

WebMemo



Published by The Heritage Foundation

No. 2043
September 2, 2008

FCC Needs to Reexamine Public Safety Spectrum

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The recent failure by the Federal Communications Commission (FCC) to garner the minimum bid on the public safety spectrum is a major setback for interoperability in the United States. Micromanagement, coupled with a lack of homework by the FCC, created an auction destined for failure.

The FCC must examine what went wrong and ensure that the re-auction takes into account private sector realities, public safety objectives, and FCC goals. The re-auction should be radically different from the first and include fewer restrictions, no reserve price, and more dialogue with the private sector.

New Kid on the Block. The portion of the FCC radio spectrum in controversy, 10 MHz of the upper 700 MHz “D-Block,” is currently occupied by TV broadcasters. Once these broadcasters transition to digital, the spectrum will be available to create a nationwide communications network that allows communications between state and local public safety entities. Recognizing this opportunity, the FCC decided to auction off a portion of the D-Block to commercial entities on one condition: that the private sector winner would agree to share the spectrum with first responders when needed.

The auction was lauded as an attempt to create a public-private partnership while improving nationwide interoperability. In reality, the FCC got bogged down in the details, requiring vast prerequisites for the winning private sector bidder including entrance into a Network Sharing Agreement (NSA) with the Public Safety Spectrum Trust Corporation (PSST) and exorbitant annual fees.

When bidding closed on March 18, only one bid of \$472 million—well under the minimum bid amount of \$1.33 billion—was received. Potential bidders screamed foul, claiming that the auction was a fraud and that the FCC was involved in back-room deals with other potential investors. Bidders also objected to the burdensome requirements and staggering minimum bid price. Congress held hearings on the issue that resulted in a vast amount of finger pointing but little progress.

The Way Forward. In order to continue the path towards a public safety spectrum, the FCC must examine lessons learned. The FCC should:

- **Refocus for Re-auction.** There is a reason why the private sector was not interested in the original auction, and it is the FCC’s job to find out why. The FCC should enter into dialogue with private sector stakeholders to ensure that the next auction is successful. Continued communication with Congress will make certain that the FCC will not undergo such intense and negative scrutiny in the next auction;
- **Keep Only Needed Restrictions.** The FCC must reevaluate the restrictions placed on the private sector and figure out what is needed and what is not. Tech policy expert Jerry Brito, a fellow with

This paper, in its entirety, can be found at:
www.heritage.org/Research/HomelandSecurity/wm2043.cfm

Produced by the Douglas and Sarah Allison
Center for Foreign Policy Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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the Mercatus Center, rightly recommends throwing out the NSA requirement with the PSST. Under the current requirement, if the PSST and the licensee are unable to come to an agreement, the FCC can step in and impose requirements on the licensee or pay a penalty for non-compliance. The PSST, on the other hand, is not subject to FCC requirements or fines, thereby giving the trust the advantage in negotiations. Private sector entities recognize this disadvantage, and no one wants to be a part of a losing deal;

- *Allow Leasing of Excess Capacity.* While licensees should be required to allow public safety entities to use capacity first, there is nothing wrong with allowing licensees to benefit economically from excess capacity. This would provide a financial incentive to bidders, increasing interest in the spectrum; and
- *Eliminate Reserve Prices.* The lack of bids demonstrates that the FCC was off target regarding valuation of the auction spectrum. Again, Brito

rightly recommends that the FCC should consider eliminating reserve prices all together to ensure adequate bids are received. This would also encourage a diversity of bidders, including minorities and woman-owned businesses, to bid on the spectrum, a problem highlighted in congressional proceedings.

Reinvigorate the Re-auction. No one likes a micromanager, and the private sector is no different. The FCC must realize that purchasing this spectrum is an economic choice, just like any other private sector business decision. If the private sector gets scared off by what it perceives as a future bureaucratic fight, it is likely to choose less intrusive ventures. The D-Block needs to be something worth competing for. After all, American lives depend on it.

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