporting the grant of these waivers pursuant to

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<sup>6</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*, DA 00-112 (rel. January 21, 2000) (*Auction No. 30 Public Notice*).

<sup>7</sup> See 'Auction of Licenses for Fixed Point-to-Point Microwave Service in the 38.6 to 40.0 GHz (39 GHz) Band; Status of Applications to Participate in the Auction,' *Public Notice*, DA 00-615 (rel. March 17, 2000) (*Auction No. 30 Status Public Notice*).

<sup>8</sup> See *Auction No. 30 Public Notice* at 5-6.

Section 1.925 of the Commission's rules.<sup>9</sup> Consequently, we will permit Applicant to amend its short-form application to add the licenses listed in its Request, and these amendments will allow Applicant to bid on those licenses.

This action is taken under the delegated authority pursuant to Section 0.331 of the Commission's rules.<sup>10</sup>

Sincerely,

Mark Bollinger  
Acting Chief, Auctions and Industry Analysis  
Wireless Telecommunications Bureau

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<sup>9</sup> 47 C.F.R. § 1.925.

<sup>10</sup> 47 C.F.R. § 0.331.