RECORD ONLY

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 94-264
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
	)	

FOURTH MEMORANDUM OPINION AND ORDER

Adopted: October 19, 1994 **Released:** October 19, 1994

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION

1. By this action, we resolve petitions for reconsideration or clarification of our rules governing the methodology and procedure for auctions to provide personal communications services in the 2 GHz band (called "broadband PCS").[1] Twenty-six petitions were received, as well as 17 oppositions and 8 replies.[2] Specifically, we will re-examine aspects of our rules concerning: simultaneous multiple round auction design and procedures; application, payment and penalty procedures; and regulatory safeguards. In a future *Order*, we will consider whether the public interest would be served by changing our entrepreneurs' block rules, as well as other provisions we established to ensure that small businesses, rural telephone companies and businesses owned by minorities and women (collectively termed "designated entities") have a meaningful opportunity to participate in the provision of broadband PCS.

2. In general, the rules and decisions we make in this *Fourth Memorandum Opinion and Order* are designed to result in auctions that will award licenses to those who value them most highly. To achieve this goal, we adopt auction rules that balance the need to allow bidders the information necessary to express the interdependency of licenses with the need to minimize complexity. We believe the rules we adopt strike a proper balance between these objectives.

II. BACKGROUND

3. On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (the Budget Act) added Section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. § 309(j).[3] This section gives the Commission express authority to employ competitive bidding procedures to select among mutually exclusive applications for certain initial licenses. In the *Second Report and Order* in this proceeding, the Commission exercised its authority by determining that broadband PCS licenses should be awarded through competitive bidding and prescribing general rules and procedures and a broad menu of competitive bidding methods to be used for all auctionable services.[4] We re-examined certain aspects of these general rules and procedures in the *Second Memorandum Opinion and Order*, released August

---

[1] *Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178 (Rel. July 15, 1994) (*Fifth Report and Order*).

[2] A list of the petitions, oppositions and replies is contained in Appendix A.

[3] *See* Omnibus Budget Reconciliation Act of 1993, 47 U.S.C. § 309(j)(3)(B).

[4] *Second Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) (*Second Report and Order*).

15, 1994.[5]

4. In the *Fifth Report and Order*, we established specific competitive bidding rules for broadband PCS.[6] As described more fully below, these rules, in part, set forth auction methodology, procedure, payment and safeguard provisions. We decided in the *Fifth Report and Order* to conduct three separate auctions for broadband PCS licenses: the first for the 99 available broadband PCS licenses in MTA blocks A and B; the second for the 986 broadband PCS licenses in BTA blocks C and F (the "entrepreneurs' blocks"); and the third for the remaining 986 broadband PCS licenses in BTA blocks D and E.[7] We also decided to conduct each auction through simultaneous multiple round bidding with simultaneous stopping rules. Under that approach, bidding will remain open on all licenses until the bidding closes on all licenses in the auction. We further established a variety of rules governing bid increments and bidding activity to move the auctions toward completion in a reasonable period of time. We also retained the ability to use other approaches, including sequential auctions for the licenses, and to make other adjustments to the auction process as necessary. Finally, we established pre- and post-auction application procedures; payment and default penalties; and other safeguards to prevent collusion among applicants.[8]

---

[5] *Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215 (Rel. Aug. 15, 1994) (*Second Memorandum Opinion and Order*).

[6] The *Third Report and Order* and *Fourth Report and Order* in this docket established competitive bidding rules for narrowband PCS and Interactive Video and Data Service, respectively. *See Third Report and Order* in PP Docket No. 93-253, 9 FCC Rcd 2941, *recon. Third Memorandum Opinion and Order*, FCC 94-219 (Rel. Aug. 17, 1994); *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

[7] When we crafted our broadband PCS licensing rules in Gen. Docket 90-314, we divided the licensed broadband PCS spectrum into three 30 MHz blocks (A, B, and C) and three 10 MHz blocks (D, E, and F). We also designated two different service areas: 493 Basic Trading Areas (BTAs) and 51 Major Trading Areas (MTAs). The 493 BTAs and 51 MTAs used in our broadband PCS licensing rules have been adapted from the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, at 38-39. *See Second Report and Order* in Gen. Docket No. 90-314, 8 FCC Rcd 7700 (1993), *recon. Memorandum Opinion and Order*, FCC 94-144 (Rel. June 13, 1994).

[8] As indicated *supra*, rules were also adopted to provide for opportunities for designated entities to participate in the broadband PCS service. *See Fifth Report and Order*, FCC 94-178 at ¶¶ 93-217.

III. DISCUSSION

A. Auction Design and Procedures

1. Standby Bidding Queues

5. In the *Fifth Report and Order*, the Commission determined that the simultaneous multiple round auction design would be the preferred methodology for broadband PCS auctions, primarily because there is significant interdependency among the licenses to be auctioned, and the simultaneous multiple round auction design facilitates more efficient aggregation and imparts to bidders greater amounts of information regarding license values than the other auction designs.[9] We reserved the authority, however, to use combinatorial bidding techniques in conjunction with simultaneous multiple round auctions to further facilitate the efficient aggregation of licenses. On reconsideration of the general auction rules adopted in this proceeding, the Commission also noted that we would consider the use of a standby queue mechanism if we elected to use combinatorial bidding techniques.[10] The standby queue would allow parties seeking individual licenses to coordinate their bids in order to beat a prevailing bid for a combination of licenses.[11]

6. Petition. GTE requests that the Commission adopt a standby queue bidding mechanism for the BTA spectrum allocations.[12] GTE maintains that adoption of the standby queue proposal would facilitate the aggregation of 10 MHz blocks into larger spectrum blocks by allowing bidders to obtain full information about the status of bidding on the individual

---

[9] *Id.* at ¶ 31-32.

[10] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 44.

[11] *Id.* The National Telecommunications and Information Administration, the sponsor of an experiment to test the standby queue mechanism, described it as follows:

> The "stand-by queue" feature of [Adaptive User Selective Mechanism software] allows parties seeking individual licenses to coordinate their bids in order to beat the currently prevailing bid for a combination of licenses. The stand-by queue displays the amount that other bidders are willing to pay for the licenses that are part of a combination bid. A bidder can determine from the sum of these amounts how much to raise his or her own bid in order to surpass the current winning bid.

See Letter to FCC Chairman Reed Hundt from Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, *ex parte* filing in PP Docket No. 93-253 (filed Feb. 28, 1994).

[12] GTE Petition for Partial Reconsideration (GTE Petition), filed Aug. 22, 1994, at 19.

blocks.[13] GTE further notes that a standby queue would enable bidders to design individualized service areas consistent with their business plans and financial capabilities.[14]

7. Decision. The standby queue is a mechanism that is useful only in the context of combinatorial bidding, and is inapplicable to simultaneous multiple round bidding without combinatorial bidding. In the *Fifth Report and Order*, we concluded that the disadvantages of combinatorial bidding were likely to outweigh the advantages for auctions of broadband PCS licenses, and we adopted simultaneous multiple round bidding as our auction methodology for broadband PCS licenses. Nevertheless, we left open the option to allow combinatorial bidding if simultaneous multiple round auctions without combinatorial bidding do not result in efficient aggregation of licenses, and if there are significant advances in the development of combinatorial auctions.[15] As we noted in the *Second Memorandum Opinion and Order*, we have no current plans to use combinatorial bidding.[16] If, however, we do adopt such an auction methodology in the future, we will consider the use of a standby queue mechanism at the same time.

2. Activity Rules

8. In the *Fifth Report and Order*, the Commission adopted an activity rule to ensure that the auctions will close within a reasonable period of time and to increase the information conveyed by bid prices during each auction.[17] The activity rule requires bidders to maintain certain minimum levels of bidding activity during each round of the auction to preserve their maximum bidding eligibility.[18] The rule provides for three stages with increasing levels of activity required in each stage. The auction moves from stage I to stage II when, in each of three consecutive rounds of bidding, the high bid has increased on less than 10 percent of the spectrum (measured in terms of MHz-pops)[19] being auctioned. The auction will move from stage II to stage III when, in each of three consecutive rounds in stage II, the high bid has

---

[13] *Id.* at 21.

[14] *Id.*

[15] *Fifth Report and Order*, FCC 94-178 at ¶ 35.

[16] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 44.

[17] *Fifth Report and Order*, FCC 94-178 at ¶ 51.

[18] *Id.* at ¶¶ 52-53.

[19] "Pop" refers to each member of the population of the licensed service area and "MHz" refers to the amount of spectrum, in megahertz, that the licensee is permitted to use. The number of "MHz-pops" is calculated by multiplying the population of the license service area by the amount of spectrum authorized by the license. *See id.* at ¶¶ 52-54.

increased on less than 5 percent of the spectrum (measured in terms of MHz-pops).[20] We concluded that in simultaneous auctions without these requirements, bidders may be inclined to hold back, causing the auction to progress exceedingly slowly or possibly causing the auction to close prematurely. Furthermore, bidders would not know whether a low level of bidding on a license means that the license price is near its final level or, instead, if many serious bidders are holding back and may bid up the price later in the auction.

9. Petition. GTE maintains that the Commission's activity rule will unnecessarily complicate the PCS auctions and limit the ability of bidders to revise their plans throughout the course of the auction.[21] GTE finds the rules regarding movement from one stage to the next, with the associated minimum required increase in activity levels, particularly troubling. Under these rules, GTE maintains, a bidder may be forced to submit a relatively high bid on properties with little stand-alone value at an early stage of the auction in order to ensure that the bidder can continue to participate in subsequent stages of the bidding with respect to all markets in which it is interested. GTE further notes that the present rules restrict a bidder's ability to alter bidding plans if information revealed during the latter stages of the auction causes the bidder to become interested in additional properties. Rather, GTE alleges that the rule encourages artificial bidding activity that is inconsistent with the bidder's true intent.[22] GTE argues that instead bidders should only be required to be active on a single license in each round.[23] GTE maintains that this approach would afford maximum flexibility for qualified entities to adapt their bidding strategies to the activities of the other applicants.[24]

10. Decision. The issues raised by GTE concerning the three-stage activity rule, and the alternative activity rule proposed by GTE, were considered in the reconsideration of the

---

[20] For example, if two nationwide 30 MHz blocks of spectrum are put up for bid and the national population is approximately 250 million, a total of approximately 15,000 million MHz-pops would be available in the auction. If in stage I of the auction, the high bid increases on licenses encompassing less than 1,500 million MHz-pops for three consecutive rounds, the auction moves to stage II. This would be the case, for example, if in three consecutive rounds new bids were received on only a license for the New York MTA (26 million pops) and a license for the Los Angeles MTA (19 million pops), since the two licenses encompass a total of 1,350 million MHz-pops. Once in stage II, if in each of three consecutive rounds new acceptable bids are received on licenses encompassing less than 750 million MHz-pops, the auction would move to stage III.

[21] GTE Petition at 14.

[22] *Id.* at 16-17.

[23] *Id.*

[24] *Id.* at 18.

Second Report and Order.[25] We concluded at that time that no changes in our existing procedures were needed. We see no reason to revise that conclusion.

11. As we discussed in the *Second Memorandum Opinion and Order*, we do not believe, despite GTE's assertion, that the three-stage activity rule that we chose as our preferred activity rule will excessively restrict bidders' flexibility to bid for desired combinations of licenses, or cause licenses to be awarded to bidders who value them less than other bidders.[26] The rules were expressly designed to counteract the incentive to delay serious bidding that may occur in simultaneous auctions, without unduly limiting bidders' flexibility to pursue backup strategies and to use new information.[27] The requirement in the first stage that bidders remain active on one-third of the MHz-pops for which they wish to remain eligible constitutes only a minor restriction. By the time the auction enters stage III (if it ever does), bidding strategies should be well-advanced. In fact, we did not exercise our discretion to move the nationwide narrowband auction beyond stage I, so more restrictive rules were not invoked. Nevertheless, the Commission cannot expect all auctions to move as quickly as the nationwide narrowband auction, especially when there are more licenses with greater interdependencies among licenses. Thus, it would not be prudent for the Commission to preclude the use of stages II and III.

12. We note that, in the *Second Report and Order*, we retained the flexibility to decide on an auction-by-auction basis, and to announce by Public Notice before each auction, whether to use an activity rule, and if so, what type of rule.[28] We retained this flexibility for broadband PCS in the *Fifth Report and Order*.[29] Thus, if experience shows that the three-stage rule we adopted is unduly difficult to administer or excessively restricts bidders' flexibility, we will have the option to shift to some other activity rule, including the one recommended by GTE requiring only that bidders be active on a single license in each round.

13. We wish to make some minor adjustments in the activity rules on our own motion. First, we conclude, after our experience in conducting the nationwide narrowband auction, that we may find it important to move the auctions from one stage to the next at a different pace than would occur under the current activity rule. Accordingly, we retain the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next, based on a variety of measures of bidder activity (*e.g.*, the percentage of licenses on which there are new bids, the number of new bids, and the

---

[25] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶¶ 14-17.

[26] *Id.* at ¶ 15.

[27] *Second Report and Order*, 9 FCC Rcd 2348 at ¶ 142.

[28] *Id.* at ¶ 133.

[29] *Fifth Report and Order*, FCC 94-178 at ¶ 57.

percentage increase in revenue). Bidders will be notified of our intention to move to another stage at least one round prior to the commencement of the next stage of an auction.

14. We also stated in the *Fifth Report and Order* that in stage III, a bidder would have to be active on 100 percent of the MHz-pops for which it wishes to retain eligibility.[30] In order to allow bidders greater flexibility, we think that it may be beneficial in auctions where we expect high bidding to reduce this figure slightly, but in no case below 95 percent. We will announce the required activity levels for stage III by Public Notice in advance of each auction.

15. Finally, in the *Fifth Report and Order* we permitted bidders one waiver from the activity rule during each stage of an auction. A waiver will retain a bidder's eligibility from a previous round even though its bidding activity falls below the required level. We stated that if an activity rule waiver is entered in a round in which no other bidding activity occurs, the auction will remain open, but we stated that we might announce that submission of a waiver would not keep an auction open under any circumstances.[31] We also stated that a waiver may be submitted either in the round in which bidding falls below the level required to maintain current eligibility, or prior to submitting a bid in the next round. We now wish to clarify that the Commission retains the discretion to modify the method and timing of submitting waivers and to allow for two types of waivers --"proactive" waivers and "automatic" waivers. Both types of waivers will retain a bidder's eligibility from the previous round even though its bidding activity in the current round falls below the required level. However, a proactive waiver invoked in a round in which there are no new valid bids will keep an auction open, while an automatic waiver submitted in a round in which no other bidding activity occurs will not keep an auction open. Proactive waivers must be requested by the bidder, but automatic waivers will be submitted automatically for a bidder whenever a bidder's eligibility would be reduced because of insufficient bidding activity and a waiver is available. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. We also wish to retain the discretion to change the number of waivers that will be permitted and the frequency with which they may be exercised by Public Notice prior to each auction. As Professor Milgrom, a leading game and auction theorist, notes, a change in the rule for moving from one stage to another may result in many more rounds being completed in one stage, and may make a rule allowing one waiver per stage inappropriate.[32] Airtouch also recommends allowing bidders more flexibility

---

[30] *Id.* at ¶ 53.

[31] *Id.* at ¶ 56, n.37.

[32] Affidavit of Paul R. Milgrom, September 8, 1994 at 9. Professor Milgrom is the Shirley and Leonard Ely, Jr. Professor of Humanities and Sciences and Professor of Economics of Stanford University and an architect of the activity rule adopted in our *Fifth Report and Order*.

in choosing when to use waivers.[33]

3. Stopping Rule

16. In the *Fifth Report and Order*, we adopted a simultaneous stopping rule for all licenses in an auction. We determined that this approach, which holds bidding open on all licenses until no new acceptable bid is offered on any license, would provide bidders full flexibility to modify their bidding strategy as more information became available.[34] We further concluded that our activity rule (discussed *supra*) would help establish a reasonable pace and minimize the risk that bidders would hold back their bidding until the final rounds.[35] Because of the large number of BTA licenses, however, we retained the discretion to use a hybrid stopping rule or to allow bidding to close individually for BTA licenses if we determine our present rule is too complex.[36] In addition, we retained discretion to declare at any point after 40 rounds in a simultaneous multiple round auction that the auction will end after some specified number (probably three) of additional rounds.[37] We decided, however, that if the Commission exercises this authority we would accept bids in the final round(s) only for licenses on which the highest bid had increased in at least one of the preceding three rounds.[38]

17. Petitions. Metrex Communications Group (Metrex) and GTE both comment on the Commission's stopping rules. Metrex encourages the Commission to adopt an individual stopping rule for all BTA licenses. Specifically, Metrex requests that the Commission employ a market-by-market stopping rule pursuant to which bidding would close on each BTA if no acceptable bids are received after five rounds of bidding.[39] A market-by-market stopping rule, Metrex argues, would provide entrepreneurs' block bidders the necessary certainty to develop and implement regional licensing strategies.[40] GTE requests that the Commission decline to exercise its discretion to announce, after forty rounds, that the auction will close after an

---

[33] *Ex parte* submission of Airtouch Communications, Inc. (Airtouch), Sept. 29, 1994.

[34] *Fifth Report and Order*, FCC 94-178 at ¶¶ 46-47.

[35] *Id.*

[36] *Id.* at ¶ 47.

[37] *Id.* at ¶ 48.

[38] *Id.* at ¶ 49.

[39] Metrex Petition for Reconsideration (Metrex Petition), filed Aug. 22, 1994, at 3.

[40] *Id.* at 3-4.

additional three rounds.[41] GTE maintains that such action would effectively reduce the auction to the equivalent of a first price sealed bid auction.[42] Instead, GTE supports the Commission's determination that the auction should terminate for all markets once a single round passes in which no acceptable bids are submitted for any license.[43]

18. Decision. We reaffirm that, as we stated in the *Fifth Report and Order*, we will in most cases use a simultaneous stopping rule for simultaneous auctions.[44] We continue to believe that a simultaneous stopping rule has important efficiency advantages in allowing bidders to pursue backup strategies and to take advantage of new information from earlier bids. Further, we do not believe that a simultaneous stopping rule will prevent the implementation of regional strategies. We believe bidding activity in early rounds will provide significant information about the value of licenses to competing bidders. If bidding takes unexpected turns, it is precisely the fact that bidding on all licenses remains open to the end that will give bidders the flexibility to adopt a new strategy if an original one proves less desirable than anticipated. Moreover, bidders have the option of withdrawing high bids during an auction, subject to the applicable penalties, if they find they have bid too high on one license in the expectation of getting a complementary license at a low price.

19. Our experience in the nationwide narrowband auctions bears out this conclusion. Individual licenses often had no new bids for several rounds, followed by active bidding and steep increases in bids.[45] Allowing bidding to close on licenses individually, while bidding remains active on others, creates a risk of closing on some licenses before the final value has been reached, decreasing the likelihood that the license will be awarded to the bidder that values it most and reducing the revenues generated. In addition, as Professor Milgrom points out, individual closing might encourage strategic bidding that would reduce the efficiency of the auction.[46] Hence, we decline to adopt Metrex's recommendation that the Commission adopt and immediately announce an individual stopping rule. We note, however, that in the *Fifth Report and Order* we retained the discretion to use a hybrid or individual stopping rule for BTA licenses if a simultaneous stopping rule proved too complex to administer for large numbers of licenses.[47] We will announce the specific stopping rule to be used for BTA

---

[41] GTE Petition at 18.

[42] *Id.* at 19.

[43] *Id.*

[44] *Fifth Report and Order*, FCC 94-178 at ¶ 47.

[45] *See* Affidavit of Paul R. Milgrom, Sept. 8, 1994 at 2.

[46] *Id.*

[47] *Fifth Report and Order*, FCC 94-178 at ¶ 47.

licenses by Public Notice prior to each auction.

20. As for the option of declaring that the auction will end after some specified number of additional rounds, we agree with GTE that this procedure would likely result in less efficient allocation of licenses, and lower revenues, than allowing the auction to remain open as long as new bids are received.[48] We note that we have other methods to hasten the end of an auction, including shortening the bidding rounds, raising the minimum bid increments, and proceeding to a later auction stage. We wish to retain the option of declaring the imminent end of the auction, however, as a fallback in case of extremely dilatory bidding. We note that the procedure is only a permitted option, and we do not expect to use it except in the unlikely case that other methods fail to bring about the close of an excessively long auction.[49]

4. Duration of Bidding Rounds

21. In the *Fifth Report and Order*, the Commission decided that bidders would be provided a single business day to submit bids and that one round of bidding would be conducted each business day.[50] However, we retained discretion to vary, by Public Notice or announcement, the duration of bidding rounds or the interval at which bids are accepted, in order to move the auction toward closure more quickly.[51]

22. Petition. McCaw requests that the Commission lengthen its bidding rounds to ensure that bidders have sufficient time to submit well-informed bids.[52] Noting that bidding decisions are likely to require frequent consultation with lenders, corporate board members, technical staff and any joint venture partners, McCaw alleges that one business day per round

---

[48] GTE Petition at 18-19.

[49] *Fifth Report and Order*, FCC 94-178 at ¶ 48. We stated that if we used this closing procedure we would accept bids in the final round(s) only for licenses on which the highest bid increased in at least one of the preceding three rounds. Thus, the procedure would incorporate a form of individual closing. It would encourage active bidding on all desired licenses in the later stages of an auction to prevent losing licenses through unexpected closings, and would ensure high bidders that they would not lose a license without having an opportunity to make a counter-offer. *Id.* at ¶ 49. This procedure would impose the certainty Metrex seeks for the final bids of an auction, but would not allow the development of extended regional bidding strategies because it would occur only at the end of the auction.

[50] *Id.* at ¶ 50.

[51] *Id.*

[52] McCaw Petition for Reconsideration (McCaw Petition), filed Aug. 22, 1994, at 3; Reply of McCaw Cellular Communications, Inc. (McCaw Reply), filed Sept. 19, 1994, at 6-7.

is likely to be too short to afford fully-informed bidding.[53] Additionally, McCaw maintains that it will take considerable time for bidders to input auction data, analyze it, and formulate their next bid, unless the Commission electronically makes bidding information available.[54]

23. Decision. In the *Fifth Report and Order,* we discussed our discretion to vary the duration of bidding rounds or the interval at which bids are accepted as a tool for moving auctions toward closure more quickly.[55] We anticipated that holding one round of bidding per day might allow bidders more time than necessary to formulate their bids and might result in excessively long auctions. We still believe that our planned one-day bidding rounds are more likely to be too long than too short. We find it likely that McCaw overestimates the time required between rounds to formulate bids, particularly since much of the work of estimating the values of licenses, developing business plans, and arranging financing can be done in advance of the auction. Further, as Professor Milgrom points out, under McCaw's proposal the broadband auction might last as much as two years.[56]

24. We wish to clarify that we retain the discretion to lengthen as well as shorten the duration of bidding rounds or the interval at which bids are accepted, and will lengthen the time allowed for bidding if we see evidence during the auctions that bidders are prevented by the bidding schedule from developing rational, well-informed bids. Nevertheless, it is more likely that we will shorten bidding rounds than that we will lengthen them because we believe that doing so will expedite provision of PCS service to the public without reducing the efficiency of the auction. We believe it is extremely unlikely that we will hold more than two rounds per day, though we may start with one round per day and move to two rounds per day after the first week if it appears that this schedule will allow bidders enough time to formulate their bids.

25. We agree with Pacific Bell that prospective bidders may find it important to know the time parameters of bidding rounds as early as possible. We do not believe we have enough information at present to set an appropriate minimum duration for bidding rounds. We will continue to consider this issue as the broadband PCS auctions approach in light of the experience we gain in the regional narrowband auctions.

5. Timing for Auctioning Specific Spectrum Blocks

26. In the *Fifth Report and Order,* the Commission decided to auction the broadband PCS spectrum at three separate auctions. The 99 available PCS licenses in MTA blocks A

---

[53] McCaw Petition at 3-4.

[54] *Id.* at 4.

[55] *Fifth Report and Order,* 94-178 at ¶ 50.

[56] Affidavit of Paul R. Milgrom, Sept. 8, 1994 at 5.

and B will be auctioned first, followed by the 986 PCS licenses in BTA blocks C and F (the entrepreneurs' blocks). In the last auction, the remaining 986 licenses in BTA blocks D and E will be put up for bid.[57] The Commission reasoned that this grouping strikes a proper balance among the competing concerns of awarding licenses to the parties who value them most highly, keeping the auction process simple and manageable, minimizing administrative delay, and fostering designated entity participation.[58]

27. Petitions. Columbia PCS, Inc. (Columbia), National Paging and Personal Communications Association (NPPCA), Pacific Bell Mobile Services (Pacific Bell), Small Business PCS Association (SBPCS), and USIMTA petitioned on this issue.[59] Several parties advocate that the entrepreneurs' block licenses (on blocks C and F) be auctioned before, or at approximately the same time as, the MTA block licenses.[60] These petitioners allege that this approach is needed to ensure that the block A and B licensees do not gain a competitive advantage through a head start to the market. NPPCA also argues that BTA licenses in the entrepreneurs' blocks should be auctioned first, to encourage large, non-designated entities to invest in, or partner with, designated entities earlier in the process. NPPCA further argues that the large companies that could help to finance designated entities are holding back until the A and B block auctions occur. USIMTA requests that BTAs be licensed before the MTAs, noting that the Commission's present scheme underestimates the advantage that large companies will have in bidding for non-reserved BTAs after the MTAs. USIMTA argues that auctioning the BTA licenses first will give designated entities a realistic opportunity to acquire licenses before their value is artificially increased by the demand of MTA licenses.[61] In addition, Pacific Bell requests that the Commission auction the BTA licenses that correspond to the territory for which pioneer preferences were awarded simultaneously with

---

[57] *Fifth Report and Order*, FCC 94-178 at ¶ 37.

[58] *Id.* at ¶¶ 37-40.

[59] Columbia Petition for Reconsideration (Columbia Petition), filed Aug. 22, 1994, at 8-9; NPPCA Petition for Reconsideration (NPPCA Petition), filed Aug. 22, 1994, at 8; Pacific Bell Petition for Reconsideration and Clarification (Pacific Bell Petition), filed Aug. 22, 1994, at 1-3; SBPCS Petition for Reconsideration (SBPCS Petition), filed Aug. 22, 1994, at 4; USIMTA Petition for Reconsideration (USIMTA Petition), filed Aug. 22, 1994, at 4; NPPCA Reply and Comments to Oppositions to Petitions for Reconsideration (NPPCA Reply), filed Sept. 19, 1994, at 4-5.

[60] NPPCA Petition at 8; SBPCS Petition at 4; Columbia Petition at 8-9.

[61] USIMTA Petition at 4.

the remaining MTA licenses in those areas.[62] BET Holdings, Inc. (BET) in its comments requests that the Commission affirm the sequence of the PCS auctions, arguing that any market advantage afforded successful A and B block bidders from entering the market before the designated entities will be more than offset by the availability of price information and the accessibility of capital made available to designated entities by frustrated early bidders.[63]

28. Decision. In the *Fifth Report and Order,* we decided not to auction all broadband PCS licenses at the same time because of the cost and complexity of auctioning a very large number of interdependent licenses simultaneously.[64] We attempted to divide the licenses into three groups by combining those licenses that are most closely related to minimize interdependence across groups.[65] We stated that auctioning licenses in the entrepreneurs' blocks after those in the 30 MHz unrestricted blocks would assist designated entities in attracting partners among unsuccessful bidders for the 30 MHz unrestricted licenses, and that the auction of the large unrestricted blocks would produce price information that would be valuable to designated entities in their business planning.[66]

29. We continue to believe that the sequence of auctions of broadband licenses specified in the *Fifth Report and Order* will be efficient and will be most beneficial to designated entities, and consequently we decline to make changes in that sequence. We do not believe the alternative sequences proposed by commenters would improve the efficiency or fairness of the auction market.

30. With respect to arguments that we should auction BTA licenses (or at least entrepreneurs' block licenses) before MTA licenses to prevent large firms from getting a head start over designated entities, we believe that such a strategy would be less advantageous to designated entities than the current auction sequence and might reduce the efficiency of the auctions. Because the large firms that are potential partners for designated entities probably would prefer to own outright any licenses they might obtain in an auction, we think it less likely, rather than more likely, that these large firms would form partnership agreements with designated entities if auctions in the restricted blocks were held before the MTA auctions. In addition, we believe that the information about license values conveyed in the MTA auctions

---

[62] Pacific Bell Petition at 1; Reply of Pacific Bell Mobile Services to Comments/Oppositions to Petitions for Reconsideration of the Fifth Report and Order (Pacific Bell Reply), filed Sept. 22, 1994, at 7-8.

[63] BET Comments on Petitions for Reconsideration and Clarification (BET Comments), filed Sept. 9, 1994, at 18-19.

[64] *Fifth Report and Order*, FCC 94-178 at ¶ 36.

[65] *Id.*

[66] *Id.* at ¶ 39.

will reduce the risk of BTA financing and partnering and so will be valuable to bidders in the entrepreneurs' block auctions. In addition, it appears to us that a rational strategy for bidders in many cases might be to bid on the largest licenses first and only after the outcome of those auctions is known to attempt to acquire smaller, complementary licenses or, if unsuccessful in the auction for larger licenses, to attempt to aggregate smaller licenses as a backup strategy. In addition, if winners of MTA licenses were willing to bid more than other applicants for complementary BTA licenses, that willingness, we believe, would almost certainly represent true efficiencies of joint operation and ought to be allowed to affect the assignment of licenses.

31. As for auctioning MTA and BTA licenses together in markets with Pioneer's Preference licenses, we continue to believe, as we stated in the *Fifth Report and Order*, that substituting two 10 MHz BTA licenses for a 30 MHz MTA license is not likely to be a widely used strategy, so that little loss of efficiency would result from auctioning MTA and BTA licenses separately.[67] Further, we believe that bidders will have enough information to make informed bids in all MTA markets. We see no reason to believe that auctioning MTA and BTA licenses separately would have a greater effect on efficiency in markets where Pioneer's Preference licenses have been removed from the auction than in other markets, since the same total amount of spectrum is available for PCS in all markets. Commenters apparently have no objection to the plan to separate MTA and BTA auctions in other markets. In addition, auctioning MTA and BTA licenses together in Pioneer's Preference markets would remove those BTAs from the BTA auctions and thus may impede efficient geographic aggregation of licenses. As Omnipoint points out, the plan would also make it more difficult for entrepreneurs' block winners in those markets to aggregate their licenses with other BTA licenses.[68] The auctions might also become unnecessarily administratively complex and confusing to bidders if BTAs were auctioned with MTAs in a few but not all markets. Further, changing the grouping of licenses at this stage in the planning process might cause the first auctions to be delayed.[69] Consequently we are not convinced that any efficiency advantages would accrue from this strategy, and we will continue to auction MTAs separately from BTAs in all markets.[70]

---

[67] *See id.* at ¶ 40.

[68] Omnipoint Opposition at 14.

[69] The petitioner does not advocate changing to the proposed grouping if doing so would delay the auction. Pacific Bell Petition at 3.

[70] Pacific Bell suggests as an alternative that the Commission combine all BTA licenses in a single auction. *Id.* Leaving aside the increased size of the resulting auction and the complexities of auctioning restricted and unrestricted blocks together, we fail to see how this proposal addresses the issue of lack of substitutes for the Block B MTA licenses in Pioneer's Preference markets.

32. We agree with commenters, however, that auctioning the MTA blocks far ahead of other blocks would give a head start to the winners in the MTA blocks that would likely afford them some competitive advantage over winners in later auctions. Consequently, we intend to hold the three broadband auctions as close together in time as possible given our administrative resources. We decline to delay finalizing the award of A and B block licenses, however, because of the overriding public interest in rapid introduction of service to the public.

B. Application, Payment and Penalty Procedures

1. Authority to Adopt Filing and Processing Rules

33. In the *Notice of Proposed Rule Making (Notice)* in this proceeding, the Commission stated:

> In order to avoid needless duplication, we propose that the following general filing and processing rules apply to all PCS: Sections 22.3-22.45, 22.917(f), and 22.918-22.945. For those PCS applicants who file on Form 574, we believe that Sections 90.113-90.159 of our rules, 47 C.F.R. §§ 90.113-90.159, could be used to process those applications with appropriate modifications.[71]

34. Petition. The Association of Independent Designated Entities (AIDE) alleges that the Commission acted improperly in adopting substantive PCS application-processing rules because, it argues, such rules are outside the scope of this proceeding, which is limited to implementation of the competitive bidding requirements of § 309(j) of the Communications Act.[72] AIDE argues that the Commission's proposal is legally insufficient to constitute a valid notice of the proposed rules, and that some of the rules cited have no immediate applicability to PCS service.[73] AIDE concludes that the Commission must initiate a supplemental *Notice of Proposed Rule Making* in order to adopt any substantive application-processing rules for PCS.[74]

35. Decision. We disagree with AIDE and will not issue a supplemental Notice as it requests. Indeed, we have addressed AIDE's argument previously in the *Fifth Report and*

---

[71] *Notice of Proposed Rule Making* in PP Docket No. 93-253, 8 FCC Rcd 7635 (1993) at ¶ 128 (*Notice*).

[72] AIDE Petition for Reconsideration (AIDE Petition), filed Aug. 22, 1994, at 19-24.

[73] *Id.* at 19-20.

[74] *Id.* at 22.

Order.[75] AIDE also raised a similar notice argument concerning the adoption of PCS processing rules on reconsideration of our *Second Report and Order* on auctions.[76] Our response, once again, is that our *Notice* sought comment on specific rule sections contained in Parts 22 and 90 of our Rules, and asked commenters to indicate what modifications should be made to those rules to adapt them for PCS services.[77] In addition, the *Notice* specifically requested comment on the general procedural, processing and petition-to-deny procedures that should be used for auctionable services.[78] The *Notice*'s proposal to adopt processing rules based on Parts 22 and 90 of the Commission's Rules, with any appropriate modifications for PCS services, clearly indicated to commenters the terms of the proposed rules, as is required by the Administrative Procedures Act and the Commission's Rules (*see* 5 U.S.C. § 553 and 47 C.F.R. § 1.413(c)). Thus, we believe our original description of the proposed rule was sufficiently specific to alert interested parties to the substance of our proposal and to provide an adequate opportunity for comment on those proposals. Several commenters did, in fact, address the proposed application and processing rules set forth in our *Notice*, a further indication that sufficient notice was provided.[79] We also believe that these issues were within the scope of this proceeding because as a means of assigning licenses, the competitive bidding process is integrally related to rules and procedures for processing of license applications.

36. The broadband PCS rules established in the *Fifth Report and Order*, and modified here today, adopt several of the procedures set forth in Parts 22 and 90 of the Commission's Rules and discussed in the *Notice*. Our minor modifications to the proposed rules were needed to reflect specific concerns related to auctioning broadband PCS licenses, and address

---

[75] *Fifth Report and Order*, FCC 94-178 at ¶ 82.

[76] *See Second Memorandum Opinion and Order*, FCC 94-215 at ¶¶ 58-60.

[77] *Notice*, 8 FCC Rcd 7635 at ¶ 128.

[78] *Id.* at ¶¶ 95-114.

[79] *See* Arch Communications Group, Inc. Comments, filed Nov. 10, 1993, at 8-9, 18-19 (application requirements, petitions to deny); AT&T Comments, filed Nov. 10, 1993, at 29-35, 38, 40-42 (application standard, petitions to deny); Cellular Telecommunications Industry Association Comments, filed Nov. 10, 1993, at 4-5, 25-29 (application requirements, petitions to deny); Comcast Corp. Comments, filed Nov. 10, 1993, at 16 (application requirements); Cox Enterprises, Inc. Comments, filed Nov. 10, 1993, at 6-8 (application requirements and standard); Liberty Cellular, Inc. Comments, filed Nov. 10, 1993, at 5-7 (applications requirements, amendment of applications); Pacific Bell Comments, filed Nov. 10, 1993, at 21-28 (application standard and requirements, amendment of applications, petitions to deny); Rural Cellular Association Comments, filed Nov. 10, 1993, at 2-3, 20-21 (application requirements and standards). AIDE itself commented on several aspects of the application and processing rules proposed in the *Notice*. AIDE Comments, filed Nov. 10, 1993, at 10-13 (application requirements).

comments raised by the public. The adopted rules are a logical outgrowth of the rules proposed in the *Notice*, applied in the context of the use of competitive bidding to assign broadband PCS licenses. Rules adopted as a logical outgrowth comply with all Administrative Procedure Act requirements.[80]

2. Disclosure of Bidding Information

37. In the *Second Memorandum Opinion and Order* in this proceeding, the Commission announced that it would generally release the identities of bidders before each auction.[81] The Commission concluded that disclosure was appropriate because of the advantages of providing more information to bidders and the difficulties involved in ensuring that bidder identities remain confidential.[82] The Commission reserved the option, however, to withhold bidder identities on an auction-by-auction basis.[83] Bidders will be informed by Public Notice prior to each auction whether the identities of bidders will be made public in that auction.

38. Petitions. GTE Service Corporation (GTE) requests clarification that the Commission will apply the general bidder disclosure policy adopted in the *Second Memorandum Opinion and Order* to the broadband PCS auctions.[84] GTE alleges that bidder disclosure is needed to help bidders formulate successful bidding strategies.[85] GTE further argues that bidder disclosure would maximize information flow and efficient bidding without sacrificing consumer safeguards.[86]

39. Decision. As noted in the Commission's Public Notice announcing the first broadband PCS auction, Report No. AUC-94-04 (released Sept. 19, 1994), we have decided to

---

[80] *Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990); *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983). An agency must be free to adopt a final rule not described exactly in the *Notice*, where the difference involved is "sufficiently minor," otherwise, agencies could not change a rule in response to valid comments without beginning the rulemaking anew. *See National Cable Television Assoc., Inc. v. FCC*, 747 F.2d 1503, 1507 (D.C. Cir. 1984).

[81] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 42.

[82] *Id.*

[83] *Id.*

[84] GTE Petition at 12.

[85] *Id.*

[86] *Id.* at 12-13.

apply the bidder disclosure policy adopted in the *Second Memorandum Opinion and Order* to the first broadband PCS auction. As we indicated in the *Second Memorandum Opinion and Order*, we will generally identify bidders before each auction.[87] We reserve the authority, however, to conceal bidder identities if further experience demonstrates it is desirable to do so. Consequently, we reserve the option of withholding bidder identities on an auction-by-auction basis. Therefore, for each broadband auction, we will decide whether to identify qualified auction participants and will announce our decision in a Public Notice released before each auction.

3. Short and Long Form Applications

40. The Commission adopted a two-part application procedure in the *Fifth Report and Order* consisting of short- and long-form application obligations.[88] The Commission will initiate the application process by Public Notice, announcing when we will accept short-form applications to participate in an auction for specific broadband PCS licenses.[89] The notice, in part, will specify the licenses that will be available, identify the time and place of an auction in the event that mutually exclusive applications are filed, and announce a deadline by which short-form applications must be filed.[90] After an auction, winning bidders will be required to file a long-form application. The long-form applications must be submitted by a date specified by Public Notice, generally within ten business days after the close of bidding. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice, which will open the filing window for petitions to deny.[91]

41. Petitions. Pacific Bell Mobile Services (Pacific Bell) requests clarification that the Commission will establish short-form filing deadlines prior to each separate auction, instead of a single submission date for all three auctions.[92] Pacific Bell maintains that this clarification is needed to provide flexibility in formulating back-up strategies. Pacific Bell also requests that the Commission issue separate Public Notices announcing the submission of long-form applications after each auction.[93] Pacific Bell alleges that separate notices would facilitate the expeditious deployment of PCS services.

---

[87] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 42.

[88] *Fifth Report and Order*, FCC 94-178 at ¶ 60.

[89] *Id.* at ¶ 61.

[90] *Id.*

[91] *Id.* at ¶ 81.

[92] Pacific Bell Petition at 4-5.

[93] *Id.* at 8.

42. Decision. As demonstrated by our September 19, 1994 Public Notice announcing the first broadband PCS auction, we plan to announce the deadlines for submitting short-form and long-form applications separately for each broadband PCS auction. We intend to establish a separate submission date for each auction, as Pacific Bell requests. Indeed, we have been conducting the process in this manner for narrowband PCS. Thus, we plan to specify by Public Notice prior to each broadband auction the filing date for short-form applications and the accepted applications for each auction. Similarly, we plan to specify by Public Notice after each auction is conducted the long-form filing dates and accepted long-form applications. Our experience with the nationwide narrowband PCS auctions to date shows that these procedures work well to facilitate efficient operation of the competitive bidding process. We do reserve the right, however, to alter these procedures if we find there is a need to do so in the future.

4. Upfront Payments

43. In establishing its auction methodology for PCS, the Commission set forth several provisions to ensure that winning bidders will have the resources needed to obtain their licenses and construct their systems and to discourage insincere bidding. For example, short-form applicants must certify that they are financially qualified pursuant to Section 308(b) of the Communications Act, and must disclose certain information concerning the real party or parties in interest (*e.g.*, major stockholders, partners, joint ventures).[94] Additionally, the Commission requires accepted short-form applicants to make a substantial upfront payment, and has established significant bid withdrawal and default penalties.[95]

44. Petitions. Roland A. Hernandez (Hernandez) and GTE petition on the issue of upfront payments. Specifically, Hernandez requests that the Commission require bidders to demonstrate their ability to pay the entire down payment and meet the terms of an installment payment plan when the short-form application is filed.[96] Hernandez maintains that this modification is needed to keep non-legitimate bidders from corrupting the bidding process. Hernandez further notes that, to the extent insincere bidders artificially distort the bidding and force out legitimate bidders, the Commission's policy of promoting designated entity

---

[94] *Second Report and Order*, 9 FCC Rcd 2348 at ¶ 166; *Fifth Report and Order*, FCC 94-178 at ¶ 62.

[95] *Fifth Report and Order*, FCC 94-178 at ¶¶ 65-71, 75-77. Specifically, we require an upfront payment of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding. Payments must be made to the Commission's lock-box bank by a date certain, which we will announce in a Public Notice and which generally will be no later than 14 days before the scheduled auction.

[96] Hernandez Petition for Reconsideration (Hernandez Petition), filed Aug. 22, 1994, at 5.

ownership is compromised.[97] In addition, GTE requests that multi-market bidders be permitted to make use of an interest-bearing evergreen deposit account for upfront payments.[98] GTE maintains that the present rules unnecessarily restrict the flexibility of multi-market bidders to participate in different bidding rounds, and may discourage full and active participation by some interested parties.[99]

45. Decision. With respect to the concerns raised by Hernandez, we believe that the existing requirements for broadband PCS auction applicants provide an adequate measure of a party's ability to pay. As indicated above, short-form applicants must make a substantial upfront payment and subject themselves to significant bid withdrawal and default penalties in order to participate in the auctions. One of the principal purposes of these requirements is to ensure that only serious and financially qualified bidders participate in the auction. Thus far, our experience with the narrowband PCS nationwide license auction suggests that our requirements are sufficiently stringent to ensure that auction participants have the financial resources to purchase the spectrum for which they intend to bid.[100] We will address Hernandez's concern about the ability of designated entities to make their installment payments in our separate reconsideration order on designated entity issues.

46. Concerning GTE's request, we have considered the issue of paying auction applicants interest on their upfront payments before in the *Second Memorandum Opinion and Order* on auctions. We reject such a proposal for now because of the administrative difficulties that are posed by the need to track and transfer applicant funds, and because we lack the legal authority to engage in such financial activity. We have sought legislative authority in the 1994 House and Senate FCC authorization bills to establish interest-bearing accounts so that auction applicants may accrue interest on upfront payments.[101] If such authority is granted we may choose to pay interest.

---

[97] *Id.*

[98] GTE Petition at iii. We note, however, that GTE did not raise this argument in the body of its Petition.

[99] *Id.*

[100] We note, for example, that none of the narrowband auction winners have defaulted on their payment obligations. Hernandez contends that the recent IVDS auction defaults suggest that stricter financial scrutiny is needed for broadband PCS. In this regard, we observe that the financial requirements for both narrowband and broadband PCS are already more stringent than those required for IVDS auction participants. *Compare* Section 98.16 (c)(3) *with* Section 24.706.

[101] *See* H.R. 4522, 103d Cong. 2d Sess., 140 Cong. Rec. H4164 (May 26, 1994); and S. 2336, 103d Cong., 2d Sess., 140 Cong. Rec. S10142 (July 29, 1994).

5. Collusion and Settlement Restrictions

47. In the *Fifth Report and Order*, the Commission prohibited bidders from discussing the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.[102] The Commission further required bidders to identify on their Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements relating to the competitive bidding process.[103] We also determined that auction applicants would not be permitted to make any ownership changes or changes in the identification of parties to bidding consortia once a short-form application is filed.[104] We recently modified these rules on reconsideration of our general competitive bidding rules to permit bidders who have not applied for any of the same licenses to enter into bidding agreements during the course of an auction.[105] We also decided to allow applicants to amend their Form 175 applications to make ownership changes after the filing deadline has passed, provided such changes do not result in a change of control of the applicant.[106]

48. Petitions. McCaw Cellular Communications, Inc. (McCaw) and AIDE request changes to our collusion and settlement restrictions. In particular, McCaw requests that the Commission relax its anti-collusion rule to permit bidders to form, during the course of an auction, consortia with other bidders that have dropped out of bidding for a particular license or group of licenses.[107] McCaw maintains that this revision would help ensure that bidders have greater flexibility to increase their competitiveness in the auction by combining their resources. McCaw further notes that its proposed modification would promote the participation of designated entities, small companies and other entities with limited access to capital.[108]

49. In its petition, AIDE observes that both the Communications Act and the Commission have a well-established policy favoring full settlements of mutually exclusive applications, and alleges that the Commission erred in adopting rules which prohibit post-

---

[102] *Fifth Report and Order*, FCC 94-178 at ¶ 91.

[103] *Id.*

[104] *Id.* at ¶ 63.

[105] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 51.

[106] *Id.* at ¶ 52.

[107] McCaw Petition at 10.

[108] *Id.* at 10-11.

filing settlements.[109] AIDE maintains that the Commission's prohibition is inconsistent with Sections 309(j)(6)(A) and (E) of the Communications Act, which indicate that settlements are in the public interest.[110] AIDE further notes that the Commission never explained the regulatory or statutory purposes which its settlement prohibition was intended to satisfy.[111] Finally, AIDE states that the prohibition against settlements represents poor public policy, because potential licensees would be arbitrarily precluded from structuring business arrangements between themselves once the pre-bid documents had been filed.[112]

50. Decision. We decline to liberalize our collusion and settlement restrictions for broadband PCS in the manner requested by either McCaw or AIDE. We continue to believe that a prohibition against agreements and alliances concerning bidding between applicants bidding for the same licenses is a prudent deterrent to collusion that should have only a minimal and temporary effect on bidders' flexibility. As we stated in the *Second Report and Order*, our rules prohibiting collusion serve the objectives of the Budget Act by preventing applicants, especially the largest companies, from entering into agreements to use bidding strategies that divide the market to the disadvantage of other bidders.[113] Also, we want to avoid the problem of entities filing applications solely for the purpose of demanding payment from other bidders in exchange for settlement or withdrawal. Overall, we believe that auctions are likely to result in more efficient assignments than settlements because they reduce the transaction cost of putting a license in the hands of the applicant that values it most highly.

51. With regard to McCaw's proposal, the fact that one bidder has withdrawn its

---

[109] AIDE Petition at 5-13.

[110] *Id.* at 11. Section 309(j)(6) provides:

(6) Rules of Construction - Nothing in this subsection [309(j)], or in the use of competitive bidding, shall -

> (A) Alter spectrum allocation criteria and procedures established by the other provisions of this Act;
>
> ***
>
> (E) Be construed to relieve the Commission of the obligation in the public interest to continue to use ... negotiation ... and other means in order to avoid mutual exclusivity in application and licensing proceedings.

[111] AIDE Petition at 11.

[112] *Id.* at 13.

[113] *Second Report and Order*, 9 FCC Rcd 2348 at ¶¶ 221-224.

application before entering into a consortium with another bidder does not reduce the importance of our collusion rules, even if we forbid bidders to communicate with other bidders competing for the same license until after a formal withdrawal has taken place. We are concerned that if we permitted such consortium arrangements to occur, particularly in an environment where bidder identities are known, undue pressure might be brought to bear on smaller bidders to withdraw in exchange for teaming up with other larger bidders, or sham applications might be filed to demand payment from other applicants. In general, we are concerned that McCaw's proposal would create incentives for parties to collude and behave in an anti-competitive manner. While we recognize that allowing consortia to occur could enable many smaller applicants to pool their resources to win licenses, we believe the risks of allowing such arrangements between applicants for the same license (even when one applicant has withdrawn) outweigh the benefits at this time.

52. We also reject AIDE's contention that the Commission lacks the authority under the Communications Act to preclude settlements between mutually exclusive applicants for auctionable licenses.[114] While the Commission has an established policy of favoring settlements in some contexts, it is entirely within our authority to restrict or prohibit settlements if we find such agreements would not be in the public interest.[115] At this time, we find that post-filing settlements between applicants for the same license in the broadband PCS competitive bidding process would not serve the public interest for reasons stated above. We believe that nothing in the language or legislative history of Section 309(j) contradicts this view. Consequently, we are amending our rules to eliminate Section 24.829(b), which (as AIDE suggested in its petition) is inconsistent with our collusion rules contained in Section 1.2105 of the Rules.

53. In order to provide bidders sufficient time and greater flexibility to attract capital, however, we make several modifications to our collusion rules and policies adopted in the *Fifth Report and Order* and in our reconsideration of the generic auction rules. First, we recognize that an entity may hold non-controlling ownership interests in two or more bidders, and that those bidders may aggregate more PCS spectrum cumulatively than a single entity is entitled to hold. In such cases, we will permit divestiture of non-controlling interests to bring the entities into compliance with the PCS spectrum aggregation limits provided such divestiture is completed within 90 days of grant of the license.[116] Such post-auction

---

[114] AIDE Petition at 9-10.

[115] In the broadcast context, for example, while we have allowed settlements between applicants for construction permits, such agreements have been significantly restricted in recent years. *See Report and Order* in MM Docket No. 90-263, 6 FCC Rcd 85 (1990), *recon. Memorandum Opinion and Order*, 6 FCC Rcd 2901 (1991) (limiting settlements between mutually exclusive applicants for broadcast construction permits).

[116] We adopted a similar provision in our reconsideration of the narrowband auction rules. *Third Memorandum Opinion and Order*, FCC 94-219 at ¶ 29.

divestiture will enable investors to finance more than one bidder without risking default penalties if both bidders, for example, win licenses which in combination exceed our aggregation limits.

54. Procedurally, if entities with a common non-controlling ownership interest aggregate more PCS spectrum among them than a single entity is entitled to hold, we will require that the long-form applications for broadband PCS licensing be accompanied by a signed statement from the applicant that sufficient properties will be divested within 90 days of the license grant to bring the broadband PCS licenses held within the permitted aggregation limits. If the applicant is otherwise qualified, the applications will be granted subject to a condition that the licensee come into compliance with the PCS spectrum aggregation limits within 90 days of grant. Within 90 days of license grant, the licensee must certify to the Commission that the applicant and all parties to the application have come into compliance with our PCS spectrum aggregation limits. If the PCS licensee fails to submit this certification within 90 days, we will invoke the condition on all broadband PCS licenses won by the applicant in the auction, cancelling them immediately and imposing the default penalty. In addition, we may investigate whether the certifications on divestiture are evidence of misrepresentations that call into question the party's qualification to hold any PCS licenses. If a buyer has not been secured in the required period of time, the PCS licensee may divest the prohibited interest to an interim independent trustee, as long as the applicant has no interest in or control of the trustee. The trustee may dispose of the interest as it sees fit. In no event, however, may the trustee retain the property for longer than six months.

55. Also, as indicated *supra*, our auction collusion rules have been revised to permit bidders who have not filed Form 175 applications for any of the same licenses to engage in discussions and enter into bidding consortia or joint bidding arrangements during the course of an auction.[117] We stated in our *Third Memorandum Opinion and Order* on narrowband PCS auctions that where bidders have not applied for any of the same licenses there is little risk of anti-competitive conduct with respect to a single license.[118] We reach the same conclusion with respect to broadband PCS. The relaxed collusion rules, which we will apply in the broadband PCS context, will permit bidders to have greater flexibility to compete in the auction by combining their resources, provided that no change of control of any applicant takes place. We wish to clarify that we intended these provisions to apply to applicants that have not applied for licenses in any of the same geographic license areas, *i.e.*, the same MTAs for A and B block licenses or the same BTAs for other broadband PCS licenses.[119]

---

[117] *See Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 51; *see also* Section 1.2105 (c)(3).

[118] *Third Memorandum Opinion and Order*, FCC 94-219 at ¶ 31.

[119] If, for instance, one applicant has applied for licenses on block A in MTAs 1, 2, and 3, and another applicant has applied for licenses on block B in MTAs 3, 4, and 5, these applicants may not hold discussions or form consortia or joint bidding arrangements.

56. As noted above, we also modified our generic auction rules to permit applicants to amend their FCC Form 175 applications to reflect ownership changes that do not result in a change in control of the applicant.[120] We now modify Section 24.822 (b) to clarify the applicability of this provision to broadband PCS. Such changes shall not be regarded as major amendments to an application, provided they do not result in a transfer of control of the applicant. Amendments to FCC Form 175 must be filed with the Commission within two business days of any such change. Our experience in the nationwide narrowband PCS auction demonstrated that it is necessary to allow applicants to amend their FCC Form 175 applications to make ownership changes after the filing deadline has passed, provided such changes do not result in a change of control or discussions that violate our anti-collusion rules. Permitting such amendments will provide bidders with flexibility to seek additional capital after applications have been filed, while ensuring that the real party in interest does not change. Again, we clarify that this change applies only to applicants that have not applied for licenses in any of the same geographic license areas.[121]

57. We will also permit ownership changes in which consortium investors drop out of bidding consortia, even if control of the consortium changes as a result.[122] We do not wish to restrict some members of consortia from continuing to bid even though other members of the consortia wish to drop out of the bidding. We emphasize that members that are removed from a consortium may not subsequently bid individually or become involved with another bidder in bidding on any license for which the consortium had applied. Bidders must submit a revised Form 175 to reflect the change in ownership.

58. We also wish to clarify an aspect of our rules dealing with the information that applicants must provide to the Commission with their Form 175 and Form 401 applications. Section 24.813(a)(1) of the Commission's Rules, 47 C.F.R. §24.813(a)(1), states among other things that applicants must provide "a list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, *stockholder* or key management personnel of the applicant." (Emphasis added.) Read literally, this provision would require applicants to ascertain the holdings in other concerns of every one of their stockholders, regardless of how small that stockholder's stake in the applicant may be. This was not our intent, and we take this opportunity to amend this rule to clarify that only holdings in other concerns that are held by attributable shareholders in the applicant

---

[120] *Second Memorandum Opinion and Order*, FCC 94-215 at ¶ 52.

[121] Of course, formation of consortia, bidding agreements, and new ownership arrangements remains subject to Commission review under the public interest standard, and we would expect that entities entering into such arrangements would comply with all relevant Commission policies and all other applicable laws, *e.g.*, the antitrust laws.

[122] *See ex parte* submission of Comcast Corporation, Oct. 7, 1994.

need be disclosed.[123]

59. Finally, we note that in the *Second Memorandum Opinion and Order*, we clarified the applicability of the collusion rules to cases where an applicant has a common ownership interest with another applicant.[124] We stated that, unless the second applicant is expressly identified as an entity with whom the first applicant has an agreement concerning bidding, we will prohibit these parties from communicating concerning their bidding strategies. As we stated in the *Second Memorandum Opinion and Order,* this prohibition will hold even if the other bidder is identified on the applicant's short-form application as having a common ownership interest with the applicant.[125] Communication among bidders concerning matters unrelated to the license auctions, however, will be permitted.

60. Accordingly, we are retaining the collusion rules in the broadband PCS context with the modifications set forth above.[126] We believe that these modifications will ensure that the bidding process is competitive and will encourage formation of a competitive post-auction market structure,

D. Miscellaneous

---

[123] By "attributable" shareholder we mean a shareholder that holds an interest of 5 percent or more in a bidder or that holds an attributable interest in a bidder through the operation of the multiplier.

[124] *Id*. at ¶ 53.

[125] Of course, applicants will also be subject to existing antitrust laws. For example, we would expect that this would prohibit discussions with respect to bid prices between any applicants who have applied for licenses in the same geographic market. *See United States v. Champion Int'l Corp.*, 557 F.2d 1270 (9th Cir.), 434 U.S. 938 (1977); *c.f., e.g., United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 293 (6th Cir. 1898), *modified and aff'd* 175 U.S. 211 (1899). In addition, agreements between two or more actual or potential competitors to submit collusive, non-competitive or rigged bids are *per se* violations of Section One of the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. *See, e.g., United States v. MMR Corporation (LA)*, 907 F.2d 489 (5th Cir. 1990); *United States v. W.F. Brinkley & Sons Construction Co.*, 783 F.2d 1157 (4th Cir. 1986); *United States v. Finis P. Renest, Inc.*, 509 F.2d 1256 (7th Cir. 1975), *cert. denied*, 423 U.S. 874. Similarly, agreements between actual or potential competitors to divide or allocate territories horizontally in order to minimize competition are *per se* violations of the Sherman Act (*United States v. Topco*, 405 U.S. 596 (1972); *Affiliated Capital Corporation v. City of Houston*, 700 F. 2d 226, 236), and such agreements are anticompetitive regardless of whether the parties split a market in which they both do business or whether they merely reserve one market for one and another for the other. *See Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46, 49 (1990).

[126] *See Second Report and Order*, 9 FCC Rcd 2348 at ¶ 225.

1. Antenna Height Restrictions

61. The Commission established antenna height restrictions in the *Fifth Report and Order* which provide, in part, that no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 meters above ground level unless prior Commission approval is obtained.[127]

62. Petition. American Personal Communications (APC) requests that the antenna height restrictions be rescinded because they were adopted without comment in a proceeding intended to adopt PCS auction and application processing rules, not substantive technical ones.[128] Noting that the Commission has already established antenna safety and interference provisions, APC also maintains that the rule is unnecessary. APC further argues that the rule would impose a regulatory burden on PCS providers that is not imposed on either cellular or enhanced specialized mobile radio (ESMR) providers, a result that is incompatible with the Commission's efforts to achieve regulatory parity.[129] Finally, APC maintains that the implementation and enforcement of this rule would consume significant industry and staff resources without gaining any appreciable benefit.[130]

63. Decision. In light of APC's petition, we believe that issues relating to antenna height are best resolved in another proceeding, to afford a greater opportunity for industry comment. Our primary concern when we adopted this rule section was to promote the safe location and identification of PCS antennas, particularly in areas around airports. There may be less administratively burdensome methods, however, of obtaining the same result. Moreover, Section 24.816, may be duplicative since Part 17 of our rules already provides for similar antenna height and use safeguards.[131] We therefore rescind the antenna height restrictions adopted in the *Fifth Report and Order*, but will examine the issue in a future proceeding on revisions to Part 24 of our rules. The substantive merits of APC's petition, as well as the arguments set forth in oppositions filed by PCIA and DCR Communications, Inc., will be considered at that time.[132]

2. Restrictions on Cellular Participation

---

[127] *Fifth Report and Order*, FCC 94-178 at Appendix B (Section 24.816). Section 24.816 also contains restrictions on height and use of antennas around airports.

[128] APC Petition for Reconsideration (APC Petition), filed Aug. 22, 1994, at 4.

[129] *Id.*

[130] *Id.*

[131] 47 CFR Part 17.

[132] PCIA Opposition at 1-3; DCR Communications, Inc. Opposition at 8.

64. In the *Fifth Report and Order*, we reserved specific spectrum blocks in broadband PCS for bidding exclusively by entities that, together with their affiliates and certain investors, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million.[133] We determined that designation of these "entrepreneurs' blocks" was needed to ensure that small entities have a meaningful opportunity to participate in the acquisition and provision of broadband PCS services.[134]

65. Petition. GTE alleges that our entrepreneurs' block plan, which is intended to ensure that designated entities have opportunities to acquire licenses and provide PCS service, restricts the ability of cellular carriers to participate in the provision of PCS.[135] Specifically, GTE argues that many cellular operators can now only bid on a maximum of 20 MHz instead of 30 MHz of spectrum, which will impair their ability to compete with other PCS operators. Accordingly, GTE requests that we eliminate several cellular restrictions adopted in our broadband PCS service rules proceeding.[136] First, GTE encourages the Commission to eliminate the cellular-PCS cross-ownership restrictions to permit cellular carriers to obtain 30 MHz of spectrum in any MTA in the country.[137] Next, GTE requests we modify our geographic overlap standard for purposes of determining cellular eligibility.[138] Specifically, GTE requests we adopt an "effective pops" test that it has previously advocated in the PCS proceedings. Finally, GTE requests that we permit cellular carriers to acquire up to 30 MHz of spectrum, so long as they divest the appropriate cellular properties within 90 days of the PCS license grant.[139]

66. Discussion. We reject GTE's proposal to eliminate certain cellular restrictions, as its request is outside the scope of this proceeding. Rather, those restrictions were appropriately addressed in our broadband PCS service rules proceeding, GN Docket No. 90-314.[140] As Pacific Bell points out in its Opposition, the Commission considered arguments

---

[133] *Fifth Report and Order*, FCC 94-178 at ¶ 121.

[134] *Id.*

[135] GTE Petition at 2.

[136] *Id.* at 6-8. *See Second Report and Order* in GN Docket No. 90-314, 8 FCC Rcd 7700 (1993) at ¶¶ 97-111.

[137] GTE Petition at 6.

[138] *Id.* at 6-7.

[139] *Id.* at 7-8.

[140] *Second Report and Order* in GN Docket No. 90-314, 8 FCC Rcd 7700 (1993) at ¶¶ 97-111, *recon. Memorandum Opinion and Order*, FCC 94-144 (Rel. June 13, 1994) at ¶¶ 98-

identical or similar to the ones raised by GTE in that proceeding and concluded that our restrictions strike an appropriate balance between fostering broad participation in PCS and ensuring that cellular operators do not exert undue market power.[141] Accordingly, we will retain our present restrictions on cellular participation in the provision of PCS. We will address the merits of GTE's claim that they will be unfairly disadvantaged by the creation of entrepreneurs' blocks in our reconsideration order on designated entity concerns.[142]

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

67. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604, the Commission's final analysis for the *Memorandum Opinion and Order* is as follows:

68. Need for, and Purpose of, this Action. As a result of new statutory authority, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, *see generally* 5 U.S.C. § 603, within the *Notice of Proposed Rule Making* in this proceeding and published Final Regulatory Flexibility Analyses within the *Second Report and Order* (at ¶¶ 299-302) and the *Fifth Report and Order* (at ¶¶ 219-222). As noted in these previous final analyses, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, be afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

69. Summary of the Issues Raised by the Public Comments. No commenters responded specifically to the issues raised by the *Fifth Report and Order*. We have made some modifications to the proposed requirements as appropriate.

70. Significant Alternatives Considered and Rejected. All significant alternatives have been addressed in the *Fifth Report and Order* and in this *Memorandum Opinion and Order*.

B. Ordering Clauses

71. Accordingly, IT IS ORDERED that the petitions for reconsideration ARE

146.

[141] Pacific Bell Opposition at 10-11. *See also Second Report and Order,* 8 FCC Rcd 7700 at ¶ 108.

[142] *See also* Omnipoint Opposition at 11-12.

GRANTED to the extent described above, DEFERRED with respect to entrepreneurs block issues and DENIED in all other respects.

72. IT IS FURTHER ORDERED that Part 24 of the Commission's Rules IS AMENDED as set forth in Appendix B.

73. IT IS FURTHER ORDERED that the rule amendments made herein WILL BECOME EFFECTIVE immediately upon publication in the Federal Register. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).[143]

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[143] Pursuant to 5 U.S.C. § 553(d)(3), we conclude that "good cause" exists to have the rule changes take effect immediately because a delay would not provide applicants with sufficient time to finalize their bidding strategies and business plans for the upcoming broadband PCS auctions. Immediate implementation of the rule changes set forth herein also provides applicants with the required certainty to proceed with their bidding and business strategies, alleviating concerns that last-minute modifications to our Rules would impede the success of their auction plan. *See* 5 U.S.C. § 553(d)(1).

Appendix A

List of Parties who Filed Petitions for Reconsideration in PP Docket 93-253

American Personal Communications (APC)
Association of Independent Designated Entities (AIDE)
BET Holdings, Inc. (BET)
Cellular Telecommunications Industry Association (CTIA)
Century Telephone Enterprises, Inc. (Century)
Citizens Utilities Company (Citizens)
Columbia PCS, Inc. (Columbia PCS)
Cook Inlet Region, Inc. (Cook Inlet)
EATELCORP, Inc. (EATEL)
GTE Service Corporation (GTE)
Hernandez, Roland A. (Hernandez)
Hicks and Ragland Engineering Company, Inc. (Hicks and Ragland)
Karl Brothers, Inc. (Karl Brothers)
Lehman Brothers (Lehman)
MasTec, Inc. (MasTec)
McCaw Cellular Communications, Inc. (McCaw)
Metrex Communications Group, Inc. (Metrex)
Minnesota Equal Access Network Services, Inc. and
South Dakota Network, Inc. (Joint) (MEANS/SDN)
National Association of Black Owned Broadcasters, Inc. (NABOB)
National Paging and Personal Communications Association (NPPCA)
Omnipoint Communications, Inc. (Omnipoint)
Pacific Bell Mobile Services (Pacific Bell)
Pacific Telecom Cellular, Inc. (PTC)
Small Business PCS Association (SBPCS)
Telephone Electronics Corporation (TEC)
United States Interactive & Microwave Television Association (USIMTA)

Oppositions filed in Response to Petitions for Reconsideration

Association of Independent Designated Entities (AIDE)
American Personal Communications (APC)
BET Holdings, Inc. (BET)
Columbia PCS, Inc. (Columbia)
Cook Inlet Region, Inc. (Cook)
DCR Communications, Inc. (DCR)
Encompass, Inc. (Encompass)
Mankato Citizens Telephone Co. (Mankato)

MasTec (MasTec)
McCaw Cellular Communications, Inc. (McCaw)
Minnesota Equal Access Network Services, Inc. and South Dakota Network, Inc.
Omnipoint Communications, Inc. (Omnipoint)
Pacific Bell Mobile Services (PacBell)
Personal Communications Industry Association (PCIA)
Telephone and Data Systems, Inc. (TDS)
United States Telephone Association (USTA)
Vanguard Cellular Systems, Inc. (Vanguard)

Replies filed in Response to Petitions for Reconsideration

BET Holdings, Inc. (BET)
City of Dallas (Dallas)
GO Communications Corporation (GO Comm.) (formerly Columbia PCS, Inc.) (Columbia PCS)
McCaw Cellular Communications, Inc. (McCaw)
Minnesota Equal Access Equal Access Network Services, Inc.
and South Dakota Network, Inc. (Minnesota)
National Paging & Personal Communications Association (NPPCA)
Omnipoint Communications (Omnipoint)
Small Business Administration (SBA)

Appendix B
Rule Changes

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. Section 24.703 is amended by revising paragraph (f) and adding paragraph (h) to read as follows:

§ 24.703 Competitive bidding mechanisms.

* * * * *

(f) Activity Rules. The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, bidders will be entitled to request and be granted waivers of such rule. The Commission will specify the number of waivers permitted in an auction, the frequency with which they may be exercised, and the method of operation of waivers by Public Notice prior to each auction.

* * * * *

(h) Bidder Identification During Auctions. The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

3. Section 24.813(a)(1) is amended to read as follows:

§ 24.813 General application requirements.

(a) * * *

(1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.

* * * * *

4. Section 24.816 is removed and reserved.

5. Section 24.822(b) is revised to read as follows:

§ 24.822 Amendment of application to participate in auction for licenses in the broadband Personal Communications Services filed on FCC Form 175.

* * * * *

(b) In broadband PCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make changes to the information required by § 24.813(a) (such as ownership changes or changes in the identification of parties to bidding consortia), provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for licenses in any of the same geographic license areas as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also Section 1.2105 of this Chapter.

6. Section 24.829 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

7. Section 24.833 is added to read as follows:

§ 24.833 Post-auction divestitures.

Any parties sharing a common non-controlling ownership interest who aggregate more PCS spectrum among them than a single entity is entitled to hold (See §§ 20.6(e), 24.710, 24.204, 24.229(c)) will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The broadband PCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the PCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the PCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband PCS licenses won by the applicant, impose the default penalty and, based on the facts presented, take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the

property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.