

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

In the Matter of)
)
Petition for Rulemaking or, Alternatively, a) RM-11019
Waiver of the Closed Bidding Rules for C)
Block Licenses in the Broadband Personal)
Communications Services)
_____)

COMMENTS OF MOTOROLA, INC.

Motorola, Inc. (“Motorola”) respectfully submits these comments in support of the CTIA petition to modify the auction participation rules applicable to Auction 58.¹ Motorola believes that the Commission’s current closed bidding rules for Broadband PCS C-block licenses are outmoded given the existing regulatory and competitive environment for commercial wireless services. Motorola therefore urges the FCC to take the necessary actions to provide expanded eligibility to participate in Auction 58.

The commercial wireless services industry has changed dramatically since the FCC originally adopted eligibility restrictions for Broadband PCS C and F-block licenses.² The

¹ Petition for Rulemaking or, Alternatively, a Waiver of the Closed Bidding Rules for C Block Licenses in the Broadband Personal Communications Services, RM-11019 (filed July 8, 2004) (“Petition”).

² These restrictions were originally adopted in 1995 when the Commission decided to set aside 30 MHz of C block PCS frequencies for designated entities, or small and women or minority businesses. *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, ¶ 115 (1994). The Commission modified this set aside in 2000 when it chose to permit non-designated entities to bid on certain portions of this spectrum. *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Sixth Report and Order and Order on Reconsideration, 15 FCC Rcd 16266, ¶ 2 (2000) (“C/F Block Sixth R&O”).

provision of commercial wireless services has become increasingly competitive with six national wireless providers and several large regional carriers vying for customers with new and innovative technologies, services, and billing plans.³ In many markets, the ability of some carriers to offer new services is limited by their lack of spectrum. Auction 58 spectrum would offer the opportunity for these carriers to respond to customer demands yet the Commission's closed bidding policies will effectively thwart such efforts to enhance competition.

Also, the FCC has recently expanded opportunities for all entities to acquire spectrum via secondary markets as opposed to direct FCC licensing.⁴ In large part, this effort was intended to “enhance economic opportunities and access for the provision of communications services by designated entities, and enable development of additional and innovative services in rural areas.”⁵ These provisions did not exist in 1995 when the C and F-block eligibility restrictions were originally adopted. Motorola believes that the combination of small business bidding credits, which are used instead of eligibility restrictions in every other commercial wireless auction, and secondary markets leasing provisions, is a more effective means of furthering the goals of promoting small business participation and rural buildout. These policies provide incentives for small businesses to develop legitimate business cases for the provision of broadband PCS services without prejudicing the needs of incumbent carriers.

³ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services*, Eighth Report, 18 FCC Rcd 14783, ¶ 12 (2003) (stating that “there is effective competition in the CMRS marketplace”).

⁴ See *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order, WT Docket No. 00-230, released Oct. 6, 2003.

⁵ *Id.* at ¶ 2 (footnote omitted).

Finally, the initiation of a rulemaking need not delay Auction No. 58. The Commission has, in the past, successfully initiated and completed rulemakings regarding bidding eligibility restrictions in under six months.⁶ There is no reason why the Commission cannot do the same here. CTIA's Petition is limited in scope to a sole issue. Given the record that has been developed in response to the Commission's Auction No. 58 Public Notice and that is being developed in response to CTIA's Petition, a very short comment cycle can be established for any Notice of Proposed Rulemaking that will be adopted. Thus, if the Commission acts expeditiously, the January 12, 2005 date for Auction No. 58 need not be changed.

For these reasons, Motorola urges the Commission to grant CTIA's Petition and initiate a rulemaking to eliminate its bidding eligibility restrictions on C block licenses.

Respectfully submitted,

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⁶ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Further Notice of Proposed Rulemaking, 15 FCC Rcd 9773 (June 7, 2000) (requesting comment on the use of closed bidding in Auction No. 35); C/F Block Sixth R&O (Aug. 29, 2000) (adopting modifications to the bidding eligibility restrictions for Auction No. 35). Auction No. 35 subsequently began on December 12, 2000.