

PCS C block auctions.⁶ The *Order* resolved the waiver requests of two applicants who submitted erroneous bids which were later withdrawn. The *Order* also delegated authority to resolve requests for waiver of the bid withdrawal payment provisions involving similar factual circumstances to the Wireless Telecommunications Bureau ("Bureau").⁷ The *Order* indicated that for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. In addition, the Bureau was directed to consider such requests on a case-by-case basis.⁸

4. Georgia Waiver Request. In its request, Georgia alleges that due to a clerical or typographical error, it submitted a bid of \$119,720,000 for License B-076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia further alleges that the error may have been due in part to a "flaw" in the Commission's remote bidding software.⁹ Georgia states that it intended to submit the minimum accepted bid for that round and license, or \$11,972,000.¹⁰ Georgia attempted to withdraw its \$119,972,000 bid during the bid withdrawal period for Round 37 by contacting the FCC telephonically.¹¹ Due in part to technical problems with the FCC's wide-area network, Georgia claims it was not able to withdraw its erroneous bid until Round 38.¹² The final high bid on this market at the close of the auction was \$21,288,000. Consequently, if the bid withdrawal payment requirement were fully enforced, Georgia would be subject to a bid withdrawal payment of \$73,824,000. Affidavits by A.J. Paserella, and Robert L. Swearingen, Jr., two of Georgia's authorized bidders, and Mr. Swearingen's secretary, Wanda Queen, describe the events surrounding the erroneous bid submission.

5. Georgia argues that imposition of the bid withdrawal payment for its erroneous bid would be unduly burdensome and contrary to the public interest.¹³ Georgia contends that there is

⁶ *Order*, Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions, FCC 96-203 (rel. May 3, 1996) (*Order*).

⁷ *Id.* at ¶ 26.

⁸ *Id.* at ¶ 21.

⁹ Georgia Waiver Request at 2-3.

¹⁰ *Id.*

¹¹ Georgia Waiver Request at 5. The FCC's recorded telephonic bidding line reflects that Georgia attempted to withdraw its erroneous bid during Round 37.

¹² Georgia Waiver Request at 5. The Commission acknowledged that the wide-area network experienced technical difficulties during Round 37 and extended the Bid Withdrawal Period until 2:45 p.m.

¹³ Georgia Waiver Request at 6-11.

established case law governing mistaken bids that prohibit the requirement of any payment for bids resulting from typographical or clerical errors.¹⁴ It observes that Section 24.822 of the Commission's rules¹⁵ allows for the correction of typographical errors on applicants' short-form applications (FCC Form 175s) and that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors.¹⁶ Finally, Georgia argues that the most that the Commission should require from bidders who submit erroneous bids is the forfeiture of a single activity rule waiver.¹⁷

6. Decision. In the May 3 *Order*, the Commission considered the same issues presented here and indicated that full application of the bid withdrawal payment provisions in instances of erroneous bids would cause an extreme and unnecessary hardship on most bidders. On the other hand, the Commission also indicated that a full waiver of these provisions could threaten the economic efficiency of the auction process.¹⁸ The Commission therefore decided to reduce the bid withdrawal payments substantially, taking into consideration the round and stage in which the mistaken bids were submitted and withdrawn.¹⁹

7. Among other things, the Commission decided specifically that if a mistaken bid is withdrawn in the same round in which it was submitted, the withdrawal payment should be the greater of a) the minimum bid increment during the round in which it was submitted or b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. The Commission applied this calculation to reduce the bid withdrawal payment of MAP Wireless, L.L.C., who withdrew its erroneous bid in the same round in which it was submitted.²⁰

8. Under the facts presented, Georgia has demonstrated that it submitted an erroneous bid

¹⁴ *Id.* at 11-13.

¹⁵ 47 C.F.R. 24.822.

¹⁶ *See e.g.*, Letter to David J. Kaufman, Esq. from Kathleen O'Brien Ham, Chief, Auctions Division (December 8, 1995); Letter to Gene DeJordy, Esq. from Kathleen O'Brien Ham, Chief, Auctions Division (December 8, 1995); Letter to Sara Seidman, Esq. from Kathleen O'Brien Ham, Chief, Auctions Division (December 11, 1995).

¹⁷ Georgia Waiver Request at 23.

¹⁸ *Order* at ¶¶ 13-16.

¹⁹ *Id.* at ¶ 17.

²⁰ *Id.* at ¶ 25. The Commission also reduced the bid withdrawal payment of Atlanta Trunking Associates, Inc. (ATA), a bidder in the 900 MHz Specialized Mobile Radio auction. In that case, the bidder withdrew its erroneous bid in the round immediately following its submission. The Commission reduced ATA's bid withdrawal payment to two times the minimum bid increment for the license and round in which the erroneous bid was submitted.

of \$119,720,000 for License B-076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia has further demonstrated that it attempted to withdraw its erroneous bid in Round 37. Georgia submitted a request for waiver accompanied by sworn affidavits attesting to the veracity of the factual circumstances surrounding the erroneous bid. We find that full enforcement of the bid withdrawal payment against Georgia in this instance would not serve the purpose of this rule and would be contrary to the public interest.²¹ In accordance with the Commission's May 3 *Order*, we find that a partial waiver of Section 24.704(a)(1) of the Commission's rules²² is warranted. Specifically, because Georgia attempted to withdraw its erroneous bid in the same round in which it was submitted, we will reduce Georgia's required bid withdrawal payment to the minimum bid increment for License B-076 in Round 37 of the broadband PCS C block auction, or \$569,898.

9. Accordingly, IT IS ORDERED that the waiver request submitted by Georgia Independent PCS L.L.C. is granted to the extent indicated above.

10. IT IS FURTHER ORDERED that Georgia Independent PCS L.L.C. is subject to a bid withdrawal payment requirement of \$569,898.

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

²¹ See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 C.F.R. § 24.819(a)(1).

²² 47 C.F.R. § 24.704(a)(1).