

*Advanced
Wireless
Services
Spectrum
Auction
Presents
Opportunities
for Wireless
Providers*

On December 23, 2004, President Bush signed into law Public Law No. 108-494, the Commercial Spectrum Enhancement Act (“CSEA”). The CSEA mandated two courses of action of interest to wireless providers and new technology investors. First, the CSEA required the Federal Communications Commission (“FCC”) to establish a process by which parties may bid on newly available wireless spectrum. Second, the CSEA established a funding mechanism to relocate incumbent private and federal government operations in certain bands, including the 1710-1755 MHz band, currently used by the Department of Defense and the Department of Homeland Security, among other government agencies, in order to free additional spectrum for commercial use.

In response, in early 2005 the FCC announced a plan to conduct the Advanced Wireless Services auction (Auction No. 66) in which participants would be offered the opportunity to bid on 1,122 licenses in the 1710-1755 MHz and 2110-2155 MHz (“AWS-1”) bands. The activity in the auction focused primarily on the likelihood of incumbent wireless providers operating in the nearby 1.9/2.1 GHz bands picking up additional spectrum (such as T Mobile and Cingular Wireless). Wary of domination by established providers, the FCC structured several aspects of Auction No. 66 in order to facilitate the participation also of new third generation (3G) or Advanced Wireless Services

providers within the U.S. Notably, no specific technology requirements were associated with this spectrum – thereby increasing the potential value of any technology or application offering utilized in the spectrum space.

The CSEA authorized the FCC to grant commercial licenses in these bands prior to relocation of federal government operations and the termination of a federal agency’s authorization to operate in that space. Thus, AWS licensees can either share space temporarily with the government agency or negotiate to relocate the agency to a new spectrum slot. The statute required the FCC to condition such licenses, however, by requiring that commercial licensees “cannot cause harmful interference to such Federal entity until such entity’s authorization has been terminated by [the Commerce Department].”

In response to the demands of the CSEA, the FCC and the Commerce Department’s National Telecommunications Information Agency require that all AWS licensees coordinate AWS use of the 1710-1755 MHz band during the transition so that licensees can deploy their systems in an efficient manner without causing harmful interference to existing federal operations. Coordination will provide federal incumbents with some assurance that critical operations will not be interrupted due to harmful interference.

The upper half of these paired frequencies, i.e., 2110–2150 MHz band, is used by private (including state and local governmental public safety services) and common carrier fixed microwave services (“FS”). The 2150–2155 MHz band is currently used by the Broadband Radio Service (“BRS”). As industry participants are aware, harmful radiofrequency interference could cause networks to experience catastrophic outages affecting critical missions. Thus, any winning licensee must be prepared to expend additional funds to manage the relocation of incumbent government users.

Auction 66 closed on September 18, 2007 and yielded results of successful bids on over 1,087 licenses, resulting in cumulative net winning bids of just over \$13.7 billion. This result translates into a price per MHzPop of approximately \$0.54, with multiples ranging from \$0.022 for the California 6 – Mono Cellular Market Area (CMA) to \$1.59 for the Washington, DC-MD-VA CMA. T-Mobile, Verizon Wireless, and the Cable-Sprint Nextel “SpectrumCo” consortium were the top three bidders. Metro PCS was fourth at \$1.4 billion and Cingular was fifth at \$1.3 billion in high bids. Today, with the acquisition of new spectrum, it appears that T-Mobile is situated to emerge as a stronger and more robust market participant, while MetroPCS and Cricket Wireless/ Leap’s likely expansion into new urban markets will add additional pricing pressure in major markets.

At bottom, however, one of the attractive elements of this particular spectrum auction was the proven operational value to government users and the ease by which commercial providers could begin to derive revenues from the service immediately.

Kelley Drye Collier Shannon continues to follow developments – both legal and financial – in this segment as carriers deploy equipment and implement efforts to enter new markets or reinforce their presence in existing markets. We are available to respond to questions concerning the legal implications of this auction on third parties and its general affect on the market and communications policy.

FOR MORE INFORMATION

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