

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
Department of Justice )  
Antitrust Division )  
325 7th Street, N.W., Suite 500 )  
Washington, D.C. 20530, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
21st CENTURY BIDDING CORP., )  
4665 MacArthur Court )  
Newport Beach, CA 92660, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 1:98CV02752

COMPLAINT

The United States of America, through its attorneys, acting under the direction of the Attorney General of the United States, brings this civil antitrust action under Section 1 of the Sherman Act, to obtain equitable and other relief against 21st Century Bidding Corp.

I. NATURE OF THIS ACTION

1. In August 1996, the Federal Communications Commission (“FCC”) commenced an auction (the “DEF auction”) to award licenses of broadband radio spectrum to be used for the development and operation of personal communications services (“PCS”). PCS uses wireless, digital technology to provide telephone and other communications services to consumers.

2. Defendant 21st Century Bidding Corp. (“21st Century”) was among the successful bidders in the DEF auction. 21st Century bid on several licenses and sometimes submitted bids

that ended with three-digit numerical codes. 21st Century used the coded bids to communicate with rival bidders during the auction. By using the codes, 21st Century created links between two or more specific markets and thereby proposed to competing bidders that they not bid against each other in the linked markets.

3. Through the use of the coded bids during the auction, 21st Century and one of its rivals reached an agreement to refrain from bidding against one another for PCS licenses in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. As a consequence of this agreement, 21st Century and its rival paid less for PCS licenses, depriving the Treasury of the United States of revenues.

## II. JURISDICTION, VENUE AND DEFENDANT

4. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. § 4, in order to prevent and restrain violations by 21st Century of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

5. 21st Century is a Delaware corporation that is wholly-owned by 21st Century Telesis Joint Venture, which is a Delaware general partnership with headquarters in California. 21st Century Telesis Joint Venture is comprised of two partners: 21st Century Telesis, Inc. and 21st Century Telesis (II), Inc., both of which are Delaware corporations. 21st Century and its controlling entities construct and operate PCS systems in numerous geographic areas in the United States pursuant to licenses granted by the FCC. 21st Century and its controlling entities provide communications services to businesses and individuals across the United States. 21st Century and its controlling entities are engaged in interstate commerce and their activities substantially affect interstate commerce.

6. A substantial number of the events that gave rise to this complaint occurred in this District. Venue is proper under 28 U.S.C. § 1391(b)(2). 21st Century consents to jurisdiction and venue in the District of Columbia pursuant to 15 U.S.C. § 22 and 28 U.S.C § 1391(c).

### III. THE FCC AUCTION OF PCS LICENSES

7. In 1993, Congress enacted legislation providing for auction of licenses by the FCC for the use of radio spectrum. The legislation required the FCC to promulgate rules for ensuring that auctions would be competitive. One of the uses for the spectrum to be auctioned by the FCC is PCS.

8. The FCC divided the spectrum available for broadband PCS into 6 bands: A, B, C, D, E and F. The A, B and C licenses were for 30 MHZ each, while the D, E and F licenses were for 10 MHZ each.

9. The FCC also divided the country into 51 geographic areas called Market Trading Areas (“MTAs”), which were each allotted an A and a B license. The FCC further subdivided these 51 MTAs into 493 smaller geographic units, which it called Basic Trading Areas (“BTAs”), which were each allotted a C, D, E and F license. Each BTA was assigned a number between 1 and 493.

10. The FCC adopted a simultaneous, multiple-round, open format for the PCS auctions. Under this format, numerous licenses are offered in a single auction, staged over several rounds, with all licenses remaining open for bidding until the auction closes. Auction participants can observe all of the bidding activity in each round. An auction ends only when a round passes in which no bidder submits a bid on any license.

11. One goal of the FCC was to ensure the efficient allocation of the licenses, that is, that each license should go to the bidder who valued it most highly. The PCS auction format helped achieve this goal by awarding each license to the highest bidder.

12. The first broadband PCS auction was held from December 1994 to March 1995 for all A and B licenses. From December 1995 to May 1996, the FCC conducted a second auction, this time for all C licenses.

13. The auction of the D, E and F licenses for all 493 BTAs began in August 1996. As in the earlier auctions, each round of the DEF auction began with a bid submission period during which participants could submit bids electronically or by telephone for any of the licenses in which they were interested. Because there were three bands, the DEF auction involved a total of 1479 licenses.

14. After each bid submission period, the FCC published electronically to all bidders the results of the bidding for each license, including the name of each company bidding, the amount of each bid, and the time each bid was submitted. The high bidder for a license in a round became the “standing high” bidder for that license; in the case of a tie, the highest bid received earliest by the FCC during that round was the standing high bid.

15. Following publication of the results of each bid submission round, there was a bid withdrawal period. During this period, bidders were permitted to withdraw standing high bids from any market, subject to a bid withdrawal penalty specified by the FCC. The FCC then published the results of the withdrawal period.

16. An auction round was comprised of the bid submission and bid withdrawal periods. At the beginning of the auction, the FCC held one round per day. As the auction progressed, the

FCC increased the number of rounds held in a single day. Where there were multiple rounds in a day, the FCC provided a period of time between rounds for auction participants to analyze the bidding of the prior round and to plan for the next round.

17. Before the auction, bidders analyzed which licenses (or group of licenses) would best enable them to provide effective and competitive PCS service, assessed the value they placed on those licenses, and developed strategies to obtain the licenses. As the auction proceeded, bidders often adjusted their market valuations and business strategies in light of other participants' bids.

18. The DEF auction lasted 276 rounds, ending in January 1997.

#### IV. VIOLATION ALLEGED

19. In the course of the DEF auction, 21st Century sometimes placed bids in which the final three digits intentionally corresponded to the numerical designator for a BTA (a "BTA end code"). 21st Century knew the BTA end codes were visible to other bidders and that it could use the BTA end codes to signal or communicate with its competitors. 21st Century used these signals to, among other things, link the bidding of licenses in two (or more) specific BTA markets, highlight the licenses 21st Century wanted, and convey offers to allocate the licenses. 21st Century's use of the BTA end codes did not serve any legitimate purpose of the auction.

20. During the course of rounds 120 to 125, 21st Century reached an agreement with Mercury PCS II, L.L.C. ("Mercury") to allocate between them the F-band licenses for Indianapolis (BTA #204), Baton Rouge (BTA #032) and Biloxi (BTA#042). 21st Century agreed to stop bidding for the Baton Rouge and Biloxi-F licenses in exchange for Mercury's

agreement to stop bidding for the Indianapolis-F license. Their agreement is evidenced by, among other things:

- a. Prior to round 123, 21st Century had been bidding for the Indianapolis-F license and had not bid for any licenses in Baton Rouge or Biloxi;
- b. Prior to round 123, Mercury had the standing high bids for the Baton Rouge and Biloxi-F licenses;
- c. Mercury bid for the first time for the Indianapolis-F license in round 120 and again in round 122;
- d. In round 123, 21 Century began bidding for the Baton Rouge and Biloxi-F licenses and attached the Indianapolis BTA end code to these bids;
- e. 21st Century's use of the BTA end codes established a link between the Baton Rouge and Biloxi-F licenses and the Indianapolis-F license;
- f. Mercury saw the BTA end codes and understood that 21st Century proposed to stop bidding in Baton Rouge and Biloxi in exchange for Mercury ceasing to bid for the Indianapolis-F license;
- g. Mercury stopped bidding for the Indianapolis-F license, even though it was willing to pay more than 21st Century's standing high bid for that license; and
- h. 21st Century then stopped bidding in Baton Rouge and Biloxi.

21. The purpose and effect of the agreement was to allocate licenses between 21st Century and Mercury and to suppress the prices for PCS licenses by eliminating competing bids. The agreement had the following effects, among others:

- a. competition between 21st Century and Mercury in the auction of PCS licenses was restrained, suppressed, and eliminated; and
- b. the Treasury of the United States received less revenue for certain PCS licenses.

22. The agreement between 21st Century and Mercury was not authorized by the FCC rules governing.

23. Unless permanently restrained and enjoined, 21st Century will continue to engage in conduct in future FCC auctions that unreasonably restrains trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

#### V. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

24. That the Court adjudge and decree that 21st Century entered an agreement to restrain interstate trade and commerce of licenses for PCS in violation of Section 1 of the Sherman Act.

25. That 21st Century, its officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the agreement alleged, or from engaging in any other agreement, understanding or concert of action having a similar

purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

Dated: November 10, 1998

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