

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
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The Development of Operational, Technical)
and Spectrum Requirements for Meeting)
Federal, State and Local Public Safety)
Communications Requirements Through the)
Year 2010)
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WT Docket No. 96-86

To: The Commission

REPLY COMMENTS OF RADIOFONE NATIONWIDE PCS, L.L.C.

Radiofone Nationwide PCS, L.L.C. ("Radiofone") hereby submits the following comments on the Commission's Eighth Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding, regarding issues relating to the operational, technical and spectrum requirements for public safety entities. As discussed below, the Commission has concluded that the proposal of Access Spectrum, L.L.C., Intel Corporation and others (collectively "Access") to reconfigure commercial 700 MHz Guard Band spectrum is beyond the scope of the captioned proceeding, and should be considered in a separate proceeding that will fully and adequately address the rights of adversely affected incumbent licensees.

Statement of Interest

Radiofone is the successful bidder on the license for 700 MHz B Block Guard Band license WPRV424, for the Gulf of Mexico (MEA 052B). The Commission can take official notice that the principals of Radiofone (through Radiofone, Inc. and related entities) have long been involved in the provision of valuable communications services to the public in the Gulf

Region, as a regional paging licensee and the A-Block cellular licensee for the New Orleans, Baton Rouge and Houma-Thibadoux Metropolitan Statistical Areas, prior to the sale of these operations. Indeed, Radiofone's principals acquired one of the first paging licenses awarded by the Commission; and they won the New Orleans cellular license pursuant to a comparative hearing, upon demonstrating their technical, legal and financial qualifications, and superior service proposal. Radiofone acquired the Gulf of Mexico Guard Band license given its roots in the Gulf Region, and its demonstrated ability to develop new services. Radiofone would be adversely affected by any proposal to "reclaim" spectrum it won in the 700 MHz Guard Band auction, or to otherwise reconfigure its license.

I. The Commission Should Consider Any Reconfiguration of the 700 MHz Guard Bands in a Separate Proceeding, and Must Protect the Rights of Incumbent Licensees.

In its June 6, 2006 Comments in this proceeding, Access urges the Commission to reconfigure the 700 MHz commercial Guard Bands, with the intent to create more spectrum for broadband radio services, including services that may be used by public safety entities. As part of this reconfiguration, Access requests the Commission to take spectrum away from the existing B Block licensees (including Radiofone), as a way to enhance the amount of spectrum available for other 700 MHz spectrum blocks. Radiofone applauds Access' desire to explore the more efficient provision of broadband services in the 700 MHz bands. However, any tinkering with a spectrum allocation *after* the spectrum has been sold at auction raises several thorny issues, because of the impact that rule changes may have on the rights and expectations of incumbent licensees that have purchased spectrum. Auction participants must be able to count on predictability in the auction process – *e.g.*, that if they buy a license at auction, spectrum will not be reconfigured or confiscated during their license term without their consent – or such entities

will be discouraged from participating in future auctions. Spectrum auctions require considerable time and expense, and involve the making of choices and formulation of business plans to the exclusion of other courses of action. Auction winners must know that their purchase of spectrum will not be disturbed afterwards, except under the most extraordinary of circumstances. Investors and financiers must know that their investments will not be undercut after the auction, or they will not provide the capital necessary to develop new services and spectrum may not be used to its full potential.¹ The FCC has long recognized that regulatory certainty is critical to providing the industry with incentives to make investments in new technologies and services.²

Moreover, auction winners are entitled to the benefit of their successful bidding, and the risk that they have undertaken. They should not have to be concerned that a few years later someone will envision another, arguably more profitable use for the spectrum that was won at

¹ See Gregory L. Rosston & Jeffrey S. Steinberg, Using Market-Based Spectrum Policy to Promote the Public Interest, 50 Fed. Comm. L.J. 87, 111 (1997) (“If spectrum users and their financial supporters are not reasonably certain of the rules that will govern spectrum use, they will be less willing to invest in obtaining and developing the spectrum.... In the absence of such certainty, the spectrum may not be used to its full potential and the public may fail to realize its full value.”)

² Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *Order on Reconsideration of Third Report and Order*, 24 CR 727, 16 FCC Rcd 21633 at ¶ 21 (2001); see also 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, Cellular Telecommunications Industry Association’s Petition for Forbearance from the 45 MHz CMRS Spectrum Cap, Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Regulatory Treatment of Mobile Services, *Report and Order*, 15 FCC Rcd 9219, 9243 ¶ 51 (1999); see also Report and Order, WT Docket Nos. 03-103 and 05-42, 70 FR 76414, 76416 (December 27, 2005)(FCC declines to depart from Part I bidding credit schedule, “which the Commission has used effectively since 1997 to promote the participation of small businesses in auctions *and whose predictability is helpful to small businesses in the business planning and capital fundraising process.*” [emphasis added]); see also March 24, 1998 Statement of Commissioner Susan Ness, Amendment of the Commission’s Rules Regarding Installment Payment Financing for C block Personal Communications Service (PCS) Licensees, WT Docket No. 97-82, 11 CR 873, 63 FR 17111, 13 FCC Rcd 8345 (1998) (“Moreover, financial markets need regulatory certainty and predictability of outcomes. Otherwise the regulatory risk is too great to warrant investment.”); see also Amendment of Part 1 of the Commission’s Rules--Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 386 ¶14 (1997) (“We believe that standardizing the rules regarding definitions of eligible entities, unjust enrichment and bidding credits will assist small, minority and women-owned businesses because the rules’ predictability will facilitate the business planning and capital fundraising process.”).

auction. Otherwise, auction licenses could come under a never-ending series of challenges by entities that believe they have come up with a better way to use the spectrum. Business plans cannot be made in such an environment.

In this instance, the Commission has reviewed the proposal of Access and others to reconfigure the 700 MHz Guard Bands, since it was presented to the Commission in a white paper filed in another proceeding, prior to the release of the NPRM.³ Presumably in recognition of the thorny issues raised by this proposal, the Commission concluded as follows:

In a separate proposal submitted in the Intelligence Reform Act proceeding in WT Docket 05-157, Access Spectrum, LLC, and Pegasus Guard Band, LLC, submitted a White Paper that contains a number of proposed options to provide public safety with a mixed public safety/commercial use block of spectrum for broadband use in the 700 MHz Guard Bands. *These reallocation issues raised by Motorola and Access Spectrum/Pegasus are beyond the scope of this proceeding; and we will address them in a separate rulemaking.*⁴

In the absence of a consensus by all affected incumbent licensees, Radiofone supports the Commission's conclusion that any reconfiguration of the 700 MHz Guard Bands must be separately undertaken, given the far reaching implications of such actions. The rights of incumbent licensees must be carefully protected. Detailed proposals and rule changes must be spelled out, and the policy issues thoroughly debated. Such matters should not constitute a "rider" on a larger agenda, where their importance may be overridden by the desire to push forward the overall project.

³ See NPRM at para. 34.

⁴ *Id.* (footnote omitted, emphasis added).

Conclusion

Based on the foregoing, Radiofone urges the Commission to stand by its conclusion that any changes to the 700 MHz Guard Bands must be the subject of a separate rule making, and urges that the rights and expectations of incumbent auction winners be protected.

Respectfully Submitted,

By

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