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

In re Application of	)	
Royal Street Communications, LLC For Certain Licenses To Provide Broadband Personal Communications Services	)	WT Docket No. 05-149
	)	File No.: 0002069525
	)	Report No. AUC-58
To: The Commission	)	

OPPOSITION TO SUBMISSIONS OF AMEER FLIPPIN

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Dated: April 10, 2005

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Royal Street Communications, LLC ("Royal"), by its attorneys and pursuant to Section 1.2108(c) of the Commission's Rules[1] and the Commission's *Public Notice*, DA 05-771, released March 25, 2005, hereby opposes, to the extent such opposition is required,[2] certain *ex parte* motions and petitions described below ostensibly filed with the Commission by Mr. Ameer Flippin. Those documents, which purport to object to the issuance of licenses to any of the high bidders in Auction No. 58, including Royal, are procedurally defective. Further, as is demonstrated in detail below, Mr. Flippin has no standing to object to any Auction No. 58 application. Moreover, Mr. Flippin is not questioning the qualifications of any specific applicant, but seeks such denial or delay based on unsubstantiated attacks on the FCC's auction process. The Commission should rule promptly that

[1] 47 C.F.R. § 1.2108(c).

[2] In filing this opposition, Royal does not concede that any of the various submissions by Mr. Flippin referenced herein were ever validly filed or submitted to the Commission so as to constitute a timely or duly filed objection to the Royal application that requires a response. Royal is making this filing out of an abundance of caution to protect its legal interests as an applicant. If the Commission does determine that Mr. Flippin's filings serve to place the Royal application in a contested status, Royal respectfully requests that the Commission designate this proceeding as one where the Commission's meet and disclose *ex parte* procedures specified in Section 1.1206 of the FCC rules apply. *See, e.g.,* 47 C.F.R. § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable ex parte rules by order, letter, or public notice."). This is particularly appropriate since Mr. Flippin has not raised any application-specific issue with regard to the Royal application.

Mr. Flippin's submissions are defective, without legal effect and do not justify any delay in the processing and favorable action upon the Royal application.

I. BACKGROUND

On October 15, 2004, the Commission established a deadline of November 30, 2004, for interested parties to file short form applications (i.e., FCC Form 175) to participate in Auction No. 58.[3] On December 16, 2004, the Commission announced that it had accepted for filing the short form applications of Royal and 21 other entities.[4] The name of Ameer Flippin was not among those identified as having timely filed an FCC Form 175 application. On January 11, 2005, the Commission identified Royal and 34 other entities as the final group of applicants qualified to participate in Auction No. 58.[5] Again, the name of Ameer Flippin was not on the list of qualified applicants.

On the eve of the start of Auction No. 58, the Commission denied certain requests by Mr. Flippin to extend the time for him to (a) file a short form application, and (b) make an upfront payment for Auction No. 58. The Commission also denied Mr. Flippin's request to postpone Auction No. 58 entirely for 6 months.[6] As a consequence, Mr. Flippin never filed with the Commission the required short form application for Auction No. 58 and never made the required upfront payment in order to participate. Accordingly, Auction No. 58 proceeded without Mr. Flippin as an FCC-authorized bidder.

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[3] *FCC Public Notice*, DA 04-3270, released October 15, 2005

[4] *FCC Public Notice*, DA 04-3918, released December 16, 2004.

[5] *FCC Public Notice*, DA-05-51, released January 11, 2005.

[6] *Letter from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Ameer Flippin*, DA 05-173, January 25, 2005. Mr. Flippin also moved for a stay of Auction No. 58 in the United States Court of Appeals For The District Of Columbia Circuit ("D.C. Circuit"), but on January 25, 2005 that Court summarily denied that motion. *In re: Ameer Flippin, Petitioner,* No. 05-1026, Per Curiam Order, January 25, 2005.

Royal was the high bidder on six (6) licenses in Auction No. 58, which the Commission closed on February 15, 2005.[7] Starting on March 9, 2005, and continuing periodically through March 15, 2005, Royal's counsel received a series of seven (7) electronic mail messages designated as being from Ameer Flippin. Attached to those messages, in various sequences and forms, were electronic copies of the following entitled documents[8]:

1. Ex-Parte Motion And Petition To Deny Against All Long-Form Applications Of Opposing Entities Which Placed Bids Less Than Or Equal To In Value Of Bids Placed By Ameer Flippin, An Individual In Auction No. 58, In Accordance With 47 CFR 1.2108; Attached Listing Of Long-Form Applicants Being Motioned To Deny; By Pro Se Bidder, Ameer Flippin ("Flippin Petition To Deny"), dated March 10, 2005

2. Affidavit In Support Of Flippin Petition To Deny ("Flippin Affidavit"), dated March 10, 2005.

3. Certificate of Mailing, dated March 14, 2005.

4. A transmittal document, dated March 14, 2005.

Royal has found no indication (and has been unable to confirm through consultations with the Commission staff) that any of these documents were duly filed with the Commission electronically through its Electronic Comment And Filing System ("ECFS") or on paper, through designated channels, with the Commission's Secretary. To the best of Royal's knowledge, other than through the electronic mail messages attached as Exhibit 1, Royal has not been formally served by U.S. Mail or otherwise with any other copies of these documents by Mr. Flippin or anyone else. Thus, Mr. Flippin has failed to abide by Section 1.47 of the FCC rules which governs Service of Process and Proof of Service.[9]

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[7] *FCC Public Notice*, DA 05-459, released February 18, 2005.

[8]For the Commission's convenience, Royal has enclosed as Exhibit 1 copies of each of those electronic mail messages, with the attachments thereto. The dates assigned to the documents are the latest dates of the various versions attached.

[9] In particular, Mr. Flippin has failed to abide by Section 1.47(d) which provides, in pertinent part: "Documents that are required to be served must be served in paper form, even if documents are filed in electronic form with the Commission, unless the party to be served agrees to accept service in some other form." Royal has not agreed to accept service from Mr. Flippin in any other form.

On March 25, 2005, the FCC announced that Royal's long form application, which had been filed with the Commission on March 7, 2005, was accepted for filing.[10] The Commission provided that any petitions to deny that application were to be filed, either through the ECFS or by paper, 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, Royal received no petition to deny from Mr. Flippin or any other party, electronically or otherwise, directed against the Royal application. The Commission's ECFS for WT Docket No. 05-149 as of the date of this opposition reflects no such filings.

On March 26, 2005 and again on March 28, 2005, counsel for Royal 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 purports to have been "filed at the Federal Communications Commission" although it has the caption of "Appellate Case No: 05-1026," which was the case number assigned to Mr. Flippin's efforts in the D.C. Circuit.[11] Therefore, it is unclear to Royal whether Mr. Flippin was directing this request to the Commission or the Court, or both. In any event, the submission appears to be in the nature of a stay request directed against the entire Auction No. 58 process rather than a specific objection to the Royal application or any other application. Again, Royal has found no evidence that the Flippin Stay

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[10] *FCC Public Notice*, DA 05-771, released March 25, 2005

[11] A copy of that document is attached as Exhibit 2. In addition, Royal's counsel has received a string of other electronic mail messages with various documents that Mr. Flippin represents have been filed in that Court in connection with Case No. 05-1026.

Petition was duly filed with the Commission electronically through the ECFS or on paper through the Commission's Secretary. It does not specifically reference the Royal application by file number and has not been formally served on Royal.

II. THE COMMISION MUST EXPEDITIOUSLY FIND THAT THE FLIPPIN PETITION TO DENY IS NOT AN OPPOSITION TO ROYAL'S APPLICATION

The Commission should rule expeditiously that the various submissions by Mr. Flippin, including the inaccurately denominated "Petition To Deny", do not constitute duly filed oppositions to Royal's application and are without any legal effect. As is set forth in detail in this opposition, no valid objection to the Royal application was properly or timely filed. And, Mr. Flippin has absolutely no standing to file any such petition. Finally, the various Flippin submissions fail to challenge the licensee qualifications of any Auction No. 58 high bidder in a manner that would justify treating the applications as contested.

A. The Flippin Petition To Deny Is Procedurally Defective

The Commission provided detailed instructions for filing petitions to deny against the Auction No. 58 long form applications by interested parties. Such filings were to be made in accordance with the Commission's current procedures for submission of filings or other documents (i.e., electronic filing through the Commission's ECFS or by paper at specific locations or addresses).[12] Royal has no evidence to indicate that Mr. Flippin complied with these requirements with respect to his Petition To Deny or, for that matter, the Flippin Stay Petition. The Commission's ECFS reflects no such filing. Royal has no indication that Mr. Flippin complied with the requirements for filing by paper or that the filings were sent to either the Commission or to Royal by U.S. Mail. Therefore, the so-called Petition To Deny filed by Mr. Flippin cannot be considered a

[12] *FCC Public Notice*, DA 05-771, *supra*, at pp. 1-2

formal opposition since it has not been filed with the Commission or properly served. The Commission should expeditiously issue a ruling to this effect.

Even if the documents had been properly submitted to the Commission, which they were not, Section 1.2108 of the Commission's Rules sets forth specific procedures governing the timing of petitions to deny against long form applications of winning auction bidders. In relevant part that Section states that "*[w]ithin a period 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."[13] The Commission issued the operative *Public Notice* on March 25, 2005, opening a window that extended from March 25, 2005 until April 4, 2005 for the filing of petitions to deny. Assuming for the sake of argument that Mr. Flippin's "Petition To Deny" was deemed to have been filed as of the date of his electronic mail messages to Royal's counsel (i.e., between March 10 and March 15, 2005) this would have been at least ten (10) days before the prescribed filing window opened. Therefore, this petition, if deemed filed at all, was out of time and is subject to rejection. The Commission also should expeditiously issue a ruling to this effect.

B. <u>The Flippin Petition Makes No Specific Allegations Concerning Royal's Qualifications And Should Not Be Considered An Opposition</u>

Even if Mr. Flippin's petition had been timely filed, to merit substantive consideration 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 Royal's application.[14] Yet neither the self-styled Petition To Deny nor the accompanying Affidavit filed by Mr. Flippin makes any specific factual assertions or claims with respect to the qualifications of Royal, or for that manner any of the Auction No. 58 applicants, to be licensees. The Petition and

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[13] 47 CFR § 1.2108(b)(emphasis supplied). The Flippin Affidavit cites this very Section of the Commission's Rules.

[14] 47 CFR §1.2108(b)

Affidavit are directed totally toward the Commission's allegedly improper decision not to alter the Auction No. 58 process to accommodate Mr. Flippin. None of the claims are specific to or are directed against Royal's application.

The purpose of the petition to deny process is to assess challenges to applicants' qualifications to be licensees.[15] 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.[16] 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.[17]

This is yet another reason why the Commission should expeditiously rule that the Flippin filings are defective and will be given no consideration.

C. Mr. Flippin Has No Standing To File A Petition To Deny Against Royal

Even assuming Mr. Flippin properly and timely filed a petition to deny -- which is not the case - -he has absolutely no standing to do so. Section 309(d)(1) of the Communications Act, as amended, permits any "party in interest" to file a petition to deny an application.[18] In general, to establish standing as an interested party, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.[19] The petition

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[15] *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")*

[16] *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. 12 233, 13236, ¶ 10 (Wireless Tel. Bur. 1195)

[17] *In re Applications of DCR, PCS, Inc.*, 11 FCC Rcd. at 14484, ¶ 13.

[18] 47 U.S.C. § 309(d)(1).

[19] *See Los Angeles Cellular Telephone Co.*, 13 FCC Rcd. 4601, 4603-4604 (Comm. Wireless Div. 1998)

must further demonstrate a causal link between the claimed injury and the challenged action.[20] And, in the auctions context, the Wireless Telecommunications Bureau has adopted the explicit requirement that a petitioner, to establish standing to challenge an application or license in a particular market, must demonstrate that it was qualified and eligible to bid in that market.[21]

Mr. Flippin must meet all of these tests to establish its standing, but fails to satisfy a single one. As earlier noted, Mr. Flippin has failed to make any specific allegations against the Royal application and has failed to demonstrate how a grant of the Royal application would cause any direct tangible injury in fact to Mr. Flippin. He also has not made any showing that a denial of the Royal application would cure Flippin's failure to timely file an acceptable auction application, thus failing to establish the requisite causal link between the relief requested and alleged injury.

Finally, and most important, Mr. Flippin lacks standing because he is not a qualified applicant in Auction No 58. This 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."[22] This conclusion is supported by the decisions of the D.C. Circuit.[23] Thus, even if Mr. Fippin's petition had been properly and timely filed, which it was not, Mr. Flippin is without standing to contest the grant of Auction No. 58 licenses to Royal

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[20] *See Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

[21] *See Western Communications Services, Inc.*, 17 FCC Rcd. 24636, 24636-37, ¶ 2 (Comm. Wireless Div. 2002)(Petitioner lacked standing to object to a license grant in a market where petitioner was not qualified to bid in the auction). *See also NextWave Personal Communications, Inc.*, 12 FCC Rcd. 2030, 2034, ¶ 11 (Wireless Tel. Bur. 1997) ("[a] Petitioner has standing to challenge the licenses for markets another applicant won at auction only if Petitioner was qualified to bid in those markets."); *DCR PCS, Inc.*, 11 FCC Rcd. 16849, 16857, ¶¶ 21-23 (Wireless Tel. Bur. 1996) (petitioner failed to demonstrate standing to challenge applications in multiple markets because it was not eligible to bid in all of the markets at issue).

[22] *In the Matter of Applications of Alaska Native Wireless, L.L.C.*, 18 FCC Rcd. 11640, 11644, ¶ 11 (2003); *see NextWave Personal Communications, Inc., supra.*; *DCR PCS, Inc., supra.*

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

because he was not qualified to bid on those licenses in the first place. The Commission must expeditiously so rule.

III. THE FLIPPIN STAY PETITION ALSO IS DEFECTIVE

The Flippin Stay Petition, to the extent that it is directed to the Commission, also is fatally defective on both procedural and substantive grounds. Royal can find no evidence that the stay request was properly filed with the Commission. Mr. Flippin fails to satisfy any of the elements of the standard applied for granting a stay.[24] And, because Mr. Flippin did not timely file an acceptable application to participate in Auction No. 58 he should be deemed to have no standing to seek a stay of the auction to which his Stay Petition relates. The Commission should expeditiously so rule.

IV. CONCLUSION

The submissions made by Mr. Flippin, assuming they were made in same form, to the Commission are wholly procedural 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 Royal's qualifications to be a licensee. The Commission, to the extent that it does consider these submissions, should give them no formal credence and formally declare that both the Flippin Petition To Deny and Stay Petition are without any legal effect.

[The remainder of this page has been intentionally left blank.]

[24] *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).

Respectfully submitted,

ROYAL STREET COMMUNICATIONS, LLC

By _____

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Dated: April 10, 2005

DECLARATION OF ROBERT A. GERARD

I, Robert A. Gerard, do hereby attest and state as follows:

1. I am the Chairman of the Management Committee and CEO of Royal Street Communications, LLC.

2 I am familiar with the contents of the foregoing "Opposition to Submissions of Ameer Flippin".

3, Except for the facts of which official notice may be taken, the facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct as of this 10th day of April, 2005.

Robert A. Gerard

CERTIFICATE OF SERVICE

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

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