



Federal Communications Commission  
Washington, D.C. 205 54

DA 96-1566

September 17, 1996

Mr. David L. Nace  
Lukas. McGowan, Nace & Gutierrez  
1119, 11 Nineteenth Street, N.W., Suite 1200  
Washington, D.C. 20036

Dear Mr. Nace:

This letter responds to your letter of August 9, 1996 seeking clarification of the impact of the Commission's anti-collusion rules upon business negotiations between applicants for broadband PCS licenses in the D, E and F block auction. Specifically, you inquire about the applicability of the rules to discussions of management and partitioning arrangements for a C block market when both parties to the discussions are applicants in the D, E and F block auction.

The Commission's anti-collusion rules, 47 C.F.R. §1.2105(c), generally prohibit applicants in an auction from "cooperating, collaborating, discussing or disclosing *in any manner* the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements with other applicants," other than those identified on an applicant's short-form application as party to a bidding consortium or other joint bidding arrangements. 17 C.F.R. § 1.2105(c) (emphasis added). See also 47 C.F.R. §§1.2105(a)(2)(viii), (a)(2)(ix). This prohibition is in place from the time short-form applications are filed until after the high bidder makes the required down payment, and only applies to applicants who have applied for the same geographic markets. *Id.*

The Wireless Telecommunications Bureau recently released a **Public Notice** providing guidance on the anti-collusion rules in the context of the D, E and F block auction and the impact of the rules on negotiations by bidders for management, resale, roaming, interconnection, partitioning and disaggregation, and other similar arrangements between bidders. See **Public Notice**, "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders," DA 96-1460 (rel. August 28, 1996). The Bureau cautioned that the rules may place 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, because they may convey pricing information and bidding strategy *Id.* at 2.

As a general matter, the anti-collusion rule does not prohibit business negotiations between D, E and F block applicants who have applied for the same markets. Auction participants are reminded, however, that such negotiations should not amount to "cooperating, collaborating, discussing or disclosing in any manner the substance of bids or bidding strategies." 17 C.F.R. §1.2105(c)(1) (emphasis added). Additionally, as suggested in our recent *Public Notice*, the Commission has clearly indicated that subject matter which only indirectly addresses bids or bidding strategies may be subject to Section 1.2105(c). For example, potentially prohibited subject matter could include "communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids or bidding strategies directly or indirectly." *Memorandum Opinion and Order* in PP Docket No. 93-295, FCC 94-295 (rel. November 17, 1994); *Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Wireless Division* (rel. December 1, 1994). See also *Second Report and Order* in PR Docket No. 89-553 and PP Docket No. 93-253, FCC 95-159 (rel. April 17, 1995) at ¶ 94, n. 133 (citing *Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Wireless Division*). Similarly, in the context of the Multipoint Distribution Service and 900 MHz Specialized Mobile Radio auction, the Bureau stated that prohibited communications include negotiations with other applicants that are incumbent licensees for assignment or transfer of control of licenses for encumbered spectrum. *Memorandum Opinion and Order* in MM Docket No. 94-131 and PP Docket No. 93-253, DA 95-2292 (rel. November 3, 1995) at ¶ 6. See also *Public Notice*, "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," DA 95-2244 (rel. October 26, 1995).

To conclude, it is recommended that auction participants who have applied for overlapping markets err on the side of caution when dealing with each other in light of the Commission's anti-collusion rules. While discussions concerning agreements regarding issues such as management, resale, roaming, interconnection and partitioning and disaggregation between C block license applicants and D, E and F block auction participants are permitted (and are not per se violations of Section 1.2105(c)), parties should exercise sound judgment to ensure that their activities do not involve discussion or agreement regarding bids and bidding strategies in the D, E and F block auction. Moreover, it should be noted that enforcement of the anti-collusion rule will turn on a full examination of the facts in each particular case. In enforcing the rule, the Bureau will consider all relevant

factors, including, but not limited to, whether both parties knew or should have known that [he activities in question would affect bidding or bidding strategies, and that the activities in fact had such an effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen O'Brien Ham". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

Kathleen O'Brien Ham  
Chief, Auctions Division  
Wireless Telecommunications Bureau

cc. Larry S. Roadman