

ORIGINAL

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

In the Matter of)
)
SAL SPECTRUM, LLC)
)
Application to Participate in Auction 1002)

File Number 0007122225

Accepted/Files

MAY - 3 2016

To: The Commission

Federal Communications Commission
Office of the Secretary

**APPLICATION FOR REVIEW OF WIRELESS TELECOMMUNICATIONS
BUREAU DENIAL OF CONFIDENTIALITY REQUEST**

SAL Spectrum, LLC (“SAL”), a wholly-owned subsidiary of Atlantic Tele-Network, Inc. (“ATN”) (together the “Applicants”), has filed an application to participate in the upcoming forward auction of mobile broadband licenses in the 600 MHz Band (Auction 1002) in which it seeks to qualify for the “rural service provider bidding credit” provided in Section 1.2110(f)(4) of the Commission’s rules.¹ As further explained below, SAL sought confidential treatment of market-sensitive information that was submitted as part of its application. Pursuant to Section 0.459(g) of the Commission’s rules,² Applicants now file this Application for Review (“AFR”) of the April 20, 2016 Letter Ruling by the Auctions and Spectrum Access Division of the Wireless Telecommunications Bureau (“Bureau”)³ that denied SAL’s request for confidential treatment of that information.⁴

¹ See File No. 000712225. See also 47 C.F.R. §1.2110(f)(4).

² 47 C.F.R. § 0.459(g).

³ Letter from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, FCC, to Rohan Ranaraja, SAL Spectrum, LLC, DA No. 16-426 (rel. Apr. 20, 2016) (“Letter Ruling”).

⁴ Applicants acknowledge that the Commission may not rule on this AFR prior to the release of public notices listing applicants with complete applications of qualified bidders in Auction 1002. In that case, the Bureau should release

Concurrently with this AFR, Applicants are filing a petition with the Bureau seeking, to the extent necessary, a waiver of any requirement that SAL submit the number of foreign subscribers served outside the U.S. by its foreign affiliates.⁵ Applicants respectfully ask that the Commission give prompt consideration to that Bureau-level waiver request before the start of clock rounds in the initial stage of Auction 1002, and address this AFR shortly thereafter.

I. Introduction

On February 4, 2016, SAL filed an FCC Form 175 application to participate in Auction 1002. Given the predominantly rural nature of ATN's operations in the United States, SAL sought the rural service provider bidding credit and provided in its application information demonstrating its eligibility for that credit, including a request for confidential treatment.⁶ Subsequently, on April 5, 2016, staff of the Wireless Telecommunications Bureau ("Bureau") indicated to SAL that it would need to submit additional information, which SAL submitted on April 6, 2016 along with an amended request for confidential treatment. If only the subscribers served in the United States by SAL's domestic affiliates "count" toward bidding credit eligibility, SAL would be able to assert a claim of eligibility for the rural service provider bidding credit in Auction 1002. On the other hand, if subscribers served outside the United States by SAL's foreign affiliates also "count," SAL would not qualify for the bidding credit.⁷

the names of all qualified bidders, including SAL, with a notation that SAL's application for the rural service provider bidding credit remains pending. SAL is not suggesting that resolution of this AFR should in any way delay the release of the list of qualified bidders in the forward auction.

⁵ See SAL Spectrum, LLC, Petition for Waiver, File No. 0007122225 (filed May [], 2016).

⁶ SAL requested confidential treatment of its subscriber information pursuant to Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459.

⁷ The number of subscribers served by SAL's affiliate in Guyana alone would disqualify SAL if foreign subscribers count. Thus, the subscribers served by SAL's affiliates in Aruba and Bermuda are irrelevant regardless of the Bureau's ruling on SAL's waiver petition.

The Bureau issued the Letter Ruling on April 20, 2016, and stated that if SAL does not seek review of the Bureau's ruling by May 4, 2016, the Bureau will make the subscriber information available to the public.⁸ This AFR therefore seeks Commission review and reversal of the Letter Ruling.

II. The Commission Should Reverse the Letter Ruling If the Applicants' Waiver Petition Is Granted.

SAL seeks confidential treatment of the subscriber counts for its foreign affiliates serving Aruba and Bermuda.⁹ When it submitted this data, SAL provided a detailed demonstration that each portion of the confidentiality standard of Section 0.459(b) was satisfied, and specifically identified the information for which confidentiality was requested. In short, these data comprise highly confidential, market-sensitive information that is not otherwise reported and that could be used by competitors to gain an advantage in the marketplace.

The Bureau denied SAL's request for confidential treatment because of its belief that the FCC's rules require this information to be disclosed if an applicant seeks to demonstrate eligibility for the bidding credit.¹⁰ SAL submitted foreign subscriber data only at the request of Bureau staff, but the Commission's July 21, 2015 order adopting Section 1.2110(f)(4) is unclear whether eligibility for the rural service provider bidding credit is to be determined based on the number of subscribers served in other countries by its foreign affiliates, or only on domestic

⁸ The Bureau, on its own motion, waived the requirement in Section 0.459(g) of the Commission's rules, that an application of review be filed within 10 business days after the date of oral notice of denial of a request for confidentiality, and stated that SAL could file an application for review by May 4, 2016. *See* Letter Ruling at 5 and n.26.

⁹ SAL initially sought confidential treatment of all of the subscriber data submitted with its Form 175 application, including for its affiliate serving Guyana, but is not seeking review of the denial of confidentiality for the Guyana affiliate because it has determined that the information for that affiliate is publicly available.

¹⁰ *See* Letter Ruling at 3.

subscribers.¹¹ Regardless of the Commission's intention in establishing this bidding credit, the Applicants believe that a waiver is warranted of any requirement that SAL submit the number of foreign subscribers served outside the U.S. by its foreign affiliates in order to assert a claim of eligibility for the bidding credit. Accordingly, as noted above, Applicants are concurrently filing a petition seeking, to the extent necessary, such a waiver. Grant of the requested waiver would make the information regarding foreign subscribers irrelevant for purposes of determining SAL's eligibility. With the clock rounds of the initial stage of Auction 1002 fast-approaching, Applicants have requested that the Bureau give prompt consideration to the waiver petition. If that petition is granted by the Bureau, the Commission should reverse the Letter Ruling with respect to the subscriber data submitted by SAL for its Aruba and Bermuda affiliates.¹²

III. Conclusion

Data regarding the number of subscribers served by SAL's foreign affiliates should not be necessary as part of SAL's Form 175 application, so it should not be made publicly available.¹³ Given the sensitive nature of subscriber data and the questionable relevance of the information to the rural service provider bidding credit, Applicants request that the Commission await the Bureau's decision on the waiver petition before ruling on this AFR, and that it reverse

¹¹ See *Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order*, 30 FCC Rcd 7493, 7529-7539 ¶¶ 86-108 (2015) ("*Part I Reform Order*").

¹² In the event the Commission denies the requested waiver and determines that foreign subscriber data must be provided and made publicly available by parties seeking a rural service provider bidding credit, SAL intends to withdraw its request for such a credit, in which case we understand that the subscriber data would be removed from Petitioner's Form 175 application and this AFR would become moot in its entirety.

¹³ Section 0.459(g) provides that material for which confidentiality is sought will be accorded confidential treatment ... until the Commission acts on any timely applications for review of an order denying a request for confidentiality, and until a court acts on any timely motion for stay of such an order" 47 C.F.R. § 0.459(g).

the Letter Ruling as to the disclosure of foreign subscriber figures if the requested waiver is granted.

Respectfully submitted,

ATLANTIC TELE-NETWORK, INC.
SAL SPECTRUM, LLC

By: /s/ Douglas J. Minster

Douglas J. Minster
Vice President Government and Regulatory
Affairs
Atlantic Tele-Network, Inc.
600 Cummings Center
Suite 268-Z
Beverly, MA 01915
(978) 619-1303

Of Counsel:

Bryan N. Tramont
Jonathan V. Cohen
WILKINSON BARKER KNAUER, LLP
1800 M Street, NW, Suite 800N
Washington, D.C. 20036
(202) 783-4141

Of Counsel:

Michele C. Farquhar
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

May 3, 2016