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FCC Announces Schedule for Advanced Wireless Services Spectrum Auction; FCC Auction Seminar to Be Held Monday, April 24, 2006; Small Business Bidding Discounts Still Under Review

April 2006

On June 29, the FCC will begin one of its biggest spectrum auctions ever. The FCC will auction a total of 1,122 licenses in 90 MHz of spectrum at 1710-1755 MHz and 2110-2155 MHz, known as Advanced Wireless Services (“AWS”) or Third Generation (“3G”) spectrum. This is the largest auction of spectrum for wireless services since the auction of Personal Communications Services (“PCS”) licenses in the mid-1990s.

The FCC’s AWS rules are intended to encourage licensees to develop new and innovative services with minimal regulatory restraint. The AWS spectrum can be used for a wide range of fixed and mobile wireless services. The services that can be provided include common carrier, non-common carrier, private communications, public safety communications, or any combination of these services. The only services that are prohibited are “broadcast” services, which are defined as free, over-the-air services but do not include subscription services. To the extent an entity provides common carrier services, it will be subject to the foreign ownership limits in the Communications Act, which restrict direct foreign ownership of a common carrier licensee to 20% and indirect foreign ownership to 25% (although the indirect limit can be waived by the FCC).

Major wireless carriers are expected to use this spectrum to expand the capacity of their existing wireless networks and to offer new higher-bandwidth services, including high-speed mobile Internet access and entertainment services. Some analysts have predicted that new entrants might participate in the auction, such as cable operators and new media companies, such as Google or Yahoo, which do not currently have significant wireless assets.

In any given geographic area, six AWS licenses will be available. A bidder is permitted to acquire an unlimited number of licenses in any market and nationwide. The population covered by the geographic area assigned to each license varies considerably. For example, the AWS A Block spectrum will be licensed into 734 Cellular Market Areas (“CMA”), which range in population from more than 16 million (New York–Newark CMA) to just over 1,000 (Culebra, Puerto Rico CMA). The AWS B and C Blocks will be licensed into 176 Economic Areas (“EA”), which range in population covered from almost 25 million (New York City) to just 57,000 (America Samoa). The AWS D, E, and F Blocks will be licensed into 12 Regional Economic Area Groupings (“REAGs”), ranging in population from 50 million (Northeast REAG) to just over 57,000 (America Samoa REAG). The size of the spectrum block assigned to each license also varies, with the A, B, and F

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Block licenses each assigned 20 MHz, and the C, D, and E Block licenses each assigned 10 MHz. The chart below lists the geographic area and spectrum block assigned to each of the six types of licenses available in each market.

Block	Frequency Bands (MHz)	Total Bandwidth	Geographic Area Type	No. of Licenses
A	1710-1720/2110-2120	20 MHz	Cellular Market Area (CMA)	734
B	1720-1730/2120-2130	20 MHz	Economic Area (EA)	176
C	1730-1735/2130-2135	10 MHz	Economic Area (EA)	176
D	1735-1740/2135-2140	10 MHz	Regional Economic Area (REAG)	12
E	1740-1745/2140-2145	10 MHz	Regional Economic Area (REAG)	12
F	1745-1755/2145-2155	20 MHz	Regional Economic Area (REAG)	12

There are incumbent users of the AWS frequencies. The 1710-1755 MHz band is currently used by the federal government, including for military operations. Pursuant to federal legislation, the proceeds from the AWS auction will be used to relocate these federal government users to other frequency bands. The 2110-2150 MHz band is used by private and common carrier fixed microwave services and the 2150-2155 MHz band is currently used by the Broadband Radio Service ("BRS"). AWS licensees will be required to relocate these users to other frequencies before initiating service in the 2110-2155 MHz band.

Key Dates

There are five key upcoming events for entities interested in participating in the AWS auction.

1. Auction Seminar

On Monday, April 24, 2006, the FCC will sponsor a seminar for parties interested in participating in the AWS auction. The seminar will be held at the FCC's headquarters in Washington, DC. **Parties attending in person must register with the FCC by Thursday, April 20, 2006.** Please contact one of the editors listed below if you are interested in registering. A webcast of the seminar will also be available from the FCC's website at <http://wireless.fcc.gov/auctions/66/>. The seminar will provide information about pre-auction procedures, required FCC forms, auction rules, and the AWS rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to the AWS auction.

2. Short-Form Application Filing Window (FCC Form 175)

All entities that want to participate in the AWS auction must submit an FCC Form 175, also known as a "Short-Form Application," between 12:00 p.m. ET on April 24 and 6:00 p.m. ET on May 10, 2006. This form requires a potential auction



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participant to disclose, among other things, its ownership information and each license on which the applicant intends to bid.

3. Upfront Payments

In order to be eligible to bid in the auction, an auction participant must submit an upfront payment before 6 p.m. ET on June 1, 2006. The amount of the upfront payment will vary based upon the licenses for which the party wants to bid. Each of the 1,122 licenses has been assigned an upfront payment amount (also known as “bidding units”). The number of bidding units is based upon the population covered by the license and the size of the assigned spectrum block. For example, the upfront payment for the F Block license for the Northeast REAG (a license for 20 MHz of spectrum which is assigned a geographic area covering over 50 million people) is more than \$47 million. In contrast, the upfront payment for the A Block license for the Wyoming 5 – Converse CMA (a license for 20 MHz of spectrum which is assigned a geographic area covering over 12,000 people) is just over \$7,000.

In order to qualify to participate in the auction, a potential bidder must submit an upfront payment by June 1, 2006 that meets or exceeds the number of bidding units assigned to the licenses for which the bidder intends to bid. The bidder’s total upfront payment must be high enough to establish eligibility to bid on at least one of the licenses selected on the Form 175, or else the applicant will not be eligible to participate in the auction. A bidder, however, does not have to make an upfront payment to cover all of the licenses the bidder has selected on its Form 175. Rather, a bidder determines the maximum number of bidding units on which it may wish to be active in any single round, and then submits an upfront payment amount covering that number of bidding units.

For example, assume that a bidder has selected the following licenses on its Form 175.

Market Number	Market Name	Frequencies	Population Covered	Bidding Units	Upfront Payments
CMA001-A	New York-Newark, NJ CMA	A Block (1710-1720 MHz/2110-2120 MHz)	16,134,166	16,134,000	\$16,134,000
BEA160-C	Los Angeles-Riverside-Orange County EA	C Block (1730-1735 MHz/2130-2135 MHz)	18,003,420	8,888,000	\$8,888,000
BEA013-B	Washington-Baltimore EA	B Block (1720-1730 MHz/2120-2130 MHz)	8,403,130	\$7,813,000	\$7,813,000
BEA163-C	San Francisco-Oakland-San Jose, CA EA	C Block (1730-1735 MHz/2130-2135 MHz)	4,424,000	4,424,000	\$4,424,000
CMA010-A	Houston, TX CMA	A Block (1710-1720 MHz/2110-2120 MHz)	4,393,382	4,393,000	\$4,393,000



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If a bidder wishes to bid on all of these licenses in a round, it must submit an upfront payment of at least \$41,652,000 (*i.e.*, the sum of the upfront payments applicable to each license). If a bidder wishes to bid on any one of these licenses, but not all five licenses, submitting an upfront payment of \$16,134,000 (*i.e.*, the highest upfront payment for any of the licenses selected) will be sufficient to bid for any one license in the same round.

4. Mock Auction

All qualified bidders will be eligible to participate in a mock auction on Monday, June 26, 2006. The mock auction will enable bidders to become familiar with the FCC's auction system prior to the actual auction.

5. Auction Begins

The AWS auction will begin on June 29, 2006.

Uncertainty Surrounding Bidding Credits for Small Businesses

In order to encourage broader participation in the AWS auction, the FCC has established the following bidding credits for small businesses.

A "small business," defined as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, will receive a 15 percent discount on its winning bids.

A "very small business," defined as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million, will receive a 25 percent discount on its winning bids.

In determining whether a prospective small business satisfies the revenue restriction, the FCC will attribute to the prospective small business the gross revenues of the entities that have a controlling interest in the small business or that are affiliates of the small business. For example, if Small Company A has average annual gross revenues for the preceding three years not exceeding \$15 million, but 51% of the voting shares of Small Company A are owned by an entity with average annual gross revenues for the preceding three years exceeding \$40 million, Small Company A will not qualify for the small business bidding credit. Small Company A can qualify for a bidding credit even if it receives funding from investors with significant revenues, however, by ensuring that these large investors do not control the small business. This can be accomplished by providing the investor with only non-voting securities and otherwise restricting the investor from being able to control the operations of the small business. Under the current rules, the FCC is concerned only with who "controls" the small business. There is no limit on the amount of financing a large company can provide to a small business.

In February 2006, the FCC initiated a proceeding to revise its small business bidding credit program to ensure that it is not dominated by larger corporate entities. The FCC is concerned that large companies, particularly the largest wireless carriers, have structured relationships with small businesses in order to reap the benefits and opportunities of the small business bidding credit program. For example, many of the "small businesses" that won licenses at the recent PCS re-auction held in 2005 were financially backed by the largest wireless carriers (such as Cook Inlet (backed by T-Mobile) and Vista PCS (backed by Verizon



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Wireless)). The FCC is concerned that true small businesses are not benefiting as intended from the small business bidding credit program.

The FCC is currently considering a number of options for revising its small business bidding credit program. One option would prohibit the award of a bidding credit to a small business that has a material relationship with a national wireless service provider, which would include only Cingular, Verizon Wireless, Sprint-Nextel, T-Mobile, and Alltel, but would not prohibit relationships between the small business and smaller wireless carriers or even large non-wireless communications companies, such as cable companies. Another option would prohibit the award of a bidding credit to a small business that has a material relationship with any entity that has a significant interest in any communications-related service, which includes not only wireless carriers but also cable companies, wireline communications providers, and equipment manufacturers, among others. Recent reports claim that the FCC is leaning towards adopting an even more restrictive approach – prohibiting the award of a bidding credit to a small business that has received over 33 percent of its equity from any company with revenues exceeding \$125 million.

Depending upon which option the FCC ultimately adopts, the proposed restriction might dramatically limit the financing opportunities available to small businesses that intend to participate in the auction, while at the same time ensuring that true small businesses are able to participate in the auction on an equal footing with other true small businesses. In light of the June 1, 2006 deadline for upfront payments, venture capital firms and other investors will need to work quickly with small businesses that intend to participate in the auction to structure their business vehicles to comply with the new rules once they are adopted.

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