

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309

**COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceedings.¹ The NPRM seeks comment on service rules for wireless licenses in the 698-746, 747-762, and 777-792 MHz bands (700 MHz Band).

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Notice of Proposed Rulemaking, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Further Notice of Proposed Rulemaking, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, Second Further Notice of Proposed Rulemaking, FCC 06-114 (rel. Aug. 10, 2006) (NPRM).

OPASTCO is a national trade association representing over 550 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

The transition to digital television (DTV), which has opened the 700 MHz Band to fixed and mobile wireless operations, presents the Commission with an opportunity to promote the spread of innovative wireless services to rural consumers. To accomplish this, the Commission should take steps to make spectrum more easily attainable for small, rural wireless carriers. Specifically, the Commission should license spectrum in the 700 MHz Band over smaller geographic service areas that small, rural wireless carriers have a realistic ability to acquire. In addition, the Commission can facilitate greater competition in the wireless market and promote the spread of wireless services to additional consumers by establishing “entrepreneurs’ blocks” of spectrum reserved for small, rural wireless carriers and other new entrants. Finally, the Commission should adopt a triggered “keep what you use” re-licensing mechanism that allows a carrier willing and able to serve rural consumers to acquire spectrum from an existing licensee that is not adequately deploying wireless services in the rural portion of the license area.

II. THE COMMISSION SHOULD LICENSE 700 MHZ SPECTRUM OVER SMALLER GEOGRAPHIC SERVICE AREAS TO FACILITATE ACCESS TO SPECTRUM FOR SMALL, RURAL WIRELESS CARRIERS

The upcoming 700 MHz Band auction, spurred by the transition to DTV, presents a unique opportunity for the Commission to promote the introduction of innovative wireless services to rural consumers. However, the current 700 MHz Band plan, which

consists of large geographic license areas,² will make it virtually impossible for small, rural wireless carriers to gain access to spectrum.

Small, rural wireless carriers do not have a realistic opportunity to obtain spectrum when it is auctioned over large geographic license areas. This is due, in part, to the fact that they do not have access to the same levels of financing as their large counterparts. This makes it virtually impossible for a small, rural wireless carrier to compete for a license that combines the rural area which they seek to obtain with a neighboring metropolitan area. Therefore, auctioning the 700 MHz Band over smaller geographic license areas such as Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs)³ would offer small, rural wireless carriers with a *meaningful* opportunity to acquire the spectrum they seek to serve rural consumers.

III. THE COMMISSION SHOULD RESERVE SPECTRUM BLOCKS FOR SMALL, RURAL WIRELESS CARRIERS AND OTHER NEW ENTRANTS IN ORDER TO PROMOTE COMPETITION IN THE WIRELESS MARKET

The Commission should consider establishing “entrepreneurs’ blocks” in the 700 MHz Band to facilitate access to spectrum for small, rural carriers as well as entities that have not previously acquired wireless spectrum. Smaller geographic license areas and bidding credits, while extremely important tools, are not always sufficient to enable small, rural carriers and other new entrants to acquire spectrum. A recent example can be

² See, *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, First Report and Order, 15 FCC Rcd 476 (2000) (Upper 700 MHz First Report and Order); *Reallocation and Service Rules for the 698-746 Spectrum MHz Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (“Lower 700 MHz Report and Order”).

³ The NPRM also asks which spectrum block(s) in the 700 MHz Band should be re-designated to different service area sizes should the Commission auction the spectrum over smaller license areas. NPRM, ¶¶42-48. In response to those questions, OPASTCO supports a proposal by the Rural Telecommunications Group (RTG) filed in response to a petition from the Rural Cellular Association (RCA) seeking modification of the 700 MHz Band plan. See, RTG Comments in GN Docket No. 01-74 and WT Docket No. 99-168 (fil. Sep. 27, 2005).

found in the Advanced Wireless Services (AWS-1) auction, where small, rural wireless carriers and other new entrants did not comprise a significant percentage of the winning bids.⁴ The end result is that the AWS-1 auction will place spectrum in the hands of a small number of large, established carriers.

Therefore, in order to facilitate greater competition in the wireless market, the Commission should take steps beyond establishing smaller license areas to ensure that spectrum is obtainable for small, rural wireless carriers and other new entrants. Specifically, blocks of spectrum should be reserved exclusively for small, rural carriers and other new entrants for whom spectrum has historically been difficult to obtain, similar to the “entrepreneurs’ blocks” used in previous auctions. History has shown that absent targeted efforts to assist small carriers, the same few, large players will dominate control of the nation’s wireless spectrum. This is detrimental to the provision of new wireless services to consumers living in rural areas and other “niche” markets, where large, urban-based carriers have traditionally shown less interest in providing robust service. Reserving blocks of spectrum for small, rural carriers and other new entrants will promote competition in the wireless market and will ultimately lead to new, innovative wireless offerings for more consumers nationwide.

⁴*See*, Advanced Wireless Services (AWS-1) bidding and results system. Available at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=66. OPASTCO is concerned that there is little indication that the so-called “small businesses” that were among the winning bidders in the AWS auction have an interest in serving rural consumers. The fact is, designated entities, which tend to be the most interested in serving rural markets, won only 4 percent of the AWS licenses, by value, as a percentage of net winning bids. *See*, Comments of Council Tree Communications, Inc. in WT Docket No. 05-211 (fil. Sep. 20, 2006), p. 10.

IV. THE COMMISSION SHOULD ADOPT A TRIGGERED “KEEP WHAT YOU USE” RE-LICENSING MECHANISM TO ENSURE THAT WIRELESS SPECTRUM IS USED TO PROVIDE SERVICE TO RURAL CONSUMERS

OPASTCO supports a triggered “keep what you use” re-licensing mechanism similar to that proposed in the NPRM.⁵ Under such an approach, a wireless carrier would have the ability to gain access to spectrum in rural areas that is not being used by the existing licensee to serve rural consumers. This would encourage the efficient use of spectrum while also promoting the spread of innovative wireless services to additional rural consumers.

Under a triggered “keep what you use” re-licensing mechanism, a carrier that wishes to serve one or more rural areas within a license area could petition the Commission to evaluate whether those areas are being adequately served by the existing licensee. If the Commission determines that the rural portion(s) of the license area are not being sufficiently served, the petitioning carrier would then be granted access to that spectrum to serve rural consumers.

In administering such a mechanism, the Commission should adopt strict buildout requirements for rural portions of license areas to ensure that spectrum is not warehoused by carriers interested in serving only densely populated areas. Thus, the Commission’s substantial service rules should not be based on population standards; instead, they should focus on geographic areas and rural areas specifically. If a licensee has not, after a set time frame, met the substantial service standards for the rural portion(s) of the license area, a carrier that demonstrates its willingness and ability to serve those rural areas should be granted access to the spectrum.

⁵ NPRM, ¶¶ 67-69.

The Commission can promote the availability of innovative wireless services in rural areas by placing spectrum in the hands of carriers that are willing and able to provide service to rural consumers. A triggered “keep what you use” re-licensing mechanism will assist in accomplishing this goal.

V. CONCLUSION

Despite the spread of wireless services throughout the nation, rural consumers continue to be underserved by larger carriers. Small, rural carriers have the desire to provide robust and innovative wireless services to rural consumers but often lack the necessary means to obtain spectrum in competition with large, deep-pocketed providers. The Commission can promote spectrum access for small, rural carriers by auctioning 700 MHz Band spectrum over smaller geographic license areas. The Commission should also reserve blocks of spectrum for small, rural wireless carriers and other new entrants to promote competition and spur the deployment of innovative wireless technologies to additional consumers. Finally, the Commission can promote the spread of wireless services to rural consumers by adopting a triggered “keep what you use” re-licensing mechanism that places spectrum in the hands of carriers that are willing and able to provide wireless services to rural areas that are not being adequately served by existing licensees.

Respectfully submitted,

**ORGANIZATION FOR THE PROMOTION
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Certificate of Service

I, Brian Ford, hereby certify that copies of OPASTCO's comments were sent on this, the 29th day of September, 2006 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

By: /s/ Brian Ford
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Service List
WT Docket No. 06-150
CC Docket No. 94-102
WT Docket No. 01-309
FCC 06-114

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