

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Virginia Tech Foundation, Inc. )  
Petition for Reconsideration of Request )  
for Waiver of Section 101.23 -- )  
Auction No. 17, )  
Local Multipoint Distribution Service )

**ORDER**

**Adopted: February 20, 1998**

**Released: March 4, 1998**

By the Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. The Wireless Telecommunications Bureau has before it the Emergency Petition for Reconsideration of Virginia Tech Foundation, Inc. ("VTF"), requesting reconsideration of a waiver request on new grounds -- namely, that grant of its waiver is in the public interest under Section 101.23 of the Commission's rules. In requesting its waiver, VTF has sought to participate in the Local Multipoint Distribution Service ("LMDS") auction as an "entrepreneur" with a 25 percent bidding credit. VTF's petition for reconsideration is granted based upon the unique facts and circumstances it has now presented.<sup>1</sup>

**II. BACKGROUND**

2. In its initial waiver request, VTF requested a waiver of Section 101.1112(g) to

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<sup>1</sup> This decision confirms an earlier oral grant made on February 20, 1998 as confirmed in a telephone conversation between Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, and VTF's counsel, John Branscome, in which he was informed that the Bureau had granted VTF's Emergency Petition for Reconsideration.

exclude certain revenues from its gross revenues calculation or, alternatively, a waiver of Sections 101.1112(g) and 101.1112(h) to exclude revenues of a particular affiliate. Essentially, VTF argued that, as a not-for-profit entity, certain of its proceeds should not have been counted in its gross revenues calculation, because VTF either had restricted use of such funds or the state of Virginia had not appropriated funds for use in the LMDS auction. Alternatively, VTF contended that it was unfair to attribute the revenues of its affiliate, Virginia Polytechnic Institute and State University ("Virginia Tech") to VTF and requested a waiver of the affiliation rules, so it could qualify to participate in the LMDS auction as an "entrepreneur". The Auctions and Industry Analysis Division disagreed and, on February 17, 1998, denied VTF's waiver request.<sup>2</sup> Subsequently, VTF retained counsel and filed a petition for reconsideration.

### **III. DISCUSSION**

3. A petition for reconsideration shall state with particularity the respects in which a petitioner believes the action taken should be changed and shall specifically state the relief sought. 47 C.F.R. 1.106(d)(1). Under Section 1.106(c)(2) of the Commission's rules, a petition for reconsideration which relies on facts not previously presented to the Commission may be granted where it is determined that consideration of the facts relied on is required in the public interest. Moreover, a request for a waiver of the Commission's rules must make an affirmative showing 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." 47 C.F.R. § 101.23(b). On the basis of the record before us, we are persuaded that it is in the public interest to consider the new facts and circumstances presented by VTF.

4. In its petition, VTF provides the Bureau with additional facts which, taken together, demonstrate compelling circumstances that are unique to VTF. As a not-for-profit entity affiliated with a premier high technology research university, VTF has limited discretionary funds for bidding. VTF submits evidence of its commitments to the development of advanced communications and Internet capabilities, and to the acceleration of the public's access to new services. VTF supplies two examples of current and ongoing research projects that serve the public, Blacksburg Electronic Village and Net.Work.Virginia. According to VTF, the Blacksburg Electronic Village research project, conducted in partnership with Bell Atlantic of Virginia and the town of Blacksburg, has created an electronic network that links together institutions such as schools, libraries, businesses, government offices and citizens located in Blacksburg, Virginia to form a "geographic on-line community." As VTF describes it, the Net.Work.Virginia research project is a project conducted by Virginia Tech, in association with Old Dominion University and the Virginia Community College System, to develop universal access to advanced digital communications services via a broadband education network that carries audio, video and digital

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<sup>2</sup> See Letter from Kathleen O'Brien Ham, Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, DA 98-307 (February 17, 1998).

information to schools, colleges and universities, libraries, museums and local government agencies across Virginia.

5. Based upon this record, we find that grant of VTF's petition will serve the public interest, by permitting a not-for-profit entity affiliated with a public educational institution with limited discretionary funds to continue its demonstrated commitment to developing advanced communications technology for the public benefit.<sup>3</sup> Because VTF is a not-for-profit entity affiliated with a public educational institution, and not a large commercial venture, grant of this waiver will neither present an unfair competitive advantage in the LMDS auction nor thwart one of the purposes underlying the affiliation rules -- to prevent larger commercial firms from spinning off a "front" company to compete against legitimate small businesses.<sup>4</sup> We grant the waiver in this limited instance in favor of the public interest, but emphasize that the policy and purposes underlying our affiliation rules remain essential to ensuring that all financial and other resources available to an entity will continue to be considered in assessing its size.<sup>5</sup>

6. For the reasons stated above, VTF's emergency petition for reconsideration IS **HEREBY GRANTED**. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.

Daniel B. Phythyon  
Chief, Wireless Telecommunications Bureau

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<sup>3</sup> In its 175 application, VTF selected licenses in markets located in the same geographical area as its research projects. These eight licenses include: B104 (A & B Block -- Danville, VA); B229 (A & B Block -- Kingsport-Johnson City, TN-Bri); B284(A & B Block -- Martinsville, VA) and B376 (A & B Block -- Roanoke, VA.)

<sup>4</sup> See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, ¶¶ 31-45 (1994). See also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Amendment of the Commission's Cellular Cross-Ownership Rule, and Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, *Sixth Report and Order*, 10 FCC Rcd 136, ¶¶ 24-33 (1995).

<sup>5</sup> See In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 425 (1994).