



PUBLIC NOTICE

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DA 96-1460
August 28, 1996

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders

The Wireless Telecommunications Bureau has received numerous inquiries concerning the impact of the Commission's anti-collusion Rules upon business contacts between current broadband PCS licensees and auction winners and eligible participants in the ongoing broadband PCS D, E and F Block auction. Specifically, these questions concern negotiations by bidders for management, resale, roaming, interconnection, partitioning or disaggregation,¹ and other, similar agreements with other bidders. This Public Notice provides guidance on these business negotiations in the context of our anti-collusion Rules.

The Commission's anti-collusion Rules, 47 C.F.R. § 1.2105(c), are intended to enhance and ensure the competitiveness of both the auction process and the post-auction market structure. Once an applicant has filed a short-form application to participate in an auction (FCC Form 175), that applicant becomes subject to specific limitations affecting business discussions and agreements with respect to all geographic license areas for which it intends to bid. Specifically, after the short-form filing deadline, applicants may not discuss the substance of their bids or bidding strategies with other bidders that have applied to bid in the same geographic license areas, with the exception of those with whom they have entered into agreements and identified on the short-form application.² This prohibition also prevents the transfer of indirect information which affects, or could affect, bids or bidding strategy.³

¹ See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, FCC 96-287, *Notice of Proposed Rule Making* (Released July 15, 1996).

² 47 C.F.R. § 1.2105(c); *Fourth Memorandum Opinion and Order* in PP Docket No. 93-253, 9 FCC Rcd 6858, 6868 (1994); *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348, 2387 (1994).

³ *Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division* (released December 1, 1994). For further explanation of the basic application of the Commission's anti-collusion rules in the auction context, the Bureau refers interested parties to the *Public Notice*, "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," DA 95-2244 (released October 26, 1995) and the *Order* in MM Docket No. 94-131 and PP Docket No. 93-253, DA 95-2292 (released November 3, 1995).

Auction participants are reminded, however, that Section 1.2105(c) may affect the way in which they conduct their routine business during the auction. The anti-collusion Rule may place significant limitations upon an auction participant's ability to pursue business opportunities involving services in the geographic areas for which it has applied to bid for licenses. For example, management, resale, roaming, interconnection, partitioning and disaggregation agreement negotiations may all raise impermissible subject matter for discussion by applicants for the same geographic service areas during the auction. In particular, where an auction participant's continuing contact with other licensees or license applicants, who are also bidders for the same geographic license area in an upcoming auction, implicates issues such as pricing and bidding strategy, the participants risk violating Section 1.2105(c).

Consequently, auction applicants who have applied for licenses in the same geographic areas, and who are also licensees or applicants for licenses in the same or competing services, must affirmatively avoid all discussions with each other which affect, or in their reasonable assessment, have the potential to affect their bidding or bidding strategy.

The Bureau provides the following two examples to illustrate this standard:⁴

Example 1

X Corp was a successful bidder in the broadband PCS A and B Block auction, and currently holds a license to provide service in the Los Angeles-San Diego MTA. Y Corp was a successful bidder in the PCS C Block auction, and is a license applicant to provide service in the San Diego BTA. X Corp and Y Corp recently submitted short-form applications (FCC Form 175), which indicate their interest in bidding on all markets in the PCS D, E and F Block auction. After their submission of their short-form applications, X Corp and Y Corp begin preliminary negotiations concerning a possible resale agreement of air time in Los Angeles. As a result of these negotiations, Y Corp concludes that pursuing a resale agreement with X Corp is a more economical alternative, and decides not to bid for a license in the Los Angeles BTA. X Corp is privy to this decision due to the negotiations between the two companies.

Under the Commission's anti-collusion Rules, since these events occur between the submission of short-form applications and the deposit of the down payment on the winning bid, and involve the discussion and disclosure of bidding strategies, X Corp and Y Corp risk violation of Section 1.2105(c). To ensure full compliance with Section 1.2105(c), X Corp and Y Corp, including their officers, directors, and shareholders of an

⁴ The Bureau emphasizes that these examples are for purposes of illustration only. They are not based upon any actual event or occurrence, and are not intended to be all inclusive.

interest of 5 percent or greater, must affirmatively avoid all discussion with each other of this nature which affects, or in their reasonable assessment, has the potential to affect their bidding or bidding strategy.

Example 2

A Corp is a cellular operator providing service to an MSA in the state of Florida. It has applied to bid on all D and E block licenses serving the state in the upcoming PCS D, E and F Block auction. B Corp is an entrepreneur with no CMRS licenses. It has applied to bid in the upcoming auction on all licenses in Florida, including a BTA which overlaps A Corp's cellular MSA. After the short-form filing deadline, B Corp approaches A Corp to discuss a possible management agreement which would allow A Corp to manage its business in the overlapping BTA should B Corp win the corresponding license. Neither A Corp nor B Corp disclosed the existence of any agreement in their short-form applications for the upcoming auction. As a result of these negotiations, A Corp develops a bidding strategy based upon its conclusion that managing B Corp's business will be more profitable than owning the license outright. As the auction approaches, it plans not to bid any higher than B Corp for so long as B Corp has the high bid on any license overlapping its MSA. B Corp is privy to this strategy due to the negotiations between the two companies.

Under the Commission's anti-collusion Rules, since these events occur between the submission of short-form applications and the deposit of the down payment on the winning bid, and involve the discussion and disclosure of bidding strategies, A Corp and B Corp risk violation of Section 1.2105(c). To ensure full compliance with Section 1.2105(c), A Corp and B Corp, including their officers, directors, and shareholders of an interest of 5 percent or greater, must affirmatively avoid all discussion with each other of this nature which affects, or in their reasonable assessment, has the potential to affect their bidding or bidding strategy.

To the extent the Commission becomes aware of specific allegations that an auction participant has violated Section 1.2105(c), it will conduct a detailed investigation of the matter. Bidders who are found to have violated the Commission's anti-collusion Rules in connection with their participation in the auction process may, among other remedies, be subject to the loss of their down payment or their full bid amount, face the cancellation of their licenses, and may be prohibited from participating in future auctions. In addition, where allegations give rise to violations of the federal antitrust laws, the Commission may investigate and/or refer such

allegations to the United States Department of Justice for investigation.⁵

For additional information, please contact Mark Bollinger or Josh Roland, Auctions Division, Wireless Telecommunications Bureau, at (202) 418-0660.

- Action by the Chief, Wireless Telecommunications Bureau -

⁵ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2388 (1994).