



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

**Presentation to Sam Feder  
September 2, 2004**



- **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 15.4 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



- **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



- **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.**



- **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

- **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 market transactions
  - Set-asides historically have resulted in financial failures, litigation, and delay in the use of 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**



- **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**



- **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



- **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