



Federal Communications Commission
Washington, D.C. 20554

July 7, 2004

DA 04-2057

John T. Scott, III
Cellco Partnership d/b/a Verizon Wireless
1300 Eye Street, N.W.
Suite 400 West
Washington, D.C. 20005

R. Michael Senkowski
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

Dear Messrs. Scott and Senkowski:

This letter is in response to the enclosed FCC Form 175 application (“Application”) filed manually on behalf of Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) seeking a nationwide license for the 1910-1915 MHz and 1990-1995 MHz spectrum under Part 24. For the reasons described below we return Verizon Wireless’s Application because it does not comply with the Commission’s rules and is unacceptable for filing. Further, we dismiss as moot Verizon Wireless’s request for waiver of the Part 1 competitive bidding rules.

Submission of FCC Form 175, the short-form auction application, is governed by the Commission rules at 47 C.F.R. § 1.2105, which states that the Commission will specify by public notice a date on which short-form applications may be filed and requires that such applications be electronically filed. Verizon Wireless states that it seeks to utilize the spectrum consistent with PCS requirements, but acknowledges that the FCC has not designated the 1910-1915 MHz and 1990-1995 MHz spectrum as being available for licensing by issuing a public notice scheduling and establishing procedures for an auction. Verizon Wireless argues that the Commission has indicated that in certain circumstances it may decide to accept applications before scheduling an auction. In addition, Verizon Wireless seeks a waiver of the requirement that FCC Form 175 be filed electronically.

Section 1.2105(a) provides that short-form applications are due to be filed “[o]n the date(s) specified by public notice; or (ii) [i]n the case of application filing dates which occur automatically by operation of law . . . on a date specified by public notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.” Verizon Wireless’s Application was not filed within dates set by the Commission for the filing of FCC Form 175 for the auction of specific license(s). Moreover, no

application filing date has occurred automatically by operation of law with respect to the frequencies sought by Verizon Wireless. Indeed, no such dates exist because, as Verizon Wireless acknowledges, the spectrum requested has not been "designated" for assignment in the specific service requested.¹ Accordingly, the Application fails to comply with Section 1.2105(a).

We reject Verizon Wireless's assertion that its application was filed pursuant to the Commission's authority to accept applications in some services before scheduling an auction. In support of this assertion, Verizon Wireless cites the Commission's *Competitive Bidding Second Report and Order*.² However, Verizon Wireless ignores the Commission's explanation that such a process might be used "in services where mutually exclusive applications are filed during filing windows that open automatically by operation of our Rules."³ No such filing windows exist for this spectrum. Accordingly, Verizon Wireless's argument fails again because no dates for filing applications have been established for the frequencies requested.

In light of our conclusion that Verizon Wireless's Application fails to comply with the timing requirements of Section 1.2105(a) and is unacceptable for filing, we need not address Verizon Wireless's request for waiver of the electronic filing requirement and dismiss the request as moot.

Sincerely,

Kathryn Garland
Deputy Chief
Auctions and Spectrum Access Division

¹ Accordingly, any application for these frequencies is defective and must be dismissed. See 47 C.F.R. § 1.934(e)(1).

² In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348 (1994).

³ *Id.* at ¶164 n. 121.