

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

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
)
Implementation of Section 3(n) and)
322 of the Communications Act)
Regulatory Treatment of Mobile)
Services)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

PETITION FOR RECONSIDERATION
ON
RESERVE PRICES AND MINIMUM OPENING BIDS

The Personal Communications Industry Association ("PCIA"), through its counsel, hereby respectfully requests reconsideration of the Chief, Wireless Telecommunications Bureau's October 6, 1997 Order, which adopted the use of minimum opening bid requirements in the auction of SMR licenses in the 800 MHz band.¹ In support thereof, the following is shown:

¹62 FR 55251 (October 23, 1997).

I. BACKGROUND

On September 5, 1997, the Wireless Telecommunications Bureau proposed to set minimum opening bids in the upcoming 800 MHz auctions.² The first 800 MHz auction began on October 28, 1997 for the so-called "Upper" 10 MHz of SMR Spectrum. The Bureau proposed and ultimately adopted in the Order a minimum opening bid of no less than the value of the upfront payment amounts specified in the Public Notice released August 6, 1997 for that auction. The smallest upfront payment established in the Public Notice was \$2,500.

The Commission is currently conducting the Upper 800 MHz auction. As a result of the Bureau's Order establishing minimum bids, a number of initial applicants dropped their participation in the auction by failing to make upfront payments. As predicted by PCIA throughout this proceeding, the ongoing auction is dominated by Nextel Communications (with 92% of the high bids at the end of round 91) and Southern Companies, with little ability on the part of small companies to participate.

II. COMMENTS

Obviously, it is now too late for the Commission to reconsider its action establishing minimum bids for the Upper 800 MHz auction. However, the proximity of the Public Notice to the due date for applications for the auction, as well as the one week period for submitting comments, raises the likelihood that the Bureau will take similar action for the "Lower" 80 and General Category auctions, i.e., failing to give itself or the public adequate time to consider this important issue. As initially discussed by PCIA, it is in the next 800 MHz auction that PCIA's concerns are greatest. Therefore, PCIA believes that reconsideration at this time is appropriate.

²DA 97-1933, released September 5, 1997.

PCIA wishes to again specify that its Petition herein applies only to the 800 MHz auction. PCIA is analyzing the impact of minimum bidding in other proposed auctions, including 220 MHz and paging, and PCIA intends to express its opinion on these auctions at the appropriate time. However, the 800 MHz auction is unique, because it involves: (1) heavily encumbered spectrum; (2) bidding on multiple channels as part of a single bid; and (3) mandatory relocation of incumbent licensees. These three elements do not all co-exist in any other previously held auction or contemplated auction.

Fortunately, the adoption of minimum bidding at the artificially high levels created by the Bureau did not seriously impact the actual Upper 800 MHz auction, as Nextel simply elected to bid on every channel in every market.³ However, the implementation of minimum bidding for the Lower 80 and General Category auction can have serious consequences.

The Bureau failed to justify its adoption of a minimum bid requirement in the Order. Instead, the Bureau only noted that "... Congress rejected the notion that minimum opening bids or reserve prices are inherently contrary to the public interest..."⁴ However, the Bureau failed to conduct any analysis whatsoever to find that minimum bids were in the public interest in this case. Instead, the Bureau spent the majority of the Order justifying a reduced minimum bid.

PCIA believes that it is the Federal Communications Commission's responsibility to fully carry out its Congressional mandate, not to merely pick which mandates it desires to fulfill at any one moment. The Commission has the authority not to use minimum bidding pursuant to the Balanced

³However, this is also the problem with the Upper 800 MHz auction, in that it was designed in a fashion that minimized small incumbent participation.

⁴Order at para. 10.

Budget Act of 1997. However, no effort was expended to justify the need for minimum bidding for this auction, perhaps because of the limited amount of time between the Public Notice and the start of the Upper channel auction.

PCIA believes that the use of minimum opening bids is extremely inappropriate for the 800 MHz auctions. As PCIA has pointed out repeatedly to the Commission in the past three years, the Commission is offering in this auction extremely encumbered spectrum. The 800 MHz frequencies involved in this auction have been constructed throughout the country and have already been licensed to cover far more geographic area than any prior FCC spectrum auction. This means that the use of minimum bids is not only inappropriate, but counterproductive to the Commission's obligation to manage the radio spectrum.

The use of minimum opening bids means that incumbent licensees will be forced to pay substantial fees for spectrum on which they already have operating systems and for which there is no competing bidder. Specifically, the use by the Commission of an "all" box on the Form 175 means that every license will automatically become mutually exclusive, despite the fact that in many cases an incumbent licensee covers 100% of the geographic market being licensed and no competing bidder could possibly construct any system to meet the Commission's construction requirements. For these reasons, PCIA adamantly opposes the use of minimum opening bids for the 800 MHz band auctions.

The Lower 80 800 MHz auction involves channels that have been previously licensed in the same configuration as the blocks in which the Commission proposes to offer for bid (i.e. five channel blocks). Therefore, the auction should primarily be one that involves incumbent licensees, who have already built out the block. If the Bureau truly wishes to accomplish its purpose, which is to use various methodologies as a "... protection against assigning licenses at unacceptably low prices and

in noncompetitive markets...”,⁵ it should look at other auctions. There is no valid, rational reason for making incumbent licensees pay exorbitant amounts of money for what they already have (or have been relocated to). Protection against assigning licenses at unacceptably low prices is a concern where the Commission is auctioning virgin spectrum, not fully operating radio systems.

⁵Order at para. 12.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to RECONSIDER the auction of the Bureau to adopt minimum opening bid or reserve price requirements for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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