

Federal Communications Commission  
Washington, D.C. 20554

DA 00-2721

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Released: December 1, 2000

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Dear Mr. Barker:

This letter is in response to the “Request for Waiver and Leave to Amend” (“Waiver Request”) that you filed and amended on November 20, 2000 on behalf of your client, Theta Communications, L.L.C. (“Theta”). Theta requests permission to amend its Auction No. 35 short-form application (FCC Form 175) to delete from its application spectrum returned to the Commission by Fortunet Communications, L.P. (“Fortunet”),<sup>1</sup> an affiliate of certain Theta controlling interests. Under the Commission’s rules,<sup>2</sup> Theta is ineligible to bid on C block spectrum in BTA077, BTA215, BTA227, BTA330 and BTA398 because Fortunet, a C block licensee, returned either all 30 MHz or disaggregated 15 MHz portions of the aforementioned spectrum to the Commission pursuant to the disaggregation, prepayment and/or amnesty/prepayment election that the Commission made available to C block licensees prior to Auction No. 22.<sup>3</sup>

According to Theta, it inadvertently chose all markets in its FCC Form 175 because Theta and its controlling interests assumed that all the spectrum surrendered by Fortunet had been purchased in Auction No. 22 or in the aftermarket. Theta contends that waiver would be appropriate because the gaming and collusion concerns that underlie Rule 1.2105(b) are not present. Theta further argues that permitting it to make the requested changes to its FCC Form 175 would be in the public interest because it would promote competition and would not prejudice other applicants. Finally, Theta contends that its Waiver Request should be granted because the alternative—disqualification—would prevent its participation in this

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<sup>1</sup> See “Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block Elections,” *Public Notice*, 13 FCC Rcd 16,705 (WTB 1998), App. A (listing Fortunet C block elections and returned and retained licenses) (“*C Block Election PN*”)

<sup>2</sup> 47 C.F.R. § 24.709(b)(9)(ii); Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Fourth Report and Order*, 13 FCC Rcd 15,743, 15,750-51, ¶¶ 12-13 (1998); Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8360-61 ¶¶ 37, 28 and 41 and 8367 ¶ 50 (1998) (“*C Block Reconsideration Order*”).

<sup>3</sup> Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,346 (1997); *C Block Reconsideration Order*, 13 FCC Rcd 8345; see *C Block Election PN*, 13 FCC Rcd 16,705.

auction.

Upon review of your pleading, we are persuaded that granting Theta's Waiver Request is in the public interest and is consistent with the Commission's practice.<sup>4</sup> Consequently, we will permit Theta to amend its FCC Form 175 to delete BTA077, BTA215, BTA227, BTA330 and BTA398 from its selected licenses.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.<sup>5</sup>

Sincerely,

Margaret Wiener  
Deputy Chief, Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau

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<sup>4</sup> See Letter to Jeanne W. Stockman, Esq., Counsel for Tri-States PCS, Inc. from Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, regarding Amendment to FCC Form 175 (dated March 3, 1999); Letter to David F. Kaufman, Esq., Counsel for Antigone Communications Limited Partnership from Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, regarding Amendment to FCC Form 175 (Application to Participate in Broadband PCS Auction) (dated December 8, 1995); see also *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>5</sup> 47 C.F.R. § 0.331.