

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Service Rules for the 746-764 and) WT Docket No. 99-168
776-794 MHz Bands, and Revisions to)
Part 27 of the Commission's Rules)

To: The Commission

REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its reply comments on issues that the Federal Communications Commission ("FCC" or "Commission") raises in the *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.¹

There is no question that both Congress and the FCC have made the clear public policy choice to allocate the 746-764 MHz and 776-794 MHz bands for use by services other than broadcasting service.² What remains is for the Commission to implement this policy choice in a manner that will meet both the Congressional mandate and the Commission's frequently stated

¹ See *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-168, *et al.*, FCC 00-224 (rel. June 30, 2000) ("*Further Notice*"), paras. 80-105.

² See Section 337(a) of the Communications Act, 47 U.S.C. § 337(a), as amended by § 3004 of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997); *see also In re Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1997). *See also* Comments of Paxson Communications Corporation to *Further Notice* ("*Paxson Comments*") at 21.

public policy goal of maximizing the use of radio spectrum. It is well within the power of the Commission to adopt in a timely manner rules that will facilitate clearing this spectrum for the use Congress intended. It not only can, but clearly should do so, and do so now. Congress merely placed limits on the Commission's ability to simply terminate Channel 60-69 analog broadcast service. There is nothing in the law, however, that prevents the Commission from doing everything short of those limits to ensure new users' access to these spectrum bands.

I. The Commission Should Adopt Band Clearing Rules Prior to the Start of the C and F Block Auction

In its comments to this proceeding, Verizon Wireless stressed that the Commission must provide as much certainty as possible and as soon as possible.³ Planning for the Commission's first combinatorial auction is a complex undertaking, requiring considerable resources. If in addition there is remaining uncertainty over the cost and timing of clearing the 700 MHz spectrum, a rational approach to bidding becomes even more difficult. The likely result is that the auction will not yield an efficient outcome. An inefficient outcome is not, as some have suggested,⁴ solely a matter of less revenue to the government, worse, it undercuts the fundamental purpose of competitive bidding – to get licenses into the hands of those who value them most highly. Continued uncertainty about the cost and timing of clearing the 700 MHz band would turn this auction into a guessing game. The bidder that can best “guess” the most likely outcome of the Commission's deliberative process would be best able to anticipate the value of the

³ See Comments of Verizon Wireless to *Further Notice* at 2-3 (“*Verizon Wireless Comments*”).

⁴ See *e.g.*, Comments of Association of Maximum Service Television, Inc. (“*MSTV Comments*”) at 9-10; *see also* Comments of Sonshine Family Television at 1; Comments of

spectrum. In past auctions, the Commission has sought to remove from the auction process those uncertainties over which it has control. The end result has been that, for most auctions to date, the greatest unknowns are not related to the licenses, but to the so-called “private values” that pertain to bidders’ business plans and costs of doing business.

Verizon Wireless believes that the Commission has before it a sufficient record in this proceeding to reach a decision regarding clearing the 700 MHz spectrum, and that it should do so expeditiously. We urge the Commission to adopt and issue its final decision as soon as possible,⁵ and in any event prior to financial deadlines for the upcoming C and F block auction. These two auctions are inextricably bound because bidders’ participation in the C and F block auction will be significantly affected by expectations of the eventual cost to acquire and clear the 700 MHz band. Therefore, we request that the Commission adopt and release its band clearing proposals before November 27, 2000, the deadline for upfront payments in the C and F block auction.

II. The Newest Spectrum Exchange Proposal for a Secondary Auctions Has Promising Elements, But Raises Additional Questions

Spectrum Exchange has placed on the table a new band clearing proposal that would tie the band clearing auction to the license auction and thus would link the price paid for clearing the spectrum to its value to new licensees.⁶ Verizon Wireless objects in principle to band clearing

Marantha Broadcasting Company, Inc. at 1; Comments of Entravision Holdings, L.L.C. at 1.

⁵ Other commenters to this proceeding have urged the Commission to adopt rules regarding band clearing as soon as possible, *see, e.g. Paxson Comments* at 16 and Comments of USA Broadcasting, Inc. (“*USAB Comments*”) at 11.

⁶ *See gen. Comments of Spectrum Exchange Group L.L.C. to Further Notice (“Spectrum Exchange Comments”)*.

schemes that are based on the value of the spectrum rather than the cost of moving the incumbent.⁷ Despite this objection, Verizon Wireless finds certain elements of the latest Spectrum Exchange proposal to be appealing. Because the two auctions would be tied, a bidder would know the total cost of unencumbered spectrum at the instant it places its bid, which eliminates much of the uncertainty surrounding this auction. Verizon Wireless questions, however, how such a proposal would work in practice, particularly given the complexities of a combinatorial auction.

More important, however, is the difficulty of determining the value of what Spectrum Exchange calls the linkage ratio, or “R.” This value, or the percentage of the winning bid that would be paid to the broadcaster, would no doubt be the subject of intense negotiations and would require broadcasters to reach mutual agreement as to an appropriate percentage. It also assumes that the same “R” would be acceptable to all bidders.

III. The Commission Must Adopt Rules to Prevent “Lone Holdouts”

As is the case with each band clearing proposal, negotiation of Spectrum Exchange’s linkage ratio could also be held hostage by a “lone holdout.” There is nothing new in this proposal that would appear to compel broadcasters to participate and prevent such an outcome. In order for this or any other proposal to work, the Commission would still have to adopt rules that would reduce the opportunity for a single broadcaster to gain a windfall by refusing to participate in a coordinated band clearing process.

As Verizon Wireless states in its comments, it believes that the Commission is well within

⁷ See *Verizon Wireless Comments* at 7-8.

its statutory authority to take certain actions to reduce, if not eliminate, the opportunity for a single or small group of broadcasters to game the process in this manner.⁸ It is possible for the Commission to make a public interest finding in the 700 MHz context to support a rule under which an analog television broadcast station can be ordered to change to another analog channel of operation.⁹ Contrary to Paxson's Comments, the suggested "lone holdout" rule would not conflict with the statutory scheme for the transition to digital television because the relocating station would not be forced to "terminate licensed broadcasting service for the sake of facilitating early band clearing."¹⁰ To the contrary, the relocating station would not be required to cease analog transmissions at all prior to the end of the statutory transition period. For this reason, such a rule would not be "contrary to Congressional directive" as USA Broadcasting states in its comments.¹¹ Nor should the Commission, whose rules are often challenged, see the threat of litigation as an impediment to the right policy choice.¹²

⁸ *Verizon Wireless Comments at 4-5*. Verizon Wireless does not intend to suggest by these comments that any broadcaster would be forced to move to truly technically unsuitable spectrum. *See MSTV Comments at 10-15*.

⁹ *Verizon Wireless Comments at 4-5*. Furthermore, Verizon Wireless believes that the Commission is unlikely to ever need to invoke such a rule. Our expectation is that the existence of such a rule will promote the voluntary participation of broadcasters in a band clearing plan.

¹⁰ *Paxson Comments at 23*.

¹¹ *USAB Comments at 9*.

¹² "[M]andating participation in any part of the band clearing process. . . is inconsistent with other Commission policies, contrary to Congressional directive, and would undoubtedly lead to protracted litigation and thus frustrate the Commission's goal of expedited band clearance." *Id.*

III. Without Certainty of Mandatory Negotiations, the Commission Must Cap Costs

As discussed above and in our initial comments, all clearing mechanisms proposed could prove less than successful because few incentives exist for the parties to reach agreement. Setting a date certain by which a broadcaster must move, even if only to another analog channel, is one way to provide such an incentive. Another way to provide an incentive for the broadcaster to reach an agreement is to cap the costs associated with moving from the band. The Commission has found elsewhere that a cap on costs improves the ability of auction participants to assess the value of licenses, protects cost-sharers from contributing to exorbitant relocation expenses, and reduces disputes over the appropriate amount of relocation costs.¹³ The same rationale can be applied to this proceeding.¹⁴ There is nothing in either Section 309(j)(14) or Section 337 of the Act that restricts the Commission from applying such caps.¹⁵ The Commission must provide at least some boundaries on this process. If it chooses not to require “lone holdouts” to move their analog stations, it should, at a minimum, cap costs and thus prevent these stations from holding the new licensees hostage.

IV. Conclusion

Verizon Wireless urges the Commission to act aggressively to the extent of its legal power

¹³ *Amendment of the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, 11 FCC Rcd 8825, 8889 (1996).

¹⁴ *Verizon Wireless Comments* at 7-8.

¹⁵ *See* 47 U.S.C. §§309(j)(14), 337. The only commenter other than Verizon Wireless that addressed the issue of capping costs was NAB, which does not believe that the Commission should “interfere in the functioning of the market by artificially capping the amount that new 700 MHz licensees may freely choose to offer incumbent broadcasters.” *Comments of National*

to create a regulatory environment that will allow voluntary market-oriented clearing mechanisms to succeed. The Commission is well within its authority to bring greater certainty to this process.

It is especially important that the Commission resolve the remaining issues in this proceeding quickly, so that prospective bidders have adequate time to adjust to these new rules and to incorporate them into their business plans and bidding strategies for the March 2001 auction.

Respectfully submitted,

VERIZON WIRELESS

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Certificate of Service

I hereby certify that on this 15th day of September, 2000, copies of the foregoing "Comments of Verizon Wireless" in WT Docket No. 99-168 were sent by first-class mail to the following parties:

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