

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PP Docket No. 93-253

In the Matter of:)
)
IMPLEMENTATION OF SECTION 309(j))
OF THE COMMUNICATIONS ACT)
)
COMPETITIVE BIDDING)

To: The Commission

COMMENTS

Duncan, Weinberg, Miller & Pembroke, P.C. ("DWMP")
herewith submits comments in the above referenced proceeding, as
follows:

1. DWMP is a law firm, which represents
municipalities, municipal electric utilities, quasi-governmental
authorities, rural electric cooperatives, franchising authorities
and other local governmental authorities, all of whom have an
interest in the various services that will be subject to the
competitive bidding process. Accordingly, they have an interest
in the competitive bidding process itself.

2. Local government takes every shape and form
imaginable. Local government serves large, densely populated
metropolitan areas. It serves small, sparsely populated rural
areas. Many municipal electric utilities arose, some of them 100
years ago, to provide electrical service where investor owned
utilities would not, and became the engine that caused their

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communities to grow and prosper. Local franchising authorities have been thrust into the forefront of the communications revolution by the 1992 Cable Act. The Clinton Administration envisions a key role for local government in the National Information Infrastructure.

3. In designing the competitive bidding process, DWMP urges the Commission to keep in mind two important points:

a. Local governmental authorities may be applicants and thus bidders for new authorizations in these various radio services. Local government brings a unique perspective to these communications services. The competitive bidding process should not discourage, inhibit or restrict their participation.

b. All citizens in communities across the United States have a strong interest in obtaining the benefits of the services authorized by the FCC, and the competitive bidding process should facilitate that goal. The residents of small markets and rural areas are equally entitled to the benefits of the new services to be licensed by the F.C.C. through the competitive bidding process.

4. In PCS, for example, the FCC will no doubt see intense bidding for the largest markets, and prompt initiation of service given the expected high prices bid. However, it is not so self-evident that an intense level of interest will exist to bid for smaller, rural markets, notwithstanding express Congressional directives to quickly bring PCS benefits to rural communities. Indeed, logic and experience suggest a decline in

interest relative to market size. Regulatory design of a radio service ¹ and the state and availability of technology significantly influence the start-up and growth of a new service in a small market, and such matters are beyond the scope of this proceeding. Nevertheless, the design of the competitive bidding process -- which is the subject of this proceeding -- should facilitate, and not discourage, development of service in smaller markets and rural areas.

5. Accordingly, for each element of the competitive bidding process DWMP urges the Commission to ask itself how it would impact on a local governmental applicant. For example, the requirement to tender, as opposed to display, an "upfront payment" for each action, as a prerequisite to bid in that auction, could present more difficulties for a local governmental authority than a commercial enterprise, which can raise money in the private sector specifically to fund the bidding process. Accordingly, DWMP supports the proposal to display, rather than tender, the "upfront payment".

6. Even the tentative decision to use "oral bidding" (NPRM, Para. 46) should be examined in light of the different positions of governmental and non-governmental bidders in an auction. In part because of those distinctions, DWMP supports

¹ For example, the use of the Basic Trading Area or BTA as the smallest geographic service market and licensing unit may discourage development of PCS in certain parts of the country where the BTA includes a huge geographic area and a small, scattered population. At some level, the BTA may no longer serve as an effective licensing device, and may inhibit development of a service.

the FCC's preliminary decision that there be no minimum bid requirement. (NPRM, Para. 67).

7. There are no doubt many other ways in which a local governmental authority would approach an auction differently from a private commercial enterprise.

8. Unless a local governmental authority were able to qualify as a rural telco or a "small business", it apparently would be ineligible for any of the preferences, including payment method, proposed by the F.C.C. for the four statutorily "designated entities". The Commission reasoned that "the administratively simplest option is to require full payment in a lump sum" and to "leave financing to the private sector". (NPRM, Para. 68). DWMP submits that because of the nature of local governmental authorities, and limitations on their access to private sector financing, as a matter of policy, it is appropriate to treat them differently from commercial enterprises, and permit, for example, installment payments of successful bids.

9. The amendments to Section 309 of the Communications Act contain very express language about the development and rapid deployment of new technologies in rural areas and the prompt delivery of new services to rural areas. Moreover, Congress directed the Commission to avoid excessive concentration of licenses. See Subsections (j)(2) and (j)(3), as set forth in Paragraphs 12 and 13 of the NPRM. DWMP submits that because of this express Congressional mandate, it may be

inappropriate and inconsistent with the Congressional mandate to auction frequencies starting with the largest markets and working downward. Instead, it may be more appropriate and consistent with the Congressional mandate to start with the smallest markets and work upward.

10. Accordingly, DWMP urges the Commission to design its competitive bidding process, with the expectation that some unit of local government will seek to bid for these authorizations, so as to accommodate the different position they will be in relative to a more conventional private commercial bidders. Furthermore, that bidding process should go further to fulfill the Congressional mandate to deploy new technologies in rural areas. As proposed, the system is either designed with large markets in mind, or at least contains little to facilitate the development of service in rural areas.

Respectfully Submitted,


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November 10, 1993

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