

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of)	
)	
Service Rules for the 698-746, 747-762, and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures)	WT Docket No. 05-211
)	
Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through 2010)	WT Docket No. 96-86
)	

**PETITION FOR RECONSIDERATION
OF
THE *AD HOC* PUBLIC INTEREST
SPECTRUM COALITION**

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SUMMARY

The *Ad Hoc* Public Interest Spectrum Coalition (PISC) continues to believe that the Commission should have adopted a mandatory wholesale requirement for the C Block. PISC does not seek reconsideration of that decision here, however, as the Commission's decision to adopt the "device open access" condition serves the public interest (albeit not nearly as well as mandatory wholesale).

Nevertheless, other issues in the *2nd R&O* do require reconsideration by the Commission. First, although the Commission rejected PISC's request for spectrum caps or other procompetitive limits designed to maximize the number of new entrants, *Id.* at ¶¶256-59, the Commission should reconsider this decision. In particular, PISC requests the Commission reconsider this decision with regard to the D Block and C Block licenses. To maximize the potential for new regional or national competitors, the Commission should adopt an "either/or" rule that would require a bidder that wins both the D block and any C Block licenses to choose between the D block and C Block licenses. In other words, the holder of the D Block license would be prohibited from winning any C Block licenses in the auction.¹

Second, the Commission should clarify that although it chose – for whatever reason -- to analyze Verizon's potential First Amendment claim under the "intermediate scrutiny" standard, *2nd R&O* at ¶¶218-19, the correct standard for analysis remains the "rational basis" standard set forth in *NBC v. United States*, 319

¹The D Block licensee could acquire C Block licenses after the auction, subject to Commission review of the transfer pursuant to Section 310(d).

U.S. 190 (1943). Given Verizon's pending judicial challenge stating its intent to raise First Amendment issues, the Commission would do well to clarify this point.

Third, PISC sought a Declaratory Ruling from the Commission clarifying that an explicit conspiracy to block a bidder constituted a violation of the anti-collusion rules. *Comments of Ad Hoc Public Interest Spectrum Coalition*, WT Docket No. 06-150 (filed May 23, 2007) at 31 ("PISC Comments"). The *2nd R&O* instead clarifies that all participants have a responsibility to voluntarily disclose any communications that would appear to violate the anti-collusion rules. *2nd R&O* at ¶¶285-86. Oddly, while this would appear intended to respond to PISC's request for a Declaratory Ruling, it neither addresses the issue raised by PISC nor actually references PISC's explicit request. Accordingly, PISC asks again that the Commission provide clarification that a conspiracy to block a bidder violates the anti-collusion rules.

Finally, in footnotes 644 and 645, the Commission makes several erroneous statements and demonstrates fundamental misunderstandings with regard to the analysis of the AWS-1 Auction prepared by Dr. Gregory Rose (the "Rose Report") and PISC's arguments with regard to the nature of the AWS-1 argument. Even if these criticisms were correct, they are unnecessary in light of the Order's conclusion to adopt anonymous bidding. Accordingly, PISC requests that the Commission vacate footnotes 644, 645, and 655.

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**PETITION FOR RECONSIDERATION
OF
THE *AD HOC* PUBLIC INTEREST SPECTRUM COALITION**

Media Access Project, on behalf of the *Ad Hoc* Public Interest Spectrum Coalition (PISC),² files this *Petition for Reconsideration* of the Commission's *Second Report and Order*, 22 FCCRcd 15289 (2007) ("*2nd R&O*").

ARGUMENT

I. THE COMMISSION SHOULD PROHIBIT THE WINNER OF THE D BLOCK FROM HOLDING C BLOCK LICENSES.

The Commission declined to adopt any eligibility restrictions. *2nd R&O* at

²PISC consists of, in alphabetical order, The CUWiN Foundation (CUWIN), Consumer Federation of America (CFA), Consumers Union (CU), EDUCAUSE, Free Press (FP), Media Access Project (MAP), the National Hispanic Media Coalition (NHMC), the New America Foundation (NAF), Public Knowledge (PK), and U.S. PIRG.

¶¶256-259. The Commission’s finding that the broadband market is sufficiently competitive and that it will auction sufficient licenses to make foreclosure impossible are highly suspect. As an initial matter, the *2nd R&O* fails to discuss the possibility of a spectrum cap. Further, while identifying the relevant market as broadband services, ¶256, the Commission makes no mention of the fact that 96% of residential broadband subscribers use either cable or DSL. Rather, the *2nd R&O* merely recites once again the list of potential broadband competitors without any attempt to analyze their availability, substitutability, and – perhaps most arbitrary in this context – comparability to the potential broadband mobile services it is anticipated licensees will provide through this spectrum.

Despite these flaws in the analysis presented in the *2nd R&O*, PISC limits its reconsideration request on this issue to the question of a spectrum cap. As an initial matter, PISC notes that the *2nd R&O* utterly failed to address any of the arguments raised in support of spectrum caps, instead choosing to address the issue of “eligibility restrictions” in only the most general terms.

Spectrum caps are different from general eligibility requirements, in that they allow the Commission to tailor restrictions on a regional basis, facilitate participation by incumbents with spectrum needs, and insure that sufficient spectrum remains available for other competitors to prevent foreclosure. Recent mergers requiring divestiture of spectrum illustrates that although the Commission may consider CMRS generally competitive on a national basis, it maintains a consistent policy of ensuring that sufficient spectrum remains available for competing providers. *See In re*

Applications of Nextel Communications and Sprint Corporation, 20 FCCRcd 13967 (2005) (describing framework for analysis, including need for market-by-market analysis of wireless services). *See also In re AT&T Inc. And BellSouth Corp.*, 22 FCCRcd 5662, 5752 (2007) (recognizing potential danger of allowing a single entity to acquire a “too big footprint” regionally or nationally). Thus, a general finding of competitiveness based on general national trends does nothing to address the reasons advanced by PISC for provision of a spectrum cap. Nor does such a finding address the command of Section 309(j)(3)(B) that the auction of licenses “promote competition” by “avoiding excessive concentration of licenses.” 47 U.S.C. §309(j)(3)(B).

At the least, PISC requests that the Commission adopt a rule prohibiting the winner of the D Block from holding any C Block licenses. Under this “either/or” rule, a bidder could bid on both the D Block license and the C Block licenses. If, after the auction, the bidder has both the high bid for the D Block license and for one or more C Block licenses, the bidder would be required to choose whether to take the D Block license or the C Block license(s). The Commission has employed this sort of limit in the past to balance the benefits of broad participation with the need to encourage new entry. *See In Re Revision of Rules and Policies for the Direct Broadcasting Satellite Service*, 11 FCCRcd 9712 at 9726-39 (1996) (permitting DBS incumbents to bid for orbital spots, but requiring that successful bidders must surrender previously obtained license).

The Commission apportioned the C Block in REAGs and permitted package bidding on the C Block for the express purpose of facilitating the entry of a new broadband provider. *2nd R&O* at ¶¶74, 81, 296. The D Block provides a national

license. To permit a single entity to hold both the D Block and C Block licenses significantly reduces the likelihood that a new national competitor will emerge from the auction. Even without the enhanced possibility of creating a new national competitor, an entity holding both the D Block license and any C Block license would have an enormous spectrum capacity advantage over its rivals. It therefore serves the public interest, and the express direction of Section 309(j)(3)(B) to use auctions to foster competition by preventing excessive concentration of licenses, to adopt the “either/or” rule proposed by PISC.

PISC anticipates that parties opposed to any spectrum cap, even to one as basic as the proposed either/or rule, will argue that Commission findings in the *2nd R&O* and elsewhere that the CMRS market is “competitive” prevents the Commission from adopting such a rule. The express language of Section 309(j)(3)(B), however, refutes this argument. Section 309(j)(3)(B) requires the Commission to prophylactically “*promote* competition” by “*avoiding* excessive concentration of licenses.” (Emphasis added.) In other words, even if the Commission concludes that the current market is sufficiently competitive, it should still adopt a limit on the licenses a single entity may hold if it finds that limit necessary to avoid creating excessive concentration in the future.

An entity that controlled both the D Block and a C Block license would have potential access to more than 40 MHz of 700 MHz in whatever wide geographic areas its licenses overlapped. Given the unique characteristics of the 700 MHz spectrum, this overwhelming advantage in capacity would surely constitute an “excessive

concentration of licenses.” Only by adopting the either/or rule proposed here can the Commission avoid this excessive concentration and thus promote competition, as required by Congress in Section 309(j)(3)(B).

II. THE COMMISSION SHOULD CLARIFY THAT “INTERMEDIATE SCRUTINY” DOES NOT APPLY TO VERIZON’S FIRST AMENDMENT CLAIM.

For reasons known only to the Commission, the *2nd R&O* fails to cite any of the obvious and highly relevant case law that directly refutes Verizon’s First Amendment argument. While PISC certainly agrees with the Commission that “providing consumers with greater choice in the devices and applications they may use to communicate” promotes the First Amendment values of expressive freedom, ¶217, and that Verizon fails to raise any cognizable First Amendment claim, *id.*, the *2nd R&O* inexplicably fails to cite the more than 70 years of consistent Supreme Court precedent finding that no First Amendment right exists in the grant of a license. *Fed. Radio Comm’n v. Nelson Bros*, 289 U.S. 266, 285-86 (1933). Instead, in what can only be called a superabundance of caution, the *2nd R&O* elects to analyze Verizon’s First Amendment claim (assuming one exists) under intermediate scrutiny. *2nd R&O* ¶218.

Especially in light of Verizon’s recent filing of a *Petition for Review* in the U.S. Court of Appeals for the District of Columbia Circuit, the Commission should clarify that the proper framework for Verizon’s First Amendment claim remains the “rational basis” flowing from the “scarcity rationale” adopted by the Supreme Court in *NBC v. U.S.*. As the Court explained:

Freedom of utterance is abridged to many who wish to use the limited

facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it must be denied....The right of free speech does not include, however, the right to use the facilities of radio without a license. The licensing system established by Congress in the Communications Act of 1934 was a proper exercise of its power over commerce. The standard it provided for the licensing of stations was the ‘public interest, convenience, or necessity.’ Denial of a station license on that ground, if valid under the Act, is not a denial of free speech.

NBC v. U.S., 319 U.S. at 226-27.

In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969), the Supreme Court expressed itself in even more forceful terms. Declaring that “[w]here there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish,” the *Red Lion* Court explicitly rejected the First Amendment argument raised by Verizon. In language directly relevant here, the Court found:

By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. ***There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others*** and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.

Id., at 389 (emphasis added). A few pages later, the Court again emphasized the power of Congress (and the Commission) to require a licensee to share the spectrum licensed to it with others:

Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of 200,000,000, the Government could surely have decreed that each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week. The ruling and regulations at issue here do not go quite so far.

Id., at 391. Similarly, the regulation here does not go “quite so far” as requiring the C Block licensee to share its spectrum on a wholesale basis with “all or some of those who wish to use it,” and therefore certainly passes muster under *Red Lion*.

Indeed, existing case law makes clear that the Commission could have ordered existing licensees accept the C Block conditions. *See FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (Commission may require existing licensees to divest newspaper-broadcast cross ownerships not grandfathered); *Time Warner Entertainment Co., L.P., v. FCC*, 96 F.3d 957 (D.C. Cir. 1996) (Congress may impose new obligation to set aside capacity for independent non-commercial programmers). As long as the Commission retains the power to issue exclusive licenses based on the scarcity rationale, rational basis will remain the appropriate level of scrutiny. *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 401-402 (3rd Cir. 2004) (persistence of physical scarcity makes rational basis the appropriate level of review).

The Commission’s determination that it will only grant licenses on the conditions outlined falls squarely within this line of cases. The Commission should clarify that, despite the use of intermediate scrutiny analysis in the 2nd R&O, the

appropriate framework remains the “scarcity rationale” and the “rational basis” standard of *NBC v. US* and *Red Lion*.

III. THE COMMISSION SHOULD VACATE THE FOOTNOTES CRITICAL OF THE ROSE REPORT.

As an initial matter, PISC observe that, given the Commission’s determination to adopt anonymous bidding, the decision to address the merits of the Rose Report in this fashion is both unnecessary and unusual in the extreme. This alone would warrant vacating the footnotes at issue. Further, the analysis of the Rose Report contained in footnotes 644 and 645 contain several patently false claims about both the Rose study and the Cramton and Schwartz studies that warrant vacation of the footnotes even if the Commission determines that it need not rely on the Rose Report to reach its conclusions in support of anonymous bidding.

Footnote 644 asserts that since Cramton and Schwartz in their 1999 paper used code bidding as a means of identifying some retaliatory bids, and the AWS auction did not permit code bidding, that the use of the Cramton and Schwartz methodology was invalid for analyzing the AWS auction. This demonstrates a fundamental misunderstanding of the methodology employed by Cramton and Schwartz. *See* Peter Cramton and Jesse A. Schwartz, "Collusive Bidding: Lessons from the FCC Spectrum Auctions," *Journal of Regulatory Economics* 17 (2000). Cramton and Schwartz, relying on their 1999 study, explain their methodology as follows:

We [Cramton & Schwartz] begin by reviewing the evidence from Cramton and Schwartz (1999), hereafter CS.

CS find that **bidders attempted to use code bids to win 23 licenses**, but for only 12

licenses were these code bids successful. The definition of success is that the code bidder placed the winning bid on the license within five rounds of the latest code bid. Usually, as is the case with the USWest example above, code bids were used repeatedly to win a single license. Code bids were used as punishments, and sometimes code bids were used to signal which markets were being or would be punished should the rival not cease its competition. **CS identify over 90 bids ending in market numbers that were part of a code bidding strategy.**

CS find that over 50 bids were retaliating bids that did not use trailing digits. These retaliating bids were used in attempts to win 14 licenses, and were successful 7 times, meaning that the retaliator placed the winning bid on the contested market within five rounds of its retaliation. Using both econometric methods and simple assumptions, 10 CS estimate that the FCC lost between \$6 million and \$14 million in the contested markets due to code bidding and retaliation, **with a majority of the loss coming from retaliations that did not use code bids.**

Cramton & Schwartz (2000)³ (emphasis added). As both the methodological description in the 1999 paper and Cramton and Schwartz's own retrospective analysis in 2000 reveal, the Cramton and Schwartz methodology did not primarily depend on identifying code bids, was reliable for identifying retaliatory bids which did not involve code bidding, and retaliatory bids which did not involve code bidding accounted for the majority of loss in the PCS auction.

The further assertion in footnote 644 that “unlike the Cramton and Schwartz study, Rose does not control for alternative hypotheses before making conclusions about the effects of retaliatory bidding on the auction outcome” is also patently false. The Rose study

³Available at:
<http://www.cramton.umd.edu/papers2000-2004/00jre-collusive-bidding-lessons.pdf>

describes at great length how exactly the same methodology as Cramton and Schwartz, including controls for alternative hypotheses, was used. See PISC May 23 Comments Appendix B at 7-8. Given Rose's lengthy discussion of the methodology, including a description of precisely how Rose did indeed control for alternative hypotheses, the assertion is exceedingly puzzling.

Also of note, the Rose study did not, as footnote 644 claims, assert that retaliatory bidding was a strategy solely adopted by incumbents. The footnote appears to conflate Appendix B, where the presence of retaliatory bidding was established and its effects evaluated regardless of whether the retaliation was by incumbents or non-incumbents, with Appendix C, where evidence was presented that incumbents used a strategy of blocking bidding to exclude non-incumbents. Both incumbents and non-incumbents used retaliatory bidding, and inefficiencies were introduced into the auction by retaliatory bidding regardless of whether by incumbent or non-incumbent bidders.

Footnote 644 also draws a false and misleading inference in claiming that "Rose finds no instances of retaliatory bidding in the REAG block, which appears to be inconsistent with claims in the study that incumbents directed their efforts at denying a national footprint to Wireless DBS, which bid primarily in the REAG blocks." Again, this error flows from mistakenly conflating the report on retaliatory bidding in Appendix B with the report on blocking in Appendix C. Retaliatory bidding and blocking bidding are two different strategies with two entirely different objectives. This is, of course, one reason why Dr. Rose conducted two separate reports employing different methodologies – *i.e.*, precisely to avoid the confusion evidenced in footnote 644.

To clarify, retaliatory bidding aims at warning a competitor off of bidding on a specific license especially prized by the retaliator. Blocking bidding aims at preventing a bidder from acquiring any licenses in a specific block or region. This difference explains the absence of *retaliatory* bidding (designed to divert a bidder from a license sought by the retaliator to an alternative) in the REAGS by incumbents seeking to *block* potentially disruptive new entrants from acquiring licenses altogether. Given that incumbents sought to deny national footprint to Wireless DBS by systematically blocking in the REAG licenses, one would not expect to see an incumbent retaliatory bidding strategy there.

Additionally, the claimed inability to determine whether the challenge rates cited in the Rose study are meaningful because of an inability to determine how those rates were calculated ignores the explicit description of the methodology provided by Dr. Rose in the text of the Blocking Report. For Table 1 “Rate of Challenge by Incumbents in Standard Deviations from the Mean of Each Incumbent” Dr. Rose provided the following description of the calculation methodology:

A major incumbent was defined as a bidder owned by firm(s) with significant, pre-existing, national or near-national broadband deployment, whether wireless or landline. A targeted new entrant was defined as an entrant which bid on ten or more licenses and which was challenged by two or more incumbents at a rate at least two standard deviations higher than the mean rate at which each incumbent challenged all bidders. A challenged incumbent was defined as an incumbent which was challenged by two or more incumbents at a rate at least two standard deviations higher than the mean rate at which each incumbent challenged all bidders.

PISC May 23 Comments, Appendix C at 7-8. (2) As the title of the table suggests, for each bidder a bid against that bidder on a license was counted as a challenge. The number of such bids for each bidder by each incumbent was tallied and then standardized

using the mean and standard deviation of each incumbent. For Table 3, “Rate of Challenge by Targeted New Entrants in Standard Deviations from the Mean of Each Targeted New Entrant,” the same definitions were used and the same procedure was employed, only substituting the mean and standard deviation of each targeted new entrant for that of each incumbent in calculating the standardization.

Furthermore, precisely to avoid attributing significance to idiosyncratic challenge phenomena of the sort cited by footnote 644 regarding Command Connect, LLC or NTELOS, challenge rates at least two standard deviations higher than the mean of the incumbent were required from at least three incumbents before a targeted new entrant was identified. *See* Appendix C at 6-7 (defining “targeted new entrant”). The identifications of targeted new entrants therefore could not be an artifact of idiosyncratic distribution, but rather well-established patterns involving at least three of eight major incumbents. To pretend that this analysis was either so unclear that it rendered the Rose Report worthless, or that use of standard tools of statistical analysis to eliminate outlier phenomena (such as the bids cited in Note 644) disregards normative methodological praxis. But to the extent such explanation has proven necessary, the Commission now has the explanation before it and should vacate the footnotes on Reconsideration.

Finally, footnote 644 dismisses the entire study of blocking behavior submitted in Appendix C without even mentioning the detailed round-by-round analysis which directly established the existence of a collusive incumbent strategy to exclude Wireless DBS from acquiring any spectrum in the AWS auction. It is astounding that, after so much attention spent on flyspecking the analysis for supposed flaws, the footnote cavalierly passes over

the round-by-round analysis that forms the central (and unrefuted) proof for the argument that incumbents collectively used the open nature of the auction to block targeted new entrants from acquiring national footprints.

Footnote 645 asserts a misunderstanding of how the pre-auction application process worked in the AWS auction. The Rose study did not misunderstand this process in the least. The Rose study pointed out that there were bidders who qualified and made up-front payments who either then did not bid or bid only in a one round and acquired no licenses and recommended FCC investigation of whether these bidders were dummies intended merely to drive up the ratio to prevent anonymous bidding rules from coming into effect in the AWS auction. PISC further observed that, because bidders had the opportunity to correct deficient applications, incumbents could limit the number of “sham” bidders by submitting numerous deficient applications and correcting only a sufficient number to meet the needed ratio. *Compare* “Public Notice, Auction of Advanced Wireless Services Licenses,”²¹ FCCRcd 7231 (2006) (252 short form applications received, 171 incomplete), *with* “Public Notice, Auction of Advanced Wireless Services Licenses,” 21 FCCRcd 8585 (2006) (168 total qualified bidders, yielding a modified eligibility ratio of 3.04).

Regardless of whether incumbents took advantage of this opportunity, the possible “gaming” of the system involved bidders who made up-front payments and then failed to participate significantly in the auction: it was their up-front payments summed with those of putative genuine bidders which achieved the required ratio. Footnote 645 appears premised on the assumption that an incumbent willing to introduce sham bidders would be unwilling to forgo the upfront payments. While perhaps the Commission is correct in this

assumption, it does not change two essential facts at issue here. The first is that just enough bidders and their upfronts qualified to require an open auction. The second is that an unusual number of these bidders did not bid, or made one non-winning bid and did not bid again. While such coincidences do happen, it does not seem unreasonable to ask that the Commission take note of it and consider possible alternate explanations.

It is clear that the footnotes challenging the validity of the Rose Reports are based on an astounding number of false premises, misunderstandings, and what can almost be described as an arbitrary obstinance to even consider that retaliatory bidding and blocking took place in the AWS-1 auction. Indeed, it is telling that not a single party opposing anonymous bidding produced a professional economist willing to rebut either of the Rose Reports, choosing instead to rely on assertions that the Rose Reports did not amount to proof of a conspiracy. As PISC noted, however, it does not matter whether bidders engaged in a planned and deliberate conspiracy to block new entrants, or whether bidders acted pursuant to decisions based on individual analyses and unique decisions by each bidder on how to maximize the most positive outcome. Rather, as demonstrated by the Rose Reports, the open nature of the auction facilitated behavior in the AWS-1 auction that introduced inefficiencies and made blocking possible – and these phenomena did in fact occur.

Whether or not the Commission wishes to endorse the conclusions drawn by Dr. Rose and PISC, it is manifest that footnotes 644 and 645 (and thus footnote 655, which relies upon these two footnotes) are inaccurate and arbitrary and, on reconsideration, should be vacated.

IV. THE COMMISSION SHOULD DECLARE THAT A CONSPIRACY TO BLOCK BIDDERS VIOLATES THE ANTI-COLLUSION RULES.

In part as a response to the Rose Reports, PISC examined the Commission's anti-collusion rules and determined that it remains ambiguous whether a conspiracy to block a bidder from winning any licenses, rather than a conspiracy to distribute licenses or set the price for licenses, violates existing anticollusion rules. Whether or not one agrees that the Rose Reports provide evidence that such a conspiracy existed in the AWS-1 Auction, it would serve the public interest for the Commission to remove any doubt with regard to the prohibited nature of such collusion. Accordingly, PISC asked in its May 23 comments that the Commission clarify this point. PISC May 23 Comments at 31.

The *2nd R&O* does not, in fact address this request at all. Instead, the *2nd R&O* clarified "the obligation that applicants in Commission auctions have to report any communications of bids or bidding strategies" prohibited by the rules. *2nd R&O* at ¶¶285-86. While a useful clarification, this does not address the issue PISC raised.

PISC therefore once again asks the Commission to state explicitly that a conspiracy between two or more bidders to work together to block any third bidder or class of bidders from winning licenses constitutes a violation of Rule 1.2105(c). The Commission should clarify that the phrase "prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies," includes strategies designed to block specifically

identified bidders or classes of bidders. Although a fair reading of the language would allow the Commission to enforce the rule against bidders in a pact or agreement to block other bidders, the Commission should prevent any possibility of collusion in the belief that a pact or conspiracy to block, rather than to acquire or distribute licenses, violates the rule.

To the extent any argument is necessary, a conspiracy among bidders to block potential rivals – even if they plan to bid aggressively against one another – thwarts the goals of Congress in distributing licenses via auction. Congress intended that auctions should maximize competition and further the distribution of licenses among competing entities. *See* Section 309(j)(3)(B). To allow bidders to work together to exclude others, even if the excluding bidders then distribute the licenses via aggressive bidding among themselves, prevents the competition that Congress intended to foster. As all opponents of anonymous bidding have denied that any such conspiracy has now or ever will take place, it can raise no objection for the Commission to clarify that such a practice would violate the Commission's rules.

CONCLUSION

WHEREFORE, for the reasons given above, PISC ask that the Commission, on reconsideration, grant the modifications and clarifications of the *2nd Report and Order* requested above.

Respectfully submitted,

_____/s/_____

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