



Federal Communications Commission
Washington, D.C. 20554

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Mr. Thomas E. Wheeler
President/CEO
Cellular Telecommunications & Internet Association
1250 Connecticut Avenue, NW
Suite 800
Washington, D.C. 20036

Re: Request for Delay of Auction Nos. 31 and 44

Dear Mr. Wheeler:

I am writing in response to your April 3rd letter to Chairman Powell, which requests that the Commission's auctions of licenses in the Upper and Lower 700 MHz bands (Auction Nos. 31 and 44) be postponed for an indefinite time. The Chairman has referred your letter to the Wireless Telecommunications Bureau ("Bureau") for response, in accordance with the Bureau's delegated authority in this area.¹ In your letter, you note that potential bidders face various uncertainties that make it "virtually impossible" to develop business plans. You also state that it is premature to hold these auctions because the 700 MHz bands may offer potential solutions to homeland security and public safety needs.

The Commission has recognized that there are special circumstances regarding the 700 MHz band that have the potential to create uncertainty for bidders. It has endeavored to reduce the uncertainties within its control, pursuant to the requirements of Section 309(j) of the Communications Act. In particular, the Commission has worked to address the concerns raised in a previous request for delay by the Cellular Telecommunications & Internet Association ("CTIA") – filed in July 2000 – which stated that bidders needed additional time to engage in negotiations with incumbent broadcasters to develop agreements for early, voluntary clearing, and to develop a better understanding of then-new combinatorial bidding mechanisms. The Commission acceded to the request, and granted a postponement that has lasted almost two years.² In that interval, the Commission has sought to alleviate those uncertainties within its

¹ 47 C.F.R. §§ 0.139(c), 0.331 (delegating authority to Bureau for matters related to auction procedures and timing). *See also* 47 C.F.R. § 1.2104(i) (addressing grounds for delay, suspension, or cancellation of an auction).

² *See* "Auction of Licenses in the 747-762 and 777-792 MHz Bands Postponed Until March 6, 2001," *Public Notice*, WT Docket No. 99-168, FCC 00-282 (rel. July 31, 2000); Cellular Telecommunications Industry Association et al.'s Request for Delay of the Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000 (Auction No. 31), *Memorandum Opinion*, 15 FCC Rcd 17406 (2000).

control by affirming and further refining its voluntary clearing policies,³ and helping potential bidders develop a better understanding of combinatorial bidding.⁴ Nonetheless, the current statutory scheme, which directs the Commission to conduct these auctions a number of years in advance of the end of the digital television (“DTV”) transition period, ensures that uncertainties about the availability of certain portions of these bands may continue for some time.⁵ Although Congress is aware of this situation, it has not acted to address it by, for example, moving the auction deadlines back or moving the DTV transition deadline forward. In particular, it has taken no action on the Administration’s current proposal to delay these auctions (nor did it act on a similar proposal made last year with respect to these bands).

While some uncertainty undoubtedly remains, the scheduled auction date is quickly approaching. As your letter recognizes, entities seeking to participate in Auction Nos. 31 and 44 must submit short form applications by May 8, 2002, which is less than one month away. Although the Bureau recently sought comment on auction procedures with respect to the auctions scheduled for June 19, 2002, CTIA failed to make its views known on what it now asserts is a critical need for postponement. However, I note that the Bureau has adopted a reserve price of \$2.6 billion dollars for the Upper 700 MHz band. Accordingly, if a high degree of uncertainty or other factors depress bidding for these licenses to a level below the reserve, the licenses will not be awarded and the auction will be rescheduled.

Finally, contrary to your suggestion, we believe that holding the auctions as scheduled is fully consistent with the Commission’s homeland security and public safety goals. As you are aware, the Commission has allocated 24 megahertz of the Upper 700 MHz band for new public safety uses pursuant to statutory directive, and the process of licensing public safety entities in

³ See 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, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, Third Report and Order, 16 FCC Rcd 2703 (2001); 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, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001). The Commission has also extended the fundamentals of these voluntary clearing policies to the Lower 700 MHz band. See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

⁴ See, e.g., “Auction of Licenses for the 747-762 and 777-792 MHz Bands: Posting of Data from Test Auctions Conducted During Development of Package Bidding Auction System,” *Public Notice*, Report No. AUC-01-31-C (Auction No. 31), DA 01-1792 (rel. July 26, 2001).

⁵ See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 §§ 3003 (adding new Section 309(j)(14) to the Communications Act of 1934, and establishing a deadline for broadcasters to cease 700 MHz operations); § 3004 (adding new Section 337(a) to Communications Act and establishing initial timetable for conducting auctions); § 3007 (uncodified, reproduced at 47 U.S.C. § 309(j) note 3; setting September 30, 2002 deadline for completion of certain auctions and deposit of proceeds). As you point out, Congress subsequently accelerated the initial auction schedule. See Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213.

this band is well under way. This allocation has doubled the amount of public safety spectrum in the U.S. and will provide vital interoperable bandwidth that will enable police, fire and emergency personnel to communicate with one another in times of crisis. In light of the current statutory scheme, the Commission has developed a voluntary clearing policy that is designed to facilitate the early clearing of these bands. Conducting these auctions will introduce new stakeholders into these bands. These new licensees will have an incentive to pursue agreements with incumbent broadcasters for early clearing. Such clearing by new Upper 700 MHz licensees will, in turn, free up public safety spectrum without cost to public safety entities. Thus, absent statutory changes, it appears that holding these auctions will more likely accelerate, rather than delay, the early availability of this spectrum for public safety and other new uses.

Accordingly, for the reasons discussed above, CTIA's Request for Delay of Auction Nos. 31 and 44 is HEREBY DENIED.

Sincerely,

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau