

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

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

Reply Comments of TCA

Telcom Consulting Associates (TCA), in response to the Public Notice¹ in the above-captioned proceeding hereby submits these comments in reply regarding auction procedural issues for the auction of licenses for Fixed, Mobile and Broadcasting services in the 698-746 (“Lower 700 MHz”) band (“Auction No. 44”), scheduled to begin June 19, 2002.

TCA is a management consulting firm providing financial and regulatory services for over fifty small, rural local exchange carriers (LECs) throughout the United States. Many of TCA’s clients have expressed interest in participating in Auction No. 44.

The initial comments demonstrate clear support for exclusivity of Auction No. 44 to the 734 MSA/RSA licenses in the Lower 700 MHz band.

Within the Public Notice, the Commission proposed including only the 734 MSA/RSA Lower 700 MHz band licenses within Auction No. 44. TCA, along with other

¹ Public Notice, *Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues*, DA 02-200, Rel. January 24, 2002 (“Public Notice”).

commentators², supports this proposal. As the Rural 700 MHz Group noted in its initial comments, “an auction bifurcated in this manner would permit the Commission to adopt auction rules and procedures³” appropriate to the size of the license. Not only would this action begin to “balance the playing field,” a goal listed by the Report and Order issued in this docket,⁴ it would advantage larger bidders.

The initial comments opposing the bifurcation of Auction No. 44⁵ should be given little credence. US Cellular comments state that all of the licenses for the Lower 700 MHz band should be auctioned together, in order to “avoid the effects of a head-start advantage”⁶ possibly gained by larger carriers if “EAG licenses are auctioned possibly as much as two years before MSA/RSA licenses...”⁷ If Auction No. 31 and Auction No. 44 are conducted simultaneously, as the Commission proposed in the Public Notice, then, larger carriers would not have a head-start.⁸ US Cellular continues that separation of the MSA/RSA licenses would be unfair and inconsistent with the statutory mandate to create opportunity for rural carriers. While US Cellular lists no justification for this statement, the initial comments supporting bifurcation promote this action in order to reach the statutory mandate. The Commission should continue its “commendable

² See *Comments of the Rural Telecommunications Group*, filed Feb. 6, 2002, p.2; See also, *Comments* filed by the Rural 700 MHz Group, filed Feb. 6, 2002, p. 2 (“Rural 700 MHz Group comments”).

³ Rural 700 MHz Group comments, p. 2.

⁴ Report and Order, *In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, FCC 01-364, GN Docket No. 01- 74, Rel. January 18, 2002, p. 40 (Report and Order).

⁵ See *Comments of United States Cellular Corporation*, filed Feb. 6, 2002, p. 2 (“US Cellular Comments”); See also, *Comments of Spectrum Exchange Group, LLC and Allen & Company Incorporated*, filed Feb. 6, 2002, p. 5 (“Spectrum Exchange/Allen comments”).

⁶ US Cellular comments, p. 2.

⁷ *Id.*

⁸ US Cellular notes later in its comments (see p. 2) its support for a postponement of both Auction No. 31 and Auction No. 44. TCA would note that even in this scenario, no head-start advantage would exist, as both auctions would be postponed.

efforts”⁹ and separate the MSA/RSA licenses from the much larger EAG licenses. This action could only increase economic opportunity for small and rural carriers.

The Spectrum Exchange/Allen comments also oppose the bifurcation of Auction No. 44.

While also opposing the Commission’s first proposal (grouping all Lower 700 MHz Band licenses in a simultaneous multiple round auction), Spectrum Exchange/Allen

states that moving the EAG-sized licenses into Auction No. 31 would be “extremely disruptive.”¹⁰ Spectrum Exchange/Allen lists many reasons for this disruption:

incumbent broadcast use, increasing complexity for Auction No. 31 bidders, software difficulties, and difference in values of Lower and Upper 700 MHz licenses.¹¹ Finally,

Spectrum Exchange/Allen states that “pessimism regarding Lower 700 MHz Band may extend to the Upper MHz Band, and depress the returns from Auction No. 31.”¹² TCA

notes however, previously in its comments, Spectrum Exchange/Allen encouraged the Commission to include EAG-sized licenses from the Lower 700 MHz Band within

Auction No. 31. By reconsidering its band plan and removing the MSA/RSA licenses basis, the Commission “could then include these C Block licenses in Auction No. 31

with minimal disruption.”¹³ TCA contends, therefore, that it is not the proposed auction

procedures that Spectrum Exchange/Allen opposes, but the design of the band plan,

specifically the inclusion of the MSA/RSA-sized licenses. An auction design that would

separate the licenses based on size, such as proposed by the Commission, should

mitigate, if not eliminate, the stated disruptions.

⁹ *Id.*

¹⁰ Spectrum Exchange/Allen comments, p. 7.

¹¹ *Id.*

¹² Spectrum Exchange/Allen comments, p. 8.

The Commission should further its intent as listed in the Report and Order “that small and rural providers will have an opportunity to participate in the auction...”¹⁴ by restricting Auction No. 44 to the 734 MSA/RSA Lower 700 MHz band licenses.

Auction No. 44 should not be postponed, but go forward as planned.

Both US Cellular and Spectrum Exchange/Allen encourage the Commission to postpone Auction No. 44.¹⁵ Citing the President’s recent submission of the proposed budget for fiscal year 2003¹⁶, Spectrum Exchange/Allen states that greater certainty regarding the clearing of incumbent broadcasters from the Lower 700 MHz Band “would serve the public interest and result in greater revenues from Auction No. 44.”¹⁷

TCA would submit that, by postponing Auction No. 44, which has a statutorily-set deadline of September 30, 2002, would harm the public interest. The public, through its elected representatives, expressed its interest when the deadline was set. The Commission cannot now, months before the deadline, ignore that interest and postpone Auction No. 44, based on a supposition that Congress will change its mind. TCA would note that there has been at least one other legislative effort to delay the auctioning of the 700 MHz Band, one that failed. With all that must be accomplished, according to law,

¹³ Spectrum Exchange/Allen comments, p. 5, FN 8 (emphasis added).

¹⁴ Report and Order, p. 40

¹⁵ US Cellular comments, p. 2; Spectrum Exchange/Allen comments, p. 4.

¹⁶ Fiscal Year 2003 Budget, as submitted to Congress February 4, 2002, would shift the statutory deadlines for auctioning the Upper 700 MHz Band until 2004, and the Lower 700 MHz Band until 2006. See Fiscal Year 2003 Budget of the U.S. Government (Executive Office of the President of the United States), February 4, 2002, <http://www.whitehouse.gov/omb/budget/fy2003>.

¹⁷ Spectrum Exchange/Allen comments, p. 5.

before an auction may take place, to now postpone, based only on a remote probability, would certainly be against the interest of the American public.

TCA would also note that taxpayer value cannot simply be measured in monetary terms. While the Commission is charged by Congress to promote the public interest of maximizing spectrum value, the Commission also has a duty to ensure that all Americans have access to telecommunications services. The Commission has made clear in the instant proceeding and countless others that it includes access to wireless services within the public interest. Congress recognized the value to the public interest of an advanced and nationwide wireless network when it mandated that the Commission, when establishing policies concerning competitive bidding for licenses, “prescribe area designations and bandwidth assignments that promote ... economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”¹⁸ Certainly, Congress realized that spreading licenses to a wide variety of entities (large and small businesses, urban and rural carriers, etc.) would probably decrease the total amount of revenues gained by the auctions. Yet, it still charged the Commission with achieving this goal, maximizing the overall spectrum value to the taxpayer, regardless of where the taxpayer lives.

¹⁸ 47 U.S.C. §309(j)(3)(B).

TCA commends the Commission for its efforts within this proceeding to provide advanced wireless services to all Americans and urges it not to set back progress by postponing Auction No. 44. Further, the Commission should proceed with its plan to license a portion of the Lower 700 MHz band on a MSA/RSA basis.

Respectfully submitted,
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