

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 99-146
DA 00-43
Report No. AUC-99-31-A
(Auction No. 31)

_____)
<i>In the Matter of</i>)
)
AUCTION OF LICENSES IN THE 747-762 AND)
777-792 MHz BANDS SCHEDULED FOR)
MAY 10, 2000)
)
Reserve Prices or Minimum Opening Bids)
And Other Auction Procedural Issues)
_____)

REPLY COMMENTS OF CISCO SYSTEMS, INC.

Cisco Systems, Inc. ("Cisco") submits these reply comments in support of the comments submitted by PSINet Inc. ("PSINet") to the Public Notice on auction procedures for the 747-762 and 777-792 MHz ("700 MHz") frequency bands. Like PSINet, Cisco strongly believes that the Wireless Telecommunications Bureau (the "Bureau") should adopt rules to increase the flexibility of bidders in the upcoming auction who seek to aggregate 30 MHz of spectrum in one or more regions.

As repeatedly stated in its *ex parte* filings in the proceeding to allocate the 700 MHz frequencies, Cisco believes that this band is perfectly suited for the provision of high-speed, low-cost Internet access services by terrestrial fixed systems – and thus provide a badly needed competitive alternative to cable modem and digital subscriber line ("DSL") technologies. However, Cisco has concluded that a licensee would likely need access to all 30 MHz of the bandwidth available in each region in order to provide such services in a truly competitive and economically viable manner. The Bureau should not

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adopt auction rules that would effectively preclude the use of this spectrum for such broadband fixed services.

In its *Allocation Order*, the Commission established a band plan in which two licenses (one for 10 MHz and one for 20 MHz) would be available in each of six regions.¹ It recognized “that there may be entities whose business plans are such that they may not wish to acquire any licenses if they are unable to aggregate the 10 MHz and 20 MHz blocks to create a nationwide 30 MHz license,” and accordingly directed the Bureau to adopt a modified bid withdrawal procedure to limit the financial exposure of such bidders.² The Commission also expressed its opinion that its standard auction rules would be adequate to facilitate the aggregation of all 10 MHz or all 20 MHz licenses nationally.³ However, there is one scenario that the Commission did not address – a bidder seeking to aggregate all 30 MHz in a single region (or fewer than all six regions). Like a bidder with a national 30 MHz strategy, a regional 30 MHz bidder, if unsuccessful, “might be left with a subset of licenses for which its bids exceeded the value it places on that subset absent the complete aggregation.”⁴ If left uncorrected, this situation could be a significant disincentive to those bidders who have concluded (like has concluded) that wireless broadband Internet service requires 30 MHz aggregations -- but do not wish to assemble a nationwide footprint.

It is this situation that PSINet sought to address with its proposed bidding rules, which are consistent with and a logical extension of the rules contemplated for nationwide 30 MHz

¹ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revision to Part 27 of the Commission’s Rules*, FCC 00-5, at ¶ 30 (Jan. 7, 2000)(“*Allocation Order*”).

² *Id.* at ¶ 126.

³ *Id.*

⁴ *Id.*

bidders. As currently drafted, the bidding procedures proposed in the Public Notice would limit withdrawal penalties for those bidders who announced before the beginning of the auction that they wish to attempt a 30 MHz nationwide aggregation. This proposal would not extend to those seeking a 30 MHz aggregation in fewer than all six regions. In fact, a nationwide bidder would be forced to withdraw from the auction entirely if it withdrew from bidding on any single license. Since a bidder has to announce its nationwide strategy pre-auction, the proposed rules would effectively force a bidder to forego any regional 30 MHz strategy if it has aspirations for a national 30 MHz strategy. This would unnecessarily limit the flexibility of bidders and could thereby discourage participation and distort auction results.⁵

PSINet has suggested that the Bureau adopt a rule that would apply limited withdrawal penalties to broadband wireless Internet service providers bidding on regional 30 MHz aggregations. Specifically, it has proposed a system in which (1) auction participants would state in their short form applications that they intend to bid on the 30 MHz aggregation in a given region, and (2) any such participant that is the high bidder for one license and elects not to participate in the bidding in any round for the other license required for aggregation, then the high bid may be withdrawn in that round without penalty and the bidder would not be eligible to continue bidding for either license in that region. There is no need to impose a penalty in this situation because there is no incentive or ability for abuse of the auction process by such participants. In the absence of combinatorial bidding, this approach offers the alternative that

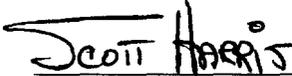
⁵ Applicants who seek 30 MHz regional aggregations are already at a disadvantage because they must win separate licenses to amass the spectrum necessary to offer their broadband services. This problem could have been overcome through the use of combinatorial bidding, but the Commission determined that its systems are not yet capable of conducting such an auction. *Id.* at ¶ 124.

gives auction participants the most flexibility in aggregating the spectrum they deem necessary to offer their services.

Cisco supports the rule proposed by PSINet as a necessary accommodation of those bidders who wish to aggregate 30 MHz on a regional (rather than national) basis in order to provide the kinds of high-speed, low-cost Internet access services that will only be available by terrestrial fixed systems with sufficient spectrum. The proposed bidding rule is a logical extension of the Commission's *Allocation Order* and would promote a more efficient auction outcome by making the process more attractive to a larger range of potential bidders. Cisco strongly urges the Commission to limit withdrawal penalties for regional 30 MHz bidders by adopting the bidding rule proposed by PSINet.

Respectfully submitted,

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