

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

Auction of 700 MHz Band Licenses)	DA 07-3415
Scheduled for January 16, 2008)	
Comment Sought on Competitive Bidding Procedures)	AU Docket No. 07-157
)	
)	Report No. AUC-07-73-A (Auction No. 73)

COMMENTS OF VERIZON WIRELESS

In the above captioned *Public Notice*, the Wireless Telecommunications Bureau announces the auction of 1,099 700 MHz licenses in the 698-806 MHz bands (“700 MHz Band”). The auction is scheduled to commence on January 16, 2008.¹ Verizon Wireless submits the following comments on several aspects of the *Public Notice*. The Bureau should (1) tighten the auction schedule and change some bidding procedures to decrease the number of months that bidders would be subject to the anti-collusion rules, (2) clarify eligibility issues and bidding procedures for the initial auction and any reaction and (3) ensure that its implementation of the anonymous bidding rules not be overly restrictive.

¹ Auction of 700 MHz Band Licenses Scheduled for January 16, 2008, Comment Sought on Competitive Bidding Procedures for Auction 73, *Public Notice*, DA 07-3415, AU Docket No. 07-157, Report No. AUC-07-73-A (Auction No. 73) (rel.Aug.17, 2007) (“*Public Notice*”).

I. THE BUREAU SHOULD TIGHTEN ITS AUCTION SCHEDULE AND ADOPT SPECIFIC BIDDING PROCEDURES TO SPEED AUCTION PROGRESS.

The unique nature of this auction and possible reauction and the potential for the anti-collusion rules to be in effect for many months² requires that the Bureau focus on aspects of its schedule and procedures that will tighten the auction schedule and speed the bidding. The Bureau should minimize the impact of the unique circumstances of this auction on the day-to-day operations of the wireless industry by taking steps to reduce the time for application review prior to the beginning of the auction as well as between auctions.

First, the Bureau should implement a shorter schedule for its review of initial applications. In the past several auctions, the Bureau has required that applicants file their “short forms” two months or more prior to the commencement of bidding. The Bureau should reduce this period to not more than six weeks prior to the auction’s start, in order to minimize the impact of an extremely lengthy anti-collusion period. That would be ample time given that the Bureaus and applicants are experienced with the short-form application and review process.

Second, with regard to the period between the first auction and a possible reauction, the Bureau indicates that its timeframe will permit “bidding on the alternative licenses to begin less than two months after the public notice announcing the close of Auction 73.”³ Verizon Wireless believes that it is possible to shorten considerably the timeframe between an auction and any potential reauction by not requiring a second application process. It is not even clear why the

² In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, WT Docket 06-150, ¶ 316 (rel. Aug. 10, 2007) (“*Second Report and Order*”). (“[G]iven the related nature of the initial auction of 700 MHz Band licenses and any subsequent auction of alternative licenses, we find that the applicable ‘down payment deadline’ for purposes of our anti-collusion rule shall be the ‘down payment deadline’ established for the subsequent auction.”)

³ Public Notice, ¶ 100.

Bureau would permit applicants to, in essence, re-apply for specific licenses. An applicant's interest in a particular geographic area in the initial application is what establishes overlapping markets for purposes of compliance with the anti-collusion rules. The Commission's rules do not permit applicants to change the choice of markets during the course of the auction.⁴ Since, for purposes of compliance with the anti-collusion rules, the Commission required the Bureau to treat Auction No. 73 and any subsequent reauction as a single auction,⁵ the Bureau cannot permit applicants to change their license selection for a reauction and thus should not invite applicants to "select[] alternate licenses" for a reauction.⁶

If the Bureau needs applicants to re-list licenses they are interested in for administrative reasons such as programming the auction software, it should either deduce that information from the initial applications or require that applicants specifically provide it in their initial applications. For example, if A, B or E block is reaucted, there would be no change in the license size offered and thus no administrative need for licensees to provide the information again. If the C block is reaucted, because EAs are a subset of REAGs, the Bureau could permit an applicant to bid on the subset of REAGs and EAs that are included in any REAGs listed on the original application.

In the alternative, the Bureau could require that the applicant indicate on its initial application any C1 licenses it would like to be able to bid on in the event of a C block reauction. In Auction No. 73, a bidder's market choices will be known only to the FCC and furthermore, a bidder's anti-collusion status cannot change during the course of the auction, thus there is no risk

⁴ 47 CFR § 2105(b)(2).

⁵ Second Report and Order, ¶ 316.

⁶ Public Notice, ¶ 100

associated with requiring an applicant to choose upfront what licenses it wishes to bid on in the initial auction and any reauction that may or may not occur.

In any event, because the upfront payment, not the selection of markets, determines bidders' eligibility during an auction, the only new requirement for a reauction is that bidders refresh their upfront payments. The Bureau should announce immediately any reauction and request that within 10 days of the close of the first auction bidders refresh upfront payments to establish new eligibility levels for the reauction.⁷ This would permit the reauction to start within weeks of the first auction.

Third, Verizon Wireless believes the Bureau should also adopt specific bidding procedures to speed auction progress. One tool the Bureau has used before is to require high activity levels in the auction's final stages. In the past several auctions, however, the Bureau has eliminated the Stage 3 activity level, in which participants must maintain 98 percent eligibility. Here the Bureau again has proposed only two, instead of three, stages, with a final eligibility level of 95 percent.⁸ Though the Bureau does indicate it could add a stage with a higher activity requirement,⁹ it leaves that decision to its discretion during the auction and does not propose at the outset to include three stages in the auction. It should do so.

Establishing a Stage 3 where bidders must use 98 percent of their eligibility has been one of the Commission's tools to keep an auction running at a reasonable pace. Bidding for

⁷ A bidder who has won nothing or has won licenses whose price is less than its initial upfront payment should be permitted to apply the excess amount to any subsequent upfront payment. Furthermore, the Bureau should permit a bidder to *decrease* the amount of its upfront payment for any subsequent reauction and receive an immediate refund of the excess amount.

⁸ Public Notice, ¶ 41.

⁹ *Id.*

Advanced Wireless Service (“AWS”) licenses in Auction No. 66 was very instructive. There the Bureau did not move to 98 percent eligibility. In part as a result of not pushing to a higher activity level, the auction continued for nearly three weeks (130 rounds of a 161 round auction) after the Bureau moved to Stage 2, the so-called “final” stage of the auction. Given that Auction No. 73 might involve both a reauction and an extensive anti-collusion period, the Bureau should include a 98 percent eligibility requirement for Auction No. 58 as an important tool in managing the pace of the auction.

Fourth, the Bureau should modify the minimum bid for the D Block. The Bureau has set a minimum bid for the D Block well below its reserve price. Because it is a single license, a bid below the reserve price is meaningless - only a bid for \$1.33 billion or more can win this license. In fact, setting a minimum bid below the reserve only ensures the type of gaming of the auction rules that the Commission is attempting to curtail by adopting anonymous bidding. If the Bureau keeps the minimum bid below the reserve, bidders can freely “park pops” on the D block, preserving eligibility with insincere bids. To prevent this kind of bidding behavior that could unreasonably prolong the auction, the Bureau should adopt a minimum opening bid for the single D block license that is equal to the block’s reserve price of \$1.33 billion

III. THE BUREAU SHOULD CLARIFY ITS BIDDING PROCEDURES FOR THE INITIAL AUCTION AND PARTICIPATION IN ANY REAUCION.

In its *Second Report and Order*, the Commission directs the Wireless Bureau to consider any additional procedures within its delegated authority that may enhance the effectiveness of the 700 MHz auction.¹⁰ Included in this direction is that the “Wireless Bureau should consider whether otherwise eligible bidders should be denied bidding eligibility in a subsequent auction of

¹⁰ Second Report and Order, ¶ 317

unconditioned licenses based on their bidding behavior, *e.g.*, withdrawals, defaults, and/or other actions, in connection with the initial auction.”¹¹ The Bureau proposes that “otherwise eligible bidders will be denied bidding eligibility in a subsequent auction in the event that they default on any winning bids in the initial auction.”¹² The Bureau should adopt this proposal,¹³ but clarify that it would not prohibit “otherwise eligible bidders” from participating in a subsequent 700 MHz reaction for any other reason, particularly such standard SMR practices as a bid withdrawals. For the same reason, the Bureau should not prevent other eligible bidders that “drop” bids in the C Block from participating in any reaction of that spectrum. Over the years, the Commission and Bureau have successfully honed the auction rules to balance the potential for abuse of such procedures against their real benefit to the bidder in managing its eligibility. The Bureau should continue to make these tools available to participants in this auction.

In addition, the Bureau should clarify whether an “otherwise eligible bidder” in a reaction of any block is any bidder that indicates in its initial application an interest in bidding on licenses in that block, or whether the bidder would have to actually bid on specific licenses in the initial auction in order to participate in any reaction of those licenses or a subset of those licenses.

Moreover, because of the unique nature of this auction, the Bureau needs to clarify how it will treat withdrawals. A bidder withdrawal could cause the aggregate price for a particular block to drop below its auction reserve price. Will the Bureau consider that the reserve has been

¹¹ *Id.*

¹² Public Notice, ¶ 103.

¹³ For the reasons that Verizon Wireless discusses *infra*, the Bureau cannot know if a bidder is in default on the initial auction except to the extent that that bidder withdraws a bid after the auction closes. As a result, the proposal to exclude such bidders will have limited impact.

met and thus there is no need for a reauction, even if the bids never again exceed the pre-withdrawal reserve amount? In another scenario, a bidder could withdraw a bid for a license in a license block that never meets the auction reserve, neither before nor after its bid withdrawal. Would the bidder be responsible for bid withdrawal payments in an auction that has not met the reserve?

Finally, also with respect to withdrawals and activity rule waivers, the Bureau should clarify that, if there is a reauction, even though for application and anti-collusion rule purposes it would be single event, it would be treated as an entirely separate auction event for bidding purposes. For example, just as the Bureau intends to establish new eligibility levels for any reauction by permitting a bidder to “refresh” its upfront payment, it should “re-set” bid withdrawals to two, and activity rule waivers to three, regardless of whether a bidder withdrew bids for any licenses or used a waiver in any round in the first auction.

III. THE BUREAU SHOULD ADOPT BIDDING PROCEDURES THAT BALANCE ANONYMOUS BIDDING REQUIREMENTS WITH ANTI-COLLUSION RULES.

Auction No. 73 presents unique challenges for bidders to comply with the FCC’s anti-collusion rules, because of the implementation of anonymous bidding, the potential for a reauction of some license blocks if those blocks do not meet their reserve price and the Commission ruling that the anti-collusion period will begin with the application filing deadline for the first auction and end with the down payment deadline of any subsequent reauction. In the *Public Notice*, consistent with the Commission’s direction,¹⁴ the Bureau proposes that the bidders’ identities be kept secret throughout both auctions, regardless of whether they are

¹⁴ Second Report and Order, ¶ 315, n. 711.

winning bidders in portions of the spectrum not to be reaucted.¹⁵ Moreover, it appears that all applicants, including those bidders who have winning bids in a block that will not be reaucted, still will be subject to the anti-collusion rules through the close of the second auction, a period that could last several more months.¹⁶ A bidder could be at risk of violating the Commission’s anti-collusion rules if it reveals that it was the high bidder for any 700 MHz licenses in the first auction. This creates a significant issue for bidders, particularly those who are public companies who may have reporting obligations. The Bureau should permit high bidders to reveal that fact to the extent they need to do so pursuant to other laws or regulations.

Moreover, because the Bureau intends to withhold the winning bidders’ identities until after the close of the any subsequent reauction, Verizon Wireless assumes that the Commission will not require high bidders to pay the remainder of their winning bids until that time. It is longstanding Commission practice to inform high bidders of their payment obligations by official public notice, which the Bureau cannot do between auctions if it intends to withhold winning bidders’ identities until after the reauction.¹⁷ However, the proposal in the *Public Notice* that would exclude bidders that default on bids in the first auction from participating in a subsequent reauction suggests that bidders will be expected to pay for licenses won in the initial auction prior to the Bureau publicly identifying the winning bidders.¹⁸ The Bureau should

¹⁵ Public Notice, ¶ 16.

¹⁶ Public Notice, ¶ 16, n. 14

¹⁷ The Commission’s rules require that it “identify and notify the high bidder and declare the bidding closed”, after which the bidder has ten business days to submit its down payment. 47 CFR § 1.2107(a)-(b). In the case of the final payment, the rule requires that the Commission notify bidders of its payment obligations by public notice. 47 CFR § 1.2109(a)

¹⁸ Public Notice, ¶ 103 (“We propose that otherwise eligible bidders will be denied bidding eligibility in a subsequent auction in the event that they default on any winning bids in the initial auction.”)

clarify that no down payment or final payment will be due for licenses won in the initial auction until after the close of any subsequent reauction.

Finally, Verizon Wireless supports the Commission'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, as it did in Auction No. 71, 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. The Bureau must disclose any information about applicants necessary for bidders to remain in compliance with the Commission's anti-collusion rules. The Bureau should thus clarify that it will release in advance of the auction a list of the auction applicants and provide access to the ownership information in other applicants' Forms 175

IV. CONCLUSION

Verizon Wireless respectfully requests that the Bureau adopt the procedures and make the clarifications as set forth above.

Respectfully submitted,

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