

DA 99-706
April 13, 1999

Mr. John D. Szuchan
10521 Whitestone Rd.
Raleigh, NC 27615

Dear Mr. Szuchan:

This letter responds to your April 2, 1999 correspondence on behalf of On Target, L.L.C. ("Target"), requesting a waiver of the filing deadline for submission of its short-form application (FCC Form 175) for Auction No. 23, the April 27, 1999 auction of LMDS licenses.¹ You claim that technical problems delayed the filing of Target's application and request permission to file after the deadline, which was March 29, 1999 at 5:30 p.m (EST).²

In order to obtain a waiver of the Commission's auction application filing deadline rules,³ Target must show: (i) that the underlying purpose of the rules will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (ii) that the unique facts and circumstances of a particular case render application of the rules inequitable, unduly burdensome or otherwise contrary to the public interest.⁴ For the reasons stated below, we find that your letter and the circumstances surrounding Target's waiver request fail to meet the Commission's criteria for granting a waiver.

The Commission established the March 29, 1999 filing deadline in the *LMDS Public Notice*, which was released January 29, 1999.⁵ The Commission's rules require that FCC Form 175

¹ See Letter from John D. Szuchan to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (April 2, 1999) ("Letter").

² *Id.*

³ 47 C.F.R. §§ 101.1104 and 1.2105.

⁴ 47 C.F.R. §§ 101.23 and 1.925; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁵ See "Auction of Local Multipoint Distribution Service Spectrum; Auction Notice and Filing Requirements for 168 Local Multipoint Distribution Service Licenses Scheduled for April 27, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-266 (rel. January 29, 1999) ("*LMDS Public Notice*").

applications be electronically filed, as noted in the *LMDS Public Notice*.⁶ To facilitate filing, the Commission's remote access system was available for submission of applications 24 hours per day beginning March 5, 1999.⁷ Applicants were cautioned that late applications would not be accepted.⁸

According to Commission records, you first contacted the technical support staff during the weekend of March 27-28, 1999. Subsequently, Target failed to submit an FCC Form 175 application for Auction No. 23. You provide no facts concerning the circumstances that resulted in your failure to timely file, other than your statement that you experienced a computer malfunction late in the afternoon of March 29, 1999.⁹ Your letter states that you were in contact with the Commission's staff via telephone when the submission period ended.¹⁰

On the basis of the record before us, we are not persuaded that Target has demonstrated that application of the deadline in its case would undercut or frustrate the deadline's purpose, nor do we find that Target has presented unique circumstances sufficient to justify grant of its waiver request. The Commission's Rules and the *LMDS Public Notice* provided comprehensive notice of filing procedures for Auction No. 23.¹¹ The Commission's rules are best served by applying deadlines in a fair and consistent manner.

We also believe that Target had sufficient time to submit its application prior to the filing deadline. The Commission specifically cautioned applicants to file early and allow adequate time for filing their applications.¹² Moreover, applicants are responsible for ensuring that their computer systems are adequate to connect and interface with the Commission's filing software.¹³ Accordingly, we are not convinced that a grant of the waiver is warranted or would be in the public interest.

⁶ See *LMDS Public Notice* at p. 13, n. 20. See also 47 C.F.R. § 1.2105.

⁷ *LMDS Public Notice* at 13.

⁸ *Id.*

⁹ Letter at ¶ 1.

¹⁰ *Id.*

¹¹ See *LMDS Public Notice* at pages 3, 6, and 13.

¹² *LMDS Public Notice* at 13.

¹³ *Id.*

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Therefore, Target's request for a waiver of the short-form application submission deadline is denied. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.¹⁴

Sincerely,

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

¹⁴ 47 C.F.R. § 0.331.