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Donald C. Brittingham
Director - Wireless Policy
Federal Relations
202-336-7873

Verizon Wireless
1300 I Street NW
Suite 400 West
Washington, DC 20005

June 28, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 – 12th Street, SW
Room: TW-A325
Washington, DC 20554

Re: C and F Block PCS Reauction
WT Docket No. 97-82

Dear Ms. Salas:

On June 27, 2000, Bill Wallace of Crowell and Moring and the undersigned met with Brian Tramont of Commissioner Furchtgott-Roth's office to discuss the Commission's planned reauction of C and F block PCS licenses. We discussed the importance of an "open bidding" process for all reauctioned PCS licenses including the 30 MHz C blocks and the 10 MHz F blocks. If the Commission is to adopt any set-aside for "entrepreneurs", it should be limited to 10 MHz in all markets. The "tiered" approach recommended by the Commission is based on incorrect assumptions and should not be adopted. The Commission should also ensure that only legitimate "entrepreneurs" qualify for such a set-aside, if one is adopted. Thus, the "grandfather" rule should be eliminated. We also stressed the importance of providing relief from the CMRS Spectrum Cap prior to, and not following, the reauction. A more detailed summary of issues discussed at that meeting is attached.

Please include a copy of this ex parte presentation in the record for the above captioned proceeding. If you have any questions, you may call me on (202) 336-7873.

Don Brittingham

cc: B. Tramont

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C AND F BLOCK REAUCTION
WT Docket No. 97-82

Verizon Wireless Ex Parte of June 27, 2000

Open Bidding for All Licenses

- The objectives established by Congress in Section 309(j) of the Communications Act can best be met through "open bidding", not spectrum set-asides.
    - Rapid deployment of new technologies and service to the public;
    - Promoting economic opportunity and competition;
    - Recovery for the public of a portion of the value of the spectrum;
    - Avoidance of unjust enrichment; and
    - Efficient and intensive use of the spectrum.

- Importantly, no auctions other than the C and F block auctions have been conducted on a closed basis. In the 23 other auctions held by the Commission, opportunities for small businesses have been provided through bidding credits without set-asides.

- Restrictions on access to spectrum are not consistent with the important goals that the U.S. achieved at the recent World Radiocommunication Conference (WRC-2000) regarding the development of Third Generation (3G) wireless services.
    - The 700 MHz band was overwhelmingly rejected as a 3G band.
    - The PCS band is the only spectrum identified for 3G that is available for near-term deployment.

The Tiered Proposal Should Not Be Adopted

The tiered proposal is based on incorrect assumptions, is overly complicated, and is unjustified by the proposed set-aside and the realities of the market for CMRS.

- The need for additional spectrum extends beyond the top handful of markets above 2.5M POPs.
- The proposal incorrectly assumes that total population is the most appropriate factor to consider in determining which markets to set-aside for DEs.
  - Population density is a more appropriate factor, since highly populated areas require more spectrum to meet service demand.
  - There are a number of markets under 2.5M POPs that have higher densities than markets above 2.5M POPs.
  - Markets with densities above 1,000 POPs/sq.mi. are generally those requiring additional spectrum in the near-term.
- Markets that surround high-density areas should also be unrestricted since they are generally considered by subscribers to be within the same service area.
- The establishment of a nationwide market for CMRS argues against a tiered approach.

Elimination of the Spectrum Cap

The Spectrum Cap impedes the ability of carriers to deploy 3G services, and is no longer in the public interest.

- Verizon Wireless and others have presented substantial evidence as to the need for additional spectrum beyond 45 MHz, and have urged the Commission to repeal the Spectrum Cap or, at a minimum, forbear from applying it to the C and F block reauction.
- The Commission has indicated that it will review the Spectrum Cap again as part of its Year 2000 Biennial Review, however, the year is half over and the review has not yet begun.
- Failure to eliminate, or significantly modify, the Spectrum Cap prior to the C and F block reauction will deny incumbents access to spectrum that is important to the development of 3G services.
- Relief after the auction occurs will serve only to unjustly enrich those who are able to acquire the licenses at potentially steep discounts and sell them at a later date in the secondary market.

Elimination of the "Grandfather" Rule

The "Grandfather" rule has the potential to confer an unjustified windfall on non-DEs, and thus, should be eliminated.

- The rule was adopted as part of the C-block amnesty program, and intended to apply only to licensees who participated in installment payment restructuring.
- Extending DE status to all original C block participants may result in classifying as DEs companies that have grown financially, or have been acquired by, or merged with, large corporations.
- Importantly, the Commission's rules (Section 24.709(a)(3)) require C block licensees to maintain their DE status for five years.
- The Commission should not allow C block bidders that withdrew from the original auction because the prices were too high to bid in the reauction as DEs if they do not currently meet the DE definition. Such action would be unfair to those legitimate DEs that have maintained their DE status.
- Whether or not the prices paid at auction were too high can always be questioned, as it changes in accordance with the fluctuations of the marketplace. Today, those prices would be considered quite reasonable. In any event, many of the bidders that withdrew from the original auction because of the high prices are the same bidders that drove the prices up in the first place. The final prices bid were arrived at through competitive bidding.
- Companies bidding as DEs should in fact be DEs. Otherwise, legitimate small businesses are disadvantaged.