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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)
)
Amendment of Part 1 of the Commission's)
Rules — Competitive Bidding Procedures)

WT Docket No. 97-82

To: The Commission

PETITION FOR EXPEDITED CLARIFICATION OR RECONSIDERATION

Eliska Wireless Ventures I, Inc. ("Eliska Ventures"), by its attorneys, hereby respectfully requests that the Commission clarify or, if necessary, reconsider a statement made in paragraph 67 of its *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making* in this proceeding.¹

The *August 14th Part 1 Order*, among other things, establishes new attribution rules for determining small business status for future auctions and thus, eligibility to hold certain licenses. The new rules will not make current holders of C and F Block broadband PCS licenses ineligible to hold their licenses, but all applicants for future auctions (except "grandfathered" entities) will be subject to the attribution rules in effect at the time of filing their short-form applications.² With respect to transfers of control and assignments, the Commission similarly ruled that existing C and F Block licensees may continue to acquire licenses under the previously existing Part 24 eligibility rules.³ As to entities that are not currently licensees, however, the Commission stated:

¹ *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274 (rel. August 14, 2000), 65 FR 52323 (August 29, 2000) ("*August 14th Part 1 Order*").

² *Id.* at para. 67.

³ *Id.*

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Non-licensees, however, are precluded from being assignees or transferees within the first five years of license grant unless they qualify as entrepreneurs based on the attribution rules in effect *at the time of assignment or transfer*.⁴

Eliska Ventures was created for the purpose of acquiring (through its wholly-owned subsidiary, Eliska Wireless Ventures License Subsidiary I, LLC (“Eliska License Sub”)) eight C Block broadband PCS licenses from DiGiPH PCS, Inc. (“DiGiPH”). Eliska Ventures’s ownership and business relationships were structured carefully to ensure that it is eligible to hold C Block licenses under the Part 24 rules. An application for Commission consent to the assignment of the DiGiPH licenses to Eliska License Sub was filed on June 14, 2000 and is currently pending. *See* File No. 0000151639.⁵

The new attribution rules adopted in the *August 14th Part 1 Order* are due to become effective on October 30, 2000. Because the Commission has not yet acted on the pending application, the proposed assignment of licenses from DiGiPH to Eliska License Sub may not be consummated by that date. The verbiage quoted above creates some uncertainty, if consummation takes place after October 30, 2000, as to whether Eliska Ventures’s qualifications to hold C Block licenses will be judged under the Part 24 rules or under the new rules. A literal reading of the italicized language would suggest that the operative rules are those in effect on the date of consummation, *i.e.*, the “time of assignment.” Such a result clearly would be unfair because an applicant should not be judged according to rules of which it had no notice when it structured its transaction and filed its assignment application.

⁴ *Id.* (emphasis added and footnote omitted).

⁵ An application for consent to the assignment of DiGiPH’s international section 214 authorization to Eliska License Sub also is pending with the Commission. *See* File No. ITC-ASG-20000829-00514.

In judging the qualifications of proposed assignees or transferees that are not currently C and F Block licensees, Eliska Ventures believes that the Commission's intent is to apply the attribution rules in effect when the assignment or transfer application was filed. Any other result would unfairly subject pending transactions to a new set of rules about which the parties could not have known when they entered into the proposed transaction.⁶ The Commission recognized, in confirming the eligibility of current C and F Block licensees to continue to hold their licenses under the existing Part 24 attribution rules, that applying new rules to existing licensees would require them to "face the potential disruption caused by restructuring their organizations and/or altering their business strategies."⁷ The Commission saw "no reason" to require such actions. The same rationale applies with respect to this issue raised herein. The Commission should therefore expeditiously clarify that the last few words of paragraph 67 of the *August 14th Part 1 Order* should read "at the time of the filing of an application for consent to the assignment or transfer."⁸ In the event that the Commission did in fact intend for the new attribution rules to apply to pending transactions, it should reconsider that decision for the reasons expressed above.

Because it hopes to be in a position to consummate the assignment of the DiGiPH licenses in the not-too-distant future, Eliska Ventures requests that action on this petition be taken in an expeditious manner.

⁶ The final rules adopted in the *August 14th Part 1 Order* do not address this issue.

⁷ *August 14th Part 1 Order*, at para. 67.

⁸ The requested clarification could take the form of an erratum to the *August 14th Part 1 Order*.

WHEREFORE, Eliska Wireless Ventures I, Inc. respectfully requests that the Commission promptly issue a clarification or, if necessary, a reconsideration along the lines suggested above.

Respectfully submitted,

ELISKA WIRELESS VENTURES I, INC.

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