

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

In the Matter of)	
)	
Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services)	WT Docket No. 03-103
)	
Biennial Regulatory Review - Amendment of Parts 1, 22, and 90 of the Commission’s Rules)	WT Docket No. 05-42
)	
Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service)	WT Docket No. 05-42
)	
Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804)	File No. 0001716212
)	

REPLY COMMENTS OF THE BOEING COMPANY

The Boeing Company (“Boeing”) hereby submits its reply comments in response to comments submitted by AirCell, Inc. (“AirCell”) and Space Data Corporation (“Space Data”) on the Notice of Proposed Rulemaking issued in the above-captioned proceeding.^{1/} Boeing has been an active participant in the proceedings to allocate spectrum for Air-Ground Radiotelephone Service (“ATG”).

Boeing does not oppose the Commission’s proposal to offer bidding credits of 15 percent for small business entities and 25 percent for very small businesses.^{2/} The Commission, however, should reject AirCell’s and Space Data’s proposals to increase the credits to 25 percent

^{1/} *Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket No. 05-42, Notice of Proposed Rulemaking, FCC 04-287 (rel. Feb. 22, 2005) (“NPRM”).

^{2/} NPRM ¶ 176.

and 35 percent respectively.^{3/} In past auctions when the FCC adopted bidding credits greater than 25 percent, it did so for reasons not relevant to the ATG auction. Moreover, the characteristics of the ATG licenses militate against an increase in bidding credits.

AirCell and Space Data argue for increasing proposed bidding credit levels based on the Commission’s decision to do so in the auctions for 39 GHz, Local Multipoint Distribution (“LMDS”) and narrowband PCS licenses.^{4/} The circumstances of those auctions, however, are not applicable here. In the 1994 narrowband PCS auction, for instance, the Commission increased the bidding credits solely for *minority and women owned small businesses* from 25 percent to 40 percent. The bidding credit for all other designated entities, specifically larger minority and women owned businesses and all other small businesses, remained at 25 percent.^{5/} Notably, moreover, even with the 40 percent bidding credit offered to small businesses owned by minorities or women, no designated entities won licenses.^{6/} As discussed below, this suggests that even with extremely generous bidding credits, the high cost of implementing many nationwide services renders the business model incompatible with small company capabilities.

Although the Commission gave small businesses a 25 percent bidding credit and very small businesses 35 percent in the 39 GHz auction, it justified the increased credits as a means of “encourage[ing] smaller businesses, that may be very well suited to provide *niche services*, to

^{3/} Comments of Space Data, p. 5.

^{4/} Comments of Space Data, p. 6; Comments of AirCell, p. 4.

^{5/} *Implementation of Section 309(j) of the Communications Act-Competitive Bidding Narrowband PCS and Amendment of the Commission’s Rules to Establish New Narrowband Personal Communications Services*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, ¶ 33 (1994).

^{6/} See NPRM ¶ 173 n.477.

participate in the provision of services in the 39 GHz band.”^{7/} Unlike the 39 GHz band, the ATG spectrum is available to provide a single type of nationwide service, which therefore makes it much less suitable than the 39 GHz band for niche players.

In the LMDS auction, the Commission increased the level of credits to 35 percent for very small businesses and 25 percent for small businesses because of the “unavailability of installment payment plans for LMDS licensees,” which the Commission eliminated after initially proposing to make available.^{8/} No such adjustment is necessary for the ATG spectrum because the Commission never provided for installment payments. Thus, prospective ATG bidders have not relied on a potential financing mechanism that would require a remedy such as increased bidding credits.

Contrary to AirCell’s and Space Data’s contentions, increased credits are not necessary to ensure participation in the ATG auction by small businesses. Bidding credits of 15 percent and 25 percent, as the Commission has proposed here, are the standard credit amounts provided for in the Commission’s rules^{9/} and applied in numerous auctions of licenses covering both large and small geographic areas^{10/} The fact that small business bidders have been unable to acquire spectrum in previous auctions for nationwide licenses even with bidding credits is attributable to

^{7/} *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, Report and Order and Second Notice of Proposed Rulemaking, 12 FCC Rcd 18600, ¶ 154 (1997) (emphasis added).

^{8/} *Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission’s Rules to Re-designate the 27.5-29.5 GHz Frequency Band*, Second Order on Reconsideration, 12 FCC Rcd 15082, ¶ 20 (1997).

^{9/} 47 C.F.R. 1.2210(f)(2) (2004).

^{10/} *See, e.g., Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 2153, ¶ 178 (2002); *Amendment of Parts 20 and 24 of the Commission’s Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Order on Reconsideration, 15 FCC Rcd 17384, ¶ 21 (2000); *Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules To License Services in the 216-220 MHz, 12390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands*, Report and Order, 17 FCC Rcd 9980, ¶ 103 (2002).

the high implementation costs of those services as opposed to the credit level. As Congress recognized in giving the Commission auction authority, “[t]he characteristics of some services are inherently national in scope, and are therefore ill-suited for small businesses.”^{11/} For this reason, the Commission has declined to adopt *any* bidding credits in some auctions involving licenses with national footprints or very large geographic areas and high capital costs for the permitted service.^{12/} Although the Commission may be correct that small business bidding credits are appropriate in the ATG auction in light of the relatively small amount of spectrum available and the expectation that infrastructure costs will be lower than those of other nationwide services, AirCell and Space Data have provided no basis for increasing the proposed bidding credits.

^{11/} See *NPRM* ¶ 173 (citing House Report to the Omnibus Budget Reconciliation Act of 1993, H.R. Rep. No. 103-111, at 254 (1993)).

^{12/} *NPRM* ¶ 173.

CONCLUSION

For the foregoing reasons, Boeing respectfully requests that the Commission retain the proposed bidding credit levels at 15 percent for small businesses and 25 percent for very small businesses.

Respectfully submitted,

THE BOEING COMPANY

Carlos M. Nalda
The Boeing Company
1200 Wilson Blvd
MC RS-00
Arlington, VA 22209
(703) 465-3321

Howard J. Symons
Sara F. Leibman
Stefani V. Watterson
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004
(202) 434-7300

Its Attorneys

Dated: May 13, 2005