

DA 98-1523

Adopted: July 29, 1998

Released: July 31, 1998

Ms. Jessie Shen-Ho
TWS, LLC
1000 East 116th St.
Carmel, IN 46032

Re: Waiver of June 8, 1998 Election Date for PCS C Block Licensees
to Resubmit Election with Correction

Dear Ms. Shen-Ho:

This letter responds to TWS, LLC's ("TWS") request for a waiver of the June 8, 1998 payment option election deadline for PCS C block licensees.¹ TWS requests this waiver of the June 8, 1998 deadline to make a resubmission under the Commission's guidelines. We find that the facts and circumstances presented by TWS are sufficient to merit a waiver of the deadline. We discuss the specific rationale for this waiver below.

TWS holds one C block license, No. PBB1637 in Garden City, Kansas. TWS submitted a letter to the Commission dated June 2, 1998 which discussed the election options, but which failed to elect a specific payment option outlined in the Commission's *Reconsideration Order*. Accordingly, TWS would be responsible for the resumption of installment payments on the full amount owed for the license under the terms of its existing loan documents. Any interest accrued since April 1, 1998 would be due by July 31, 1998, along with one-eighth of the Suspension Interest.

¹See Amendment of the Commission's Rules Regarding Installment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, FCC 98-46, 13 FCC Rcd 8345 (1997) (hereinafter "*Reconsideration Order*"); see also "Wireless Telecommunications Bureau Announces June 8, 1998 Election date for Broadband PCS C Block Licensees," *Public Notice*, DA-98-741 (rel. April 17, 1998).

In its July 13, 1998 letter to the Commission, TWS states that its June 2, 1998 letter was intended to elect the option of "Amnesty with an Option to Rebid" for its license. As the licensee points out, however, the language contained in its letter was ambiguous and failed to adequately make its intended election, but it did indicate that the licensee did not wish to retain the license. TWS argues that its failure to elect properly was in the nature of a misunderstanding, and requests permission to reiterate its intention.

Pursuant to Section 24.819 of the Commission's Rules (47 C.F.R. 24.819), waiver of a provision of the PCS rules is appropriate only when a party demonstrates either that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest, or that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.²

We find that the facts and circumstances cited here are of sufficient novelty to warrant a waiver of the June 8, 1998 election date. First, the C block election process is a unique occurrence which is unlikely to repeat itself in any other context. Second, TWS apparently believed that it had made an effective election based on its June 2, 1998 letter. Third, we do not believe that the defective submission was intended to enhance TWS's position *vis-a-vis* the other licensees, nor do we find that TWS intended to delay its ultimate election by submitting a defective submission.

TWS's waiver request is distinguishable from instances where a waiver would affect the integrity and efficient functioning of the auctions process.³ A waiver of the election date to allow the July 13, 1998 resubmission still will permit timely closure in this matter and encourage the licensee to meet its obligations to the Commission. A strict application of the election date here would be unduly burdensome for TWS and cause extreme financial hardship. Although we find that rigid enforcement of the June 8, 1998 deadline would not serve the public interest, we caution TWS that in the future, it should obtain proper legal and/or technical assistance prior to proceeding in important licensing matters.

Accordingly, we hereby grant TWS's request for a waiver of the June 8, 1998 election date, and we will accept the "Amnesty-Bid" submission contained in TWS's July 13, 1998 waiver request. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's Rules. 47 C.F.R. 0.331.

²47 C.F.R. § 24.819(a)(1)(i) and (ii). *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

³*See, e.g.,* BDPCS, Inc., Emergency Petition for Waiver of Section 24.711(a)(2) of the Commission's Rules, *Memorandum, Opinion and Order*, 12 FCC Rcd 3230, 3235 ¶ 7 (1997) (*Petition for Review* granted in part for other reasons), 12 FCC Rcd 15341 (1997).

Sincerely,

E. Rachel Kazan, Chief
Auction Finance and Market Analysis Branch
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau