

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
AUCTION 65	)	Report No. AUC-65
Public Notice Regarding Long Form/FCC Form	)	DA 06-1520
601 Applications Accepted For Filing	)	
	)	
Application of AC BidCo LLC for Authorization to	)	FCC File No. 0002653156
Provide Air-Ground Radiotelephone Service in the	)	
800 MHz Band	)	
	)	
Application of LiveTV LLC for Authorization to	)	FCC File No. 0002658043
Provide Air-Ground Radiotelephone Service in the	)	
800 MHz Band	)	

**ORDER**

**Adopted: October 30, 2006**

**Released: October 31, 2006**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. We have before us a Petition for Clarification, and Action Deemed Appropriate, Under Sections 1.939, 1.2108, and 1.41 (“Petition”)<sup>1</sup> of the Commission’s Rules, filed by AMTS Consortium LLC and Intelligent Transportation & Monitoring Wireless LLC regarding the two above-referenced applications for authorizations to provide air-ground radiotelephone service in the 800 MHz band.<sup>2</sup> The Havens Parties’ pleading is based on allegations that certain Auction 65 rules were “unconstitutionally vague, otherwise defective, and thus unenforceable”<sup>3</sup> and that because the auction proceeded under these rules, the auction itself was “defective.”<sup>4</sup> The Petition seeks clarification of the rules at issue, and asks that, based on such clarification, the Commission take “appropriate action” with respect to the two long-form applications.<sup>5</sup> For the reasons discussed below, we dismiss the Havens Parties’ Petition.

<sup>1</sup> AMTS Consortium LLC and Intelligent Transportation & Monitoring Wireless LLC (collectively, “Havens Parties”), Petition for Clarification, and Action Deemed Appropriate, Under Sections 1.939, 1.2108 and 1.41 (filed Aug. 7, 2006).

<sup>2</sup> FCC File Nos. 0002653156 (AC BidCo LLC, filed June 15, 2006) and 0002658043 (LiveTV, LLC, filed June 21, 2006). The applicants were the two winning bidders in Auction No. 65 for licenses in the 800 MHz Air-Ground Radiotelephone Service. See Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Closes, Winning Bidders Announced for Auction No. 65, *Public Notice*, 21 FCC Rcd 6304 (WTB 2006) (“Closing PN”).

<sup>3</sup> Havens Parties’ Reply to Oppositions to Petition for Clarification and Action Deemed Appropriate, Under Section 1.939, 1.2108 and 1.41 at 2 (filed Aug. 21, 2006) (“Reply”).

<sup>4</sup> Petition at 1-2; Reply at 2.

<sup>5</sup> Petition at 1-2.

## II. BACKGROUND

2. In May 2006, the Commission commenced the auction of two nationwide commercial licenses offered in three alternative band configurations, to provide air-ground radiotelephone service in the 800 MHz band. The auction concluded on June 7, 2006.<sup>6</sup> As required by the *Closing PN*, high-bidders AC BidCo LLC and LiveTV LLC submitted their FCC Forms 601 (long-form applications) by June 21, 2006.<sup>7</sup> On July 26, 2006, the Bureau found that the two long-form applications met certain minimum qualifications and issued a public notice accepting the applications for filing.<sup>8</sup> The public notice stated that petitions to deny the applications were due by August 7, 2006.

3. Shortly before commencement of Auction No. 65, the Havens Parties filed a Petition for Declaratory Ruling and Motion for Stay and Rescheduling of Auction 65, alleging that the rule regarding eligibility to hold an interest in an 800 MHz commercial aviation air-ground radiotelephone service license was inconsistent and unclear.<sup>9</sup> By Order dated May 9, 2006, the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, denied the Declaratory Ruling Petition.<sup>10</sup> On May 10, 2006, the Havens Parties filed a Response to and Informal Request for Reconsideration of Order Regarding Petition for Declaratory Ruling, and Supplement and Amendment of Motion for Stay and Rescheduling of Auction 65 (Informal Reconsideration Request); the matter is currently pending with the Wireless Telecommunications Bureau.

4. On August 7, 2006, the Havens Parties filed the instant Petition. The Petition does not address the propriety of granting or denying the two applications. Rather, it asks the Commission to take “appropriate action” regarding the two long-form applications in light of the pending Informal Reconsideration Request, which the Havens Parties also have incorporated in the Petition. The applicants each filed oppositions to the Petition.<sup>11</sup> The Havens Parties filed their Reply on August 21, 2006.<sup>12</sup>

## III. DISCUSSION

5. The Petition is duplicative of the Havens Parties’ Informal Reconsideration Request, as the Petition itself makes clear. The Petition merely incorporates by reference the arguments made previously in the Informal Reconsideration Request, and presents no new arguments.<sup>13</sup> The Havens Parties further state that they “do not seek to challenge the winning bidders per se,”<sup>14</sup> but generally challenge “the auction, the auction results, and the consequent long forms” for the reasons stated in the Informal Reconsideration Request.<sup>15</sup>

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<sup>6</sup> See *Closing PN*, 21 FCC Rcd 6304.

<sup>7</sup> See *supra* note 2.

<sup>8</sup> See Wireless Telecommunications Bureau Announces That Applications for 800 MHz Air-Ground Radiotelephone Service Licenses Are Accepted For Filing, *Public Notice*, 21 FCC Rcd 8558 (WTB 2006).

<sup>9</sup> See Petition for Declaratory Ruling and Motion for Stay and Rescheduling of Auction 65 at 2, 6-10 (filed May 1, 2006) (“Declaratory Ruling Petition”).

<sup>10</sup> See In the Matter of Intelligent Transportation & Monitoring Wireless LLC and AMTS Consortium, LLC, Petition for Declaratory Ruling and Motion for Stay of Auction No. 65, *Order*, 21 FCC Rcd 5117 (WTB, ASAD 2006).

<sup>11</sup> See Opposition of AC BidCo LLC to Petition for Clarification, and Action Deemed Appropriate (filed Aug. 14, 2006); LiveTV, LLC, Opposition to Petition for Clarification and Action (filed Aug. 14, 2006).

<sup>12</sup> See *supra* note 3.

<sup>13</sup> See Petition at 1.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> Reply at 2.

6. Because the Wireless Telecommunications Bureau will address the Havens Parties' concerns in the context of the pending Informal Reconsideration Request, we dismiss the Petition. Any licenses granted as a result of Auction No. 65 will be subject to the outcome of the Bureau's review and action on the Informal Reconsideration Request.<sup>16</sup> We are concurrently issuing a public notice granting the above-referenced AC BidCo LLC and LiveTV LLC applications.

#### IV. CONCLUSION

7. Accordingly, it is ORDERED, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Petition for Clarification, and Action Deemed Appropriate, Under Section 1.939, 1.2108, and 1.41 of Intelligent Transportation & Monitoring Wireless LLC and AMTS Consortium LLC, filed on August 7, 2006, IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>16</sup> See, e.g., Northcoast Communications, L.L.C., *Order*, 16 FCC Rcd 15637 (WTB 2001) (granting licenses despite pending reconsideration, and noting that, "[a]s a general matter, the Commission does not defer grant of license applications until pending proceedings are complete. Instead, in order to serve the public interest in prompt implementation of telecommunications services, the Commission conditions the grant of such licenses on the outcome of pending proceedings. This is the approach that was followed in other auctions"). *Id.*, 16 FCC Rcd at 15641 ¶ 6 (footnote omitted); see also Application of Wireless Co., L.P. for a License to Provide Broadband PCS Service on Block A in the San Francisco Major Trading Area, *Order*, 10 FCC Rcd 13233, 13236 (WTB 1995) (denying petitions to deny applications for A and B block PCS licenses in the San Francisco and Boston major trading areas pending resolution of litigation addressing petitioners' pioneer preference requests for these markets).