

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

In the Matter of)
)
Request of Southern Communications Services,)
Inc. and the United Telecom Council for)
Postponement of Auction No. 55)

ORDER

Adopted: December 12, 2003

Released: December 12, 2003

By the Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request jointly filed by Southern Communications Service, Inc. and the United Telecom Council (“Petitioners”) for postponement of Auction No. 55,¹ the auction of Specialized Mobile Radio (“SMR”) Service licenses in the 896-901 MHz and 935-940 MHz bands scheduled to commence on February 11, 2004.² The Petitioners request a postponement of Auction No. 55 until after Commission resolution of the pending 800 MHz Public Safety proceeding.³ For the reasons set forth below, we deny the Petitioners’ request.

II. BACKGROUND

2. On September 17, 2003, the Wireless Telecommunications Bureau (“Bureau”), acting under delegated authority, released a Public Notice announcing the scheduling of Auction No. 55 and seeking comment on a variety of procedures for Auction No. 55.⁴ The Bureau issued the *Auction No. 55*

¹ “Request for Postponement of Auction No. 55, 900 MHz Specialized Mobile Radio Service Licenses; AUC-03-55, Request for Expedited Action,” filed by Southern Communications Service, Inc. and United Telecom Council (Nov. 14, 2003) (“Petition”).

² “Auction of 900 MHz Specialized Mobile Radio Services Licenses Scheduled for February 11, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,” *Public Notice*, 18 FCC Rcd 21176 (2003) (“*Auction No. 55 Procedures Public Notice*”).

³ See Improving Public Safety Communications in 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 4873 (2002) (“*800 MHz Public Safety NPRM*”). Petitioners do not make clear whether they are requesting postponement until resolution of the issues raised in the *800 MHz Public Safety NPRM* or until complete resolution of the proceeding itself, which could conceivably include multiple Notices and resulting Orders. Because we deny Petitioners’ request, we see no need to resolve this ambiguity.

⁴ “Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004; Comment Sought on Reserve Process or Minimum Opening Bids and Other Auction Procedures,” *Public Notice*, 18 FCC Rcd 18715 (2003) (“*Auction No. 55 Comment Public Notice*”); 47 U.S.C. § 309(j)(3)(E)(i).

Comment Public Notice pursuant to delegated statutory authority over the timing of auctions.⁵ Consistent with our statutory obligation to ensure that potential bidders have adequate time before the auction to familiarize themselves with the specific rules and procedures that will govern the auction, on October 17, 2003, the Bureau released a public notice announcing the procedures and minimum opening bids for Auction No. 55.⁶ On November 14, 2002, Petitioners filed their joint request for the postponement of Auction No. 55 pending resolution of the 800 MHz Public Safety proceeding.⁷

III. DISCUSSION

3. Petitioners contend that Section 309(j)(3)(E)(ii) of the Communications Act requires that we postpone Auction No. 55 until after resolution of the 800 MHz Public Safety proceeding.⁸ Petitioners also assert that such a postponement of Auction No. 55 would be consistent with previous instances in which the Commission has exercised its discretion to postpone auctions.⁹ Finally, Petitioners maintain that postponement of Auction No. 55 would be in the public interest.¹⁰

4. Petitioners argue that uncertainty surrounding the 800 MHz Public Safety proceeding makes it difficult for prospective bidders in Auction No. 55 to develop business plans, formulate bidding strategies or assess the viability of the 900 MHz spectrum for their operations.¹¹ Therefore, Petitioners argue, the Commission must postpone the auction in order to comply with Section 309(j)(3)(E)(ii).¹² We disagree. Section 309(j)(3)(E)(ii) provides, in pertinent part, that after the issuance of bidding rules the Commission shall “ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services.”¹³ We do not believe that the statutory requirement to provide prospective bidders with time to develop a business plan and evaluate the availability of equipment requires the Commission to postpone an auction until every external factor that might influence a bidder’s business plan is resolved with absolute certainty. We also note that, while Section 309(j)(3)(E) directs the Commission to provide interested parties adequate time to prepare prior to an auction, the statute also requires that the Commission promote several other objectives in exercising its competitive bidding authority, including the rapid deployment of new technologies and services to the public, promotion of economic opportunity and competition, recovery for the public of a portion of the value of the spectrum, and efficient and intensive use of the spectrum.¹⁴ In balancing these objectives, we determine that the public interest would be served by proceeding with the auction as scheduled.

⁵ 47 U.S.C. §§ 309(j)(3) and (15); 47 C.F.R. § 0.131(c).

⁶ 47 U.S.C. § 309(j)(3)(E)(i) (as amended by Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”) (“ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures”). *Auction No. 55 Procedures Public Notice*.

⁷ *Supra* note 1.

⁸ Petition at 2.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ 47 U.S.C. § 309(j)(3)(E)(ii).

¹⁴ *See* 47 U.S.C. § 309(j)(3)(A)-(D). *See also* 47 U.S.C. § 309(j)(15).

A. Prior Auction Scheduling Decisions

5. In support of their request to postpone Auction No. 55, Petitioners cite several instances in which the Commission has postponed other auctions. Petitioners' reliance on these previous postponements is misplaced. In specific instances, the Commission has postponed auctions because of one or more unresolved issues directly relating to the licenses or spectrum to be auctioned.¹⁵ However, the Commission has not postponed an auction because of applicant concerns stemming entirely from unresolved issues in a rulemaking that does not directly relate to the licenses being auctioned.

6. Petitioners err in claiming that the Commission has postponed auctions if pending rulemakings or auctions involving other bands could possibly impact decisions concerning the spectrum available in the auction.¹⁶ Contrary to Petitioners' assertions, the Upper 700 MHz band auction (Auction No. 31) was not postponed for the purpose of delaying that auction until the close of the broadband PCS C and F block auction.¹⁷ The paramount reasons for the postponement of Auction No. 31 from September 6, 2000 until March 6, 2001, were to allow bidders sufficient time to develop business plans and assess market conditions in light of both the existence of incumbent UHF television operations using the spectrum that was to be assigned in that auction and to prepare for combinatorial bidding, a new approach to bidding that was to be implemented for the first time.¹⁸ The Commission also sought to provide prospective bidders with an opportunity to plan for and negotiate voluntary band clearing agreements with incumbent broadcasters in the band.¹⁹ After explaining its primary reasons for the postponement, the Commission merely noted that "another factor" favoring postponement was the view expressed by some commenters that they could better assess their 700 MHz spectrum needs if Auction No. 31 followed the broadband PCS C and F block auction.²⁰

7. Moreover, Petitioners erroneously assert that the Commission further delayed the Upper 700 MHz auction because pending rulemaking proceedings concerning the implementation of Advanced Wireless Services ("AWS") in other bands could influence the behavior of prospective bidders in Auction

¹⁵ See, e.g., "Auction of Direct Broadcast Satellite Service Licenses (Auction No. 52) Is Postponed," *Public Notice*, 18 FCC Rcd 11515 (2003) (DBS auction postponed pending decision on whether DBS licenses are subject to statutory auction prohibition and whether to adopt eligibility restrictions for the licenses); "FM Auction No. 37 Postponed," *Public Notice*, 16 FCC Rcd 16479 (2001) ("*FM Auction Postponement Public Notice*") (FM auction postponed pending Commission response to court decision vacating Commission's decision requiring noncommercial educational entities that applied for authorizations in the non-reserved spectrum to participate in auctions with mutually exclusive commercial applicants); "Auction of Multichannel Video Distribution and Data Service Licenses (Auction No. 53) Is Postponed," *Public Notice*, 18 FCC Rcd 9519 (2003) (auction delayed pending resolution of FNPRM regarding service area designation for licenses to be offered in the auction); "Auction of Licenses for the 747-762 and 777-792 MHz Bands (Auction No. 31) Is Postponed," *Public Notice*, 16 FCC Rcd 13079 (2001) (auction delayed pending resolution of petitions for reconsideration of band clearing mechanisms adopted for the band to be auctioned); "Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date For 528 Multilateration Location And Monitoring Service Licenses, Commencement of the Auction Postponed to February 23, 1998," *Public Notice*, 13 FCC Rcd 22608 (1998) (postponed to give potential bidders opportunity to consider information about government incumbents on the same band as the licenses to be offered in auction).

¹⁶ Petition at 6.

¹⁷ Petition at 6 (citing Cellular Telecommunications Industry Association *et. al.*'s Request for Delay of the Auction of Licenses in the 747-762 and 888-792 MHz Bands Scheduled for September 6, 2000 (Auction No. 31), *Memorandum Opinion*, 15 FCC Rcd 17406 (2000) ("*700 MHz Memorandum Opinion*").

¹⁸ *700 MHz Memorandum Opinion*, 15 FCC Rcd at 17410-11, ¶ 9.

¹⁹ *Id.*

²⁰ *700 MHz Memorandum Opinion*, 15 FCC Rcd at 17411, ¶ 10.

No. 31.²¹ Although some commenters suggested that the Commission should not auction the 700 MHz band until after the AWS proceeding is concluded,²² the Bureau did not endorse this view in its decision.²³ Of four previous auction postponements cited by the Petitioners,²⁴ in only one of those instances, Auction No. 21, did the Commission postpone the auction for the express purpose of providing potential bidders an additional opportunity to evaluate the spectrum to be licensed.²⁵ In that case, the circumstances that led to the postponement were distinguishable from the circumstances presented in Auction No. 55. In Auction No. 21, prospective bidders on licenses in the Location and Monitoring Service sought additional time to consider information on federal government primary users occupying the same band.²⁶ The information on federal usage of the spectrum to be auctioned had not been released by the National Telecommunications and Information Administration (“NTIA”), and the postponement gave bidders an opportunity to consider the deployment and technical information that NTIA was compiling at the time the auction had been initially scheduled.²⁷ In contrast, Petitioners here seek to delay an auction of spectrum in one band while they wait to see if any decision the Commission might make regarding spectrum in a different band would indirectly affect licensees in the first band. If we were to accept Petitioners’ general arguments for postponing Auction No. 55 until the elimination of any alleged “uncertainties,” subsequent spectrum auctions would be at risk of substantial postponement while the Commission resolves the myriad issues that parties raise in various proceedings in attempts to circumvent auctions for their individual purposes.

8. The additional auction postponements Petitioners cite as examples also do not support their position.²⁸ The Commission postponed the LMDS auction (Auction No. 17) to enable applicants to take advantage of a specific World Trade Organization agreement to pursue additional sources of capital to finance their bids.²⁹ The Commission postponed Auction No. 37 because the non-reserved FM band allotments included in the auction would be directly affected by the Commission’s proceeding to address a federal court of appeals decision pertaining to noncommercial educational applicants for such channels.³⁰ Finally, the Commission postponed Auction No. 19 because of a demonstrated absence of demand for licenses in the 4660-4685 MHz band.³¹ None of these postponements provides support for a postponement of the 900 MHz SMR auction. The reasons for postponement in those instances are

²¹ Petition at 6.

²² See, e.g., Letter from John T. Scott, Vice President and Deputy General Counsel, Verizon Wireless, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (filed Jan. 18, 2001).

²³ “Auction of Licenses For the 747-762 and 777-792 MHz Bands Postponed Until September 12, 2001,” *Public Notice*, 16 FCC Rcd 3947 (2001) (brief delay to provide additional time for bidder preparation and planning and for reason of auction administration).

²⁴ Petition at 6-7.

²⁵ “Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date For 528 Multilateration Location And Monitoring Service Licenses, Commencement of the Auction Postponed to February 23, 1998,” *Public Notice*, 13 FCC Rcd 22608 (1998).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Petition at 7 (citing postponements of Auction Nos. 17, 19, and 37).

²⁹ “LMDS Auction Postponed Until February 18, 1998, FCC Postpones Auction No. 17,” *Public Notice*, 12 FCC Rcd 18276 (1997).

³⁰ *FM Auction Postponement Public Notice*, 16 FCC Rcd 16479.

³¹ “Wireless Telecommunications Bureau Announces Postponement of General Wireless Communications Service (GWCS) Auction, GWCS Auction Originally Scheduled for May 27,” *Public Notice*, 13 FCC Rcd 11056 (1998); See The 4.9 GHz Band Transferred from Federal Government Use, *Second Report and Order and Further Notice of Proposed Rule Making*, 17 FCC Rcd 3955, 3965-66, ¶ 20.

distinguishable from the reasons Petitioners present. Petitioners have provided as reasons nothing more than speculation about the possible indirect impact that decisions regarding the 800 MHz band may have on a limited portion of the 900 MHz band. Moreover, we strongly disagree with Petitioners' premise that the comments received from prospective bidders regarding the minimum opening bids and auction procedures serve as a measure of interest in the spectrum to be auctioned. We reject Petitioners' speculation that the reason for a prospective bidder's absence of comment is disinterest in the auction rather than its agreement with the procedures proposed.

B. Petitioners' Concerns Regarding Outcome of 800 MHz Public Safety Proceeding

9. We find no merit in Petitioners' arguments based on conjecture and speculation about potential outcomes of the 800 MHz Public Safety proceeding. Petitioners contend it is difficult for prospective bidders to develop business plans or formulate bidding strategies for Auction No. 55 because they believe that certain proposals advanced by parties to that proceeding could have impacts on the 900 MHz band.³² Petitioners claim that the band might become either non-commercial in nature or might take on a more commercial character, if the Commission chooses to adopt certain alternative proposals that have been advanced in the 800 MHz Public Safety proceeding, and that any such changes could impact the interference environment for new 900 MHz SMR licensees.³³ Petitioners also state that they "cannot ascertain" the kinds of equipment that will be available to auction winners because certain outcomes concerning 800 MHz band interference issues could affect the availability of equipment for commercial operations in the 900 MHz band by changing manufacturers' incentives to develop and produce new equipment.³⁴ Any of these developments, Petitioners argue, could alter the demand for the 900 MHz band spectrum, and how prospective bidders value it.³⁵

10. First, we disagree with Petitioners' assertion that Nextel's proposal, if adopted, would effectively reallocate the band for non-commercial use.³⁶ Even were the Consensus Parties proposal adopted and some incumbent 800 MHz licensees relocated to the 900 MHz band, we do not believe that this possibility is sufficient reason to delay the scheduled auction. Moreover, the Consensus Parties' proposal is not dependent on the availability of the 900 MHz SMR licenses that are included in the Auction No. 55 inventory. Second, we are not persuaded that the prospect of more intensive use of the 900 MHz band is a sound basis for postponing Auction No. 55. Although it is possible that more intensive use of the spectrum might generate greater interference, such an outcome is not certain and could occur independently of any decision the Commission might make with respect to the 800 MHz band. If Petitioners are concerned that incumbent licensees in the 900 MHz band might make more intensive use of the band and create additional interference, they may factor their opinions into their business plans and bidding strategies. Third, we decline to postpone Auction No. 55 based on Petitioners' speculation that bidders might not be able to ascertain the full range of equipment that will be available for 900 MHz operations. Even if Nextel were to vacate the 900 MHz band, a result that is far from certain, we have no evidence that equipment manufacturers are likely to stop producing equipment for use by the remaining licensees operating in the band. Moreover, even absent Nextel's relocation proposal,

³² Petition at 2-4.

³³ *Id.* at 2-3.

³⁴ *Id.* at 4-5.

³⁵ *Id.*

³⁶ *Id.* at 2. Under a "two-for-one" proposal, the Consensus Parties, which include Nextel, propose that 800 MHz Business and Industrial/Land Transportation or Conventional SMR incumbents, that are required to relocate, should be given twice the amount of their current spectrum if they elect to go to the 900 MHz band instead of remaining in the 800 MHz band. See Supplemental Comments of the Consensus Parties in WT Docket 02-55, ex parte filing dated December 24, 2002 at 13. Nextel has an average of four megahertz of 900 MHz spectrum in major markets, but not nationwide. *800 MHz Public Safety NPRM*, 17 FCC Rcd at 4889-4900, ¶ 48.

bidders have no guarantee that any number of other events may or may not occur that would affect the type of equipment that manufacturers will market. We believe the “uncertainties” Petitioners allege are not unlike those many bidders face before participating in a spectrum auction. Like other bidders, Petitioners may factor their concerns into their bids and bidding strategies.

11. We also reject Petitioners’ suggestion that we should postpone Auction No. 55 because of the possibility that Nextel’s 900 MHz SMR licenses could be cancelled pursuant to applicable construction requirements, based on the circumstances under which Nextel was granted an extension of those requirements.³⁷ Petitioners argue that cancellation of Nextel’s licenses would increase the number of licenses available for auction, and accordingly increase participation in the auction.³⁸ We find Petitioners’ reasoning to be highly speculative. Notwithstanding views expressed by a small number of commenters, Nextel’s compliance with its construction deadlines is not at issue in the 800 MHz Public Safety proceeding. Nor is it currently the subject of any other pending proceeding. Therefore, we will not consider the possibility of adding to our auction inventory as a reason to postpone Auction No. 55.

C. Public Interest Objectives

12. Finally, we do not agree with Petitioners’ contention that a postponement of Auction No. 55 would serve the public interest. Petitioners argue that a postponement would be in the public interest because an auction of the 900 MHz SMR licenses as scheduled, prior to resolution of the 800 MHz Public Safety proceeding, (1) would decrease the Commission’s flexibility in resolving issues addressed in the 800 MHz Public Safety proceeding,³⁹ (2) would not ensure that the spectrum would be won by the parties that value it most highly,⁴⁰ and (3) would reduce participation in the auction and thus reduce the amount of revenue the Commission receives for the spectrum.⁴¹ We reject these arguments for the reasons stated above, and disagree with the Petitioners’ assertion that holding Auction No. 55 as scheduled would be an obstacle to resolution of the issues in the 800 MHz band. For the same reasons, we reject Petitioners’ claim that under its current schedule, participation in Auction No. 55 will be limited and that parties that win the licenses will not value them most highly. Further, we find that grant of Petitioners’ request to postpone Auction No. 55 would not serve the public interest, because doing so would defeat the underlying policy objectives set forth in Section 309(j)(3).⁴² As discussed above, Petitioners’ insubstantial arguments on the merits do not warrant the extraordinary relief they seek.

IV. CONCLUSION

13. Accordingly, IT IS ORDERED pursuant to sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 309(j)(3) and the

³⁷ Petition at 3-4.

³⁸ *Id.*

³⁹ Petition at 8.

⁴⁰ *Id.* at 8-9.

⁴¹ *Id.* at 9.

⁴² 47 U.S.C. § 309(j)(3)(A)-(D).

authority delegated pursuant to section 0.331 of the Commission's rules, as amended, 47 C.F.R. §§ 0.131(c), 0.331, that the Request for Postponement of Auction No. 55 filed jointly by Southern Communications Service, Inc. and the United Telecom Council on November 14, 2003, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
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