



Federal Communications Commission
Washington, D.C. 20554

October 22, 2001

DA 01-2466

Via Certified Mail, Return Receipt Requested

Alendra Lyons
Lynn Communication, Inc.
7010 Lynn Drive
Rowlett, Texas 75088

Re: Auction No. 40 - Waiver Request

Dear Ms. Lyons:

This letter responds to your September 21, 2001 correspondence on behalf of Lynn Communication, Inc. ("Lynn"), requesting a waiver of the filing deadline for submission of its short-form application (FCC Form 175) for Auction No. 40.¹ You claim that Lynn missed the filing deadline of September 17, 2001, 6:00 PM (ET)² because the person responsible for submitting its short-form application was "in flight" during the World Trade Center and Pentagon attacks and became stranded in Houston, Texas.³ For the reasons cited below, we deny the waiver request.

To obtain a waiver of the Commission's competitive bidding rules,⁴ Lynn 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

The Commission established the September 17, 2001 short-form application filing deadline in a Public Notice released May 25, 2001.⁶ In a subsequent Public Notice, the Commission announced that applications could be filed at any time beginning at noon ET on September 5, 2001 until 6:00 p.m. on September 17, 2001 and warned that late applications

¹ Letter from Alendra Lyons, Lynn Communication, Inc. to Lisa Stover, Federal Communications Commission, dated September 21, 2001 ("Letter").

² Auction of Licenses for Lower and Upper Paging Bands Postponed Until October 30, 2001, *Public Notice*, DA 01-1307 (rel. May 25, 2001) ("*Auction No. 40 Postponement Public Notice*").

³ Letter at 1. The attacks took place on Tuesday, September 11, 2001.

⁴ 47 C.F.R. § 1.2105(a).

⁵ 47 C.F.R. § 1.925.

⁶ *Auction No. 40 Postponement Public Notice* at 1.

would not be accepted.⁷ To facilitate filing, the Commission enabled applicants to submit applications via the internet 24 hours per day.⁸

You contend that Lynn's failure to timely submit its short-form application was due to the fact that your husband, the person responsible for submitting the application, was stranded in Houston on September 11, 2001. You further contend that as a result of the events of September 11, 2001, both you and your husband became distracted and "things got really off track."⁹

Based on the record before us, we are not persuaded that Lynn has demonstrated circumstances sufficient to justify the grant of a waiver in this case. Lynn has failed to provide any particular facts or other evidence that would demonstrate how the events that occurred on September 11, 2001 directly prevented it from timely submission of a short-form application by the September 17, 2001 deadline. The Commission's rules and public notices provided comprehensive notice of filing procedures for Auction No. 40.¹⁰ Moreover, the Commission specifically cautioned applicants to file early and allow adequate time for filing their applications.¹¹ Standing alone, the fact that Lynn's management became temporarily displaced and distracted by the events of September 11, 2001 is insufficient to warrant a waiver of the deadline. Lynn also has not shown how application of the short-form application deadline in its case would frustrate the deadline's purpose. The Commission's rules are best served by applying auction deadlines in a fair and consistent manner. Accordingly, Lynn's request is denied.

⁷ Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122 (rel. Sept. 10, 2001) ("*Auction No. 40 Staff Guidance Public Notice*") at 1.

⁸ Access to the FCC's computer system was unavailable from late afternoon on Friday, September 7, 2001 until 9 a.m. on Monday, September 10, 2001 to facilitate necessary maintenance.

⁹ Letter at 1.

¹⁰ Lower and Upper Paging Bands Auction Scheduled for June 26, 2001; Notice and Filing Requirements; Minimum Opening Bids, Upfront Payments and Other Procedural Issues, *Public Notice*, DA 01-850, 16 FCC Rcd 7657 (2001) ("*Auction No. 40 Procedures Public Notice*") at 7677-78; see also *Auction No. 40 Postponement Public Notice* at 1; Lower and Upper Paging Bands Auction Scheduled for October 30, 2001 – Technical Modifications Regarding Acceptable Bids, Bidder Seminar Scheduled for September 5, 2001, *Public Notice*, DA 01-1961 (rel. Aug. 17, 2001) ("*Auction No 40 Technical Modifications Public Notice*"); and *Auction No. 40 Staff Guidance Public Notice* at 1-7.

¹¹ *Auction No. 40 Procedures Public Notice*, 16 FCC Rcd at 7677; see also *Auction No. 40 Staff Guidance Public Notice* at 1.

Alendra Lyons
Lynn Communications, Inc.
October 22, 2001
Page 3

This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.¹²

Sincerely,

Margaret W. Wiener
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

¹² 47 C.F.R. § 0.331.