

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

In the Matter of
Reallocation and Service Rules
For the 698-746 MHz Spectrum GN Docket No. 01-74
Band (Television Channels 52-59

Auction of Licenses in the) DA 02-200
698-746 MHz Band Scheduled) Report No. AUC 02-44-A
For June 19, 2002 (Auction No. 44)

Reply comments are due on or before February 13, 2002.

To: Chief, Wireless Telecommunications Bureau

Replay Comments of McBride Spectrum Partners, LLC

McBride Spectrum Partners, respectfully submit our Reply Comments in the above-captioned proceeding.

McBride Spectrum Partners concur with the comments of **Paxson Communications** that, “The FCC *not to delay the upper 700 MHz auction*. 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.”

McBride Spectrum Partners, also harmonizes with the comments of **The Rural Telecommunications Group (“RTG”)**,¹ “The use of smaller geographic license areas, especially RSAs, will enable rural telephone companies and small businesses to have a meaningful chance of acquiring spectrum – a statutory obligation the Commission recognized in its *Lower 700 MHz*

¹ The Rural Telecommunications Group is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Services (“PCS”), and Multichannel Multipoint Distribution Service (“MMDS”) to their subscribers. Many of RTG’s members also hold Local Multipoint Distribution Service (“LMDS”) licenses and have started to use LMDS to introduce advanced telecommunications services and competition in the local exchange markets in rural areas. Other RTG members seek to acquire spectrum or to be able to utilize the spectrum of others. RTG’s members are all affiliated with rural telephone companies or are small businesses.

Report and Order when it explained “MSAs and RSAs represent areas over which many customers may desire to receive the majority of their wireless or broadcast-type services and thus can be the focus of smaller carriers that do not wish to bid on or provide service to larger regions.” Consistent with this recognition, the Commission should avoid grouping larger carriers interested in the EAG licenses in the 700 MHz bands with the smaller carriers who are more likely to be interested in serving small and rural areas. Such a grouping may discourage many smaller carriers from participating in Auction No. 44, perhaps leaving many licenses, especially RSAs, unclaimed.”

We also agree 100% with the comments of **Scott D. Retier & Vincent D. McBride** “The FCC should revisit their definition of very small businesses and their affiliation rules. We feel Auction No.44 should be a chance to involve American small businesses in a truly meaningful way, and rectify the mistakes of auctions past, where the true small businesses have received nothing more than empty promises.”²”

McBride Spectrum Partners, see eye to eye with the comments of **Telcom Consulting Associates (TCA)**, “*The minimum opening bid in Auction No. 44 should equal that of the upfront payment.* As the Commission notes in the Public Notice³, the use of minimum opening bids, an established practice in spectrum auctions, is an effective tool that accelerates the bidding process. Observing the legislative mandate that Auction No. 44 be completed by September 30, 2002, there is a clear “need for speed” in this particular Auction. TCA would caution the Commission, however, not to allow the timeliness of the Au overshadow the clear opportunity that has been granted to small businesses and rural providers.”

“Within the Public Notice, the Commission sets the minimum opening bid at a level double the upfront payment. As successful bids may not be a lesser amount than the minimum opening bid, the Commission is essentially setting a reserve price for the spectrum. TCA submits that the current proposed minimum opening bid has significant potential to discourage smaller entities from auction participation. Licenses, especially those covering remote rural areas may go unsold and once more, Americans living in

² 5 See Report No.DC-2621 June 29, 1994 Commission Adopts Competitive Bidding Procedures For Broadband PCS (PP Docket Action No. 93-253) Chairman Reed E. Hundt said, “In the long and tragic history of inequality between races and gender in America, today we are creating the greatest single opportunity ever made fairly available to small businesses, women and minorities. For the first time in our nation’s history, the federal government is creating opportunities in a new industry in which all **Americans** will have a fair chance to compete from day one”. “Entrepreneurs’ C Block” is established, which is designed to fulfill the statutory mandate to ensure that small businesses, rural telephone companies and businesses owned by minorities and /or women (referred to as “designated entities”) have the opportunity to participate in providing broadband PCS. Chairman William E. Kennard “This Plan employs all the tools suggested by Congress to create meaningful business opportunities”.

³ Id. 10 Public Notice, p. 6, fn. 15.

these areas will not be served by advanced wireless services.”

McBride Spectrum Partners is on the same airwaves as that of **United States Cellular Corporation** and the regional and rural carriers. “We applaud the Commission for adopting MSA/RSA service area licensing for at least a portion of this 48 MHz of spectrum “First, we support a consolidation of the licenses, large and small service areas, for all of the newly reallocated 700 MHz spectrum into a single auction. This will help avoid the effects of the head-start advantage which national or super regional carriers might otherwise obtain if all EAG licenses are auctioned possibly as much as two years before MSA/RSA licenses in this band are auctioned. We oppose the separation of the auction for the 734 MSA/RSA Lower 700 MHz band licenses in Auction No. 44 as fundamentally unfair and inconsistent with the Commission's commendable efforts to create licensing opportunities for rural telephone companies and small businesses.”

“Finally, we strongly support use of simultaneous multiple-round auction methodologies for all MSA/RSA licenses without combinatorial bidding features as currently proposed in the above-referenced public notice.”

McBride Spectrum Partners are on the same frequencies with the collective comments of **The Rural 700 MHz. Group,**

“ The Minimum Opening Bid Price Is Excessive.”

It is the Group’s opinion that the minimum opening bid arrived at by the Commission is too high considering the circumstances surrounding the Lower 700 MHz Band spectrum. The spectrum is currently occupied by television incumbent licensees who are not required to relocate until December 31, 2006, at the earliest. A small business may not have the ability to invest a large sum of money without the ability to realize a profit on that investment for the amount of time it will take for the incumbents to vacate these channels. It is possible, given the state of the economy and the uncertainty surrounding the ultimate transition to digital television (DTV), that licenses could remain unsold at the conclusion of the 700 MHz auctions, if the minimum opening bid is set too high. This could delay service to rural and underserved areas and would not be in the public interest. The Rural 700 MHz Group suggests that the minimum opening bid should not exceed the upfront payment required for each license.

Conclusion

Indeed, one benefit of the Commission's auction program is that it tends to put licenses in the hands of those who value them most highly. Revenue generation is a fortunate by-product of auctioning valued spectrum, and it remains to be seen what price these licenses may bring upon auction 44 to designate entities. But as the Commission realizes, increasing federal revenue is not Congress's goal⁴. Rather, the Telecommunications Act seeks to bring competition, innovation, and diversity to the nation's communications marketplace. Issues of auction revenue generation are irrelevant to this objective.

Maximizing short-term revenue for the federal treasury should not be the prime goal of the Commission's. Providing licenses to "deep pocket" bidders who can pay the most should not be elevated above the public policy goal of assuring opportunity for small business to compete and laying the groundwork for competition in a developing service. Congress never intended that revenue be the prime goal of spectrum auctions. Congress directed the Commission to provide Competitive opportunities for women, minorities, and small business

Providing a level playing field for small businesses is in the public interest, pursuant to the Commission's statutory mandate under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 4 and the Small Business Regulatory Enforcement Fairness Act of 1996.

For all the collective reasons set forth above in our comments, we respectfully urge the Commission to give our comments genuine consideration.

Respectfully submitted,

VINCENT D. McBRIDE
McBride Spectrum Partners, LLC
Wednesday, February 13, 2002

⁴ Congress also requires the Commission to "promot [e] economic opportunity and competition and ensur [e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women." Implementation of Section 309(J) of the Communications Act – Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253 (1994), paragraph 11.