

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Auction of Broadband Radio Service (BRS)) AU Docket No. 09-56
Licenses Scheduled for October 27, 2009)

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF SAL SPECTRUM, LLC

SAL Spectrum, LLC (“SAL”), by counsel, hereby provides its comments in response to the Public Notice inviting comment on competitive bidding procedures for the auction of 78 BRS Basic Trading Area (“BTA”) authorizations (Auction 86).¹

Background

SAL is a Commission licensee² and the commonly owned affiliate of Commnet Wireless, LLC (“Commnet”), a mobile wireless carrier operating primarily in rural, remote and tribal areas of the country. Commnet serves primarily as a “carriers’ carrier,” providing service to areas that other wireless carriers do not serve, and thereby extending the effective coverage footprint of other carriers, without those other carriers having to spend their own capital resources on build-out. Commnet has roaming agreements with over one hundred domestic and international carriers, including Verizon Wireless, AT&T Mobility, Sprint Nextel, T-Mobile and Cricket. In a year, Commnet handles several hundred million minutes of voice traffic on behalf of these other carriers. Commnet

¹ Public Notice, “Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009,” DA 09-843, re. Apr. 24, 2009 (“*Public Notice*”).

² SAL was the high bidder for five 700 MHz Lower Band market areas in Auction 73. See licenses issued to SAL (Call Signs WQJQ808, WQJQ809, WQJQ810, WQJQ811 and WQJQ812, granted November 26, 2008).

affiliates recently obtained status as an eligible telecommunications carrier in Nevada and Colorado.

SAL and Commnet have obtained spectrum rights in a number of ways, including by filing for unserved areas, acquiring other mobile wireless carriers and participating in the Commission's spectrum auctions. SAL is considering participating in Auction 86 in order to expand its spectrum holdings.

Discussion

In the *Public Notice*, the Wireless Telecommunications Bureau ("Bureau") invites comment on proposed procedures for Auction 86. SAL believes that these procedures, which are nearly identical to those employed in the 700 MHz Lower Band auction, are satisfactory and will well serve the public interest.

SAL is concerned, however, that the May 1, 2011 date for auction winners to demonstrate "substantial service" pursuant to Section 27.14(o) of the Commission's Rules will discourage participation in Auction 86 and deflate the amount that participants will be willing to bid. The Commission adopted Section 27.14(o) in April 2006 to establish a firm date by which *existing* licensees were required to demonstrate substantial service, but did not account for BRS licenses to be issued *in the future*.³

³ See Amendment of Parts 1, 21, 74, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606 (2006), at 5733. Notably, the May 1, 2011 deadline applies to licensees that obtained licenses for BTAs in 1996 pursuant to Auction 6. Because the Commission excused these licensees from meeting earlier performance obligations when it considered new rules for the 2.5 GHz band, most of these licensees will have 15 years from initial license grant to demonstrate substantial service. Likewise, many EBS licensees issued pursuant to the 1995 filing window will have more than ten years to demonstrate substantial service. See Amendment of Parts 1, 21, 74, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004), at ¶233.

Assuming the auction begins on schedule and licenses are granted the following month, licensees would have at most only 18 months to meet the substantial service deadline. This is far less than the ten years the Commission affords licensees in other auctioned services, where the substantial service showing is coextensive with the initial ten-year license term.⁴ If Auction 86 licensees have 18 months or less to construct facilities that comply with the substantial service standard, prospective bidders may elect to forego participation, and those that do participate may not be willing to pay full value.

SAL appreciates that the Bureau may not have delegated authority to amend Section 27.14(o). If such is the case, SAL asks the Commission, not the Bureau, to adopt the auction procedures order and include therein an amendment to Section 27.14(o) that affords Auction 86 licensees a full ten years from license grant to demonstrate substantial service. Alternatively, SAL requests that the Commission clarify Section 27.14(o), issue a declaratory ruling or initiate an expedited rulemaking proceeding so that prospective auction participants can take part in Auction 86 knowing that they will have a reasonable period of time to demonstrate substantial service.

Respectfully submitted,

SAL SPECTRUM, LLC

May 15, 2009

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⁴ See, e.g., Section 27.14(a) (substantial service to be demonstrated within ten years for AWS and WCS licensees); Section 101.17(a) (same for 39 GHz licensees); Section 101.1011(a) (same for LMDS licensees). SAL observes that the Commission has extended the ten-year period for WCS and LMDS licensees.