

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Auction of Advanced Wireless Services)	DA 06-238
Scheduled for June 29, 2006)	
Comment Sought on Reserve Prices or)	AU Docket No. 06-30
Minimum Opening Bids and other)	
Procedures		Report No. AUC-06-66-A (Auction No. 66)

COMMENTS OF VERIZON WIRELESS

In the above captioned Public Notice, the Wireless Telecommunications Bureau announces the auction of 1,122 broadband Advanced Wireless Service (“AWS”) licenses in the 1710-1755 MHz and 2110-2155 MHz (“AWS-1”) bands. The auction is scheduled to commence on June 29, 2006.¹ Verizon Wireless submits the following comments on several aspects of the Public Notice, including whether the Bureau should offer some portion of the licenses in an auction with package bidding, whether the Bureau should continue to release certain information about bidders and bidding during the course of the auction, how the Bureau intends to calculate the reserve price for the auction in order to satisfy the provisions of the Commercial

¹ Auction of Advanced Wireless Services Scheduled for June 29, 2006, Comment Sought on Reserve Prices or Minimum Opening Bids and other Procedures, *Public Notice*, DA 06-238, AU Docket No. 06-30, Report No. AUC-06-66-A (Auction No. 66) (rel. Jan. 31, 2006) (“*Public Notice*”). While we support a mid-summer auction start, rather than begin the auction immediately prior to the 4th of July holiday weekend, the Bureau should start the auction two weeks later than announced.

Spectrum Enhancement Act (“CSEA”), and whether the bid withdrawal payments are high enough.

I. THE COMMISSION SHOULD THE USE PACKAGE BIDDING FOR THE E/F BLOCK LICENSES IN AUCTION NO. 66.

In its Public Notice, the Bureau asks for comment on whether it should allocate the AWS-1 licenses between two auctions, run concurrently, one using the standard simultaneous multiple round bid format (“SMR”) and the other using the package bidding format (“SMR-PB”).² Verizon Wireless has elsewhere expressed its support for the Commission’s use of the package bidding format for conducting auctions.³ It has been nearly nine years since Congress gave the FCC authority to “provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round.”⁴ And, it is nearly six years since the FCC concluded in June 2000 that “the Wireless Telecommunications Bureau may implement [combinatorial bidding] design under its existing delegated authority if, after review of the comments, it finds combinatorial bidding to be

² Public Notice at 4-5.

³ *See gen.* Verizon Wireless Comments in Comment Sought on Experimental Design for Examining Performance Properties of Simultaneous Multiple Round Spectrum License Auctions with and without Combinatorial Bidding, DA 05-1267 (filed June 1, 2005).

⁴ Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3002 (1997); codified at 47 U.S.C. § 309(j)(3).

appropriate and feasible.”⁵ Shortly thereafter, the Wireless Bureau found that “package bidding should be an improvement over our usual auction design when (1) there are strong complementarities among licenses for some bidders, and (2) the pattern of those complementarities varies for different bidders. Under these circumstances, package bidding should yield the more efficient outcome, with licenses being sold to those bidders who value them the most.”⁶

Clearly the time is ripe for the Bureau to act on its long-ago conclusions. It is likely that the conditions quoted above are present in most spectrum auctioned for use by commercial mobile service (“CMRS”) providers, as is the case with the AWS-1 auction. The circumstances the Bureau envisioned as supporting the use of package bidding, that is, that there are strong complementarities among licenses for some bidders, and that the pattern of those complementarities varies for different bidders, exist here.

Verizon Wireless understands that conducting such an SMR-PB auction for all 1,122 licenses in AWS-1 may be infeasible; however, it supports the approach outlined in the Public Notice of taking a smaller subset of the larger licenses and offering them in an SMR-PB format. In particular, Verizon Wireless supports the

⁵ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Memorandum Opinion and Order*, FCC 00-224, 15 FCC Rcd 20845 at ¶ 76 (2000).

⁶ Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Procedures Implementing Package Bidding for Auction No. 31; *Public Notice*, DA 00-1486, 15 FCC Record 11526, 11526 (2000). Auction 31 was ultimately delayed by Congress. *See* Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715; 47 U.S.C. § 309(j)(15)(C)(iv).

Bureau's suggestion that it auction AWS-1 Blocks E and F in a separate SMR-PB auction.

The Bureau suggests that an SMR-PB auction may make it “more difficult for bidders interested in small groups or single licenses to compete against bidders interested in large aggregations.”⁷ However, the Commission's decision to create a band plan with six licenses including smaller geographic areas, in combination with the Bureau's proposal to permit standard SMR format bidding for a subset of licenses comprising 60 MHz of nationwide spectrum (Blocks A through D), mitigates such difficulties for bidders interested in aggregating small groups or single licenses. Furthermore, Blocks A-D, which comprise the smallest markets as well as one block of Regional Economic Area Grouping (“REAG”) licenses, are those most likely to be sought by bidders interested in small groups or single licenses, rather than Blocks E and F. Finally, an SMR-PB auction for two of the REAG licenses would permit those bidders seeking nationwide or larger geographic and spectral combinations to aggregate those licenses more efficiently.⁸ Offering both types of auction will satisfy both those bidders interested in smaller groups or single licenses as well as those interested in larger groupings, and will disadvantage neither.

⁷ *Public Notice* at 5.

⁸ *See, e.g.*, In the Matter of Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, FCC 05-149, 20 FCC Rcd. 14058 (2005) at ¶¶15-18, indicating that it may be important for some carriers to aggregate spectrum at auction.

Verizon Wireless does not believe, however, that the SMR and SMR-PB auctions should be held at the same time. It would be extremely difficult for bidders with numerous auction objectives to manage eligibility across both auctions. For example, in an SMR-PB auction, a bid remains active until the close of the auction, which makes it difficult for a bidder to know its exposure and thus determine what to do in the SMR auction being held at the same time. It is better for the Bureau to conduct the auctions consecutively.

II. LIMITS ON INFORMATION AVAILABLE TO BIDDERS SHOULD NOT RESTRICT INFORMATION ON OTHER APPLICANTS' OWNERSHIP.

Verizon Wireless is generally supportive of the Bureau's decision to limit the kinds of information it makes available prior to and during the course of the auction. Limiting information about bidders and bidding will lead to a better auction environment in which the focus rightfully is on licenses and their value, not on other bidders and their bidding strategies. However, the Bureau must release all information necessary for bidders to make informed decisions about the nature of permissible communications during the course of the auction. For example, the Bureau will need to release, in advance of the auction, a list of the auction applicants, including all 10 percent or greater owners, and information regarding applicants' agreements and other instruments. It seems clear that the Bureau must disclose any information about applicants necessary for bidders to remain in compliance with the Commission's anti-collusion rules. With respect to the disclosure of other information about bidders during the course of the auction,

Verizon Wireless supports the concept of limiting bidder information, but only if certain key information is available and aggregate auction data is released to the bidders after each round. It is not clear from the Public Notice, however, exactly what information the Bureau *is* intending to disclose and what information it *is not*. For example, what information will be available from applicants' Form 175 filings? Verizon Wireless believes it is important for bidders to know which bidders have ultimately qualified for the auction and whether an individual applicant has paid an upfront payment, even if the Bureau does not release the amount of the upfront payment. Bidders should also know the total the number of bidding units deposited at the start of the Auction. Also, in one place the Public Notice notes that "even under the proposal to limit bid information, the number of bids placed on a license in a round will continue to be publicly available as well at the amount of the provisionally winning bid."⁹ However, the Notice also states that "the only information about bids that we propose to reveal to the public is the gross, not the net, amount of any provisionally winning bids."¹⁰ The Bureau should clarify that it will include in the round results the number of bids per license and the total number of bids per round. The Bureau should also release after each round anonymous "totals" of other key information that it has previously released in detail by bidder, such as waivers used, eligibility lost, remaining eligibility and the number of remaining bidders. Finally, the Bureau should provide information on

⁹ *Public Notice* at 7.

¹⁰ *Id.*

the auction activity level, which is an indicator that the auction is about ready to change stages. With the exception relating to the FCC's anti-collusion rules, and aggregate information on the progress of the overall auction described above, Verizon Wireless sees no valid reason to support the release of other bidder and bidding data.

Verizon Wireless sees no reason to distinguish between and SMR and SMR-PB auctions for purposes of limiting bidding information; the same public interest analysis applies to both forms of auction. If the Bureau adopts the procedures for one auction, it should adopt it for both.

III. THE BUREAU SHOULD NOT SET AN EFFECTIVE RESERVE PRICE OF TWO TIMES THE AMOUNT REQUIRED UNDER THE CSEA.

As noted by the Bureau, the CSEA requires that the total cash proceeds “attributable to” eligible spectrum be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction.¹¹ In the Public Notice, however, the Bureau proposes an interpretation of the CSEA that has the result that only “one-half of each winning bid net of any applicable bidding credit discounts at the end of bidding will be counted toward meeting the reserve price.”¹² The Bureau's interpretation of the CSEA language with respect to the AWS-1 auction complicates the Commission's straightforward objective of raising 110

¹¹ *Public Notice* at 14, citing to CSEA, § 203(b). *See also* Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Report and Order*, FCC 06-4 (rel. Jan. 24, 2006) (“*CSEA Order*”).

¹² *Public Notice* at 14.

percent of NTIA's estimated relocation costs as estimated. This interpretation is strained and leads to the perverse result that the auction could raise \$2 billion, well in excess of the CSEA requirement of \$1,029,534,343.20, and yet still be cancelled.

Except under special circumstances, the Commission should avoid setting any reserve price for spectrum licenses it sells at auction. By setting a reserve price, the FCC is attempting to establish the value of the spectrum in advance of the auction. The FCC has previously determined that there are widely varying views about how different entities value spectrum.¹³ As a result, the FCC has historically left it to the market to decide. In fact, the FCC has never auctioned any spectrum in which it has employed a reserve price.¹⁴

The only circumstance in which it is appropriate for the FCC to set a reserve price is when, as is the case here, Congress has mandated that a minimum amount of money be raised from the auctioning of the spectrum. That amount is the minimum that must be raised to accomplish the specific public policy objectives of Congress – in this case, the relocation to other spectrum bands of federal systems

¹³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, ¶ 5 (1994).

¹⁴ Eventually the FCC established a reserve price for Auction No. 31, though that auction has never been conducted. *See* Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for June 19, 2002; Further Modification of Package Bidding Procedures and Other Procedures for Auction No. 31, *Public Notice*, DA 02-659, Report No. AUC-02-31-B (Auction No. 31), 17 FCC Rcd. 5140, 5175-78 (2002). We believe that the Bureau erred in setting a reserve price for that auction as well because, unlike Auction No. 66, there was no statutory requirement that the FCC recover a minimum amount from the auction. While we agree that the CSEA requires the Commission to set a reserve for Auction No. 66, that reserve will have been met once the auction raises 110% of NTIA's estimated relocation costs.

currently occupying the 1710-1755 MHz band. In enacting the statute, Congress did not mandate how those funds should be apportioned over the 45 MHz of spectrum that will be cleared, let alone mandate that the Commission should ensure that a minimum of additional funds be secured for auctioning other spectrum separate from this band.

The Commission's statutory requirement is clear. It must ensure that it raises at least 110 percent of the relocation estimates, as determined by NTIA. Beyond that, it should not attempt to assess a value to the spectrum being auctioned. Moreover, the Bureau uses an arbitrary computational methodology in which it assumes that precisely one-half any AWS-1 bid can be attributed to one-half the spectrum. Indeed, the value of the AWS-1 spectrum comes from the fact that the CSEA portion of the spectrum (1710-1755 MHz) can be paired with spectrum previously reallocated by the Commission (2110-2155 MHz).¹⁵ If that were not the case, and each half had an intrinsic value, the FCC would have long ago considered auctioning the upper band alone. In fact, elsewhere in the Public Notice the Bureau indicates that it has greater discretion under CSEA than suggested by its analysis in which it concluded that it should set a \$2 billion reserve.¹⁶ In its proposal to count only one-half the bid price for any license toward

¹⁵ The 2110-2155 MHz spectrum was set aside for future use as part of the FCC's Emerging Technologies Docket – a decision that the FCC made 13 years ago. *See gen.* Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9.

¹⁶ The Bureau suggests that if it were to conduct two auctions simultaneously, the reserve price for all the spectrum could be satisfied by the first auction in which the bidding stops,

meeting the CSEA reserve, the Bureau appears to be using CSEA as a justification for doubling the reserve. It should instead establish a reserve based only on the specific requirement that the auction raise 110 percent of NTIA's estimated relocation costs.

and that it “will not be necessary to hold that auction open to assure that the reserve price is met.” *Public Notice* at 9. In this instance, the Bureau’s conclusion that it could use the proceeds from the first auction to satisfy the full requirement of the reserve price without respect to the second auction is in conflict with its conclusion that in calculating whether the reserve price has been met it must attribute a particular value to a portion of the spectrum in each license. The reserve will have been met once the AWS-1 auction raises 110% of NTIA’s estimated relocation costs and the Bureau should not count each winning bid separately at one-half its amount.

IV. THE BUREAU SHOULD IMPLEMENT THE COMMISSION'S "TIERED" WITHDRAWAL PAYMENTS APPROACH IN THIS AUCTION.

Verizon Wireless believes that the Bureau's proposed interim bid withdrawal payment of 10 percent is too low. A mere 10 percent payment is unlikely to have the deterrent effect the Commission envisioned in its recent CSEA Order,¹⁷ particularly for the kinds of late auction withdrawals that unnecessarily extended Auction No. 58. In order to reduce the risk of speculative bidding behavior in late rounds when it can be so damaging, the Bureau should implement the Commission's "tiered" withdrawal payments approach for this auction. As Verizon Wireless noted elsewhere in comments on this issue,¹⁸ raising the default payment is an important change that will help curtail ill-informed or speculative behavior, and will put the burden of such behavior squarely on the shoulders of the individual bidder responsible for creating the inefficiencies that result from payment withdrawals.

IV. CONCLUSION

Verizon Wireless believes the public interest would be best served if the Bureau were to offer some portion of the AWS-1 licenses in an auction with package bidding, and hold those auctions consecutively, limit information available about bidders and bidding during the course of the auction for both auctions, calculate the

¹⁷ *CSEA Order*, ¶ 31.

¹⁸ Verizon Wireless Comments in Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, (filed Aug. 24, 2005) at 3-4.

reserve price for the auction only to satisfy the provisions of the CSEA, and raise the bid withdrawal payments in the final stage of the auction.

Verizon Wireless respectfully requests that the Bureau adopt the proposals it describes more fully above.

Respectfully submitted,

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