AUCTION 58

Docket No. RM 11019

CTIA – The Wireless Association ™

Presentation to

The Wireless Telecommunications Bureau

September 24, 2004

CHANGED CIRCUMSTANCES WARRANT ELIMINATION OR WAIVER OF CLOSED BIDDING

- Increased consumer demand for broadband services and national/regional coverage.
- Unavailability of suitable, alternative CMRS spectrum in the short term.
- Effectiveness of bidding credits and other measures in promoting small businesses.
- Unique circumstances of returned NextWave licenses.

AUCTION 58 SPECTRUM IS IDEAL FOR MEETING CONSUMER DEMAND

- Auction 58 spectrum is largely unencumbered and readily deployable.
- Auction 58 spectrum is near to many carriers' spectrum holdings and therefore offers valuable expansion opportunities to provide additional capacity or fill in footprints.
- PCS spectrum allows carriers to use "off the shelf" equipment and obtain scale economies in equipment purchases.

SHORT-TERM UNAVAILABILITY OF ALTERNATIVE CMRS SPECTRUM

- 1710-1755/2110-2155 MHz band is unlikely to be fully cleared or available for auction in the next few years.
- Spectrum allocated for advanced wireless services in 2 GHz band is encumbered and cannot be deployed until FCC adopts service and licensing rules and conducts an auction.
- Substantial time will be required to implement transition to new band plan for Broadband Radio Services in the 2.5 GHz band.
- Upper and lower 700 MHz bands remain heavily encumbered by incumbent broadcast operations; FCC is unlikely to conduct another auction for licenses in those bands within the next several years.

BIDDING CREDITS ARE EFFECTIVE IN PROMOTING SMALL BUSINESSES

- FCC relies upon bidding credits, instead of closed bidding, in virtually all other spectrum auctions; C block spectrum is only auctioned spectrum that remains subject to closed bidding.

- Nearly 80% of winning bidders in open auctions utilizing small business bidding credits were small businesses.

- Small businesses used bidding credits in Auction 35 to acquire nearly half of the available open licenses.

- In virtually all markets where both open and closed licenses were available at Auction 35, small businesses using bidding credits paid less or no more for open licenses than winners of closed licenses.

ADDITIONAL MEASURES PROMOTE SMALL BUSINESS PARTICIPATION IN C BLOCK

- Reconfiguration of 30 MHz C block licenses into 10 MHz licenses allowed small businesses to launch services in blocks of spectrum appropriately sized for their businesses.

- Partitioning and disaggregation of spectrum enables small businesses to enter markets, provide new services, and fill in or expand their footprints.

- Partitioning and disaggregation have resulted in creation of more than 300 additional active A and B block PCS licenses (and more than 200 additional active cellular licenses).

- FCC's secondary market rules and policies offer leasing opportunities and enhance small businesses' ability to enter markets with viable business plans.

UNIQUE CIRCUMSTANCES OF RETURNED NEXTWAVE LICENSES

- Open auction is best way to achieve FCC's stated objectives in reaching NextWave settlement (*i.e.*, putting long-dormant spectrum to active use, recouping value for the government, and facilitating final resolution of NextWave spectrum).

- Returned NextWave licenses have been built out and therefore could have been sold to any qualified purchaser in the secondary market, subject only acceleration of any installment financing.

- NextWave already sold a number of licenses to non-DEs, including Cingular and Verizon Wireless, which won 10 MHz C block license for New York BTA for $930 million in a private auction.

- NextWave licenses should be made available to all parties on same basis, regardless of whether they are returned for re-auction or sold in secondary market.

OPEN BIDDING PROMOTES PUBLIC INTEREST AND OBJECTIVES OF SEC. 309(j)

- Open bidding will expedite delivery of new services to the public and facilitate efficient and intensive spectrum use by ensuring spectrum assignment to those most willing and able to provide new services.

- Open bidding will enhance CMRS competition by broadening pool of auction participants and allowing more established carriers an opportunity to fill out their footprints.

- Open bidding will ensure that the public receives the full market value of the licenses.

- Open bidding, together with bidding credits, will ensure that small businesses continue to have ample opportunities to acquire licenses.

CLOSED BIDDING IMPOSES SIGNIFICANT CONSUMER COSTS

- T-Mobile data shows that closed bidding for C block licenses has resulted in consumer surplus losses of $13.6 billion to $32 billion.

- Vast majority of the 493 closed C block licenses auctioned in 1996 were never utilized by winning bidders and ultimately were canceled or terminated.

- Returned NextWave spectrum, initially acquired through closed bidding, has remained fallow for nearly eight years.

- T-Mobile economic analysis shows that closed bidding was at least partly responsible for payment defaults and bankruptcies that have prevented or delayed spectrum use.

RESPONSE TO COUNCIL TREE CLAIMS

- *Claim: Closed bidding is the only effective tool the FCC has to promote small businesses.*
  - Response: FCC relies upon bidding credits, instead of closed bidding, to promote small business participation in virtually all other auctions.
  - Response: FCC acknowledged that bidding credits "will allow effective competition by small businesses" in open auction.
- *Claim: Most of the DE licenses won in open auctions are of low economic and strategic value.*
  - Response: Council Tree unjustifiably assumes that DE licenses won at "small" auctions yielding less than $50 million in revenue are of low economic and strategic value. Winning bid price is not necessarily an accurate measure of value, as the C block auction experience has shown.
  - Response: FCC recognizes that objective of promoting small businesses does not and cannot guarantee certain number or type of licenses.
  - Response: Small businesses won nearly half of the open licenses in Auction 35, which undisputedly are not of low economic or strategic value.

RESPONSE TO COUNCIL TREE CLAIMS (cont'd)

- *Claim: DEs fare poorly using bidding credits against dominant large incumbents.*
  - Response: Council Tree arbitrarily measures DE success solely in terms of the value of winning bids.
  - Response: Council Tree arbitrarily and vaguely defines "dominant large incumbents" as "one or more of the large national incumbent carriers who together won 25% or more in given auction."
  - Response: More reliable measures of DE success show that DEs used bidding credits to compete successfully against larger carriers for licenses, particularly the open license available in Auction 35.
- *Claim: FCC already considered built-out status of returned NextWave licenses.*
  - Response: When FCC last modified DE rules four years ago, it did not address whether closed bidding should apply to built-out licenses that otherwise could be sold to any qualified purchaser in the open market.

RESPONSE TO COUNCIL TREE CLAIMS (cont'd)

- *Claim: Major carriers have alternatives (i.e., open market acquisitions and swaps)*
  - Response: Piecemeal acquisition of spectrum through individual negotiations is inadequate to meet spectrum needs on a regional or national basis.
  - Response: Auction 58 offers a rare opportunity for regional and national carriers to acquire substantial blocks of spectrum to implement their business plans.
- *Claim: CTIA's remedy is to go to Congress, not the FCC.*
  - Response: FCC has full authority to grant CTIA's petition.
  - Response: FCC did not require Congressional action when it modified closed bidding rules four years ago.
  - Response: Congressional remedy is not required because Congress did not mandate closed bidding.

FCC REVIEW OF CLOSED BIDDING RULES WILL NOT DELAY AUCTION 58

- FCC took less than 3 months to complete the rulemaking when it last modified the entrepreneur eligibility rules for Auction 35.
- CTIA rulemaking petition presents narrow issues that can be addressed well before the scheduled January 2005 commencement of Auction 58.
- FCC can avoid any auction delay by granting a waiver of closed bidding rules for Auction 58 licenses or for some subset of these licenses.
- At a minimum, FCC should waive closed bidding rules for the returned NextWave licenses. But for the NextWave settlement, these licenses would be freely transferable in the open market.