



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Before the
FEDERAL COMMUNICATIONS COMMISSION
In the Matter of Revision of Part 22 and Part 90 of the Commission's
Rules to
Facilitate Future Development of Paging Systems and
Implementation of Section 309(j) of the Communications Act --
Competitive Bidding

[WT Docket No. 96-18; PP Docket No. 93-253]

and

In the Matter of Amendment of Part 1 of the
Commission's Rules --
Competitive Bidding Proceeding

[WT Docket No. 97-82]

Comment of the
FEDERAL TRADE COMMISSION

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I. INTRODUCTION AND SUMMARY

On February 24, 1997, in WT Docket No. 96-18, the Federal Communications Commission ("FCC") published a Second Report and Order and Further Notice of Proposed Rulemaking ("Second Report") adopting new rules for the distribution of licenses for paging frequencies and soliciting further comment on several issues, including possible revisions to the license application and frequency coordination procedures for shared paging channels. The FCC also has taken under advisement the Federal Trade Commission's suggestion from its March 1996 comment on this docket that bidding agents for licenses at auction be required to disclose the real parties-in-interest behind their bids, *i.e.*, the intended license owners, and to provide those parties with material information about the FCC's paging regulations. On February 20, 1997, in WT Docket No. 97-82, the FCC published an Order, Memorandum Opinion and Order and Notice of Proposed Rule Making (the "Bidding Rules Notice") adopting certain rules for competitive bidding for all auctionable services and seeking comment on various matters, including whether to adopt general ownership information disclosure requirements for auction applicants. The Federal Trade Commission ("Commission") submits this comment to address the matters raised in both the Second Report and the Bidding Rules Notice.

The Commission supports the efforts of the FCC to provide important information to potential licensees about the FCC telecommunications licensing process, certain aspects of which have been rife with consumer investment fraud for the better part of the past decade. Specifically, the Commission endorses the suggestion in the Second Report that Form 600, the form used to apply for various wireless telecommunications licenses, be modified to include disclosures about the FCC's requirements for licensees and, separately, to require the preparers of applications for these licenses both to disclose their identities to the FCC and to certify that the actual applicants have received pertinent FCC information. See Second Report at 220. The Commission also recommends that the FCC require frequency coordinators, such as the Personal Communications Industry Association ("PCIA"), to provide disclosures about FCC license requirements to applicants who have submitted license applications to them pursuant to the FCC's mandatory frequency coordination procedure. ⁽¹⁾ Id. Finally, the Commission continues to be concerned about the potential for fraud that may stem from wireless license auctions and recommends that the FCC: (1) require bidders at auction to disclose ownership information about the applicants on the auction application form, and (2) take steps to ensure that applicant owners receive material information about the applicable regulations for the licenses at issue. See Second Report at 118, 121, 124 and 128; Bidding Rules Notice at 49-52.

II. BACKGROUND: RECENT TELEMARKETING FRAUD INVOLVING FCC LICENSES

As the Commission noted in its earlier comment to the Notice of Proposed Rule Making ("NPRM") in WT Docket No. 96-18, fraudulent telemarketing schemes involving FCC wireless licenses as investments have traditionally fallen into two categories: license "application mills" and "build-out" schemes. See Second Report at 219. In exchange for fees amounting to several thousand dollars paid by consumers, application mills typically offer to apply to the FCC for wireless licenses for consumers based on false promises that the licenses, once obtained from the FCC, can easily be sold or leased for tens or hundreds of thousands of dollars to established telecommunications companies. Promoters of build-out schemes usually offer shares of partnerships or of limited liability companies that purportedly will acquire wireless licenses at auction, build and operate telecommunications systems, and pay consumers high dividends. All too often, the build-out promoters use most of the money they raise to pay sales commissions to themselves, leaving little money to fund the systems they promised to construct and operate. These types of frauds have fleeced consumers of hundreds of millions of dollars during the last several years.

In January 1996, the Commission brought six cases against application mills in connection with a coordinated state-federal law enforcement effort called "Project Roadblock." In each of the six cases, the Commission's complaints alleged that the telemarketers misrepresented the potential value of FCC licenses as passive investment opportunities and failed to disclose that FCC regulations prohibit the transfer of a license that was obtained for speculative purposes without any intention by the licensee to construct and operate a telecommunications service. ⁽²⁾

Soon after the Project Roadblock cases were filed, both the Commission and the FCC took further action to stem fraud involving paging licenses. In February 1996, the FCC froze the issuance of paging licenses to new applicants pursuant to the initial NPRM in WT Docket No. 96-18. In March and April 1996, the Commission mailed brochures about telemarketing fraud involving FCC licenses to over 17,000 consumers who had applied for or received paging or Specialized Mobile Radio ("SMR") licenses. The brochures warned not only about traditional scams, but also about "reloader" firms that fraudulently induce existing licenseholders to pay large up-front fees to broker their licenses. The FCC also began sending the brochures to licensees upon the grant of each paging and SMR license.

Despite these efforts, telemarketing fraud involving paging and SMR licenses continues to plague consumers. Although the Project Roadblock cases and the FCC's freeze on the issuance of new licenses have at least temporarily put most application mills out of business, many consumers who acquired licenses from the mills have been targeted in recent months by telemarketers who promise to help the consumers preserve and profit from their licenses. Since FCC rules require that paging and SMR licenses be placed in operation within 12 months of issuance or be forfeited (see 47 C.F.R. §§ 22.511, 90.167), telemarketers exploit consumers' desire to save their licenses and to profit from them without spending the substantial sums necessary to construct and operate a communications service. From its experience in this area, the Commission has observed three distinct services offered by these telemarketers that raise potential concerns:

First, some telemarketers, posing as license "brokers," have promised consumers that they could procure lucrative purchase or lease offers from system operators in exchange for up-front fees from the consumers of several hundred dollars per license. In fact, in two cases brought by the Commission, brokers pocketed the up-front money and made little or no effort to market their customers' licenses.(3) These services are likely to be of little or no value because any legitimate system operator can obtain paging and SMR licenses directly from the FCC or use the FCC's database to identify existing licensees who might wish to transfer their licenses.(4)

Second, some telemarketers have offered to help consumers petition the FCC for license extensions in exchange for fees of several hundred dollars per license. These telemarketers have claimed that they have "inside" knowledge of the FCC's workings and that the FCC is likely to grant extensions to victims of fraudulent application mills.(5) In late 1995 and 1996, the FCC received petitions for the extension of over 2,000 paging and SMR licenses, virtually all of them prepared by telemarketers. The FCC has denied most of the petitions prepared by telemarketers, consistent with its 1995 decision that customers of application mills who had not attempted to operate systems with their licenses would not receive extensions.(6) These scams continue, however. For example, FCC records show that one telemarketing firm has filed petitions for reconsideration of the extension application denials for 700 licenses. That firm continues to offer extension services to other licensees.(7)

Third, as another means of avoiding the FCC's 12-month expiration deadline, a number of telemarketers have offered to install "site saver" transmitters at antenna sites at a cost of several thousand dollars per license, plus monthly antenna lease fees. Such an installation, the telemarketers have claimed, would satisfy the FCC's construction requirements, thus saving the licenses from forfeiture and preserving the chance that consumers would be able to find buyers or lessors for their licenses.(8) Even if such equipment were installed in a timely manner and complied with the FCC's construction requirements, most shared paging licenses and single-channel SMR licenses have little resale value, and consumers appear to be wasting thousands of dollars each for the supposed construction services.

The Commission believes that providing accurate information about important FCC regulations to consumers is a key element to reducing future fraud in the FCC licensing area. If the customers of application mills had understood from the start that FCC licenses alone were not marketable commodities, they would have been less likely to succumb to the telemarketers' pitch about applying for licenses in the first place.(9) Informed consumers also probably would not have fallen victim to the subsequent telemarketers' pitches about various mechanisms that might be used to save and profit from their licenses. Similarly, if consumers who invested in build-out schemes had been aware of the restrictions on transferring the licenses involved and other FCC regulatory requirements, telemarketers would have found it considerably more difficult to deceive consumers into investing in those schemes. In order to limit the recurrence of these frauds, the Commission recommends providing future consumer applicants with more information about any licenses they seek to acquire, whether through a traditional application process or through an auction.

III. RECOMMENDATION: PROVIDE RELEVANT INFORMATION TO CONSUMER APPLICANTS THROUGH MULTIPLE AVENUES TO DETER AND DETECT FRAUD

Because fraudulent operators often deceive consumers and withhold critical information about FCC licenses, it is important that consumers receive relevant FCC information early in the application process. Requiring disclosures on the license application form (Form 600), as well as requiring application preparers, frequency coordinators, and bidding agents to provide similar disclosures to consumers, should help to prevent and deter fraud in the licensing process. Consumers who receive these disclosures also may be more likely to make inquiries to the fraudulent telemarketers themselves, to the FCC, and to the Commission and other consumer protection agencies.(10) Compliance with the disclosure requirements that the Commission suggests would be easily verifiable by the FCC, and would place fraudulent operators in the position of having to violate clear legal requirements in order to sell their offerings.

A. Add New Disclosures to Form 600

The Commission agrees that Form 600 should be modified (as suggested by the FCC; see Second Report at ¶ 220) to include clear and conspicuous disclosures about (1) the FCC's regulations against speculating and trafficking in wireless telecommunications licenses, (2) the construction requirements for these licenses, and (3) the general potential for fraud in the FCC licensing process.⁽¹¹⁾ The new Form 600 also should list the telephone number for the FCC's Call Center, so that consumers can call the FCC directly for further information on any license. For many consumer applicants, the proposed disclosures may be the only accurate information they receive about FCC licenses before they apply through an application service. It is thus important that the FCC use this unique opportunity to communicate directly with the applicants about the licenses they are seeking.⁽¹²⁾

The suggested modification of Form 600 would impose only limited, one-time printing costs on the FCC, and would impose no costs or other burdens on applicants.

B. Require Application Preparers to Identify Themselves on Form 600 and Provide Material Information to Applicants

The Commission also agrees with the FCC's suggestion that Form 600 be modified to require entities that prepare FCC wireless telecommunications license applications ("application preparers") to identify themselves on the applications and to certify that they have provided the applicants with information about pertinent FCC regulations. See Second Report at ¶ 220. Specifically, the Commission suggests that the FCC require application preparers to certify on Form 600 that they have given each applicant a standardized document, prepared by the FCC, that contains clear warnings about FCC regulations for wireless licenses and the FCC Call Center number.⁽¹³⁾ Since few individual consumers complete the FCC license application forms themselves, this procedure would provide an important avenue for the distribution of critical information to consumers at a very early stage in the process. Such disclosures might prevent or deter fraud in the first instance and perhaps limit the injury flowing from frauds that have already occurred.

The Commission anticipates that the implementation of this proposal would impose relatively modest costs on the FCC in connection with the development of the disclosure document. Application preparers also are unlikely to incur significant costs, although the dissemination of the disclosure document might involve some additional mailing costs.

C. Require Frequency Coordinators to Disclose Key Information to Applicants

In response to the FCC's request for comment on "whether PCIA should be required to implement additional procedures in the coordination process to reduce fraudulent or speculative applications" (Second Report at ¶ 220),⁽¹⁴⁾ the Commission recommends that the FCC require PCIA and other frequency coordinators to include clear and prominent disclosures similar to those suggested for the Form 600 on the cards frequency coordinators send to applicants to acknowledge receipt of their applications.⁽¹⁵⁾ In addition, for the cards that frequency coordinators send out to notify applicants for shared licenses of the frequencies to which they have been assigned, the Commission recommends that the FCC require frequency coordinators to disclose the number of pre-existing co-channelled licensees for the relevant frequency.⁽¹⁶⁾

Again, the Commission believes there are likely to be relatively few costs associated with the implementation of these proposals, because the proposed alterations to the frequency coordinators' notification cards would require the coordinators only to change the printing on cards that they already use.

D. Modify Pre-Auction Application Procedures to Require Disclosure of Real Parties-in-Interest

The Commission welcomes the FCC's decision in the Second Report to take under advisement the Commission's recommendations for the implementation of stricter safeguards to deter and prevent deception involving licenses issued through auctions (see Second Report at ¶ 121), and the FCC's request in the Bidding Rules Notice for

comment on the types of ownership disclosures that should be required concerning applicants for auctioned licenses. [See Bidding Rules Notice at ¶ 51.](#)⁽¹⁷⁾

Although the majority of the Commission's cases in the FCC license area have involved application mills, the Commission also has brought cases against build-out telemarketers that sold consumers interests in partnerships that supposedly would operate telecommunications systems using licenses acquired through auction.⁽¹⁸⁾ The Securities and Exchange Commission also has brought a large number of such cases.⁽¹⁹⁾ In these cases, a telemarketer or its affiliate typically acquires a license through auction either as the bidder for a partnership or limited liability company composed of consumers who have paid the telemarketer \$10,000 or more each, or as the applicant who then "flips" the license at ten or twenty times the auction price to the consumer entity.⁽²⁰⁾ The telemarketer usually promises the consumers that their investments will enable them to construct and operate a major telecommunications system that will generate handsome returns. All too often, unfortunately, the telemarketers keep for themselves the majority of the money raised, leaving the partnerships or limited liability companies financially incapable of building and operating telecommunications systems that would generate the kind of financial returns promised.⁽²¹⁾

The Commission believes that the number of future victims of fraudulent build-out schemes would be reduced substantially if consumers were provided more information about the nature of investments in FCC licenses before the auctions take place. Accordingly, the Commission renews its suggestions that the FCC require bidding agents: (1) to disclose to the FCC the real parties-in-interest (*i.e.*, the ultimate intended owners of the licenses) behind their bids prior to auction ([see Bidding Rules Notice at ¶ 51](#)), and (2) to provide the real parties-in-interest with information about FCC regulatory requirements for licenses issued through auction. On the first point, the names of partners in general partnerships and shareholders in limited liability companies should be disclosed on the FCC's short form application.⁽²²⁾ This disclosure requirement would impose only a modest burden on the bidding agents and would provide the FCC with the ability to identify, and thus to communicate with, the potential victims of fraudulent build-out schemes.⁽²³⁾

With respect to the second point, as the Commission stated in its March 1996 comment in WT Docket No. 96-18, the Commission also believes that consumers would receive further protection from unscrupulous telemarketers of build-out schemes if the FCC were to require bidding agents at auction to certify that they have provided material information concerning the applicable license regulations to the real parties-in-interest they represent -- *i.e.*, general partners or limited liability company shareholders. For instance, if bidding agents were required to provide the auction bidder packages to all general partners or shareholders in applicant partnerships or limited liability companies, the consumers would be in a better position to make informed decisions about the build-out investment opportunities that telemarketers are offering them.⁽²⁴⁾ Integration of this last proposal into the General Bidding Rules would go far toward ensuring that consumers have sufficient information to make informed decisions before investing in FCC license build-out schemes.

1. Pursuant to 47 C.F.R. § 90.175 (1996), applications for most wireless communications licenses must include a statement from a frequency coordinator recommending the most appropriate frequency for the license. PCIA serves as a frequency coordinator pursuant to a contract with the FCC.

2. Five of the six cases have been resolved. In three, the defendants agreed to the entry of injunctions that prohibit them from making future misrepresentations about FCC licenses. [FTC v. Bell Connections, Inc.](#), No. 96-0455 KMW (SHx) (C.D. Cal.); [FTC v. On Line Communications, Inc.](#), No. CV-S-96-00055-LDG (RLH); [FTC v. USA Channel Systems, Inc.](#), No. 96-0454 HLH (CTx) (C.D. Cal.). In another case, the court granted the Commission's motion for summary judgment and banned the defendants from telemarketing any investment involving a government license. [FTC v. Micom Corp.](#), No. 96-CIV-0472 (SS) (S.D.N.Y.). Finally, in [FTC v. Alliance Communication, Inc.](#), No. 96-CIV-0568 (DC) (S.D.N.Y.), the defendants defaulted. The litigation in the sixth case, [FTC v. North East Telecommunications Ltd.](#), No. 96-6081-CIV-Gonzalez (S.D. Fla.), is ongoing.

3. See FTC v. Falcon Crest Communications, Inc., CV 95-4881 (ADS) (E.D.N.Y.); FTC v. United Consumer Services, Inc., 1:94-CV-3164-CAM (N.D. Ga.) (summary judgment for FTC ordered on Dec. 18, 1995). These two fraudulent services cases were brought prior to Project Roadblock, and similar businesses continue to operate.

4. This is not to suggest that there are no legitimate brokers of telecommunications properties. Legitimate brokerage services, however, deal in licenses associated with operational telecommunications systems, not bare licenses such as those held by victims of application mill fraud.

5. In an early postcard solicitation to consumers, one telemarketer warned:

[T]he FCC will be sending you a letter asking if you have constructed your station within the few months allowed by the Code of Federal Regulations.... Do you need more time? File an extension request in accordance with the FCC's Code of Federal Regulations. Call _____ today.

6. See Daniel R. Goodman, Receiver; Dr. Robert Chan, Memorandum Opinion and Order, 10 FCC Rcd 8537 at ¶¶ 27-28 (1995). According to FCC records, as of March 1997 one telemarketer alone had submitted extension petitions for nearly 1,800 shared paging and SMR licenses. The FCC has denied 1,500 of these petitions, and the remaining petitions are pending.

7. A current postcard from the telemarketer claims:

The FCC has not treated all licensees equally! Stop sweating the loss and demand your rights. Others were given more time to profit from their licenses, while yours was taken away. Don't be discriminated against by your own government. We can help you...

...use the FCC's own rules to demand equality.

...file a personal, 50 page motion to demand your rights.

...establish the grounds for a future class action law suit.

...postpone any current action by the FCC.

What will this cost? Only \$395, a fraction of your investment, and volume discounts are available. Call _____ TODAY to preserve your rights.

8. One such solicitation letter stated:

The result of the now famous freeze initiated by the FCC on 2/8/96 is that your license is the last of its kind. Your license gives you the right to build out that system as long as the system is built out before the anniversary date of the issuance of the license. According to FCC rules, you must construct and operate the system for a year before you are permitted to apply to transfer or assign the license. Once you have complied with these requirements, you now have a system that has value and equity.

9. One consumer made the following comment in a July 1996 letter to the FTC (punctuation in original):

I really would have appreciated your [brochure] if it had come a lot sooner, it seems the people you say are unscrupulous, have already hit this market heavy, and were way ahead of you. Their pitch was very good. It was about how the government wanted to get licenses out to individuals, so that the big boys could not create conglomerates like, "Ma Bell". They, also, said that the large companies would be seeking leases, from licensees, and pay a royalty for each customer they signed up, and could amount to an income of \$1200. or more per month. I was taken for \$7000.

10. For example, when the Commission mailed brochures about telemarketing fraud to over 17,000 paging and SMR licenseholders, consumer reports to the Commission about suspected FCC license scams increased 397 percent. See Fighting Consumer Fraud: The Challenge and the Campaign, A Report from the Federal Trade Commission at 11 (Jan. 1997).

11. As the record indicates, many of the other commenters on the NPRM in WT Docket No. 96-18 also suggested that Form 600 be modified in a similar manner. See, e.g., Reply Comments of Ameritech Mobile Services, Inc., at 5 (recommending that bold, large-type warnings about fraud and applicable construction requirements be placed above the signature line on Form 600); Reply Comments of The Paging Coalition at 6; Reply Comments of Page Hawaii at 8; Reply Comments of Teletouch, Inc., at 7.

12. Unfortunately, telemarketers may seek to avoid providing the Form 600 to consumers. With the advent of electronic filing -- which means that the applicant need not sign the Form 600 -- it is important that the application preparers, too, provide information to applicants. See Section III.B, infra.

13. The Commission would welcome the opportunity to assist the FCC in the development of such a standardized disclosure document.

14. Frequency coordination is often the first step in applying for many wireless licenses. See note 1, supra. The frequency coordinator is responsible for forwarding the completed license applications to the FCC for filing and further processing.

15. To ensure that the disclosures reach their intended audience, the Commission recommends that the FCC require the frequency coordinators to send their notification cards to the applicants themselves, not just to the application preparers or application mills. In addition to the disclosures, it might be feasible for the FCC to require frequency coordinators to provide consumers with a short period of time in which to withdraw their applications and receive a partial refund of the frequency coordination and FCC filing fees. This would provide consumers an opportunity to recoup some of the money they may have been duped into giving an application mill and perhaps would lower the transaction costs of the FCC and frequency coordinators in handling consumer applications.

16. Since the number of other co-channelled licensees often exceeds 1,000 for shared 929 MHz licenses in major metropolitan areas, this disclosure might educate consumers who were told falsely by telemarketers that they would be applying for valuable exclusive licenses rather than heavily utilized shared licenses.

17. In the same vein, the Commission respectfully recommends reconsideration of the FCC's decision not to implement new ownership disclosure and information requirements for bidders in the paging license auctions mandated by the Second Report. See Second Report at ¶ 128.

18. See FTC v. Chase McNulty Group, Inc., No. 95-524-CIV-T-25E (M.D. Fla.); FTC v. Digital Interactive Assocs., Inc., No. 95-Z-754 (D. Colo.).

19. See Securities and Exchange Commission, Telecommunications Technology Securities Fraud, (Jan. 25, 1996). State regulators also have been active in bringing law enforcement actions to deter these frauds.

20. The Commission supports the FCC's decision to apply the reporting requirements of 47 C.F.R. § 1.2111(a) (1996) to scrutinize the transfers of paging licenses obtained through the competitive bidding process. As the FCC notes in the Second Report, requiring parties involved in license transfers to make disclosures to the FCC should inhibit fraudulent telemarketers from flipping licenses obtained at auction to coalitions of unqualified and unsuspecting consumers at inflated prices. See Second Report at ¶ 162.

21. See, e.g., Chase McNulty Group, supra note 18; Digital Interactive Assocs., supra note 18.

22. The FCC already requires such disclosures by bidding agents in auctions for broadband PCS licenses. 47 C.F.R. § 24.813. The FCC also requires additional ownership disclosures depending on the service being auctioned. See Bidding Rules Notice at ¶¶ 49-50.

23. The potential benefits that flow from these recommended disclosures depend upon the use the FCC might make of the information. Notably, in the Second Report, the FCC states that it has enhanced its efforts to communicate with consumers by releasing a Consumer Alert and training the operators at its Call Center. See Second Report at ¶ 121. These efforts can succeed only if the likely victims are aware of them.

24. The FCC may decide that providing the auction bidder packages to each owner applicant is impractical because much of the information relates only to the auction process. At a minimum, bidding agents should be required to provide material information similar to the suggested standard FCC disclosure document that application preparers would be required to provide to their customers. See Section III.B, supra. Like application preparers, bidders presumably communicate already with their customers, so the additional disclosure requirements would not appear to be unduly burdensome.