

Before the FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
)
 Atlanta Trunking Associates, Inc. and)
 MAP Wireless, L.L.C.)
)
 Petition for Reconsideration of Bid)
 Withdrawal Payment)
)
 Georgia Independent PCS Corporation)
)
 Application for Review of Request to Waive)
 Bid Withdrawal Payment Provision)

MEMORANDUM OPINION AND ORDER

Adopted: May 2, 1997

Released: May 6, 1997

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We have before us two petitions for reconsideration¹ pertaining to our May 3, 1996, Order requiring MAP Wireless, L.L.C. ("MAP") and Atlanta Trunking Associates, Inc. ("ATA") to make bid withdrawal payments in connection with MAP's participation in the broadband PCS C block auction and ATA's participation in the 900 MHz SMR auction ("*May 3 Order*").² We also

¹ Atlanta Trunking Associates, Inc., "Petition for Reconsideration" (June 3, 1996) ("ATA Petition"); MAP Wireless, L.L.C., "Petition for Reconsideration of Bid Withdrawal Payment," (June 3, 1996) ("MAP Petition").

² *In the Matter of Atlanta Trunking Associates, Inc. and MAP Wireless, L.L.C. Requests to Waive Bid Withdrawal Payment Provisions*, FCC 96-203 (rel. May 3, 1996) ("*May 3 Order*").

have before us an Application for Review³ pertaining to an Order by the Wireless Telecommunications Bureau⁴ ("Bureau") requiring Georgia Independent PCS Corporation ("Georgia") to make a bid withdrawal payments associated with its participation in the broadband PCS C block auction based on our *May 3 Order*. While we uphold the bid withdrawal guidelines adopted in our *May 3 Order*, we have determined that these three parties present facts that warrant a waiver of the bid withdrawal payments imposed in our *May 3 Order* with respect to ATA and MAP and the *Bureau May 6 Order* with respect to Georgia. Each of these parties demonstrated that the Commission's remote bidding system, which placed a zero in the bid submission field where bidders enter their bids, may have contributed to some confusion causing the clerical error at issue. Consequently, we have determined that is in the public interest for us to rescind that portion of our *May 3 Order*, as well as the Bureau's *May 6 Order*, subjecting MAP, ATA and Georgia to bid withdrawal payments.

II. BACKGROUND

2. In December 1995 and January 1996, respectively, ATA and MAP filed requests for waivers of bid withdrawal payments in connection with ATA's participation in the 900 MHz SMR auction and MAP's participation in the broadband PCS C block auction.⁵ The rules governing the 900 MHz SMR and Broadband PCS C Block auctions at issue provide that the amount of a bid withdrawal payment is to be calculated based upon the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. Under the rules, no bid withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.⁶ At the time, there was no provision in the rules addressing erroneous bids that result from typographical or clerical errors.⁷ ATA alleged in its waiver request that it inadvertently added three extra zeroes to its bid in one round and thus erroneously submitted a bid of \$125,025,000 instead of \$125,025. ATA reported the error after the round had closed and withdrew its bid in the next round.⁸ In its request, ATA did not explain how the typographical error occurred, but suggested that the error may have been due to a function of the Commission's

³ Georgia Independent PCS Corporation, "Application for Review" (June 5, 1996) ("Georgia Application").

⁴ In the Matter of Georgia Independent PCS Corporation Request to Waive Bid Withdrawal Payment Provision, DA 96-706 (rel. May 6, 1996) ("*Bureau May 6 Order*").

⁵ Atlanta Trunking Associates, Inc. "Request for Waiver" (December 18, 1996) ("ATA Waiver Request"). MAP Wireless, L.L.C. "Request for Waiver of Section 24.704 of the Commission's Rules" (January 24, 1996) ("MAP Waiver Request").

⁶ See 47 C.F.R. §§ 1.2104(g); 90.805(a); and 24.704(a)(1).

⁷ *May 3 Order* at 7. See, e.g., 47 C.F.R. §§ 1.2104(g)(1), 24.704(a) and 90.805(a).

⁸ ATA Waiver Request at 1-3.

bidding software.⁹ In its request, MAP alleged that due to a typographical error, it submitted a bid of \$22,680,020 instead of \$2,268,002.¹⁰ MAP withdrew its \$22,680,020 bid during the same round. In its request, MAP claimed that the error occurred because the Commission's bidding software placed a zero on each bid entry line, which did not disappear when a bid was entered unless it was manually removed. Thus, MAP's actual bid was ten times greater than its intended bid.¹¹

3. On February 7, 1996, the Bureau released a Public Notice ("*Notice*") seeking comment on these and other requests for waiver of the Commission's bid withdrawal payment provisions.¹² In the *Notice*, the Bureau also 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 alternative approaches for handling such payments in instances when it is determined that the erroneous bids were the result of inadvertent or typographical mistakes. Further, 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).¹³

4. In total, 20 parties submitted Comments to the *Notice*, and six parties submitted Reply Comments. A number of parties recommended that the Bureau decline to impose bid withdrawal payment requirements when it is clear that an erroneous bid is the result of an honest typographical error or clerical mistake.¹⁴ Others supported one of the alternative proposals made in the *Notice* or advanced their own proposals.¹⁵ Other parties recommended denial of the

⁹ *Id.* at 3.

¹⁰ MAP Waiver Request at 2.

¹¹ *Id.* at 2-4.

¹² 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 that were the subject of the Public Notice were filed by ATA, MAP and PCS 2000, L.P. Consistent with the Commission's *May 3 Order*, the Bureau released an Order on December 20, 1996, which reduced PCS 2000's bid withdrawal payment to two times the minimum bid increment for the round in which PCS 2000 submitted its erroneous bid. See *In the Matter of PCS 2000, L.P.*, Request for Waiver of Section 24.704(a)(1) of the Commission's Rules, DA 96-2156 (rel. December 20, 1996), *app. rev. pending*.

¹³ *Id.*

¹⁴ See, *e.g.*, Comments and Reply Comments of Antigone Communications Limited Partnership; Comments of Eastern Communications, Ltd.; Comments of Kennedy-Wilson International; Comments and Reply Comments of MAP; Comments of National Auctioneers Association; Comments of Nelson Repeater Service, Inc.; Reply Comments of PCS 2000; Comments and Reply Comments of Wilderness Communications, L.L.C.

¹⁵ See, *e.g.*, Comments of American Mobile Telecommunications Association, Inc.; Comments of Atlanta Trunking Associates, Inc.; Comments of Telewaves Corporation; Comments of Southern Wireless, L.P.

waiver, contending that the Bureau should strictly adhere to the Commission's rules in order to promote and maintain integrity of the auction process.¹⁶

5. In the *May 3 Order*, we determined that ATA and MAP had shown that they submitted erroneous bids which exceeded their intended bids by factors of ten or more. We stated that under these circumstances, full imposition of the bid withdrawal payment provisions would impose an extreme and unnecessary financial hardship and would not further the underlying purpose of these provisions to discourage insincere bidding. On the other hand, we rejected a complete waiver of these provisions on the ground that such action would threaten the economic efficiency of the auction process and could encourage future bidders to submit "mistaken" bids intentionally so as to gain insight into competitors' valuation of licenses.¹⁷ We decided to partially waive these provisions in a manner which was fair to bidders and which preserved the economic efficiency of the auction process. We determined that the appropriate bid withdrawal payment is one that takes into consideration the round and state in which a mistaken bid is withdrawn.¹⁸ In general, this approach is designed to eliminate the strategic benefit of purposely submitting "mistaken" bids.

6. Accordingly, we fashioned the following guidelines for addressing individual requests for waiver of withdrawal payments as a result mistaken bids: 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 bid withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If a 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 in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment.¹⁹ Utilizing this approach, we determined that ATA's bid withdrawal payment would be \$45,594 and MAP's payment would be \$206,400.

¹⁶ See e.g., Letter to Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, from Shelly Spencer, AirLink, L.L.C. (January 25, 1996); Letter to Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, from Jeffrey Craven, Counsel for PCS One, Inc. (February 9, 1996); Comments of AmeriCall International, L.L.C.; Comments of Infocore Wireless, Inc.; Comments of Quantum Communications Group, Inc.; Comments of SouthEast Telephone Limited Partnership.

¹⁷ *May 3 Order* at 8.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 10.

7. In the *May 3 Order*, we delegated authority to the Bureau to resolve similar requests for waiver of the Commission's bid withdrawal provisions. We noted that these requests would be evaluated on a case-by-case basis and that relief would 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.²⁰

8. Based on the *May 3 Order*, the Bureau issued an order on May 6, 1996,²¹ resolving a waiver request for bid withdrawal payment filed by Georgia.²² In its request, Georgia alleged that due to a clerical or typographical error, it submitted a bid of \$119,720,000 for a license instead of \$11,972,000. Georgia claimed that it was unable to withdraw its bid until the next round due, in part, to technical problems with the Commission's wide area network.²³ The Bureau determined that Georgia had demonstrated that it submitted an erroneous bid and that it attempted to withdraw that bid in the same round and that full enforcement of the bid withdrawal payment against Georgia would not serve the purpose of the rule. The Bureau held that in accordance with the Commission's *May 3 Order*, Georgia was entitled to a partial waiver of the rules and its required bid withdrawal payment was reduced to \$569,898, the minimum bid increment for the license in the round in which the bid was made.

I. 9. ATA, MAP and Georgia raise various arguments in their respective petitions challenging the Commission and Bureau Orders that subject them to bid withdrawal payments for their mistaken bids. Among other things, the parties challenge any bid withdrawal payment on equitable principles. Georgia, for example, argues that the payment ordered is inequitable given the fact that its error was unintentional and most likely caused by technical difficulties in the Commission's remote auction system or by the extra zero in the Commission's remote bidding software.²⁴ MAP also argues that a complete waiver is warranted in view of the obvious problems with the Commission's remote bidding software, which, it contends, invited bidders to

²⁰ *Id.* at 11.

²¹ *Bureau May 6 Order* at 2.

²² Georgia Independent PCS Corporation, "Request for Expedited Waiver of Section 24.704(a)(1) Withdrawal Penalty" (March 6, 1996) ("Georgia Waiver Request"). As noted above, the Commission's rules governing the broadband PCS C block auction provided that 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. 47 C.F.R. §§ 24.704(a)(1) and 1.2104(g).

²³ Georgia Waiver Request at 14.

²⁴ Georgia Application at 8.

err by placing an extra zero at the end of their bids, requiring them to delete it manually.²⁵ ATA contends that the magnitude of its erroneous bid as compared to the minimum bid amount for the license in the round clearly demonstrates that the bid was caused by a clerical mistake rather than a bid intentionally placed for strategic purposes. ATA thus claims that equity demands that the Commission provide it complete relief from the bid withdrawal payment.²⁶

III. DISCUSSION

10. As we stated in the *May 3 Order*, a bid withdrawal payment requirement is essential to the functioning of the auction process because it discourages insincere bidding. We noted that insincere bidding distorts the price information generated by the auction process and reduces efficiency.²⁷ In the *May 3 Order*, however, we noted that 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.²⁸ We further stated that, depending on the facts, in cases of erroneous bids some relief from the bid withdrawal payment requirement appears necessary. However, we declined to provide a complete waiver of the bid withdrawal provisions based upon our concern that a complete waiver could threaten the economic efficiency of the auction process and encourage strategic bids disguised as "mistaken" bids.²⁹ Consequently, we established guidelines which balanced issues of fairness to the bidders with the preservation of the economic efficiency of the auction process.³⁰

²⁵ MAP Petition at 7.

²⁶ ATA Petition at 10-11.

²⁷ *May 3 Order* at 7. *See also* Implementation of Section 309(j) -- Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2373 (1994).

²⁸ *May 3 Order* at 8. 47 C.F.R. § 90.805(b) and 47 C.F.R. § 24.704(a)(1). *See also* 47 C.F.R. § 90.151 (waiver of Part 90 of the Commission's rules is appropriate when petitioner demonstrates that unique circumstances are involved and that there is no reasonable alternative solution within the existing rules); and 47 C.F.R. § 24.819(a)(1) (waiver of Part 24 of the Commission's rules is appropriate when petitioner demonstrates (1) that the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case and that grant of the waiver is otherwise in the public interest; or (2) that the unique facts and circumstances of a particular case render the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative).

²⁹ *May 3 Order* at 8.

³⁰ *Id.* at 9.

11. We believe that the guidelines established in our *May 3 Order* are both appropriate and necessary to maintain the integrity of the auction process. Upon further review of ATA's, MAP's and Georgia's petitions, we believe that these parties present unique situations that warrant a waiver of the bid withdrawal payment rule. Common to all three parties is their demonstration that the Commission's remote bidding system, which placed a zero in the bid submission field, may have contributed to some confusion causing the clerical error at issue.³¹ Specifically, the zero appeared when a bidder used the "Go to market" function. This function enabled the bidder to have only the specific market they may be interested in appear on the screen. When it appeared, a zero was present with the cursor on the left of that zero. When a bid was entered, the zero remained on the screen and the additional numbers entered appeared to the left of the zero. We note that the Commission has undertaken system enhancements to reduce the possibility of these types of mistaken bids. The zero has been eliminated from the bidding software so that the bid submission field is blank when a bidder begins entering its bid. In addition, further procedures have been employed in our spectrum auctions that will warn bidders of the possibility of a mistaken bid by alerting them that a bid has been entered that is greater by a certain factor of the minimum bid increment for the round. The Commission will make a determination of that factor for each auction.³²

12. In view of these system enhancements which, if available, may have avoided the situation now presented by ATA, MAP and Georgia, we determine that it is in the public interest to reconsider our *May 3 Order* and the Bureau's *May 6 Order* to the extent the Orders subject these parties to bid withdrawal payments. In this regard, given the system enhancements, we do not anticipate that any bidder will experience this type of mistake in the future. We nonetheless strongly urge bidders to exercise great care when submitting their bids. We caution bidders that they will be faced with a heavy burden to show a mistaken bid and that it is unlikely the Commission will make similar exceptions for such mistaken bids in the future.

13. Based upon authority we delegated in the *May 3 Order*,³³ the Bureau will continue to evaluate and resolve requests for waiver of the Commission's bid withdrawal provisions on a case-

³¹ We note that ATA's erroneous bid contained three extra zeroes, while MAP's and Georgia's contained only one extra zero. See ATA Waiver Request at 3. We do not find this distinction decisionally significant as we believe that the "Go to market" function of the Commission's remote bidding system was the contributing factor in ATA's error.

³² This procedure was implemented in the broadband PCS D, E and F Block auction. See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, FCC 96-278, *Report and Order*, 11 FCC Rcd 7824 (1996). Since the PCS D, E and F Block auction, the Commission has created additional bidding software enhancements designed to prevent the submission of mistaken bids.

³³ *Id.* at 11.

by-case basis. Again, 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.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Atlanta Trunking Associates, Inc. IS GRANTED, the *May 3 Order* is vacated in part, and 47 C.F.R. §§ 90.805(a) and 1.2104(g) of the Commission's rules are waived.

15. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by MAP Wireless, L.L.C. IS GRANTED, the *May 3 Order* is vacated in part, and 47 C.F.R. §§ 24.704(a)(1) and 1.2104(g) of the Commission's rules are waived.

16. IT IS FURTHER ORDERED that the Application for Review filed by Georgia Independent PCS Corporation IS GRANTED, the *Bureau May 6 Order* is vacated in part, and 47 C.F.R. §§ 24.704(a)(1) and 1.2104(g) of the Commission's rules are waived.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary