

DA 99-423
Released March 3, 1999

Ms. Jeanne W. Stockman
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2000 M Street, N.W.
Suite 600
Washington, D.C. 20036

Dear Ms. Stockman:

This letter responds to the "Emergency Petition for Waiver" ("Waiver Petition") that you filed on February 25, 1999 and amended by erratum on February 26, 1999, on behalf of your client, Tri-States PCS, Inc. ("Tri-States"). Tri-States requests permission to amend its short-form application (FCC Form 175) for participation in Auction No. 22 to delete from its application spectrum returned to the Commission by Tri-States' affiliate DiGiPH PCS, Inc. ("DiGiPH").¹ Under the Commission's Rules,² Tri-States is ineligible to bid for BTA B094 and BTA B292 because DiGiPH disaggregated spectrum in those two markets during the Commission's C block restructuring process.³

According to Tri-States, although it chose all markets in its FCC Form 175, it never intended to bid on or re-acquire spectrum returned to the Commission by DiGiPH. In its erratum to its Waiver Petition, Tri-States submitted a declaration by its President, Paul Brown to this effect. In addition, Brown stated that Tri-States was unaware that the Commission's Rules would be violated when Tri-States designated all markets on its application.

Upon review of your pleading, we are persuaded that the grant of Tri-States' Waiver Petition is in

¹ DiGiPH disaggregated BTA B094 and B292. "Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block Elections," *Public Notice*, DA 98-1168 (rel. June 16, 1998), App. A, p. 5.

² 47 C.F.R. § 24.709 (b)(9)(ii).

³ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-342, 12 FCC Rcd 16,436 (1997); Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, FCC 98-46, 13 FCC Rcd 8345 (1998); Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Fourth Report and Order*, FCC 98-176, 13 FCC Rcd 15,743 (1998).

the public interest and is consistent with the Commission's practice.⁴ Consequently, we will permit Tri-States to amend its FCC Form 175 to delete BTA B094 and BTA B292. This amendment will make Tri-States' short-form application accepted for filing.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.⁵

Sincerely,

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

⁴ See Letter to David J. Kaufman, Esq., Counsel for Antigone Communications Limited Partnership from Kathleen O'Brien Ham, Chief, Auctions and Division, Wireless Telecommunications Bureau, regarding Amendment to FCC Form 175 (Application to Participate In Broadband PCS Auction) (dated December 8, 1995). See also *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁵ 47 C.F.R. § 0.331.