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April 4, 2002

The Honorable Michael K. Powell
Federal Communications Commission
The Portals
445 12th St SW
8th Floor
Washington DC 20554

**Re: Auctions of 700 MHz Spectrum
WT Docket No. 99-168, GN Docket No. 01-74**

Ex Parte Communication

Dear Chairman Powell:

This letter is written in response to an *ex parte* letter by the Cellular Telecommunications & Internet Association ("CTIA"), dated April 3, 2002.¹ Spectrum Exchange Group, LLC ("Spectrum Exchange") respectfully opposes CTIA's request to delay Auction No. 31.

As you are aware, Spectrum Exchange, www.spectrum-exchange.com, was established with the mission to create value for the public by promoting efficient exchange of spectrum. Spectrum Exchange was formed by principals of Market Design, Inc., www.market-design.com, which since 1995 has designed and conducted high-stakes auctions in the telecommunications, energy and e-commerce industries, in the U.S. and internationally. Spectrum Exchange has been working closely with Allen & Company Incorporated and the Spectrum Clearing Alliance in an attempt to create a private market mechanism for the clearing of the Upper 700 MHz spectrum currently used by television broadcast stations.

In the second paragraph of its letter, CTIA describes its own request as "seemingly incongruent from an industry that has characterized itself as 'spectrum starved'." Spectrum Exchange agrees. This incongruence arises from the countervailing interests of CTIA's dominant members. The major commercial wireless operators, like the incumbents in most industries, at times have an incentive to restrict new capacity to limit competition. At other times, they do better with restrictions lifted to expand their own capacity. In making spectrum decisions, the Commission should ignore the first voice and listen to the second.

¹ *Letter Requesting Delay of Auctions 31 and 44 ("CTIA Letter")* from Thomas E. Wheeler, President/CEO of CTIA, to the Hon. Michael K. Powell, Chairman of the Federal Communications Commission, posted on the Internet at <http://www.wow-com.com/news/press/> on April 3, 2002.

Despite CTIA's characterization of the Upper 700 MHz Band as "ideally suited for next generation mobile and high-speed broadband services,"² CTIA's involvement in the two proceedings, WT Docket No. 99-168 and GN Docket No. 01-74, has been minimal. CTIA's main comment to date has been an earlier *ex parte* letter, filed July 20, 2000, requesting the postponement of Auction No. 31 until June 2001.³

Similar to the recent CTIA Letter, the July 2000 CTIA Letter also asserted that Section 309(j) of the Communications Act required a postponement, for the following reasons:

- CTIA noted that the Commission had issued its package bidding procedures for the 700 MHz auction less than 3 weeks earlier. Bidders required time to develop software and auction analysis tools, to test their internal systems, and to participate in a mock auction.⁴
- CTIA noted that the Commission had issued a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking affecting band-clearing procedures less than 3 weeks earlier. "Thus, the Commission's deliberations on the significant issues raised in the Further Rulemaking in this proceeding must be concluded prior to the auction."⁵

Subsequent filings by the cellular industry demanded further delays, adding a third reason to the list: the ongoing saga of Auction No. 35. The 700 MHz auction needed to be postponed, first to allow time for Auction No. 35 to conclude, and second to allow time so that the uncertainties concerning the Auction No. 35 licenses could be resolved.

Spectrum Exchange takes note that there have been no fundamental changes to the Auction No. 31 package bidding procedures since July 2000, and that an industry test of the package bidding software was conducted in January 2001. Public notices containing the final auction procedures for both Auctions No. 31 and 44 were issued three months in advance of the scheduled June 19, 2002 auction date.⁶

Spectrum Exchange further takes note that most uncertainties regarding the band-clearing regime for the Upper 700 MHz Band were resolved by the *Third Report and Order*, FCC 01-25, issued more than a year ago, and the *Order on Reconsideration of the Third Report and Order*, FCC 01-258, issued more than half a year ago. There are currently no open proceedings on WT Docket 99-168 or on the rules for Auction No. 31.

There do remain some major uncertainties concerning Auction No. 44. The comment period for the petitions for reconsideration and clarification of the *Report and Order*, FCC 01-364, on the Lower 700 MHz Band only recently closed. More importantly, the Commission

² *Letter Requesting Delay of Auction Scheduled for September 6, 2000* ("July 2000 CTIA Letter") from Brian Fontes, Senior Vice President of CTIA and others, to the Hon. William E. Kennard, Chairman of the Federal Communications Commission, filed July 20, 2000, p. 1.

³ *July 2000 CTIA Letter*, p. 5.

⁴ *July 2000 CTIA Letter*, p. 2.

⁵ *July 2000 CTIA Letter*, p. 3.

⁶ *Public Notice DA 02-659*, Mar. 19, 2002 and *Public Notice DA 02-563*, Mar. 20, 2002.

has thus far declined to extend the voluntary band-clearing regime from the Upper 700 MHz Band to the Lower 700 MHz Band, or to utilize the package bidding procedures for Auction No. 44. Public policy might be served by waiting to hold Auction No. 44 until after Auction No. 31 has concluded, and if the voluntary band-clearing regime and package bidding procedures are judged to be successful, to extend these to the Lower 700 MHz Band.

The current CTIA Letter raises several additional issues that are irrelevant if not misleading. The CTIA Letter observes that the Administration “has proposed legislation regarding the 700 MHz auctions that would shift the statutory deadline for the Upper 700 MHz, channels 60–69, from 2000 to 2004, and shift the statutory deadline for the auction of Lower 700 MHz, channels 52–59 from 2002 to 2006.” However, Spectrum Exchange notes that very similar legislation was proposed in last year’s budget cycle,⁷ yet the Commission nevertheless chose last year to set the June 19, 2002 auction date, well ahead of the proposed statutory deadline.

The CTIA Letter also waves the flag that “The Administration is also searching for solutions to Homeland Security spectrum needs for national security and public safety. The 700 MHz band could offer some potential solutions – but not if the spectrum has been auctioned prematurely.” Spectrum Exchange notes, to the contrary, that the Spectrum Clearing Alliance plan for clearing the Upper 700 MHz Band includes the clearing of 24 MHz of public safety spectrum together with 30 MHz of commercial spectrum. Compensation to incumbents for accomplishing the clearing would come at the expense of the commercial licensees—a fair outcome given that Channels 59-68 need to be cleared for both public safety and commercial purposes. The Spectrum Clearing Alliance plan would make 24 MHz of spectrum available to public safety many years earlier than the plan that CTIA advocates.

Finally, the CTIA Letter observes that “Additionally, if the 700 MHz auctions are held in June as scheduled, they will be completed before the FCC’s advanced wireless services rulemaking is finished, and before the auction for spectrum for advanced wireless services is completed.” Again, this is a fact that was well understood when the Commission set the June 19, 2002 auction date,⁸ and is no reason for further postponement. Moreover, in every spectrum auction, the value of the spectrum being auctioned always depends on the supply to be auctioned in future auctions. If Section 309(j) of the Communications Act required auctions to be postponed whenever there was any uncertainty about future spectrum supplies, then it would never be permissible for spectrum auctions to be held.

⁷ “Bush Budget Would Push Back Auctions, Implement Lease Fees,” *Washington Telecom Newswire*, April 9, 2001.

⁸ See “Bush Administration Unveils New 3G Plan, Removing Threat to DoD,” *Communications Daily*, Oct. 9, 2001.

To conclude, there is no good reason for the Commission to further delay Auction No. 31. Further delay of the auction simply would postpone the time when commercial wireless, private wireless, and public safety can begin offering wireless services on this valuable spectrum. We urge you and the Commission staff to carefully consider these matters and to deny CTIA's request for delay.

Sincerely yours,

Spectrum Exchange Group, LLC

by:



Peter Cramton, Chairman
Lawrence Ausubel, Co-President
Paul Milgrom, Co-President

cc (by hand delivery): The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
Peter Tenhula
Bryan Tramont
Paul Margie
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Thomas J. Sugrue, WTB
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