

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

In re Application of
Wirefree Partners III, LLC
For Certain Licenses To Provide
Broadband Personal
Communications Services

To: The Commission

WT Docket No. 05-149

File No.: 00002068574

Report No. AUC-58

OPPOSITION TO PLEADINGS IMPROPERLY SUBMITTED BY AMEER FLIPPIN

Wirefree Partners III, LLC

By: Janet Fitzpatrick Moran
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6000

It's Attorney

Dated: April 11, 2005

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Wirefree Partners III, LLC (“Wirefree” or “Company”), by its attorneys and pursuant to Section 1.2108(c) of the Commission’s Rules¹ and the Commission’s Public Notice DA 05-771, released March 25, 2005, hereby opposes, as procedurally improper and without merit certain ex parte motions and petitions ostensibly filed with the Commission by Mr. Ameer Flippin. In filing this opposition, Wirefree does not concede that the various pleadings allegedly filed by Mr. Flippin were validly filed or submitted to the Commission. In this ambiguous circumstance and without a ruling by the Commission that the pleadings were not properly filed, Wirefree is submitting this Opposition to protect its legal interests as an applicant.

By e-mailing multiple documents to Auction 58 high bidders, Mr. Flippin seeks to deny or delay the issuance of Auction 58 licenses to Wirefree and other qualified high bidders. The pleadings should be dismissed expeditiously on procedural and substantive grounds. Mr. Flippin has no standing to challenge the applications of bidders in Auction 58 since he never properly filed an

¹ 47 C.F.R. § 1.2108(c).

application or upfront payment to participate in the auction and was not an eligible bidder. In addition, Mr. Flippin does not challenge the qualifications of Wirefree or the other bidders to be licensees, but rather seeks a blanket denial or delay of all applications based on unfounded claims concerning his right to participate in Auction No. 58. The Commission should promptly dismiss Mr. Flippin's submissions as procedurally defective, without legal merit and irrelevant to the processing of Wirefree's application.

I. MR. FLIPPIN WAS NOT AN APPLICANT OR BIDDER IN AUCTION 58

Mr. Flippin was not an applicant or bidder in Auction 58 and lacks standing to challenge the qualified bidders' applications. Mr. Flippin did not file an FCC Form 175 short form application to participate in Auction No. 58 by the November 30, 2004 deadline.² Mr. Flippin was not listed in the Commission's December 16, 2004 public notice identifying the short form applications of Wirefree and 21 other entities as accepted for filing.³ Similarly, Mr. Flippin did not submit an upfront payment and his name does not appear on the January 11, 2005 public notice in which the Commission identified Wirefree and 34 other entities as the final group of applicants that submitted upfront payments and were qualified to participate in Auction No. 58.⁴

Wirefree was the high bidder on 16 licenses in Auction No. 58, which closed on February 15, 2005.⁵ In March 2005, Shelley Spencer, the company contact for Wirefree, received a series of electronic mail messages that indicated they were from Ameer Flippin. Attached to those messages, in various sequences and forms, were electronic copies of documents generically challenging the auction results by requesting that the Commission deny or delay grant of all applications that were

² *FCC Public Notice*, DA 04-3270, released October 15, 2005.

³ *FCC Public Notice*, DA 04-3918, released December 16, 2004.

⁴ *FCC Public Notice*, DA-05-51, released January 11, 2005.

⁵ *FCC Public Notice*, DA 05-459, released February 18, 2005.

filed for licenses in which Mr. Flippin allegedly placed bids with a value in excess of those placed by the final high bidder in the auction. Since Mr. Flippin never placed a bid in Auction 58, the value of his bids must be zero. Therefore every single bidder who has filed a long form application by definition placed a bid higher than Mr. Flippin's alleged bids.

Wirefree has found no indication (and has not been notified by the Commission) that any of Mr. Flippin's documents were filed with the Commission electronically through its Electronic Comment Filing System ("ECFS") or on paper with the Commission's Secretary.⁶ On March 25, 2005, the FCC announced that Wirefree's long form application was accepted for filing.⁷ The Commission provided that any petitions to deny that application were to be filed either through the ECFS or by paper, by no later than April 4, 2005. From the time of the release of the Commission's Public Notice on March 25, 2005 through April 4, 2005, Wirefree has received no petition to deny from Mr. Flippin or any other party, electronically or otherwise.⁸ The Commission's ECFS for WT Docket No. 05-149 as of this date reflects no such filings.

Finally, on March 28, 2005 and again on April 4, 2005, Wirefree received additional electronic mail messages designated as being from Mr. Flippin which had attached to them all or portions of a document entitled "Ex Parte Motion And Petition To Stay The Issue Of All Broadband PCS Licenses In Auction No. 58, Pending An Emergency 'Review De Novo' Of All Actions, Decisions, And Orders Issued By The Federal Communications Commission Adversely Affecting Ameer Xenos Flippin And Designating The Case For Hearing By An Administrative Law Judge At The Federal Communications Commission; And Memorandum In Support Thereof By Pro Se Appellant Ameer Flippin" ("Flippin Stay Petition"). The document indicates that it was

⁶ Best Copy and Printing Inc., the Commission's contractor designated by public notice to receive copies of petitions filed on paper, confirmed today that it has not received any petitions against Wirefree.

⁷ FCC Public Notice, DA 05-771, released March 25, 2005.

“filed at the Federal Communications Commission” although it has the caption of “Appellate Case No: 05-1026,” which is the case number assigned to Mr. Flippin’s D.C. Circuit case. Therefore, it is unclear to Wirefree whether Mr. Flippin is directing this request to the Commission or the Court, or both. Again, Wirefree has found no indication that the Flippin Stay Petition was filed with the Commission electronically through the ECFS or on paper through the Commission’s Secretary. It has not been otherwise served on Wirefree.

II. THE COMMISSION SHOULD EXPEDITIOUSLY DISMISS THE FLIPPIN PLEADINGS

The Commission should expeditiously dismiss the Flippin Petition to Deny as without merit and as improperly filed. Mr. Flippin has no standing to file such a Petition. Further, the Petition fails to articulate any facts against Wirefree’s qualifications that would warrant consideration of the document.

A. The Pleadings Are Procedurally Defective

Mr. Flippin has failed to follow the procedural rules for filing petitions to deny against the Auction No. 58 long form applications. Such filings must be made in accordance with the Commission’s current procedures for submission of filings or other documents.⁹ Wirefree has no evidence to indicate that Mr. Flippin complied with these requirements in submitting his Petition to Deny. Wirefree also has found no evidence that Mr. Flippin complied with the requirements for filing by paper. Therefore, it is unclear whether the Flippin Petition to Deny can be considered validly before the Commission.

Even assuming the documents were properly submitted to the Commission, Section 1.2108 of the Commission’s Rules dictates the timing of petitions to deny against long form applications of winning auction bidders. In relevant part it states that “[w]ithin a period

⁹ FCC Public Notice, DA 05-771, *supra*, at pp. 1-2.

specified by Public Notice, and after the Commission by public notice announces that long-form applications have been accepted for filing, petitions to deny such applications may be filed."¹⁰ The Commission issued the operative Public Notice on March 25, 2005, opening a window that extended until April 4, 2005 for the filing of petitions to deny. Assuming Mr. Flippin's Petition To Deny were filed, if filed at all, contemporaneously with his electronic mail messages to Wirefree, such filing would have occurred at least ten (10) days before the prescribed filing period even opened. Therefore, even assuming that his Petition to Deny had been properly filed with the Commission, it would have been filed out of time and is properly subject to rejection.

B. Mr. Flippin Lacks Standing to Petition Against Auction 58 Applications

Mr. Flippin was never a qualified bidder in Auction No. 58 and therefore was not a participant in Auction 58. The Commission has expressly and clearly held that "an entity that was not qualified to bid in particular markets in an auction has no standing to file a petition to deny the winning bidders' applications in those markets."¹¹ The standing requirement has been upheld by the decisions of the D.C. Circuit.¹² Thus, even if Mr. Flippin's Petition to Deny had been properly and timely filed, Mr. Flippin does not have standing to contest the grant of Auction No. 58 licenses to Wirefree, because he was never qualified to bid on those licenses.

C. The Flippin Petition to Deny Does Not Contain Any Facts or Allegations That Could Impact Wirefree's Qualifications to be a Commission Licensee

¹⁰47 CFR § 1.2108(b)(emphasis supplied). The Flippin Affidavit cites this very Section of the Commission's Rules.

¹¹*In the Matter of Applications of Alaska Native Wireless, L.L.C.*, 18 FCC Rcd. 11640, 11644, ¶ 11 (2003); see *In re Applications Of NextWave Personal Communications, Inc. for various C-Block broadband PCS Licenses*, 12 FCC Rcd. 2030, 2034, ¶ 11 (Wireless Tel Bur. 1997); *In re Applications of DCR PCS, Inc.*, 11 FCC Rcd 16849, 16857, ¶¶ 21-23 (Wireless Tel. Bur. 1996).

¹²*High Plains Wireless, L.P. v FCC*, 276 F.3d 599, 605 (D.C. Cir. 2002); see generally *U.S. Airways, Inc. v FCC*, 232 F.3d, 227, 232 (D.C. Cir. 2000).

In order to challenge an application, a petition to deny must “contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof” setting forth why it is not in the public interest to grant an application.¹³ Mr. Flippin does not make any factual assertions or claims with respect to Wirefree’s qualifications to be licensee. The Petition and Affidavit are principally directed toward the Commission’s allegedly improper decision not to permit Mr. Flippin to participate in Auction No. 58, and asserts Mr. Flippin’s curious claim that he placed bids in Auction 58 in excess of those placed by the final high bidders. His assertion regarding bid placement is even more curious in light of the fact that Mr. Flippin has asked the D.C. Circuit to grant him *in forma pauperis* status and waive the court filing fees based on his claim of poverty. If he lacks the resources to pay the circuit court’s filing fee, how does he intend to pay for licenses auctioned in Auction 58 at a price in excess of the final high bids?

The purpose of the petition to deny process is to assess challenges to applicants’ qualifications to be licensees.¹⁴ A petition to deny is wholly unsustainable where it contains no allegations at all, much less supporting affidavits, regarding the qualifications of the winning bidder.¹⁵ A pending challenge to the underlying licensing process cannot be a basis for refusing to grant pending applications, particularly where neither the Commission nor a Court has been willing to stay the licensing process based on the petitioner’s challenge.¹⁶

¹³ 47 CFR §1.2108(b).

¹⁴ *In the Matter of Applications for A & B Block Broadband PCS Licenses*, 11 FCC Rcd 3229, 3234, ¶ 12 (Wireless Tel. Bur. 1995) (“A & B Block”).

¹⁵ *In re Applications of DCR PCS, Inc.*, 11 FCC Rcd 14478, 14484, ¶ 13 (Wireless Tel. Bur. 1996); *A & B Block*, *supra*, at ¶ 12; see also *In the Matter of Application of Wireless Co., L.P.*, 10 FCC Rcd. 12233, 13236, ¶ 10 (Wireless Tel. Bur. 1195).

¹⁶ *In re Application of DCR, PCS, Inc.*, 11 FCC Rcd at 14484, ¶ 13.

This is yet another reason why the Commission should expeditiously rule that the Flippin Petition to Deny is totally defective and can be given no consideration.

III. THE FLIPPIN STAY PETITION SHOULD ALSO BE DISMISSED

Mr. Flippin's Petition for a Stay, to the extent that it is directed to the Commission, is equally procedurally and substantively defective. Wirefree has no indication that it was properly filed with the Commission. Mr. Flippin fails to satisfy any of the elements of the standard applied for granting a stay.¹⁷ For the same reasons set forth above regarding his Petition To Deny, Mr. Flippin, who did not participate on Auction No. 58, is without standing to seek such a stay. The Commission should dismiss the petition expeditiously.

IV. REQUEST FOR CHANGE IN EX PARTE STATUS

Pursuant to Section 1.1200(a) of the Commission's rules, Wirefree requests that, to the extent that Mr. Flippin's improperly filed documents have caused this proceeding to be "restricted," the Commission exercise its discretion to modify this proceeding to "permit but disclose" status. Such action is warranted because none of Mr. Flippin's documents raise any allegations with respect to Wirefree's qualifications to become a licensee. Therefore, the public interest would be served by modification of the ex parte status to "permit but disclose."

V. CONCLUSION

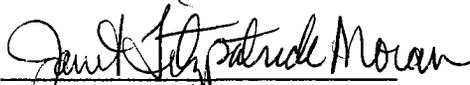
The submissions made by Mr. Flippin are wholly procedurally and substantively defective. They were not properly filed with the Commission. The Petition to Deny was not timely. Mr. Flippin is without standing to seek the relief that he requests. He makes absolutely no challenge to Wirefree's qualifications to be a licensee. The Commission, to the extent that it does consider these

¹⁷ See *Wisconsin Gas Co v FERC*, 758 F. 2d 669, 674 (D.C. Cir. 1985); *Washington Metropolitan Transit Commission v Holiday Tours, Inc.*, 559 F. 2d § 41, 843 (D.C. Cir. 1977); *Virginia Petroleum Ass'n, v FPC*, 259 F. 2d 921, 925 (D.C. Cir. 1958).

submissions, should give them no credence and formally dismiss both the Flippin Petition to Deny and Stay Petition.

Respectfully submitted,

Wirefree Partners III, LLC

By 
Janet Fitzpatrick Moran
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
It's Attorney

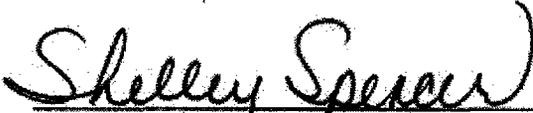
April 11, 2005

DECLARATION OF SHELLEY L. SPENCER

I, Shelley L. Spencer, do hereby attest and state as follows:

1. I am a Manager of Wirefree Partners III, LLC.
2. I have read the foregoing "Opposition to Pleadings Improperly Submitted by Amee: Flippin" and I have personal knowledge of the facts stated therein in regarding the submissions that are the subject of the Opposition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Shelley L. Spencer

CERTIFICATE OF SERVICE

I, Lorna Shingleton, with the law firm of Patton Boggs LLP, hereby certify that copies of the foregoing "Opposition To Pleading Improperly Submitted by Ameer Flippin" were served this 11th of April 2005, by electronic and/or U.S. mail indicated on the following:

Ameer Flippin
2053 Wilson Road
Memphis, TN 38116



Lorna J. Shingleton