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June 29, 2005

57739-00013

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: WT Docket No. 02-353 (Advanced Wireless Services)  
*Ex Parte* Communication

Dear Ms. Dortch:

This *ex parte* letter is being filed on behalf of MetroPCS Communications, Inc. (“MetroPCS”) in connection with the consideration by the Commission of a final band plan for Advanced Wireless Services (“AWS”) in the 1710-1755 and 2110-2155 MHz bands.<sup>1</sup>

Introduction and Summary

MetroPCS wholeheartedly supports the Commission’s determination to adopt final rules that will enable it to license AWS spectrum. However, as is set forth in detail below, MetroPCS favors a more flexible band plan in which spectrum is made available in a greater variety of geographic areas and an increased number of smaller spectrum block sizes so that carriers of all sizes will have a meaningful opportunity to acquire spectrum and compete in the provision of spectrum-based services. Specifically, MetroPCS advocates a plan which includes Major Economic Areas (“MEAs”), a rough equivalent of the MTAs which have been used so often in the past for broadband licensing. MetroPCS also proposes a greater use of 10 MHz channel blocks which can be used as efficient building blocks by auction participants.

The Joint Proposal submitted by T-Mobile USA, Inc. (“T-Mobile”) and Rural Telecommunications Group, Inc. (“RTG”),<sup>2</sup> and supported by others,<sup>3</sup>

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<sup>1</sup> See Service Rules for Advanced Wireless Services, *Report and Order*, 18 FCC Rcd 25612 (2003) (the “AWS Report and Order”).

<sup>2</sup> See T-Mobile and RTG *ex parte* filing in WT Docket No. 02-353 dated March 11, 2005.

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represents a step in the right direction because it advocates dividing one of the Commission-proposed 30 MHz blocks into smaller spectrum blocks, some of which would be licensed in smaller market areas.<sup>4</sup> Similarly, the alternate band plan advocated by Verizon Wireless<sup>5</sup> is commendable in that it proposes to increase the number of spectrum blocks from five to six, and would relocate the block to be licensed on an MSA/RSA basis to facilitate the aggregation of markets and spectrum which are based on an Economic Area (“EA”) and Regional Economic Area Grouping (“REAG”) scheme.

However, for the reasons set forth below, further subdivisions of the spectrum and the service areas are necessary and appropriate in order to foster a robust auction in which both larger and smaller carriers can compete for needed spectrum resources. (For ease of reference, the original Commission-proposed AWS band plan is summarized in Attachment 1, the T-Mobile/RTG alternative is summarized in Attachment 2, the Verizon Wireless Plan is summarized in Attachment 3 and the proposed MetroPCS band plan is included as Attachment 4 hereto. In addition, Attachment 5 contains a color-coded bar chart that visually depicts all of the plans together.)

### The Interest of MetroPCS

MetroPCS is an independent carrier which provides broadband wireless voice and data services on a local and regional basis in portions of the United States. The company has operations in the Miami, Atlanta, Sacramento and San Francisco metropolitan areas and recently acquired spectrum rights in Detroit, Dallas, and Tampa/Sarasota.<sup>6</sup> The company also is a non-controlling interest holder in Royal Street Communications LLC, which was the high bidder in Auction No. 58 for licenses in Los Angeles and Orlando/Jacksonville, among others.<sup>7</sup> Royal Street’s gross high bids of \$387,443,000 at the close of Auction No. 58 were the highest of any bidder.

MetroPCS offers interconnected wireless service and unlimited local calling for a prepaid, flat monthly fee, with long distance and other services available

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<sup>3</sup> See, e.g., *Ex Parte* Comments in WT Docket No. 02-253 of OPASTCO (June 5, 2005), SunCom Wireless Operating Company, LLC (May 20, 2005), United States Cellular Corporation (April 29, 2005); National Telephone Cooperative Association (May 25, 2005), PCIA (June 9, 2005) and Alcatel (May 23, 2005).

<sup>4</sup> The Commission proposed a 30 MHz block licensed on a Regional Economic Area Groupings basis. T-Mobile/RTG proposed instead breaking this into 3 ten MHz blocks to be licensed on an MSA/RSA, EA and REAG basis, respectively.

<sup>5</sup> See, e.g., Verizon Wireless *ex parte* filing in WT Docket No. 02-353 dated May 27, 2005.

<sup>6</sup> See FCC File Nos. 0001967542, 50000CWAA05 and 0001820782.

<sup>7</sup> See FCC File No. 0002069525.

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on an *a la carte* basis. The MetroPCS service is a flexible, low-cost alternative to the national plans offered by many wireless carriers, and a significant competitor to traditional landline service. MetroPCS estimates that approximately 40% of its customers use their MetroPCS service as their primary – if not only – telecommunications service.

By competing effectively, MetroPCS is expanding the market for wireless services. Within three years of launch, MetroPCS became the second largest wireless provider in the South Florida market – surpassing wireless carriers that have been in operation for decades. MetroPCS market research indicates that approximately 40% of its customer additions are completely new to wireless. Thus, customers who traditionally have not had access to wireless services are now participating in the wireless revolution.

MetroPCS anticipates having spectrum needs in additional market areas as it expands to bring its innovative service plan to new places. As a consequence, MetroPCS is looking at the AWS band as an important spectrum acquisition opportunity. However, the MetroPCS expansion plans could be frustrated by the faulty assumption underlying the previously proposed AWS band plans that future growth in broadband service will be completely dominated by large regional or national players. A more accurate forecast would recognize that there is significant growth by independent carriers (like MetroPCS, Leap Wireless and others) which are providing substantial services on a more local basis with more localized spectrum needs.

### Concerns About Prior Band Plan Proposals

The previously proposed band plans are much too heavily skewed toward larger channel blocks (30 MHz and 20 MHz) and larger geographic areas (REAGs). The successful MetroPCS business model has been developed in license areas significantly smaller than REAGs; often on 10 MHz spectrum blocks. MetroPCS has proved that 10 MHz blocks are an attractive building block for incumbent wireless carriers seeking additional spectrum.<sup>8</sup> MetroPCS is concerned that an AWS band plan weighted toward 20 or 30 MHz spectrum blocks and REAG license areas will dampen the participation of smaller independent carriers, such as MetroPCS, who are developing more specialized service offerings.

There are only a handful of incumbent wireless carriers in the U.S. with footprints that cover an entire Regional Economic Area Grouping.

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<sup>8</sup> MetroPCS also has pioneered the use of six-sector base stations which, along with other developments such as intelligent antennas, will enable it to serve the needs of its customer base in new markets in many instances with just 10 MHz of spectrum.

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Nevertheless, the original AWS Band Plan proposed by the Commission in 2003 would have devoted 60 MHz of the 90 MHz spectrum to geographic licensing on a REAG basis.<sup>9</sup> Verizon Wireless would have the Commission devote 50 MHz of spectrum to REAG licenses. The alternative plan proposed by T-Mobile and RTG is better in that only 40 MHz of spectrum would be licensed on a REAG basis. Still, three of the six license blocks proposed by T-Mobile and RTG are REAG licenses.

MetroPCS does not object to having the national wireless players assemble large blocks of spectrum in REAGs if that in fact proves to be the highest and best use of the spectrum. This can, however, be accomplished through the auction process even if the spectrum is allocated in smaller spectrum blocks and areas. The beauty of the auction is that carriers can take a building block approach and assemble as much bandwidth and coverage area as is needed.<sup>10</sup> The same is not true if the initial allocation blocks are overly large at the outset, either in terms of bandwidth or geographic area. While bidders can aggregate contiguous spectrum and markets in the bidding process, there is no mechanism during the auction for a bidder to disaggregate spectrum or partition geographic areas.<sup>11</sup> Indeed, the FCC's anti-collusion rules which apply during an auction would prevent a bidder from approaching other bidders to ascertain if they would be interested in buying a portion of the spectrum or territory in a license block that exceeded the bidder's business objective.<sup>12</sup>

The problem presented by overly large spectrum blocks or market areas is exacerbated by the realities of the financing market. Carriers such as MetroPCS which are pursuing more localized business plans do not have financial resources as extensive as those of some of the nationwide wireless carriers. As a consequence, MetroPCS cannot afford to acquire and "warehouse" spectrum for future use that does not meet the company's near term business objectives. The practical effect of having a band plan too heavily weighted toward larger blocks of spectrum and market areas is to foster a less competitive auction because certain carriers with serious needs for spectrum are effectively precluded from bidding for some licenses. The

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<sup>9</sup> *AWS Report and Order*, para 28.

<sup>10</sup> Experience indicates that there is a robust auction after-market that enables a carrier to make post-auction adjustments in the event it did not end up exactly where it wanted.

<sup>11</sup> Although the Commission's rules permit partitioning and disaggregation of spectrum after an auction, such divestitures have been - - and likely would continue to be - - the exception rather than the rule. One important reason for this is that an auction bidder cannot be certain a post-auction divestiture can be accomplished which serves to inhibit bidding in the first instance.

<sup>12</sup> This is especially relevant if the prices for the spectrum exceed the initial applicant's business plan.

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Commission in the past has correctly acknowledged that: “Smaller channel blocks, on the other hand, are less likely to be cost prohibitive.”<sup>13</sup>

The Commission previously has recognized the virtue of taking a “building block” approach in band plans that enables larger carriers to assemble spectrum resources while still allowing smaller carriers to participate:

Traditionally, in establishing a service, the Commission attempts to adopt optimal geographic area size(s) and optimal spectrum block size(s), taking into consideration that parties may aggregate licenses through the auction process...<sup>14</sup>

And, in a recent Advanced Wireless Service NPRM, the Commission correctly observed that:

Ideally, the size(s) of the initial geographic license areas would match the business plans of the initial licensees.<sup>15</sup>

MetroPCS respectfully submits that the current Commission plan, and even the much-preferable T-Mobile/RTG plan, fail to fully meet these laudatory Commission objectives.

### The Plans Overlook MEAs

The biggest mystery to MetroPCS about the original Commission spectrum plan and the T-Mobile/RTG and Verizon Wireless alternatives is the complete disregard of Major Economic Areas (“MEAs”) as an element of the band plan. MEAs are a logical building block in any spectrum allocation plan that uses EAs as a core unit. As the Commission knows, there are 176 EAs in the U.S., 52 MEAs and 12 REAGs. Because MEAs are composed of multiple EAs, and REAGs are composed of multiple MEAs, an optimal, flexible allocation plan certainly would include MEAs as a licensing alternative. This is especially true since the AWS allocation is expected in

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<sup>13</sup> Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration* (PR Docket No. 93-144); <sup>14</sup> FCC Rcd 17556, para 111 (1995).

<sup>14</sup> Services Rules for Advanced Wireless Services in the 1915-1920 MHz; 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, *Notice of Proposed Rulemaking* (WT Docket No. 04-356; 02-353), FCC 64-218, released September 24, 2004 (“AWS NPRM”); accord, Amendment of Part 90 of the Commission’s Rules to Provide for Flexible Use of the 896-901 and 935-940 MHz Bands; *Notice of Proposed Rulemaking and Memorandum Opinion and Order* (WT Docket No. 05-62); DA-04-3013, para 21 released February 16, 2005. (“Amendment of Part 90 NPRM and MO&O”).

<sup>15</sup> AWS NPRM, *supra* at para 22.

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part to supplement the spectrum needs of incumbent carriers who already are licensed on an MTA/BTA basis, and also is expected to accommodate new market entrants who will need to compete with existing networks configured on an MTA/BTA basis.

The case for including MEAs in the AWS band plan is supported by the *AWS Report and Order* itself. In enunciating the goals it is seeking to achieve with this allocation, the Commission notes:

We believe our objectives of ensuring both efficient use of spectrum and diversity of licensees can best be achieved by adopting a variety of license areas and spectrum block sizes...<sup>16</sup>

However, this goal is not fully met by an allocation scheme that forces applicants to choose between relatively small EAs and very large REAGs with no middle ground.

The AWS band plans of the Commission, T-Mobile/RTG and Verizon Wireless all propose to license a portion of the AWS spectrum on an MSA/RSA (or CMA) basis. The rationale, with which MetroPCS conceptually agrees,<sup>17</sup> is that many incumbent licensees have spectrum that initially was licensed to them on an MSA/RSA basis, and providing an AWS block on an MSA/RSA basis will best meet the expansion needs of some of these licensees. Using the same logic, it would be optimal to license some portion of the AWS spectrum using the Rand McNally Major Trading Area (MTA) market boundaries since other broadband wireless spectrum has been licensed and developed on an MTA basis. MetroPCS recognizes, however, that there are trademark licensing issues that dissuade the Commission from utilizing the Rand McNally MTA designation. But, the use of MEAs would constitute a reasonable approximation. Rand McNally organized the United States into 47 MTAs. As earlier noted, there are 52 MEAs. This relative parity has caused the Commission in the past to refer to MEAs as “the rough equivalent of MTAs.”<sup>18</sup>

The Commission also has recognized that MEA-based licenses grant “the degree of flexibility, both geographically and operationally, necessary to construct wide-area systems,”<sup>19</sup> and “offer a balance between smaller more numerous [areas] that could impede wider-area service, versus larger

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<sup>16</sup> *AWS Report and Order*, Appendix B, Final Regulatory Flexibility Analysis, Section J.

<sup>17</sup> MetroPCS supports an MSA/RSA block but does not believe that 20 MHz is necessary.

<sup>18</sup> *Amendment of Part 90 NPRM and MO&O*, *supra* at para 22.

<sup>19</sup> *Id.* at para 22.

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geographic areas that may result in a smaller number of licensees...”<sup>20</sup> It is no wonder in light of these findings that the Commission repeatedly has settled upon band plans that incorporate MEAs.<sup>21</sup> For example, the Commission utilizes MEA-based licenses in the Wireless Communications Services (“WCS”) for frequency assignments in the 2305-2310/2350-2355 MHz and 2310-2315/2355-2360 MHz bands,<sup>22</sup> in the 1390-1392 bands,<sup>23</sup> and in the 746-747/776-777 MHz and 762-764 and 792-794 MHz bands.<sup>24</sup> MEAs also are used for market area licenses in the 929/931 MHz paging service.<sup>25</sup> The Commission also has proposed utilizing MEAs for licensing new systems in the 896-901 and 935-940 bands<sup>26</sup> and as part of the transition plan for the newly created Broadband Radio Service.<sup>27</sup> In light of these prior Commission actions, it would be capricious for the Commission to disregard MEAs in its AWS band plan, particularly in light of the stated objective to adopt an allocation scheme containing a variety of options to meet diverse business needs.

#### The MetroPCS Band Plan

Based on the foregoing considerations MetroPCS proposes the following AWS band plan:

<b>Block</b>	<b>MHz</b>	<b>Pairings</b>	<b>Area</b>	<b>Licenses</b>
A	10	1710-1715 paired with 2110-2115	MSA/RSA	734
B	20	1715-1725 paired with 2115-2125	MEA	52
C	10	1725-1730 paired with 2125-2130	MEA	52
D	10	1730-1735 paired with 2130-2135	REAG	12
E	10	1735-1740 paired with 2135-2140	EA	176
F	10	1740-1745 paired with 2140-2145	EA	176
G	20	1745-1755 paired with 2145-2155	EA	176

<sup>20</sup> Id.

<sup>21</sup> When the number of services licensed on a REAG/EA basis is compared with services licensed on a MEA/EA basis, it is clear that the Commission has favored MEA/EA licensing area.

<sup>22</sup> 47 C.F.R. § 27.5(a).

<sup>23</sup> 47 C.F.R. § 27.5(b) and 27.6(d).

<sup>24</sup> 47 C.F.R. § 27.6(b)(1).

<sup>25</sup> 47 C.F.R. § 22.503(b)(2).

<sup>26</sup> *Amendment of Part 90 NPRM and MO&O*, *supra* at paras 22 to 24.

<sup>27</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165, paras 289 to 290.

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In comparing this to the original Commission-proposed plan, the T-Mobile/RTG alternate, and the Verizon Wireless proposal, the following distinctions can be made:

- The Commission proposed five channel blocks (one of 30 MHz, two of 20 MHz and two of 10 MHz); T-Mobile/RTG and Verizon Wireless each proposed six channel blocks (three of 20 MHz and three of 10 MHz); MetroPCS proposes seven channel blocks (two of 20 MHz and five of 10 MHz). Thus, the MetroPCS plan increases the prospects there will be new market entrants while at the same time offering a greater variety of spectrum and market area alternatives to incumbent carriers who are seeking additional spectrum to provide new services.
- The Commission plan, the T-Mobile/RTG plan and the Verizon Wireless plan all proposed that three blocks of spectrum be licensed on a REAG basis (60 MHz in the case of the Commission; 50 MHz in the case of Verizon Wireless and 40 MHz in the case of T-Mobile/RTG). MetroPCS proposes a single 10 MHz REAG block. There would of course be no barrier to auction participants aggregating EAs or MEAs to create additional REAGs. And, indeed, the MetroPCS proposal fosters this by strategically placing the REAG block in the middle of the band to facilitate the aggregation of contiguous spectrum.
- The Commission plan, the T-Mobile/RTG plan and the Verizon Wireless plan contain no MEA-based licenses. The MetroPCS plan designates one 20 MHz channel and one 10 MHz channel for licensing on an MEA basis. This proposal creates needed geographical diversity in the market areas, and also provides a larger building block if bidders want to assemble licenses on a REAG basis. Licensing only one spectrum block on a MEA basis would not be sufficient to meet these dual objectives.
- The Commission proposed a single 10 MHz channel for licensing on an MSA/RSA basis. The T-Mobile/RTG and Verizon Wireless alternatives proposed a single 20 MHz channel to be licensed on an MSA/RSA basis. MetroPCS supports the original Commission proposal for a 10 MHz MSA/RSA block. The reason is two-fold. First, in many geographic areas there is no need for an additional 20 MHz of MSA/RSA-based spectrum. Second, recent allocations indicate that the Commission is moving away from MSAs and RSAs as

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the core geographic unit for broadband licensing. As a consequence, competition will be fostered if more spectrum is devoted to areas based on an EA building block.

- MetroPCS proposes moving the MSA/RSA allocation to the lowest portion of the new band consistent with comments made by Verizon Wireless in this proceeding. This change allows contiguous spectrum to be designated for EA, MEA and REAG licensing, which will facilitate the aggregation of spectrum to form more REAG licenses if that is what the market desires.

MetroPCS respectfully submits that its band plan will encourage the active participation in the AWS auction of all who have *bona fide* spectrum needs. The variety of channel block sizes and geographic areas will accommodate diverse business plans. And, the flexible auction rules proposed by the Commission will allow carriers to aggregate significant blocks of spectrum into large regional or even nationwide systems during and after the auction. The result will be a robust auction in which spectrum ultimately is configured in a manner that meets, and is acquired by those who will put it to, its highest and best uses.

Respectfully submitted,

/s/ Carl W. Northrop

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CWN:syc

cc: The Honorable Kevin Martin, Chairman  
The Honorable Kathleen Abernathy, Commissioner  
The Honorable Michael Copps, Commissioner  
The Honorable Jonathan Adelstein, Commissioner

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cc: Fred Campbell  
Sam Feder  
John Branscome  
Paul Margie  
Barry Olson  
Kathy Seidel  
Blaise Scinto  
Peter Corea  
Jennifer Tomchin  
WDC/311496.6

## Original AWS Band Plan

<b><u>Block</u></b>	<b><u>MHz</u></b>	<b><u>Pairings</u></b>	<b><u>Area</u></b>	<b><u>Licenses</u></b>
A	20	1710-1720 paired with 2110-2120	Economic Area	176
B	20	1720-1730 paired with 2120-2130	REAG	12
C	10	1730-1735 paired with 2130-2135	REAG	12
D	10	1735-1740 paired with 2135-2140	CMA (i.e., MSA/RSA)	734
E	30	1740-1755 paired with 2140-2155	REAG	12

## T-Mobile/RTG Joint AWS Band Plan

<b><u>Block</u></b>	<b><u>MHz</u></b>	<b><u>Pairings</u></b>	<b><u>Area</u></b>	<b><u>Licenses</u></b>
A	20	1710-1720 paired with 2110-2120 MHz	EA	176
B	20	1720-1730 paired with 2120-2130 MHz	REAG	12
C	10	1730-1735 paired with 2130-2135 MHz	REAG	12
D	20	1735-1745 paired with 2135-2145 MHz	MSA/RSA	734
E	10	1745-1750 paired with 2145-2150 MHz	EA	176
F	10	1750-1755 paired with 2150-2155 MHz	REAG	12

## Verizon Wireless Band Plan

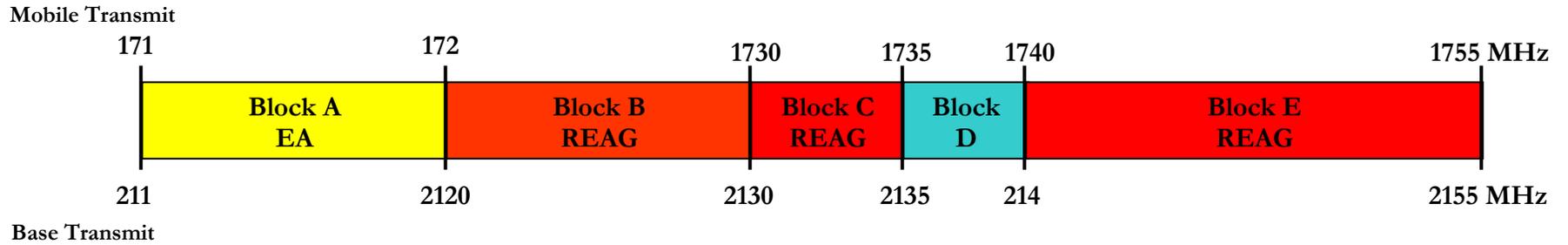
<b><u>Block</u></b>	<b><u>MHz</u></b>	<b><u>Pairings</u></b>	<b><u>Area</u></b>	<b><u>Licenses</u></b>
A	20	1710-1720 paired with 2110-2120 MHz	MSA/RSA	734
B	10	1720-1725 paired with 2120-2125 MHz	EA	176
C	20	1725-1735 paired with 2125-2135 MHz	REAG	12
D	10	1735-1740 paired with 2135-2140 MHz	REAG	12
E	20	1740-1750 paired with 2140-2150 MHz	REAG	12
F	10	1750-1755 paired with 2150-2155 MHz	EA	176

## MetroPCS Band Plan

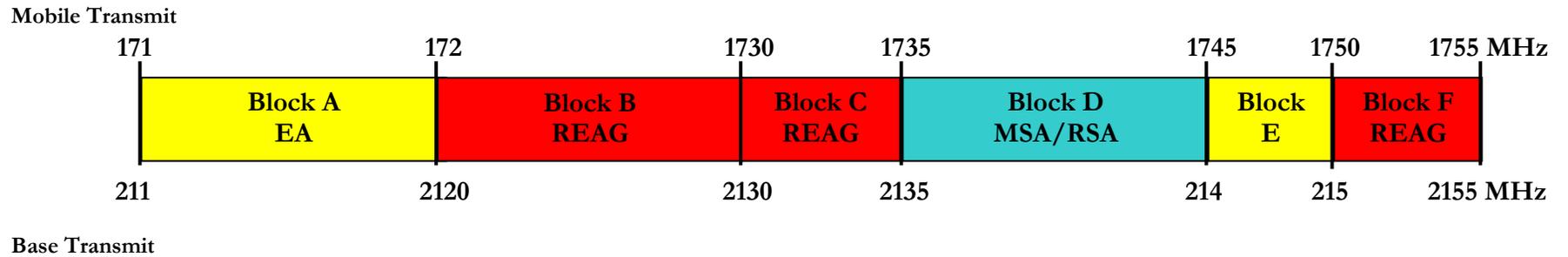
<b><u>Block</u></b>	<b><u>MHz</u></b>	<b><u>Pairings</u></b>	<b><u>Area</u></b>	<b><u>Licenses</u></b>
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F	10	1740-1745 paired with 2140-2145	EA	176
G	20	1745-1755 paired with 2145-2155	EA	176

Attachment 5

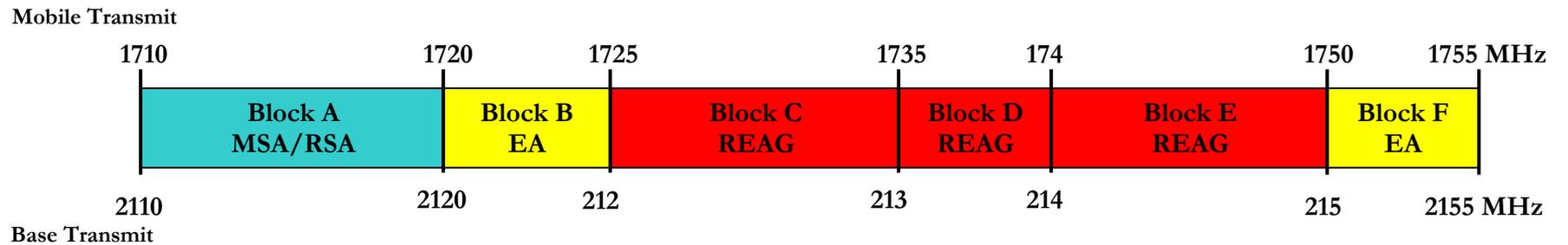
## FCC Original Band Plan



## T-Mobile/RTG Band Plan



## Verizon Wireless Band Plan



## MetroPCS Band Plan

