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

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In the Matter of:	)	
	)	
Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band	)	ET Docket No. 98-237 RM-9411
	)	
The 4.9 GHz Band Transferred from Federal Government Use	)	WT Docket No. 00-32

Comments of the Office of Advocacy, U.S. Small Business Administration

The Office of Advocacy of the United States Small Business Administration ("Advocacy")[1] respectfully submits these Comments to the *Second Notice of Proposed Rulemaking ("Second NPRM")* published in relation to the above-captioned proceeding.[2] The Federal Communications Commission ("Commission") proposes rules to govern the 3650-3700 MHz spectrum band, which was transferred from Federal government to private sector use. The Commission proposes auctioning spectrum licenses in this band on a geographic basis, and requests input on the size of area it should use. Advocacy recommends that the Commission use small geographic areas, such as Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"), which would encourage small business participation in the spectrum auction and would speed service to rural areas. The Commission should avoid larger areas, such as Economic Areas ("EAs"), which are too large for most small businesses to bid for or serve.

[1] Congress established Advocacy in 1976 by Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. (Codified as amended at 15 U.S.C. §§ 634 a-g, 637.) Advocacy serves as a focal point for concerns regarding the government's policies as they affect small business, develops proposals for changes in Federal agencies' policies, and communicates these proposals to the agencies. (*See* 15 U.S.C. § 634c(1)-(4).) Advocacy also monitors agency compliance with the RFA and reports this to Congress.
[2] *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, Second Notice of Proposed Rulemaking*, ET Docket No. 98-237, FCC 00-363, released October 24, 2000.

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Also, the Commission should not rely on geographic partitioning or spectrum disaggregation as a means to encourage small business participation in this spectrum auction. For this purpose, partitioning and disaggregation are inadequate.

The Commission also proposes to grant bidding credits to small businesses, and proposes three different tiers of credit, based on different business sizes. To the extent that this would establish small business sizes for 3650-3700 MHz services that differ from those set by the U.S. Small Business Administration ("SBA"), Advocacy urges the Commission to seek permission from the SBA prior to issuing final rules.

1. The Commission should license 3650-3700 MHz spectrum by RSA and MSA.

Advocacy recommends that the Commission auction 3650-3700 MHz spectrum licenses based on MSAs and RSAs, in order to encourage small business participation in the auction and assure provision of services to rural areas. This will permit dissemination of licenses among a wide variety of applicants and will ensure provision of service to rural areas.

By offering licenses on an MSA/RSA basis, the Commission would encourage small businesses to seek to provide services in the 3650-3700 MHz spectrum band. A small business interested in serving only a single rural or urban locale could bid on the RSA or MSA containing that area. Any business, small or large, interested in serving a particular town or city, could bid on that city. By separating rural areas from metropolitan areas, those companies that wish to serve a rural area, but not the neighboring city, could gain affordable access to the desired community. The price of the RSA license would be measured by bidding competition and not be affected by the value of nearby metropolitan areas. Thus, licensing smaller areas would tend to increase participation by small and rural businesses, including businesses owned by women and minorities.

By contrast, organizing the licenses by EAs, which include both rural and urban areas, would cause the relatively high value of urban areas to influence bidding levels for relatively less valuable rural areas. Bidding levels might simply become too high for small businesses, despite the use of bidding credits. Small businesses would face the prospect of bidding on larger areas than they wish to serve, at prices that would be elevated by the presence of urban areas, and in competition with larger businesses. Including rural areas in the same EA with metropolitan areas runs the risk that a large business, interested in serving only the city, might not serve surrounding rural areas. And local companies wanting to provide wireless services to the rural areas of an EA might be unwilling to bid on the entire EA or unable to bid against large companies. Thus the company that would obtain the rural license might have no use for it and the company that wants to serve the rural community would be denied that opportunity.

2. The Commission should not rely on partitioning to create small business licenses.

The Commission tentatively concludes that partitioning and disaggregation would provide "economic opportunity" for small businesses and "overcome entry barriers" that these businesses face.[3] The Commission acknowledges that the smaller licenses require less capital, which will facilitate entry by small business.[4] But by relying on post-auction partitioning to overcome these barriers and lower capital costs for small business, the Commission would miss an opportunity to encourage small business participation in the auction itself.

Rather, the Commission should create smaller areas themselves, so that small businesses

[3] *See Second NPRM*, paragraph 75, pp 33-34. The Commission states, "We tentatively conclude that geographic partitioning and spectrum disaggregation can result in efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants, as required by Section 309(j)(4)(C) of the Communications Act. We also tentatively conclude that our proposed approach will provide a means to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by rural telephone companies and other smaller entities, many of which are owned by minorities and women." [Citations omitted.] *Id.*
[4] *Id.*

may compete at auction. As Commissioner Susan Ness has pointed out in another proceeding, "Auction of larger service areas limits the ability of smaller providers with rural strategies to obtain spectrum."[5] Commissioner Harold Furchtgott-Roth and Commissioner Gloria Tristani also appear open to the idea of smaller geographic licensing areas.[6]

Partitioning does not work. The small business may have to pay considerably more to partition a rural area than if it had been auctioned as a discreet license area. The price of the rural area would reflect the value of the EA's urban areas. Or the EA licensee, a potential competitor to the smaller business, might try to exact a higher price. The EA licensee also might prefer to sit on the spectrum and not partition its EA, even areas it does not plan to serve, just in case it later decides to expand its service. As a result of any of these factors, large rural areas of an EA could remain unserved indefinitely. Auctioning by RSA and MSA would avoid these problems and permit speedy service to rural communities. Commissioner Furchtgott-Roth calls the record on partitioning and disaggregation "mixed" and notes that these practices "appear to create substantial transaction costs."[7] Commissioner Ness sees the problem as well: "While the theory behind our partitioning and disaggregation rules would suggest that rural carriers could obtain access to spectrum, there is evidence that in practice this has not happened."[8] Commissioner Tristani agrees that "this policy has produced mixed results at best."[9]

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[5] *Amendments to Parts 1, 2 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order ("24 GHz Report and Order"), Separate Statement of Commissioner Susan Ness,* WT Docket No. 99-327, FCC No. 00-272, released August 1, 2000 .

[6] *See 24 GHz Report and Order, Concurring Statement of Commissioner Harold Furchtgott-Roth and Concurring Statement of Commissioner Gloria Tristani.*

[7] *24 GHz Report and Order, Concurring Statement of Commissioner Harold Furchtgott-Roth.*

[8] *24 GHz Report and Order, Separate Statement of Commissioner Susan Ness.* [Citations omitted.]

[9] *24 GHz Report and Order, Concurring Statement of Commissioner Gloria Tristani.*

3. The Commission should seek SBA permission for new size standards.

Advocacy also notes that the Commission proposes three tiers of small business for purposes of awarding bidding credits in this auction. The definitions of small business the Commission proposes here, while consistent with those used in other auctions, differ from the size standards determined by the U.S. Small Business Administration ("SBA"), and appear to be new definitions for services at 3650-3700 MHz. As such, Advocacy urges the Commission, if it has not done so already, to seek the approval of SBA prior to establishing new definitions for small business.

4. Conclusion.

Small businesses will have a greater opportunity to obtain 3650-3700 MHz spectrum licenses for the areas they wish to serve if they can compete for these licenses at the auction stage. The Commission should encourage small business auction participation, and therefore small business provision of 3650-3700 MHz services, by offering the licenses according to RSAs and MSAs. The Commission should avoid licensing according to EAs, as these areas are too large for small businesses, and partitioning will not assure small businesses have an opportunity to provide 3650-3700 MHz services.

Respectfully submitted,

Jere W. Glover
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December 14, 2000