

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-1506

September Term, 2000

NATIONAL TELECOM PCS, INC.,
[547879]

FILED ON: OCTOBER 4, 2000

APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION,
APPELLEE

Appeal of Orders of the
Federal Communications Commission

Before: WILLIAMS, RANDOLPH, and TATEL, *Circuit Judges*.

J U D G M E N T

This cause came to be heard on the record on appeal from the Federal Communications Commission, and was briefed and argued by the parties. The issues have been accorded full consideration by the Court and occasion no need for a published opinion. *See* D.C. CIR. R. 36(c). It is

ORDERED AND ADJUDGED by the Court that the Commission's *Memorandum Opinion and Order*, 12 F.C.C.R. 10163 (1997), and *Order on Reconsideration of Memorandum Opinion and Order*, 14 F.C.C.R. 18822 (1999), be affirmed. The Commission's rules governing the C Block Auction provided sufficient notice that the Commission would deduct bid withdrawal penalties from bidders' upfront and down payments and that failure to timely remit the required down payment would result in default and dismissal of the license application. *See* 47 C.F.R. § 1.2104(g)(1) (1996); 47 C.F.R. § 1.2106(e) (1996); 47 C.F.R. § 1.2109(b) (1996); 47 C.F.R. § 24.704(a)(1) (1996); 47 C.F.R. § 24.708(b) (1996). The Public Notice

announcing the auction results clearly stated that outstanding bid withdrawal payments “will be subtracted from the winning bidders’ upfront payments on deposit” and that “if a winning bidder fails to submit the required down payment(s) by Wednesday, May 15, 1996, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be subject to the default payment specified in Sections 1.2104(g)(2) and 24.704(a)(2) of the Commission’s rules.” The excerpts of the Public Notices issued on April 15, 1996, and May 8, 1996, relied upon by National Telecom do not detract from the clear import of the foregoing rules. As to National Telecom’s contentions regarding the denial of its request for a waiver, the company’s failure to raise the contentions before the Commission precludes the court from considering them. *See* 47 U.S.C. § 405(a); *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1163 (D.C. Cir. 1987).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. CIR. R. 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk