

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Commercial Spectrum)	
Enhancement Act and Modernization of the)	WT Docket No. 05-211
Commission's Competitive Bidding Rules and)	
Procedures)	
)	
Auction of Advanced Services)	AU Docket No. 06-33
Licenses Scheduled for June 29, 2006)	
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**WRITTEN EX PARTE STATEMENT OF DR. GREGORY ROSE
ON BEHALF OF NHMC, *ET AL.* IN OPPOSITION TO THE PROPOSED
"COMPROMISE" ON ANONYMOUS BIDDING**

There are significant difficulties with the auction transparency compromises suggested by Dr. Cramton and Dr. Weber which militate against either strategy or both used in concert reducing opportunities for tacit collusion by bidders in the AWS auction.

A. The Proposed Initial Eligibility Ratio of 2:1 Appears Insufficient To Ensure a Sufficiently Competitive Auction to Prevent Tacit Collusion.

Dr. Cramton suggests that the initial eligibility ratio be used such that in any auction in which the ratio is greater than or equal to 2:1 the current fully transparent bidding rule should be used, since an auction in which such a ratio obtains is likely to be strongly competitive and tacit collusion is less likely to be effective where competition is strong (Cramton 2006a). Dr. Cramton argues that "if secrecy is considered, it should only be considered in auctions where competition is weak" (Cramton 2006a). There are methodological questions about whether the initial eligibility ratio is sufficiently fine a measure to assure that a ratio of 2:1 or more guarantees strong competition, and whether

that ratio is simultaneously robust against manipulation by bidders.

While Dr. Cramton argues that the initial eligibility ratio of the PCS DEF Block auction at 1.68:1 was “much lower” (Cramton 2006a) than in the other PCS auctions which averaged circa 2:1, when the initial eligibility ratio is calculated for all simultaneous, ascending spectrum auctions which the FCC has conducted to date, the difference between the ratio in the PCS DEF Block auction and the mean ratio of the entire set of auctions is not statistically significant. Thus Dr. Cramton’s claim that the level of tacit collusion he measured in the PCS DEF Block auction (Cramton and Schwartz 2002) is avoidable in auctions with a ratio of 2:1 rests on a distinction without a statistical difference.

There is no statistically sound reason to conclude that the interval between 1.68:1 and 2:1 contains a magic threshold between weak and strong competition. The assumption appears to rest on the assumption that *any* auction stronger than the PCS DEF Block auction would prove sufficiently competitive to resist tacit collusion. While nothing in the record definitively disproves this hypothesis, nothing in the record supports the hypothesis either. In the absence of more research validating the specific benchmark ratio of 2:1, and in light of the statistical insignificance between the ratio in the PCS DEF Block auction and the proposed benchmark for strong competition, adoption of the initial eligibility ratio as proposed appears at best imprudent and at worst arbitrary.

B. The Initial Eligibility Ratio Is Not Robust Against Manipulation.

Furthermore, the initial eligibility ratio is not robust against manipulation by bidders. The record in regard to the designated entity rule, WB Docket No. 05-211, strongly suggests that some bidders have facilitated entry of other bidders who were little more than pawns to allow major bidders to reap the benefits of what was an anti-discriminatory

measure to reduce the effects of prior discrimination against minorities and women without actually reducing those effects. Since the initial eligibility ratio assumes that bidders sincerely make up front payments to obtain the opportunity to compete, a strategy by major bidders of inducing additional entrants to make such payments with the understanding that the major bidder will have some degree of control over how these new entrants will bid would artificially inflate the initial eligibility ratio while diminishing actual competition in the auction.

On the basis of the FCC's experience with designated entities there is no reason to believe that Dr. Cramton's benchmark initial eligibility ratio greater than or equal to 2:1 will not be gamed by some bidders in this fashion. Further, because the apparent difference between sufficient competition and insufficient competition rests on such a modest difference in the ratio, it would take only the introduction of a few "dummy bidders" to produce an illusion of competition in the auction where none exists.

C. Use of the Initial Eligibility Ratio Does Not Remedy the Flaws In the "Snapshot" Proposal.

Dr. Weber's "snapshot" proposal is also flawed (Weber 2006). As Dr. Cramton notes, "[a] problem with the snapshot approach is that it creates an incentive to slow the auction and distort the bidding, since bidders will tend to do all their serious bidding in the round before the snapshot" (Cramton 2006b). There is no reason to believe that the proposal to randomize the snapshots will not simply displace serious bidding to the round immediately succeeding the snapshot while still slowing the auction and distorting the bidding.

Dr. Cramton's suggestion that the probability of a snapshot be tied to the initial

eligibility ratio of the auction does not resolve these problems. To the contrary, it merely introduces the problems with the initial eligibility ratio identified above to Dr. Weber's "snapshot" proposal, and adds a further level of complexity without significantly impeding tacit collusion.

D. Absent Collusion, Open Bidding Does Not Provide Knowledge of the Final Winner of Adjacent Licenses That Smaller Bidders Claim to Require.

The arguments advanced by supporters of the current rules and of the proposed compromise, that transparent bidding reduces uncertainty about the technological profile of bidders for licenses in the same and adjacent geographic markets, is patently fallacious. Absent the very collusion bidders deny, knowledge of the current leading bidder on a license in any round of an auction *is not* knowledge of which bidder will eventually prevail in the auction. The entire point of a competitive, multi-round auction is to permit bidders to compete for licenses until the bidder that places the highest value on the license wins the auction.

To argue that some bidders will evaluate their willingness to bid on a license based on who bids on neighboring licenses, as defenders of transparent bidding repeatedly have argued, amounts to a virtual confession any reasonably informed bidder familiar with the auction process can anticipate the distribution of licenses based on the bids made. *This is the very definition of tacit collusion.* If the FCC wishes to promote such "efficient" outcomes, it would be better served by eliminating the expense of auctions entirely and simply allow the incumbents to divide the licenses themselves.

There is no reason to believe that current wireless technology is locked in by a successful bid; even less so does knowledge of the current leading bidder on a license in

any round of an auction specify who the eventually prevailing bidder will be. The substantial lag-time between acquisition at auction and actual deployment by the prevailing bidder, and the considerable speed at which wireless technology has evolved in the last decade, render decisions based on current technologies unreliable at best. If bidders are basing their business models and determining their bidding strategies on the assumption that the current high bidder in any round for any license determines what technology will eventually be deployed in that geographic region, then they are fools and transparent bidding will not repair the consequences of their foolishness.

CONCLUSION

It is difficult to escape the conclusion that there is something very powerfully motivating both major bidders and some small bidders which none of these proposed alternatives to anonymous bidding in the AWS auction make explicit. The *ex parte* submission of the U.S. Department of Justice (U.S. Dept. of Justice 2006) in this proceeding makes clear what these proposed “compromises” obscure:

If bidders have avoided challenging their largest competitors as part of a tacit agreement to allocate licenses, denying them the information about which bidders to avoid would make such an arrangement less likely. As a result, there would be more competition from a larger number of bidders seeking any particular license. Without bidder identities, smaller bidders might also have a lower cost of participating because their bids would not necessarily be targeted before other similarly situated blocks of spectrum. (U.S. Dept. of Justice 2006)

Anonymous bidding will effectively end the ability of both major and smaller bidders to tacitly collude. In the case of the major bidders, it prevents them from allocating licenses among themselves. In the case of smaller bidders, anonymous bidding helps them avoid punitive reactions by major bidders to their entry into various markets from which the major

bidders would prefer to exclude them, while depriving them of the ability to avoid bidding against major bidders.

It is precisely the fact that anonymous bidding would eliminate such collusive opportunities which underlies the ways in which bidders are so vehemently attempting schemes which would permit some degree of tacit collusion to persist. Transparent bidding is a necessary condition for the success of tacit collusion. The FCC's proposed anonymous bidding rule is the best available strategy for eliminating tacit collusion in spectrum auctions.

References

Cramton 2006a. Peter Cramton, Ex parte on behalf of T-Mobile in AU Docket 06-30, March 3, 2006.

Cramton 2006b. Peter Cramton, Ex parte email in AU Docket 06-30, March 30, 2006.

U.S. Dept. of Justice 2006. U.S. Department of Justice, Ex parte submission in AU Docket 06-30, March 22, 2006.

Weber 2006. Ex parte of Robert J. Weber on behalf of U.S. Cellular Corporation in AU Docket 06-30, March 17, 2006.

CERTIFICATION

I, Dr. Gregory Rose, hereby declare under penalty of perjury that to the best of my knowledge and belief the above is true and correct.

/s/ _____
Dr. Gregory Rose
April 5, 2006