

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

Auction of 700 MHz Band Licenses Scheduled )  
for July 19, 2011 )  
)  
Comments Sought on Competitive Bidding ) AU Docket No. 10-248  
Procedures for Auction No. 92 )

To: Wireless Telecommunications Bureau

**COMMENTS OF RURAL CELLULAR ASSOCIATION**

Rural Cellular Association (RCA)<sup>1</sup> hereby submits these Comments in response to the Federal Communications Commission's (FCC or Commission) Wireless Telecommunications Bureau's (Bureau) Public Notice<sup>2</sup> (*Public Notice*) seeking comment on the procedures to be used in an auction of 16 licenses in the 698-806 MHz band (700 MHz band) that were not sold in Auction 73<sup>3</sup> or were returned to the Commission as a result of bidder default. In its *Public Notice*, the Bureau seeks comment on a broad range of auction procedures, including, among other issues, the auction structure, minimum opening bid amounts, upfront payments, eligibility requirements, and post-auction payments. RCA appreciates the opportunity to provide comment in this proceeding and limits its comments to valuation of the spectrum being auctioned in Auction 92 and future spectrum auctions.

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<sup>1</sup> RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the Nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers.

<sup>2</sup> See *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Comment Sought on Competitive Bidding Procedures for Auction 92*, AU Docket No. 10-248, Public Notice, DA 10-2298 (December 15, 2010) (*Auction 92 PN*).

<sup>3</sup> *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, DA 07-4171, 22 FCC Rcd 18,141 (WTB 2007).

To ensure the success of Auction 92 and all future auctions, RCA urges the FCC to immediately resolve interoperability concerns in the 700 MHz band.<sup>4</sup>

The Bureau proposes, for Auction 92, to calculate minimum opening bid amounts using a method that takes into consideration the amounts bid for the same licenses in Auction 73.<sup>5</sup> The Bureau proposes a calculation<sup>6</sup> to establish higher minimum opening bids because it believes these licenses will sell for “relatively higher prices”. The Bureau also seeks comment on factors that could reasonably have an impact on valuation of this auctioned spectrum.<sup>7</sup> The most significant factor on valuation of the 700 MHz spectrum is the lack of interoperability throughout the band.

RCA disagrees with the Bureau’s assumption that these 16 licenses will sell for relatively higher prices. In fact, lack of interoperability throughout the 700 MHz band will likely result in lower auction revenues, not just in Auction 92, but in all future auctions.<sup>8</sup> RCA members invested hundreds of millions of dollars on Lower A Block 700 MHz licenses, which are served in the 3<sup>rd</sup> Generation Partnership Project (3GPP) established Band

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<sup>4</sup> See 700 MHz Block A Good Faith Purchasers Alliance Petition for Rulemaking, filed in RM-11592 (Sept. 29, 2009); see also RCA Comments at 19-20, filed in RM-11592 (March 31, 2010).

<sup>5</sup> Auction 92 PN ¶ 37.

<sup>6</sup> The Bureau proposes to calculate the minimum opening bid amount on a license-by-license basis, as the greater of: (1) the minimum opening bid amount for the same license in Auction 73; or (2) 10% of the highest bid amount received for the license in Auction 73. *Id.*

<sup>7</sup> Auction 92 PN ¶ 38.

<sup>8</sup> See Peter Cramton, *700 MHz Device Flexibility Promotes Competition* (August 9, 2010), available in *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592 (filed Aug. 10, 2010); see also *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592; WT Docket No. 06-150; PS Docket No. 06-229; GN Docket No. 09-51; PS Docket No. 07-114 (Aug. 11, 2010); see also *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592; RM-11487; WT Docket No. 06-150; PS Docket No. 06-229; GN Docket No. 09-51 (Aug. 17, 2010); see also *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592; RM-11487; WT Docket No. 06-150; PS Docket No. 06-229; GN Docket No. 09-51 (Aug. 19, 2010); see also *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592; RM-11487; WT Docket No. 06-150; PS Docket No. 06-229; GN Docket No. 09-51 (Aug. 23, 2010).

Class 12. After the auction was announced, proprietary band classes were established through the non-governmental 3GPP process. In the absence of required interoperability across the 700 MHz band, AT&T and Verizon Wireless are able to adopt restrictive equipment practices, preventing competition from the Lower A Block winners and jeopardizing the Lower A Block licensees' investment.

Lack of interoperability will have a significant impact on the valuation of the spectrum being auctioned in Auction 92. Since the FCC began auctioning spectrum in 1994, RCA carrier member participation has led to greater auction competition and, as a result, increased revenues. In fact, the Lower A Block licenses commanded a higher price (\$1.16) than the Upper C Block (\$0.76).<sup>9</sup> Competition in the Lower A Block spectrum was created mostly by rural and regional carriers. The loss of these bidders likely would have a large negative impact on spectrum auction competition and resulting revenues. We have already seen in the original D Block auction how potential bidders react to unfavorable or uncertain conditions.<sup>10</sup> Lack of interoperability creates uncertainty for current and future 700 MHz spectrum holders. Similarly, in Auction 92, smaller carriers will be unwilling to commit the substantial capital needed to participate without the certainty that interoperability provides. Without competition from the smaller carriers, auction revenues will be lower than expected. Further, potential new bidders will be unwilling to bid if they think there is a significant risk

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<sup>9</sup> See *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, Report No. AUC-08-73-I (Auction 73), Public Notice, DA 08-595 (March 20, 2008) (*Auction 73 Closing PN*); see also *Erratum, Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, Report No. AUC-08-73-I (Auction 73), Public Notice (March 26, 2008).

<sup>10</sup> See generally *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 73 and 76*, Public Notice, DA 07-4171, 22 FCC Rcd 18,141(2007); see also *Auction 73 Closing PN*.

that the dominant incumbents will take anti-competitive steps to block participation and competition in the market.<sup>11</sup>

Beyond this spectrum, the FCC plans to auction much more spectrum over the next 10 years.<sup>12</sup> As part of the National Broadband Plan, for example, the Commission plans to free-up and auction 120 MHz of additional TV broadcast spectrum.<sup>13</sup> This is an aggressive relocation plan which largely depends on spectrum auctions producing sufficient revenues to compensate broadcasters who voluntarily relinquish their spectrum. Auction competition will be diminished and revenues lower to the extent that the Lower A Block winners are unable to use their high-priced spectrum as a result of lack of interoperability.

The Congressional Budget Office has scored spectrum auctions from 2010 to 2020 to raise \$3 billion, including \$1 billion in 2011.<sup>14</sup> This number could be dramatically higher if the FCC mandates interoperability throughout the 700 MHz band, which will promote competitive auctions and produce higher auction revenues. Requiring interoperability, and in turn device flexibility and spectrum investment certainty, will encourage competition in both current and future spectrum auctions.

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<sup>11</sup> See Peter Cramton, *700 MHz Device Flexibility Promotes Competition* (August 9, 2010), available in *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592 (filed Aug. 10, 2010).

<sup>12</sup> Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 84-93 (Mar. 16, 2010) (“Broadband Plan”). See *Prepare Remarks of Chairman Julius Genachowski, Federal Communications Commission, 2011 International Consumer Electronic Show, Las Vegas, NV (January 7, 2011)* (We need to free up more spectrum. If we do, we can drive billions of dollars in new private investment, fueling world-leading innovations, creating millions of new jobs, and enabling endless new products and services that can help improve the lives of all Americans. If we don’t tackle the spectrum challenge, network congestion will grow, and consumer frustration will grow with it. We’ll put our country’s economic competitiveness at risk, and squander the opportunity to lead the world in mobile. That’s why unleashing spectrum to support mobile innovation is at the top of the FCC’s 2011 agenda.)

<sup>13</sup> Broadband Plan at 88-89.

<sup>14</sup> Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2010 to 2020*, 63. Available at <http://www.cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf>

Also in its *Public Notice*, the FCC advises potential bidders to perform their due diligence, including technical and marketplace analyses, before bidding on these 700 MHz licenses.<sup>15</sup> RCA members that won Lower A Block licenses in Auction 73 did just that. They evaluated the spectrum being auctioned, reviewed the levels of incumbency in their desired markets, analyzed the technology and equipment options for the spectrum, examined interference concerns, and valued the spectrum before bidding. Despite their due diligence, Lower A Block licenses still cannot attract equipment manufacturers making Band Class 17 or Band Class 13 equipment to produce Band Class 12 equipment at reasonable, economically competitive costs.

At the time of the auction, Lower A Block bidders had no way of knowing that AT&T and Verizon Wireless would be allowed to balkanize the 700 MHz band after the auction concluded, damaging the value of the Lower A Block. In fact, Band Class 17 was not proposed until April 2008,<sup>16</sup> one month *after* the 700 MHz auction ended in March 2008. The FCC established an analog compatibility standard when originally licensing the cellular spectrum.<sup>17</sup> As a result, interoperability was expected when the FCC auctioned other spectrum bands, including AWS and PCS spectrum. It was reasonable to assume the same would be true, and this practice would continue, for the 700 MHz spectrum. As such, Lower A Block bidders assumed that devices would operate on at least Band Class 12, which includes the Lower A, B and C Blocks. As we know now, this was not and is not the case.

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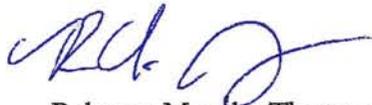
<sup>15</sup> *Auction 92 PN* ¶ 4.

<sup>16</sup> See *On the introduction of Band Class 15*, prepared by Ericsson and submitted to TSG-RAN Working Group 4 (Radio) meeting #47bis in Munich, Germany, June 16-20, 2008 (Band Class 15 later became Band Class 17); see also Motorola, TS36.101: Lower 700 MHz Band 15 (now Band 17), 3GPP TSG RAN WG4 Meeting #47, RA 081108 (April 5-9, 2008) ("This document is presented as a discussion paper to evaluate the need for a new operating band to support Block B and Block C in the lower 700 MHz band.").

<sup>17</sup> 47 C.F.R. § 22.901(b). The analog compatibility standard sunset in 2008. See also 17 FCC Rcd 22140 (2002).

No amount of due diligence could have prevented AT&T and Verizon Wireless from fragmenting the spectrum, preventing Lower A Block licensees from participating in the 4<sup>th</sup> Generation (4G) market. Further, bidders could not have predicted that the FCC would abandon its long-standing policy of compatibility and interoperability, particularly for spectrum that holds the promise of 4G technology and service. While Lower A Block licensees watch their substantial spectrum investment linger until the FCC mandates interoperability, current 700 MHz spectrum policy will limit the success of Auction 92 and all future auctions. The FCC must act quickly to resolve interoperability concerns in the 700 MHz band and, in the interest of ensuring the highest possible value and maximum utilization of the spectrum offered in Auction 92, require interoperability throughout the 700 MHz band.

Respectfully submitted,



Rebecca Murphy Thompson  
General Counsel



The Voice of Rural & Regional Carriers  
805 15<sup>th</sup> Street NW, Suite 401  
Washington, DC 20005  
Office: (202) 449 -9866

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