

Federal Communications Commission

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

| | | |
|--|---|-------------------------------|
| In re Application of |) | |
| |) | |
| NORTHEAST COMMUNICATIONS OF WISCONSIN, INC. |) | File No. EB-02-IH-0768 |
| |) | NAL/Acct. No. 200332080022 |
| |) | FCC Account ID No. 0442010372 |
| For C Block Facilities in the |) | FRN No. 0002706190 |
| 710-716 and 740-746 MHz Bands |) | |

ERRATUM

Adopted: October 22, 2004

Released: October 25, 2004

By the Chief, Investigations & Hearings Division, Enforcement Bureau:

On September 22, 2004, the Chief, Enforcement Bureau released *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, DA 04-3027 (EB rel. Sept. 22, 2004) (“*Forfeiture Order*”). By this *Erratum*, we make the following two corrections: (a) the caption above replaces the caption on the *Forfeiture Order*, which inadvertently referenced an incorrect NAL/Acct. No.; and (b) the paragraph below replaces paragraph 5 of the *Forfeiture Order*, which inadvertently contained superfluous editorial material:

5. Turning to the instant case, we reject Northeast’s claim that it did not violate section 1.2105(c) because it was not an applicant in Auction No. 44 on August 29, 2002, when the communication at issue took place.²² Northeast maintains that it ceased being an “applicant,” subject to section 1.2105(c), when it failed to make its upfront payment by the May 30, 2002, deadline.²³ Although Northeast’s failure to timely make its upfront payment disqualified it from bidding in Auction No. 44, and suggested that WTB would

²² *Response at 2-7.*

²³ Northeast’s reliance on section 1.935 of the rules to support its claim that it ceased being an applicant for the purposes of the anti-collusion rule lacks merit. *Response at 5-6.* Section 1.935 relates to agreements among mutually exclusive applicants to dismiss their applications and clearly is inapplicable here. Northeast’s further reliance on Public Notice, DA 02-659, 17 FCC Rcd 5,140 (WTB rel. March 19, 2002) and Public Notice, DA 02-1346, 17 FCC Rcd 10,700 (WTB rel. June 7, 2002), also is misplaced. The March 19 Public Notice was issued in connection with Auction No. 31, not Auction No. 44, and the June 7 Public Notice merely identified Northeast as among those applicants that had failed to timely make upfront payments and were, therefore, ineligible to bid in Auction No. 44. Neither public notice affected Northeast’s status as an “applicant” in Auction No. 44 for purposes of the anti-collusion rule. We also reject Northeast’s argument that, because it decided the term “bidder” may be substituted for the term “applicant” in the context of section 1.2105(c), and Northeast was not a bidder in Auction No. 44, it follows that the Commission is prevented from lawfully concluding that Northeast violated section 1.2105(c). *Response at 2-3.* Northeast’s interpretation of section 1.2105(c) ignores the plain language of the rule. In this regard, although section 1.2105(c) initially referenced “bidders,” it was subsequently amended in 1994 to apply to “applicants.” That amendment occurred years before the Star and Northeast applications were filed. *See In the Matter of Implementation of Section 309(J) of the Communications Act – Competitive Bidding*, 9 FCC Rcd 7,684 (1994).

Federal Communications Commission

in due course dismiss its application, the fact remains that, as of August 28 and 29, WTB had not dismissed Northeast's application and it thus remained pending under the rules.

When the *Forfeiture Order* is published in the FCC Record, it will contain the corrections referenced herein.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigations & Hearings Division
Enforcement Bureau