

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

In the Matter of:)	
)	
Auction of Broadband Radio Service)	
(BRS) Licenses Scheduled for October 27,)	
2009)	AU Docket No. 09-56
)	
Comment Sought on Competitive)	
Bidding Procedures for Auction 86)	

REPLY COMMENTS OF CLEARWIRE CORPORATION

I. INTRODUCTION AND SUMMARY

Clearwire Corporation (“Clearwire”), a Broadband Radio Service (“BRS”) licensee and lessor, in response to the Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) on April 24, 2009 in the above-referenced matter^{1/} hereby submits reply comments regarding the competitive bidding procedures proposed by the FCC for the auction (“Auction 86”) of BRS licenses, scheduled for October 27, 2009.

I. DISCUSSION

A. Proposed Minimum Prices Should be Adjusted to Account for Incumbency Levels

Clearwire agrees with both the Wireless Communications Association International (“WCAI) and the Ad Hoc BRS Applicants Association (“Ad Hoc Applicants”) that the Bureau’s proposed upfront payment and the corresponding minimum opening bid amounts must be adjusted to reflect differing levels of existing encumbrances among the licenses offered for

^{1/} *Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009; Comment Sought on Competitive Bidding Procedures for Auction 86, Public Notice, AU Docket No. 09-56, DA 09-843 (rel. Apr. 24, 2009) (“Auction Procedures PN”).*

auction.² Clearwire shares their concern that the proposed minimums based on a MHz*Pops formula that does not account for incumbency results in an auction “entry fee” that is so excessive for a significant number of licenses that auction participation will be discouraged and the bidding process will be compromised. Both WCAI and the Ad Hoc Applicants propose modifications to the Bureau’s methodology for calculating the auction minimums that provide a fuller picture of the actual MHz*Pops available in a particular Basic Trading Area (“BTA”).³ While WCAI’s and the Ad Hoc Applicants’ proposed modifications are slightly different, either proposal is acceptable to Clearwire. Clearwire urges the Bureau to avoid unsold licenses or skewed bidding by modifying its formula for calculating upfront payments and minimum opening bids pursuant to one of the two proposals now before it. As noted by WCAI, adjustment of the minimums to appropriate levels will promote participation in the auction and help preserve the integrity of the Commission’s auction processes.

B. The Substantial Service Date for Auction Winners Should Not be Changed

SAL Spectrum, LLC (“SAL”)’s request that the May 1, 2011 date for auction winners to demonstrate “substantial service” pursuant to Section 27.14(o) of the Commission’s rules be extended for 10 years should be rejected by the Bureau.⁴ The difficulty of meeting the substantial service deadline likely will vary depending upon the particular characteristics of a license such as the size of the available service area and the available MHz*Pops. SAL has not made any particular showing that a blanket 10 year extension is warranted. In fact, the question of whether the “substantial service” deadline is achievable is an assessment that must be made by

² Comments of Wireless Communications Association International at 1-3; Comments of Ad Hoc BRS Applicants Association at 1-3.

³ BTAs are material copyright © 1992 Rand McNally & Company.

⁴ Comments of SAL Spectrum, LLC.

each individual potential bidder with regard to each license. This factor, along with other factors such as the level of incumbency associated with a market, the status of the market's transition to the new BRS/EBS band plan, and the existence of ongoing litigation is an input that can be fully considered as a potential bidder evaluates a license.

Clearwire does not believe it would be in the public interest to re-auction these licenses which have been in the Commission's spectrum inventory for some time, only to permit the spectrum to be potentially unused for another decade. Instead, the auction winners should be granted the licenses pursuant to the general rules that apply to all other BRS licenses, including the Commission's build out requirements.⁵ If the Bureau is inclined to give new licensees additional time to meet the substantial service requirement, Clearwire recommends that the extension be no more than two years from the issuance of the auction winner's license. Otherwise, the Bureau risks that valuable spectrum continues to be unused despite the Bureau's efforts through its auction process to put it into the hands of a licensee that finally will deploy it.

II. CONCLUSION

Clearwire hereby submits the foregoing reply comments and asks that the FCC take actions consistent with the views expressed herein.

Respectfully submitted,

Clearwire Corporation

By: /s/ Cathleen A. Massey
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⁵ Of course, new licensees and all existing BRS licensees may request an extension of the substantial service deadline if they make a particularized showing justifying an extension under the Commission's rules.

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