

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules Regarding) WT Docket No. 97-82
Installment Payment Financing for Personal)
Communications Services ("PCS") Licensees)

COMMENTS OF AMERICA CONNECT, INC.

America Connect, Inc.¹ hereby files these comments in response to the above-captioned Further Notice of Proposed Rulemaking.²

Since the conclusion of Auctions 5, 11, and 22 there have been a number of changes in the CMRS marketplace. Technology advances, the explosion of Internet usage and the migration of networks to third generation ("3G") wireless are all occurring. In part, the Commission established set-asides for small businesses and approved Designated Entities ("DEs") to facilitate greater competition in the marketplace by enabling these smaller entities to compete on a more equal footing with larger more established carriers in acquiring spectrum at auction.³ This program's success is somewhat debatable, due to the structure of

¹ America Connect, Inc. ("America Connect") is a Georgia based small business as defined by the 1994 *Competitive Bidding Fifth Report and Order* whose business could be impacted by the proposed change in spectrum allocation in the latest NPRM for Auction 35. America Connect is a newly formed company that offers competitive voice and data services to business and residential customers.

² *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services ("PCS") Licensees*, WT Docket No. 97-82, *Further Notice of Proposed Rulemaking*, FCC 00-197 (rel. June 7, 2000) ("*Further Notice*").

³ *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd 5532, 5537-38 ¶ 11 (1994).

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the original auction rules that allowed the “overbidding” which ensued. Nevertheless, America Connect submits that the program’s fundamental, statutory objectives of promoting “economic opportunity and competition” and encouraging participation by a “wide variety of applicants, including small businesses” are still valid and should be maintained in this rulemaking and in the re-auction.⁴

Since 1996, consolidation in the telecommunications industry has reduced the number of service providers, resulting in a smaller number of interested parties that will likely participate in spectrum auctions. Further, many analysts have anticipated that the eagerly awaited auction of Channels 60-69 (700 MHz), which has no DE set-aside blocks, could bring prices for spectrum as high as \$4 per MHz per Pop placing the auction out of reach for small businesses and businesses servicing primarily rural markets.

We acknowledge that the public interest has not been fully served by the inconsistent successes of the DE program to date. Nevertheless, the Commission should bear in mind that small business participation has provided public benefits and that the market conditions surrounding the successful capitalization of and the interest in participation in the re-auction by small businesses have also changed in useful ways. With this background set forth, America Connect provides the following specific comments.

I. THE COMMISSION SHOULD MAINTAIN THE DE SET-ASIDE FOR ONE OF THE 10 MHZ C BLOCK LICENSES AND FOR ALL F BLOCK LICENSES RE-AUCTIONED

In the *Further Notice*, the Commission seeks comment on proposals to lift the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35

⁴ 47 U.S.C. § 309(j)(3).

and in future C and F block auctions.⁵ America Connect submits that Section 309 objectives are best met if the Commission breaks up the returned 30 MHz C block licenses into 3 10 MHz licenses, as proposed. The Commission should also maintain DE eligibility/set-aside requirements for one of the C block 10 MHz licenses, in both Tier 1 and Tier 2 markets, as well as retain the set-aside requirements for the F block licenses subject to re-auction. Establishing such limited set-asides will meet the spectrum requirements of large incumbent carriers and ensure that competitive opportunities remain available to small businesses. This will promote the Commission's efforts to bring innovation, competition and services to the marketplace.

Without such limited set-asides, the Commission would eliminate the public's ability to see true competition from all but a handful of large established carriers. This result is inconsistent with the intent of Section 309 and would encourage continued consolidation. Having a set-aside will allow small businesses to attract capital and compete in large and small markets and, in turn, will promote the provision of competitive services in the public interest.

Further, while America Connect agrees with the many commenters who argue that 10 MHz of spectrum is sufficient to launch mobility-based businesses, America Connect believes that 10 MHz of spectrum is insufficient for upcoming broadband offerings that might employ significant data rates as part of the service offerings. Moreover, as mobility based systems transition to 3G wireless offerings, 10 MHz will be insufficient to facilitate that transition. Therefore DEs must have a meaningful opportunity to aggregate more spectrum for these competitive purposes. Indeed, there are many indicators that additional spectrum is necessary

⁵ See *Further Notice* at ¶ 19.

for successful wireless businesses; otherwise, there would be no controversy over elimination or modification of the spectrum cap.

II. THE COMMISSION SHOULD ELIMINATE BIDDING CREDITS FOR AUCTION NO. 35 BUT SHOULD EXTEND THE PAYMENT DEADLINE BY SIX MONTHS

America Connect also urges the Commission to eliminate bidding credits for small businesses and DEs. Such bidding credits artificially inflate the bid prices for the spectrum as is easily demonstrated by the results of the original C Block auction conducted in 1996. By eliminating bidding credits, the Commission will improve the quality of the business plans required to receive financing from the capital markets and thus remove speculation and irresponsibility from the marketplace.

Finally, America Connect requests further that the Commission extend the payment due date by six months to allow small businesses successful in the auction the opportunity to solicit capital in excess of what is required to initiate service with their known licenses in hand.

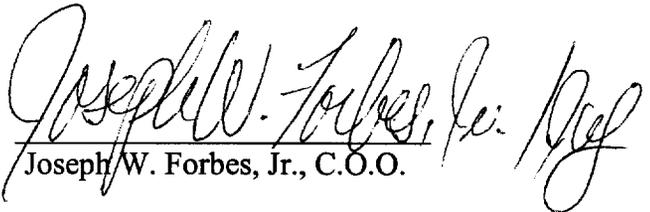
CONCLUSION

In sum, the Commission should maintain the entrepreneur eligibility restrictions for one of the 10 MHz C block licenses and for all F block licenses in Auction No. 35 and for any future C and F block re-auctions. Maintaining these set-asides for DEs will promote the Commission's policies of bringing innovation, competition and services to the marketplace.

America Connect also opposes the use of bidding credits in Auction No. 35, because such credits are inefficient and skew the ultimate bid prices for the spectrum. Finally, America Connect urges the Commission to extend the payment deadline by six months.

Respectfully submitted,

America Connect, Inc.

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