

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Auction No. 44 Revised Schedule, License)
Inventory, and Procedures, *Public Notice*, DA)
02-1491)
)
Petition for Reconsideration by Spectrum)
Holdings I, LP)
)

MEMORANDUM OPINION AND ORDER

Adopted: July 25, 2002

Released: July 25, 2002

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Spectrum Holdings I, LP (“Spectrum Holdings”) seeks reconsideration¹ of actions taken by the Wireless Telecommunications Bureau (“Bureau”) to implement requirements of the Auction Reform Act of 2002.² Among other things, the Auction Reform Act required the Commission to remove from the Auction No. 44 inventory three of five blocks of Lower 700 MHz spectrum for which licenses had been available.³ In light of this and other significant changes required by the Auction Reform Act, the Bureau released a public notice revising the auction schedule, license inventory, and procedures for Auction No. 44.⁴ By the public notice, the Bureau provided bidders with flexibility essential to maintaining a competitive auction environment, consistent with the requirements of the Auction Reform Act. Spectrum Holdings now challenges the Bureau’s grant of this flexibility, in particular, the Bureau’s decision to allow qualified bidders to select additional licenses and supplement upfront payments.⁵ In addition, Spectrum Holdings opposes the Bureau’s requirement that requests for returns of upfront

¹ Petition for Reconsideration, Auction No. 44 Revised Schedule, License Inventory, and Procedures, filed on behalf of Spectrum Holdings I, LP, dated July 1, 2002 (“Petition”).

² Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”).

³ Auction Reform Act, sec. 3 (adding para. 15(B) and (C)(i) to 47 U.S.C. §309(j)) (effectively removing the Lower 700 MHz A, B, and E block licenses from Auction No. 44, which comprised 30 of the 48 megahertz of Lower 700 MHz originally available in Auction No. 44).

⁴ Auction No. 44 Revised Schedule, License Inventory, and Procedures, *Public Notice*, DA 02-1491 (rel. June 26, 2002) (“*Auction No. 44 Revised Schedule Public Notice*”).

⁵ See *Auction No. 44 Revised Schedule Public Notice* at 5-8.

payments mandated by the Auction Reform Act be made by 6 p.m. ET July 3, 2002.⁶ For the reasons set forth below, we deny Spectrum Holdings' Petition.⁷

II. BACKGROUND

2. On March 20, 2002, in the *Auction No. 44 Procedures Public Notice*, the Bureau established a 6 p.m. ET May 8, 2002, deadline to file short-form applications to participate in Auction No. 44.⁸ Also in the *Auction No. 44 Procedures Public Notice*, the Bureau established a 6 p.m. ET May 28, 2002 deadline to submit upfront payments and a June 19, 2002 auction start date.⁹ Numerous parties subsequently requested that the full Commission review the schedule and delay Auction No. 44.¹⁰ On May 24, 2002, the Commission issued the *Auction No. 44 AFR Order* and the *Auction No. 44 Commission Public Notice* which, respectively, denied the requests for delay of Auction No. 44 and reaffirmed the Bureau's previously announced schedule.¹¹ On that same day, the Bureau released the *Auction No. 44 Status Public Notice*, which extended the original 6 p.m. ET May 28, 2002 upfront payment deadline until 6 p.m. ET May 30, 2002.¹²

⁶ See *id.* at 2-4.

⁷ The Bureau received comments both supporting and opposing the new procedures adopted for Auction No. 44. On July 24, 2002, the Commission received a letter from Congressman W.J. "Billy" Tauzin and Senator John Ensign supporting the Bureau's decision to permit qualified bidders to select additional licenses and supplement their upfront payments. On July 18, 2002, the Commission received a letter from Senators Tim Johnson, Max Baucus, and Mike Enzi objecting to the Bureau's decision in this matter. In addition, Council Tree Wireless, L.L.C. ("Council Tree") submitted a Response to the Petition filed by Spectrum Holdings. Response of Council Tree Wireless, L.L.C., filed by Mark F. Dever and Kelly N. Stone, counsel for Council Tree (July 11, 2002). Council Tree argues that if we grant Spectrum Holdings' request to rescind our decision to allow qualified bidders in Auction No. 44 to supplement their upfront payments, we should nevertheless allow a qualified bidder that requested the partial return of its upfront payment to supplement its upfront payment up to the level reported for that qualified bidder in the *Auction No. 44 Qualified Bidders Public Notice*. Auction of Licenses for 698-746 MHz Band, *Public Notice*, DA 02-1346 (Wireless Telecommunications Bureau rel. June 7, 2002). Because we deny Spectrum Holdings' Petition, we need not address Council Tree's Response.

⁸ Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures, *Public Notice*, 17 FCC Rcd 4935, 4951 (2002) ("*Auction No. 44 Procedures Public Notice*"). Pursuant to Commission rules, applicants must select the license(s) on which they wish to bid in their short-form applications. 47 C.F.R. §1.2105(a)(2)(i).

⁹ *Auction No. 44 Procedures Public Notice*, 17 FCC Rcd. at 4951.

¹⁰ See Auction of Licenses in the 747-762 and 777-792 MHz Bands (Auction No. 31); Auction of Licenses in the 698-746 MHz Band (Auction No. 44); Cellular Telecommunications & Internet Association; Paxson Communications Corporation and the Spectrum Clearing Alliance; Applications for Review of Wireless Telecommunications Bureau Letter, *Order*, 17 FCC Rcd 10,098 (2002) ("*Auction No. 44 AFR Order*").

¹¹ *Auction No. 44 AFR Order*; Auction of Licenses in the 747-762 and 777-792 MHz Bands (Auction No. 31) Postponed Until January 14, 2003; Auction of Licenses in the 698-746 MHz Band (Auction No. 44) Will Proceed As Scheduled, *Public Notice*, 17 FCC Rcd 10,108 (2002) ("*Auction No. 44 Commission Public Notice*").

¹² Auction of Licenses for 698-746 MHz Band; Status of FCC Form 175 Applications to Participate in the Auction; Extension of Upfront Payment Deadline, DA 02-1213, *Public Notice*, 17 FCC Rcd 9415, 9415 (2002) ("*Auction No. 44 Status Public Notice*").

3. On June 19, 2002, one day after the Senate and the House of Representatives adopted it by unanimous consent, the President signed the Auction Reform Act of 2002.¹³ Among other things, the Auction Reform Act required that the Commission take certain actions with respect to scheduling the auction of Lower 700 MHz band licenses. More specifically, the Auction Reform Act prohibited the Commission from commencing Auction No. 44 on June 19, 2002, as provided in the *Auction No. 44 Procedures Public Notice*.¹⁴ It expressly directed the Commission to commence an auction of the Lower 700 MHz band C and D block licenses no earlier than August 19, 2002, and no later than September 19, 2002, and defined the entities eligible to bid in that auction.¹⁵ Finally, the Auction Reform Act required the Commission, within one month of the its enactment, to return to bidders for licenses in the A, B and E blocks in Auction No. 44 the full amount of all upfront payments made by such bidders for such licenses.¹⁶

4. Following enactment of the Auction Reform Act, the Bureau issued the *Auction No. 44 Revised Schedule Public Notice*. In the *Auction No. 44 Revised Schedule Public Notice*, the Bureau announced that, pursuant to the Auction Reform Act: Auction No. 44 will start on August 27, 2002; only those parties that had been identified as qualified bidders will be eligible to participate in the rescheduled Auction No. 44; the rescheduled Auction No. 44 will offer only licenses for the C and D block of the Lower 700 MHz bands; and that qualified bidders that had been eligible to bid on the A, B, and E block licenses could request partial or full refunds of their upfront payments by providing necessary information no later than 6 p.m. ET July 3, 2002.¹⁷ In addition, because qualified bidders could not have anticipated the changes in Auction No. 44 mandated by adoption of the Auction Reform Act, the Bureau permitted qualified bidders to elect, no later than 6 p.m. ET July 3, 2002, to terminate participation in, *i.e.*, depart from, Auction No. 44, and receive a full refund of their upfront payments.¹⁸ Finally, the Bureau permitted all qualified bidders not departing from Auction No. 44 to select additional licenses and supplement their upfront payments pursuant to specified procedures beginning July 22, but no later than 6 p.m. ET July 26, 2002.¹⁹

III. DISCUSSION

5. In its Petition, Spectrum Holdings argues that the Bureau's decision to permit qualified bidders not departing from Auction No. 44 to select additional licenses and to supplement upfront payments violates Section 309(j) of the Communications Act of 1934, as

¹³ See Auction Reform Act.

¹⁴ Auction Reform Act, sec. 3 (adding para. 15(B) to 47 U.S.C. § 309(j)); see also Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, *Public Notice*, 17 FCC Rcd 1617 (2002)(public notice scheduling Auction No. 44).

¹⁵ Auction Reform Act, sec. 3 (adding para. 15(C)(ii)(Auction No. 44 timetable) and (iii)(Auction No. 44 qualified bidders) to 47 U.S.C. § 309(j)).

¹⁶ Auction Reform Act, sec. 3 (adding para. 15(D) to 47 U.S.C. § 309(j)).

¹⁷ *Auction No. 44 Revised Schedule Public Notice* at 2-4.

¹⁸ *Auction No. 44 Revised Schedule Public Notice* at 4-5.

¹⁹ *Auction No. 44 Revised Schedule Public Notice* at 5-8.

amended (“Communications Act”).²⁰ Spectrum Holdings also claims that the Bureau’s actions violated fundamental administrative law principles and are not consistent with Commission rules governing waivers.²¹ Finally, Spectrum Holdings contends that it should be permitted until 6 p.m. ET July 16, 2002, rather than only until the Bureau’s 6 p.m. ET July 3, 2002 deadline, to request the return of upfront payments in connection with A, B, and E block licenses.²²

6. Contrary to Spectrum Holdings’ contention, Section 309(j)(3)(E) does not prohibit the Bureau’s modification of the deadlines for selecting licenses and making upfront payments. In relevant part, Section 309(j)(3)(E) of the Communications Act requires the Commission to allow an adequate period, before issuance of bidding rules, to permit notice and comment on proposed auction procedures.²³ Spectrum Holdings complains that the Bureau did not allow any opportunity for notice and comment on the procedures for selecting additional licenses and supplementing upfront payments. The Bureau previously sought comment on the process of having qualified bidders establish their initial maximum eligibility by selecting licenses and making upfront payments. This procedure was not changed in the *Auction No. 44 Revised Schedule Public Notice*.²⁴ Rather, the Bureau merely modified the deadlines by allowing qualified bidders to select additional licenses and make supplemental upfront payments within a specific time period. These modifications do not amount to the issuance of new bidding rules within the meaning of Section 309(j)(3)(E).

7. The Commission has applied the requirements of Section 309(j)(3)(E) to “bidding rules” regarding specific mechanisms of day-to-day auction conduct, including, for example, the structure of bidding rounds and stages, minimum opening bids or reserve prices, minimum acceptable bids, and initial maximum eligibility for each bidder.²⁵ Such mechanisms incorporate the Bureau’s power to exercise discretion and make changes in appropriate circumstances. For example, the Bureau does not create an immutable bidding schedule following notice and comment. Instead, the Bureau adopts mechanisms for announcing changes in bidding rounds during the course of the auction.²⁶ Section 309(j)(3)(E) does not require anything more stringent. Similarly, the Bureau’s use of notice and comment when establishing a mechanism for calculating initial maximum eligibility does not require further notice and comment before the

²⁰ Petition at 5-12.

²¹ Petition at 12-15.

²² Petition at 15-16.

²³ 47 U.S.C. §309(j)(3)(E)(i) (“(3) Design of Systems of Competitive Bidding. . . . [T]he Commission . . . shall seek to promote . . . the following objective[. . . (E) ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed – (i) before the issuance of bidding rules, to permit notice and comment on proposed auction procedures[.]”)

²⁴ Pursuant to the originally established Auction No. 44 procedures, a qualified bidder’s initial maximum eligibility in the rescheduled Auction No. 44 will be determined by licenses selected prior to the auction and by the amount of the qualified bidder’s upfront payment. *Auction No. 44 Procedures Public Notice*, 17 FCC Rcd at 4965.

²⁵ Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448 (1997) (“*Part 1 Third Report and Order*”).

²⁶ See, e.g., *Auction No. 44 Procedures Public Notice*, 17 FCC Rcd at 4969.

Bureau modifies deadlines for selecting licenses or submitting upfront payments, when other relevant concerns make such modifications appropriate. Indeed, in the case of Auction No. 44, the Bureau departed from the originally announced deadline for accepting upfront payments when it extended the original deadline for two days without providing further notice or comment pursuant to Section 309(j)(3)(E).²⁷ Moreover, the Bureau has granted waivers in other auctions, when appropriate, with respect to both license selections and upfront payments, after the relevant deadline has passed.²⁸ Section 309(j)(3)(E) does not prohibit the Commission, or the Bureau acting on its delegated authority, from changing without notice and comment the specific dates by which auction participants must select licenses and submit upfront payments.²⁹

8. Also contrary to Spectrum Holdings' argument, the Auction Reform Act does not limit the pre-existing discretion the Commission has, consistent with Section 309(j)(3)(E), to modify without notice and comment dates for selecting licenses and submitting upfront payments. Recognizing that the Bureau needs flexibility and discretion in this area in order to respond to changed circumstances and conduct an orderly auctions process, the Commission has granted the Bureau broad authority to administer competitive bidding procedures.³⁰ Spectrum Holdings asserts that new Section 309(j)(15)(A)'s reference to the remainder of Section 309(j) transforms Section 309(j)(3)(E) into a prohibition against the Bureau's actions.³¹ Section 309(j)(15)(A) provides that, like the Commission's design of competitive bidding systems generally, the Commission's new discretion to "determine the timing of and deadlines for the conduct of competitive bidding," including "the timing and deadlines for qualifying for bidding" is subject to the goals of Section 309(j).³² Thus, for example, the Commission must take into account promoting efficient and intensive use of the electromagnetic spectrum, pursuant to Section 309(j)(3), when exercising its discretion to establish auction schedules. This does not, however, transform Section 309(j)(3)(E) into a notice and comment requirement for all auction deadlines. In any event, the Bureau had previously sought comment generally and always retains

²⁷ See *Auction No. 44 Status Public Notice*, 17 FCC Rcd at 9415.

²⁸ E.g., Letter to Melodie A. Virtue, Counsel for Pass Word, Inc., from Mark Bollinger, Acting Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, D.A. 00-274 (rel. February 14, 2000) (granting waiver of Section 1.2105(b) to permit selecting additional licenses); Letter to Ms. Lynn R. Charytan, Counsel to MPC Wireless, Inc., from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 15 FCC Rcd 24540 (2000) (granting waiver of upfront payment deadline).

²⁹ See 47 C.F.R. §§ 0.131(b) and (c), 0.331; *Part 1 Third Report and Order*, 13 FCC Rcd at 448-449 ¶ 125 (1997).

³⁰ *Part 1 Third Report and Order*, 13 FCC Rcd at 448-449 ¶ 125 (1997); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-5698 ¶ 16.

³¹ Auction Reform Act, sec. 3(a) (adding para. 15(A) to 47 U.S.C. § 309(j)) ("(15) Commission To Determine Timing Of Auctions. – (A) Commission Authority. – Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.")

³² See, generally, 47 U.S.C. §309(j).

the discretion to modify its procedures consistent with the goals of Section 309(j).³³

9. Spectrum Holdings' also misreads Section 309(j)(15)(C)(ii), added by the Auction Reform Act. Section 309(j)(15)(C)(ii) provides that "[t]he entities that shall be eligible to bid in the auction of the C-block and D-block licenses . . . shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline."³⁴ Pursuant to this language, the Bureau announced that previously identified qualified bidders among the entities that submitted applications to participate in Auction No. 44 by May 8, 2002, would be the only parties eligible to participate in the rescheduled Auction No. 44.³⁵ Contrary to Spectrum Holdings' claim, Section 309(j)(15)(C)(ii) limits *who* is eligible to participate in the rescheduled Auction No. 44 and not *what* those parties may bid on or *how* their maximum initial eligibility is to be determined. Nowhere in this section is there language addressing the *extent* of eligibility that any qualified entity is to have in rescheduled Auction No. 44.

10. Spectrum Holdings' contention that the Bureau's modification of previously announced deadlines for Auction No. 44 violates the general administrative law principle that an agency must adhere to its own rules and regulations also lacks merit.³⁶ Spectrum Holdings confuses application deadlines in the Bureau's administrative process with Commission rules restricting parties' amendments to their applications; administrative deadlines for filing and amending applications to participate in auctions are not fixed by Commission rules.³⁷ "Like the rules governing the filing of applications, rules permitting (or suspending) amendment are 'rules of agency organization, procedure, or practice' exempt from the Administrative Procedures Act's notice and comment requirement."³⁸ No general administrative law principle precludes the Bureau, when appropriate, from altering prior deadlines and allowing qualified bidders to select additional licenses and supplement upfront payments.

11. Moreover, contrary to Spectrum Holdings' argument that the Bureau cannot satisfy the Commission's waiver rule,³⁹ the present circumstances plainly support the Bureau's waiver of Section 1.2105(b)(2),⁴⁰ which prohibits post-deadline amendments to license selections, and the upfront payment deadline.⁴¹ As noted in the *Auction No. 44 Revised Schedule Public Notice*, the Bureau established the challenged procedures because qualified bidders could not have anticipated the Auction Reform Act's changes to Auction No. 44 when they originally

³³ *Id.*

³⁴ Auction Reform Act, sec. 3 (adding para. 15(C)(ii) to 47 U.S.C. §309(j)).

³⁵ *Auction No. 44 Revised Schedule Public Notice* at 2.

³⁶ Petition at 12-15 (citing, *inter alia*, *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)).

³⁷ See 47 C.F.R. §1.2105(b)(2) (rule determines effect of the deadline without establishing the deadline).

³⁸ *Bachow Communications, Inc. v. Federal Communications Commission*, 237 F.3d 683, 690 (D.C. Cir. 2001) (citations omitted).

³⁹ See 47 C.F.R. §1.925.

⁴⁰ 47 C.F.R. §1.2105(b)(2).

⁴¹ *Auction No. 44 Revised Schedule Public Notice* at 5-6 (granting waivers).

submitted license selections or upfront payments.⁴² At that time, Auction No. 44 qualified bidders had no way of knowing that the Auction Reform Act would reduce the amount of spectrum available in Auction No. 44 by more than fifty percent.⁴³ The removal of 3 of 5 originally available license blocks significantly changed the availability of Lower 700 MHz band spectrum licenses for the near future. Auction No. 44 will promote the Communication Act's purposes, such as efficient and intensive use of the electromagnetic spectrum, by awarding licenses to parties that value them most highly.⁴⁴ The rules governing license selection and upfront payments, together with the procedures for determining maximum eligibility, further this purpose by protecting against insincere bidding while permitting qualified bidders flexibility to bid on a variety of licenses.⁴⁵ In light of the extraordinary changes in Auction No. 44 required by the Auction Reform Act, permitting qualified bidders to select additional licenses and supplement upfront payments may be the only way to permit a party that currently most highly values a particular license to bid on and win it in the auction, thereby promoting statutory objectives.⁴⁶ Under these circumstances, the Bureau clearly satisfies either of the Commission's relevant tests for waivers. The underlying purpose of the rules would not be served by refusing to modify the deadlines and modifying the deadlines is in the public interest.⁴⁷ Alternatively, given these unique circumstances, strict enforcement of the original deadlines would be contrary to the public interest and, absent the waivers, qualified bidders would have no means of increasing their maximum eligibility to bid on licenses in which they now have an interest.⁴⁸

⁴² *Id.*

⁴³ The Auction Reform Act's provisions effectively removing the A, B, and E blocks, or 30 megahertz of the 48 megahertz of Lower 700 MHz licenses covering the country that were available in Auction No. 44, were not introduced until June 18, 2002, more than two weeks after the upfront payment deadline and one day prior to Auction No. 44's scheduled start date. See 148 Cong. Rec. S5714-02, S5715 (daily ed. June 18, 2002) (text of amendments).

⁴⁴ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2360-61 (1994).

⁴⁵ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at (¶¶173-175) (“bidders will be limited in an auction to bidding on licenses . . . that their upfront payment covers [while having] the flexibility to change its strategy during the auction[.]”).

⁴⁶ See also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use; 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 414-15 (“we recognize that there may be some circumstances in which the competitiveness of the auction might be enhanced by allowing applicants to add markets to their short-form applications,” while concluding that generally such additional selections should be prohibited).

⁴⁷ See 47 C.F.R. §1.925(b)(3)(i).

⁴⁸ See 47 C.F.R. §1.925(b)(3)(ii). The radical change in available spectrum may or may not change individual qualified bidders' valuations of particular licenses or the total number of licenses they seek to purchase. Spectrum Holdings forecasts that the interests of qualified bidders will not be substantially changed. Petition at 15. Rather than rely on forecasts by Spectrum Holdings or any other party, however, the Bureau chose to permit qualified bidders to increase their initial maximum eligibility so the bidders will be able to bid based on their current valuations.

12. In light of the significant timing and inventory changes to the auction mandated by the Auction Reform Act, the Bureau acted reasonably and fairly to ensure that all qualified bidders were offered the maximum amount of flexibility consistent with the requirements of the legislation. Importantly, the Bureau's actions in response to the legislation promote the objectives of Section 309(j)(3) of the Communications Act, including the fostering of economic opportunity and competition, the recovery for the public of a portion of the value of the spectrum, and the efficient and intensive use of the spectrum.⁴⁹ Within the limited pool of qualified bidders, the Bureau acted to maximize competition consistent with the statute. Granting the relief sought by Spectrum Holdings would undermine competition and intensive use of the spectrum in these circumstances. The overarching goal of the Commission's auctions process is to ensure that spectrum is awarded to those that value it most highly, thereby promoting efficient and effective spectrum use.⁵⁰ Nothing in the Auction Reform Act bars the Bureau from continuing to pursue these goals, especially here where there is already a potential diminishment of competition (*i.e.*, by the withdrawal of potential bidders and by limiting the pool of qualified bidders).

13. Finally, Spectrum Holdings' opposition to the Bureau's deadline for requesting the return of upfront payments is unsupported by the Auction Reform Act. Spectrum Holdings maintains that the Auction Reform Act's requirement that the Commission return certain upfront payments for certain qualified bidders by July 19, 2002, gives those bidders a right to request returns until 6 p.m. ET July 16, 2002, only two full days before the statute's deadline for the returns and almost two weeks after the 6 p.m. ET July 3, 2002 deadline the Bureau established in the *Auction No. 44 Revised Schedule Public Notice*.⁵¹ The Auction Reform Act requires that "[w]ithin one month after the date of enactment of this [provision], the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses."⁵² The Commission, however, cannot determine the precise amounts to return because qualified bidders' aggregate upfront payments are not license specific.⁵³ Accordingly, the Bureau established a procedure for qualified bidders eligible to bid on A, B, or E block licenses to request a full or partial return of their upfront payments.⁵⁴ The Bureau allowed qualified bidders one week, or five business days, after the release of the *Auction No. 44 Revised Schedule Public Notice* to provide the necessary information to process any requests, *i.e.*, not later than 6 p.m. ET July 3, 2002. By establishing this deadline, the Bureau provided the Commission with eleven business days to process the requests, and resolve any potential disputes, while complying with the Auction Reform Act's statutory deadline. Thus, the Bureau's procedure both complies with the Auction Reform Act and accommodates qualified bidders by giving them five business days to determine the amount

⁴⁹ 47 C.F.R. § 309(j)(3).

⁵⁰ See FCC Report to Congress on Spectrum Auctions, WT Docket No. 97-150, FCC 97-353 (1997).

⁵¹ Petition at 15-16.

⁵² Auction Reform Act, sec. 3 (adding para. 15(D) to 47 U.S.C. §309(j)).

⁵³ See *Auction No. 44 Procedures Public Notice*, 17 FCC Rcd at 4965.

⁵⁴ See *Auction No. 44 Revised Schedule Public Notice* at 3-4.

of their upfront payment to be returned.⁵⁵

IV. CONCLUSION AND ORDERING CLAUSE

14. For the foregoing reasons, Spectrum Holdings' Petition is denied. This action is taken on delegated authority pursuant to 47 U.S.C. § 155(c) and 47 C.F.R. §§ 0.131(c) 0.331(d) of the Commission's rules.

15. ACCORDINGLY, IT IS ORDERED, pursuant to pursuant to Section 1.106(j) of the Commission's rules, 47 C.F.R. §1.106(j), and sections 4(i), 309, and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and 405(a), that the Petition for Reconsideration filed on behalf of Spectrum Holdings I, LP, dated July 1, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham
Deputy Chief
Wireless Telecommunications Bureau

⁵⁵ In addition, the Bureau's decision to allow qualified bidders remaining in Auction No. 44 to supplement their upfront payments gives these qualified bidders an opportunity effectively to revise any requests they later deem excessive. *See Auction No. 44 Revised Schedule Public Notice* at 6-8.