

FCC MAIL SECTION

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

DA 95-213

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act--)
Competitive Bidding)
)
Emergency Motion for Stay of)
Telephone Electronics Corporation)
)

PP Docket No. 93-253

ORDER

Adopted: February 9, 1995

Released: February 10, 1995

By the Chief, Wireless Telecommunications Bureau:

1. In an "Emergency Motion for Stay" filed on January 6, 1995, Telephone Electronics Corporation ("TEC") asks the Commission to stay its Fifth Report and Order, 9 FCC Rcd 5532 (1994), and Fifth Memorandum Opinion and Order, FCC 94-285 (released November 23, 1994), to the extent necessary to enable TEC to participate in the upcoming "entrepreneurs' block" auction for broadband personal communications services ("PCS").¹ At the same time, TEC has petitioned for judicial review of these orders.² We conclude that TEC has failed to demonstrate that it would suffer irreparable harm in the absence of a stay. TEC suggests that it would have no opportunity to obtain a broadband PCS license if a stay is not granted because FCC rules preclude TEC from participating in the entrepreneurs' block auction. But those rules also authorize post-auction transactions in which rural telephone companies (such as the six companies comprising TEC) can purchase geographically partitioned licenses from successful auction bidders. See 47 C.F.R. § 24.714. Moreover, TEC will have an opportunity to participate in future spectrum auctions that are not governed

¹ The entrepreneurs' block auction for 30 MHz broadband PCS C block licenses is currently scheduled for April 17, 1995, or 30 days after completion of the A and B block auction, whichever is later. Any party who wishes to participate in the C block auction must file with the Commission an FCC Form 175 by February 28, 1995. FCC Announces Date for First Entrepreneurs' Block Auction, News Release, December 23, 1994.

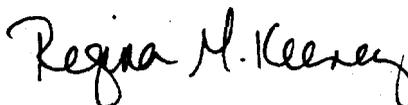
² See Telephone Electronics Corporation v. FCC, No. 95-1015 (D.C. Cir. filed Jan. 6, 1995).

by the eligibility restrictions TEC challenges in court.³ By acquiring spectrum blocks in future broadband PCS auctions, for example, TEC could obtain other broadband PCS licenses. Therefore, TEC has failed to demonstrate any irreparable harm that would justify a stay in this proceeding.

2. We further find that grant of TEC's Emergency Motion for Stay would not serve the public interest. The Commission established the entrepreneurs' block auction to fulfill its statutory mandate to ensure economic opportunities for designated entities that had traditionally encountered barriers to entry into the communications industry. The Commission concluded that these designated entities, which had limited access to capital, simply could not outbid larger companies with more substantial resources.⁴ If the stay requested by TEC were granted, certain important restrictions imposed by the Fifth Report and Order and the Fifth Memorandum Opinion and Order would be removed without public notice and an opportunity for public comment, large companies could then participate in the entrepreneurs' block auction, and the entire purpose of creating the entrepreneurs' blocks would be undermined. Such a result would defeat the public interest by thwarting the Commission's efforts to fulfill its Congressional mandate.

3. TEC has failed to make the showings of irreparable harm and public interest that are necessary to justify the extraordinary relief it seeks.⁵ For these reasons, TEC's Emergency Motion for Stay is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Regina M. Keeney, Chief
Wireless Telecommunications Bureau

³ TEC will also have the opportunity to enter into partnership agreements or other joint ventures with the winners of broadband PCS licenses in the ongoing 30 MHz A and B block auctions after the close of that auction.

⁴ See Fifth Report and Order, 9 FCC Rcd at 5584-88 (¶¶ 118-127).

⁵ See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958).