

DA 98-1861

Released: September 14, 1998

VIA FACSIMILE AND REGULAR MAIL

John Reardon, Esquire
Secretary to the Board of Directors and General Counsel
Mobex Communications, Inc.
1150 18th Street, Suite 250
Washington, DC 20036-3839

RE: Mobex Communications, Inc.
220 MHz Auction (No. 18)

Dear Mr. Reardon:

This letter is in response to your September 9, 1998 letter requesting that the Commission withdraw the FCC Form 175 short-form application filed on behalf of Mobex Communications, Inc. ("Mobex") to participate in the Phase II 220 MHz Service auction. Identifying a series of events which you claim led to the inadvertent electronic filing of Mobex's short-form application, you urge the Commission to treat the application as if it were withdrawn before the short-form deadline so that Mobex would not be subject to the anti-collusion rule, 47 C.F.R. Section 1.2105(c).

Having reviewed the facts and circumstances of your situation, we conclude that a grant of your request is not in the public interest. In order to be eligible to bid in an auction, an applicant must timely submit a short-form application (FCC Form 175) and an appropriate upfront payment.¹ When the short-form filing deadline passes, the anti-collusion rule applies to all applicants with submitted short-form applications.² Once the short-form filing deadline passed and Mobex's application remained pending, the anti-collusion rule applied to all applicants, including Mobex.

Mobex has offered no compelling facts to justify withdrawing the application. Mobex's claim that the submission was inadvertently made by a paralegal does not justify departure from the Commission's rules. At a minimum, Mobex or its counsel should have filed a letter with the

¹ See 47 C.F.R. § 1.2105(a).

² 47 C.F.R. § 1.2105(c).

Commission prior to the expiration of the short-form filing deadline requesting that its application be withdrawn from consideration. We believe that strict adherence to the filing requirements and anti-collusion rule is critical to the integrity of the auction process.³

We strongly urge applicants to exercise great care when submitting their short-form applications. It is the applicant's responsibility to ensure that those entrusted with the task of preparing and filing short-form applications have the requisite skill and experience to, not only accomplish the task, but also recognize the import of the undertaking. We also remind applicants that submitted applications, once the short-form deadline passes, trigger application of the anti-collusion rule even if they are later withdrawn.

Therefore, Mobex's request to treat its short-form application as if it were withdrawn prior to August 17, 1998 IS DENIED. This action is taken in accordance with delegated authority pursuant to 47 C.F.R. 0.331.

Sincerely,

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

³ See 47 C.F.R. § 1.2105(a) - (c). See also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2385-2386, ¶¶ 221-226 (1994).