

Before the Federal Communications Commission

Auction of Rural Service Area
Licenses/ Opening Bids and Other
Auction Procedures

Re: Auction 45

Comments of Ranger Cellular and
Miller Communications, Inc.

Ranger Cellular and Miller Communications, Inc. (Applicants) hereby submit these comments in response to the Commission's February 5, 2002 Public Notice (DA 02-265). Applicants were original applicants for the licenses at issue in the market to be auctioned here. The FCC dismissed their applications on the grounds that it was required to do so as a result of the conversion from lotteries to auctions in 1997. Applicants contend that any auction for these licenses is required both by statute and by past Commission precedents to be limited to those applicants in the original applicant pool who have maintained the viability of their applications. Applicants will therefore be appealing both the Commission's decision to open this auction to the world at large and its dismissal of their applications on erroneous grounds. As pending applicants for these licenses, Applicants have the following brief comments.

Absence of Texas-21. The conduct of this auction is a result of the Commission's Report and Order in WT Docket No. 01-32. *Implementation of Competitive Bidding Rules to License Certain Rural Service Areas*, FCC 02-9, released January 28, 2002. ("RSA Order") In that Order, the Commission specifically addressed the fact that the license for Texas-21/Chambers is vacant as a result of the disqualification of Alee Cellular Communications in connection with its participation in the so-called risk-sharing agreement in the late 80's. At paragraph 34 of the RSA Order, the Commission referred to Alee's request that Texas 21 not be included in any upcoming auction pending the resolution of the denial of its application. The Commission "den[ied] Alee's request," an action which would seem to suggest that the Commission intended for Texas 21 to be *included* in the auction for these markets even while Alee's petition for reconsideration was pending. The Feb. 5 Public Notice does not explain why Texas-21 is not included per the Commission's directive, nor has the Commission's staff offered an explanation. Applicants believe that it would be conducive to an efficient conduct of cellular auctions to include as many as possible in a single auction. If Texas-21 is not included now, it will have to await another miscellaneous auction sometime in the indefinite future. Each time the auctions for these markets have been delayed, the delay has slipped into a matter of several years. This is how six years have gone by since the first re-lottery of these facilities was scheduled. These licenses have lain fallow now for almost 14 years; the Commission should not inject another few years of delay into the process.

Minimum opening bid. The Commission proposes minimum opening bid amounts of \$39,000, \$59,000 and \$25,000, respectively for the markets in issue. These figures are too high. The RSAs at issue here are the last cellular licenses in the Commission's inventory. This auction represents perhaps the last chance for a true small business to acquire and operate a cellular radio system. The Commission's rules have permitted putative "very small businesses" to bid hundreds of millions of dollars on PCS and other licenses, something which by definition a truly small business would be incapable of doing. Huge mega-companies have shoved aside the small carriers; their sheer ability to throw money at auctioned services makes it very difficult for small businesses to compete. This is directly contrary to the stated intent of Congress that small business ownership of communications facilities be fostered by the auction methodology. 47 U.S.C. 309(j)(3)(B). By setting the opening threshold relatively high, the Commission effectively cuts small businesses off before they even have a chance to enter the bidding.

Look at it this way. If the large megaliths want to bid the prices up high, they can do so regardless of how low the opening bid is and the Commission will not have experienced any loss. If, however, the megaliths choose to stay out of the auction, keeping the minimum opening bid low will permit more true small businesspersons to compete.

The sole reason offered by the Commission for adopting a relatively high opening bid is "to accelerate the competitive bidding process." Feb. 5 Public Notice at p.4. Given that there are only three markets (or four, if Texas-21 is included) in this auction, acceleration of the bidding process is hardly an issue. We anticipate that the bidding will not consume more than a couple of days, if that. (Witness the recently completed Auction 82 which also involved only four markets and which took only a week to complete.) Setting an overly high starting bar in this case simply prevents small businesses from having a chance to get into the cellular business at a relatively low entry cost while serving no countervailing good. The proposed methodology thus works directly against the Congressional directive.

With these considerations in mind, Applicants suggest that the minimum opening bid be no higher than the upfront payment amount specified for each market. The upfront amounts are consistent with figures used in other auctions and seem reasonable. In many other auctions, the Commission has used the upfront payment as a good benchmark for minimum opening bids. The same principle should apply here.

Appropriate warnings. Applicants intend at the appropriate time to seek judicial review of the Commission's rejection of the Congressional directive to restrict this auction to pre-1997 filers and to adhere to prior precedents regarding applicant pools. The next Public Notice issued by the FCC with respect to this auction should alert potential bidders that the validity of the auction is subject to judicial review.

Perhaps it would be even better if the Commission delayed the start date of this auction to accommodate the judicial review. If the Commission has learned anything from the NextWave debacle, it should be that the most serious impediment to the auction process is *uncertainty*. Given the situation that followed Auction 35, firms will be reluctant to tie up large sums of money in auction down payments and upfront payments when the Commission does not have clear title to the assets being auctioned. Here there is no doubt that the Commission has title, but the eligibility of bidders other than original filers is very much up in the air. Holding the auction before this issue is resolved will almost certainly have a chilling effect on the auction process, especially with the NextWave situation fresh in bidders' minds. We recognize that awaiting judicial review would delay the ultimate licensing of these systems, something we decried in above, but we see no other way to preserve the full value of the licenses. Looked at in this light, perhaps delaying the auction would also give the Commission time to resolve the Texas-21 issues and include that market in the auction free of any clouds.

Applicants respectfully request that the Commission take these factors into account in establishing the final rules for Auction 45.

Respectfully submitted,

Ranger Cellular and
Miller Communications, Inc.

By _____/s/_____
Donald J. Evans
Their Attorney