



Federal Communications Commission
Washington, D.C. 20554

December 13, 2019

DA 19-1269

AU Docket No. 19-101

Mr. John Thorn
127 Tiburon Path
Georgetown, KY 40324

Re: 833 Auction Application of John Thorn

Dear Mr. Thorn:

On October 18, 2019, you filed an application to participate in the auction of certain toll free numbers in the 833 code (833 Auction).¹ On December 10, 2019, Somos, Inc. (Somos), the auctioneer for the 833 Auction, released a Public Notice announcing the applicants that are qualified to bid in the auction.² In that Public Notice, you were found to be non-qualified to bid in the 833 Auction. This letter explains the reasons for that determination.

In preparation for the 833 Auction, the Commission adopted procedures that limit the amount and type of information that may be shared by auction applicants until after the close of bidding and announcement of auction results. Specifically, the Commission stated that, among other things, “the amount of any upfront payment made by or on behalf of an applicant for the 833 Auction” will not be made public until after bidding has closed.³ Applicants in the 833 Auction are also prohibited from communicating with any other applicant in any manner, the substance of its own, or one another’s, or any other competing applicant’s bids or bidding strategies.⁴ The prohibition on certain communications became applicable for the 833 Auction at the auction application filing deadline on October 18, 2019, and will remain applicable until the post-auction final payment with late fee deadline.⁵ The *833 Auction Procedures Public Notice* cautioned applicants that communicating non-public bidding information publicly or privately to another applicant may violate the prohibition on certain communications.⁶ The procedures for the 833 Auction also prohibit certain agreements among applicants in the 833 Auction. Specifically, the prohibition applies to any agreements, arrangements, or understandings of any kind to which the applicant is a party relating to the toll free numbers being auctioned that address or

¹ Auction application of John Thorn, Auction ID 38987617 (filed Oct. 18 2019). The auction applications of all 833 Auction applicants may be viewed online at auction.somos.com.

² See Somos, *Auction of Toll Free Numbers in the 833 Code, 44 Applicants Qualified to Bid in 833 Auction* (Dec. 10, 2019), <https://auction.somos.com/sites/default/files/2019-12/qbpn.pdf> (833 Auction Qualified Bidder Public Notice).

³ *Auction of Toll Free Numbers in the 833 Code; Notice and Filing Requirements, Upfront Payments, and Other Procedures for the 833 Auction; Bidding Scheduled to Begin December 17, 2019*, AU Docket No. 19-101, WC Docket No. 17-192, CC Docket No. 95-155, Public Notice, 34 FCC Rcd 6560, 6577, para. 54 (2019) (833 Auction Procedures Public Notice).

⁴ *Id.* at 6568, para. 22.

⁵ *Id.* at 6569, para. 24-25.

⁶ *Id.* at 6571, para. 32.

communicate directly or indirectly bids, bidding strategies, or the post-auction market for toll free numbers.⁷

Based on information provided to Somos with the upfront payment made on your behalf by another applicant, William Quimby, and information conveyed by Mr. Quimby in a voice mail message to Somos on November 27, 2019,⁸ and your and Mr. Quimby's separate telephone conversations with FCC and Somos staff, on December 5, 2019 (December 5 conversations), you were listed as a non-qualified bidder in the *833 Auction Qualified Bidder Public Notice* because you and Mr. Quimby violated the 833 Auction rules and procedures set forth above. First, in the December 5 conversations, you and Mr. Quimby acknowledged entering into an agreement, arrangement or understanding in which you agreed to borrow money from Mr. Quimby for the purpose of funding your upfront payment and therefore your participation in the 833 Auction. Such an arrangement is an agreement between applicants relating to the toll free numbers being auctioned that directly or indirectly addresses or communicates bids, bidding strategy, or the post-auction market for toll free numbers, and thus is an arrangement of the type prohibited between applicants in the 833 Auction.

Second, you and Mr. Quimby violated the limited information procedures in place for the 833 Auction by revealing at least one applicant's upfront payment amount prior to the close of the auction. In the December 5 conversations, you and Mr. Quimby admitted that Mr. Quimby made an upfront payment for the 833 Auction on your behalf, which directly would have determined your bidding eligibility in the auction. Therefore, Mr. Quimby gained direct knowledge of the amount of your upfront payment (and thus his bidding eligibility) because he made the payment.⁹ The Commission specifically stated that such information should remain non-public until after the close of bidding.¹⁰ Thus, by sharing that non-public information between two applicants, you violated the limited information procedures in place for the 833 Auction.

Finally, both you and Mr. Quimby engaged in communications after the auction application deadline that affect or have the potential to affect bids or bidding strategy of one or both applicants. In the December 5 conversations, you and Mr. Quimby conceded communicating information related to your upfront payment shortly before the upfront payment deadline of November 27, 2019, which was clearly within the prohibited communications period for the 833 Auction. The prohibition on certain communications is intended to, among other things, facilitate detection of collusive conduct and deter anticompetitive behavior.¹¹ The amount of one's upfront payment, and thus bidding eligibility for an auction, has the potential to affect the bids or bidding strategy of one or both applicants. Communications between two applicants

⁷ *Id.* at 6575, para. 46.

⁸ The deadline for submitting an upfront payment to participate in the 833 Auction was 6:00 p.m. Eastern Time on November 27, 2019.

⁹ We also note for the record that Mr. Quimby acknowledged that he attempted to make a cash upfront payment on your behalf to Somos's bank account, but because such a cash payment contravened the bank's procedures, the upfront payment was wired to Somos from an account he opened at the bank for this purpose. Thus, the bank's wire transfer to Somos noted that he was the payor. *See also 833 Auction Procedures Public Notice*, 34 FCC Rcd at 6589-90, para. 106 (allowing payment only by wire transfer or ACH under a certain threshold).

¹⁰ *Id.* at 6577, para. 54.

¹¹ *See Toll Free Assignment Modernization, Toll Free Service Access Codes*, Report and Order, 33 FCC Rcd 9274, 9292, para. 50 (2018) (citing *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6736, para. 397 (2014); *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, 9 FCC Rcd at 2386-88, paras. 221, 225 (1994)).

in the auction during the prohibited communications period that involve the bidding eligibility of one or both applicants is the type of communications that the prohibited communications procedure is intended to prevent. Furthermore, you failed to report this communication to the Commission and Somos within the five-day period required by the rules applicable to the 833 Auction. Specifically, any applicant that makes or receives a communication that appears to violate the prohibition on certain communications must report such communication in writing to the Commission and Somos staff immediately, and in no case later than five business days after the communication occurs.¹²

Because of these violations of the 833 Auction rules and procedures, you were found unqualified to participate in the bidding.

Sincerely,

Margaret W. Wiener
Chief
Auctions Division
Office of Economics and Analytics

Pamela Arluk
Chief
Competition Policy Division
Wireline Competition Bureau

¹² 833 Auction Procedures Public Notice, 34 FCC Rcd at 6573, para. 39.