T-Mobile

Auction No. 58
Use of Set-Asides in FCC Broadband PCS Auctions

August 17, 2004

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- **T-Mobile Is the Fastest Growing National Carrier**
  - T-Mobile's GSM 1.9 GHz footprint covers 254M POPs, with service in 46 of the top-50 metro markets
  - T-Mobile has deployed GSM/GPRS over 224M POPs and expects to deploy EDGE in 2005
  - T-Mobile has 15.3 million total subscribers, with 4 million new subscribers in the past 12 months
- **T-Mobile's Ability To Continue To Compete as a Value Leader Is Dependent on New Spectrum**
  - T-Mobile has 20 MHz or less in seven of the top 15 markets
  - Auction No. 58 has numerous markets of strategic importance to T-Mobile

Background

- **FCC Scheduled Auction No. 58 (Broadband PCS) for January 12, 2005**
- **Auction PN issued June 18, 2004**
  - Substantial number of comments received
  - Large bulk of record addresses open/closed issues
- **CTIA Petition for Rulemaking Or, In the Alternative, Waiver filed on July 8, 2004**
  - Petition seeks to "open" all licenses in Auction No. 58
  - FCC PN on Petition issued July 15, 2004
  - Large number of industry filings
  - Pleading cycle now closed and Petition is ripe for action

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The Historical Context

- **When Set-Asides Were Adopted, the Wireless Industry Was Considerably Different**
  - Competition was limited—a duopoly shared by incumbent cellular carriers
  - Service was largely restricted to voice, with little in the way of data services
  - Service was available only in and around major population centers and rate plans were highly localized
  - Commission's auction authority was new and it had little experience with auctions
  - Commission adopted a number of eligibility restrictions:
    - *Cellular/PCS cross ownership*
    - *Spectrum Cap*
    - *DE set asides*

Over time, these restrictions have been eliminated except for DE set asides.

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Today's Mobile Market Is Evolved

- **The Mobile Marketplace Today Is Much Different Than In 1995 When Set-Asides Were Adopted**
  - Carrier offerings have evolved to meet consumer demands—
    - *Emphasis on national, or super-regional services*
    - *Near ubiquitous coverage*
    - *High quality services, low prices, and new data offerings*
  - The industry is highly competitive, with six carriers, including a number of national providers, in many markets
  - New spectrum is vital to meet consumer demand, and thereby drive further competition
  - Given the nature of national services, economies of scope and scale are necessary to be competitive

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Set-Asides Have a Huge Consumer Cost

- **Set-Asides Have a Significant Impact on Consumer Welfare**
  - Set-asides do not result in licenses being assigned to those who value them most highly
  - Set-asides encourage inefficient bidding
  - In the CMRS market, where capital costs and economics preclude niche or local services, set-asides result in inefficient secondary markets transactions
  - Set-asides historically have resulted in financial failures, litigation, and delay in the use of the spectrum assets

Dr. Simon Wilkie, Former FCC Chief Economist, Calculates the Lost Consumer Surplus of the C Block DE Policies at $13-$32 billion dollars

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Set-Asides Are Inefficient

- **Set-Asides Are Ill-Suited to Meeting the Statutory Objectives of Section 309(j)**
  - Congressional goal inherent in Section 309(j) is dissemination of authorizations to a wide variety of licensees to ensure "new and innovative technologies are readily accessible to the American people"
  - Goal is not to confer economic windfall on a class of entities
  - Set-asides also contravene Section 309(j)'s goal of ensuring rapid licensing without administrative or judicial delays

An analysis of the top auction winners demonstrates that the DEs overwhelmingly either are in financial distress or have sold their licenses

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The FCC Can Expeditiously Grant Relief

- **The FCC Could Conduct an Expedited Rulemaking Without Significant Impact To Auction No. 58 Timing**
  - A short comment cycle can be established due to the full record gathered as part of the Auction 58 proceeding and comments gathered in response to the CTIA Petition
  - The Commission has shown that it can move swiftly from rule making to auction (e.g. Auction 35)
  - Rulemaking would be narrowly focused on a single issue

The FCC Can Expeditiously Grant Relief

- **Alternatively, the FCC Could Order Waiver Relief Immediately**
  - Incorporating the filings on the Auction No. 58 Public Notice, the FCC has a full record on the CTIA Petition
  - The FCC could order waiver relief without any impact to the schedule for Auction No. 58
- **At a Minimum, the FCC Should Grant Waiver Relief for Those Licenses Returned by NextWave**
  - FCC has approved NextWave's 5 year build-out showings, so the licenses are freely alienable
  - Unique circumstances surrounding NextWave licenses fully satisfy waiver requirements
  - FCC has fiduciary responsibility to ensure that the NextWave licenses are open to all bidders to maximize the benefit to U.S. taxpayers

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