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March 26, 2001

RECEIVED
MAR 26 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Magalie Roman Salas, Secretary
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Washington, D.C. 20554

Re: Procedures to Govern the Auction of Licenses For the Lower and Upper Paging Bands Scheduled for June 26, 2001 (Auction No. 40)

DA 01-593, Report No. AUC-01-40-A
WT Docket No. 96-18

REPLY COMMENTS

Dear Ms. Salas:

On behalf of Robert F. Ryder d/b/a Radio Paging Service, submitted herewith are his reply comments in the above-referenced proceedings.

Please refer any questions or comments to this office.

Very truly yours,

Harold Mordkofsky

Attachment

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List A B C D E

Robert F. Ryder d/b/a
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Magalie Roman Salas, Secretary
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REPLY COMMENTS

Dear Ms. Salas:

These comments are in reply to the comments filed on March 19, 2001, in the referenced matter.

We are a small radio common carrier located in Boise, Idaho and have been in the business for over 30 years. We bid in the first 900 MHz auction (Auction No. 26) and plan to bid in the upcoming auction, provided the procedures adopted are fair and reasonable.

The commenters generally take the position that the proposed minimum opening bids are too high. The BloostonLaw Paging Group observes correctly that, while there is

a wide disparity in the populations of the market areas involved, the "floor" of the minimum opening bids does not reflect this disparity. For example, of the 175 Basic Economic Areas (BEAs), ranging in population from the smallest – 46,773 (American Samoa – BEA175) and 60,432 (North Platte, NE – BEA121) to the largest – 23,919,008 (New York, NY-NJ-CT-PA-MA-VT – BEA010), and all 172 BEAs in between, the proposed $500 floor is applicable to 155 of them, or almost 90 percent of the total. If the $500 floor is appropriate for some of the larger markets, and we do not dispute that it is, it is clearly too high for the small-to-medium size markets. The BloostonLaw Paging Group accordingly recommends a floor of no more than $200 for BEAs with a population under one million.

Also, in setting minimum opening bids, the Commission has indicated that it will take into account levels of incumbency. In determining levels of incumbency, the Commission is the best authority for making such determinations, *i.e.*, the Commission should not be relying on potential bidders to go to the expense of giving the Commission information that is contained within its own records. However, suffice it so say, our observation is that on some of the most desirable frequencies in the 150 MHz band, a substantial portion of the U.S. in areas of even modest population density are already licensed. Indeed, in a number of BEAs there is no unlicensed area on these frequencies. Both theoretically and practically, as the area licensed to incumbents approaches 100 percent, the value of the market area license in an auction approaches zero. The almost

across-the-board floor of $500, regardless of levels of incumbency, does not reflect reality.

We believe that the comments filed by Rule Radiophone Service, Inc. probably portray the circumstances in which many small radio common carriers, including ourselves, find themselves today. Paging service providers have been struggling to make a profit and to stay competitive with the service offerings of broadband two-way service providers. The Commission's five-year freeze on licensing new facilities and major modifications has made our situation worse. The Commission is now in a position to right that wrong by coming up with procedures for the upcoming auction that reflect the value of the spectrum being offered and the uncertain value of that spectrum in the future. Unlike PCS and other broadband spectrum, the narrowband channels (25 or 30 KHz bandwidth) to be offered in the upcoming auction are presently useful primarily for paging and two-way dispatch communications. The interconnected two-way communications market has, for the most part, been taken over by cellular and PCS. Because of the apparent limitations on being able to sell these licenses or even partition the license areas in the future, we cannot justify spending large amounts of money in this auction.

Rule Radiophone, Inc. suggests that the floor on minimum opening bids be reduced to $50. We are inclined to agree that the floor should be closer to $50 than to $500.

The Commission has proposed to reduce the floor on minimum opening bids for the 900 MHz band, from $2,500 to $1,000. If this proposal is adopted, we believe that it

creates the following issue that needs to be addressed by the Commission. In Auction No. 26, we bought several 900 MHz band frequencies in MEA No. 42. This MEA encompasses both the Boise, Idaho and Salt Lake City, Utah areas. Since our interests are in the Boise area, our thought, in meeting the build-out requirements, was to partition the Salt Lake City area to another carrier. If the minimum opening bids for MEA No. 42 are reduced, as the Commission has proposed, we anticipate greater difficulty in partitioning our Auction No. 26 frequencies in the Salt Lake City area since these frequencies may now be acquired more cheaply. Indeed, we may be precluded from doing so. In that event, it is questionable whether we will be able to meet the buildout requirement currently mandated by Section 22.503(k) of the Commission's Rules.

The Commission should recognize that reducing the minimum opening bids for the 900 MHz band frequencies will increase the difficulty of meeting the buildout requirements. Accordingly, the buildout requirements should be correspondingly reduced.

Finally, we support the urging of the BloostonLaw Paging Group that the short-form application (Form 175) be revised so as not to allow auction applicants to apply for all frequencies in all markets by simply checking a single box on the application form. As far as we can see, the only purpose for having an "ALL" box on the application form is to allow some applicants to save some time and effort in filling out the application form by not having to check off individual licenses.

If there was ever a good reason to have an "ALL" box on the application form, we certainly do not understand it. In our opinion, the Commission should not be in the business of oversimplifying application preparation, especially when, as in this case, it has such a potentially detrimental effect. Allowing applicants to check an "ALL" box instead of individual licenses clearly has a detrimental effect: it creates mutual exclusivity among applications where none would otherwise exist. In other words, it brings about circumstances that the Commission is legally bound to avoid, under Section 309(j)(6)(E) of the Communications Act. The Commission is duty bound in the public interest to use all means at its disposal in order to avoid mutual exclusivity in application and licensing proceedings. One simple way of fulfilling its statutory obligation would be to eliminate the "ALL" box on the Form 175, thereby avoiding unintended and unnecessary mutual exclusivity among the auction applicants. The Commission's desire to raise a lot of money by way of spectrum auctions should not overcome its stated statutory responsibilities.

In conclusion, we strongly urge the Commission to be mindful of all the circumstances that distinguish the upcoming Auction No. 40 from many of the prior auctions. As the Commission learned in last year's paging auction, where the majority of the licenses were unsold, it is not desirable to set minimum opening bids that are unreasonable. We recognize that the costs of conducting an auction are substantial and, therefore, it is not in the public interest to hold reauctions if they can be avoided. The

Commission will go a long way in this regard by setting the floor for minimum opening bids at a level that reasonably reflects the limitations on the spectrum offered.

Likewise, in the absence of a strong reason that justifies it in the face of the negative and adverse effect it has, and in view of the statutory directive to the Commission to avoid mutual exclusivity in application and licensing proceedings, the Commission should eliminate the "All" box from the Form 175 for the upcoming paging auction.

Respectfully submitted,

RADIO PAGING SERVICE

By: Robert F. Ryder

Robert F. Ryder, Owner