

DA 99-492
March 11, 1999

Mr. Jerome Vigil, Partner
LORALEN PCS LLC
72 Providence St.
Hyde Park, MA 02136

Dear Mr. Vigil:

This letter responds to your February 17, 1999 correspondence requesting a waiver of the filing deadline for submission of LORALEN PCS LLC's ("LORALEN") short-form application (FCC Form 175) for Auction No. 22.¹ You claim that extenuating circumstances delayed the filing of your application and request that you be permitted to file after the deadline of February 12, 1999, 5:30 p.m.

In order to obtain a waiver of the Commission's auction application filing deadline, LORALEN must show "(i) that the underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (ii) 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 For the reasons cited below, we find that LORALEN's *Letter* and the circumstances surrounding its waiver request fail to meet the Commission's criteria for obtaining a waiver.

The Commission established the February 12, 1999 filing deadline in a *Public Notice* released December 23, 1998.³ The Commission's Rules require that FCC Form 175 applications be

¹ See Letter from Jerome Vigil, Partner of LORALEN PCS INC to Audrey Baskin, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (February 17, 1999) ("*Letter*").

² 47 C.F.R. § 1.925; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)

³ See "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 (rel. December 23, 1998); see also "Correction to Attachment A; Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice* (rel. January 21, 1999) and "Supplement to Attachment B; Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction C, D, E, and F Block Broadband Personal Communications Services

electronically filed.⁴ To facilitate filing, the Commission's remote access system was available for submission of applications 24 hours per day beginning January 25, 1999.⁵ Applicants were cautioned that "[l]ate applications or unconfirmed submissions of electronic date will not be accepted."⁶

You acknowledge using the remote access system on January 25, 1999, when it first became available for submission of LORALEN's application.⁷ According to your letter, you first contacted the Commission's technical support hotline on February 12, 1999, at 4:30 p.m. (EST), approximately one hour before the end of the application filing period. You cite as the reason for delay that you made an emergency trip out of town on February 11, 1999 to visit a gravely ill relative, as well as problems with your computer on February 12, 1999. Despite attempts to resolve your computer problems, you were unsuccessful and requested that the Commission accept your application orally.⁸

On the basis of the record before us, we are not persuaded that LORALEN has demonstrated that application of the deadline in its case would undercut or frustrate its purpose, nor do we find that LORALEN presented unique circumstances sufficient to justify grant of its waiver request. The Commission's Rules, its Public Notices and the *Bidder Information Package* provided comprehensive notice of filing procedures for Auction No. 22.⁹ The Commission's Rules are best served by applying deadlines in a fair and consistent manner. We also believe that LORALEN had sufficient time to submit its application prior to the filing deadline. By your own admission, your computer and personal problems occurred the day before the end of the filing period, leaving three previous weeks in which LORALEN might have filed properly. Moreover, applicants are responsible for ensuring that their computer systems are adequate to connect and interface with the Commission's filing software.¹⁰ Accordingly, we are not convinced that a grant of the waiver is warranted or would be in the public interest.

Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-302 (rel. February 8, 1999). *See also* FCC Auction, "C, D, E & F Broadband PCS Auction BTA -- Basic Trading Area, March 23, 1999," *Bidder Information Package*.

⁴ 47 C.F.R. § 1.2105

⁵ *Public Notice*, DA 98-2604 at 17; *Bidder Information Package* at Tab F, p. 148.

⁶ *Bidder Information Package* at Tab F, p. 148.

⁷ *See Letter* at ¶ 1.

⁸ This request was denied by the technical support aide and is included in an audiotaped conversation with you on February 12, 1999 at approximately 4:30 p.m. (EST).

⁹ *See* footnote 2, *supra*.

¹⁰ *Bidder Information Package* at Tab F, p. 148.

Therefore, LORALEN's request for a waiver of the application submission deadline is denied. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.¹¹

Sincerely,

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

¹¹ 47 C.F.R. § 0.331.