

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
)
CLEARCALL, INC.)
)
Request for Waiver of)
47 C.F.R. § 1.2105(b)(2))

ORDER

Adopted: May 19, 1998

Released: May 19, 1998

By the Chief, Wireless Telecommunications Bureau:

1. The Commission has before it the Request for Dismissal filed by ClearCall, Inc. ("ClearCall") of its Application for Review, filed March 30, 1998.¹ ClearCall's Application for Review² sought review of a Bureau order³ denying ClearCall's Petition for Reconsideration of the denial of its request to change its designated entity status in connection with the 900 MHz Specialized Mobile Radio ("SMR") auction. After completion of the auction, ClearCall filed a waiver request seeking to change its status from that of a small business with gross revenues of not more than \$15 million, to one with gross revenues of not more than \$3

¹ ClearCall, Inc. Request for Waiver of 47 C.F.R. § 1.1205(b)(2), Request for Dismissal of Application for Review (filed March 30, 1998) ("Request for Dismissal").

² ClearCall, Inc. Request for Waiver of 47 C.F.R. § 1.1205(b)(2), Application for Review (filed February 27, 1997)("Application for Review").

³ ClearCall, Inc. Request for Waiver of 47 C.F.R. § 1.1205(b)(2), *Order*, 12 FCC Rcd 965 (1997)("Order").

million.⁴ By a letter ruling,⁵ the Bureau's Auctions Division⁶ denied ClearCall's Request for Waiver. On January 21, 1997, the Wireless Telecommunications Bureau affirmed the Auction Division's decision and denied ClearCall's Petition for Reconsideration.⁷ ClearCall then filed its Application for Review pursuant to the Commission's rules.⁸ Now, ClearCall requests dismissal of its Application for Review so that its pending license applications may be processed.

2. We will grant ClearCall's request to dismiss its Application for Review. We are satisfied that granting this request will serve the public interest by eliminating the need for expenditure of further time and resources of ClearCall and the Commission. Moreover, dismissal of ClearCall's Application for Review will serve the public interest by furthering the goal stated in Section 309(j)(3) of the Communications Act⁹ of promoting rapid deployment of new services for the benefit of the public.

3. We conclude, however, that ClearCall has not presented sufficient grounds to show that dismissal without prejudice would serve the public interest. We therefore dismiss the Application for Review with prejudice. The Bureau determined that the Commission's interest in ensuring the integrity of the competitive bidding process required that ClearCall maintain the small business status initially claimed on its short-form application (FCC Form 175).¹⁰ In its Request for Dismissal, ClearCall expressly states that the purpose of its request to forgo Commission review of the Bureau's decision is to allow the Commission to expeditiously process its license applications.¹¹ In light of this assertion by ClearCall, and the Bureau's previous determination, it would undermine the efficacy of the Bureau's determination if the Commission, in reliance upon ClearCall's Request for Dismissal, were to subsequently grant ClearCall's license applications only to have ClearCall renew its attempt to obtain a larger bidding credit by changing its small business eligibility status.

⁴ See 47 C.F.R. § 90.814(b)(1)(i), (ii). The requested change in status would provide ClearCall with certain financial benefits under our rules. See 47 C.F.R. § 90.810, 90.812.

⁵ Letter to Terry J. Romine, Esq. and Pamela Gaary, Esq., counsel for ClearCall, from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau (July 30, 1996).

⁶ On May 11, 1997, the Auctions Division was redesignated the Auctions & Industry Analysis Division.

⁷ The Bureau decided that modification of an applicant's small business status to provide it with a more favorable bidding credit constitutes a major amendment within the meaning of Section 1.2105(b)(2) of the Commission's rules, 47 C.F.R. § 1.2105(b)(2), because it would affect other bidders that had placed bids during an auction based upon their understanding of the specific bidding credit to which the applicant was entitled. Order, 12 FCC Rcd at 970.

⁸ 47 C.F.R. § 1.115

⁹ 47 U.S.C. § 309(j)(3).

¹⁰ FCC Rcd. at 971.

¹¹ Request for Dismissal at 3.

4. Accordingly, IT IS ORDERED, pursuant to delegated authority under Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, that Clearcall's request for dismissal of its Application for

Review IS GRANTED, and that the above-captioned Request for Waiver of 47 C.F.R. § 1.2105(b)(2) IS HEREBY DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau