

COPY

July 20, 2000

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 – 12th Street, SW
Washington, DC 20554

Re: Auction of Licenses in the 747-762 and 777-792 MHz Bands
Scheduled for September 6, 2000
WT Docket No. 99-168 – Ex Parte Filing

Dear Mr. Chairman:

The following members of the wireless telecommunications industry, the Cellular Telecommunications Industry Association; AT&T Wireless Services, Inc.; BellSouth Corporation; Ericsson Inc.; Motorola, Inc.; Nextel Communications, Inc.; Qwest Wireless, L.L.C.; SBC Communications, Inc.; Verizon Wireless; and VoiceStream Wireless respectfully request that the above-referenced auction of licenses in the 700 MHz band be delayed until June 2001.¹ Because the FCC Form 175's are currently scheduled to be filed by August 1, with the 700 MHz auction scheduled to commence on September 6, the above-listed entities respectfully ask for expedited consideration of this request.

Because of its location in the electromagnetic spectrum and its excellent propagation characteristics, the 30 MHz of spectrum to be auctioned in the 700 MHz band is ideally suited for next generation mobile and high-speed broadband services. These services will intensify competition for all communications services and yield tremendous benefit to the public.

Under the current auction schedule, however, these benefits are placed at risk because of uncertainties that still exist regarding near-term deployment in this band and the upcoming auction. Under Section 309(j)(3)(E)(ii) of the Communications Act, the Commission must assure that an adequate period is allowed after issuance of bidding rules "to ensure that interested parties have a sufficient time to develop business plans, access market conditions, and evaluate

¹ Delay of the 700 MHz commercial auction need not affect the timing of the 700 MHz "Guard Band" auction, also scheduled to commence on September 6, 2000. The two auctions can be conducted independently of one another, and thus, the Commission should continue with its current schedule to auction the "Guard Bands" based on independent considerations.

the availability of equipment for the relevant services.”² Recent activity by the Commission in the 700 MHz proceeding and related proceedings – particularly new package bidding rules – make it difficult, if not impossible, for bidders to develop the above-referenced business plans, formulate bidding strategies and assess market conditions under the current 700 MHz auction schedule. Given these circumstances, Section 309(j) requires postponement of the auction.

On July 3, 2000, the Commission released a Public Notice significantly revising its auction procedures for the 700 MHz auction to allow for the first time “package” or “combinatorial” bidding. While we can appreciate the motivation behind the Commission's decision to adopt package bidding procedures for the 700 MHz auction, these procedures are very complex and have never been used before in a Commission spectrum auction. Indeed, just yesterday, carriers and FCC staff spent more than three hours discussing the complexities and clarifying the rules surrounding package bidding. This meeting was helpful, but the fact remains that certain aspects of the FCC's package bidding system are still in development and have not been made public. Once the system is finalized and its data formats are made available, bidders will require time to develop software and auction analysis tools that are essential in formulating their bidding strategies. Bidders also need time to test their internal systems well before the start of the auction. The Commission also should hold a longer “mock auction” and provide for a greater period in between the mock auction and the actual auction. These steps are necessary to allow both prospective bidders and the Commission to fully test and fine-tune their systems and processes for the package bidding process.

In addition, less than three weeks ago the Commission issued a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in which it decides certain issues regarding the 700 MHz band and seeks comment on additional proposals to facilitate clearing the band of incumbent broadcasters.³ Obviously, uncertainties regarding the timing of 700 MHz band clearing will devalue the spectrum and threaten the Commission's goal of quickly awarding licenses to the parties who can put them to their most efficient use. In the *700 MHz MO&O and FNPRM*, the Commission clarifies several issues relating to voluntarily negotiated agreements between prospective new licensees and incumbent broadcasters. Under the current auction schedule, the parties do not have sufficient time to determine whether such negotiations can be successful. Now that these issues have been clarified, the Commission should allow a sufficient period of time for negotiations to take place. Regardless of their outcome, providing additional time for negotiation will lend greater certainty to the auction, which will aid bidders in formulating their business models and bidding strategies.

² See Section 309(j)(3)(E)(ii) of the Communications Act, 47 U.S.C. §309(j)(3)(E)(ii).

³ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224, ___ FCC Rcd ___ (2000) (the “700 MHz MO&O and FNPRM”).

The *700 MHz MO&O and FNPRM* also seeks comment on a number of possible mechanisms that may be useful in the Channel 60-69 DTV transition/clearing process, including cost-sharing among auction winners and "secondary auctions" that could establish incumbent clearing costs (to take place prior to or simultaneously with the 700 MHz auction). Interested parties need time to review the Commission's proposals so that they can meaningfully comment. The Commission also will need significant time in which to consider the industry's views in formulating its policies and rules on these matters. Under the current schedule, however, potential bidders are required to file their FCC Form 175 applications two weeks prior to the end of the initial comment period specified in the *700 MHz MO&O and FNPRM*, **with the reply period scheduled to end after the start of the proposed auction**. Thus, bidders will be required to enter the auction without a complete set of rules and procedures, resulting in continuing uncertainty as to a most fundamental consideration in valuing the spectrum, *i.e.*, when it will be available for commercial service.

The undersigned industry participants respectfully submit that this uncertainty will discourage participation in the 700 MHz auction and create a substantial and unacceptable amount of risk for potential bidders. Prospective bidders need greater certainty and clarity regarding possible arrangements with incumbents prior to the auction so that they can make rational business decisions as to whether to even participate. Thus, the Commission's deliberations on the significant issues raised in the Further Rulemaking in this proceeding must be concluded prior to the auction.⁴

Each of these above-described issues creates significant uncertainty about the 700 MHz auction and increases the risk that the auction will be skewed so that licenses are not efficiently awarded to the parties who value them most highly. Conducting the auction in this environment devalues the 700 MHz spectrum and will increase the likelihood that the American public will not realize the full economic and public benefits of a 700 MHz spectrum auction. Postponing the auction would allow additional time not only for Commission deliberation of unresolved issues in the pending rulemaking proceeding, but also for potential bidders to evaluate the impact of any subsequent Commission decisions regarding the auction, a result directly contemplated by Section 309 of the Communications Act.

⁴ It is significant to note that, prior to the 800 MHz Specialized Mobile Radio ("SMR") auction (Auction No. 16) and the 1.9 GHz Personal Communications Services ("PCS") auctions (Auction Nos. 4, 5, 10 and 22), the Commission formulated detailed provisions providing for mandatory relocations of incumbents after a voluntary negotiation period. While the Commission has chosen not to adopt similar mandatory relocation provisions for the 700 MHz spectrum at this time, even voluntary negotiation procedures must be carefully arranged prior to the auction to provide some degree of certainty and clarity as to any bidder's obligations during the post-auction period.

The industry is mindful that Congress enacted a consolidated appropriations statute, which requires the Commission to accelerate this auction so as to have revenues deposited in the U.S. Treasury by September 30, 2000.⁵ According to the Chairman of the Senate Budget Committee, “[t]he purpose of this acceleration was to provide an ‘offset’ so that fiscal year 2000 appropriations would not exceed the spending limits established in law.”⁶ The Commission’s efforts to expedite the 700 MHz proceeding to meet this deadline are laudable. As a matter of sound spectrum management policy, however, the rush to auction the 700 MHz spectrum will jeopardize the efficient assignment of the spectrum and ultimately disserve the public interest. Congress’ budgetary goals have been met “regardless of when receipts from this auction are deposited into the Treasury.”⁷ Since the initial postponement of the auction until September 6, 2000 has already shifted auction revenues into FY 2001, a further delay until June 2001 will not undermine budgetary objectives, as this schedule will allow auction proceeds to be deposited in the U.S. Treasury by September 30, 2001. Thus, the Commission should work with the Congress as necessary to permit a postponement of the 700 MHz auction until June 2001.

The purposes of spectrum auctions – promoting efficient and intensive use of spectrum by awarding licenses to the parties who value them most highly while recovering some of the value of these resources for the American people – cannot be achieved if the 700 MHz auction is held without a greater degree of certainty for prospective bidders. Providing regulatory certainty will benefit the public and the Commission’s auction and spectrum policies by allowing all interested parties to have as much information as possible in preparing for the auction. In view

⁵ See 1999 Consolidated Appropriations Act, Appendix E, §213.

⁶ See Letter dated May 5, 2000 from Senator Pete V. Domenici to Chairman William E. Kennard.

⁷ *Id.*

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of the imminent deadline for submitting short-form applications, we request expedited consideration of this request, and urge the Commission to postpone the 700 MHz auction until June 2001.

Respectfully submitted,

Brian Fontes CHB

Brian Fontes
Senior Vice President Policy and Administration
Cellular Telecommunications Industry Association

Douglas Brandon CHB

Douglas Brandon
Vice President, Law and External Affairs
AT&T Wireless Services, Inc.

Howard Haug CHB

Howard Haug
Assistant Vice President, Strategic Management
BellSouth Corporation

Jose M. Cangas CHB

Jose M. Cangas
Vice President and General Manager, Strategic Accounts
Ericsson Inc.

Richard C. Barth CHB

Richard C. Barth
Vice President and Director, Telecommunications Strategy
Motorola, Inc.

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Robert S. Foosner CHB

Robert S. Foosner
Senior Vice President and Chief Regulatory Officer
Nextel Communications, Inc.

Peter A. Mannetti CHB

Peter A. Mannetti
President
Qwest Wireless, L.L.C.

Craig M. Smith CHB

Craig M. Smith
Vice President – Strategic Planning
SBC Communications, Inc.

John T. Scott CHB

John T. Scott
Vice President and Deputy General Counsel-Regulatory Law
Verizon Wireless

Brian T. O'Connor CHB

Brian T. O'Connor
Vice President, Legislative and Regulatory Affairs
VoiceStream Wireless

cc: Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Harold Furchtgott-Roth
Thomas Sugrue
Kathleen O'Brien-Ham
Gerald P. Vaughan
James D. Schlichting
Dale Hatfield
Robert Pepper