



Federal Communications Commission
Washington, D.C. 20554

August 8, 2008

DA 08-1877

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Dear Mr. Whiteaker:

This letter is in response to the Motion to Dismiss and Petition to Deny of AST Telecom, LLC (“AST”), filed by you on July 16, 2008 (“Motion”).¹ The Motion requests that the Commission dismiss or deny the short-form application (FCC Form 175) to participate in Auction 78 of the American Samoa Telecommunications Authority (“ASTCA”). Auction 78 is scheduled to begin on August 13, 2008.² The Motion states that AST and ASTCA are “competing providers of mobile wireless services.”³ It urges that the Commission dismiss or deny the short-form application of ASTCA on the grounds that ASTCA allegedly colluded with another Auction 71 applicant and engaged in anti-competitive bid withdrawals in Auction 71.⁴ That other Auction 71 applicant did not submit a short-form application to participate in Auction 78. In support of these allegations, the Motion references AST’s Petition to Deny the long-form application submitted by ASTCA for Auction 71, as well as certain related filings.⁵ AST acknowledges in its Motion that its Auction 71 Petition to Deny is still pending before the Commission.

ASTCA submitted a letter to the Commission on July 28, 2008 (the “ASTCA Letter”), urging that the Motion be dismissed.⁶ The ASTCA Letter maintains, *inter alia*, that the Motion is not permitted

¹ Motion to Dismiss and Petition to Deny, filed on behalf of AST Telecom, LLC, dated July 16, 2008. We note that the Commission’s Part 1 Competitive Bidding Rules only provide for the filing of petitions to deny against the long-form applications of winning bidders. See 47 C.F.R. §§ 1.2108(a), 1.939(a).

² “Auction of AWS-1 and Broadband PCS Licenses: Status of Short-Form Applications to Participate in Auction 78,” *Public Notice*, DA 08-1579 (July 7, 2008) (“*Status Public Notice*”). The *Status Public Notice* stated that the short-form applications of both AST and ASTCA were complete and had been accepted for filing.

³ *Motion* at 2.

⁴ See “Auction of Broadband PCS Spectrum Licenses Closes: Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

⁵ See *Motion* at 2-5; see also Petition to Deny, filed on behalf of AST Telecom LLC, dated July 5, 2007 (“Auction 71 Petition to Deny”); Informal Request for Commission Action, filed on behalf of AST Telecom, LLC, dated July 6, 2007; Opposition to the Petition to Deny, filed on behalf of the American Samoa Telecommunications Authority, dated July 12, 2007; Opposition to Informal Request, filed on behalf of Samoa Technologies, Inc., dated July 16, 2007; Reply to Opposition to Petition to Deny, filed on behalf of AST Telecom, LLC, dated July 19, 2007; Reply to Opposition to Informal Request, filed on behalf of AST Telecom, LLC, dated July 26, 2007.

⁶ Letter, filed on behalf of the American Samoa Telecommunications Authority, dated July 28, 2008.

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under the Commission's rules, that its contentions are unsupported, and that the pending Auction 71 Petition to Deny should not affect ASTCA's participation in Auction 78. On August 4, 2008, AST submitted a reply to the ASTCA Letter, in which AST acknowledges that it is the Commission's usual practice to defer consideration of challenges to an auction applicant's qualifications until after the auction, but nevertheless contends that the Commission should consider AST's allegations in this case.⁷

The Commission takes allegations of wrongdoing very seriously. However, we are also sensitive to the fact that any action we take before an auction begins, or before the long-form applications (FCC Form 601) are filed, could harm the integrity of the auction process. Upon receipt of the short-form applications to participate in Auction 78, the Commission carefully scrutinized each application to ensure compliance with the Commission's rules. Generally, we believe it is more prudent to address such allegations after the winning bidders have submitted their long-form applications, when there is greater opportunity for investigation.⁸ We find that AST's allegations do not warrant a departure from that practice.⁹

As the bidding in Auction 78 has not yet started, we are unable, at this time, to specify the long-form application due date. Please note, however, that at the close of Auction 78, in accordance with Section 1.2108(b) of the Commission's rules, we will issue a public notice announcing the timeframe and procedures for filing petitions to deny.

Accordingly, we believe that the Motion is not ripe and it is therefore denied.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

cc: David L. Sieradzki, Esq.

⁷ Reply to ASTCA Response to AST Telecom, LLC Motion to Dismiss and Petition to Deny, filed on behalf of AST Telecom, LLC, dated August 4, 2008.

⁸ *Cf.* Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, Reexamination of the Policy Statement on Comparative Broadcast Hearings, GC Docket No. 92-52, Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, GEN Docket No. 90-264, *First Report and Order*, 13 FCC Rcd 15,920, 15,951 ¶ 84 (where long-form applications for broadcast station construction permits had been filed prior to submission of short-forms, Commission would not consider, prior to the auction, petitions to deny already filed against applicants).

⁹ We note that in the pending Auction 71 Petition to Deny, AST's request that ASTCA be prohibited from future participation in Commission auctions is based on the language of 47 C.F.R. § 1.2109(d). However, that rule provides the Commission discretion to impose such a sanction on bidders who "are found to have violated" a Commission rule in connection with their auction participation. The Commission has made no finding with respect to the allegations in the Auction 71 Petition to Deny.