



Federal Communications Commission
Washington, D.C. 20554

DA 06-952

May 2, 2006

William Gordon
Vice President, Regulatory Affairs
AirCell, Inc.
725 Eye Street, NW, Suite 300
Washington, DC 20006

Re: AirCell, Inc. – Application to Participate in Auction No. 65/Report of Communication Covered by Section 1.2105(c) of the Commission’s Rules

Dear Mr. Gordon:

We are in receipt of your e-mail of April 26, 2006, in which you report the receipt of a communication from another applicant in the Commission’s auction of 800 MHz Air-Ground Radiotelephone Service Licenses, Auction No. 65.¹ We acknowledge your effort to timely comply with AirCell’s reporting obligation in this matter.

As you know, Section 1.2105(c) of the Commission’s rules prohibits applicants for any licenses in the same geographic areas from communicating with each other about bids, bidding strategies, or settlements unless they have identified each other on their short-form applications as parties with which they have entered into agreements under section 1.2105(a)(2)(viii).² The prohibition on communications with other applicants became effective as of the short-form application filing deadline on March 24, 2006, and continues to apply until the down payment deadline, which is announced after the close of bidding.³ The *Auction No. 65 Procedures Public Notice* emphasized that this prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.⁴ In that public

¹ E-mail from Bill Gordon, VP, Regulatory Affairs, AirCell, Inc. to Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, dated April 26, 2006.

² 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *id.*, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

³ 47 C.F.R. § 1.2105(c)(1).

⁴ *Auction No. 65 Procedures Public Notice* at 6, citing Northeast Communications of Wisconsin, LLC, *Forfeiture Order*, 19 FCC Rcd 18635 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., 16 FCC Rcd 10080 (WTB Auc. Div. 2000) (declining to exempt an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

notice, the Bureau also reminded applicants of their duty under Section 1.2105(c)(6) of the Commission's rules to report immediately on any communication covered by Section 1.2105(c).⁵

Your email states that, on April 26, 2006, Jack Blumenstein, Chief Executive Officer of AirCell, Inc. ("AirCell") received an unsolicited voicemail message from Blake Swensrud, President and Chief Executive Officer of WorldCell, Inc. ("WorldCell"), which is also an applicant in Auction No. 65. You characterize the voicemail as "brief" and state that the message was "limited to notifying AirCell that WorldCell has withdrawn [from] the auction and is now free to talk." You also declare that "Mr. Blumenstein has not and will not respond to the voicemail from Mr. Swensrud." The bidding in Auction No. 65 is scheduled to begin on May 10, 2006.⁶

The Commission takes reports of communications covered by Section 1.2105 very seriously. After further review of the information submitted, the Auctions and Spectrum Access Division will refer this matter for such further action as it deems appropriate.⁷

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

⁵ "Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs." *Auction No. 65 Procedures Public Notice* at 8.

⁶ See "Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 65, *Public Notice*, DA 06 -299 (rel. Feb. 21, 2006) (*Auction No. 65 Procedures Public Notice*).

⁷ Generally, we believe it is more prudent to address such allegations after the winning bidders have submitted their long-form applications, when there is greater opportunity for investigation of such allegations. See *Baker Creek Communications, L.P., For Authority to Construct and Operate Local Multipoint Distribution Services In Multiple Basic Trading Areas*, DA 98-1921, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998); Letter from Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Steven R. Sixberry, Nevada Wireless, DA 00-1949 (rel. August 24, 2000).