Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (Television Channels 60-69)	)	WT Docket No. 99-168
	)	
Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)	)	GN Docket No. 01-74
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket No. 02-55
	)	
Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for June 19, 2002	)	DA 02-260 Report No. AUC 02-31-A (Auction No. 31)
	)	
Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002	)	DA 02-563 Report No. AUC 02-44-B (Auction No. 44)

To: The Commission

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION IN SUPPORT OF APPLICATION FOR REVIEW FILED BY CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

Dobson Communications Corporation ("Dobson"),[1] hereby supports the Cellular Telecommunications & Internet Association's ("CTIA's") April 24, 2002 Application for

[1] Through subsidiary companies, Dobson owns and manages cellular mobile telephone networks providing wireless communications to over 1.3 million customers in 17 states, focusing primarily on rural and suburban markets.

Review of the Wireless Telecommunications Bureau's denial[2] of CTIA's request for postponement of Auctions 31 and 44 ("the 700 MHz Auctions"), which are scheduled to begin on June 19, 2002.[3] As demonstrated below, postponement of the 700 MHz Auctions would best fulfill the Commission's statutory responsibility to manage spectrum policy in a rational way. Given the substantial uncertainties involving the outcome of Auction 35, future advanced wireless ("3G") spectrum allocations, public safety spectrum needs and the status of incumbent broadcasters in the 700 MHz band, proceeding with the 700 MHz Auctions under the existing schedule would be inconsistent with sound spectrum management policy. Accordingly, the Commission should grant CTIA's Application for Review and postpone the 700 MHz Auctions.

SOUND SPECTRUM MANAGEMENT POLICY DICTATES THAT THE 700 MHZ AUCTIONS BE POSTPONED

The 700 MHz bands hold enormous potential to produce benefits for consumers given their location in the electromagnetic spectrum and their excellent propagation characteristics. Dobson is in the process of rolling out advanced data services, and would benefit from future opportunities to acquire additional spectrum in the 700 MHz band to facilitate such efforts. The Commission has allocated the C Block in the Lower 700 MHz band for licensing according to MSA/RSA boundaries, which could fit especially well with Dobson's existing 800 MHz cellular

[2] *See* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau to Thomas E. Wheeler, President/CEO of CTIA, DA 02-857 (April 10, 2002).

[3] These comments are filed in accordance with the schedule established in the Commission's *Public Notice*, DA 02-971 (rel. April 26, 2002).

footprint.[4] The uncertainties surrounding both the 700 MHz spectrum and other spectrum interrelated with it, however, make it impossible for Dobson and others to accurately assess the desirability of 700 MHz licenses at this time.

Postponement of the 700 MHz Auctions, as requested by CTIA, would best fulfill the Commission's statutory responsibility to manage spectrum so that it can be effectively and efficiently used. Dobson appreciates that the Commission is faced with statutorily mandated revenue timetables that conflict with its obligations under the Communications Act. CTIA is correct, however, that where statutory conflicts exist, the Commission may reconcile them through reasonable statutory interpretation.[5] The Commission has faced this dilemma before, when (also at CTIA's request) it decided to postpone a previously scheduled auction of licenses in the upper 700 MHz band. At that time, the Commission stated, "[w]e have a statutory mandate to design our auction rules and procedures so as to manage the radio spectrum effectively and efficiently in the public interest."[6] The Commission correctly concluded that its responsibility to manage the radio spectrum in the public interest required that the auction be

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[4] For 800 MHz cellular carriers like Dobson, the 700 MHz bands (assuming they can be cleared of incumbent broadcasters) offer far better efficiencies for the offering of 3G services than the 1.9 GHz band allocated for PCS or the other bands generally regarded as candidates for reallocation for 3G services.

[5] *See* CTIA Application for Review at 6.

[5] *Cellular Telecommunications Industry Association et al.'s Request for Delay of the Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000 (Auction No. 31), Memorandum Opinion*, 15 FCC Rcd 17406, 17408-09 (citing 47 U.S.C. § 309(j)(3), (4)) (2000) ("*2000 Auction Delay Opinion*").

delayed, even if that meant ignoring a budget-driven statutory directive concerning the timetable for deposit of auction revenues into the Treasury.[7]

These considerations carry no less weight today than they did in 2000. Indeed, as described below, the uncertainties looming over the 700 MHz band have only increased in the past two years. The Commission should take the time to remove at least some of these uncertainties before proceeding with the auctions.

- Auction 35 Uncertainties. As the Commission is painfully aware, the status of the licenses auctioned in Auction 35 is unclear and will continue to remain so for some time. Until Auction 35 winning bidders know whether licenses from that auction will be available, it is impossible for them to fully assess their needs for spectrum in the 700 MHz band. In the *2000 Auction Delay Opinion*, the Commission noted that one of the factors favoring postponement was the need to allow prospective bidders to "properly assess their spectrum needs . . . follow[ing] the close of [Auction 35]."[8] With Auction 35 still unresolved, winning bidders remain in this same position of being unable to conduct this crucial assessment.

  An auction of the 700 MHz bands at this time would reflect an artificially skewed market and thus fail to achieve the Commission's primary goal for spectrum auctions, which is to efficiently award licenses to the entities who place the highest value on them, thereby ensuring that scarce spectrum is put to its highest and most efficient use, as Section 309(j) intends.[9] The Commission must therefore do its best to ensure that the 700 MHz Auctions are conducted under conditions that allow all bidders to compete on the basis of complete information regarding their spectrum needs.

- Uncertainties Regarding Other Spectrum Allocations. The Commission and the Administration are working together to identify other spectrum bands to be reallocated for 3G services. The availability and timing of future auctions for 3G spectrum should be more clear before prospective bidders are asked to place bids on the 700 MHz licenses. These open 3G issues make it virtually impossible for interested parties "to develop business plans" or "assess market conditions" as required under Section 309(j)(3)(E)(ii) of the Communications Act.

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[7] *Id.* at 17409-10, *citing Western Coal Traffic League v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000)

[8] *2000 Auction Delay Opinion* at 17411.

[9] *See* 47 U.S.C. § 309(j)(3)(d).

- Broadcaster Clearing Uncertainties. Despite the Commission's efforts, there is still no predictable timetable either for the DTV transition or for voluntary clearing of incumbent broadcast stations from the 700 MHz bands. This adds substantial uncertainty to the planned 700 MHz Auctions. Further, if early clearing is to take place, prospective bidders still have no way of knowing how much it may cost to clear the broadcasters. The Bush Administration has expressed a strong desire for a delay in the 700 MHz Auctions while greater clarity is achieved concerning the date that the 700 MHz spectrum can be cleared. In a letter to Chairman Powell, Commerce Secretary Evans stated that "[u]ntil more certainty exists about the means for and timing of such spectrum clearing, an auction of the Upper and Lower 700 MHz bands would be premature and contrary to public interest."[10] In light of the difficulties that resulted from Auction 35, the Commission should avoid auctioning more spectrum when there is no predictable way to determine when pre-existing claims to the spectrum will be extinguished.

- Possible Additional Use of the 700 MHz Band for Public Safety. The Commission has recently initiated a proceeding to examine ways to alleviate interference to public safety communications in the 800 MHz bands,[11] and the 700 MHz bands could be part of the answer to that intractable problem. Auctioning licenses in these 700 MHz bands prematurely could foreclose solutions on an issue that is "one of the FCC's highest priorities"[12] – ensuring that adequate spectrum is available to meet the present and future needs of the public safety community.

Over 50 members of the U.S. House of Representatives have undertaken legislative action that would delay the 700 MHz Auctions by introducing the Auction Reform Act of 2002.[13] This legislation correctly points out that the telecommunications landscape has changed dramatically since 1997 (when a revenue receipt timetable for the upper 700 MHz band was

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[10] *See* Letter from Donald L. Evans, Secretary of Commerce, to FCC Chairman Michael K. Powell, available at http://www.ntia.doc.gov/ntiahome/fccfilings/2002/700auction_41702.htm.

[11] *See Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, FCC 02-81 (released March 15, 2002).

[12] *1998 Biennial Regulatory Review, 47 C.F.R Part 90, Private Land Mobile Radio Services*, WT Docket No. 98-182, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 16673, 16682-83 (2000).

[13] H.R. 4560, 107th Congress, 2d Session (April 24, 2002) ("ARA").

enacted), "raising serious questions as to whether the original deadlines, or the subsequent revision of the deadlines, are consistent with sound telecommunications policy and spectrum management principles."[14] The ARA notes the lack of a comprehensive plan for allocating additional 3G spectrum, the fact that the 700 MHz band is an option to address public safety interference problems, and the uncertainties regarding broadcaster clearing,[15] and orders that the scheduled 700 MHz Auctions not take place.[16] In light of this recent Congressional activity, rushing to auction the 700 MHz bands would be a mistake.

A premature auction of the 700 MHz licenses would serve only to exacerbate the current lack of direction in spectrum policy that is negatively affecting consumers, carriers and the economy alike. Further, because uncertainties will undoubtedly keep some potential bidders from participating, conducting the 700 MHz Auctions as currently scheduled will fail to achieve the Commission's primary goal for spectrum auctions, which is to efficiently award licenses to the entities who place the highest value on them and therefore presumably would put them to their most efficient use. To achieve this goal, the Commission must afford sufficient time to remove uncertainties that could jeopardize the auction. This is precisely what the Commission did in the *2000 Auction Delay Opinion* and in another case as well.[17] In the present

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[14] ARA at § 2(1).

[15] *See* ARA at §§ 2(2), 2(3), 2(4), 2(5), and 2(6).

[16] ARA at § 4.

[17] *See 2000 Auction Delay Opinion* at 17409-10; *see also Allocation of Spectrum below 5 GHz Transferred from Federal Government Use, Fourth Report and Order,* 13 FCC Rcd 23830, 23834 & n. 20 (1998).

circumstances, the best way for the Commission to fulfill its duty to conduct sound spectrum management policy is to again postpone the 700 MHz Auctions.

CONCLUSION

For the foregoing reasons, the Commission should grant CTIA's Application and postpone the 700 MHz Auctions presently scheduled to begin on June 19, 2002.

Respectfully submitted,

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