

March 17, 2006



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WB Docket No. 05-211

Dear Ms. Dortch:

On March 15, 2006, Harold Feld of Media Access Project and Dr. Gregory Rose, an economic consultant for MAP, met with Uzoma Onyeije, Gary Michaels, and Jim Schlichting of the Wireless Telecommunications Bureau, to discuss the filing of NHMC in the above captioned proceeding.

Mr. Feld discussed the importance of digital inclusion and access to wireless by minority and other traditionally underserved communities. In response to the Reply Comments of Cingular, Mr. Feld stated that the question before the Commission is not whether there are other means of promoting wireless competition, such as spectrum aggregation caps. The question is whether the current rules – and the DE rule specifically – serve the purposes of Section 309(j) by promoting competition, new entrants, innovation, minority ownership, and deployment of advanced wireless services to all Americans. The study by Dr. Rose of the FCC's publicly available data demonstrates that the auction rules create the opposite effect. When combined with the data contributed by Council Tree, it is clear that the current DE rules merely encourage large incumbent carriers to partner with Des to receive a 25% discount on the auction price without providing any of the benefits required under Section 309(j). Further, in response to Cingular's questioning the validity of the data used in the Rose declaration, it was explained that all data came from the FCC's website and must therefore be considered reliable. While collecting the data was arduous because of the failure to collect and display data in a consistent format, this does not effect the validity of the data or the validity of the results, which can be verified by anyone else collecting the publically available data from the FCC's website.

Dr. Rose then explained that the commission should focus its line drawing on size of carrier, rather than in-region or out of region incumbency. For example, a carrier dominant in a smaller DMA could introduce genuine competition into a Top 25 DMA by partnering with a DE. It's transition from a regional carrier to one with a national footprint would introduce a new competitor in the national market, creating consumer surplus from the enhanced competition. As criteria for exclusion, Dr. Rose suggested

the Commission look at national subscriber size and whether the carrier's footprint covered the top 25 DMAs. Given the fact that 50% of the country's population live in the top 25 DMAs, and that these DMAs contain the bulk of high-value commercial and residential users most likely to subscribe to larger packages and additional services, a carrier with significant presence in the top 25 DMAs is unlikely to contribute significant competition in smaller DMAs by partnering with DEs where it could just as easily buy a license directly. Indeed, the record is devoid of any benefit of allowing such carriers to partner with DEs instead of requiring them to purchase licenses directly. Dr. Rose observed that the FCC has shown a striking ignorance of the extant auction literature which discusses the conflict between the empirical data on deployment and collusion as contrasted with theoretical assumptions embraced by the FCC in the mid-1990s when it first adopted auctions.

With regard to auction structure generally, Dr. Rose stated that his study supported the work of others that tacit collusion is used by incumbents to lower price at auction and exclude potentially disruptive rivals from entry. Dr. Rose cited to three empirical studies of FCC auctions describing this phenomenon: Peter Cramton and Jesse A Schwartz, "Collusive Bidding in the FCC Spectrum Auctions," *Contributions to Economic Analysis & Policy* 1:1 (2002); Richard Engelbrecht-Wiggans and Charles M. Kahn, "Low Revenue Equilibria in Simultaneous Auctions," Working Paper, University of Illinois, 1999; Sandro Brusco and Guiseppe Lopomo, "Collusion Via Signalling in Simultaneous Ascending Bid Auctions with Heterogeneous Objects, With and Without Complementarities," *Review of Economic Studies* 69:2 (2002), 407-436.

With regard to his own research, Dr. Rose identified two kinds of preemptive bids understood by auction participants as signals. A "Type I Preemptive Bid" in which a bidder immediately places a large bid on an item to signal its willingness to fight for it, and a "Type II Preemptive Bid" in which a bidder dramatically increases price from one round to the next to cut off further bidding.

Dr. Rose stated that, consistent with the work of Klemperer and others, blind bidding would reduce the ability to engage in such tacit signaling because concealing the identity of the bidder hides information on bidders past behavior, potential complementarities, and resource asymmetries (knowledge of such asymmetries are more likely to cause a new entrant or weaker player to "fold" rather than challenge a preemptive bid from a far superior rival). While anonymous bidding did not entirely remove the ability to signal, it would help. Dr. Rose added that it was essential that all information relating to the auction be disclosed *post* auction to allow detection of outright collusion.

When asked what other changes he would recommend, Dr. Rose stated that it was unclear to him that problems of collusion and resource asymmetry could ever entirely be resolved in auctions, particularly auctions for less valuable spectrum licenses. With

that caveat, Dr. Rose recommended two things consistent with Klemperer. First, that bidders receive no information other than whether their bid was or was not the highest bid in the round (“sealed auction”). Second the FCC must do a better job of evaluating the reserve price, and refusing to sell if the reserve is not met. In numerous auctions, bids were consistently below the reserve price.

Finally, Mr. Feld and Dr. Rose emphasized the importance of post-auction enforcement in preventing collusion, sham DEs, or other abuses of the system. As an initial matter, the Commission should recognize that any behavior conveying an advantage contrary to the intent of the rules will be copied in subsequent auctions and that, absent consequences for doing so, bidders will consistently “push the envelope” on permissible conduct. Furthermore, facts demonstrating a violation of the rules might not become apparent until after the auction. Mr. Feld observed the Commission is fully empowered to create law via adjudication and to require applicants to obey the intent as well as the letter of the FCC’s regulations. Such enforcement should be handled by the enforcement bureau, but there should be a clear process and expedited action on complaints.

In accordance with Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Uzoma Onyeije
Gary Michaels
Jim Schlichting
Leslie Marx