



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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WT Docket 99-168
FCC 00-282
July 31, 2000

AUCTION OF LICENSES FOR THE 747-762 AND 777-792 MHz BANDS POSTPONED UNTIL MARCH 6, 2001

Report No. AUC-00-31-I (Auction No. 31)

By the Commission: Chairman Kennard issuing a separate statement. Commissioners Furchtgott-Roth and Tristani issuing a separate statement.

The upcoming auction of licenses in the 747-762 and 777-792 MHz band, scheduled to begin on September 6, 2000 is postponed until March 6, 2001, in order to provide additional time for bidder preparation and planning. Therefore, the FCC Form 175 application filing window for Auction No. 31 is now closed. Any applications that were in the system will be deemed ineffective and purged from the system. Applicants wishing to participate must file in compliance with the deadlines listed below. The new filing window for FCC Form 175 will open on January 11, 2001. The new schedule is as follows:

Filing Deadline for FCC Form 175	February 2, 2001; 6:00 PM ET
Upfront Payment Deadline	February 16, 2001; 6:00 PM ET
Bidding Preference Form Deadline	February 20, 2001; 6:00 PM ET
Mock Auction	March 1-2, 2001
Auction Start Date	March 6, 2001

The Commission will memorialize its views supporting this decision in a separate opinion.

For further information, contact Howard Davenport, Auctions Legal Branch at (202) 418-0660, or Lisa Stover, Auctions Operations at (717) 338-2804.

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STATEMENT OF CHAIRMAN WILLIAM E. KENNARD

*Re: Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until
March 6, 2001, Public Notice, WT Docket 99-168*

I believe a further postponement of the 700 MHz Auction (Auction No. 31) is necessary as a matter of sound spectrum management and is consistent with a balanced reading of all our statutory obligations. As the expert agency charged with managing the nation's airwaves, it is of paramount importance that the Commission allocate and assign as valuable a resource as the spectrum in the 747-762 MHz and 777-792 MHz band in a manner that comports with the specific statutory requirements of the Communications Act governing spectrum management and spectrum auctions. In complying with conflicting statutes, and resolving those directives as we proceed toward an auction, I believe the Commission's primary goal should be to conduct an auction that is fair, efficient, puts the spectrum to the best use, and thereby best serves the public interest.

With that in mind, the Commission takes this action today in response to a request from a large number of potential bidders asking us to do so. Among the reasons cited for the request is the fact that industry needs more time to develop their business plans and bidding strategies in light on the special characteristics of this band. It is undisputed that factors surrounding this spectrum, including the incumbency of the UHF television broadcasters in this band, make bidder planning for this auction unusually complex. In support of their position, industry representatives cite Section 309(j)(3)(E)(ii) of the Communications Act. Under this section of the Communications Act, the Commission must provide an adequate time after issuance of bidding rules "to ensure that interested parties have a sufficient time to develop business plans, access market conditions, and evaluate the availability of equipment for the relevant services." The consensus of the potential bidders for this auction is that a September 6th auction will not satisfy this obligation. We are aware of no industry party or member of Congress who oppose the industry request or rationale.

Although the Commission takes congressional deadlines very seriously, upon weighing the statutory obligations of the Consolidated Appropriations Act of 2000 against those in our charter statute, the Communications Act, the action taken today is appropriately tailored to balance our responsibilities in a manner that best serves the public interest. At the same time, I believe it is not possible to comply with the Appropriations Act deadline and satisfy our obligations under the Communications Act concerning our spectrum management responsibilities and, in particular, our obligations to conduct fair and efficient auctions. Accordingly, in order to ensure a successful and competitive auction, and to meet all of our statutory responsibilities, I believe postponement of this auction until March of 2001 is the right course for this Commission to take at this time.

**DISSENTING STATEMENT OF COMMISSIONERS
HAROLD FURCHTGOTT-ROTH AND GLORIA TRISTANI**

Re: Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until March 6, 2001, Public Notice (rel. July 31, 2000)

We cannot support today's decision to delay the 700 MHz auction until March 2001. This action is in stark disregard of this agency's statutory obligation to "ensure[] that all proceeds of such bidding are deposited . . . not later than September 30, 2000."¹

No spectrum or fiscal policy consequence, no letters from members of Congress, and no interpretation of the overall statutory scheme can overcome the Commission's clear obligation to proceed with this auction consistent with the statute. Our auction design rules and issues raised in the Commission's further notice² are no basis for abandoning this statutory deadline. Moreover, the assertion that delay is warranted to ensure that the auction derives more revenue does not comport with the statute.³

As Commissioners, we are sworn to uphold the law. Today we are obligated to object to this direct violation of our governing statute.

¹ Pub. Law 106-113, 113 Stat. 1501, Appendix E, Section 213. *See also* 145 Cong. Rec. at H12494-94, H12501 (Nov. 17, 1994), "Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes."

² *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Carriage of the Transmission of Digital Television Broadcast Stations, and Review of the Commission's Policies Affecting the Conversion to Digital Television*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 00-224 (rel. June 30, 2000).

³ *See* 47 U.S.C. § 309(j)(3)(C) (identifying as an objective of competitive bidding "recovery for the public of a *portion* of the value of the public spectrum resource" (emphasis added)).