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April 4, 2006

57739-00013

**VIA ELECTRONIC FILING (ECFS)**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Communication  
Advanced Wireless Services Auction (AU Docket No. 06-30)

Dear Ms. Dortch:

On April 3, 2006, the following persons participated in oral presentations pertaining to the above-referenced proceeding:

Ben Almond representing Cingular Wireless  
Carl Northrop representing Columbia Capital, M/C Venture  
Partners and MetroPCS Communications, Inc.  
James Barker representing Leap Wireless  
Mark Stachiw representing MetroPCS Communications, Inc.  
Ken Johnson representing the Rural Telecommunications Group  
Tom Sugrue representing T-Mobile USA  
George Wheeler representing United States Cellular Corp.

Two separate meetings were held. The first was with Aaron Goldberger and Dana Shaffer in Commissioner Tate's office. The second was with Evan Kwerel, Walter Strack, James Schlichting and Margaret Wiener from the Wireless Bureau.

The presentation indicated the support of the diverse companies represented in the meeting for a compromise pertaining to anonymous bidding if the Commission was unwilling to retain the full transparency procedures from prior auctions. The compromise is summarized in the attached outline (Attachment 1) which was filed in the proceeding on Friday, March 31, 2006.

In response to an inquiry from Ms. Shaffer in yesterday's meeting, the e-mail communication attached hereto as Attachment 2 was sent today to provide additional information regarding the stance of the investment community on the blind bidding proposal.

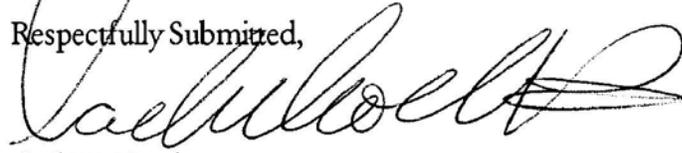
Marlene H. Dortch  
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Page 2

No written materials were distributed in the meeting.

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being electronically filed with your office.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully Submitted,



Carl W. Northrop  
Of PAUL, HASTINGS, JANOFSKY & WALKER LLP

CWN:s

cc: Aaron Goldberger  
Dana Shaffer  
Evan Kwerel  
Walter Strack  
James Schlichting  
Margaret Wiener

# **ATTACHMENT 1**

## AWS Auction Bidding Procedures

The following companies and organizations, all of which have endorsed full transparency in Auction 66 and continue to do so, have formulated the below-described proposal for the consideration of the Commission *if* the Commission rejects the arguments for continuing to provide complete bidder and bidding information as in the past: Cingular Wireless LLC, Columbia Capital LLC, Edge Wireless Licenses, LLC, Leap Wireless International, Inc., M/C Venture Partners, Madison Dearborn Partners, LLC, MetroPCS Communications, Inc., Rural Telecommunications Group, Inc., T-Mobile USA, Inc., and United States Cellular Corporation. The below proposal is intended to address the Commission's primary concerns without chilling participation in the auction to the point where there could be a material adverse affect on the level and extent of participation in the auction. The proposal sets forth a four-step program for the Commission to follow:

### I. **Send a Message**

The Plan: The auction procedures order should sent a strong message that the FCC intends to police bidding behavior carefully to guard against collusion or anti-competitive bidding practices and reserve to the Commission the right to suspend or cancel the auction, or to deny individual licenses, in the event that collusive bidding patterns are detected.

Rationale: Participants will avoid behavior that would jeopardize their winning bids or the entire auction. It is better regulatory policy to investigate suspicious activity and the punish wrongdoers than to adopt overly restrictive procedures that “throw the baby out with the bath water.”

### II. **Eliminate all Jump Bidding**

The Plan: Modify the auction procedures so that all bidders can only increase the prior high bid by a single bidding increment.

Rationale: This change addresses the FTC and DOJ concern that jump bids are a way of signaling and can be used to “punish” an uncooperative bidder.

### III. **Adopt the T-Mobile Competitiveness Ratio**

The Plan: Allow full transparency if the auction meets the eligibility and bidder thresholds proposed by Peter Cramton in the T-Mobile *ex partes* of March 3 and March 20:

- Full transparency if at the outset of the auction there is an eligibility ratio of 2 (using the below principles to make the calculation).

- Cap the amount of eligibility attributable to any single bidder at 50 percent of the total offering (e.g. 45 MHz nationwide) for purposes of calculating the eligibility ratio.
- Adjust the required competitiveness ratio upward if there are fewer than 15 bidders with eligibility of greater than 1% of available spectrum.
- 3 or more eligible bidders for the largest REAG license.

Rationale: These thresholds will guarantee a highly competitive auction which reduces the prospects for successful collusive behavior.

#### IV. **Adopt the U.S. Cellular “Snapshot” Proposal With Certain Modifications**

The Plan: If the auction is not fully transparent because the T-Mobile competitive ratios are not met, then the information available in the early round of the auction would be limited to “snapshots” as proposed by Robert Weber in the US Cellular *ex parte* of March 17, 2006, with certain modifications:

- At random intervals, varying from every 3rd round to every 7th round, the FCC would release the same bidding and bidder identity information that was available after every round in prior auctions.
- On non-snapshot rounds, the Commission would reveal only the currently high bid amount, and the aggregate level of eligibility for all bidders in a particular market.
- The auction would move to full transparency when any of the following triggers are met:
  - The Auction enters Stage II;
  - The total provisionally winning bids in any round, net of applicable bidding credit discounts, equals \$4,118,137,372.80 (twice the aggregate minimum reserve price that must be met pursuant to CSEA); or
  - The total bidding eligibility in the auction for all bidders drops below 50% of the initial total bidding eligibility of all bidders based on their upfront payments.

Rationale: Snapshots at random intervals dramatically reduce the prospects for effective signaling and punishing bids since the actor won’t know if the source of the bid will be known. The triggers to move to full transparency recognize that the risks of signaling and punishing bids are greatest when prices are lower and participants have ample remaining eligibility to enable them to use bids to signal or punish.

**The Bottom line:** The Commission's latest auctions have been great successes. To the extent that the Commission perceives potential risks of collusion, it is better to address the situation through incremental rule changes rather than by radical alterations of the procedures that have worked efficiently in the past.

## **ATTACHMENT 2**

**Northrop, Carl**

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**From:** Northrop, Carl  
**Sent:** Tuesday, April 04, 2006 10:42 AM  
**To:** 'Dana.Shaffer@fcc.gov'  
**Cc:** Harry F. Hopper III (harry.hopper@colcap.com); James F. Wade (jwade@mcventurepartners.com); Jim Perry (jperry@mdcp.com)  
**Subject:** AWS Auction procedures - AU Docket No. 06-30

Ms. Shaffer -

This e-mail responds to your desire to hear from representatives of the financial community in connection with the anonymous bidding issue.

I am attaching for your information copies of the Joint Comments filed by Columbia Capital LLC and M/C Venture Partners, and the Joint Reply Comments filed by Madison Dearborn Partners LLC and TA Associates, Inc. in this proceeding. Both sets of comments answer the question you posed yesterday as to why prospective bidders need to know who they are bidding against. They also provide compelling evidence of the fact that fewer bidders will show up at the auction, and those who show up will be less active, if they are forced to bid blind.

As indicated in the *ex parte* filing made last Friday, M/C, Columbia and Madison Dearborn all support the compromise proposal we discussed with you yesterday *if* the Commission cannot go along with total transparency. The principals of these companies who have been focusing on this issue all are *en route* to Las Vegas for the CTIA convention,. We would, though, be glad to try to arrange a conference call with you this afternoon to discuss their views. I know that Harry Hopper of Columbia is available from 1 PM to 2:30 PM EST today by telephone. If there is a time that suits your schedule in this window, I will try to get representatives from the other companies to join as well (though at this point I do not know their schedules). Please let me know as soon as possible if you want me to set up a dial in conference call number.

We look forward to conferring with you.

Carl Northrop

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4/4/2006

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

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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**

Carl W. Northrop  
J. Steven Rich  
Paul, Hastings, Janofsky  
& Walker LLP  
875 15th Street, NW  
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(202) 551-1700

Their Attorneys

February 14, 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,<sup>2</sup> Crowley Cellular,<sup>3</sup> Sterling Cellular,<sup>4</sup> Triad Cellular Corporation,<sup>5</sup> and TeleCorp Holding Corporation.<sup>6</sup> Current portfolio companies of both Columbia and MC include MetroPCS Communications,<sup>7</sup> Cleveland Unlimited d/b/a Revol,<sup>8</sup> Coral Wireless d/b/a Mobi PCS,<sup>9</sup> and TX-11 d/b/a/ Cellular One.<sup>10</sup>

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.

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

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

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

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

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

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

<sup>8</sup> 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.

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

<sup>10</sup> 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,<sup>11</sup> 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

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<sup>11</sup> 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.<sup>12</sup> 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.

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<sup>12</sup> 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.<sup>13</sup> 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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(...continued)

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]").

<sup>13</sup> 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.<sup>14</sup> 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 are a number of important

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<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.

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<sup>15</sup> 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.

<sup>16</sup> 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,

**Columbia Capital LLC**

**MC Venture Partners**

By: /s/ Carl W. Northrop  
Carl W. Northrop  
J. Steven Rich  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
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Telephone: (202) 551-1700  
Facsimile: (202) 551-1705

*Their Attorneys*

February 14, 2006

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

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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 REPLY COMMENTS  
OF  
MADISON DEARBORN PARTNERS, LLC  
AND  
TA ASSOCIATES, INC.**

**TA Associates, Inc.**  
**125 High Street,**  
**Suite 2500**  
**Boston, MA 02110**

**Madison Dearborn Partners, LLC**  
**Three First National Plaza**  
**70 W. Madison, Suite 3800**  
**Chicago, IL 60602**

February 28, 2006

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

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In the Matter of	)	
	)	
<b>Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006</b>	)	AU Docket No. 06-30
	)	
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**JOINT REPLY COMMENTS**

Madison Dearborn Partners, LLC (“MDP”) and TA Associates, Inc. (“TA”) hereby submit their joint reply comments in the above-captioned proceeding, which was initiated pursuant to the *Public Notice*, DA 06-238, released January 31, 2006 (the “*Notice*”)<sup>1</sup> in which 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. In reply to the *Notice* and the many comments filed in this proceeding<sup>2</sup>, the following is respectfully shown:

**I. INTRODUCTION**

MDP and TA are private equity firms with substantial investment portfolios in the wireless telecommunications sector. MDP is one of the largest and most experienced private

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<sup>1</sup> *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).

<sup>2</sup> More than 50 interested parties filed comments in the proceeding on February 14, 2006.

equity firms in the United States, having raised and managed four funds over the past 13 years with assets exceeding \$12 billion. MDP focuses its investments in a handful of specific industry sectors, including the communications sector. Representative wireless licensee companies in this sector in which MDP is or has been invested include Council Tree Alaska Native Wireless, LLC, MetroPCS Communications, Inc., Nextel Communications, Inc. and Nextel Partners, Inc., Omnipoint Corporation, Rural Cellular Corporation and WNP Communications, Inc. TA is one of the oldest private equity and buyout firms in the world and has a \$6 billion capital base. The communications sector makes up a significant portion of the TA portfolio, and companies in wireless-related businesses represent a growing portion of the TA investments. Representative TA investments (past and present) in this sector include Asurion (wireless enhanced service provider), Bachtel Cellular Liquidity, L.P. (rural cellular operator); MetroPCS Communications, Inc. (broadband wireless service provider) and SBA Communications Corporation (wireless infrastructure).

MDP and TA typically take major positions in their investment portfolio companies in the communications sector, and often participate directly in the business through active participation on the governing boards of the companies. Multiple companies that MDP and/or TA backed have participated in and garnered spectrum in wireless spectrum auctions, and representatives of MDP and TA have been active in the auction process. As a consequence, both firms have familiarity with the auction rules and are able to assess the impact – particularly the impact on financial institutions – of the new rules and procedures proposed by the Commission for Auction No. 66.

As is set forth in greater detail below, MDP and TA agree with the many commenters in this proceeding who oppose the proposed withholding of bidding information before and during the course of the auction. Financial institutions will be less likely to fund auction participants to

the same extent if this dramatic change in standard bidding procedures is imposed. MDP and TA also oppose having the Commission conduct two simultaneous auctions with one of the two auctions utilizing package or combinatorial bidding procedures. Any theoretical benefits of that approach are outweighed by the added complexities that combinatorial bidding brings to the process.

Finally, MDP and TA concur with commenters who urge the Commission to make sure that the applicable rules are established and publicized well before the start of the auction so that proper investment decisions can be made.

## **II. Dramatic Changes Should Not be Made to the Successful Auction Procedures**

The involvements of MDP and TA in the wireless industry predate the Commission's auction authority. As a result, the companies witnessed the delays in licensing that came with comparative hearings and the inefficient license allocations that came with random selection techniques. While auctions have not been without problems,<sup>3</sup> the Commission has been vigilant in continuing to refine and improve the auction processes, to a point where the auction now are running efficiently and smoothly. Auction 58, the most recent wireless broadband auction, generated robust bidding and was virtually free of controversy. With this successful track record, MDP and TA are surprised that the Commission wants to make major changes in the process, particularly since the AWS auction will be bringing so much spectrum to market.

### **A. Blind Bidding Will Discourage Investment**

As financial institutions, MDP and TA have a bias in favor of receiving as much market information as they can before investing money in a license acquisition. Information concerning the number and identity of different competitors in a market, their respective

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<sup>3</sup> For example, the speculative bidding in the PCS C Block Auction (Auction No. 5) was fueled in part by the installment payment program.

spectrum holdings, their regional or national market positions, etc., are critical determinants of the amount that MDP and TA will invest. The Commission's proposal to withhold all bidding information other than the high bid price will leave bidders in the dark and less able to evaluate each market. In the absence of a solid basis for evaluations, financial investors will either withdraw or reduce the amount of their investments because they have been forced to factor in additional elements of uncertainty and risk.

Bidder information is particularly critical in light of the amount of spectrum that is coming on line in Auction No. 66. The 90 MHz of AWS spectrum will increase by more than one-third the available broadband spectrum, and could result in as many as 6 new entrants, in each market. This means that two similarly-sized markets could end up with dramatically different competitive situations. One market might have a handful of national carriers each with 55 MHz of spectrum or more. Another might have twice as many competitors, including several new entrants, with smaller spectrum positions. MDP and TA would have little interest in backing a new entrant in the second case. The problem, of course, is that it won't know the situation if auction participants are forced to bid blind.

MDP and TA note that an overwhelming number of commenters oppose the Commission proposal to withhold bidding information. The Commission should be impressed by the fact that the opponents include a diverse cross section of prospective auction participants including small<sup>4</sup>, midsize<sup>5</sup> and larger carriers<sup>6</sup>, nationwide carriers<sup>7</sup> and niche players<sup>8</sup>, urban<sup>9</sup>

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<sup>4</sup> See, e.g., Comments of RT Communications, Inc.

<sup>5</sup> See, e.g., Comments of Centennial Communications Corporation.

<sup>6</sup> See, e.g., Comments of Alltel Corporation.

<sup>7</sup> See, e.g., Comments of Sprint Nextel Corporation ("Sprint Nextel Comments").

<sup>8</sup> See, e.g., Comments of Leap Wireless International, Inc.

<sup>9</sup> See, e.g., Comments of MetroPCS Communications, Inc. ("MetroPCS Comments").

Here too, the record of the proceeding shows no groundswell of support for package bidding. Rather, a broad cross-section of prospective bidders have urged the Commission not to pursue this alternative.<sup>14</sup>

In sum, in the absence of compelling justification, the Commission should not alter the standard simultaneous multiple round auction procedures with which bidders are familiar and which are highly likely to result in an economically efficient assignment of licenses.

### **III. Prospective Bidders Will Need Time to Assess the Final Rules**

MDP and TA have capital to invest and would like to see Auction No. 66 take place in the near term. Nonetheless, MDP and TA agree with interested parties who ask the Commission to allow adequate time after the auction procedures are established before requiring applications to be filed in Auction No. 66.<sup>15</sup> For the reasons set forth in these comments, the manner in which the procedural issues that are in play in this proceeding get resolved could have a material effect upon the nature and extent of the additional investments, if any, that MDP and TA will make in prospective Auction No. 66 applicants. While MDP and TA are willing to move quickly, it will take time for applicants to finalize their business plans and solidify their financing. The last thing the Commission wants is for applicants to show up in the auction without their financing in place. This either would discourage participation or encourage unfunded bidding, neither of which is desirable.

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<sup>14</sup> See, e.g., MetroPCS Comments at 6; Sprint Nextel Comments at 1; Columbia/MC Comments at 4; Comments of T-Mobile USA, Inc. at 4-5; U.S. Cellular Comments at 12.

<sup>15</sup> See MetroPCS Comments at 5; Columbia/MC Comments at 9.

and rural carriers<sup>10</sup>, and financial institutions.<sup>11</sup> In contrast, the support for blind bidding is sporadic, and not particularly compelling.<sup>12</sup>

On balance, the Commission should alter its proposal and stick with the transparent auction process that has worked well in the past.

### **B. Combinatorial Bidding is Unnecessary**

Auction 66 includes a diverse collection of licenses of varying geographic and spectrum configurations. With six licenses in a common frequency range, bidders will have many choices to fill particular spectrum and service area objectives. And, the availability of large Regional Economic Area Grouping (REAG) licenses will enable an interested party to assemble a nationwide footprint (if indeed that is desired). With these points in mind, there is no reason to use this important auction as an experiment in combinatorial bidding.

MDP and TA agree with commenters who express concern that conducting two simultaneous auctions utilizing different bidding rules will increase the risk of bidding mistakes, license defaults and, ultimately, inefficient license allocations.<sup>13</sup> Given the number of licenses and markets that are involved, the possible combinations and outcomes will be difficult to monitor, predict and manage. The bidders who will be harmed the most will be the smaller entrepreneurial companies that investors like MDP and TA typically back, because these companies do not have the personnel and other auction resources that will be necessary to manage the complexity of combinatorial bidding and simultaneous auctions.

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<sup>10</sup> See, e.g., Comments of Marne & Elk Horn Telephone Company.

<sup>11</sup> See, e.g., Joint Comments of Columbia Capital LLC and MC Venture Partners (“Columbia/MC Comments”).

<sup>12</sup> For example, Verizon Wireless supports blind bidding but largely devotes its analysis to an explanation of why certain information—such as the identities of bidders that have qualified for an auction, along with ownership information—is beneficial, instead of why some information should be withheld. Comments of Verizon Wireless (“Verizon Wireless Comments”) at 5-7.

<sup>13</sup> See, e.g., Sprint Nextel Comments at 3-4; MetroPCS Comments at 8-9; and Comments of United States Cellular Corporation (“U.S. Cellular Comments”) at 10-11.

#### IV. CONCLUSION

In light of the foregoing, MDP and TA respectfully request that the Commission adopt auction procedures in conformance with these Joint Reply Comments.

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