

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

92-297

In the Matter of )  
)  
Auction of Local Multipoint )  
Distribution Service Basic )  
Trading Area Licenses )  
)  
Minimum Opening Bids or )  
Reserve Prices )

Report No. AUC-17-B

DA 97-2224

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these reply comments in response to the comments filed on or before November 5, 1997, in the above captioned matter. The Commission is proposing that minimum opening bids be established and used in conjunction with the upcoming Local Multipoint Distribution Service ("LMDS") auction<sup>1</sup> in order to serve a revenue raising objective and regulate the pace of the auction.

NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural America.

NTCA agrees with comments filed in opposition to the Commission's minimum opening bid proposal. The Commission's proposed minimum opening bid calculations have the potential

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<sup>1</sup> The LMDS auction is scheduled to commence on December 10, 1997. *Auction of Local Multipoint Distribution Service*, DA 97-2081, WT Docket No. 97-150, (rel. September 25, 1997).

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to substantially hinder bidding for rural LMDS licenses and therefore thwart the deployment of LMDS services to rural customers. NTCA strongly urges the Commission to promote public interest goals by abandoning the concept of minimum opening bids for purposes of the LMDS auction.

Section 309(j) of the Telecommunications Act of 1996 directs the Commission to promote the development and rapid deployment of new technologies and services in *all* areas, and specifically to encourage the dissemination of licenses for auctionable spectrum-based services to small businesses and rural telephone companies as well as large entities.<sup>2</sup> In addition, Section 257 charges the Commission with the task of identifying and eliminating market entry barriers for small businesses.<sup>3</sup> NTCA is well aware that the Commission recently made an effort to “improve” the ability of small businesses to participate in spectrum auctions. However, the Commission’s current proposal to require minimum opening bids in the upcoming auction for LMDS licenses represents yet another policy that may severely inhibit small telecommunications companies from becoming noticeable participants in their industry and bringing the benefits of new technologies and services to their customers.

Rural markets are faced with unique characteristics, needs, and challenges. Further, as recognized in comments filed by Midwest Wireless Communications, L.L.C. (“Midwest Wireless”) and HighSpeed Com, L.L.C., the Department of Justice has previously recognized that the use of minimum bids poses significant risks:

... minimum bid restrictions pose some significant risks that the minimum will be

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<sup>2</sup> 47 U.S.C. § 309(j).

<sup>3</sup> 47 U.S.C. § 257(a).

mistakenly set above fair market value, thereby delaying the sale of the spectrum and the introduction of new services consumers desire ... If the Commission should decide to institute minimum bid requirements, it should consider doing so only in limited circumstances (i.e., where there are only a few bidders).<sup>4</sup>

Virtually all commenting parties believe that these “risks” will be realized and that the Commission’s proposed minimum bid calculations, which grossly overstate rural market values, will likely discourage smaller entities from participating in the LMDS auction.<sup>5</sup>

In fact, certain rural entities filed comments suggesting that the proposed minimum bids exceed a level that will allow them to participate at all. For example, Pioneer Telephone Association (“PTA”), a former participant in three prior spectrum auctions, states the following:

Until the Public Notice proposing minimum bids was issued, PTA planned to participate in the LMDS auction ... The minimum bids proposed by the Commission in all cases exceed the value of the licenses on which PTA planned to bid.<sup>6</sup>

In general, commenting parties assert that the proposal’s greatest deficiency lies in the fact that the formula for minimum bid calculations does not account for population density, thereby producing unrealistic assessments of market value.<sup>7</sup> NTCA concurs and urges the Commission not to adopt its minimum bid proposal as such a proposal will ultimately harm the

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<sup>4</sup> Joel Klein letter to Chairman Reed Hundt at p. 2, October 8, 1997. *See* comments of Midwest Wireless at 2 and HighSpeed Com, L.L.C. at 5.

<sup>5</sup> *See*, for example, comments of Cornerstone Wireless Communications, L.L.C. at 1-2: “The result is a minimum opening bid so large as to inhibit participation in this auction ... we already know of several entities that have abandoned plans to participate in the LMDS auction as a result of the bidding structure as presently proposed.”

<sup>6</sup> Comments of PTA at 1.

<sup>7</sup> *See* comments of Virginia Tech Foundation, Inc. at 1. *See also*, PTA at 1, Midwest Wireless at 1, JATO Communications Corp. at 2.

public interest. "The public interest is best served by having no opening bids..."<sup>8</sup>

However, should the Commission decide to adopt a minimum opening bid structure for the LMDS auction, NTCA asks that the Commission at least heed the suggestions of parties such as Midwest Wireless by deciding not to enforce a minimum opening bid requirement where the population density is less than 75 persons per square mile.<sup>9</sup>

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<sup>8</sup> Comments of Montana Wireless, Inc. at 5.

<sup>9</sup> Comments of Midwest Wireless at 1-2. For a similar discussion, *see also*, PTA at 1-2.

CONCLUSION

For reasons stated above, NTCA urges the Commission to abandon its proposed minimum opening bid restriction for the upcoming LMDS auction. The Commission must recognize that its proposed calculations will, in many instances, require exorbitant minimum opening bids, clearly hindering the participation of many small and rural entities. If the Commission does adopt a minimum bid requirement, NTCA supports the request that the Commission not restrict the opening bid in areas where the population density is less than 75 persons per square mile.

Respectfully submitted,

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November 10, 1997

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association in DA 97-2224 was served on this 10th day of November 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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