



**Federal Communications Commission**  
Washington, D.C. 20554

DA 03-3885

December 4, 2003

Ms. Elizabeth R. Sachs  
Attorney at Law  
Lukas, Nace, Gutierrez & Sachs  
Suite 1200  
1111 Nineteenth Street N.W.  
Washington, DC 20036

In re: American Mobile Telecommunications Association  
900 MHz SMR Auction No. 55

Dear Ms. Sachs:

This letter responds to your request by letter, dated November 26, 2003, on behalf of your client, American Mobile Telecommunications Association (“AMTA”).<sup>1</sup> AMTA requests that the Commission increase the small business bidding credit levels that will apply to the upcoming 900 MHz Specialized Mobile Radio (SMR) auction (Auction No. 55), which is scheduled to begin in February of 2004. Specifically, AMTA urges the Commission to raise the bidding credit levels for small businesses from 10 percent to 25 percent and for very small businesses from 15 percent to 35 percent. For the reasons set forth below, we deny AMTA’s request.

In September of 1995, in a rulemaking adopting competitive bidding rules specifically for the 900 MHz SMR service (“*900 MHz SMR Rulemaking*”), the Commission established a two-tiered bidding credit scheme for the 900 MHz SMR auction consisting of 10 and 15 percent credit amounts.<sup>2</sup> In adopting those credit levels, the Commission took into consideration the comments filed regarding the appropriate discounts to be awarded to small business entities as well as the encumbered nature of the 900 MHz SMR service.<sup>3</sup> Significantly, in that service-specific rulemaking, the Commission expressly rejected the adoption of 25 percent and 40 percent credit levels in favor of 10 and 15 percent credits for small and very small businesses, respectively.<sup>4</sup> On April 15, 1996, the Commission completed its auction of 900 MHz SMR

---

<sup>1</sup> Letter to Margaret Wiener, FCC, from Elizabeth R. Sachs, Nov. 26, 2003.

<sup>2</sup> Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2645-46 (1995) (*900 MHz SMR Rulemaking*).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

licenses.<sup>5</sup> On September 17, 2003, the Commission released a public notice announcing the scheduling of another 900 MHz SMR auction, Auction No. 55.<sup>6</sup> The spectrum to be included in this auction is spectrum that was previously associated with licenses that have been cancelled or terminated. On October 17, 2003, the Commission released a public notice announcing minimum opening bids and procedures for Auction No. 55, including bidding credit amounts of 10 and 15 percent.<sup>7</sup>

AMTA argues that the Commission's explicit determination in the *900 MHz SMR Rulemaking* was superceded by language in a 1997 Part 1 competitive bidding rulemaking, which clarified and amended the Commission's general competitive bidding rules.<sup>8</sup> In addition, AMTA points to the availability of 25 and 35 percent bidding credit levels in auctions of other services to support its contention that such credit levels should similarly be adopted for the upcoming 900 MHz SMR auction.<sup>9</sup>

Prior to 1997, the Commission adopted separate competitive bidding rules for each auctionable service.<sup>10</sup> In 1997, the Commission launched a rulemaking proceeding to expand the general competitive bidding rules contained in Part 1, Subpart Q of its rules.<sup>11</sup> The purpose of the Part 1 proceeding was to establish a streamlined set of general competitive bidding rules for all auctionable services and to reduce the burden on both the Commission and the public of conducting service-specific rulemakings.<sup>12</sup> In the 1997 Part 1 rulemaking, the Commission decided to continue to adopt small business size standards on a service-specific basis.<sup>13</sup> The Commission also adopted a schedule of bidding credits for small businesses consisting of three credit levels—15 percent, 25 percent and 35 percent, based on the gross revenues of the

---

<sup>5</sup> FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas, *Public Notice*, 11 FCC Rcd 18599 (1996).

<sup>6</sup> Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004, *Public Notice*, 2003 WL 22170843 (F.C.C.), DA 03-2897 (Sept. 17, 2003).

<sup>7</sup> Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004, *Public Notice*, 2003 WL 22383006 (F.C.C.), DA 03-3235 (Oct. 17, 2003) (*Auction No. 55 Procedures Public Notice*).

<sup>8</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 403-04 (1997) (*1997 Part 1 Rulemaking*).

<sup>9</sup> We note that AMTA supports its claim by citing three rulemaking orders for three specific services, Broadband Personal Communications Services (PCS), Local Multipoint Distribution Service, and PCS.

<sup>10</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 15293, 15294 (2000).

<sup>11</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 5686 (1997).

<sup>12</sup> *Id.*

<sup>13</sup> *1997 Part 1 Rulemaking*, 13 FCC Rcd at 388.

businesses.<sup>14</sup> In adopting this schedule, the Commission acknowledged that these credit levels were higher than those previously adopted for specific services, namely the 900 MHz SMR service.<sup>15</sup> In 2000, the Commission further clarified and amended the Part 1 competitive bidding rules.<sup>16</sup> In that item, the Commission stated that it was in the public interest to conform service-specific auction rules to the general competitive bidding rules and instructed the Wireless Telecommunications Bureau ("Bureau") to make conforming edits to the Code of Federal Regulations.<sup>17</sup> In 2002, the Bureau adopted the *Conforming Edits Order*.<sup>18</sup> In the *Conforming Edits Order*, the Bureau stated that

Pursuant to our delegated authority, this Order identifies and removes service-specific competitive bidding rules that have been superseded or made redundant by the Part 1 general competitive bidding rules. **In those instances in which service-specific departures from the Part 1 general competitive bidding rules were tailored for a particular service, we retain such rules. . . .**<sup>19</sup>

AMTA argues that the bidding credit schedule adopted in the 1997 Part 1 general competitive bidding rulemaking supercedes the Commission's previous decision in the service-specific *900 MHz SMR Rulemaking* to offer lower bidding credit amounts. We firmly disagree. AMTA's argument seems to be based on its belief that the bidding credit levels set forth in the 1997 rulemaking apply automatically to all auctions that take place thereafter, even those auctions for which specific service rules were previously adopted after having provided notice and received comment. The idea that the Commission intended a blanket application of the 1997 bidding credit schedule to all services is without merit.

In connection with its service-specific consideration of small business size standards, the Commission adopts bidding credit amounts for each service. In the course of its 1995 900 MHz SMR service proceeding, the Commission was asked to adopt a 25 percent bidding credit amount. It specifically rejected that proposal.<sup>20</sup> Based on the record developed in that proceeding, the Commission decided to adopt a two-tier, 10 and 15 percent formula, concluding that it "strikes a reasonable compromise between the new applicants who favor a higher bidding

---

<sup>14</sup> *Id.*, 13 FCC Rcd at 403-04.

<sup>15</sup> *Id.*, 13 FCC Rcd at 404 n. 124.

<sup>16</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 15293, 15294 (2000).

<sup>17</sup> *Id.*, 15 FCC Rcd at 15330.

<sup>18</sup> Amendment of Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's Rules – Competitive Bidding, *Order*, 17 FCC Rcd 6534, 6536 (Wireless Telecommunications Bureau, 2002) (emphasis added)(footnotes omitted) (*Conforming Edits Order*).

<sup>19</sup> *Id.*

<sup>20</sup> In fact, Pro Tec proposed a 40 percent bidding credit because it "would encourage greater participation in the auction process by small businesses, women and minorities." *900 MHz SMR Rulemaking*, 11 FCC Rcd at 2705. This is the same argument made by AMTA in this instance.

credit on all blocks, and the incumbent commenters who favor a lower bidding credit only on unencumbered blocks."<sup>21</sup> Thus, in the case of the 900 MHz SMR service, the Commission adopted bidding credit levels specifically tailored to that service. As noted in the highlighted language above, the *Conforming Edits Order* provides that in this circumstance, the Commission retains such rules, rather than conforming the service-specific rules to the Part 1 rules.<sup>22</sup>

Even with regard to the three services AMTA provides as examples of the Commission's use of 25 and 35 percent bidding credits, Broadband Personal Communications Services (PCS), Local Multipoint Distribution Service, and PCS, we note that in each instance, the Commission solicited comment and made an individual determination on the bidding credit amounts to be used in the auctions for those services.<sup>23</sup> While the Commission established a bidding credit schedule in the Part 1 rules, consistent with Sections 1.2110(c)(1) and 1.2110(f)(1), the Commission has continued to seek comment on bidding credit amounts in service rules proceedings in which the Commission adopts competitive bidding rules.<sup>24</sup> Thus, contrary to AMTA's implication, the amount of the bidding credit for each service was not settled in a rulemaking order of general applicability, but continues to be resolved in rulemaking proceedings applicable to each individual service.

AMTA acknowledges that it failed to submit its request within thirty (30) days of the release of the *Auction No. 55 Procedures Public Notice*.<sup>25</sup> In light of the Commission's specific rejection of a 25 percent bidding credit amount for the 900 MHz SMR auction, we reject AMTA's request, submitted shortly before the due date for auction applications, to supersede the Commission's 1995 determination to use 10 and 15 percent bidding credits.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's rules.<sup>26</sup>

Sincerely,

---

<sup>21</sup> *900 MHz SMR Rulemaking*, 11 FCC Rcd at 2706.

<sup>22</sup> *Conforming Edits Order*, 17 FCC Rcd at 6536.

<sup>23</sup> Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824, 7846-49 (1996); Rulemaking To Amend Parts 1, 2, 21 and 25 Of the Commission's Rules to Redesignate The 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service And for Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12693-95 (1997); Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service (PCS) Licensees, WT Docket No. 97-82, *Fourth Report and Order*, 13 FCC Rcd 15743, 15767-69 (1998).

<sup>24</sup> 47 C.F.R. § 1.2110(c)(1); 47 C.F.R. § 1.2110(f)(1).

<sup>25</sup> Letter to Margaret Wiener, FCC, from Elizabeth R. Sachs, Nov. 26, 2003. See Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004, *Public Notice*, 2003 WL 22383006 (F.C.C.), DA 03-3235 (Oct. 17, 2003).

<sup>26</sup> 47 C.F.R. § 0.331.

Margaret W. Wiener  
Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau