



Federal Communications Commission
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DA 03-1719

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Re: Banks Broadcasting, Inc. Request for Waiver of Section 1.2109(b) of the Commission's Rules (Auction No. 44)

Dear Messrs. Schmidt and Blake:

This letter responds to the Request for Waiver¹ and Petition to Promptly Resolve Waiver Request² filed on behalf of Banks Broadcasting, Inc. ("Banks"). Banks seeks a waiver of Section 1.2109(b) of the Commission's Rules, which permits the Commission to offer a license to the next highest bidders (in descending order) if a winning bidder withdraws its bid after close of the auction.³ Specifically, Banks seeks to have the Commission offer it four licenses on which it placed a high bid prior to submission and withdrawal of higher bids by another bidder prior to close of Auction No. 44.⁴ For the reasons discussed below, we deny Banks's Waiver Request.

Background. Banks states that it is a minority-controlled, small business entity that operates television stations in Boise, Idaho and Wichita, Kansas.⁵ Banks was a participant in Auction No. 44, and was the winning bidder of two licenses.

¹ Banks Broadcasting, Inc. Waiver Request (filed October 2, 2002) ("Waiver Request"); Supplement to Pending Waiver Request In Light of Subsequent Commission Action (filed March 21, 2003) ("Supplement").

² Petition to Promptly Resolve Waiver Request or Remove Four Licenses from Auction No. 49 Pending Resolution of Outstanding Waiver Request (filed December 17, 2002) ("Petition").

³ 47 C.F.R. § 1.2109.

⁴ Waiver Request at 2.

⁵ See Waiver Request at 2-3. Lyle Banks holds 100% of the voting stock of Banks. In addition, LIN Television Corporation holds 50% of Banks's preferred, non-voting stock. See Banks Broadcasting, Inc. FCC Form 175, Auction No. 44, Exhibit A. Short form applications for Auction No 44, as well as other past auctions, may be viewed online via the Commission's FCC 175 search page. See <https://auctionfiling.fcc.gov/form175/search.htm>.

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In Auction No. 44, the Commission made available 740 licenses in the C and D blocks of the Lower 700 MHz band. On June 7, 2002, the Commission announced that 128 bidders, including Banks, were qualified to participate in Auction No. 44.⁶ On June 19, 2002, the Auction Reform Act of 2002 was signed into law.⁷ Among other things, that legislation directed the Commission to delay the auction of the A, B, and E blocks of the Lower 700 MHz band and to proceed with an auction of the C and D blocks starting “no earlier than August 19, 2002, and no later than September 19, 2002.”⁸ The Auction Reform Act also limited the pool of eligible bidders for Auction No. 44 to those entities that the Bureau had previously identified as qualified bidders among those that had filed short form applications by the original May 8, 2002 deadline.⁹ Banks was thus deemed a qualified bidder for Auction No. 44.¹⁰ Auction No. 44 began on August 27, 2002 and closed in round 84 on September 18, 2002.

Banks placed bids on nine licenses during the course of the auction and emerged as the winning bidder for two licenses.¹¹ Banks’s request involves four C block Boise-area licenses that it bid upon, but did not win, in Auction No. 44. For purposes of this order, these four licenses, which are the Boise, Idaho license (CMA 190) and three rural Idaho markets near Boise (CMA 389, CMA 391, and CMA 392), are collectively termed the “Boise Licenses.”

Banks arguments rely in large part on the bids placed on the Boise Licenses during the course of the auction.¹² Banks, Vulcan Spectrum LLC (“Vulcan”), and two other bidders bid upon some or all of the Boise Licenses in the early rounds of the auction.¹³ By round 17, however, the other two bidders placed no more bids on the Boise Licenses.¹⁴ Banks and Vulcan then alternated as the high bidders for

⁶ At that time, Auction No. 44 was scheduled to start on June 19, 2002. See “Auction of Licenses for 698-746 MHz Band; 128 Qualified Bidders,” *Public Notice*, DA 02-1346, Report No. AUC-02-44-F (Auction No. 44) (rel. June 7, 2002).

⁷ See Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”).

⁸ 47 U.S.C. § 309(j)(15)(C)(iii), as enacted by the Auction Reform Act. The Auction Reform Act also directed the Commission to delay its then-scheduled auction of certain licenses in the Upper 700 MHz band (Auction No. 31).

⁹ See 47 U.S.C. §309(j)(15)(C)(ii).

¹⁰ See “Auction No. 44; Revised Qualified Bidder Notification,” *Public Notice*, DA 02-1933, Report No. AUC-02-44-H, Attachment A (rel. Aug. 7, 2002).

¹¹ Banks was winning bidder of C block licenses for one Boise-area license (Idaho 3 – CMA390) and the license covering the Wichita, KS CMA (Wichita – CMA 089). See “Lower 700 MHz Band Auction Closes; Winning Bidders Announced,” *Public Notice*, DA 02-2323, Report No. AUC-02-44-I (Auction No. 44) (rel. Sept. 20, 2002) (“*Closing PN*”).

¹² See Waiver Request at 4-7.

¹³ See *id.* Banks also placed bids upon the C block license for nearby Umatilla, OR (Oregon 3 – CMA608) for which Vulcan was the winning bidder. Complete information concerning Auction No. 44, including individual round results and auction outcomes, may be found on the Commission’s web site at: <http://wireless.fcc.gov/auctions/>.

¹⁴ See Waiver Request at 3-6.

the four Boise Licenses through round 32.¹⁵ After Vulcan became the high bidder on all four of the Boise Licenses in round 32, Banks determined that those high bids “were in excess of the value that Banks placed on the licenses,” and it discontinued bidding on those licenses.¹⁶ Banks continued to bid on the Reno, Kansas license, and remained high bidder on the Wichita license and a fifth Boise-area license.¹⁷

Under the procedures in effect for Auction No. 44, bidders were permitted to withdraw high bids.¹⁸ In round 57, Vulcan withdrew its high bids on the Boise Licenses.¹⁹ Pursuant to the Auction No. 44 procedures, the minimum acceptable bid for these licenses in the next round became the second highest bid received for the license in the prior rounds.²⁰ Thus, the minimum acceptable bid on the Boise Licenses was the amount of Banks’s next-highest bids.²¹ At the time Vulcan withdrew, Banks’s bidding eligibility was sufficient either for its standing high bids on the Wichita-area license and the fifth Boise-area license, or to place bids on some of the Boise Licenses.²² Neither Banks nor any other bidder submitted any bids on any of the Boise Licenses in the following 27 rounds of the auction. Thus, the auction closed after round 84 with the four Boise Licenses unsold.

Shortly after the close of the auction, on September 27, 2002, Banks filed its Waiver Request.²³ Banks requests that the Commission restore Bank’s last bids for the Boise licenses and offer Banks the four Boise Licenses as the next-highest bidder.²⁴ Banks argues that permitting it to acquire the licenses at its previous high bids would serve the objectives of the auction process by awarding the Boise Licenses to the party that values them most highly.²⁵ Banks contends that, because it submitted the second-highest

¹⁵ *See id.*

¹⁶ Waiver Request at 4-5.

¹⁷ *See id.* at 5.

¹⁸ Bid withdrawals serve an important and legitimate purpose in reducing a bidder’s risk associated with efforts to secure certain license combinations. *See* “Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,” *Public Notice*, 17 FCC Rcd 4935, 4974-75 (2002) (“*Auction No. 44 Procedures PN*”).

¹⁹ Section 1.2104(g)(1) of the Commission’s Rules imposes an obligation requiring withdrawing bidders to pay the difference between their withdrawn bid and a lower subsequent winning bid for the license. 47 C.F.R. § 1.2104(g)(1); *Auction No. 44 Procedures PN*, 17 FCC Rcd at 4974-75. Vulcan was assessed, and paid, interim bid withdrawal payments. *See Closing PN*, Attachment C.

²⁰ *See Auction No. 44 Procedures PN*, 17 FCC Rcd at 4974-75.

²¹ *See id.*

²² Waiver Request at 6; Petition at 7. Had Banks sought to place bids on any of the Boise Licenses at that point, it would have had to withdraw one or both of its standing high bids.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ Waiver Request at 7, 11-15; Petition at 3-7; Supplement at 1-3.

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bids on the Boise Licenses, it has “conclusively demonstrated that it is the party that valued the Boise Licenses most highly.”²⁶

Banks also argues that by not allowing it to acquire the licenses at its last bids, the Commission would frustrate what Banks claims was Congress’s intent to maximize the availability of the Lower 700 MHz C block channels to rural and small businesses.²⁷ Banks further claims that the Commission should grant its request as a means of assuring that the spectrum is licensed expeditiously to a party that will use it efficiently and intensively.²⁸ Finally, in its Petition, Banks asks that the Commission remove the Boise licenses from the inventory for Auction No. 49 pending resolution of Banks’s Waiver Request.²⁹

The Boise Licenses have been included in the inventory for Auction No. 49, which will make available the Lower 700 MHz C and D block licenses that were unsold in Auction No. 44. Auction No. 49 is scheduled to begin on May 28, 2003.

Discussion. We do not agree with Banks’s claims that the public interest would be served by granting Banks’s request and offering the Boise Licenses to Banks at its second-highest bids. Banks seeks a waiver of Section 1.2109(b) pursuant to Section 1.925(b)(3) of the Commission’s rules.³⁰ Under Section 1.925(b)(3), an argument that a waiver would be in the public interest is not sufficient grounds for a grant unless the applicant also shows that grant would be consistent with the purpose of the rule(s) or that unique or unusual circumstances are involved.³¹ For the reasons discussed below, we find that Banks has not made a sufficient showing to meet this standard.

Banks argues that grant of its request and offering the Boise Licenses at the next-highest bid amount would serve the purpose of Section 1.2109(b) by getting spectrum in the hands of the party that values it most highly and that is likely to speed service to the public.³² Section 1.2109(b) provides that the Commission may, in its discretion, offer licenses to the next-highest bidder if a winning bidder withdraws or defaults “after the Commission has declared competitive bidding closed.”³³ Section 1.2109(b) was intended to address a narrow circumstance that is not present here – namely, a bidder’s default *after* the close of the auction.³⁴ Further, when the Commission first adopted rules governing the

²⁶ Waiver Request at 7.

²⁷ *Id.* at 10-11; Petition at 8.

²⁸ Waiver Request at 11-12.

²⁹ Petition at 1.

³⁰ *See* Waiver Request at n. 3 (citing 47 C.F.R. § 1.925(b)); Petition at n. 18 (citing 47 C.F.R. § 1.925(b)(3)(ii)).

³¹ *See* Application of Aircom Consultants, Inc., *Order on Reconsideration*, DA 03-405, ¶ 12 (WTB rel. Feb. 11, 2003); 47 C.F.R. § 1.925(b)(3).

³² *See* Waiver Request at 12-14; Petition at 3-5.

³³ 47 C.F.R. § 1.2109(b).

³⁴ *See* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2382-84 ¶¶195-205 (1994) (“*Competitive Bidding Second Report and Order*”).

default of an auction winner, it stated, as a general rule, that the best course of action would be to re-auction the spectrum.³⁵ In the *Competitive Bidding Second Report and Order*, the Commission noted that one of its primary concerns is that licenses be awarded to the parties that value them most highly, and in the situation of a winning bidder's withdrawal after the close of an auction, this can best be assured through a re-auction.³⁶ In the *Part 1 Third Report and Order*, the Commission considered revisions to Section 1.2109(b) and decided to reserve discretion to either re-auction the spectrum associated with a defaulted license or offer it to the other highest bidders (in descending order) at their final bids.³⁷ However, the Commission noted that offering spectrum associated with a defaulted license to the next highest bidder at its final bid may not ensure that the license will be awarded to the bidder who values it most highly.³⁸ In particular, the Commission observed, that "as the license is offered to bidders at the next highest bids, other parties can argue that they would pay more for the license if given the opportunity."³⁹ Moreover, when more than one license is being auctioned, aggregation strategies may shift during the course of the auction, affecting the value placed on any individual license by a particular bidder.⁴⁰

We reject Banks's assertion that offering it the Boise Licenses would serve the purpose of Section 1.2109(b).⁴¹ We are not persuaded that the facts Banks presents dictate a conclusion that Banks is the party that values the Boise Licenses most highly. We have not identified any case where an applicant has made a convincing showing that the Bureau should, in the context of a withdrawal that occurred *after* the auction closed, exercise its discretion under Section 1.2109(b) to offer unsold licenses to the next highest bidder. Therefore, we are unconvinced that the Bureau should waive Section 1.2109(b) to offer unsold licenses to the next highest bidder when a bidder withdraws its high bid *before* the close of an auction. We do not accept Banks's speculation that no party valued the Boise Licenses more highly than Banks simply because eight bidders that had sufficient eligibility to bid on the licenses after Vulcan's withdrawals did not do so at that point in the auction. Banks has not adequately addressed the issue of whether other bidders may have based their bidding strategy on a plain reading of Section 1.2109(b) (*i.e.* – that Section 1.2109 would not be applied in the case of a bid withdrawal during the auction). Similarly, we do not believe that the bidding history prior to Vulcan's bid withdrawals show that there were no bidders who may have wanted the opportunity to change their bidding strategy in light of those withdrawals.⁴² Waiver of Section 1.2109(b) after the auction to offer Banks licenses on which Banks lacked sufficient unused

³⁵ *Id.*, 9 FCC Rcd at 2383 ¶ 204.

³⁶ *Id.*

³⁷ Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 461-62 ¶ 152 (1997).

³⁸ *Id.* at 462 ¶ 153.

³⁹ *Id.*

⁴⁰ *See id.*

⁴¹ *See* Waiver Request at 12-15.

⁴² *See id.* at 9.

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eligibility to bid after Vulcan's withdrawal would be unfair to other bidders that might otherwise have bid on those licenses.⁴³ Such action by the Bureau could undermine the integrity of the auction process.⁴⁴

We also reject Banks's contention that the activity and eligibility rules of Auction No. 44 precluded the Boise Licenses from being awarded to the party that values them most highly. The activity and eligibility rules serve several important functions that are necessary to promote efficient auction processes and outcomes.⁴⁵ These rules encourage bidders to make early bids in the auction, rather than waiting until later rounds to participate. Prompt and early participation by a bidder in the auction reveals useful information to other bidders about its demand and valuations for licenses.⁴⁶ This transparent process allows bidders to modify their strategies based on current prices. The activity and eligibility rules also help maintain the pace of the auction, which reduces costs to bidders and the Commission. By promoting an efficient auction process, these rules increase the likelihood that the winning bidder will be the party that most highly values the license. The Bureau applied the activity and eligibility rules uniformly to all bidders in Auction No. 44.⁴⁷ We disagree with Banks's claim that it was "uniquely disadvantaged" by the auction's activity and eligibility rules because the operation of those rules resulted in Banks not having sufficient bidding eligibility to place bids on the Boise Licenses after Vulcan withdrew its bids.⁴⁸ We cannot conclude that Banks was the only bidder so situated at this stage of the auction. Indeed, Banks concedes that it is "theoretically possible" that other bidders may have also been without sufficient eligibility to place bids on the Boise Licenses after Vulcan withdrew.⁴⁹ Further, the bidding prior to Bank's loss of eligibility does not "conclusively demonstrate," as Banks asserts, that Banks is the entity that values the Boise Licenses most highly.⁵⁰ The party that values a license most

⁴³ See Harbor Wireless LLC Request for Waiver of Section 1.2109(b) of the Commission's Rules, 16 FCC Rcd 3615, 3619 (WTB 2001) ("*Harbor Wireless*").

⁴⁴ See In the Matter of Two Way Radio of Carolina, Inc. *Memorandum Opinion and Order*, 14 FCC Rcd 12035, 12041 ¶ 11 (1999).

⁴⁵ These rules are intended to: (1) move auctions along at an appropriate speed; (2) provide bidders with sufficient flexibility to pursue a wide range of alternative bidding strategies; and (3) be simple and clearly understood by bidders. *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2371 ¶ 134. The Commission has recognized that "[d]esigning an effective activity rule involves making tradeoffs among these objectives. For example, any incentive to induce bidders to actively participate (beyond a single license) in early rounds [of a simultaneous multiple round auction] constrains the flexibility to pursue some bidding strategies." *Id.* Recognizing the costs of such tradeoffs, the Commission has observed that the Milgrom-Wilson activity rule will not "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." Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245, 7248 ¶ 15 (1994).

⁴⁶ See Auction Of Licenses in the Lower 700 MHz Band Scheduled for May 28, 2003, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 3138 (2003) ("*Auction No. 49 Procedures Public Notice*").

⁴⁷ See *Auction No. 44 Procedures PN*, 17 FCC Rcd at 4965-68.

⁴⁸ See Waiver Request at 7-10.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 7.

highly is determined by the highest bid within the established competitive bidding rules and procedures, and not by a bidder's interpretation of bidding activity.

Contrary to Banks's assertion,⁵¹ we do not believe that the instant case can be distinguished from *Harbor Wireless* on the basis of Banks's belief that no other parties would be prejudiced by granting the request to offer licenses to the second-highest bidder.⁵² We believe that Banks's position is similar to that which confronted Harbor Wireless in Auction No. 33.⁵³ There, a bidder withdrew bids during an auction after Harbor Wireless, the next highest bidder, had exhausted its eligibility, and the licenses went unsold. Like Banks, Harbor Wireless sought a waiver of Section 1.2109(b) and asked the Commission to offer it the license at Harbor Wireless's second-highest bid. Harbor made many of the same arguments that Banks offers. As here, we rejected Harbor Wireless's arguments that awarding it the licenses would place them into the hands of the party that valued them most highly. Instead, we determined that the best alternative was to re-offer those licenses in a subsequent auction.⁵⁴ This is the course we are following here.

We find no merit in Banks's argument that denial of the waiver request would frustrate Congress' directive under Section 309(j) of the Communications Act to assure that the auction process provides ample opportunity to small businesses.⁵⁵ The Commission has consistently rejected arguments that Sections 309(j)(3)(B) and 309(j)(4)(C), which are the statutory basis pursuant to which the Commission has adopted bidding credits and other provisions to provide greater opportunities to small businesses to participate in the provision of spectrum-based service, also obligate the Commission to afford such entities special treatment under its general competitive bidding rules.⁵⁶ The Commission fulfills competitive bidding statutory mandates and policy goals with appropriate rule provisions; not by forbearing from enforcing its competitive bidding rules. The Commission specifically made provisions for small businesses in Auction No. 44 by providing three levels of bidding credits for the C block licenses to give entities such as Banks the maximum opportunity to acquire licenses.⁵⁷ Furthermore, the Commission used the smaller and more numerous Metropolitan Service Areas and Rural Service Areas to define license areas in the C block, as compared to the larger Economic Area Groupings, for the express purpose of providing small and rural wireless providers as many opportunities as possible to obtain

⁵¹ See Waiver Request at n. 31.

⁵² *Harbor Wireless*, 16 FCC Rcd 3615.

⁵³ *Id.*

⁵⁴ In that subsequent auction, all three of licenses on which Harbor had been the next highest bidder were sold to other bidders for values in excess of Harbor's bids in Auction No. 33. See 700 MHz Guard Bands Auction Closes, Winning Bidders Announced, Down Payments Due March 8, 2001, FCC Forms 601 and 602 Due March 8, 2001, Ten-Day Petition to Deny Period, *Public Notice*, DA 01-478, Attachment A (rel. February 22, 2001).

⁵⁵ Waiver Request at 10-11; Petition at 3, 8.

⁵⁶ See, e.g., TPS Utilicom, *Order on Reconsideration*, 18 FCC Rcd 2516, 2522-23 ¶ 12 and n. 39 (WTB 2003) and cases cited therein. Cf. Reallocation and Service Rules for the 698-746 Spectrum MHz Band (Television Channels 52-59), GN Docket 01-74, Report and Order, 17 FCC Rcd 1022, 1089-90 ¶ 175 ("*Lower 700 MHz Report and Order*") (rejecting arguments that Sections 309(j)(3)(B) and 309(j)(4)(C) amount to a "congressional mandate" to establish a special bidding credit for rural telephone companies).

⁵⁷ See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1088 ¶ 173; 47 C.F.R. § 27.702(a)(1).

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spectrum.⁵⁸ We note that Banks did not file comments in the rule making proceeding asking for more or different provisions or objecting to any of the provisions that are specially designed to assist small businesses such as Banks.

Nor do we find any merit in Banks's argument that the public interest in general service deployment supports its Waiver Request.⁵⁹ The broad purpose of Section 309(j) was to create an efficient regulatory regime based on the congressional determination that competitive bidding is the most effective way of allocating resources to their most productive uses.⁶⁰ Thus, the Commission has recognized that "auction designs that award licenses to the parties that value them most highly will best achieve" the goals set forth by Congress.⁶¹ We decline to accept Banks's unsubstantiated claim that it will provide service using the Boise Licenses more quickly than a winning bidder in a subsequent auction. We believe that the best approach is the one that we are pursuing: making the Boise Licenses available promptly in another auction, along with the other licenses that were unsold in Auction No. 44.⁶²

We disagree with Banks's assertion that another auction of the Boise Licenses would be unfair to Banks and would not effectively serve the goal of the competitive bidding process to place the Boise licenses in the hands of the party that values them most highly.⁶³ For the reasons discussed above, we reject Banks's argument that the activity and eligibility rules of Auction No. 44, which were applied uniformly to all bidders in the auction, wrongly deprived Banks of the Boise licenses.⁶⁴ Accordingly, we cannot conclude that offering these licenses in another auction would frustrate the Commission's objective of awarding the licenses to the party that values them most highly.⁶⁵

Finally, we do not agree with Banks's contention that the Commission must grant its request "as a matter of equity and public policy" because eligibility to participate in Auction No. 49 is not limited to those that qualified to participate in Auction No. 44.⁶⁶ Banks contends that making the Boise Licenses available in Auction No. 49 unfairly subjects Banks to competition in an open auction and is contrary to

⁵⁸ *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1061 ¶ 95.

⁵⁹ *See* Waiver Request at 7-12, 14-15; Petition at 9.

⁶⁰ BDPCS, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 17,590, 17,598 ¶ 14 (2000). As the House Committee on Energy and Commerce explained, "[a] carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves." H.R. Rep. No. 103-111, at 253 (1993), reprinted in 1993 U.S.C.A.N. 378, 580.

⁶¹ *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360 ¶ 70.

⁶² Those licenses will be available in Auction No. 49, which is scheduled to start on May 28, 2003. *See Auction No. 49 Procedures Public Notice*.

⁶³ *See* Supplement at 2.

⁶⁴ *See id.*

⁶⁵ To the extent that Banks is concerned about the "uncertainty" of a subsequent auction, such concern appears to contradict its claim that it is the party that values the Boise Licenses most highly. *See* Supplement at 2.

⁶⁶ *See* Supplement at 3.

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the intent of the Auction Reform Act.⁶⁷ Banks bases this claim on its view that the limitation on the pool of qualified bidders for Auction No. 44 must be extended to Auction No. 49 pursuant to the “plain language of the Auction Reform Act.”⁶⁸ The Bureau has considered, and rejected, Banks’s reading of the statute, and declined to adopt an eligibility restriction for Auction No. 49.⁶⁹ The Bureau determined in the *Auction No. 49 Procedures Public Notice* that “a plain reading of the Auction Reform Act shows that the limitations on who qualified to bid on the C block and D block licenses only applied to the conduct of Auction No. 44 and not any subsequent auction.”⁷⁰ Moreover, the Bureau found, “such an interpretation of the Auction Reform Act would be contrary to the statutory objectives of section 309(j) of the Communications Act,” and would be “unlikely to result in the licenses being awarded to the parties that value them most highly.”⁷¹ In short, we do not agree that Congress intended “to favor applicants initially eligible for Auction No. 44” indefinitely, as Banks suggests.⁷²

Conclusion. Accordingly, Banks’ Waiver Request is denied, and its related Petition seeking to remove the Boise Licenses from the inventory of Auction No. 49 is denied as moot. This action is taken pursuant to authority delegated by Sections 0.331 and 1.925 of the Commission’s rules, 47 C.F.R. §§ 0.331, 1.925.

Sincerely,

Margaret W. Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

⁶⁷ See Waiver Request at 10-11; Supplement at 2-3.

⁶⁸ Supplement at n. 6.

⁶⁹ See *Auction No. 49 Procedures Public Notice*, 18 FCC Rcd at 3152-53. We note that Banks is seeking review of this determination with the United States Court of Appeals for the District of Columbia Circuit. See *Banks Broadcasting, Inc. v. FCC*, Case No. 03-1078 (D.C. Cir., filed March 20, 2003).

⁷⁰ See *Auction No. 49 Procedures Public Notice*, 18 FCC Rcd at 3152-53.

⁷¹ See *id.* (citing 47 U.S.C. § 309(j)(3)).

⁷² Supplement at 2-3.