



FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DA 00-737
April 3, 2000

Mr. Jason Bunch
NTCH, Inc.
100 No. Sepulveda Blvd.
Suite 1100
El Segundo, CA 90245

Dear Mr. Bunch:

This letter responds to your March 29, 2000 correspondence, filed on behalf of Mr. Glenn W. Ishihara (Applicant), requesting a waiver of the upfront payment deadline for Auction No. 30.¹ You claim, on behalf of Applicant, that Salomon Smith Barney's internal deadline caused the wire transfer to be late.

In order to obtain a waiver of the Commission's upfront payment deadline, 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 waiver 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.² For the reasons cited below, we find that the circumstances of your waiver request fail to meet the Commission's standard for granting a waiver.

On January 21, 2000, the Commission first notified applicants for Auction No. 30 that the deadline for submission of upfront payments was 6:00 p.m. (EST) on March 27, 2000.³ The Commission also warned applicants that [f]ailure to deliver upfront payment by the March 27, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.⁴

You claim that several unforeseen events precluded Applicant from completing the wire transfer to Mellon Bank before the upfront payment deadline. Among these unforeseen events, you claim that Applicant was not aware that its bank, Salomon Smith Barney, required the location address and telephone number for Mellon Bank. You contend that Applicant had extreme difficulty in acquiring this information and, when Applicant ultimately did acquire the requisite information for

¹ See Letter from Jason Bunch, NTCH, Incorporated, to Kathy Garland, Wireless Telecommunications Bureau, Federal Communications Commission, filed March 29, 2000.

² 47 C.F.R. § 1.925.

³ 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").

⁴ See *Auction No. 30 Public Notice* at Section III.D.

Mellon Bank, was not able to successfully process the wire transfer so that it was received by Mellon Bank before the upfront payment deadline. In addition, you contend Applicant was not aware that, in order for the transfer to be completed the same day, Salmon Smith Barney required this information to be internally filed and processed before its 11:00 a.m. deadline. You further claim that Applicant did not realize until the morning after the payment deadline (*i.e.*, March 29, 2000) that the wire transfer was not completed before the Commission's upfront payment deadline.

On the basis of the record before us, we are not persuaded that Applicant has demonstrated unique circumstances sufficient to justify the grant of a waiver in this case, nor do we find that Applicant has demonstrated that application of the deadline in its case would undercut or frustrate the underlying purpose of the deadline. We believe that Applicant had sufficient time to submit his upfront payment prior to the payment deadline. By your own admission, Applicant initiated processing of the wire payment the day of the payment deadline, leaving little time for Applicant to become familiar with the requirements of the process. The Commission has repeatedly cautioned auction participants regarding the importance of planning ahead to account for unforeseen last-minute difficulties. In particular, applicants were warned to avoid untimely payments by discuss[ing] arrangements (including bank closing schedules) with their banker several days before they plan to make a wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.⁵ In addition, applicants were cautioned to confirm receipt of their upfront payments at Mellon Bank by contacting their sending financial institution.⁶ Applicant failed to perform these fundamental and critical tasks. Accordingly, we are not convinced that grant of a waiver is warranted or would be in the public interest.

This action is taken under the delegated authority pursuant to Section 0.331 of the Commission's Rules.⁷

Sincerely,

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

⁵ Auction No. 30 Public Notice at Section III.D.1.

⁶ *Id.*

⁷ 47 C.F.R. § 0.331.