

BY FACSIMILE AND FIRST CLASS MAIL

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2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Dear Mr. Senter:

This letter is in response to a request for waiver of 47 C.F.R. § 90.812 filed on behalf of Cordell Engineering, Inc. (CEI).¹ On August 16, 1996, the Commission granted CEI six 900 MHz Specialized Mobile Radio (SMR) licenses for which CEI was the winning bidder in the auction that concluded on April 15, 1996.² Grant of these licenses was conditioned upon CEI paying its bids in quarterly installment payments. At the time of this grant, section 90.812 of the Commission's rules provided that installment payments for 900 MHz SMR licenses were subject to 47 C.F.R. § 1.2110(e). This section provided that an entity that was more than 90 days delinquent in any installment payment was in default; however, upon default or in anticipation of default, licensees were permitted to request a grace period of three to six months. 47 C.F.R. § 1.2110(e)(4) (1997).

CEI's first installment payment of \$44,998.32 was due on November 30, 1996. On April 28, 1997, nearly five months after this payment was due, CEI wire transferred \$89,996.84 to the Commission to pay both its first installment and its second installment payment, which was due on February 28, 1997. On June 2, 1997, assuming its licenses had been cancelled, CEI requested a waiver of section 90.812 and asked the Commission to reinstate its licenses.³ CEI has timely paid all subsequent installment payments.

Although the Commission's current Part 1 competitive bidding rules allow licensees to pay installment payments up to 180 days late, as long as they submit late payment fees, these rules were not in effect at the time CEI missed its payment deadline. *See* 47 C.F.R. § 1.2110(f)(4); Amendment of Part 1 of the Commission's Rules--Competitive Bidding Procedures, *Third Report and Order*, 13 FCC Rcd. 374 (1997). Under the Commission's rules in effect at the time, all of CEI's 900 MHz licenses should have automatically cancelled when it failed to pay its first

¹ Request for Waiver filed June 2, 1997 (CEI Waiver Request).

² The Commission conditionally granted CEI 900 MHz SMR licenses for the following markets: 27A, Phoenix, Arizona; 33C, San Antonio, Texas; 14F, Houston, Texas; 33G, San Antonio, Texas; 27I, Phoenix, Arizona; and 25Q, Puerto Rico. "FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses," *Public Notice*, 11 FCC Rcd. 9,451 (rel. August 16, 1996).

³ CEI Waiver Request at 1.

installment payment within 90 days of the deadline and also failed to submit a timely grace period request.

The Auctions and Industry Analysis Division (Division) of the Wireless Telecommunications Bureau recognizes that the acceptance of CEI's late payment could have been construed as a waiver of the payment deadline. The Division also acknowledges that CEI's record of timely payments over a period of nearly two years since payment of the second installment is indicative of a commitment on the part of CEI to meet its payment obligations. The Division therefore grants CEI a waiver of sections 90.812 and 1.2110(e)(4) with respect to its first installment payment. However, we also believe that it is every licensee's responsibility to ensure that its payments are submitted on time and that CEI should have been more attentive to its payment schedule. Therefore, CEI should not receive a complete waiver of the payment deadline. In light of this finding, we assess Cordell a late payment fee of 5 percent of the total amount due in one quarterly installment payment.

Accordingly, CEI will not be deemed in default on its six 900 MHz SMR licenses if it makes a payment of \$2,249.92, which represents 5 percent of one installment payment for the six licenses conditionally granted to CEI, no later than 30 days from the date of this letter. Failure to timely submit this amount in full by March 4, 1999, will result in the automatic cancellation of CEI's 900 MHz SMR licenses. This action is taken in accordance with delegated authority pursuant to 47 C.F.R. § 0.331.

Sincerely,

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division

Wireless Telecommunications Bureau