

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**PROCEDURES TO GOVERN THE
AUCTION OF LICENSES FOR THE 698-
746 MHz BAND (LOWER 700 MHz
BAND) SCHEDULED FOR JUNE 19, 2002**

Auction No. 44

To: The Commission

COMMENTS

These comments are submitted by the Washington, D.C. law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, on behalf of its clients as listed in Attachment A. The commenters are hereinafter referred to collectively as the "Rural 700 MHz Group" or the "Group." The comments are in response to the Federal Communications Commission's Public Notice, DA 02-200, Report No. AUC-02-44-A, issued January 24, 2002, in connection with the procedures that are to govern the conduct of the auction of licenses for the Lower 700 MHz Band (698-746 MHz, or television channels 52-59), scheduled for June 19, 2002 (Auction No. 44).

I. INTERESTS OF THE RURAL 700 MHz GROUP

The constituents of the Rural 700 MHz Group are made up of rural telephone companies and their affiliated entities, and all are potential bidders in the upcoming auction. These companies accordingly have an interest in the procedures under which the auction will be conducted, including whether the Economic Area Group (EAG) licenses are included with

Auction No. 44, or instead included with the licenses to be sold in the Upper 700 MHz Band Auction (Auction No. 31).

The Rural 700 MHz Group commends the Commission for providing an opportunity for small and rural companies to obtain licenses in this auction by offering one of the 12 megahertz licenses in each of the 734 Metropolitan Statistical Area (MSA) and Rural Service Areas (RSA). By doing so, the Commission has taken an important step toward fulfilling its mandate under Section 309(j) of the Communications Act 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 businesses, rural telephone companies, and businesses owned by members of minority groups and women.

47 U.S.C. § 309(j)(B).

II. AUCTION STRUCTURE

A. Removal of the EAG Licenses to be Included in Auction No. 31

The Rural 700 MHz Group supports the Commission's suggestion that it may combine the 24 EAG-sized licenses in the Lower 700 MHz Band with the Upper 700 MHz Band licenses, to be sold in a single auction. It is appropriate that all of the EAG licenses be auctioned together, as it would be administratively simpler for bidders interested in the EAG licenses to participate in a single auction, rather than two simultaneous ones.

In addition, an auction bifurcated in this manner would permit the Commission to adopt auction rules and procedures more appropriate for bidders wishing to purchase only MSA or RSA licenses, while utilizing the rules and procedures that work best for large operators interested in EAG licenses in a separate auction. Finally, it is possible that separating the two types of licenses as proposed by the Commission might attract new small business entrants to the

auction process that might otherwise shy away from participating if they felt that the auction was going to be dominated by large carriers.

B. Minimum Opening Bid and Upfront Payment

The Rural 700 MHz Group supports the Commission's decision to use a minimum opening bid rather than a reserve price pursuant to Congress's directive.¹ However, the Group feels that the minimum opening bid price is excessive. The Commission does not explain how it determined the formula for calculating minimum opening bids. However, it is apparent that it is exactly double the amount required for the upfront payment.

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.

¹ See, 47 U.S.C. § 309(j) (as amended by the Balanced Budget Act, Section 3002(a)). See also, 47 C.F.R. § 1.2104(c) and (d).

Regardless of whether the Commission reduces the minimum opening bid to equal the amount of the upfront payments, it should recognize the difference between a “rural pop” and a “metropolitan pop.” The Commission has proposed to use the same rate for both MSAs and RSAs, when it is indisputable that a rural pop should be priced well below an urban pop. Because of drastically lower population densities and less embedded infrastructure (such as antenna towers), it is much more costly to build out a rural telecommunications system than an urban or suburban system. Therefore, the Commission should establish the upfront payment and minimum opening bid for RSA licenses by applying a rate equal to one-half of the rate used to determine MSA payments.

C. Minimum Acceptable Bids and Bid Increments

The Commission proposes to use a “smoothing methodology” to calculate the minimum acceptable bid for each license for the following round. The smoothing methodology calculates the minimum bid increment based on a weighted average of the activity received on that license. The Commission has set the minimum percentage increment at ten percent and the maximum percentage increment at 20 percent. Because the minimum bid is based on the activity in previous rounds, it is difficult to plan long-term auction bidding strategy.

The Rural 700 MHz Group suggests that the Commission use a simple percentage increase to determine the bid increment for the Lower 700 MHz Band auction, as it did in Auction No. 40. Use of a straight percentage would permit bidders to formulate their long-term auction participation strategy prior to the start of the auction and adjust it upon occasion when necessary, rather than between each round as results become available. The Group suggests the Commission adopt a straightforward 15 percent increment, which is midway between the ten

percent minimum and twenty percent maximum amount the Commission proposes to use to limit the bid increment arrived at through the use of its smoothing methodology.

D. Stopping Rule

The Commission proposes to use a simultaneous stopping rule to end Auction No. 44, but also proposes to retain the discretion to utilize any one of three alternative stopping rules:

- Modified simultaneous stopping rule – the auction would close after one round in which no bidder has submitted a proactive waiver, a withdrawal or a new bid on any license on which it is not the standing high bidder;
- The second alternative proposed was that the auction would remain open even if no new acceptable bids or proactive waivers are submitted and would not end until each bidder's rule waivers and excess eligibility are exhausted; and
- Special stopping rule – would permit the Commission to end the auction after a specified number of additional rounds.

The Rural 700 MHz Group suggests that the Commission utilize only the first and third alternatives in addition to the simultaneous stopping rule. Prior auctions have shown that, by the time an auction dwindles to one or two bids per round, the majority of the participants have completed their bidding strategies and are ready for the auction to come to a conclusion. Permitting the auction to remain open past the point where a round has passed with no new bids, no withdrawals and no proactive waivers would not be in the public interest. Such a stopping rule would serve only to prolong the auction for the possible benefit of only a few entities, while the remaining auction participants and Commission staff would be forced to continue monitoring the progress, or lack thereof. This is especially burdensome for small bidders, who suffer if key

management personnel are unnecessarily tied up monitoring up to ten rounds per day just to make sure that there are no latecomer bids. Keeping an auction open to potentially serve the purposes of a few dilatory bidders is not in the public interest. Therefore, the Rural 700 MHz Group suggests that the second alternative not be used in Auction No. 44.

E. Provisions for Designated Entities

The Rural 700 MHz Group supports the Commission's decision to adopt definitions of "small business," "very small business" and "entrepreneur" for purposes of awarding bidding credits to discount the prices paid at auction.² These designated entity provisions have been used by the Commission in prior auctions to comply with its obligations mandated by Congress under Section 309(j) of the Communications Act of 1934, as amended (the Act), and have proven successful at:

Promoting economic opportunity and competition and ensuring 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 businesses, rural telephone companies, and businesses owned by members of minority groups and women.

47 U.S.C. § 309(j)(B).

III. Conclusion

The Rural 700 MHz Group in large part supports the auction design and procedures proposed for Auction No. 44. Of particular concern, the Group requests the following actions:

² Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, ¶ 178 (Released: January 18, 2002).

- The Commission should include the Lower 700 MHz Band EAG licenses in Auction No. 31, and auction only the smaller MSA/RSA sized-licenses in Auction No. 44, so that small/rural bidders have a fair chance to win a license. The Commission has suggested auctioning the EAGs in Auction No. 31, leaving the MSA/RSA licenses to be auctioned separately in Auction No. 44.³ The Group feels that this segregated auction scheme would be in the best interests of small business.
- The Commission should decrease the price of the minimum opening bid to equal that of the upfront payment. Currently, the Commission is suggesting an amount double the upfront payment (rounded to the nearest hundred or thousand) as the price of the opening bid. This amount should be decreased to equal the upfront payment for MSA/RSA licenses. The Commission should also calculate the upfront payment and minimum opening bid for RSAs at one-half the rate used to calculate these payments for MSAs.
- The FCC should use a percentage increase to determine the bid increment, rather than its “smoothing formula” based on activity level per license. A simple percentage increase will allow smaller operators to plan their bidding strategies more easily and effectively.
- The FCC should not keep the auction open past the first round in which no bids, proactive waivers or withdrawals have been submitted. Keeping the auction open beyond that point would not serve the interests of the Commission and that vast majority of auction participants.

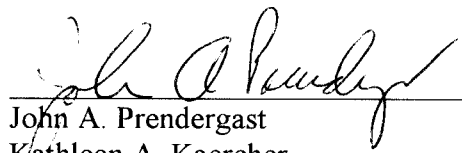
³ “Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002,” *Public Notice*, p. 2, DA 02-200, Report No. AUC-02-44-A, issued January 24, 2002.

- The Group supports the Commission's adoption of small, very small and entrepreneur bidding credits. Adoption of such measures for designated entities assists in providing small and minority owned enterprises a realistic opportunity to participate in the auction process.

Respectfully Submitted,

Rural 700 MHz Group

By



John A. Prendergast
Kathleen A. Kaercher
Its Attorneys

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830

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Attachment A

Cameron Communications Corporation (Sulphur, Louisiana)

Golden West Telecommunications Cooperative, Inc. (Wall, South Dakota)

Interstate Telecommunications Cooperative, Inc. (Clear Lake, South Dakota)

Kennebec Telephone Co., Inc. (Kennebec, South Dakota)

Midstate Communications, Inc. (Kimball, South Dakota)

South Dakota Network, LLC d/b/a SDN Communications (Sioux Falls, South Dakota)

Southern Illinois RSA Partnership d/b/a First Cellular of Southern Illinois (Mt. Vernon, Illinois)

Splitrock Telecom Cooperative, Inc. (Garretson, South Dakota)

Sully Buttes Telephone Cooperative, Inc. (Highmore, South Dakota)

United Telephone Association, Inc. (Dodge City, Kansas)

US Unwired, Inc. (Lake Charles, Louisiana)

SERVICE LIST

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-B204
Washington, DC 20554

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Margaret Weiner, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A760
Washington, DC 20554

Kathryn Garland
Via facsimile at 717/338-2850