

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

FCC 94-262

In the Matter of)
)
Inquiry into alleged abuses of) GN Docket No. 94-96
the Commission's auction)
processes by applicants for)
licenses in the Interactive)
Video and Data Services)

ORDER

Adopted: October 17, 1994

Released: October 18, 1994

By the Commission:

1. By an Order released on August 30, 1994 (FCC 94-222), the Commission initiated an inquiry into abuses that may have occurred with regard to auctions of licenses in the Interactive Video and Data Services (IVDS). The non-public inquiry is being conducted pursuant to 47 U.S.C. § 403. Now before us are (1) a Petition for Partial Reconsideration; (2) a Second Emergency Motion for Stay; and (3) a Supplement to Petition for Partial Reconsideration. All three pleadings were filed by Commercial Realty St. Pete, Inc. (CRSP). Also before us is a letter from EON Corporation (EON) opposing CRSP's reconsideration request.

2. In its Petition for Partial Reconsideration and Supplement, CRSP asks the Commission to expand the scope of the inquiry to include an investigation into the availability of IVDS technology and equipment. In its Supplement, CRSP requests that this investigation be open to the public and that counsel for CRSP be permitted to subpoena witnesses and documents, object to questions, and cross examine witnesses.

3. CRSP has refused to make down payments on the 20 licenses in the IVDS for which it bid and states that its principals and attorneys have received subpoenas in this investigation. CRSP wants the Commission to expand the scope of the investigation so that it can demonstrate that there was good cause for its failure to make the down payments. According to CRSP, the technology for establishing an IVDS system does not exist and IVDS equipment is not available. CRSP contends that if the scope of the inquiry is expanded, it will prove these allegations.

4. This proceeding is a fact finding inquiry. It is not an adjudicatory proceeding and will not determine CRSP's rights or the rights of any other individual or entity. Accordingly, there are no non-Commission parties to this proceeding and CRSP, a non-party, has no standing to file any of its requests. CRSP's requests will, therefore, be dismissed. See Inquiry into Alleged Abuses of the

Commission's Processes by Applicants for Broadcast Facilities, 4
FCC Rcd 6498 (1989).

5. Moreover, there is no merit to CRSP's request that the scope of the inquiry be expanded. The Section 403 inquiry we have initiated is already sufficiently broad in scope to encompass all relevant facts and circumstances surrounding the failure of bidders to make the required payments. We expect the staff and the presiding Administrative Law Judge to develop a complete record without the necessity of further expanding the nature of the inquiry.

6. CRSP's further requests that the inquiry be opened to the public and that CRSP be permitted to adduce evidence and examine witnesses again reflect a fundamental misconception of the nature of this proceeding. CRSP is not a party, its rights are not being adjudicated, and it has no standing to participate in any capacity. Southern Bell Tel. & Tel. Co., 70 FCC 2d 705, 707 (1979); In the Matter of Inquiry Into Radio Station KISN, et al., 22 FCC 2d 471 (1970). If CRSP's principals are called as witnesses, its counsel may be present and may participate to the extent permitted by Section 1.27 of the Commission's Rules. See KISN, 22 FCC 2d at 472. We have directed that the investigation not be conducted in public and we continue to believe that a non-public inquiry is appropriate. See Southern Bell, 70 FCC 2d at 708.

7. Finally, CRSP requests that we stay this investigation, including the dates by which it must respond to subpoenas, until we have ruled on its reconsideration requests. We are now ruling on the reconsideration requests. Therefore, were we not dismissing CRSP's stay request because of CRSP's lack of standing, we would dismiss it as moot.

8. ACCORDINGLY, IT IS ORDERED, That the Petition for Partial Reconsideration, Second Emergency Motion for Stay, and Supplement to Petition for Partial Reconsideration, filed by Commercial Realty St. Pete, Inc., ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary