

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59))	GN Docket No. 01-74
)	
Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002)	DA 02-200 Report No. AUC 02-44-A (Auction No. 44)
)	

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation (“Paxson”) submits these comments in response to the Wireless Telecommunications Bureau’s Public Notice requesting comment on the procedures for the lower 700 MHz auction commencing on June 19, 2002.¹ The most important consideration in structuring the rules and procedures for this auction is for the FCC ***not to delay the upper 700 MHz auction***.² Further delay would frustrate over two years of Commission and broadcaster efforts to clear the upper 700 MHz band, seriously jeopardizing the long-recognized public interest in introducing critically needed public safety and new wireless services. The Bureau must conduct these two auctions separately and refrain from coupling any of the lower and upper 700

¹ The auction of the lower 700 MHz band (698-746 MHz) is alternatively referred to as “Auction No. 44.”

² The auction of the upper 700 MHz band (747-762 and 777-792 MHz) is alternatively referred to as “Auction No. 31.”

MHz licenses so that any delay in Auction No. 44 does not require or result in a delay of Auction No. 31.

I. DO NOT DELAY THE UPPER 700 MHZ AUCTION.

If the Commission hopes to clear the upper 700 MHz band, Auction No. 31 must be held as scheduled on June 19, 2002. There can be no further delay. Paxson is extremely concerned that the proposal to couple some of the licenses in the upper and lower 700 MHz auctions could result in delaying both.³ Because further delay of Auction No. 31 is flatly inconsistent with the public interest and Commission policy on the early clearing of the upper 700 MHz band, the Bureau should not link these auctions in any regard and clearly reiterate its intention to hold Auction No. 31 on June 19, 2002 regardless of any delays that may result in the lower 700 MHz auction.

The Commission has struggled to identify viable spectrum for reallocation to public safety and advanced wireless services, but, other than in the upper 700 MHz band, available spectrum is virtually impossible to find.⁴ Accordingly, Congress directed the Commission to reallocate the band, due in no small part to “a longstanding need by public safety officials for more channels of radio communication.”⁵ In turn, the

³ See Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002: Comments Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, *Public Notice*, DA 02-200, Report No. AUC-02-44-A (Auction No. 44) (rel. Jan. 24, 2002) (“*Public Notice*”).

⁴ See, e.g., Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, *Notice of Proposed Rule Making and Order*, ET Docket 00-258, 16 FCC Rcd 596 (2001).

⁵ Remarks of Sen. John McCain, introducing bill to reallocate spectrum to public safety and advanced wireless services. 143 Cong. Rec. S945 (Feb. 4, 1997). See 47 U.S.C. § 337(a).

Commission has promoted voluntary band clearing agreements by incumbent broadcasters in the upper 700 MHz band as a means of removing spectrum encumbrances and introducing new public safety and commercial wireless services more quickly than otherwise possible.

Indeed, following the events of September 11th, the Commission has emphasized the importance of band clearing – especially to public safety services. Chairman Powell stated that broadcaster clearing agreements would “free spectrum for uses the public deems important – such as public safety, which has become critical in the wake of threats to our nation’s homeland.”⁶ The Association of Public-Safety Communications Officials has stressed that television stations are “blocking public safety access” to the 700 MHz band and told the Commission that “the sooner television stations vacate channels 60-69, the sooner public safety agencies will have the opportunity to utilize the spectrum allocated for public safety.”⁷

The Commission’s band clearing policies were not simply adopted overnight but are the result of a multi-year, thoroughly considered rule making process.⁸ As early as

⁶ Commission Chairman Michael Powell, *Public Safety Spectrum*, WASH. POST, Oct. 23, 2001, at A22.

⁷ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Third Report and Order*, 16 FCC Rcd 2703 (2001) (“*Upper 700 MHz Third Report and Order*”).

⁸ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Order on Reconsideration of the Third Report and Order*, WT Docket No. 99-168, FCC 01-258 (rel. Sept. 17, 2001) (“*Upper 700 MHz Reconsideration Order*”); *Upper 700 MHz Third Report and Order*, 16 FCC Rcd 2709; Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845 (2000) (“*Upper 700 MHz MO&O*”); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *First Report and Order*, 15 FCC Rcd 476 (2000) (“*Upper 700 MHz First Report and Order*”); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Notice of Proposed Rulemaking*, 14 FCC Rcd

1996, the Commission contemplated the early recovery of Channels 60-69 for reallocation to other services and announced plans to further that effort.⁹ The Commission said it would “minimize the number of DTV channels” in the upper 700 MHz band to expedite recovery,¹⁰ and consider “requiring the new licensees to compensate broadcasters.”¹¹ In June 1999, the Commission proposed to allow upper 700 MHz entrants to reach voluntary clearing agreements with incumbent broadcasters.¹² A year later, the Commission affirmed that approach, concluding that **“the several statutory purposes involved here are best furthered by enabling voluntary agreements that result in the expeditious and efficient recovery of [the upper 700 MHz band] for the legislatively specified commercial and public safety purposes.”**¹³ Accordingly, the Commission created a regulatory framework to help clear the band, and numerous broadcasters have responded by working hard to reach band-clearing agreements. The Commission expressed its “hope that before the end of

11006 (1999); Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953 (1998) (“*Reallocation Report and Order*”); Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Notice of Proposed Rule Making*, 12 FCC Rcd 14141 (1997) (“*Reallocation NPRM*”).

⁹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 10979-80 (1996).

¹⁰ *Id.*

¹¹ *Id.* at 10980.

¹² Service Rules for the 746-764 and 776-794 MHz Band, and Revisions to Part 27 of the Commission’s Rules, *Notice of Proposed Rulemaking*, 14 FCC Rcd 11006, 11056 (1999).

¹³ *Upper 700 MHz MO&O*, 15 FCC Rcd at 20868 (2000) (emphasis added); see also *Upper 700 MHz Reconsideration Order*, ¶ 11 (citing *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 534; *Upper 700 MHz MO&O*, 15 FCC Rcd at 20860-72; *Upper 700 MHz Third Report and Order*, 16 FCC Rcd at 2703).

2006 additional parts of the band will be cleared as the result of voluntary agreements between broadcasters and licensees.”¹⁴

All of these band-clearing efforts will go for naught if the upper 700 MHz auction is postponed again for any reason. The FCC has delayed the upper 700 MHz auction five times. The auction now is set for June 19, 2002, nearly two years after the September 30, 2000 statutory deadline for the auction proceeds to be deposited in the U.S. Treasury.¹⁵ Although previous Commissions have ignored this statutory directive – which still stands as federal law – another postponement would not somehow cure this noncompliance but only worsen it. There is no justification for this Commission to continue to disregard the statutory deadline, and it would be particularly unfair given that the agency continues to hold FCC licensees to deadlines of lesser consequence (*e.g.*, the May 1, 2002 DTV construction deadline). Paxson alerted the Commission, as long ago as August 2000, that the FCC was fast approaching the point beyond which band clearing would not be practical, and has frequently urged the agency not to continue postponing the auction if it wanted Channels 59-69 cleared.¹⁶ The five auction postponements have exhausted the Commission’s margin of error.

Keeping Auction No. 31 on track is integral to the band-clearing efforts undertaken by Paxson and the Spectrum Clearing Alliance. As Paxson has frequently reminded the Commission, however, repeated and indefinite delay of Auction 31

¹⁴ *Upper 700 MHz MO&O*, 15 FCC Rcd at 20862-63.

¹⁵ 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 (rel. October 15, 2001).

¹⁶ Paxson Comments in response to the *Upper 700 MHz MO&O* (filed Aug. 20, 2000). Paxson did support a single brief delay of the auction late last year to accommodate global band clearing efforts. See Notification of *Ex Parte* Communication in WT Docket No. 99-168 (filed May 1, 2001).

undermines broadcasters band-clearing efforts.¹⁷ The Spectrum Clearing Alliance has worked aggressively to clear the upper 700 MHz band, offering the Commission the only realistic means for doing so. The Spectrum Clearing Alliance has a growing list of members who represent a significant number of incumbents in the upper 700 MHz band, demonstrating that band clearing through voluntary agreements can occur if allowed to proceed.

Prospective bidders have little need for delay. They have known for at least two years that the Commission supported the use of voluntary agreements to clear the upper 700 MHz band,¹⁸ and the Spectrum Clearing Alliance long ago expressed its willingness to negotiate.¹⁹ The Commission does not need a delay. The important public interest benefits which give the Commission authority to sanction early band clearing would be threatened by an another postponement.

A sixth auction postponement would wipe out the momentum necessary to ensure a significant level of band-clearing. Wireless service providers say that “a nationwide ‘footprint’ is considered necessary for large scale broadband services,”²⁰ so their need to obtain a large or nationwide service area means that “unless a clear path is found to clearing a **substantial** number of broadcast stations from the 700 MHz band,

¹⁷ See Opposition of the Spectrum Clearing Alliance to MSTV Petition for Reconsideration of the Commission’s *Order on Reconsideration of the Third Report and Order* in WT Docket No. 99-168, CS Docket No 98-120, MM Docket No. 00-39, FCC 01-258 (rel. Sept. 17, 2001), filed December 17, 2001; *Ex Parte* Presentation of Lowell W. Paxson in WT Docket No. 99-168, filed July 12, 2001.

¹⁸ Upper 700 MHz First Report and Order, 15 FCC Rcd 533-34.

¹⁹ See Spectrum Clearing Alliance Petition for Reconsideration of the *Upper 700 MHz Third Report and Order* (filed Mar. 16, 2001).

²⁰ Comments of US West, Inc., WT Docket No. 99-168, at 2 (July 19, 1999).

this spectrum could remain unusable for a long time.”²¹ Membership in the Spectrum Clearing Alliance has reached the critical mass necessary to conduct **substantial** band clearing, but organizing the 80 owners of the 144 incumbent stations in the upper 700 MHz band is no easy task. If there is another auction delay, no one – not even the FCC – will be able to put the Alliance back together again.

It is crucial that the Bureau not delay the upper 700 MHz auction. The substantial public interest benefits of early band clearing, including the introduction new public safety services, will not be realized. Spectrum would “remain unusable for a long time” – to the detriment of the public interest.

II. THE BUREAU MUST RETAIN THE FUNCTIONAL SEPARATION OF THE TWO AUCTIONS.

The most important step the Bureau can take to ensure that the upper 700 MHz auction is not delayed is to refrain from linking the two auctions as suggested in the *Public Notice*. The Bureau should not group the 24 licenses in Auction No. 44 that are based on 700 MHz EAGs with the 12 licenses in Auction No. 31.²² The Bureau cannot afford to risk that some *bona fide* delay of the lower 700 MHz auction will arise that would prevent auctioning the upper 700 MHz licenses.

The Commission offers no explanation or justification for why, at this stage, it would offer such a risky proposal to link the two auctions. The Commission elsewhere has acknowledged that the circumstances surrounding the upper 700 MHz auction are far more developed than those for the lower 700 MHz auction. To put it bluntly, there is

²¹ Comments of Verizon Wireless, WT Docket No. 99-168, at 3 (Aug. 16, 2000) (emphasis added).

²² See *Public Notice* at 2-3.

no chance of clearing the lower 700 MHz band in the near future (*i.e.*, not for many, many years). The Commission already has found that “in light of certain differences between the Upper and Lower 700 MHz Bands,” it would treat the respective band clearing efforts differently.²³ The Commission specifically noted that (1) “there is no public safety allocation in the Lower 700 MHz Band,” and (2) “there is a significantly greater degree of broadcast incumbency” in the lower 700 MHz band.²⁴ Having explicitly determined to treat the upper and lower 700 MHz bands differently, it strikes Paxson as peculiar that the Bureau now would attempt to merge them in any fashion.

Indeed, this “greater degree of broadcast incumbency” in the lower 700 MHz band makes it quite possible that Auction No. 44 ultimately will be delayed. Detractors of such a view need only consider the history of Auction No. 31. Despite the existence of a statutory deadline, the upper 700 MHz auction has been postponed five times, and the Commission’s most articulate explanation for the multiple delays was that prospective bidders needed the additional time because the encumbered spectrum made planning “unusually complex.”²⁵ With the issuance of the Bureau’s first Public Notice on Auction No. 44 falling only on January 24, 2002, it is not difficult to predict that prospective bidders will want additional planning time – despite the presence, as before, of a statutory deadline.

Merging portions of the upper and lower 700 MHz auctions offers no articulated benefits, but doing so would potentially eliminate the last real opportunity to clear

²³ Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, FCC 01-364, GN Docket No. 01-74, ¶ 184 (rel. January 18, 2002).

²⁴ *Id.*, ¶ 184.

Channels 59-69 for the introduction of new public safety and commercial wireless services. The Commission must not lose this last opportunity. Paxson urges the Bureau to stay the course and not engage in such risk taking. Linking the auctions in any way would only result in delaying both.

In addition, the Bureau should make it clear that Auctions No. 31 and 44 are functionally separate, requiring, for example, separate upfront payments, separate round-by-round bidding activity qualification, and separate sets of activity rule waivers.²⁶ Moreover, the Bureau should make clear that the application of the WTB's delay, suspension, or cancellation rules will need to be exercised separately for Auctions No. 31 and 44, and that application of those rules to Auction No. 44 will have no necessary effect on the continuation of Auction No. 31.²⁷

CONCLUSION

The Bureau must not act to delay the upper 700 MHz auction. Paxson cannot stress enough the importance of maintaining the June 19, 2002 date for Auction No. 31 if the Commission wishes to accomplish early clearing of the upper 700 MHz band. In setting the rules for Auction No. 44, the Commission should make it abundantly clear that it is functionally separate from Auction No. 31. To that end, the Bureau should refrain from merging the lower 700 MHz EAG-based licenses from Auction No. 44 with Auction No. 31. Early band-clearing of the upper 700 MHz band is within reach, but

²⁵ Auction of Licenses in the 747-762 and 777-792 MHz Band Postponed Until March 6, 2001, *Public Notice*, FCC 00-282, at 3 (rel. July 31, 2000).

²⁶ See *Public Notice* at 3-4.

²⁷ See *Public Notice* at 5.

additional delay cannot be tolerated. The Commission should not allow Auction No. 44 to deter it from this goal.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

By: /s/ William L. Watson

Name: William L. Watson

Title: Vice President and Assistant Secretary

Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

Dated: February 6, 2001