

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Auction of Licenses in the 698-746 MHz Band) DA 02-200
Scheduled for June 19, 2002)
)
Comment Sought on Reserve Prices or)
Minimum Opening Bids and Other Auction)
Procedural Issues)
)

To: Chief, Wireless Telecommunications Bureau

**COMMENTS OF SPECTRUM EXCHANGE GROUP, LLC
AND ALLEN & COMPANY INCORPORATED**

Spectrum Exchange Group, LLC and Allen & Company Incorporated (“Spectrum Exchange/Allen”) hereby submit comments in response to the Wireless Telecommunications Bureau’s (“Bureau’s”) January 24, 2002 Public Notice (“Public Notice”) scheduling an auction of licenses in the 698-746 MHz band (“Lower 700 MHz Band”) to commence on June 19, 2002 (“Auction No. 44”) and proposing procedures to be used in that auction.¹

For the reasons stated below, it would be ill-advised for the Commission to conduct Auction No. 44 in the manner proposed and at the same time as the auction for licenses in the adjacent 747-762 and 777-792 MHz bands (“Upper 700 MHz Band”), which is also scheduled to

¹ *Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues*, Public Notice, DA 02-200 (WTB, rel. Jan. 24, 2002).

begin on June 19, 2002. (“Auction No. 31”).² The Commission should recognize that the procedures it adopts for use in Auction No. 44 could affect, positively or negatively, Auction No. 31. The Commission should modify the proposed Auction No. 44 schedule and competitive bidding procedures to accommodate that reality. Since these two auctions are likely to attract many of the same potential bidders, the Bureau should not conduct these two auctions at the same time and should consider adopting uniform practices and procedures that will not only maximize the efficiency of both auctions, but also enhance the value to bidders of all of the licenses in both the Upper and Lower 700 MHz Bands.

A. Background

Spectrum Exchange/Allen has sought to play an active role in the Commission’s Upper 700 MHz Band proceeding, but to date has stayed on the sidelines of the Lower 700 MHz Band proceeding. Our role in the Upper 700 MHz Band has been threefold. First, we commented extensively in connection with organizing voluntary private market processes to facilitate efficient clearing of the band while minimizing the reduction in over-the-air reception of television broadcast signals.³ Second, Spectrum Exchange/Allen has also attempted to play an important role in crafting the package bidding design for the Upper 700 MHz Band auction.⁴

² See *Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Scheduled for June 19, 2002*, Public Notice, DA 01-2394 (WTB, rel. Oct. 15, 2001); *Auction Notice and Filing Requirements for 12 Licenses in the 700 MHz Bands Auction Scheduled for May 10, 2000*; *Minimum Opening Bids and Other Auction Procedural Issues*, Public Notice, DA 00-292, 15 FCC Rcd 2921 (2000).

³ The details regarding Spectrum Exchange’s proposed private band-clearing auction have been outlined in filings on the record in this proceeding. See “Opposition of Spectrum Exchange Group LLC to Petitions for Reconsideration,” in WT Docket No. 99–168, filed March 10, 2000; see also “Comment,” filed August 16, 2000, and “Reply Comment,” filed September 15, 2000 in that proceeding.

⁴ For example, see the paper presented by Stanford University Professor Paul R. Milgrom (Co-President of Spectrum Exchange) at the Conference on Combinatorial Bidding jointly sponsored by the Federal Communications Commission, the Stanford Institute for Economic Policy Research and the National Science Foundation, that took place on May 5-7, 2000 at the Aspen Institute’s Wye River Conference Center. Paul R. Milgrom, “FCC–SIEPR– (continued on next page)

Third, Spectrum Exchange/Allen has made significant progress toward making voluntary band-clearing a reality in the Upper 700 MHz Band.

Until today, we have stayed on the sidelines of the Lower 700 MHz Band proceeding, with the expectation that the rules and procedures governing the licensing of the Lower 700 MHz Band would follow the Commission's previous logic and would promote the public interest of maximizing the value of the spectrum while realizing value for the taxpayer. Such a logical course would have involved waiting to see the results of the Upper 700 MHz Band auction and clearing plans before forging ahead in the Lower 700 MHz Band. If voluntary market processes successfully cleared the Upper 700 MHz Band spectrum, then the same rules facilitating voluntary transactions would be extended to the Lower 700 MHz Band; if not, a different clearing regime would be developed. If the ascending auction with package bidding ran successfully in the Upper 700 MHz Band, the same auction format would be used for the Lower 700 MHz Band; if not, different auction rules would be followed. In any case, nothing would be done in the Lower 700 MHz Band to endanger the success of the auction and clearing of the Upper 700 MHz Band, acknowledged by the Commission to have considerably higher value.

We now begin to comment in the Lower 700 MHz Band proceeding because recent and proposed Commission and Bureau actions have not met these expectations. The FCC now proposes to launch ahead with auctioning the Lower 700 MHz Band, without pausing to learn from the experience of the Upper 700 MHz Band. Rules facilitating voluntary clearing, and auction procedures allowing package bids — each as necessary for the Lower as for the Upper 700 MHz Band — are not to be attempted. And, worst of all, Auction No. 44 has been scheduled

NSF Wye Woods Conference: Lessons plus a Simple Proposal," presented on May 7, 2000 (downloadable at <http://combin.fcc.gov/papers.html>).

to begin on the same day as Auction No. 31, overwhelming potential bidders and jeopardizing the success of the auction and clearing regime. We comment on the aspects of this relating to Public Notice DA 02-200 today, but we also expect to follow up with additional filings in coming weeks.⁵

B. Auction No. 44 Should Be Postponed

Spectrum Exchange/Allen appreciates the efforts of the Bureau and others to develop effective rules and policies for efficiently clearing the Upper 700 MHz Band of incumbent broadcast operations. While the Commission has had success auctioning encumbered spectrum in the past, the degree and complexity of encumbrance in the Upper and Lower 700 MHz Bands is unprecedented. Nevertheless, progress is being made. In particular, the Spectrum Clearing Alliance (with which Spectrum Exchange/Allen is affiliated) is moving forward and likely will have success in creating new value in the Upper 700 MHz Band. Holding a simultaneous auction for the Lower 700 MHz Band at this time, however, could frustrate these efforts by needlessly complicating the task at hand. Indeed, because the Commission may wish to reevaluate its rules and policies for the Lower 700 MHz Band and for Auction No. 44 as a result of what it learns from efforts to clear the Upper 700 MHz Band, the Bureau should postpone Auction No. 44 at least until the results of ongoing clearing efforts in the Upper 700 MHz Band can be assessed and evaluated.

⁵ In particular, we note that the current band plan for the Lower 700 MHz Band is badly designed. UHF Channel 59, the portion of the Lower 700 MHz Band that abuts the Upper 700 MHz Band, is slated to be licensed according to MSA/RSA boundaries, despite the fact that it needs to be cleared in order to use the Upper 700 MHz Band, which is being licensed according to economic area grouping (“EAG”) boundaries. Applying MSA/RSA boundaries to channel 59 creates an additional free-rider problem in clearing, which could be avoided by simply interchanging the geographic area type of Block C in the Lower 700 MHz Band with that of either Block A or Block B. The Commission therefore should reconsider the band plan for the Lower 700 MHz Band.

In this respect, Spectrum Exchange/Allen notes that the Executive Branch's proposed budget for fiscal year 2003 calls for shifting the statutory deadline for auctioning the Upper 700 MHz Band until 2004, and the Lower 700 MHz Band until 2006.⁶ According to the administration, such a delay would "establish a framework for the FCC to develop regulations that promote clearing" of incumbent TV stations from the band.⁷ While Spectrum Exchange/Allen believes that Auction No. 31 should go forward as scheduled, providing greater certainty with respect to clearing the Lower 700 MHz Band would serve the public interest and result in greater revenues from Auction No. 44. Consistent with the goal of promoting clearing of these bands, the Commission should move ahead with Auction No. 31 in June of this year, but defer conducting Auction No. 44 until at least September 2002.⁸

C. Auction No. 44 Should Be Conducted As A Separate Package Auction

In the Public Notice, the Bureau seeks comment on whether it should (1) group all 758 Lower 700 MHz Band licenses in a simultaneous multiple round auction, or (2) move the 24 EAG licenses to Auction No. 31 using the procedures established for Auction No. 31, including package bidding. Spectrum Exchange/Allen opposes both of these proposals.⁹ Instead, it urges

⁶ *Fiscal Year 2003 Budget of the U.S. Government (Executive Office of the President of the United States)*, February 4, 2002 (downloadable at <http://www.whitehouse.gov/omb/budget/fy2003/pdf/budget.pdf>).

⁷ *Id.* at p. 384.

⁸ If the Commission is determined to proceed with an auction of some Lower 700 MHz Band licenses in June 2002, it should reconsider the band plan for the Lower 700 MHz Band C Block, which includes 710-716 MHz and 740-746 MHz and is thus immediately adjacent to the Upper 700 MHz band, and license this block on an EAG basis, not on the basis of MSAs and RSAs. It could then include these C Block licenses in Auction No. 31 with minimal disruption.

⁹ Spectrum Exchange similarly regards the Bureau's more recent proposal to make corresponding changes in the procedures for Auction No. 31 as highly problematic. See *Auction of License in the 747-762 and 777-792 MHz Bands Scheduled for June 19, 2002; Comment Sought on Adding to Auction Inventory and Further Modifying Package Bidding Procedures*, Public Notice, DA 02-260 (rel. Feb. 4, 2002).

the Bureau to consider a third option — to keep all 758 Lower 700 MHz Band licenses together in Auction No. 44, but to conduct Auction No. 44 under package bidding procedures similar to those employed for Auction No. 31. At minimum, bidders should be permitted to place package bids on Lower 700 MHz Band licenses encompassing the entire nation, and package bids on Lower 700 MHz Band MSA/RSA licenses encompassing each entire EAG.¹⁰

With respect to the Bureau’s first option, Spectrum Exchange/Allen submits that the same considerations that led the Commission to adopt for Auction No. 31 its new package bidding methodology over the familiar simultaneous multiple-round design should govern the auction of Lower 700 MHz Band licenses. As the Commission indicated nearly a year ago: “[w]e believe that package bidding provides many advantages over our current simultaneous multiple round auction design.”¹¹ Specifically, “package bidding allows bidders to take advantage of any synergies that exist among licenses and will lead to the most efficient outcome consistent with our objectives under Section 309(j) of the Communications Act of 1934.”¹² The Commission’s own experiments and tests further confirm that package bidding is a feasible and preferable alternative.¹³

With respect to the second option, Spectrum Exchange/Allen urges the Commission to resist the impulse simply to move the Lower 700 MHz Band EAG licenses into Auction No. 31.

¹⁰ Our suggestions toward enhancing the Auction No. 31 package bidding design are contained in “Comments on the Second Wye River Package Bidding Conference” by Paul Milgrom and Lawrence Ausubel (downloadable at <http://wireless.fcc.gov/auctions/conferences/combin2001/papers/combin2001-comments.pdf>).

¹¹ *Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000; Procedures for Implementing Package Bidding for Auction No. 31*, Public Notice, DA 00-1486 at 8 (rel. July 3, 2000)

¹² *Id.*

¹³ *Id.*

Though such a move may at first blush appear rational, it would in fact be extremely disruptive. Because of the significantly greater level of incumbent broadcast use of the Lower 700 MHz Band, clearing that band could prove to be considerably more difficult than clearing the Upper 700 MHz Band. Including Lower 700 MHz Band licenses in Auction No. 31 would certainly add another layer of complexity for bidders who will be experiencing package bidding for the first time and attempting to gauge the relative value of particular licenses (especially packages of licenses) in the heat of the auction.¹⁴

Furthermore, auction software and tracking tools for the 12 licenses presently included in Auction No. 31 took many months of effort for the Commission to develop, and equally importantly, for the prospective bidders to respond to. Adding additional licenses (and additional packages of licenses) to Auction No. 31 would require prospective bidders to revamp these software tools with only weeks to go before short-form applications are due to be filed. There seems to be no good reason for the Commission to put prospective bidders through such an exercise.

Given the likely differences in the values of Lower and Upper 700 MHz licenses due to incumbency differences, the degree to which these licenses should be regarded as substitutable for one another is slight. There is thus little if any public interest rationale to support auctioning the Lower and Upper 700 MHz licenses at the same time. It makes more sense to auction these licenses in separate and distinct auctions.

¹⁴ The fact that the upper and lower band licenses have different relative costs and benefits is reflected in the different minimum prices established for the two auctions. Specifically, the FCC has set a minimum opening bid of \$24 million per MHz (entire U.S.) for the Upper 700 MHz Band, but only \$6 million per MHz for the Lower 700 MHz Band.

Finally, moving the Lower 700 MHz Band EAG licenses into Auction No. 31 may act counter to the Commission's objective of realizing value for the taxpayer. There is currently a general perception that the Lower 700 MHz Band frequencies have a significantly lower probability of being successfully cleared than the Upper 700 MHz Band, and the greater number of encumbrances and the lack of any clearing regime may justify this perception.¹⁵ By grouping the disparate licenses into a single auction, the pessimism regarding Lower 700 MHz Band may extend to the Upper 700 MHz Band, and depress the returns from Auction No. 31.

¹⁵ See also footnote 14.

D. Conclusion

For the reasons set forth above, Spectrum Exchange Group, LLC and Allen & Company Incorporated respectfully urge the Commission to postpone Auction No. 44 until at least September 2002 and to conduct that auction under the same package bidding methodology being employed for Auction No. 31.

Respectfully submitted,

**SPECTRUM EXCHANGE GROUP, LLC
AND ALLEN & COMPANY INCORPORATED**

By: Laurence Ausubel
Lawrence Ausubel, Co-President, Spectrum Exchange
Peter Cramton, Chairman, Spectrum Exchange
Richard Fields, Managing Director, Allen & Company
Paul Milgrom, Co-President, Spectrum Exchange

2920 Garfield Terrace, NW
Washington, DC 20008
(tel) 301.405.3495
(fax) 202.318.0863

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