

April 11, 1997

Mr. John Prawat  
DigiVox Telecom, Inc.  
1750 24th Street, N.W.  
Suite 300  
Washington, D.C. 20037

Re: DigiVox's Request for Rule Waiver of the Upfront Payment Requirement  
in the WCS Auction

Dear Mr. Prawat:

This letter responds to the "Request for Waiver of Upfront Payment Requirement" ("Waiver Request") filed by DigiVox Telecom, Inc. ("DigiVox") on April 4, 1997. DigiVox requests that the Commission waive the Wireless Communications Service ("WCS") auction upfront payment deadline of April 4, 1997.<sup>1</sup> DigiVox claims that because a Commission order reconsidering out-of-band emission limits applicable to WCS licensees<sup>2</sup> was released two days before the upfront payment deadline, DigiVox did not have sufficient time to obtain financing to make its upfront payment. DigiVox states that prospective investors were not willing to finalize financing agreements until the rules were changed to permit it to operate technologies on the WCS spectrum that were previously infeasible.<sup>3</sup> DigiVox asks to make its upfront payment, in installments, by May 16. For the reasons discussed below, we deny DigiVox's request.

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<sup>1</sup> See 47 C.F.R. § 27.205

<sup>2</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, GN Docket No. 96-228, *Memorandum Opinion and Order*, FCC 97-112 (rel. April 2, 1997), 62 FR 16,493 (April 7, 1997) (*WCS Memorandum Opinion and Order*).

<sup>3</sup> In the *WCS Memorandum Opinion and Order*, the Commission adopted an alternative, less-stringent out-of-band emission limit for certain portable WCS transmitters than that set forth in the original order adopting technical rules for WCS. See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, GN Docket No. 96-228, *Report and Order*, FCC 97-50 (rel. Feb. 19, 1997), 62 FR 9636 (March 3, 1997) (*WCS Report and Order*). DigiVox has stated that it intends to deploy such transmitters in the WCS spectrum.

The April 4 deadline, which was set forth in a Public Notice released on February 21, 1997,<sup>4</sup> was necessary to enable the Commission to verify the receipt of the upfront payments, mail software to bidders, and make final preparations for the April 15 start of the WCS auction, which is statutorily prescribed by the 1997 Appropriations Act.<sup>5</sup> In every Commission auction, the amount of each bidder's upfront payment establishes its eligibility to bid in the auction. It is therefore not operationally feasible to allow DigiVox to bid in the WCS auction without having made an upfront payment. Furthermore, our Auction System software and associated bidding "tools" are programmed using the total eligibility figure established from upfront payments. This software is thoroughly tested once the auction parameters are established. Allowing a bidder to submit an upfront payment late risks the integrity of the auction system itself. Finally, we note that all prospective bidders in the WCS had six weeks notice of the upfront payment deadline. To waive this deadline for one bidder, may harm qualified bidders who made upfront payments on time.

The timing of the release of the *WCS Memorandum Opinion and Order* does not justify a waiver of the upfront payment requirement. DigiVox filed its Petition for Expedited Reconsideration on March 11, 1997, 20 days after release of the *WCS Report and Order*. The Commission placed the petition on public notice, established an expedited pleading cycle, and addressed the issues raised in 22 days. Throughout this period, DigiVox was aware of the upfront payment deadline, and it should have been prepared to make a timely upfront payment in the event that its petition was granted. That it was not successful in doing so does not give grounds for waiving the upfront payment requirement.

For the reasons stated above, DigiVox's waiver request IS HEREBY DENIED. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Kathleen O'Brien Ham  
Chief, Auctions Division  
Wireless Telecommunications Bureau

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<sup>4</sup> *Auction of Wireless Communications Service (WCS), Auction Notice and Filing Requirements for 128 WCS Licenses, Public Notice*, DA 97-386 (rel. Feb. 21, 1997), 62 FR 12,186 (March 14, 1997)

<sup>5</sup> Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996). In response to comments filed by DigiVox proposing a postponement of the auction, the Commission stated that it had no flexibility to move it to a later date. See *WCS Report and Order, supra*, at ¶ 171; see also *Emergency Motion of the Wireless Cable Association International, Inc. for a Stay of the Wireless Communications Service Auction and Associated Rules, Order*, FCC 97-111 (rel. April 1, 1997) (the Commission lacks discretion to defer the commencement of the WCS auction).