



February 2010

Anti-Collusion Rules Tightened

R.J. Quianzon
Quianzon@fhhlaw.com
703-812-0424

Anyone who has participated in an FCC auction is (ideally, at least) familiar with the stringent anti-collusion rules that the Feds impose on participants. Unless there is proper disclosure, auction participants are forbidden from speaking with one another not only about the auction itself, but also about what post-auction matters. The government has issued six-figure fines to bidders who have been found to have violated this rule.

To kick off the new year, the FCC has tinkered with its anti-collusion rule, adding important new details to the “rat-out rule” applicable to recipients of unauthorized contacts. For those not familiar with the auction rules, if you *receive* a call, e-mail, message or other communication from another bidder in an auction, you have to notify the authorities of that contact. Even if you are just an unsuspecting bidder, minding your own business and bidding on a permit, once you are contacted by another bidder seeking to discuss auction-related matters, you are required to narc to the authorities about that contact.

The recent clarifications of that obligation are intended to “enhance the usefulness of application information”. To that supposed end, the FCC has cut the time within which a bidder must report an unauthorized contact to the government from 30 days to *a mere five business days*. This leaves very little time for contemplation if/when an auction participant receives a prohibited contact. At a minimum, bidders in that position should immediately contact counsel.

It should also be noted that the obligation to fink on your competitors still extends (as it always has) well beyond the mere bidding activity of the auction itself: the No-Collusion period runs from the deadline for filing the initial short-form applications for the auction all the way until the post-auction down payment deadline.

In addition to the FCC’s new, strict timeline for snitching on your competitor, the FCC also has provided new practical details about the required ratting-out process. Up to now, the rules weren’t clear about where, or with whom, or precisely how, the reports should be filed. That lack of clarity gave rise to the possibility (if not likelihood) that some reports might be made in a way which could exacerbate the ill-effects of the improper

contact. For example, if a report of an improper contact were made, in detail, through the Commission's standard filing public mechanisms, that report could be found by others participating in the subject auction. But that would then give everybody access to the information that wasn't supposed to be communicated to anyone in the first place. In other words, inappropriately-directed reports could have the effect of aggravating the adverse effects of the collusive contacts.

To prevent (or at least discourage) that, the Commission has clarified that reports of collusive contacts must be filed as directed in a public notice or, if there is no notice, with the Chief of the Auctions Division "by the most expeditious means available."

The FCC auction regime has been around for more than 15 years and the government is still revising its policies to ensure the integrity of the process. While the overall auction process is straight-forward and based upon the simple principle of "whoever has the most money wins the auction", there are plenty of rules that can trip up participants. Prior to participating in an auction, an applicant should become very familiar with the rules.