

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Auction of Licenses in the 747-762 and)
777-792 MHz Bands Scheduled for)
September 6, 2000)
)
Modifying the Simultaneous Multiple)
Round Auction Design to Allow)
Combinatorial (Package) Bidding)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiary, United States Cellular Corporation,¹ (collectively "TDS"), by its attorneys, submits its reply comments in response to the Commission's Public Notice ("Public Notice"), released May 18, 2000 in the above-captioned proceeding.

Introduction

TDS on behalf of its subsidiaries has supported the Commission's efforts to establish competitive, quantifiable, open and fair auction procedures in the numerous proceedings where the terms and conditions of auctions for specific spectrum bands have been approved. In this instance, however, TDS opposes adoption of the Commission's proposals both as it may be implemented in the auction of 700 MHz spectrum on September 6 (Auction #31) and as it might serve

¹ USCC provides cellular systems serving approximately 17% of the land area and approximately 9% of the population of the United States (approximately 24.1 million people).

as a possible model for generic procedures to be implemented in future auctions. For all of the reasons described in the comments of VoiceStream Wireless Corporation ("VoiceStream"), Verizon Wireless ("Verizon") and of Motorola, Inc. ("Motorola") as supplemented here, the Commission should not adopt its package bidding proposals and should commence separate proceedings to afford adequate opportunity for a full and fair public airing of numerous issues surrounding the initial implementation of package bidding.

Discussion

1. The Commission Should Consider Package Bidding in Separate Proceedings Rather Than Attempt to Implement Such Procedures as Proposed in its Public Notice.

From the earliest days of the Commission proceedings to implement Section 309(j) of the Communications Act of 1934, as amended, the possible use of combinatorial or package bidding techniques has been controversial because of the added complexity, administrative risks and the inherent "threshold" or "free rider" problems, among many other considerations. The Commission's attempts to address these problems in its Public Notice confirms that there will be no easy solutions and that compromises to mediate the differences in the circumstances of bidders for individual licenses, small packages and large packages are and will remain highly contentious.

In fairness to potential bidders in Auction #31 and to avoid any adverse precedents for the eventual development of generic package bidding procedures, all interested parties must be afforded an adequate opportunity to evaluate the

complex issues addressed in on the Commission's Public Notices. The fact that so few comments were filed in response to the Commission's Public Notice illustrates a near total absence of the kind of public participation which the Commission obtained in prior proceedings where fundamental changes in auction procedures were proposed. Even some of the largest companies like Verizon and Motorola have indicated in their comments that additional time will be needed to complete review of these proposals and that a timetable to implement these proposals to meet the September 6 start date for Auction #31 is unrealistic.² Also the absence of comment by potential bidders likely to be interested exclusively in small packages or individual licenses also raises serious issues regarding the adequacy of notice and of the abbreviated opportunity for public comment given this complex subject matter.

The approach which would begin to assure fairness to the broad cross-section of potential bidders would be for the Commission to declare the record in these proceedings as too thin to support the adoption of its current package bidding proposals as offered. Separate proceedings could then be commenced without the internally generated time pressures imposed by the possible implementation in connection with Auction #31.

2. Separate Proceedings Are Needed to Address in Additional Detail the Numerous Novel, Complex and Controversial Features of Package Bidding.

As explained in the attached materials prepared by Professor Robert J. Weber, the time pressures to implement some form of package bidding in Auction #31 may have caused the Commission to limit its exploration of the many proposals

² Verizon Comments, p. 4; Motorola Comments, pp. 1-2.

presented at the Wye River Conference in May to a single procedure. This means that alternative procedures were effectively rejected without explanation and without the benefit of public comment. The commencement of separate proceedings as proposed here would provide healthy opportunities for the Commission to explore these alternative procedures.

Professor Weber's materials also identify the numerous compromises, omissions and patches in the Commission's proposals which deserve to be reviewed in detail, alternatives proposed and most importantly, subjected to the practical insights of potential bidders. He concludes as explained in the attachment hereto: "Having acknowledged the existence of new problems that must be dealt with in package bidding, the FCC has put forward a proposal that is both too simple (in the way it barely addresses the "threshold problem") and too complex (in the patches needed to address other inherent flaws), and which favors bidders with certain types of business plans over others." Even if the Commission is unwilling to address alternative procedures as proposed here, it should at a minimum provide opportunity for detailed public consideration of these matters.³

3. The Commission Should Not Adopt the Proposals of Spectrum Exchange or SBC/BellSouth.

TDS strongly disagrees with the conclusory statements in the comments of Spectrum Exchange Group, LLC ("Spectrum Exchange") that the Commission's

³ The Commission should also supplement its proposals to address how the exception provisions for bidding consortium and joint bidding arrangements in Section 1.2105(c)(1) of its rules would not render the restrictions proposed to protect against "strategic bidding" by large package bidders to disadvantage bidders for small packages and individual licenses.

proposals are "...relatively uncontroversial and unobjectionable."⁴ Based on the record of these proceedings, the Commission's proposals clearly do not reflect any industry "consensus" on a design for package bidding procedures.

TDS also objects to the adoption of the proposals presented in the Joint Comments of SBC Wireless, Inc. and BellSouth Cellular Corp. ("SBC/BellSouth"). These proposals which conflict with significant elements of the Commission's proposals constitute a late filed alternative procedure which, if it is to be considered at all, should be addressed in a separate public notice with full opportunity for public comment.

Conclusion

TDS does not intend by its comments to suggest that the Commission's only alternative is to delay Auction #31. The Commission has already stated the procedures announced in its February 18 Public Notice could be used so that this auction can proceed on schedule without prejudicing its consideration of the novel, complex and controversial issues presented by the implementation of package bidding. The Commission should resist the temptation to adopt a package bidding proposal without first testing in public proceedings whether such procedures are in fact competitive, quantifiable, open and fair.

⁴ Spectrum Exchange Comments, p.5.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By


George Y. Wheeler

June 16, 2000

Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 467-5700

Its Attorneys

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ATTACHMENT A

Reply to Comments on FCC Report No. AUC-00-31-G
Prepared By Professor Robert J. Weber
June 15, 2000

I applaud the FCC's decision to explore auction procedures that permit bidders to submit "package" bids for sets of licenses. However, I consider it unfortunate that, under time pressure with regard to Auction No. 31, the FCC has chosen to limit much of its exploration to a single procedure. The procedure that forms the heart of the proposal under consideration emerged from the FCC's (May 2000) Wye River Conference badly wounded, and much of the detail in the current report constitutes an attempt to apply a patchwork of bandages to the wounds.

The comments filed by Verizon Wireless properly point out that the original congressional mandate for spectrum auctions called for the testing of combinatorial bidding systems prior to their implementation. The FCC itself announced earlier this year that using a "complex and untested auction design" for the 700 MHz band auction was inappropriate.

Similarly, VoiceStream notes prior FCC comment that combinatorial bidding "involves numerous complications for both the Commission *and bidders*." (emphasis added) Even if the FCC were proposing an ideal, clearly-defined package bidding method, it would still be unclear whether the current time frame is adequate for bidders to prepare with due diligence their business plans, bidding strategies, and the necessary computational support.

The joint comments of SBC Wireless and BellSouth Cellular (and their Harstad attachment), as well as the comments filed by David Salant, correctly emphasize that the impact of any individual rule proposal in this complex environment depends critically on the manner in which other rule proposals are resolved. SBC/BellSouth counts 23 separate items, of great variety, on which the FCC report calls for comment. In addition, my reading of several filed comments indicates that the FCC's current presentation of the issues is so brief (and, in some places, cryptic) that the commenters are not even certain as to the precise nature of the proposals. In light of all this, for the FCC to move forward with either the current proposal or an alternative package-bidding method, without further elaboration and public comment, would be unadvisable.

For example, several commenters pointedly object to the FCC's selection of a particular limited set of packages on which bids can be submitted. The limitation clearly favors firms with certain specific business plans, while offer no matching support (and indeed, burdensome exposure to the "threshold problem") to those whose plans don't coincide with the FCC's choice. Academic comments support the view that, with only twelve EAG licenses on the block, computational constraints would not prohibit the offering of a broader set of packages. Yet, if the FCC were to adopt a more equitable approach to the choice of packages to be offered for bid, much of the current report – which repeatedly focuses on the specific discussion of global, national, and regional packages – would need to be rewritten. This is but one example of the interdependence of the resolution of myriad still-open issues.

The FCC report implicitly (and correctly) notes that the current proposal, while weakening the "exposure problem" for bidders interested in the particular packages to be offered for bid, leaves

other bidders still facing the possibility of ending the auction with an inefficient, uneconomic allocation of licenses, or of becoming “stuck” with retained, non-winning bids which limit their strategic opportunities. The discussions of “or-bids” and bid withdrawal provide interdependent, somewhat conflicting approaches to these problems. Again, the decision as to whether to adopt either, neither, or both of these patches, and in what forms, will substantially vary the impact of other rule proposals contained in the report.

Admittedly, the FCC is caught in a bind. The 700 MHz band auction is an appropriate setting in which to consider the use of a package-bidding procedure. However, there has not been enough time for the full and proper evaluation of the numerous methods that have been proposed for conducting such an auction. Having acknowledged the existence of new problems that must be dealt with in package bidding, the FCC has put forward a proposal that is both too simple (in the way it barely addresses the “threshold problem”) and too complex (in the patches needed to address other inherent flaws), and which favors bidders with certain types of business plans over others.

What can be done? If the FCC could delay the 700 MHz band auction until band-clearing issues are fully resolved, there might be time to go back to the drawing board and build a better procedure from the ground up. There might even be time to find an appropriate test forum of smaller scale on which to refine a new proposal (much as the nationwide and regional narrowband PCS auctions served to test and refine procedures then used for the A&B block broadband PCS auction). To rush forward in the period of a few months with a new, complex (and widely criticized) procedure, and then first use it in what is likely to be the largest auction the FCC has held in three-and-a-half years, seems patently unwise.

If the auction cannot be delayed, the FCC would then be best advised to stick with the familiar simultaneous multiround auction procedure, while continuing to develop better procedures for package bidding to be tried in future auctions.

In the longer term, I urge the FCC to widen its perspective and, with more time at hand, to explore thoroughly alternative procedures that may provide a sounder foundation for future spectrum auctions involving package bidding. Among those alternatives, I recommend continued and further investigation of procedures involving “tentative” bids (such as Levin’s contingent bids, Ledyard’s stand-by queue, or Vohra and Weber’s offers), continuous-time bid submission (discussed, for example, by Ledyard, Plott, and Vohra-Weber), and tightened bid-increase requirements (discussed in various forms by Rothkopf-Pekec, DeMartini-Kwasnica-Ledyard-Porter, and Vohra-Weber).

Respectfully submitted by

Robert J. Weber
Frederick Nemmers Distinguished Professor of Decision Sciences
J.L. Kellogg Graduate School of Management
Northwestern University
Evanston, Illinois

CERTIFICATE OF SERVICE

I, Judy Norris, a secretary at Koteen & Naftalin hereby certify that on this 16th day of June, 2000, a true and correct copy of the foregoing "Reply Comments of Telephone and Data Systems, Inc." was served by U.S. Mail to the following:

Lawrence Ausubel, Co-President
Peter Cramton, Chairman
Paul Milgrom, Co-President
Spectrum Exchange Group, LLC
2920 Garfield Terrace, NW
Washington, DC 20008

Richard C. Barth
Vice President and Director
Telecommunications Strategy
and Regulations
Motorola, Inc.
1350 I Street, NW
Washington, DC 20005

Mary E. Brooner
Director, Telecom Strategy
and Regulations
Motorola, Inc.
1350 I Street, NW
Washington, DC 20005

John T. Scott, III
Vice President and Deputy General
Counsel - Regulatory Law
1001 Pennsylvania Avenue, NW
10th Floor
Washington, DC 20004

Leonard J. Kennedy
Christina H. Burrow
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave. NW
Suite 800
Washington, DC 20036

Louis Gurman
Christa M. Parker
Morrison & Foerster LLP
2000 Pennsylvania Avenue
Suite 5500
Washington, DC 20006

Carol Tacker
SBC Wireless, Inc.
17330 Preston Road
Suite 100-A
Dallas, TX 75252

Charles Featherstun
BellSouth Cellular Corp.
1100 Peachtree Street, NE
Suite 910
Atlanta, GA 30309-4599

Aleksandar Pekec
The Fuqua School of Business
Duke University
Durham, NC 27708-0120

Michael H. Rothkopf
Rutcor
Rutgers University
640 Bartholomew Road
Piscataway, NJ 08854-8003

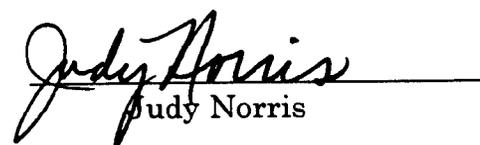
Professor Frank Kelly
University of Cambridge
Statistical Laboratory
Wilberforce Road
Cambridge CB3 0WB, England

Dr. Richard Steinberg
University of Cambridge
The Judge Institute
Trumpington Street
Cambridge CB2 1AG, England

Professor Charles Plott
Division of Humanities and Social Services
Mail Stop 228-77
The California Institute of Technology
Pasadena, CA 91125

Dr. Tim Salmon
Division of Humanities and Social Services
Mail Stop 228-77
The California Institute of Technology
Pasadena, CA 91125

Dr. David J. Salant
National Economic Research Associates, Inc.
444 Market Street
Suite 910
San Francisco, CA 94111


Judy Norris