

D. Petitions To Deny Should Not Be Considered Until The Auction Has Been Completed And The Winner Ascertained.

PageMart agrees with other commenters that the Commission would risk serious delay and disruption in the auction process by considering petitions to deny prior to holding an auction.<sup>52/</sup> For unassailable reasons of administrative efficiency, petitions to deny should only be considered after the auction, by subjecting the winning bidder's long-form application to public scrutiny for a period of thirty (30) days, consistent with the public notice and petition to deny procedures set out in Sections 309(b) and (d) of the Communications Act.<sup>53/</sup>

E. The Proposed Forfeiture Policies Will Deter Speculation.

The Commission proposes to require winning bidders that are found to be unqualified, ineligible or insolvent to forfeit their deposit.<sup>54/</sup> Many commenters support this rather draconian policy<sup>55/</sup> -- the legal underpinnings of which are highly questionable<sup>56/</sup> -- because it will deter speculators from

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<sup>52/</sup> See Comments of PacBell at 26; Comments of BellSouth at 36.

<sup>53/</sup> 47 U.S.C. § 309(b), (d). See Comments of PacBell at 26.

<sup>54/</sup> NPRM at ¶ 113.

<sup>55/</sup> See, e.g., Comments of CTIA at 29; Comments of PageNet at 36; Comments of Southwestern Bell at 34.

<sup>56/</sup> The procedural safeguards and maximum forfeiture amounts established by 47 U.S.C. §§ 503-504 do not appear to have been diluted by anything in the Budget Act. Thus, analogies to different forfeiture procedures employed by other agencies are inapposite at best, particularly when the maximum amount that could be at issue in, e.g., a Bureau of Land Management forfeiture case appears to be less than \$20,000. See 43 C.F.R. §§ 3120.2-3, 3120.5-2(b)-(c),

(continued...)

participating in the auction. Assuming arguendo the legality of such an automatic forfeiture provision, the Commission must not lose sight of its statutory obligation to waive the operation of its rules in appropriate cases.<sup>57/</sup>

PageMart recommends that, in the case of post-auction disqualification, the subject license ought to be awarded to the second place bidder.<sup>58/</sup> Holding another auction, as some commenters suggest,<sup>59/</sup> invites unnecessary delay and administrative expense in awarding a license after all potential bidders have already had fair opportunity to make their best offer.

#### CONCLUSION

Fundamentally, PageMart urges the Commission to remain focused on its essential statutory mission -- serving the public interest as defined by Congress -- and to avoid simplistic assumptions that might lead to results inconsistent with that goal. The Commission must reject unsubstantiated claims that "efficient" auction procedures are sufficient to ensure that the public interest is served. PageMart has shown that efficient auction procedures will succeed in awarding licenses to the

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<sup>56/</sup> (...continued)

3120.5-3(a); 57 Fed. Reg. 4639 (Feb. 6, 1992). Conversely, the amount subject to forfeiture in a spectrum auction could be tens of millions of dollars. See, e.g., Comments of PageNet at 36-37.

<sup>57/</sup> See generally WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>58/</sup> This would be easily determined in the case of sealed bids.

<sup>59/</sup> See, e.g., Comments of BellSouth at 37; Comments of PageNet at 37.

highest value bidder, but only at the cost of a highly-concentrated market. Mechanisms justified solely on efficiency grounds must therefore be rejected as contrary to Congress' explicit public interest mandate to encourage competition and diversity.

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