

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

In the Matter of	)
	)
Petition for Reconsideration of	)
Mobilfone Service, Inc.	)
Application for Bidding Credit	)
In Auction No. 40	)
	)

**Second Order on Reconsideration**

**Adopted: February 15, 2007**

**Released: February 15, 2007**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. By this Order, we deny the September 3, 2002 Petition for Reconsideration filed on behalf of Mobilfone Service, Inc. (“Mobilfone”).<sup>1</sup> Mobilfone’s Petition for Reconsideration contends that it complied with Commission rules to establish eligibility for a twenty-five percent bidding credit with respect to winning bids for licenses in Auction No. 40.<sup>2</sup> Alternatively, Mobilfone alleges that the Commission is not authorized to enforce its rule collecting certain information that Mobilfone did not provide prior to the pre-auction deadline.<sup>3</sup> Mobilfone asserted eligibility for a bidding credit when it first submitted its application to participate in Auction No. 40. However, Mobilfone’s final pre-auction application, after its resubmission to correct other deficiencies, did not provide all the information Commission rules require from applicants prior to the auction to demonstrate that they will be eligible for a bidding credit.<sup>4</sup> Subsequently, during the auction, Mobilfone filed a November 15, 2001 Petition that argued that its final pre-auction application provided all the information the Commission’s rules required or, alternatively, that the Commission could not enforce the rule regarding the information Mobilfone had not provided.<sup>5</sup> At the same time, Mobilfone amended its application to provide the missing information.<sup>6</sup> The Wireless Telecommunications Bureau (“Bureau”) denied Mobilfone’s first Petition in an August 1,

<sup>1</sup> In the Matter of Recission [sic] of Auction Bidding Credit for Mobilfone Service, Inc. – Auction No. 40, Petition for Reconsideration (filed September 3, 2002) (“Petition for Reconsideration”). As discussed *infra*, contrary to the implication of Mobilfone’s caption, Mobilfone never received a bidding credit in connection with Auction No. 40.

<sup>2</sup> Petition for Reconsideration at 10.

<sup>3</sup> *Id.*

<sup>4</sup> In the Matter of Recission [sic] of Auction Bidding Credit for Mobilfone Service, Inc. – Auction No. 40; Petition for Reconsideration and Request for Reinstatement of 25% Bidding Credit (filed November 15, 2001) (“Petition”), Attachment (Letter to Timothy E. Welch from Kathryn Garland, October 17, 2001) (“Garland Letter”). Mobilfone asserts that it received the October 17, 2001 on November 1, 2001. Petition for Reconsideration at 1.

<sup>5</sup> See Petition.

<sup>6</sup> Mobilfone Form 175 (viewable at <https://auctionfiling.fcc.gov/form175/search175/index.htm>, Auction Application Search, Auction No. 40, File No. 0402010488) (“Mobilfone Form 175”), EXHIBIT A—REVISED IN CONJUNCTION W/PET. FOR RECON.

2002 Letter based on Mobilfone's failure to comply with the pre-auction deadline by which the more than 200 applicants in Auction No. 40 were required to provide complete application information.<sup>7</sup> In its pending Petition for Reconsideration, Mobilfone argues that the Bureau Letter misreads Commission precedent, misapplies Commission rules, and violates the Paperwork Reduction Act.<sup>8</sup> For reasons discussed below, we do not find any merit in Mobilfone's arguments and, accordingly, deny its Petition for Reconsideration.

## II. BACKGROUND

2. Mobilfone timely submitted its initial application to participate in Auction No. 40.<sup>9</sup> In its initial application, Mobilfone identified its directors and officers by name and position, as required by Commission rule 1.2112(b)(1)(i).<sup>10</sup> After reviewing all the initial applications to participate in Auction No. 40, the FCC announced in a Public Notice that 99 of the 218 initial applications received, including Mobilfone's, were classified as incomplete.<sup>11</sup> The Commission sent correspondence to each applicant with an incomplete application, identifying deficiencies in the application and providing a contact person at the Commission to assist the applicant with making corrections.<sup>12</sup> Pursuant to Commission rules, Mobilfone was afforded an opportunity to correct deficiencies in its application by a deadline of October 5, 2001.<sup>13</sup>

3. In a resubmitted application, Mobilfone provided additional information regarding FCC-regulated businesses, as required pursuant to Commission rule 1.2112(a)(6).<sup>14</sup> At the same time, however, Mobilfone deleted previously provided information regarding the names and positions of its directors and officers.<sup>15</sup> Mobilfone offered no explanation for the deletion in its application.<sup>16</sup> As a consequence of Mobilfone's deletion, Mobilfone's resubmitted application identified its President by name and position but, unlike its initial application, did not identify any corporate directors or any other corporate officers as required by Commission rule 1.2112(b)(1)(i).<sup>17</sup>

4. Over twelve days from October 5 to October 17, 2001, the Commission reviewed the nearly 100 resubmitted applications that had been classified as incomplete to determine whether the applicants had corrected deficiencies identified in their initial submissions; reviewed nearly 200 applications to determine whether any other changes were made, and, if so whether the changes were

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<sup>7</sup> See Letter to Timothy E. Welch from Kathleen O'Brien Ham, Deputy Chief, Wireless Telecommunications Bureau, Re: Auction No. 40 – Petition for Reconsideration, DA 02-1889, 17 FCC Rcd 14,754 (2002) ("Bureau Letter").

<sup>8</sup> See, generally, Petition for Reconsideration.

<sup>9</sup> See Bureau Letter, 17 FCC Rcd at 14,755.

<sup>10</sup> *Id.* at n. 7; Petition for Reconsideration at n. 3; see 47 C.F.R. § 1.2112(b)(1)(i).

<sup>11</sup> See Auction of Licenses for Lower and Upper Paging Bands, DA 01-2262, *Public Notice*, 16 FCC Rcd 17,185 (2001) ("Auction No. 40 Status Public Notice").

<sup>12</sup> See *Auction No. 40 Status Public Notice*, 16 FCC Rcd at 17,186.

<sup>13</sup> See *id.*

<sup>14</sup> See Mobilfone Form 175, Exhibit A; see also 47 C.F.R. § 1.2112(a)(6).

<sup>15</sup> See Petition for Reconsideration at n.3; Bureau Letter, 17 FCC Rcd at 14,755.

<sup>16</sup> Mobilfone now says the information was "inadvertently deleted in response to a request for further information." Petition for Reconsideration at n.3.

<sup>17</sup> Bureau Letter, 17 FCC Rcd at 14,755 and n.7; see 47 C.F.R. § 1.2112(b)(1)(i).

permissible; and issued a Public Notice identifying all applicants qualified to bid in Auction No. 40.<sup>18</sup> In Mobilfone's case, the Commission determined that, although Mobilfone had provided required information missing from its initial submission, it also had failed to provide required information regarding its directors and officers. Certain other resubmitted applications also failed to provide the Commission with sufficient information to demonstrate that the applicants would be eligible for requested bidding credits. In those cases where the application otherwise demonstrated that the applicant was qualified to participate in the auction, the Commission modified the applicant's publicly-available on-line application to reflect that the applicant did not qualify for bidding credits.<sup>19</sup> The Commission advised the affected applicants by correspondence transmitted with a copy of the *Auction No. 40 Qualified Bidders Public Notice*.<sup>20</sup>

5. Bidding began in Auction No. 40 on October 30, 2001. Mobilfone placed what ultimately became winning bids in the first round of bidding on October 30; in the nineteenth round of bidding on November 7; and in the twenty-fifth round of bidding on November 8.<sup>21</sup>

6. On November 15, Mobilfone submitted its Petition regarding its qualification for a bidding credit. The Petition asserted that Mobilfone had complied with the relevant Commission rules or, alternatively, that the Commission was not authorized to enforce the relevant rule. At the same time, Mobilfone identified all of its directors and officers by name and position in a revised application attachment which Mobilfone appended to its publicly available on-line application.<sup>22</sup>

7. Bidding in Auction No. 40 concluded on December 5, 2001.<sup>23</sup> Mobilfone became the winning bidder for five licenses, with bids totaling \$23,720.<sup>24</sup>

8. The Bureau denied Mobilfone's November 15, 2001 Petition for Reconsideration on August 1, 2002.<sup>25</sup> Subsequently, on August 6, 2002, the Commission issued a Public Notice, announcing that it was prepared to grant Mobilfone the five licenses that it won in Auction No. 40.<sup>26</sup> Mobilfone paid for the full amount of its winning bids and the Commission granted it the licenses on August 28, 2002.<sup>27</sup> Thereafter, Mobilfone filed its pending Petition for Reconsideration.

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<sup>18</sup> See Auction of Licenses for Lower and Upper Paging Bands, DA 01-2418, *Public Notice*, 16 FCC Rcd 18,575 ("Auction No. 40 Qualified Bidders Public Notice").

<sup>19</sup> See, e.g., Mobilfone Form 175. See also Garland Letter; Lower and Upper Paging Bands Auction Closes; Winning Bidders Announced, *Public Notice*, 16 FCC Rcd 21821 ("Auction No. 40 Closing Public Notice"), Attachment A (showing Mobilfone's gross and net bids equal, i.e., no bidding credit applied).

<sup>20</sup> See, e.g., Garland Letter.

<sup>21</sup> See *Auction No. 40 Closing Public Notice*, on-line Supplemental File, FCC Paging Auction; Round Results, High Bids; Auction ID: 40, downloadable from <http://wireless.fcc.gov/auctions/default.htm?job=release&id=54&y=2001> (identifying Mobilfone's winning bids by round); Auction No. 40 round results files, downloadable from [http://auctionresults1.fcc.gov/Auction\\_40/Results/ab/txt/](http://auctionresults1.fcc.gov/Auction_40/Results/ab/txt/) (providing date of each round).

<sup>22</sup> See Petition; Mobilfone Form 175, EXHIBIT A—REVISED IN CONJUNCTION W/PET. FOR RECON.

<sup>23</sup> See *Auction No. 40 Closing Public Notice*.

<sup>24</sup> *Id.*

<sup>25</sup> See Bureau Letter.

<sup>26</sup> See Wireless Telecommunications Bureau Announces It is Prepared to Grant Upper and Lower Paging Bands Licenses Upon Full and Timely Payment, *Public Notice*, 17 FCC Rcd 15,501, 15,504 (2002).

<sup>27</sup> See Wireless Telecommunications Bureau Grants Upper and Lower Band Paging Licenses, *Public Notice*, 17 FCC Rcd 16,339 (2002).

## II. DISCUSSION

### A. Mobilfone did not establish eligibility for a bidding credit pursuant to the Commission's rules.

9. In support of its claim for bidding credits on its winning bids, Mobilfone's Petition for Reconsideration argues that it submitted the required information, which should be considered despite its submission after the deadline established by the Commission for resubmission of corrected short-form auction applications. In particular, Mobilfone disputes the Bureau Letter conclusion that "Mobilfone must establish its eligibility for a bidding credit based on information it submitted to the FCC prior to the October 5, 2001 short-form application resubmission deadline."<sup>28</sup> Mobilfone contends that the Bureau's conclusion relies on a misreading of the Commission's decision in *Two-Way Radio of Carolina*. In *Two-Way Radio of Carolina*, the Commission denied an applicant's post-auction request for a bidding credit based on the applicant's failure to demonstrate eligibility for the credit prior to the deadline.<sup>29</sup> Mobilfone attempts to distinguish *Two-Way Radio of Carolina* on the grounds that Mobilfone submitted different eligibility information, by means of different documentation, and at a different time than did the applicant in *Two-Way Radio of Carolina*, whose request for a bidding credit was rejected. Mobilfone argues that a more appropriate precedent for its circumstances can be found in *PVT Networks*, a decision of the former Public Safety Private Wireless Division of the Bureau. Mobilfone's arguments fail for multiple reasons.

10. Mobilfone argues that *Two-Way Radio of Carolina* does not apply because the Commission there rejected an applicant's attempt to revise previously submitted revenue information, while Mobilfone seeks to submit information relating to its officers and directors. This argument fails because the logic underlying the Commission's decision in *Two-Way Radio of Carolina* was not restricted to instances in which an applicant provided new revenue information, as opposed to other information required to demonstrate eligibility for a bidding credit.<sup>30</sup> The Commission's decision in *Two-Way Radio of Carolina* affirmed the Bureau's denial of a request for waiver of the rule governing submission and revision of auction applications, section 1.2105(b),<sup>31</sup> noting that submissions of information in support of more favorable bidding credits after the deadline established pursuant to that rule are not permitted.<sup>32</sup> Further, the Commission concluded that by requiring that applicants provide essential information regarding basic qualifications to hold licenses and to claim bidding credits before an auction, the pre-auction application deadline enhances the integrity of the auction process.<sup>33</sup> In order to assign licenses effectively, the auction process, as well as basic fairness, requires that each applicant comply with uniform deadlines for providing pre-auction information to the Commission and other applicants. Thus, it makes no difference that after the deadline Mobilfone seeks to provide information in support of its originally requested bidding credit, whereas the applicant in *Two-Way Radio of Carolina* sought to provide new revenue information in support of a bidding credit larger than originally claimed. The Commission's rules plainly require that applicants must provide the information required to meet the basic qualifications for the bidding credit claimed before the auction and may not later either increase the

<sup>28</sup> Petition for Reconsideration at 2 (quoting Bureau Letter).

<sup>29</sup> Petition for Reconsideration at 2; see Bureau Letter, 17 FCC Rcd at 14,755, n.11 (citing *Two-Way Radio of Carolina, Inc.*, *Memorandum Opinion and Order*, 14 FCC Rcd 12,035, 12,039 ¶ 8 (1999)) ("*Two-Way Radio of Carolina*").

<sup>30</sup> Disclosure of officers and directors required under the Commission's rules for bidding credit eligibility requires disclosure of their identities as well as any attributable gross revenues they may have. See Bureau Letter, 17 FCC Rcd at 14,756, n.14 (Mobilfone's final application left "the Commission to guess the identities of the directors and other officers, as well as their attributable gross revenues.")

<sup>31</sup> 47 C.F.R. § 1.2105(b).

<sup>32</sup> *Two-Way Radio of Carolina*, 17 FCC Rcd at 12,040 ¶ 9.

<sup>33</sup> See *Two-Way Radio of Carolina*, 17 FCC Rcd at 12,043 ¶ 15.

claimed bidding credit or provide additional information to support a bidding credit claim for which they failed to qualify by the deadline.

11. Further, Mobilfone argues that its provision of director and officer information in an attachment should be accepted because it does not modify the auction application itself. Mobilfone's argument misses the point. As noted above, the Commission's rule imposes a deadline by which applicants must submit the information required to support its claim for a bidding credit. If Mobilfone's contention were correct, then the applicant in *Two-Way Radio of Carolina* could have avoided the rule's restriction simply by inserting the new revenue information in an attachment to its application. In short, having failed to demonstrate eligibility for the bidding credit by the relevant deadline, Mobilfone cannot later demonstrate eligibility by providing missing information, whether in the application form or in an attachment to it.<sup>34</sup>

12. More substantively, Mobilfone contends that by providing the missing information during the auction, it averted any possible harm from its initial omission. As the Bureau noted when it denied Mobilfone's initial Petition, the pre-auction deadline for submitting information serves the public interest in a transparent auction process in which applicants comply with basic eligibility qualifications in a timely manner prior to the auction.<sup>35</sup> Mobilfone's subsequent attachment was untimely pursuant to the Commission's rules. Mobilfone's argument that the attachment to its application averted any harm to the auction process does not justify reconsidering the rule. Mobilfone submitted its attachment in the middle of the auction, after Mobilfone itself had placed all of what would become its winning bids. Mobilfone's attempt to change its status in the middle of the auction conflicts with the public interest in a transparent auction process in which applicants provide information necessary to satisfy basic eligibility requirements prior to the auction.

13. Mobilfone also contends in passing that the Commission "chooses" to ignore the information that Mobilfone submitted in its initial application and that Mobilfone "inadvertently" deleted in its resubmitted application.<sup>36</sup> Given the limited amount of time available between when parties apply to participate in a Commission auction and the determination of the pool of qualified bidders, the burden of providing information and demonstrating qualifications by applicable deadlines of necessity falls on the applicants, not the Commission.<sup>37</sup> In processing the over 200 applications for Auction No. 40 in a matter of weeks before the auction start, the Commission did not "choose" to ignore information provided by the applicants but had to rely on the most up-to-date information timely provided by the applicants. In Mobilfone's case, the most up-to-date information was the resubmitted application, which superseded the initial application and offered no explanation as to why information in the initial application was deleted from the resubmitted application. The Commission is not positioned to conduct an inquiry regarding each and every change applicants choose to make but instead must process the application based on the most recent information provided by the applicant.

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<sup>34</sup> Similarly, Mobilfone cannot distinguish its circumstances from those in *Two-Way Radio of Carolina* by noting that it claimed the bidding credit in its initial application. Petition for Reconsideration at 2. Mobilfone failed to provide sufficient information to support its claim and consequently participated in the auction without a credit. Bureau Letter, 17 FCC Rcd at 14,755. Otherwise, there would have been no need for Mobilfone to file its Petition for Reconsideration.

<sup>35</sup> Bureau Letter, 17 FCC Rcd at 14,756.

<sup>36</sup> Petition for Reconsideration at 2, n.3.

<sup>37</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15324, ¶ 62 (applicant has disclosure obligation); see also 47 U.S.C. § 309(j)(5)(participation in auctions prohibited "unless such bidder submits such information and assurances as the Commission may require.")

14. Like its contention that *Two-Way Radio of Carolina* does not apply, Mobilfone's contention that the action taken in *PVT Networks* supports its request is mistaken.<sup>38</sup> In *PVT Networks*, the applicant, unlike Mobilfone, submitted sufficient information in its pre-auction application to meet the basic eligibility requirements for the bidding credit ultimately granted.<sup>39</sup> After review of the applicant's initial post-auction license application, the request for the bidding credit was denied. However, the applicant subsequently amended its post-auction license application, consistent with the Commission's rules, and demonstrated its eligibility for the bidding credit initially requested.<sup>40</sup>

15. The difference between the circumstances in *PVT Networks* and those here is readily apparent and crucial. In its pre-auction application, the applicant in *PVT Networks* provided information supporting its certification of eligibility for the bidding credit. Mobilfone did not. Consequently, during the auction, the *PVT Networks* applicant, and its opposing bidders, proceeded on the assumption that the applicant ultimately would be eligible for the bidding credit claimed.<sup>41</sup> Although the applicant's initial post-auction license application failed to demonstrate eligibility for the claimed bidding credit, the applicant subsequently amended that license application to provide the necessary information. Here, notwithstanding its claim in its initial pre-auction application, Mobilfone did not provide sufficient information to support its certification. Accordingly, Mobilfone participated in the auction without a bidding credit. Only after the final deadline for making changes to its pre-auction application with respect to its bidding credit status, did Mobilfone submit information necessary to support its initial claim. Thus, in contrast to the *PVT Networks* applicant, Mobilfone did not meet the requirements to demonstrate eligibility for bidding credits in advance of bidding. Its untimely effort to do so is contrary to the Commission's rules.

16. Mobilfone also fails in its attempt to claim it complied with the Commission's rule requiring disclosure of the names and positions of the directors. Mobilfone contends that its application provided the information required by the rule, simply by virtue of the directors' and officers' names appearing in its application, without any indication of their status as such. The Bureau Letter noted that Mobilfone's strained construction of the rule would render it nearly useless. In its Petition for Reconsideration, Mobilfone now complains that the rule's failure to detail its purpose to the extent provided in the Bureau Letter "violate[s] Mobilfone's due process right to clear notice of the requirement."<sup>42</sup> This attempt to turn the Bureau's illustration of the rule's purpose into an argument that the rule cannot be enforced borders on the frivolous. The rule requires that the applicant "[l]ist the names, addresses, and citizenship of all officers, directors and other controlling interests of the applicant[.]"<sup>43</sup> Mobilfone's claim that this requirement is satisfied because the names of directors and officers appear in

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<sup>38</sup> Petition for Reconsideration at 2 (citing Application of PVT Networks, Inc., Request for Waiver of Sections 1.2110(b) and 101.1209(e), *Order on Reconsideration*, 16 FCC Rcd 13,155 (PS&PWD 2001)(*"PVT Networks"*)).

<sup>39</sup> *PVT Networks*, 16 FCC Rcd at 13,156.

<sup>40</sup> See *PVT Networks*, 16 FCC Rcd at 13,160.

<sup>41</sup> As the Commission has recently noted, "while prior certifications may be a prerequisite to eligibility, applicants still must demonstrate compliance with all applicable Commission rules, including eligibility for any bidding credits, at the time the Commission is ready to grant a license, regardless of previously applicable rules." Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 4753, 4771 n.126 (2006).

<sup>42</sup> Petition for Reconsideration at 5.

<sup>43</sup> 47 C.F.R. § 1.2112(b)(1)(i).

the application, without identifying them as directors and officers, lacks any merit.<sup>44</sup>

**B. The Commission's requirement that Mobilfone submit the information complied with the Paperwork Reduction Act.**

17. Mobilfone's argument that the rule's collection of information does not comply with the Paperwork Reduction Act ("PRA") also misses the mark.<sup>45</sup> Mobilfone contends that the Commission's display of the control number for the information collection authorized by Section 1.2112(b)(1)(i) is inadequate. As Mobilfone concedes, pursuant to the PRA, the Commission sought and obtained approval from the Office of Management and Budget ("OMB") to collect the information required by Section 1.2112(b)(1)(i).<sup>46</sup> Mobilfone further concedes that the Commission displayed the OMB control number relating to its approval of the collection in a table in the Code of Federal Regulations, as provided for by OMB regulations.<sup>47</sup> In the table, the Commission displayed OMB control number 3060-0767 in the CFR along with the following title identifying the collection "Auction Forms and License Transfer Disclosures – Supplement for the 2nd R&O, Order on Reconsideration, and 5th NPRM in CC Docket No. 92-297."<sup>48</sup> Mobilfone believes that the Commission should have listed the control number along with every relevant rule section authorizing information collected in the Commission's auction forms. However, Mobilfone is unable to cite any authority for its contention that the PRA or any attendant regulations require the Commission to do so.

18. The PRA itself requires that the collection of information "display a valid control number assigned by the Director" of the Office of Management and Budget.<sup>49</sup> OMB regulations expressly provide that "display" means, "[in] the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations [e.g., information Commission CFR rules require be collected in auction forms], publication of the currently valid control number in the Code of Federal Regulations constitutes an alternative means of 'display.'"<sup>50</sup> Furthermore, "[t]o display OMB control numbers in agency regulations, those numbers shall be placed parenthetically at the end of the section *or displayed in a table or codified section.*"<sup>51</sup>

19. Notwithstanding the Commission's compliance with the PRA as described above, Mobilfone attempts to argue that the Commission's display violates OMB's regulations, which require that control numbers be displayed "in a manner that is reasonably calculated to inform the public."<sup>52</sup>

<sup>44</sup> Mobilfone also claims that the rule does not clearly require that applicants list directors and officers by office, leaving applicants guessing as to how to comply. Petition for Reconsideration at 5. This claim is belied by the fact that hundreds of applicants in Auction No. 40 and other Commission auctions have had no difficulty in understanding the rule and providing the required information. Indeed, Mobilfone itself did so before it deleted the information in its resubmitted application, Petition for Reconsideration at 3, n.3.

<sup>45</sup> Petition for Reconsideration at 6-10.

<sup>46</sup> Given the sufficiency of the display of control number 3060-0767, we need not address Mobilfone's contention regarding the Bureau Letter's alternative conclusion that display of control number 3060-0600 also sufficed to comply with the PRA and attendant regulations. See Petition for Reconsideration at 9. This does not, however, mean that we accept Mobilfone's arguments on this point.

<sup>47</sup> See Petition for Reconsideration at 7. See also 1 C.F.R. § 21.35 (providing for publication of control numbers in a table in the Code of Federal Regulations), 5 C.F.R. § 1320.3(f)(3)(defining display).

<sup>48</sup> 47 C.F.R. § 0.408(b).

<sup>49</sup> 44 U.S.C. § 3512(a).

<sup>50</sup> 5 C.F.R. § 1320.3(f)(3).

<sup>51</sup> 1 C.F.R. § 1.235 (emphasis added).

<sup>52</sup> 5 C.F.R. § 1320.5(b)(2)(ii).

Mobilfone fails to take into account that this argument is expressly contradicted by the very OMB regulation that it cites. In a gloss on this requirement, OMB expressly provides that “[i]n the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information [including the control number] in the Code of Federal Regulations constitutes an alternative means of providing it ‘in a manner that is reasonably calculated to inform the public.’”<sup>53</sup>

20. Ignoring this OMB explanation, Mobilfone contends that the Commission’s display is not reasonably calculated to inform the public because, according to Mobilfone, “the chosen display method requires the public to know the name and content of every rulemaking proceeding concluded by the FCC and because the approach conflicts with the FCC’s own procedure for listing document control numbers for discrete regulations.”<sup>54</sup> Mobilfone’s attempt to obscure what is very clear is not persuasive. The Commission’s display of the control number in this case referred very directly and simply to “auction forms,” as well as to the initial relevant FCC proceeding. No arcane knowledge of FCC proceedings was required to understand this disclosure. Mobilfone tries to ignore the obvious by claiming that this “case does not concern a request for information contained in an auction form . . . but an information collection required by regulation.”<sup>55</sup> The rule in question only requires applicants submit information when they submit an auction form. Moreover, the relevant rule expressly provides that applicants shall provide the information at issue “[o]n its application to participate in competitive bidding (i.e., short-form application (see 47 C.F.R. 1.2105)).”<sup>56</sup> No arcane knowledge is needed to understand this. Furthermore, the fact that in some instances it may be appropriate for the Commission to list rule sections along with OMB control numbers simply does not demonstrate that such an approach was either required or even appropriate in this instance. The auction forms at issue cover a variety of rules, making a single listing a reasonable choice. Notwithstanding Mobilfone’s arguments, the PRA and OMB do not require anything to the contrary.

#### **IV. Conclusion and Ordering Clauses**

21. For the reasons set forth above, Commission rules and precedent require that Mobilfone establish its eligibility for a bidding credit by submitting required information prior to the pre-auction short-form application resubmission deadline. Mobilfone failed to do so. In addition, Mobilfone’s argument that the Commission’s collection of the relevant information did not comply with the Paperwork Reduction Act is not persuasive.

22. Accordingly, IT IS ORDERED that the Petition for Reconsideration dated September 3, 2002, filed on behalf of Mobilfone with respect to its application for a bidding credit in Auction No. 40 is DENIED.

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<sup>53</sup> 5 C.F.R. § 1320.5(b)(2)(ii)(C).

<sup>54</sup> Petition for Reconsideration at 8 (citing examples of Commission display of control numbers for specific regulations).

<sup>55</sup> Petition for Reconsideration at 8.

<sup>56</sup> 47 C.F.R. § 1.2112(b)(1).

23. This action is taken pursuant to Sections 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 309(j), under authority delegated pursuant to Section 0.331 of the Commission's rules.<sup>57</sup>

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.  
Chief, Wireless Telecommunications Bureau

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<sup>57</sup> 47 C.F.R. § 0.331.