

B block licenses. The Wireless Telecommunications Bureau ("Bureau") later waived the same provisions for the long-form applications for the auction of the broadband PCS A and B block licenses. These same provisions also were waived for the short-form applications filed for the auction of the broadband PCS C block licenses. We find that the public interest would be served by waiving certain ownership information disclosure requirements for the long-form applications filed by the block winning bidders. Specifically, our rules require applicants to list in their long-form applications all businesses in which each attributable stockholder owns at least five percent. This requirement necessitates reporting of interests in firms with no relation to the licenses auctioned. For many companies, particularly investment firms with diverse holdings, compliance with this requirement is extremely burdensome, especially when calculating indirect ownership interests in outside firms. We believe that, for purposes of long-form application processing, requiring stockholders in applicants to report all firms in which they hold an interest of five percent or more is overly burdensome.

7. The purpose of the PCS ownership disclosure requirements is to allow the Commission to determine who is the real party in interest, to determine compliance with the anti-collusion rules, the applicable spectrum caps, certain ownership restrictions such as the multiple and cross ownership rules, and the alien ownership restrictions. All applicants already must certify that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden.

8. Consequently, we waive the information disclosure requirement of Sections 24.813(a)(1) and 24.813(a)(2) of the Commission's rules with respect to other, outside ownership interests of attributable stockholders of applicants, except that outside interests of five percent or more in other land mobile services (i.e., Commercial Mobile Radio Service licensees or applicants or Private Mobile Radio Service licensees or applicants) shall be disclosed. Also, all direct or indirect interests in the applicant that amount to five percent or more must be reported. All indirect interests held in the applicant should be computed in accordance with the multiplier approach set forth in 47 CFR § 24.204(d)(viii). Institutional investors need only disclose direct or indirect interests of ten percent or more in the

applicant, and need to report all outside business interests of five percent or more in CMRS or PMRS businesses. We reserve the right to ask applicants for any additional information required by Section 24.813 of the Commission's rules at a later date. All other long-form reporting requirements will continue to apply.

9. This Order is not subject to the general notice and comment requirement of the Administrative Procedure Act, because it concerns procedural rules, and we are relieving applicants of an administrative burden as opposed to imposing a reporting burden on them. In addition, good cause for the waiver is shown. The waiver will expedite the Commission's ability to process broadband PCS C block applications, thus expediting the delivery of service to the public.

10. Accordingly, *it is ordered* That the requirements of Sections 24.720(f) and 24.720(g) of the Commission's rules, 47 CFR §§ 24.720(f) and 24.720(g), are waived to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

11. *It is further ordered* That the requirements of Sections 24.813(a)(1) and 24.813(a)(2), 47 CFR §§ 24.813(a)(1) and 24.813(a)(2), are waived to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

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47 CFR Parts 24 and 90

[FCC 96-203]

Waiver of Bid Withdrawal Payment Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: The Commission has before it requests for waiver of the rules governing bid withdrawal payments associated with spectrum auctions. On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. This Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P

in Round 9 of the 900 MHz SMR auction, or \$45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B-380 in Round 10 of the broadband PCS C block auction, or \$206,400.

EFFECTIVE DATE: May 3, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202-418-0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 2, 1996, and released May 3, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037 (202) 857-3800.

ORDER

I. Introduction

1. The Commission has before it Requests for Waiver of its rules filed by Atlanta Trunking Associates, Inc. ("ATA") and MAP Wireless, L.L.C. ("MAP"). Specifically, ATA and MAP request waivers of the rules governing bid withdrawal payments associated with spectrum auctions. By this Order, we hereby resolve ATA's and MAP's Requests. Specifically, this Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9 of the 900 MHz SMR auction, or \$45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B-380 in Round 10 of the broadband PCS C block auction, or \$206,400.

II. Background

2. *Waiver Requests.* On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. In its request, ATA alleges it erroneously submitted a bid of \$125,025,000 for license 11P (Atlanta, GA) in Round 9 of the 900 MHz SMR auction. Pursuant to our auction procedures, the minimum acceptable bid for that license in Round 9 was \$121,000. According to ATA, it had intended to submit a bid of \$125,025, but inadvertently added three extra

zeroes to its bid. ATA immediately reported the error after Round 9 had closed and withdrew its bid in Round 10. When the SMR auction closed, the winning bid for license 11P was \$531,000. A declaration by L. Harold Josey, ATA's vice-president and one of its authorized bidders, describes the events surrounding the erroneous bid submission. ATA states that it cannot explain how the typographical error occurred, but suggests that the error may be due to a function of the Commission's bidding software.

4. ATA claims that the public interest will not be served by strict enforcement of the bid withdrawal payment rule in this instance. ATA notes that the error occurred early in the auction and hence there was no harm to the integrity of the auction or other bidders. Because imposition of the full bid withdrawal payment would be a significant burden on ATA, it claims that the "equities demonstrate that ATA should be provided relief from the Commission's rules as it relates to this typographical error."

5. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

6. In its request, MAP alleges that due to a typographical error, it submitted a bid of \$22,680,020 for license B-380 (Rockford, IL) in Round 10 of the broadband PCS C block auction. Pursuant to our auction procedures, the minimum accepted bid for that round and license was \$2,267,000. MAP states that it intended to submit a bid of \$2,268,002, slightly higher than the minimum accepted bid. MAP withdrew its \$22,680,020 bid during the bid withdrawal period for Round 10. As of Round 170, the standing high bid on license B-380 was \$14,433,000. A declaration and statement by Christopher O. Mantle, one of MAP's authorized bidders, describes the events surrounding the erroneous bid submission. MAP alleges that the error was attributable to a "quirk" in the Commission's bidding software. MAP claims that the error occurred because the bidding software places a zero on each bid entry line, which does not disappear when a bid is entered unless it is manually removed. As a result, MAP's bid for that round and license was ten times greater than its intended

bid. According to MAP, the only error attributable to it is "failing to notice and delete the extraneous zero caused by the bidder's software format."

7. MAP argues that imposition of the bid withdrawal payment for its erroneous bid would be inequitable and contrary to the public interest. It observes that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors. Finally, MAP argues that Commission precedent and principles of administrative law require that parties be allowed to correct typographical errors when dealing with governmental agencies.

8. *Public Notice*. On February 7, 1996, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice seeking comment on requests for waiver of the Commission's bid withdrawal payment provisions, including the requests of ATA and MAP. See Public Notice, DA 96-145, "Comment Sought on Requests to Waive Bid Withdrawal Payments and General Enforcement Guidelines" (rel. February 7, 1996). The waiver requests were filed by ATA, MAP and PCS 2000, L.P. We note that we are deferring action on the request filed by PCS 2000 until a later date. In addition, the Bureau sought comment on proposals to reduce the bid withdrawal payment requirement in cases of erroneous bids attributed to inadvertent or typographical mistakes. The Bureau proposed reducing the bid withdrawal payment in such circumstances to the greater of the upfront payment amount for the market for which the bid was submitted, or five percent of that market's winning bid. Alternatively, the Bureau proposed to treat a mistaken bid that is withdrawn in the same round as if it were made at the minimum accepted bid (if there are no other bids for that round), or at the second highest bid (if there are other bids above the minimum accepted bid). The required payment would be the difference between this amount and the subsequent winning bid. Finally, the Bureau sought comment on whether any circumstances should warrant a complete waiver of the bid withdrawal payment (e.g., a bidding error clearly attributable to a mistake by the Commission, its staff or contractors).

9. *Comments*. In total, 20 parties submitted Comments, and six parties submitted Reply Comments, concerning the waiver requests and the Bureau's proposed enforcement guidelines. Six parties, all participants in the broadband PCS C block auction, submitted comments urging the Commission to deny the various waiver requests and strictly adhere to the

applicable bid withdrawal payment provisions. Generally, these commenters argue that a waiver of the bid withdrawal payment provisions would distort the auction process and prejudice other bidders. For example, Quantum claims that if the Commission grants any of these waivers, it would undermine the integrity of the auctions by announcing to bidders that they may strategically place "erroneous" bids and withdraw them with impunity. These commenters also note that the bidding software contains numerous safeguards which are designed to encourage bidders to verify their bids prior to submission. PCS One claims that these safeguards have been effective, as bidders in the broadband PCS C block auction have reported only three mistaken bids out of the approximately 11,500 bids submitted as of February 9, 1996. They further note that the Commission staff clearly explained the bid withdrawal provisions as well as the safeguards built in to the bidding software prior to the commencement of the auction.

10. Eight parties, including participants in the broadband PCS C block auction and the 900 MHz SMR auction, urge the Commission to grant the waiver requests and impose no bid withdrawal payment requirement when it is clear that an erroneous bid is the result of an honest typographical or clerical mistake. Some of these commenters note that the Commission adopted the bid withdrawal payment provisions to deter insincere bidding. They further note that in adopting these provisions, the Commission did not contemplate the possibility that bidders might submit erroneous bids, resulting from typographical or clerical errors. Several commenters also argue that alleged problems with the Commission's bidding software necessitate granting the waiver requests at issue. For example, MAP claims that its erroneous bid resulted from an "irregularity" in the "Go to Market" function of its competitive bidding software. MAP notes that after it filed its request for waiver, the Wireless Telecommunications Bureau released a Public Notice which stated that "when a bidder begins keying in a bid amount, the zero remains in the bid column as the bid amount's final digit." Wilderness claims that the fact that "several diligent bidders" have submitted erroneous bids with an extra zero four times indicates that the Commission's software is "far from fool proof."

11. Antigone suggests that there is an established body of case law governing mistaken bids that result from clerical or

arithmetic errors. According to *Antigone*, these cases hold that when a bidder demonstrates that its bid was the result of clerical or arithmetic errors, the government agency holding the auction cannot require a forfeiture. *Antigone* relies particularly on *Ruggiero v. United States* for the proposition that once a factual determination is made that a bidder made a clerical error, equitable principles compel the remission of any bid withdrawal penalty. Similarly, PCS 2000 relies on the practice under certain provisions of the Federal Acquisition Regulation (FAR) for the proposition that bidders who submit erroneous bids may be permitted to withdraw without paying any forfeiture.

12. In addition, several parties submitted comments on our proposed alternatives to the enforcement of the bid withdrawal payment provisions in cases of erroneous bids caused by inadvertent, typographical mistakes. One commenter, Auction Strategy Inc. (ASI), favors the Commission's second proposal, but with some modification. ASI describes how a bidder can "game" the second proposal so as to find out critical information concerning a competitor's bidding strategy without being subject to any bid withdrawal payment. ASI proposes modifications which it claims would reduce the bid withdrawal payment for erroneous bids without encouraging bidders to make strategic "mistakes."

III. Discussion

13. The Commission established a bid withdrawal payment requirement in order to discourage insincere bidding. Insincere bidding, whether purely frivolous or strategic, distorts the price information generated by the auction process and reduces efficiency.

14. The bid withdrawal payment provisions are silent on how to address erroneous bids which result from typographical or clerical errors. In cases in which the erroneous bid exceeds the intended bid by factors of 10 or more, full application of the bid withdrawal payment provisions could impose an extreme and unnecessary hardship on most bidders. We believe, however, that it may be extremely difficult for the Commission to distinguish between "innocent" erroneous bids and "strategic" erroneous bids. Furthermore, we are mindful of the negative impact that erroneous bids may have on the integrity of the auction. In particular, an erroneous bid distort the price information generated by the auction process and reduce efficiency. Such distortion and inefficiency may result regardless of whether the bid was the result of an innocent error or was

strategically placed. Consequently, we have strongly urged bidders to exercise great caution when submitting their bids.

15. A waiver of the bid withdrawal payment provisions applicable to the 900 MHz SMR auction and to the broadband PCS C block auction is appropriate when a petitioner demonstrates that special circumstances warrant a deviation from the rule and such deviation will serve the public interest. *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir., 1990), citing *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). On the facts before us, we believe that ATA and MAP have demonstrated that waivers of the applicable bid withdrawal payment provisions are appropriate. ATA and MAP have shown that they submitted erroneous bids which exceeded their intended bids by factors of ten or more. Under these circumstances, full imposition of the bid withdrawal payment provisions would impose an extreme and unnecessary financial hardship. As noted above, these provisions were adopted to discourage insincere bidding. They were not adopted to impose financial hardship on bidders who submit mistaken bids. Full enforcement of the bid withdrawal payment provisions would not serve the underlying purpose of these provisions, nor would it serve the public interest. For these reasons, we believe that ATA and MAP are entitled to a partial waiver of the applicable bid withdrawal payment provisions.

16. In cases of erroneous bids, some relief from the bid withdrawal payment requirement appears necessary. We are concerned, however, that a complete waiver of these provisions could threaten the economic efficiency of the auction process. Such a precedent would encourage future bidders who are uncertain about how much more to bid on a particular license to submit "mistaken" bids intentionally so as to gain insight into competitors' valuation of licenses. As ASI points out, accurate bids are essential to the integrity of the auction process. In this regard, we believe that the cases and the practice under certain provisions of the Federal Acquisition Regulation (FAR) cited by *Antigone* and PCS 2000 are inapposite because of the unique auction methodology employed here (e.g., simultaneous multiple round bidding). We also disagree with MAP's contention that because the Auctions Division has previously granted waivers allowing applicants to correct typographical or clerical errors in their short-form applications (FCC Form 175s), MAP

should be entitled to correct the typographical or clerical error which resulted in its erroneous bid. The waivers MAP cites allowed for changes to be made to the applicant's FCC Form 175s. These waivers were granted prior to the commencement of the auction where concerns about strategic manipulation of the bidding process were non-existent. Furthermore, Commission precedent allowed for changes to short-form applications to be made, whereas the Commission has never allowed a bidder to change its bids without being subject to the bid withdrawal payment provisions.

17. Therefore, we intend to partially waive these provisions in a manner which is fair to bidders and which preserves the economic efficiency of the auction process. For those instances in which bidders submit an erroneous bid, we generally agree that the approach proposed by ASI, which is a modification of our second proposal contained in the Public Notice, is most appropriate. In determining an appropriate bid withdrawal payment, we will take into consideration the round and stage in which a mistaken bid is withdrawn. In general, the approach described below follows the guidelines suggested by ASI and is designed to eliminate the strategic benefit of purposely submitting mistaken bids.

18. Specifically, if at any point during an auction a mistaken bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment should be the greater of (a) the minimum bid increment for that license and round, or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. If a mistaken bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment should be the greater of (a) two times the minimum bid increment during the round in which the mistaken bid was submitted or (b) the standard withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If the mistaken bid is withdrawn two or more rounds following the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. Similarly, during Stage III of an auction, if a mistaken bid is not withdrawn during the round it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment.

Example: Bidder X wishes to place the minimum accepted bid for Market 1. The standing high bid for this market after Round 19 of the auction is \$1 million. The minimum bid increment is set at ten percent. Thus, the minimum accepted bid for Market 1 in Round 20 would be \$1.1 million. In Round 20, Bidder X erroneously submits a bid of \$110 million. If Bidder X withdraws its erroneous bid during the bid withdrawal period for Round 20, it would be subject to a bid withdrawal payment of the minimum bid increment for Round 20, \$100,000, or the difference between \$1.1 million and the subsequent winning bid, whichever is greater. If Bidder X does not withdraw its bid until Round 21, and the auction is in Stage I or Stage II, it would be subject to a bid withdrawal payment of two times the minimum bid increment, \$200,000, or the difference between \$1.2 million and the subsequent winning bid, whichever is greater. If Bidder X waits until Round 22 or later to withdraw its erroneous bid, it would be subject to the standard bid withdrawal payment. Similarly, if the auction is in Stage III, and Bidder X fails to withdraw its erroneous bid in Round 20, it would be subject to the standard bid withdrawal payment.

19. Under this approach, the required bid withdrawal payment would be substantial enough to discourage strategic placement of erroneous bids without being so severe as to impose an untenable burden on bidders. In addition, the payment is tailored to the size of the license and the point in the auction when the mistaken bid was submitted. For example, if a mistaken bid is submitted early in a simultaneous, multiple round auction, the potential damage to the economic efficiency of the auction is lower than if it were submitted during the later stages of the auction, and the required bid withdrawal payment would be correspondingly lower. As an auction progresses, however, the potential gain from a strategically-placed erroneous bid is higher, and the potential damage to the efficiency of the auction process is higher. In other words, erroneous bids cause greater damage to the economic efficiency of the auction process as market prices approach their final valuation. Thus, the cost of submitting an erroneous bid during the later stages of an auction is higher than it would be if it were submitted earlier in an auction.

20. We have decided to grant ATA and MAP relief from full enforcement of the bid withdrawal payment rules. Specifically, we will utilize the approach described above to reduce ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9, or \$45,594. Similarly, we will utilize the approach described above to reduce MAP's bid

withdrawal payment to the minimum bid increment for license B-380 in Round 10 of the broadband PCS C block auction, or \$206,400.

21. We delegate to the Wireless Telecommunications Bureau (the "Bureau") the authority to resolve similar requests for waiver of the Commission's bid withdrawal provisions. In order for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. We will continue to evaluate these requests on a case-by-case basis. We caution that relief will not be available to bidders if there is evidence that they have engaged in insincere or frivolous bidding or have otherwise acted in bad faith. We consider all allegations of bidder misconduct very seriously.

IV. Ordering Clauses

22. Accordingly, *it is ordered* That the waiver request submitted by Atlanta Trunking Associates, Inc. is granted to the extent indicated above.

23. *It is further ordered* That Atlanta Trunking Associates, Inc. is subject to a bid withdrawal payment requirement of \$45,594.

24. *It is further ordered* That the waiver request submitted by MAP Wireless, L.L.C. is granted to the extent indicated above.

25. *It is further ordered* That MAP Wireless, L.L.C. is subject to a bid withdrawal payment requirement of \$206,400.

26. *It is further ordered* That we delegate to the Wireless Telecommunications Bureau the authority to resolve bid withdrawal payment waiver requests involving factual circumstances similar to those presented here.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC 34

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the California Red-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened status for the California red-legged frog (*Rana aurora draytonii*) pursuant to the Endangered Species Act of 1973, as amended (Act). The Service originally proposed to list the California red-legged frog as endangered, but information obtained during the comment period suggests that this taxon is found in more localities within its current range than previously identified. The California red-legged frog is now found primarily in wetlands and streams in coastal drainages of central California. It has been extirpated from 70 percent of its former range. The California red-legged frog is threatened within its remaining range by a wide variety of human impacts, including urban encroachment, construction of reservoirs and water diversions, introduction of exotic predators and competitors, livestock grazing, and habitat fragmentation. This rule implements the Federal protection and recovery provisions afforded by the Act for this species.

EFFECTIVE DATE: June 24, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, CA 95825-1846.

FOR FURTHER INFORMATION CONTACT: Karen J. Miller, at the above address (916 979-2725).

SUPPLEMENTARY INFORMATION:

Background

The California red-legged frog (*Rana aurora draytonii*) is one of two subspecies of the red-legged frog (*Rana aurora*) found on the Pacific coast. *Rana a. draytonii* was first described by Baird and Girard in 1852 from specimens collected at or near the City of San Francisco in 1841 (Storer 1925, Cochran 1961). The California red-legged frog is the largest native frog in the western United States (Wright and Wright 1949),