

FHH Telecom Law
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Advanced Wireless Services Auction
Set for Summer, 2006

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The Commission announced that it will auction the first set of Advanced Wireless Services spectrum on June 29, 2006. The Commission is currently considering certain rules with respect to the bidding procedures, and it is expected that these rules will be issued soon.

The Commission will be licensing spectrum in the 1710-1755 and 2110-2155 MHz bands throughout the country. This spectrum is intended to be used for mobile wireless services, including voice, data, and video wireless broadband services. The Commission will be licensing different-sized spectrum blocks, in a variety of geographic service areas (*see box, below*).

The 12 Regional Economic Areas (REAGs) cover large portions of the country, with the continental US divided into six areas. The Cellular Market Areas (CMAs) and Economic Areas (EAs) cover smaller portions of the country. It is likely that smaller, rural telephone companies and start-ups will be bidding on the CMA and EA licenses. In fact, the Rural Cellular Association recently gave testimony before the Senate Committee in support of retaining the smaller blocks of spectrum.

There are a few interesting twists relating to this auction. First, because the spectrum is being taken from federal incumbent users, the Commission is not permitted to close the auction until the net bids reach 110 percent of the total costs associated with the relocation of the federal incumbent users of the spectrum. Specifically, the federal government has determined that the relocation of the 2,240 frequencies used by the federal government will cost \$935,940,312. Therefore, the auction must have net bids in excess of \$1,029,534,343.20 before the auction can close. In light of this statutory requirement, it is not surprising to see that the upfront payments, which must be submitted for the honor of participating in the auction, are quite large. For example, the least expensive continental US REAG license block has a required upfront payment of \$15 million (Mississippi Valley), and the smaller CMA licenses in the top 35 markets all exceed \$1 million (New York CMA is \$16,134,000).

In addition, the Commission is considering withholding information from bidders regarding the other bidders in the auction, such as other interests and their identities because the Commission wants to enhance the “competitiveness and economic efficiency” of the auction. This would be a dramatic change from its consistent past practice of making all bidders transparent to other bidders. Finally, the Commission is

considering adopting rules to permit “package” bidding, whereby parties can bid on an aggregation of different channels, and the entity will obtain the licenses only if the bid on the entire package is successful. The Commission believes that this new bidding structure will “better express the value of any synergies.” However, the Commission has raised this possibility in other auctions, but has always declined to adopt the procedure.

Our website will be updated to highlight the final rules when the Commission issues them. In the meantime, please contact the attorney with whom you normally work, or Lee G. Petro, with any further questions.