

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Service Rules for the 746-764	)	WT Docket No. 99-168
And 776-794 MHz Bands,	)	
And Revisions to Part 27 of the	)	
Commission's Rules	)	
(Television Channels 60-69)	)	
	)	
Reallocation and Service Rules for the	)	GN Docket No. 01-74
698-746 MHz Spectrum Band	)	
(Television Channels 52-59)	)	
	)	
Auction of Licenses in the	)	DA 02-260
747-762 and 777-792 MHz	)	Report No. AUC 02-31-A
Bands Scheduled for June 19, 2002	)	(Auction No. 31)
	)	
Auction of Licenses in the	)	DA 02-563
698-746 MHz Band	)	Report No. AUC 02-44-B
Scheduled for June 19, 2002)	)	(Auction No. 44)

**The National Telecommunications Cooperative Association's  
Opposition to CTIA's Application for Review**

The National Telecommunications Cooperative Association (NTCA) hereby submits its Opposition to the Cellular Telecommunications & Internet Association's (CTIA's) Application for Review of the Wireless Telecommunications Bureau's April 10, 2002 Letter, DA 02-858, Regarding the Schedule for Auction Nos. 31 and 44. NTCA opposes any delay of the 700 MHz auctions and respectfully submits that the auctions should proceed as scheduled on June 19<sup>th</sup>.

NTCA is a national association representing more than 500 independent rural incumbent local exchange carriers. All NTCA members are classified as "rural telephone companies" under the Telecommunications Act of 1996 (Act). Several of these small

carriers have indicated their desire to participate in the Lower 700 MHz auction and are ready and able to move forward.<sup>1</sup> Any delay in the auctions will slow the delivery of much needed spectrum-based services to rural America.

Rural carriers worked long and hard for the opportunity to compete for spectrum. It was considered a substantial victory when the Commission decided to license a portion of the Lower 700 MHz spectrum according to Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs). The licensing according to RSAs will enable small carriers to concentrate their build-out efforts on the most rural and sparsely populated regions of this country.

The Lower 700 MHz spectrum is particularly well suited for rural deployment. Its propagation characteristics are such that only a few towers may be needed to cover much distance. Other spectrum has proved to be less valuable because it is uneconomical to construct multiple towers to cover vast stretches of empty road between small towns. Rural carriers intend to use the spectrum for both fixed and mobile broadband applications and as an economical way to reach that elusive “last mile.”

CTIA argues that the Commission should push back the auctions based on “uncertainties” about the availability of portions of the band and the availability of equipment. They say that carriers are unable to make “rational business decisions” because of the uncertainties. To the contrary, there has been ample opportunity for carriers, even the smallest among them, to “develop business plans, assess market

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<sup>1</sup> The Commission has an obligation to promote the “development and rapid deployment of new technologies and services for the benefit of the public, including those **residing in rural areas, without administrative or judicial delays.**” 47 U.S.C. 309(j)(3)(A). It also must promote economic opportunity and disseminate licenses among a wide variety of applicants, including “small businesses, **rural telephone companies**, and businesses owned by members of minority groups and women.” 47 U.S.C. (j)(3)(B). And it must ensure that small businesses, **rural telephone companies** and businesses owned by members of

conditions, and evaluate the availability of equipment.”<sup>2</sup> NTCA’s members are preparing their Short Form Applications and will be ready to bid on June 19th.

It is estimated that about 85% of the more than 700 licenses to be auctioned according to MSAs and RSAs are unencumbered.<sup>3</sup> Prospective licensees of the other 15% will take encumbrances into account when they plan their bidding strategies. Given the fact that most licensees will be able to make plans to use the spectrum as soon as the auction concludes, there is no reason to delay.

While NTCA concedes that equipment to use the 700 MHz band is currently unavailable, the law only requires that the Commission give carriers enough time to “evaluate its availability.” There is no requirement that the equipment actually be available.<sup>4</sup> Further, equipment is unlikely to be available until AFTER the auction concludes, whenever that may be. The manufacturers will not “focus” on developing equipment for the 700 MHz band until they know what the demands are. The demand will come as soon as the spectrum is auctioned.

CTIA argues that the Commission should delay the auction because Congress may eventually pass legislation affecting the date of the auction. NTCA submits that Congress has had ample opportunity to act, yet has failed to do so. There is no consensus in Congress to delay the auction. There is, however, a statutory deadline by which it must take place. The Commission should not change its auction date based on mere speculation about Congress’s intentions.

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minority groups and women are given the opportunity to participate in the provision of spectrum-based services. 47 U.S.C. 309(j)(4)(D).

<sup>2</sup> 47 U.S.C. 309(j)(3)

<sup>3</sup> See, Letter from the Rural Telecommunications Group to Chairman Powell regarding Auction of 700 MHz Spectrum, Auction No. 44, WT Docket No. 98-168 and GN Docket No. 01-74 (dated April 22, 2002).

Central to CTIA's argument is a perceived statutory conflict. It argues that there is a deadline on one hand, and the requirements of Section 309(j) on the other. NTCA believes that there is no statutory conflict. Section 309(j) only permits the Commission to set its dates within the confines of a statutory deadline. To interpret otherwise, would render statutory deadlines meaningless. Every time Congress set a deadline, the Commission could change it at the request of any party with a reasonable argument for doing so. That is not a reasonable interpretation of Section 309(j).

The large carriers seem to want the Commission to believe that there is so much speculation surrounding the 700 MHz auctions that they will not bid if the auction proceeds as scheduled. It is difficult to believe that carriers that claim to be "starved for spectrum" will take the chance that all of their competitors feel the same way.

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<sup>4</sup> In February 1998, the FCC made available for auction 986 LMDS licenses. Despite the fact that there was no equipment available, there were 139 bidders who applied and were qualified to bid in the auction and net bids totaled \$578,663,029.00.

The Commission must comply with Congress's mandate that the licenses be auctioned before September 2002. NTCA urges the Commission to proceed with the auctions on June 19<sup>th</sup> so that rural telephone companies and other small businesses may begin to offer innovative new wireless services in rural and underserved areas.

Respectfully submitted,

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May 3, 2002

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Opposition to CTIA's Application for Review of the National Telecommunications Cooperative Association in WT Docket No. 99-168, GN Docket No. 01-74, DA 02-971 was served on this 3rd of May 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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