



FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DA 00-818
April 11, 2000

Mr. David E. Beyerle
331 S. Gill Street
State College, PA 16801-3963

Dear Mr. Beyerle:

This letter responds to the Letter you filed on April 6, 2000,¹ seeking permission to amend your 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 your application.² Specifically, you request 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 your short-form application.³ You contend that you intended to select all the 39 GHz license blocks for the market service areas in which you actually selected only one license block. For the reasons discussed below, we deny your Request.

To obtain a waiver of the Commission's competitive bidding rules,⁴ you 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.⁵

In support of your Request, you contend that you intended to select all 39 GHz frequency blocks for those market service areas specified in your short-form application. You cite two previous cases where the applicant's representative intended to select all frequency blocks for those market service areas specified in its short-form application.⁶ You further contend that the 39 GHz band allocation

¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Mr. David E. Beyerle (April 6, 2000) ("Request").

² You selected the following market service areas in your short-form application: BEA009, State College, PA; BEA0011, Harrisburg-Lebanon-Carlisle, PA; BEA053, Pittsburgh, PA-WV; and BEA054, Erie, PA.

³ 47 C.F.R. § 1.2105(b)(2).

⁴ 47 C.F.R. § 1.2105(b)(2).

⁵ 47 C.F.R. § 1.925.

⁶ See Letter to Mr. John Prendergast, Blooston, Mordkofsky, Jackson & Dickens, from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA00-683 (March 24, 2000); see also Letter to Mr. John Prendergast, Blooston, Mordkofsky, Jackson & Dickens, from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA00-699 (March 30, 2000).

graphic is inconsistent with the auction format of licenses. Accordingly, you request that you be permitted to amend your short-form to explicitly list each of the fourteen licenses for each of the five markets that you originally selected.

We note that the *Auction No. 30 Public Notice* did include precise frequencies related to license blocks within spectrum to be auctioned.⁷ Therefore, you were on notice of the frequencies related to the separate license blocks within each market area for the 39 GHz band. We further note that the public notice announcing the status of applications was released on March 17, 2000,⁸ and that you did not officially contact the Commission regarding the selection of your licenses until April 6, 2000, *i.e.*, one day before the scheduled mock auction for Auction No. 30. Applicants have a duty to confirm the status of their applications and the licenses selected in the applications. Therefore, although the software selection format and instruction mechanisms for the 2,450 licenses in the 39 GHz band may have been complex, we believe that you did not exercise reasonable diligence in confirming the selection of licenses in your application. The cases in which we granted a waiver along the lines you request were instances in which bidders brought their mistake to our attention quickly, thus creating little disruption for other bidders. On the basis of the record us, we are not persuaded that you have demonstrated unique circumstances to justify the grant of a waiver in this case.

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 your Request do not show unique circumstances supporting the grant of these waivers pursuant to Section 1.925 of the Commission's rules.⁹

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

Sincerely,

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

⁷ 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 at 5-6 (rel. January 21, 2000) ("*Auction No. 30 Public Notice*").

⁸ 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*").

⁹ 47 C.F.R. § 1.925.

¹⁰ 47 C.F.R. § 0.331.