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700 MHz Bidders On Their Marks

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The 700 MHz auction took another step toward the starting gun in early December when a number of filers submitted their “short form” applications to participate. Although the auction will not begin until January 24, 2008 and upfront payments need not be deposited until January 4, December 3 was the last day to declare your intention to participate.

FCC anti-collusion rules for this auction preclude disclosure of which markets the applicants have expressed interest in, though the FCC has now revealed who the applicants are. Google, which had been coyly sitting on the fence for some months, declared its intention to participate, as did Cox, while other potential players like Nextel, Time Warner and Comcast bowed out. Interestingly, and very annoyingly for the bidders, although they are bumping against each other in the starting gates, the anti-collusion rules preclude them from communicating with each other in any way that might reflect on their auction strategies until this auction (and, if necessary, the follow up auction) are completed. This should cast a pall on holiday party chitchat among bidders and their representatives.

As has become *de rigueur* for this service, last minute adjustments to the rules were issued, prompting petitions to delay the deadline. The FCC had already granted some relief to prospective D Block bidders by reducing the deficiency payment for a defaulting D Block bidder from 15% to 10%. It has now gone on to permit winning D Block bidders who are “Designated Entities” (*i.e.*, companies with less than \$40 million in revenue) to wholesale their spectrum to other users (with some limits). These steps seem to corroborate our theory that the original rules had made the D Block unattractive to prospective bidders, and these tweaks help somewhat in that regard.

At the same time, the FCC granted a license to the adjacent Public Safety licensee whose system the D Block winner must build out. The Public Safety licensee has provided guidance on what it expects of the D Block winner, which at least gives prospective bidders some measure of comfort about what they are getting into. Inevitably, petitions challenging some of these actions have been filed by competitors. Frontline filed a last

minute request to delay the filing deadline by a week, which the FCC ignored and thus effectively denied.

Meanwhile, back at the court, all of the appeals we mentioned in our last issue remain pending and unresolved, as do the various petitions for reconsideration which were filed at the FCC in August and September. We do expect the Commission to deal with those petitions prior to the auction, and probably before the upfront payment deadline at the end of the month. The FCC's disposition of those petitions may prompt further appeals. Despite these uncertainties — or perhaps because of them — interest in the auction remains intense. If things run true to form, we can expect several more strange twists and turns in the auction process before bidding opens in January. Stay tuned.