

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

ORIGINAL

FILED/ACCEPTED

MAY 29 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)
Auction of Broadband Radio Service) AU Docket 09-56
Licenses (Auction 86)

REPLY COMMENTS OF AD HOC BRS APPLICANTS ASSOCIATION

The Ad Hoc BRS Applicants Association (Ad Hoc Applicants) hereby offer these brief reply comments to the earlier comments submitted in this proceeding. First WCAI submitted comments pointing out the same problem with the proposed minimum bids as Ad Hoc Applicants had identified: the minimums fail to adequately account for the heavy encumbrances on the spectrum to be auctioned. Effectively, the Commission is proposing to auction off spectrum which it doesn't have by basing the minimum on gross MHz/pops rather than the actual MHz/pops that are available to the auction buyer. This is somewhat like auctioning off a car, but in the fine print noting that the buyer of the car is only entitled to the tires. This is, at best, misleading and, at worst, downright deceptive in a way that would never be tolerated in an auction by a private dealer. In the car context, an honest approach would be to straightforwardly offer only the tires on the car at the auction – that way the prospective buyer knows exactly what he's bidding on and what he's getting if he wins. In the BRS context, the honest approach would be to calculate the actual unencumbered MHz and pops in each BTA and base the minimums on that number.

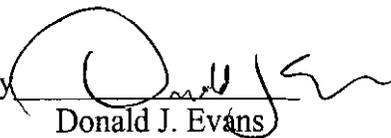
Ad Hoc Applicants have looked at the proposal by WCAI to deal with the problem by reducing the cents per MHz/pops where the BTAs are heavily or substantially encumbered. This approach goes part of the way toward rectifying the problem but leaves a great many markets

untouched because they are less than 50% encumbered. Even in a market that is only 25% or 30% encumbered, the failure to account for the encumbrances skews the minimums significantly by failing to comport with reality. It is simply inaccurate and misleading to base a minimum bid price on gross MHz/pops in a BTA when the gross MHz/pops are not available are not what are being offered.

Another commenter urges the Commission to clarify that the May, 2011 build-out deadline does not apply to these licenses. Ad Hoc Applicants certainly agree with this principle, but we had assumed that these licenses, when issued, would be new licenses with new 10 year terms and new ten year substantial service deadlines. That is the way the Commission has dealt with other licenses which have been re-claimed and auctioned anew. Indeed, it would make no sense to hold a new licensee of a new license to an impending substantial service deadline that was intended to apply to long-standing licenses which had been warehoused for many years. The licenses issued here should be issued free and clear of the encumbrances which were generated by problems which plagued this service in the past.

Respectfully submitted,

Ad Hoc BRS Applicants Association

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