

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
C.H. PCS, Inc.)
)
Request for Waiver of)
Section 24.711(a)(2) of the)
Commission's Rules)

ORDER

Adopted: August 9, 1996

Released: August 9, 1996

By the Chief, Auctions Division:

1. On July 24, 1996, C.H. PCS, Inc. ("CHPCS") filed an Emergency Petition for Waiver ("Petition") of Section 24.711(a)(2) of the Commission's Rules,¹ requesting that the Commission extend the deadline for submission of the down payment for the license upon which it was the winning bidder in the PCS Broadband Entrepreneurs' Block ("C Block") reauction. Upon review of CHPCS's arguments, we deny the Petition.

2. Background. CHPCS was a successful bidder for license number B347, covering the Phoenix, Arizona Basic Trading Area ("BTA"), in the C Block reauction which closed on July 16, 1996. By *Public Notice* on July 17, 1996, the Commission notified successful bidders that down

¹ 47 C.F.R. § 24.711(a)(2)

payments would be due on or before July 24, 1996.² In the Petition, CHPCS states that the Daewoo Corporation ("Daewoo"), from which CHPCS had received financial commitment in support of its participation in the reauction, withdrew its commitment less than twenty-four hours before the close of the reauction. CHPCS contends that the shortness of the notice prior to Daewoo's withdrawal distinguishes its request for relief from prior Commission actions in which it denied waivers of deadlines for the submission of down payments.³ Therefore, CHPCS argues, the Commission should extend the deadline for submission of its down payment.

3. We find that CHPCS has failed to demonstrate that a waiver of Section 24.711(a)(2), which governs the deadline for submission of down payments, serves the underlying purpose of the rule or is otherwise in the public interest.⁴ In the *Second Report and Order* in the competitive bidding docket, the Commission established the requirement of a full and timely down payment to ensure that bidders are financially capable of constructing and operating their systems.⁵ The Commission noted that this requirement would also deter defaults by discouraging insincere or financially unqualified bidders from "shopping" a winning bid in order to obtain financing for a down payment.⁶

4. CHPCS contends that special circumstances, in this case the last-minute withdrawal of a funding commitment from Daewoo, warrant the Commission's departure from its general rule. We disagree. The Commission has expressed in prior rulings that difficulties in obtaining funding do not support waiver of the down payment deadline.⁷ As the Commission noted in the *IVDS Order*, CHPCS could have taken reasonable precautions, such as securing back-up financing, to ensure that funds were available for a timely down payment in the event of unanticipated

² See *Public Notice*, "Entrepreneurs' C Block Reauction Closes," DA 96-1153 (rel. July 17, 1996).

³ See Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., *Order on Reconsideration*, DA 96-874 (rel. May 30, 1996); Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block auction filed by BDPCS, Inc., *Order*, DA 96-811 (rel. May 20, 1996). See also In the Matter of Interactive Video and Data Service (IVDS) Licenses - Requests to Extend Payment Deadline, *Memorandum Opinion And Order*, 11 FCC Rcd 5240 (1996); In the Matter of Interactive Video and Data Service (IVDS) Licenses - Requests to Extend Payment Deadline, *Order (IVDS Order)*, 10 FCC Rcd 4520 (1995).

⁴ See 47 C.F.R. § 24.819 (setting forth waiver standard).

⁵ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2381-2382 (1994).

⁶ See *supra*, n. 3.

⁷ *Id.*

difficulties.⁸ In its *Order* denying a Petition for waiver of the upfront payment in the Broadband PCS A and B Block auction, the Bureau stated that a "third party's failure to perform its contractual obligation did not constitute a special circumstance justifying a waiver of the deadline date associated with that rule."⁹ As such, we believe that the circumstances presented here do not warrant deviation from the Commission's policy.

5. We are also not persuaded that relief is warranted because CHPCS placed no new bids after it learned that it was losing a major investor. Indeed, CHPCS failed to act responsibly by withdrawing its high bid from the Phoenix market once it knew that the company had insufficient funds to meet its down payment obligation. The purpose of holding bidders that withdraw after the close of an auction responsible for an additional three percent payment (on top of any bid withdrawal payment owed) is to deter just such behavior.¹⁰ Under the circumstances described by CHPCS, it would not be in the public interest to grant a waiver here, since it would undermine the purpose of our bid withdrawal rules.

6. Accordingly, IT IS ORDERED that pursuant to Section 24.819 of the Commission's Rules, C.H. PCS Inc.'s Emergency Petition for Waiver IS DENIED. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.

7. IT IS FURTHER ORDERED that pursuant to Sections 1.2109 and 24.708 of the Commission's Rules, the long-form application (FCC Form 600) submitted by C.H. PCS, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham
Chief, Auctions Division
Wireless Telecommunications Bureau

⁸ See *IVDS Order* at 4521.

⁹ See Emergency Petition for Waiver of Deadline for Submission of Upfront Payments for Broadband PCS Auction filed by Personal Communications Corporation, *Order*, DA 95-37 (rel. January 12, 1995).

¹⁰ See 47 C.F.R. §§ 1.2104(g)(2) and 24.702(a)(2).