

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

In the Matter of)
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**Auction of Advanced Wireless Services)
Licenses Scheduled for June 29, 2006)**
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AU Docket No. 06-30

**JOINT COMMENTS OF
COLUMBIA CAPITAL LLC
AND MC VENTURE PARTNERS**

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COMMENTS OF COLUMBIA AND MC COMMUNICATIONS, INC.

Columbia Capital LLC (“Columbia”) and MC Venture Partners (“MC”), by their attorneys, hereby submit their comments in response to the *Public Notice*, DA 06-238, released January 31, 2006 (the “*Notice*”)¹ in which the Wireless Telecommunications Bureau (the “Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) seeks comment on certain procedural issues relating to the auction for Advanced Wireless Services (“AWS”) licenses in the 1710 – 1755 MHz and 2100 – 2155 MHz bands (“AWS-1”), currently scheduled to commence on June 29, 2006. The following is respectfully shown:

I. PRELIMINARY STATEMENT

Columbia Capital (“Columbia”) and MC Venture Partners (“MC”) both are venture capital firms specializing in investing in various segments of the communications and telecommunications industries. Each firm has invested more than \$1 billion in portfolio companies, many of which were early stage investments in emerging broadband wireless

¹ *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures*, AU Docket No. 06-30, Public Notice, DA 06-238 (released Jan. 31, 2006).

companies. In most instances, Columbia and MC act as lead or co-lead institutional investors in their wireless portfolio companies, and play a significant role in the company's growth and success through active participation as members of the Board of Directors or Board of Managers of the companies. Noteworthy among the former wireless portfolio companies in which Columbia and/or MC have been involved are Nextel Communications,² Crowley Cellular,³ Sterling Cellular,⁴ Triad Cellular Corporation,⁵ and TeleCorp Holding Corporation.⁶ Current portfolio companies of both Columbia and MC include MetroPCS Communications,⁷ Cleveland Unlimited d/b/a Revol,⁸ Coral Wireless d/b/a Mobi PCS,⁹ and TX-11 d/b/a/ Cellular One.¹⁰

Based on their longstanding investments in and commitment to the broadband wireless industry, Columbia and MC are among the most (if not *the* most) important sources of capital for wireless entrepreneurs. Several of the companies backed by Columbia and MC have participated in and garnered spectrum in wireless spectrum auctions. As a consequence, Columbia and MC have a significant interest in this proceeding and a substantial base of experience for informed comment.

² Columbia provided the initial equity capital that launched FleetCall in 1987, which went on to become Nextel.

³ MC was the principal financial backer of regional cellular operator Crowley, which ultimately owned and operated stations in eleven markets.

⁴ Columbia founded Sterling Cellular, which was an early consolidator of cellular properties in the mid 1990s.

⁵ Triad Cellular Corporation, a successful regional cellular operator, was formed by wireless entrepreneur Barry Lewis with backing from MC.

⁶ MC was an initial investor in PCS operator TeleCorp, which went on to become publicly traded prior to its acquisition by AT&T Wireless.

⁷ MetroPCS is a rapidly growing broadband service provider serving in excess of 2 million subscribers in Atlanta, Miami, Sacramento, San Francisco and Tampa markets.

⁸ Revol is a PCS service provider serving Cleveland, Columbus, Akron and Youngstown, Ohio and Indianapolis, Indiana and the surrounding area. Revol is in the process of expanding service throughout the region.

⁹ Mobi PCS provides service throughout the Honolulu BTA and is expanding service throughout other portions of the Hawaii islands.

¹⁰ TX-11 Acquisition, Inc. acquired a license divested by Cingular Wireless in connection with the AT&T Wireless merger with capital from Columbia and MC and provides service throughout RSA TX-11.

While Columbia and MC generally have not found it necessary in the past to comment on auction procedures, both companies consider the upcoming auction of the AWS-1 licenses to be the most significant auction in the history of broadband,¹¹ which is one reason that Columbia and MC are participating. But, most important, Columbia and MC are very concerned that the Commission is proposing changes in the auction process that will discourage investment by financial institutions such as Columbia and MC and thereby disadvantage the kinds of entrepreneurial companies that Columbia and MC have backed in the past. Notably, these companies are precisely the types of small and very small businesses that the Congress and the FCC have sought to promote and encourage through the designated entity program. These comments address the concerns Columbia and MC have as institutional investors in companies that may participate in Auction No. 66. The FCC's spectrum auctions have been a successful tool in which spectrum has been awarded to prospective licensees who value it most. Columbia and MC are taking this opportunity to address the Bureau's proposals described in the *Notice* with this vital policy goal in mind.

II. RESPONSES TO SPECIFIC ISSUES RAISED IN THE NOTICE

As described in more detail below, Columbia and MC support a single auction of AWS-1 licenses using the Commission's standard simultaneous multiple-round ("SMR") auction format because this format offers the advantages of simplicity and economic efficiency. Columbia and MC oppose the alternative suggested by the Bureau in which one auction would use SMR while another, concurrent auction would follow the FCC's package bidding ("SMR-PB") format, as this approach would add unnecessary complexity to the Commission's well-established procedures and also could result in an inefficient allocation of spectrum. Columbia and MC also

¹¹ The amount of Spectrum being auctioned (90 MHz) exceeds the A&B Block PCS Auction (Auction No. 4) and the C Block PCS Auction (Auction No. 5) and the D E and F Block Auctions (Auction No. 11).

oppose the proposal to withhold the bidding information that has uniformly been available in recent auctions. Finally, Columbia and MC address the optimal timing of Auction No. 66.

A. Simultaneous Multiple-Round Auctions

Columbia and MC agree with the proposal of the Bureau to offer all of the AWS-1 bands in a single auction using its standard SMR auction format. This is a format that has succeeded in numerous past auctions conducted by the Bureau, and one that is well understood by all or virtually all potential bidders. As the Bureau notes, “offering all licenses in a single standard SMR auction will provide bidders with the simplest and most flexible means of obtaining single AWS-1 licenses or aggregations of AWS-1 licenses.” *Notice*, p. 5. The SMR format allows bidders to bid head-to-head on single licenses, with the result being that the carrier that most values a given license will acquire it.

The Bureau seeks comment on the alternative of allocating the AWS-1 licenses between two auctions, run concurrently. Under this approach, one auction would use standard SMR procedures, while the other would follow the SMR-PB format. Columbia and MC strongly oppose this alternative. The Commission cites the example of a bidder who is seeking to aggregate Regional Economic Area Group (“REAG”) licenses into a nationwide license as a potential beneficiary of an SMR-PB auction. Columbia and MC note, however, that there was no great outpouring of support for nationwide licenses during the latter stages of the AWS bandplan proceeding. Rather, the majority of commenters in the AWS proceeding strenuously opposed nationwide licensing.¹² This means that an auction based on SMR-PB would be geared toward a position that had no substantial support in the record of the proceeding.

¹² See, e.g., Comments of United States Cellular Corporation, WT Docket No. 02-353, at 7 (stating that the “exclusive use of nationwide, REAG or MEA service area sizes . . . [is] unfair and unworkable for rural/regional carriers”); Comments of AT&T Wireless Services, Inc., WT Docket No. 02-353, at 5 (arguing that the “auction of national or regional licenses, such as [REAGs or EAGs] would be wasteful”); Comments of Rural Cellular

(continued...)

Most important, prior auction experience indicates that bidders are able to assemble packages of contiguous licenses in a standard SMR auction without package bidding. For example, the Narrowband PCS Regional Auction (Auction No. 4) included large regional areas similar to the REAGs that will be available in Auction No. 66. Several carriers were successful in assembling nationwide licenses in this previous regional auction.¹³ In light of this precedent, there is no compelling reason to utilize largely untested combinatorial bidding procedures in an auction as important as Auction No. 66.

As the Bureau notes, a dual-auction format would add to the complexity of participation in the auctions. Moreover, such an approach could produce the anomalous result of bidders that value a given license most highly not receiving it. For example, if a regional carrier is willing to pay \$1,000,000 for a license in a mid-sized market while a national carrier is only willing to pay \$800,000 for the same license but packages the license with another market in which it outbids its competitors, the national carrier could obtain the benefit of the license despite the willingness of another carrier to pay more for it. Such a result would be economically inefficient, and would benefit neither carriers, their customers, nor U.S. taxpayers.

B. Information Available to Bidders

In the *Notice*, the Bureau proposes not to reveal until the close of the auction: (1) bidders' license selections on their short form applications and the amount of their upfront payments; (2) the amounts of non-provisionally winning bids and the identities of bidders placing those bids; and (3) the identities of bidders making provisionally winning bids. In

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Association, WT Docket No. 02-353, at 2 (opposing the use of EAs or MEAs as too large); *compare with* Comments of Cingular Wireless LLC, WT Docket No. 02-353, at 9 (arguing that “most of the AWS spectrum should be licensed either on a nationwide or regional basis”); Comments of Verizon Wireless, WT Docket No. 02-353, at 8 (urging the Commission to “create geographic license blocks that range in size from nationwide to [EAs]”).

¹³ See *Public Notice*, PNWL 94-27 released November 9, 1994.

support of this approach, the Bureau states that “[e]conomic theory and recent analysis” support the proposition that an auction will be more competitive if certain information concerning bid amounts and bidder identities is kept secret until the close of the auction. *Notice*, p.6.

Columbia and MC strongly oppose this proposal. In the *Notice*, the Bureau describes the benefits of providing bidders with full information, which include the following: “bidders may bid more confidently if they know the bids of their potential competitors; information on the identities of likely other licensees may provide useful technical information, such as the degree of possible signal interference or the potential for negotiating roaming agreements; and full transparency during an auction process promotes confidence in the Commission’s auction process.” *Notice*, pp. 6-7. Columbia and MC submit that these considerations remain extremely relevant in the AWS-1 auction. For example, a bid by a major carrier with a history of building out its network and providing service to the public may provide stronger evidence of the appropriate value for a given license than a bid by an entity regarded in the industry as a speculator. Further, technical considerations such as the potential for negotiating roaming agreements with a technically compatible carrier in an adjoining market remain of vital importance. This is particularly true in the case of the regional wireless carriers generally backed by Columbia and MC who must rely heavily on roaming agreements to the extent that their customers seek to travel outside their home markets. Moreover, in light of the fact that AWS is newly-available spectrum that will be used to provide some new services, it is all the more important that carriers review as much information as possible in determining the proper value for licenses, including the value assigned to such spectrum by other specific carriers.

The most important reason for the Commission to abandon its “blind bidding” proposal is that it will have a chilling effect on financial investors such as Columbia and MC. In evaluating the value of a broadband license, there are a series of relevant factors that must be taken into

consideration including the demographics of the service area, the number of existing carriers serving the market, the comparative spectrum holdings of the market participants and their respective business and marketing plans. The proposal to withhold bidder information will prevent a bidder (and the bidder's investors) from knowing the identity of likely competitors and the nature and extent of their spectrum holdings. The result will be an inability to properly evaluate the competitive environment, and a reluctance to invest capital.

An auction is a dynamic process and on occasion bidders revise their bidding priorities or strategy. Sometimes these changes require access to additional capital in the course of an auction. Decisions by lenders or investors in these situations are based upon a careful review of the status of the auction. Columbia and MC would, however, be reluctant to support additional bids in the course of an auction in the absence of the standard bidding information that was made available in the past. It should come as no surprise to learn that the nature, extent and level of the bids by the nationwide wireless carriers, who serve as market leaders, would be relevant to Columbia and MC in evaluating whether a particular market could sustain a higher bid and attract additional capital for network build-out and operating capital. Denying this relevant information reduces the prospect that Columbia and MC will fund certain bids.

Other public interest benefits also weigh in favor of continuing to make public all information concerning bidders and bids. For example, the financial community monitors FCC spectrum auctions closely. If the Commission elects to keep the identities of bidders and the amounts of their bids secret (other than the amounts of provisionally winning bids), this will deprive investors and financial institutions of the kind of information they have come to expect during the days or weeks that the auction lasts. The financial markets are likely to abhor this blackout of information, which again will have a chilling effect on investment and access to follow-on capital.

The *Notice* does not cite any specific examples of collusive behavior among bidders in prior spectrum auctions, so the FCC's concerns of anti-competitive behavior are theoretical at best. In the unlikely event that bidders collude or otherwise act anti-competitively, the Commission has full authority to enforce its anti-collusion rules. Such an outcome would punish only the offending parties, instead of presuming that all parties have anti-competitive intentions and depriving all parties of useful information.

Finally, Columbia and MC submit that the Commission need not follow the latest trends in economic theory, which purportedly justify concealing the identities of bidders and their bid amounts, when there are compelling economic reasons that justify a continuation of the policies successfully implemented by the Commission in most prior auctions. The U.S. Congress and the Commission have properly determined that auctions represent an economically efficient mechanism for allocating spectrum among various entities; in fact, the FCC's spectrum auctions are perhaps one of the best examples of free-market competition in the American economy. However, a fundamental principle of economics is that perfect competition requires perfect knowledge among all competitors.¹⁴ While the FCC will not be able to ensure perfect knowledge, much less perfect competition, it should at least consider perfect competition the ideal toward which auctions should strive and should therefore avoid taking steps that would decrease the knowledge of bidders.

C. TIMING OF AUCTION

The Bureau does not expressly seek comment on its proposed start date of June 29, 2006 for the AWS auction. However, Columbia and MC are concerned that there are a number of important

¹⁴ See, e.g., Paul A. Samuelson and William D. Nordhaus, *Economics*, 16th ed. (1998) at 274 (explaining that "the invisible-hand theory assumes that buyers and sellers have full information about the goods and services they buy and sell").

issues respecting this auction that need to be fully settled well before the auction starts if participants, particularly smaller participants such as Columbia and MC typically back, are to be expected to be able to participate to the fullest extent.

For example, the proposal to withhold bidder information is a significant change that, if adopted, will disadvantage bidders who must raise capital in the financial markets. And, the prospect of combinatorial bidding, if adopted, will require significant additional auction planning. Finally, Columbia and MC note that the Commission recently issued a *Further Notice of Proposed Rulemaking* proposing significant changes in the designated entity program.¹⁵ These designated entity are important issues that must be finally resolved in order for prospective applicants to be able to adopt rational, sustainable business plans that will allow them to participate meaningfully in Auction No. 66.

Columbia and MC observe that in each of the past three auctions, the Bureau has released *final procedures* for an auction on average nearly 123 days prior to the start of the auction.¹⁶ Given the importance and scope of the upcoming AWS auction, a strong argument can be made that even more time will be required following the finalization of the rules and procedures for auction planning to be concluded properly. Columbia and MC respectfully request that the Commission take this into consideration in setting the final auction schedule.

¹⁵ See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Further Notice of Proposed Rulemaking* (FCC 06-8) released February 3, 2006.

¹⁶ See *Auction of 24 GHz Service Licenses Scheduled for July 28, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*, Public Notice, DA 04-633 (rel. March 12, 2004) (setting start date 138 days from date of Public Notice establishing procedures for Auction No. 56); *Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*, Public Notice, DA 04-1513 (rel. May 26, 2004) (setting start date 112 days from date of Public Notice establishing procedures for Auction No. 57); *Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 58*, Public Notice, DA 04-3005 (rel. Sept. 16, 2004) (setting start date 118 days from date of Public Notice establishing procedures for Auction No. 58).

IV. CONCLUSION

In light of the foregoing, Columbia and MC respectfully request that the Bureau adopt auction procedures in conformance with these Comments and delay Auction No. 66 for a reasonable time after adoption by the Commission of revised DE rules to facilitate participation by a wide range of carriers.

Respectfully submitted,

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