

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Request for Waiver of
the Competitive Bidding Rules
as Set Forth in Part 1, Subpart Q
of the Commission's Rules and
the Bid Withdrawal Rule as Set Forth
in Section 90.1007 of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: July 21, 1999

Released: July 23, 1999

By the Commission:

1. The Commission has before it an Application for Review filed on March 29, 1999 by Jeremy A. Greene ("Greene"), a bidder in the Phase II 220 MHz auction (Auction No. 18) ("220 MHz Auction").

2. Background. The 220 MHz auction commenced on September 15, 1998 and closed on October 23, 1998. In Round 19 of the auction, Greene placed the high bid on License BEA 160E, the Los Angeles-Riverside-Orange County, CA market ("License 160E").

1 Jeremy Greene, In the Matter of Request for Waiver of the Competitive Bidding Rules as Set Forth in Part 1, Subpart Q of the Commission's Rules and the Bid Withdrawal Rule as Set Forth in Section 90.1007 of the Commission's Rules, Application for Review (filed March 29, 1999).

2 See "Phase II 220 MHz Service Auction Closes: Winning Bidders In the Auction of 908 Phase II 220 MHz Service Licenses," Public Notice, DA 98-2143 (rel. October 23, 1998).

3 See Letter from Amy Zoslov, Chief, Auctions and Industry Analysis Division, 13 FCC Rcd. 22,347 (1998) ("Waiver Denial").

4 See Waiver Denial at 22,349; Letter from Jeremy Greene to Amy Zoslov, Chief, Auctions and Industry Analysis Division, dated October 26, 1998 ("October 26, 1998 Letter").

a waiver of the Commission's competitive bidding rules relative to his withdrawn bid.⁵ Specifically, he sought the award of License 160E, the establishment of an installment plan, and a reduction in his bid amount.⁶ On November 13, 1998, the Auctions and Industry Analysis Division denied Greene's waiver request on the grounds that a grant

". . . would be contrary to the most basic principles of the auction process and would seriously undermine [the integrity of the auction]."⁷ On November 17, 1998, Greene filed a petition for reconsideration of that decision,⁸ in which he claimed references to installment payments in the *220 MHz Bidder Information Package* were inaccurate.⁹ His Petition for Reconsideration was denied by the Wireless Telecommunications Bureau ("Bureau") on March 5, 1999.¹⁰ On March 29, 1999, Greene filed the Application for Review that is before us. In his Application for Review, Greene argues for the first time that: (1) the Commission had not accepted for filing mutually exclusive applications for License 160E; and (2) there was an excessive concentration of licenses in the Basic Economic Area that includes License 160E.¹¹

3. Discussion. Under the Commission's rules, an application for review will not be granted if the designated authority was not afforded an opportunity to address issues raised before the Commission.¹² Here, Greene challenges the competitive bidding design of the 220 MHz auction, an issue that could have been raised in Greene's petition for reconsideration before the Bureau.¹³ Greene does not present newly-discovered evidence, but merely attempts to add new arguments to his appeal before the Commission,

⁵ *Id.* See Letter from Jeremy Greene to Amy Zoslov, Chief, Auctions and Industry Analysis Division, dated October 29, 1998 ("October 29, 1998 Letter"); see also 47 C.F.R. § 1.2104(g)(1).

⁶ See October 26, 1998 Letter and October 29, 1998 Letter.

⁷ See *Waiver Denial* at 22,347-48.

⁸ See Letter from Jeremy Greene, "Waiver-Petition to Reconsider DA-2321," to Chairman William Kennard, Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani, dated November 17, 1998 ("Petition for Reconsideration").

⁹ Petition for Reconsideration. Consistent with the Commission's suspension of the installment payment program, the use of such financing for the 220 MHz auction was eliminated, and the public was informed about this in the *220 MHz Memorandum Opinion and Order*, as well as in the *220 MHz Bidder Information Package*. In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 14,569, 14,639-641 ¶¶ 157-164 ("220 MHz Memorandum Opinion and Order"); Phase II 220 MHz Service Auction, *Bidder Information Package* at 214 - 215 ("220 MHz Bidder Information Package"). See also In the Matter of Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 475-76 ¶¶ 180-82 (1997).

¹⁰ See In the Matter of Request for Waiver of the Competitive Bidding Rules as Set Forth in Part 1, Subpart Q of the Commission's Rules and the Bid Withdrawal Rule as Set Forth in Section 90.1007 of the Commission's Rules, *Order*, DA 99-470 (rel. March 5, 1999) ("*March 5, 1999 Order*").

¹¹ See *supra* note 1.

¹² 47 C.F.R. § 1.115(c).

¹³ See October 26, 1998 Letter; October 29, 1998 Letter; and Petition for Reconsideration.

consideration of which would not serve the public interest.¹⁴ We therefore dismiss Greene's Application for Review.

4. Accordingly, IT IS ORDERED that the Application for Review filed on March 29, 1999 by Jeremy A. Greene IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹⁴ This case is distinguished from decisions permitting consideration of newly-discovered evidence on appeal. *See, WSTE-TV v. FCC*, 566 F.2d 333, 334-338 (D.C. Cir. 1977) (remanding to the Commission its decision to deny a licensee's request to file a supplement to its application for review); *WMOZ, Inc. v. FCC*, 344 F.2d 197, 198 (D.C. Cir. 1965) *Butterfield Theatres, Inc. v. FCC*, 237 F.2d 552, 555-557 (D.C. Cir. 1956) (reversing Commission's denial to reopen licensing hearing after successful applicant filed modification to change transmitter site).