

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

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Amendment of Part 1 )  
of the Commission's Rules -- )  
Competitive Bidding Proceeding )

WT Docket No. 97-82

**COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, hereby submits its comments in the above-captioned proceeding.<sup>2</sup> In this rulemaking, the Commission seeks comment on proposed "changes to [its] general competitive bidding rules that are intended to simplify [its] regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> See Amendment of Part 1 of the Commission's Rules - Competitive Bidding, FCC 97-60 (Feb. 28, 1997) ("Notice" or "NPRM"). Comments and reply comments are due March 27, 1997, and April 16, 1997, respectively.

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guidance to auction participants while also giving them more flexibility.”<sup>3</sup> PCIA supports these laudable goals and concurs with a number of the *Notice*’s proposals. However, PCIA believes that the *Notice*’s proposal to supersede all existing service-specific competitive bidding rules for future auctions goes too far in the name of administrative simplicity. Set forth below are PCIA’s comments on several specific proposals contained in the *Notice*.

### **Existing Service-Specific Competitive Bidding Rules**

The *Notice* proposes that all future auctions generally be governed by the competitive bidding rules adopted in this proceeding. Thus, “this action would affect all services that are subject to pending proceedings and any services that have existing competitive bidding rules that might apply to licenses that have not yet been auctioned or that must be reaucted.”<sup>4</sup>

While PCIA understands the Commission’s desire to speed licensing and eliminate duplicative regulation, it cautions the agency against strict adherence to the proposed general auction rules for all services. While it may be true that “conducting rulemakings for each individual service slows down the delivery of service to the public,”<sup>5</sup> this concern easily can be addressed by applying the new generic rules prospectively. Clearly, however, there can be no justification for replacing those existing competitive bidding procedures, tailored to specific services and adopted after careful deliberation, with the new rules. Potential bidders who have built their business cases on existing service-specific auction rules should not now be forced to change their plans consistent with the rules adopted in this proceeding. If the Commission’s auctions

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<sup>3</sup> *Notice* at ¶ 2.

<sup>4</sup> *Id.* at ¶ 18 (citations omitted).

<sup>5</sup> *Id.*

are to remain successful, bidders for each service must be assured of clear and final competitive bidding rules. Accordingly, PCIA supports the *Notice's* alternative proposal to “phase in the applicability of the revised general competitive bidding rules at a future date”<sup>6</sup> to allow initial auctions to be completed under existing service-specific rules.

### **Uniform Bidding Credits**

Similarly, to the extent that the *Notice's* proposal to create uniform bidding credits for all auctionable services is inconsistent with existing service-specific auction rules, PCIA opposes its application to all services. The purpose of the bidding credit is to ensure participation by small businesses without fostering participation by firms that are not otherwise financially capable of providing service. However, as the Commission noted in the narrowband personal communications services (“PCS”) context, the financing requirements of different spectrum-based services may necessitate use of different figures to provide the proper assurances.<sup>7</sup> Thus, the FCC wisely has examined the issue of what constitutes an appropriate bidding credit on a service-by-service basis and should continue doing so.

### **Permissible Minor Amendments**

The *Notice* requests comment on whether the addition of license selections to an applicant’s Form 175 application should constitute a minor amendment, and thus, be permissible under the Commission’s rules.<sup>8</sup> PCIA supports such a rule change but

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<sup>6</sup> *Id.*

<sup>7</sup> *See* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 9 FCC Rcd 2941, 2975 (1994).

<sup>8</sup> *Notice* at ¶ 48.

recommends that auction applicants only be permitted to add license selections until the upfront payment deadline. As the FCC correctly notes, “after that point, the risks of gaming in the auction increase due to the availability of information concerning each bidder’s eligibility. ”<sup>9</sup>

### **Ownership Disclosure Requirements**

With respect to the *Notice*’s proposals regarding ownership disclosure requirements and filings, PCIA concurs that detailed ownership information is necessary to properly evaluate an applicant’s qualifications.<sup>10</sup> Full disclosure of bidder ownership is necessary if competing bidders are to accurately assess the legitimacy of their auction opponents and their respective bids. As radio spectrum is a scarce resource whose allocation is of national importance, there can be no valid reason for legitimate bidders to hide their ownership. Moreover, such information is crucial to ensuring compliance with the agency’s collusion rules, as well as any applicable spectrum caps, or other ownership limits. Accordingly, PCIA believes that potential bidders for all auctionable services should be required to publicly reveal the identity of their ownership and that such information should be a matter of public record prior to commencement of the bidding process as well as throughout the auction.

### **Second Down Payments**

Under the FCC’s current rules, winning bidders that qualify as designated entities are not required to tender their second down payment until any petitions to deny filed against them

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at ¶ 54.

are dismissed or denied. Paragraph 65 of the *Notice* discusses a proposed rule change that would require all winning bidders, including designated entities, to make such payment at the same time, regardless of whether petitions to deny have been filed against them.<sup>11</sup> If the petitions to deny subsequently are granted, the FCC proposes to refund the winning bidder the amount of the second down payment subject to any default payments owed the Commission. PCIA supports uniform payment procedures as a means of reducing potential inequities that could arise from differing payment dates.

**“Safe Harbor” From The Collusion Rules**

The *Notice* also seeks comment on a proposal to grant a “safe harbor” from the collusion rules for discussions of certain non-auction business matters. As PCIA stated in its reply comments on the FCC’s proposals regarding geographic licensing and competitive bidding rules for paging authorizations, licensees in existing industries simultaneously may be engaged in an auction and a merger or other transactional discussions that do not result from the auction process, but may have indirect implications for auction activity.<sup>12</sup> Similarly, existing licensees may find it necessary to undertake discussions to prevent unacceptable interference levels between adjacent systems or to implement coordinated market area service arrangements for the benefit of their customers. PCIA thus supports adoption of a “safe harbor” in those auctions where there are incumbent operators to permit ongoing discussions

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<sup>11</sup> *Notice* at ¶ 65.

<sup>12</sup> *See* Reply Comments of PCIA, Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems at 24-25 (filed April 2, 1996).

among bidders concerning mergers, acquisitions or intercarrier arrangements to proceed during the period in which the FCC's collusion rules are applicable.

### **Pre-Construction Grant**

PCIA supports the *Notice's* proposal to permit auction winners to begin construction of facilities prior to grant of their licenses, at their own risk and subject to interference protection for incumbent licensees. Such proposal would permit auction winners to initiate service or to proceed with service improvements pending the resolution of any petitions to deny, which experience to date has shown may well be frivolous and unrelated to the qualifications of the auction winner. PCIA suggests, however, that winning bidders should be required to submit their required down payments before being allowed to proceed with the pre-grant construction.

### **Administrative Fee Assessment and Cross-Default**

Finally, while PCIA generally concurs with the *Notice's* proposals regarding bid withdrawal payments and default payments, to further protect the integrity of the auction process, PCIA suggests that the Commission should consider incorporating two other types of penalties. First, PCIA believes that an administrative fee should be assessed on so-called "bad actors" who participate in an FCC auction to drive up the prices and then withdraw prior to the close of the auction. In this instance, such bidders who utilize precious Commission resources to game the system should be penalized in accordance with the amount of gaming. For example, an insincere bidder who withdraws from the auction early should not be subject to a penalty but penalties should increase with the number of auction rounds. PCIA recognizes that it may be difficult to establish criteria for distinguishing bad versus good actors so as not to penalize those bidders who simply withdraw from the auction for legitimate reasons. PCIA

will examine this issue more closely and hopes to provide more concrete suggestions in its reply comments.

Second, PCIA believes the FCC should adopt a cross-default policy. For example, if a winning bidder defaults on one license payment post-auction, such bidder should be deemed to have defaulted on all license payments.

By adopting the proposals outline above, PCIA believes the Commission will create a sound regulatory basis for competitive bidding of radio licenses in the public interest.

Respectfully submitted,

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