

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

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

**To: The Commission**

**COMMENTS OF THE BLOOSTON RURAL CARRIERS**

The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, on behalf of its rural telephone carrier clients (hereinafter the “Blooston Rural Carriers”), hereby submit these comments in response to the Commission’s *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making* (“NPRM”) in the above referenced proceedings, FCC 06-114, released August 10, 2006. As discussed below, the Blooston Rural Carriers support the creation of at least one additional Cellular Market Area (CMA)-sized license block in the 700 MHz band, to foster continued participation of rural telephone carriers in the acquisition of spectrum at auction and provision of advanced wireless services to less populated areas in America.

## **I. Statement of Interest**

The Commission can take official notice that Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP represents a large number of rural telephone companies that are engaged in the provision of wireless services in less populated areas of the country. The Blooston Rural Carriers are a group of “rural telephone companies” as defined in Section 153(37) of the Communications Act of 1934, as amended (“the Act”).<sup>1</sup> All are interested in bringing advanced wireless services to the residents of the sparsely populated areas in and around their certificated rural service area. Several of the Blooston Rural Carriers obtained 700 MHz licenses in Auctions 44 and 49, and many are interested in participating in future 700 MHz auctions. Therefore, these carriers have a direct interest in the outcome of the captioned proceedings.

## **II. The Commission Should Create At Least One Additional CMA-Sized 700 MHz Spectrum Block.**

The Commission requests comment on whether it should revise the size of the service areas embodied in the Upper and Lower 700 MHz Band licenses that have not yet been sold at auction. The Blooston Rural Carriers strongly support the creation of at least one, and preferably two, additional CMA-sized spectrum blocks. The use of CMA-sized licenses has proven to be one of the most effective ways to ensure rural telephone company participation in spectrum auctions, as mandated by Congress in Section 309(j) of the Act. It makes Metropolitan Statistical Areas (MSAs) available for larger bidders that want to serve more populated areas but have no interest in rural areas; and it ensures that the Rural Service Areas (RSAs) are available for bidding by rural carriers. This by

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<sup>1</sup> 47 U.S.C. §153(37).

no means guarantees that the rural carriers will win spectrum, but it ensures them a reasonable chance to bid on a license that includes their telephone service area, and that is not so large and expensive that they cannot afford to bid. The relative affordability of CMA licenses also benefits small businesses, and helps ensure the wider dissemination of licenses, another Congressional mandate.

Creation of additional 700 MHz CMA licenses would benefit rural telephone companies that have been unsuccessful in obtaining spectrum in prior auctions, including the prior Lower Band 700 MHz auctions. Additional CMA licenses would also allow existing rural 700 MHz licensees to obtain enough 700 MHz spectrum to approximate a 25 MHz cellular license, which will likely prove necessary as wireless technology creates more feature-rich and spectrum-hungry service offerings, such as mobile video. Rural carriers would not have to choose between offering traditional mobile voice and offering wireless broadband, on a fixed and mobile basis. Moreover, the 700 MHz band is well-suited for rural applications, since it has better propagation (including a greater ability to carry over the horizon and through foliage) than cellular, PCS and AWS spectrum. This superior propagation can reduce the number of transmitters and related infrastructure needed to accomplish a rural build out, which can make or break the business case for a wireless service in sparsely populated areas. To this end, the Commission should reconfigure the Lower 700 MHz B Block for CMA-sized licensing, since this 12 MHz block is the same size as, and adjacent to, the Lower 700 MHz C Block that has already been licensed on a CMA basis. The Commission can also consider creating a CMA license block from the unauctioned Upper 700 MHz spectrum.

The use of CMA licenses for at least one additional block would still afford larger bidders the opportunity to bid on large license areas, especially if the Upper 700 MHz D Block is split into two 10 MHz licenses. One of these blocks could be used for CMA licensing, while the other could be licensed using larger areas such as Economic Areas (EAs) or Economic Area Groupings (EAGs). Moreover, the recently-completed Advanced Wireless Services (AWS) auction (Auction No. 66) has shown that larger carriers can assemble spectrum by bidding on CMA-sized licenses when necessary. In Auction No. 66, Cingular was able to obtain 21 CMA licenses, while T-Mobile obtained 92 CMA licenses. *See Public Notice*, “Auction of Advanced Wireless Services Licenses Closes”, Mimeo no. DA 06-1882, released September 20, 2006, at Attachment A.

**III. The Commission Should Split the Upper 700 MHz D Block Into Two 10 MHz Blocks.**

The Commission should split the Upper 700 MHz Band D Block (which is currently a 20 MHz allocation) into two 10 MHz license blocks. As discussed above, this would allow the Commission a greater opportunity to offer a wider variety of license sizes in the upcoming auction, including more CMA-sized licenses.

**IV. The Commission Should Not Change the Bandwidth of Lower 700 MHz Spectrum Blocks Already Auctioned.**

At paragraph 49 of the NPRM, the Commission seeks comment on “potential changes to the size of the spectrum blocks in the Lower 700 MHz band.” The Blooston Rural Carriers oppose any change to the spectrum allocated to the Lower 700 MHz C and D Blocks, since this spectrum has already been sold at auction in its present configuration. Changing the size of these licenses retroactively would undermine the

integrity of the license process, and disrupt the deployment efforts of the existing licensees.

The Commission also seeks comment on whether it should create a “two-sided auction” mechanism, pursuant to which existing 700 MHz licensees could return their licenses to the Commission in exchange for a credit in a future auction. *NPRM at para. 58.* Under one proposed configuration of such two-sided auction, the credit that the licensee would receive for the return of its licenses would be “based on the prices of licenses for spectrum formerly associated with the returned licenses as determined in an auction.” *Id.* The Blooston Rural Carriers do not oppose the concept of a two-sided auction, so long as existing licensees would be free to participate in any future 700 MHz license without an obligation to return any or all of their licenses.

**V. The Commission Should Not Change the 700 MHz Build Out Requirements At This Time.**

Paragraph 60 of the *NPRM* requests comment on whether “additional steps need to be considered to ensure the Commission’s goal of achieving rapid deployment of advanced services is met, both in the nation’s cities and in more remote areas.” The Blooston Rural Carriers support the Commission’s conclusion to apply any changes in the build out requirement to unauctioned licenses only. It would be disruptive to apply any such rule changes to licenses already sold at auction, especially since the existing 700 MHz license holders have had to operate under the uncertainty created by the DTV transition, which was an unsettled issue for the first several years of their license term.

The *NPRM* also asks (at para. 63) whether the Commission should further define the safe harbors for 700 MHz licensees to meet the “substantial service” build out criterion applied to this band, since the current policy does not specifically mandate that a particular level of service be provided in rural areas. The Blooston Rural Carriers applaud the informal guideline that the Commission has formulated for rural build outs, namely, that a licensee “will be deemed to have met the substantial service requirement if it provides coverage to at least 75 percent of the geographic area of at least 20 percent of the ‘rural areas’ within its licensed area.” *Id.* However, it is respectfully submitted that this standard should remain a guideline, as opposed to a mandatory build out obligation; and that the Commission should retain a flexible approach about what constitutes “substantial service” in the rural context. At a minimum, a population coverage approach must be available as an alternative safe harbor, since geographic coverage benchmarks in rural areas can be impossible to meet in regions featuring pockets of inhabitants surrounded by large areas with population densities below twenty persons per square mile.

The Commission has, of course, already applied a safe harbor of 20 percent population coverage to 700 MHz licensees. *NPRM at para. 16; see also Reallocation and Service rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022, 1079 at para.151. It is respectfully submitted that, in the case of an RSA license (which by definition is predominantly rural in nature, and contains no city or town of substantial size), the 20 percent population coverage option accomplishes sufficient clarity in defining the substantial service build out criterion. In the case of EAs and larger licenses, the

Commission can consider applying a standard which allows licensees to satisfy the substantial service criterion by providing reliable coverage to at least 20 percent of the population within the license area that resides in an RSA (in addition to any other coverage that the licensee provided). This would prevent licensees from concentrating build out efforts solely on metropolitan areas within the market area.

The Blooston Rural Carriers do not support a “keep what you use” approach for CMA licenses that encompass an RSA. Such mechanism would threaten the ability of RSA licensees to roll out service in the manner most logical given the obstacles of a rural build. Instead, these licensees would have to base their deployment decisions on which areas are most likely to be “raided” under the keep-what-you-use rule. The Commission can consider this approach for larger licenses, in which rural areas may *never* receive service. However, an RSA is by definition rural, and the licensee should be given adequate leeway to base construction decisions on a long term business plan. It will also be more difficult for rural carriers to raise capital if potential lenders/investors must worry that a hitch in the construction schedule could turn the license into “swiss cheese” by allowing outside entities to take over portions of the RSA.

**VI. The Commission Should Extend the License Term for All 700 MHz Licenses to a Date At Least Ten Years After the DTV Transition Deadline.**

The *NPRM* (at para. 84) asks for comment on whether the Commission should extend the license term of 700 MHz authorizations, in light of the delays associated with auctioning the majority of this frequency band. The Blooston Rural Carriers support extending the license term for all Upper and Lower 700 MHz band licenses to a date ten

years after the DTV transition deadline, currently scheduled for February 17, 2009. This will give such licensees the standard license term once they are free of encumbrances from existing broadcasters. While PCS and other licensees have had to address incumbent relocation issues during their initial ten-year license term, those incumbents did not have a fraction of the power levels at which broadcasters are allowed to operate. Moreover, the PCS licensees had a mechanism pursuant to which they could largely control the timing of the incumbents' relocation. This is not the case with the 700 MHz incumbent broadcasters.

The extended license term should apply to all 700 MHz licenses, even those already granted. The incumbency considerations discussed above apply to the granted licenses as well. Moreover, the existing licensees have not had the benefit of the robust equipment development that is likely to follow the sale of all remaining 700 MHz spectrum.

**VII. The Commission Should Apply the E911 and HAC Requirements to 700 MHz CMRS Operations, But Only With Reasonable Implementation Schedules Recognizing DTV and Other Obstacles.**

The Commission poses the question of whether and how it should apply the E911 and hearing aid compatibility (HAC) requirements of Part 20 to the 700 MHz bands. The Blooston Rural Carriers support the application of these rules to 700 MHz licensees that are using their spectrum for Commercial Mobile Radio Services ("CMRS"), i.e., interconnected wireless mobility using cellular-like architecture. However, if such requirements are imposed, the Commission must recognize that the development of 700

MHz equipment is not yet as far along as the development of PCS and cellular equipment; and the timetables for complying with E911 and HAC requirements should not put licensees into a compliance quandary when they have little or no control over the equipment manufacturing process.

### **Conclusion**

The Blooston Rural Carriers request the Commission to modify the rules governing the Upper and Lower 700 MHz bands in the manner described above, so as to advance the opportunity for rural telephone companies to participate in the provision of advanced wireless services.

Respectfully submitted,

**The Blooston Rural Carriers**

By: /s/ \_\_\_\_\_  
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