

**Before the
Federal Communications Commission
Washington D.C. 20554**

In the Matter of)
)
Auction of Advanced Wireless Services) AU Docket No. 06-30
Licenses Scheduled for June 29, 2006)
)
Comment Sought on Reserve Prices)
or Minimum Opening Bids)
and Other Procedures)

To: The Wireless Telecommunications Bureau

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby submits comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice² seeking comments on competitive bidding procedures for the auction of Advanced Wireless Services (“AWS”) licenses in the 1710-1755 MHz and 2110-2155 MHz (AWS-1”) bands.

As providers of new and innovative wireless services to rural areas, RTG’s

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² *In re Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, AU Docket No. 06-30, Public Notice, DA 06-238 (January 31, 2006).

members remind the Commission that Section 309(j) of the Communications Act of 1934, as amended (“Act”), expressly commands that the Commission develop its competitive bidding procedures “for the benefit of the public, *including those residing in rural areas.*”³ With that in mind, RTG’s comments address certain proposed AWS-1 auction procedures that will deter the delivery of AWS services to consumers in rural areas, contrary to the mandate of Section 309(j). Specifically, RTG 1) opposes the Wireless Telecommunications Bureau’s (“Bureau”) proposal to withhold certain information on bidder interests, bids, and bidder identities (so called “blind bidding”); 2) opposes excessive upfront payments, especially for lower value rural markets; 3) believes that the Bureau’s proposed use of “package bidding” is premature and will be harmful to small and rural entities participating in the AWS-1 auction; and 4) supports the June 29, 2006 auction commencement date.

I. Blind Bidding Will Adversely Impact Small, Rural Wireless Provider Participation in the Auction and the Provision of AWS

It has been RTG members’ experience in previous auctions that the disclosure of bidders’ license selections prior to the auction and the disclosure of the identities of all bidders and their bid amounts at the conclusion of each round during an auction greatly benefited rural carriers. As the Commission has recognized, when bidder identities are revealed, carriers may bid more confidently and are able to assess technical information about competing

³ 47 U.S.C. § 309(j)(3)(A) (emphasis added).

bidders and neighboring bidders.⁴ Rural carriers, who are heavily dependent upon roaming and oftentimes make technological and business decisions based on the equipment and technologies used by their much larger urban neighbors, will have a hard time making rational bidding decisions if they do not know the identities of their neighboring bidders. In cellular and PCS markets, rural carriers often make their technological choice (*i.e.*, GSM or CDMA) based on the technology used by their large neighbor in order for them to be able to offer their customers technically compatible roaming.⁵ Further, small rural carriers are generally surrounded by larger, urban-based carriers, so interference issues at the nearby “edges” of their networks affect rural carriers to a greater extent than carriers with larger service areas.

Rural carriers are also adept at “filling in the gaps” overlooked by national carriers when it comes to auction participation. Knowing the identity of a neighboring bidder allows rural carriers to more efficiently fill in these spectrum gaps that may otherwise go without service. With inherently limited financial resources due to their size, rural carriers must necessarily be judicious in where they spend their resources during an auction.

⁴ *In re Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Memorandum Opinion and Order, 9 FCC Rcd 7245, 7252 at ¶¶ 39 and 158.

⁵ Likewise, the attractiveness of certain rural markets is affected by the roaming behavior of neighboring carriers. Large, nationwide carriers that have historically forbidden “in-region” automatic roaming influence the business decisions of small carriers whose customers rely on roaming services to a greater extent than customers of nationwide carriers.

Knowledge of the identity of potential neighbors is crucial to rural “gap filling” auction strategies and consistent with the Section 309(j) mandate that the Commission ensure that “rural areas” enjoy the “rapid deployment of new technologies, products, and services.”⁶

The perceived benefit of “blind bidding” – eliminating potential harm from coordinated bidding behavior – has been overstated by the Bureau and certainly does not outweigh the disadvantages, discussed above, that blind bidding will reap upon small and rural carriers. Withholding bidder information will most likely only harm those carriers without the resources to identify bidders based on their habits and strategies. Thus, while rural carriers stumble about the AWS-1 auction blindfolded, the large, nationwide wireless carriers and other deep-pocket auction entrants will likely have scores of economists and business analysts examining other entities’ bidding strategies and determining with uncanny statistical certainty whom they are bidding against. If large carriers want to collude, divvying up the country’s AWS spectrum amongst themselves, blind bidding is unlikely to stop them. The fact that economists have observed that bidders “*could* use information revealed over the multiple rounds to signal each other,”⁷ which is an action

⁶ 47 U.S.C. § 309(j)(3)(A).

⁷ Public Notice at 6 (emphasis added).

that is clearly illegal,⁸ provides no justifiable support for eliminating the historically successful auction tool of identifying bidders.⁹

Contrary to the Bureau's opinion, the Commission's mandates under Section 309(j)(3) of the Act would *not* be "better served"¹⁰ by withholding information on bidder interests both before the auction and after each round. As discussed above, Section 309(j) specifically mandates that the Commission disseminate licenses to rural areas.¹¹ Section 309(j) also requires the Commission to ensure that "a wide variety of applicants," including rural carriers, can access new technologies such as those that will be provided using the AWS spectrum.¹² The FCC's mandate regarding the development of competitive bidding rules that take into account rural concerns is evident and supported by statute. The Bureau's speculative attempt to use blind bidding to eliminate anti-competitive behavior in the AWS-1 auction since "fully revealing bid and bidder information *may* lead to anti-competitive bidding behavior"¹³ is weak justification for denying rural carriers the

⁸ See 47 C.F.R. § 1.2105(c).

⁹ The Commission can use more narrowly tailored, less arbitrary remedies such as increased forfeitures or future auction disqualifications to deter collusion rather than its overbroad "blind" bidding solution based on nothing but economic conjecture.

¹⁰ Public Notice at 6.

¹¹ 47 U.S.C. § 309(j)(3)(A).

¹² See 47 U.S.C. § 309(j)(3)(B) (promoting economic opportunity and avoiding excessive concentration of licenses by disseminating licenses to a wide variety of applicants); see also, 47 U.S.C. § 309(j)(4)(D) (requiring the Commission to ensure that small businesses and rural carriers, among others, are given the opportunity to participate in the provision of spectrum-based services).

¹³ Public Notice at 7.

information they desperately need to compete effectively in the pending auction.

II. The Bureau's Upfront Payments Are Unreasonable in Rural Markets

The Bureau's proposed upfront payment formula of $\$0.05 * \text{MHz} * \text{License Area Population}^{14}$ is excessive for smaller, rural geographic license areas. Such a payment may result in many rural licenses remaining unsold, and will make auction participation untenable for many rural carriers. With fully developed and operational rural mobile spectrum markets being sold for just \$0.10 per MHz population, requiring an upfront payment in rural regions of half of that is unreasonable on its face. RTG suggests that the Commission consider a reasonable upfront payment formula of $\$0.02 * \text{MHz} * \text{License Area Population}$ for Block A of the AWS-1 license auction which consists of smaller geographic license areas, many of them rural.

The proposed upfront payment formula will require a small, rural carrier to spend on average from \$75,000 to over \$250,000, depending upon the market, even before beginning the bidding process. The economies of many of the small markets will not justify spending the proposed minimum bid amount. Small, rural carriers do not have the financial resources to tie up a significant amount of capital on spectrum alone, when the business case may be marginal. If the Commission wants to ensure that rural carriers are able to participate effectively in the AWS-1 auction pursuant to Section

¹⁴ Public Notice at 11.

309(j), it should lower the upfront costs of participation, thus allowing smaller carriers the financial flexibility they will need in order to bid effectively in the AWS-1 auction. Lower upfront payments in Block A will help fulfill the Commission's mandate to disseminate new spectrum licenses among "a wide variety of applicants."¹⁵ Larger upfront payments in Block A can only benefit large bidders, contrary to the mandate of Section 309(j).

III. Package Bidding Is Not Fully Tested and Is Likely to Harm Small, Rural Carriers

RTG opposes conducting two simultaneous auctions in the form of one standard simultaneous multiple round ("SMR") auction and one package bidding auction ("SMR-PB"). Conducting two auctions will result in unnecessary confusion and expense, which ultimately, will harm small and rural bidders. The use of large license areas, and the allocation of many blocks of spectrum should allow larger bidders to aggregate sufficient amounts of spectrum without package bidding. A single standard SMR auction is, as the Bureau concludes, "the simplest and most flexible" auction method for the AWS-1 auction.¹⁹

In general, RTG opposes the use of the untried and relatively untested "package bidding" auction scheme in the AWS-1 auction. To date, the FCC is only beginning its examination of these complicated combinatorial bidding

¹⁵ 47 U.S.C. § 309(j)(3)(B).

¹⁹ Public Notice at 5.

mechanisms²⁰ and has yet to provide any assurance such schemes are not overwhelmingly unfavorable to smaller bidders. This small carrier “threshold” problem, inherent in package bidding auctions, has been identified by a number of economists²¹ and is likely to exclude small bidders from any meaningful participation in a package bidding auction. The value that a small provider places on a certain swath of spectrum will be overwhelmed by the size of any bid by a nationwide carrier that includes the small carrier’s chosen spectrum as part of its package. Even if a small carrier places a higher monetary value on a small slice of rural spectrum, under package bidding with its emphasis on the maximization of revenue, the small carrier’s lone bid is extremely unlikely to displace a substantial bid for a larger package containing the desired small slice of rural spectrum.

As noted above, the Commission has a congressionally-mandated duty pursuant to Section 309(j) of the Act, to craft auctions that disseminate licenses to small and rural bidders.²² So far, all evidence regarding combinatorial bidding suggests that the Section 309(j) mandate will not be met since package bidding is likely to discriminate against small, rural bidders. Given the June 29, 2006 commencement date of the AWS-1 auction,

²⁰ See, e.g., *in re Comment Sought on Experimental Design for Examining Performance Properties of Simultaneous Multiple Round Spectrum Auctions With and Without Combinatorial Bidding*, Public Notice, DA 05-1267 (May 2, 2005) (“*Experimental Design Public Notice*”).

²¹ See generally, TDS Comments and RTG Comments in to *Experimental Design Public Notice*.

²² See 47 U.S.C. §§ 309(j)(3)(A) and (D).

it is premature for the Commission to experiment with package bidding in such an important spectrum auction.

IV. The June 29, 2006 Auction Start Date Is in the Public Interest

RTG fully supports the announced AWS-1 auction commencement date of June 29, 2006.²³ With the rash of recent mergers in the wireless industry among larger carriers and the resulting consolidation of valuable spectrum, it is in the public interest for the Commission to commence the AWS-1 auction as soon as possible so that smaller and rural carriers can acquire spectrum and offer the public competitive choices and new, advanced services. RTG members and other small, rural carriers are eager to provide AWS-based offerings and any unnecessary delay would harm their rural customers.

V. Conclusion

Meaningful rural carrier participation in the AWS-1 auction is required by Section 309(j) of the Act. Blind bidding, excessive upfront payments in rural areas, and package bidding will deter rural carriers from delivering AWS offerings to rural consumers. For the reasons discussed herein, the Commission should 1) rethink its overbroad and arbitrary justification for blind bidding; 2) develop lower, reasonable upfront payments for Block A in the AWS auction; 3) wait until small carriers concerns are adequately addressed after the AWS-1 auction before implementing package bidding; and 4) commence the AWS-1 auction, as planned, on June 29, 2006.

²³ Public Notice at 1.

Respectfully submitted,

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