

## **FHH Telecom Law May 2006**

### **AWS Auction Update**

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The last time we came to you, the Commission was knee-deep in the process of establishing the auction procedures for the much-heralded AWS Auction in June 2006. We had advised you that the Commission was considering proposals to modify the bidding structure of the auction to make individual bidders “anonymous” during the auction, and was considering revisions to the designated entity standards.

First, the Commission decided that it will not disclose the identity of bidders during the auction if the subject market is not “competitive”. The Commission will determine competitiveness by looking to see if there are at least three bidders that are qualified to bid in the auction for that particular market. Only if there are three or more bidders will the Commission disclose their identity.

Second, the Commission modified the standards for entities to qualify for bidding credit as a designated entity. Rather than focus on the investment levels of otherwise non-eligible entities, the Commission will now concentrate on whether the applicant has entered into lease or resale arrangements with other entities which would effectively cede control of some of the acquired spectrum to those entities. Depending on the quantum of spectrum leased, the applicant could either be attributed with additional revenues of the lessee or lose eligibility for DE status altogether. *See* the related article on p 6. Also, the Commission yet again declined to adopt rules that would have permitted “package” bidding. Instead, it determined that the “reserve price” established by Congress to compensate the government incumbents for moving off their portion of the auctioned spectrum creates too much uncertainty, and that the package bidding may result in the undervaluing of the spectrum, thus resulting in the possible cancellation of the auction.

Several parties, including past designated entities, have filed petitions with the Commission to delay the June 29<sup>th</sup> auction. The deadline for submitting short form applications was May 10<sup>th</sup>, and to date, there have been no actions that would lead us to believe that the auction will be delayed.

We will continue to monitor the situation closely, and let you know if the Commission alters the auction schedule. In the meantime, if you have any questions, please contact the attorney with whom you normally work, or Lee G. Petro.