

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**PROCEDURES TO GOVERN THE
AUCTION OF LICENSES FOR THE 698-
746 MHz BAND (LOWER 700 MHz
BAND) SCHEDULED FOR JUNE 19, 2002**

Auction No. 44

To: The Commission

REPLY COMMENTS

Members of the Rural 700 MHz Group as listed in Attachment A, by their attorneys, hereby submit their comments in reply to the comments filed in the above-captioned proceeding.¹ The commenters are hereinafter referred to collectively as the “Rural 700 MHz Group” or the “Group.”

I. THE COMMISSION CANNOT LAWFULLY POSTPONE THE AUCTION

Several commenters urge the Commission to postpone the Lower 700 MHz Band auction in accord with the recommendation put forth by the Bush Administration in the budget proposal submitted to Congress. Contrary to the commenters’ request, the Commission is not free to postpone the auction. The deadline by which both the Lower 700 MHz Band and Upper 700 MHz Band auctions must be completed has been mandated by Congress and incorporated into the Communications Act of 1934, as amended. Section 309(j)(14)(C)(ii) states that “the

¹ “Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002” *Public Notice*, DA 02-200, Report No. AUC-02-44-A, issued January 24, 2002.

Commission shall complete the assignment of [licenses sold as a result of the transition from analog to digital television systems], and report to the Congress the total revenues from such competitive bidding, *by September 30, 2002.*” 47 U.S.C. § 309(j)(14)(C)(ii) (emphasis added).

Thus, the Commission does not have the discretion to lawfully postpone the auction. Unless and until Congress passes a law changing the statutory date by which the Commission must have the auctions completed, the Commission is obligated to proceed with both Upper and Lower 700 MHz Band auctions. Therefore, the Commission cannot give serious consideration to those comments calling for the postponement of the Lower 700 MHz Band and Upper 700 MHz Band auctions.

II. COMMENTERS’ ALTERNATIVE SUGGESTIONS

United States Cellular Corporation (USCC) proposes that the Commission hold a single auction for all of the 700 MHz licenses, and that its proposed mega-auction be postponed. “This will help avoid the effects of the head-start advantage which national or super regional carriers might otherwise obtain if all EAG licenses are auctioned possibly as much as two years before MSA/RSA licenses in this band are auctioned.”²

USCC’s argument is flawed. First, as demonstrated above, the Commission does not have the authority to postpone the auction. Second, USCC’s argument does not take into consideration the maturity of the mobile communications marketplace. National and super-regional carriers will not be “first to market” with a new product, but rather will be entering a

² United States Cellular Corporation Comments at 2.

mature marketplace with established players, as will MSA/RSA auction winners. In addition, as currently scheduled, 700 MHz EAG licensees and MSA/RSA licensees will enter the market at effectively the same time.

Paxson Communications Corporation argues that the Commission should not include the Lower 700 MHz Band EAG licenses in the Upper 700 MHz Auction because Paxson believes that such combination would result in a delay of the Upper 700 MHz Band auction and would thwart Paxson's efforts to assist in clearing the Upper 700 MHz Band of broadcast licensees.³ Paxson predicts that potential bidders for Lower 700 MHz Band EAG licenses will "want additional planning time – despite the presence . . . of a statutory deadline."⁴ Paxson's concerns are not justified. Only one set of comments suggested that additional time might be needed and that request did not involve auction planning, *per se*, but concerned auction software considerations.

In particular, Spectrum Exchange Group, LLC and Allen & Company, Inc. ("Spectrum") claimed in joint comments that prospective bidders in the Upper 700 MHz Band auction would have to revamp auction software and tracking tools "with only weeks to go before short-form applications are due to be filed."⁵ As of the February 6, 2002 deadline for filing initial comments in this proceeding there were three months until the short form application filing

³ Paxson Communications Corporation Comments at 8.

⁴ *Id.*

⁵ Spectrum Exchange Group, LLC and Allen & Company, Inc. Comments at 7. Spectrum's comments indicate its concern regarding package bidding software developed by the Commission for the Upper 700 MHz Band auction. Spectrum participated in testing of this software.

deadline of May 8, 2002 and nearly five months until the auction is scheduled to commence on June 19, 2002. No specialized bidding software or tracking tool is required for a potential bidder to submit its short-form application.⁶ Revising software to include the additional EAG-size licenses in Auction No. 31 would not be necessary until the auction actually begins, or shortly before that date.⁷ Until the deadline for filing short-form applications to participate in the Upper 700 MHz Band auction passes, the Commission has no way of forecasting who intends to participate in that auction and cannot penalize those who did not participate in the beta test, nor can it provide an advantage to those bidders who did participate.⁸ The Commission undoubtedly considered the time required to implement any necessary changes to both the Form 175 and its auction software in making its proposal to include the Lower 700 MHz Band EAG licenses in the Upper 700 MHz Band auction.

Spectrum also argues that the Commission should delay the Lower 700 MHz Band auction until the Upper 700 MHz Band auction has been completed, and it is determined how well voluntary band clearing and package bidding has worked. The Commission's auction scheduling process is governed by many factors (not the least of which are statutory directives to complete auctions within a specified time), but it is not constrained to hold auctions one at a

⁶ The Lower 700 MHz Band EAG licenses would have to be included in the short form application, however, the short form application does not appear to be the focus of Spectrum's concern, but rather the undoubtedly more complicated package bidding feature added to the bidding software. It does not appear that adding the Lower 700 MHz Band licenses to the Form 175 application to participate in the auction is a technological obstacle.

⁷ In addition, the Commission does not ordinarily release its authorized bidding software until immediately before the auction is scheduled to begin.

⁸ Spectrum should note that the Commission conducted its Paging Auction, Auction No. 40, over the Internet without releasing software to the bidders. In addition, the Commission did not provide any auction tracking tools for participants in that auction.

time.⁹ It may take several years before enough voluntary band-clearing efforts bear fruit to allow any judgments to be made. To delay Auction No. 44 for a substantial period of time would create a competitive disadvantage for smaller entities, including rural telephone companies, that intend to bid on the MSA/RSA-size licenses available in that auction. This result would be contrary to the mandate of Section 309(j) of the Communications Act of 1934, as amended, and would be adverse to the public interest. In many rural markets, there are no incumbent broadcasters in the Lower 700 MHz Band that require relocation. Delay will only slow the initiation of valuable services to rural citizens. In addition, since package bidding is not contemplated for Auction No. 44, reviewing the success of the package bidding of Auction No. 31 is not a consideration.

III. SEVERAL COMMENTS SUPPORT THE COMMISSION'S PROPOSAL TO INCLUDE THE LOWER 700 MHz BAND EAG LICENSES IN AUCTION NO. 31

The Rural 700 MHz Group's comments in support of the Commission's suggestion to include the Lower 700 MHz Band EAG licenses in Auction No. 31 were echoed by Telcom Consulting Associates ("TCA") and the Rural Telecommunications Group ("RTG"). TCA and RTG agreed that the Commission should include the Lower 700 MHz Band EAG licenses in Auction No. 31, and auction only the smaller MSA/RSA sized-licenses in Auction No. 44, so that small/rural bidders have a fair chance to obtain licenses.

TCA also advocated that the Commission decrease the price of the minimum opening bid to equal that of the upfront payment and that the FCC should use a percentage increase to

⁹ As a matter of fact, the recent Multiple Address System auction, Auction No. 42, began during the Paging Auction, Auction No. 40, and ended well before the Paging Auction ended.

determine the bid increment, rather than its "smoothing formula" based on activity level per license. The Rural 700 MHz Group and TCA both believe that a simple percentage increase will allow smaller operators to plan their bidding strategies more easily and effectively.


The Rural 700 MHz Group reiterates its request that the Commission not adopt its proposal to retain the ability to keep the auction open past the first round in which no bids, proactive waivers or withdrawals have been submitted. Keeping the auction open beyond that point would not serve the interests of the Commission and that vast majority of auction participants.

Finally, the Rural 700 MHz Group supports the Commission's adoption of small, very small and entrepreneur bidding credits. Adoption of such measures for designated entities assists in providing small and minority owned enterprises a realistic opportunity to participate in the auction process.

Respectfully Submitted,

Rural 700 MHz Group

By



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Attachment A

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Interstate Telecommunications Cooperative, Inc. (Clear Lake, South Dakota)

Kennebec Telephone Co., Inc. (Kennebec, South Dakota)

Midstate Communications, Inc. (Kimball, South Dakota)

South Dakota Network, LLC d/b/a SDN Communications (Sioux Falls, South Dakota)

Southern Illinois RSA Partnership d/b/a First Cellular of Southern Illinois (Mt. Vernon, Illinois)

Splitrock Telecom Cooperative, Inc. (Garretson, South Dakota)

Sully Buttes Telephone Cooperative, Inc. (Highmore, South Dakota)

United Telephone Association, Inc. (Dodge City, Kansas)

US Unwired, Inc. (Lake Charles, Louisiana)

CERTIFICATE OF SERVICE

I, Kathleen A. Kaercher, do hereby certify that on this day, February 13, 2002, that I served a copy of Reply Comments by first class United States mail, postage prepaid, to each of the parties listed below:

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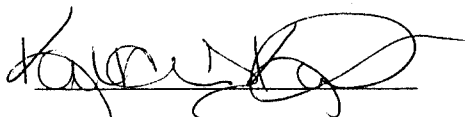
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