

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

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

**JOINT COMMENTS OF  
DIRECTV, INC. AND ECHOSTAR SATELLITE L.L.C.**

Linda Kinney  
Vice President, Law and Regulation  
Lori Kalani  
Corporate Counsel  
**ECHOSTAR SATELLITE L.L.C.**  
1233 20<sup>th</sup> St., NW, Suite 302  
Washington, DC 20036  
202-293-0981

Susan Eid  
Vice President, Government Affairs  
Stacy R. Fuller  
Vice President, Regulatory Affairs  
**DIRECTV, INC.**  
444 North Capitol Street, NW, Suite 728  
Washington, DC 20001  
202-715-2330

September 29, 2006

## TABLE OF CONTENTS

	Page
I. The Commission Should Facilitate Participation by All Classes of Bidders in the 700 MHz Band.	3
A. The Commission Should Create at Least One Nationwide 700 MHz License.	3
B. The Commission Should Consider Permitting Package Bidding.	7
II. The Commission Should Take Steps to Ensure that Valuable 700 MHz Spectrum Is Put to Timely Use.	8
A. The Commission Should Tighten Service Requirements.	9
B. The Commission Should Consider Implementing a Two-Sided Auction.	10
C. The Commission Should Not Extend the Term of 700 MHz Licenses.	10
III. The Commission Should Not Decrease the Bandwidth of 700 MHz Licenses.	11
IV. The Commission Should Consider Higher Power Limits for the Upper 700 MHz Band.	12

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

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

**JOINT COMMENTS OF  
DIRECTV, INC. AND ECHOSTAR SATELLITE L.L.C.**

DIRECTV, Inc. ("DIRECTV") and EchoStar Satellite L.L.C. ("EchoStar") have each pioneered the development of a ubiquitous, nationwide multichannel video service. In doing so, they brought the benefits of video competition to hundreds of millions of Americans for the first time, and introduced the very first multichannel video offerings to many rural and other areas unserved by terrestrial video systems. Because of their efforts, millions of Americans in rural areas – some of whom previously had no access to television – now have hundreds of channels of information and entertainment available to them. DIRECTV's and EchoStar's respective commitments to creating new video services, in turn, forced their competitors to improve *their* services – accelerating, for example, the introduction of digital cable. This improves the lives of all multichannel television viewers, not just DIRECTV and EchoStar subscribers.

DIRECTV and EchoStar have each been exploring ways to offer nationwide

wireless broadband services to complement and enhance their respective existing video service offerings. As they did with their video services, these two satellite providers are each willing to commit substantial resources to new development, with the hope of providing competition to the incumbent cable and telephone companies and improved broadband connectivity – the very goals of the Commission in this proceeding.<sup>1</sup> Wireless broadband service will also enable satellite providers to better serve their customers by offering “bundles” of video, broadband and voice service increasingly offered by their incumbent competitors.

The Commission now seeks comment on ways that its auction policies might increase the availability of wireless broadband services and improve service to rural and underserved America. DIRECTV and EchoStar believe that service providers of all sizes have a role to play. Indeed, the satellite industry’s track record over the last decade suggests that nationwide players can often serve – and spur competition in – rural America better than their local and regional competitors.

Yet, unfortunately, DIRECTV and EchoStar’s experience in last month’s Advanced Wireless Services (“AWS”) auction suggests that the Commission’s existing auction rules may unintentionally discourage nationwide entrants in favor of their local or regional competitors. As a result, a significant portion of AWS spectrum ended up in the hands of existing wireless or broadband service providers rather than entrants proposing entirely new broadband services. DIRECTV and EchoStar recognize the challenge faced by the Commission in designing auction rules that appeal to every potential bidder, and

---

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

recognize the success of the AWS auction generally. But they fear that, in the long run, such a result can harm consumers by discouraging competition from entities that would otherwise be eager to serve them, depress the value of auctioned spectrum by discouraging entities that might otherwise value spectrum more highly than do the remaining bidders, and discourage the development of new market entrants, stifling innovation.

The Commission's 700 MHz auction and service rules should provide all entities – local, regional, and national – the opportunity to bid on licenses appropriate to their service offerings. Only then can the Commission encourage the widest possible range of new services, new technologies, and new providers. In this regard, DIRECTV and EchoStar urge the Commission as follows:

- The Commission should consider auctioning at least a portion of 700 MHz spectrum through a nationwide license as part of its overall mix of geographic licensing.
- Even with respect to regional licenses, the Commission should otherwise take into account the practical ability of a new market entrant to successfully obtain nationwide spectrum coverage. In particular, it should consider allowing combinatorial bidding in the 700 MHz band.
- The Commission should adopt rules that encourage parties to make timely use of valuable spectrum.
- The Commission should allow higher-power operations in the 700 MHz band in order to allow for the deployment of new higher-capacity wireless services.

**I. The Commission Should Facilitate Participation by All Classes of Bidders in the 700 MHz Band.**

**A. The Commission Should Create at Least One Nationwide 700 MHz License.**

The Commission seeks comment on “whether, in order to further enhance access to spectrum in rural areas, the service areas sizes of the licenses to be auctioned should be smaller than the [Economic Area Groupings (“EAGs”)] provided [for certain parts of the

band] under existing rules.”<sup>2</sup> It also asks commenters to support their views with a detailed discussion of the relationship between their business plans, license size, and their ability to serve rural areas.<sup>3</sup> DIRECTV and EchoStar agree that license size will affect licensees’ ability to provide service, and are sympathetic to the Commission’s goal of encouraging smaller entrants. But they also believe that the Commission should permit *all* providers – local, regional, and nationwide – the opportunity to offer service. Indeed, from DIRECTV’s and EchoStar’s perspective as satellite television companies, nationwide providers possess many advantages in serving rural America. The Commission should thus consider creating at least one nationwide 700 MHz license as part of its overall mix of geographic licenses.

As DIRECTV and EchoStar see it, the ability to offer a nationwide service is a critical element of a new entrant’s ability to successfully compete against the built-in advantages of incumbent local and regional providers. At present, for example, both DIRECTV and EchoStar each price and promote their services on a predominantly nationwide basis. This enables them to use national advertising campaigns, create national brand awareness, and avoid customer confusion that can result from variations in regional offerings. Achieving a national footprint is critical if either company is to offer a complementary wireless broadband service to their subscribers.

In addition, by offering their product across the entire country, DIRECTV and EchoStar each capture economies of scope and scale from content providers, equipment manufacturers, and other suppliers, thus enabling them to compete against their video service rivals. Such economies of scope and scale will be even more important if DIRECTV, EchoStar, or any other new entrant is to offer a new wireless broadband

---

<sup>2</sup> Notice ¶ 28.

<sup>3</sup> *Id.* ¶ 29.

service to compete with incumbent providers.

The key to any new entrant's ability to offer nationwide service is obtaining a nationwide spectrum footprint. Yet in the Commission's most recent AWS spectrum auction, Wireless DBS, L.L.C. ("Wireless DBS"), a joint venture formed by DIRECTV and EchoStar for the purpose of participating in that auction, found itself unable to compete effectively for such a footprint. The Commission's decision to assign over half of the AWS spectrum over very small CMAs and regional EAs and the other half over regional EAGs made it harder for Wireless DBS to create a nationwide service. In order to have done so, it would have had to either (1) succeed in hundreds of contests for CMAs and EAG licenses against entities with particular interests in particular geographic areas, or (2) succeed in obtaining multiple regional EAG licenses against incumbent providers able to block it for little cost merely by outbidding them for a single license. Wireless DBS thus faced a classic case of what the Commission has termed an "exposure problem" – the risk a bidder faces in trying to acquire efficient package of licenses.<sup>4</sup>

In the end, these concerns led Wireless DBS to bid less for AWS spectrum than they otherwise would have if the spectrum were available on a nationwide basis. As a result, a new entrant that would have been well equipped and highly motivated to compete with incumbent broadband providers throughout the country dropped out of the auction relatively early in the process. This, in turn, means that consumers will not benefit from an additional broadband service provider.

Nor did Wireless DBS's experience represent an isolated case. The vast majority of the AWS winning bidders turned out to be incumbent wireless or broadband service

---

<sup>4</sup> See, e.g., *Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003*, Public Notice, 18 FCC Rcd. 6366 (2003); *Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000, Procedures Implementing Package Bidding for Auction No. 31; Bidder Seminar Scheduled for July 24, 2000*, Public Notice, 15 FCC Rcd. 11526 (2000).

providers seeking to fill out footprints for their existing service. Thus, few true new entrants – that is, entities not now engaged in providing wireless or broadband services – will be able to use AWS spectrum to initiate a new broadband service.

This need not be the case in the 700 MHz band. The Commission itself has already made the commonsense observation that, the larger the geographic area assigned to a particular geographic license, the easier it is to combine licenses into a nationwide service. More specifically, the Commission concluded that licensing 700 MHz band spectrum over EAGs, rather than some smaller geographic area, would:

- Provide optimum opportunity to aggregate spectrum, which may be particularly useful for services that require nationwide footprints.
- Make it easier for providers to take advantage of economies of scale, allowing existing technologies to grow and new technologies to develop.
- Reduce the potential transaction costs to both auction participants seeking adjoining smaller geographic areas and carriers seeking to consolidate such areas post-auction.<sup>5</sup>

DIRECTV and EchoStar agree, and believe that this line of reasoning also supports the creation of at least one *nationwide* license.<sup>6</sup> Such a license would automatically aggregate spectrum, facilitate economies of scale, and minimize transaction costs. A nationwide license would allow a nationwide new market entrant to bid aggressively, because it would have greater certainty as to the potential results. And, while a nationwide license would not constrain regional incumbents from also bidding

---

<sup>5</sup> *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd. 1022, 1060 (2001) (“*Lower 700 MHz Report and Order*”).

<sup>6</sup> The Commission has already ruled out nationwide licenses for this spectrum, in part because it concluded that regional license areas “facilitate[] the acquisition of spectrum by different providers with spectrum needs that are confined to their particular region or market.” *Id.* at 1060-61; see also *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, First Report and Order, 15 FCC Rcd 476, 500 (2000) (“*Upper 700 MHz First Report and Order*”). From DIRECTV’s and EchoStar’s point of view, however, issuing at least one nationwide license for the 700 MHz spectrum would promote service from providers whose needs are not confined to a particular region or market.

aggressively, it would prevent them from pursuing purely obstructionist bidding strategies.

The creation of at least one nationwide 700 MHz license, moreover, need not conflict with the Commission’s desire to “afford meaningful opportunities to interested parties seeking licenses with smaller initial geographic scope, including small and rural wireless providers.”<sup>7</sup> With careful planning, the Commission can tailor this auction to permit a wide mix of services from a wide mix of auction participants – large and small, new entrant and incumbent alike.

**B. The Commission Should Consider Permitting Package Bidding.**

For the reasons set forth above, DIRECTV and EchoStar urge the Commission to issue at least one nationwide 700 MHz license. Even were it to do so, however, bidders might well have good reasons to seek to acquire nationwide rights through the aggregation of multiple regional licenses. Regional bidders, for that matter, might also seek to aggregate multiple EAG licenses. In order to make it easier for all bidders to aggregate spectrum over multiple licenses, the Commission should consider allowing combinatorial or “package” bidding in the 700 MHz band.

Congress has directed the Commission to consider package bidding in certain circumstances.<sup>8</sup> The Commission, in turn, has repeatedly concluded that package bidding can allow bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses, and to avoid the “exposure problem” discussed above.

---

<sup>7</sup> Notice ¶ 15, citing *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Memorandum Opinion and Order, 17 FCC Rcd. 11613, 11619 (2002).

<sup>8</sup> 47 U.S.C. § 309(j)(3) (“The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round.”).

This is especially important for new nationwide entrants, such as DIRECTV and EchoStar, which stand to capture more synergies and face more exposure than do parties seeking merely to aggregate several regional licenses without creating a nationwide footprint. An auction of any license smaller than a nationwide license – even one covering a relatively large area such as an EAG – raises the prospect that a nationwide bidder might win licenses in some regions but not others, and thus be left with distinct and potentially non-contiguous regional service areas. This uncertainty reduces the value that such a bidder would be willing to place on the spectrum. As described above, Wireless DBS faced precisely this uncertainty in the AWS auction and decided to cease bidding at a relatively early stage.

Package bidding thus seems a natural fit for the 700 MHz band. Indeed, the Commission approved package bidding for the Upper 700 MHz band several years ago.<sup>9</sup> DIRECTV and EchoStar presume that, had it chosen to include certain Lower 700 MHz licenses in the Upper 700 MHz band auction, the Commission would have allowed package bidding for them as well.<sup>10</sup> When the Commission decided not to auction the Lower 700 MHz band along with the Upper 700 MHz band, however, it did not speak to this issue. The Commission should thus confirm that it will permit package bidding in its upcoming auction of this spectrum.

## **II. The Commission Should Take Steps to Ensure that Valuable 700 MHz Spectrum Is Put to Timely Use.**

As discussed above, both small and large service providers should have the opportunity to obtain licenses commensurate with their needs. Naturally, as more

---

<sup>9</sup> *Auction of License in the 747-762 and 777-792 MHz Bands Scheduled for June 19, 2002, Further Modification of Package Bidding Procedures and other Procedures for Auction No. 31*, Public Notice, 17 FCC Rcd. 5140 (2002).

<sup>10</sup> *Id.*

spectrum becomes available, this goal becomes easier to achieve. Accordingly, DIRECTV and EchoStar support the Commission's efforts to ensure that valuable spectrum resources move from those who may no longer intend to make timely and intensive use of their licenses to those who are well motivated to do so.

**A. The Commission Should Tighten Service Requirements.**

The Commission seeks comments on a number of proposals to tighten its requirement that 700 MHz licensees offer "substantial service."<sup>11</sup> DIRECTV and EchoStar agree that those controlling this valuable spectrum should put it to use as quickly as possible.

In this regard, the Commission should consider the merits of construction benchmarks.<sup>12</sup> The existing substantial service requirement is designed to be flexible.<sup>13</sup> Yet this flexibility can have drawbacks. Licensees may not know whether their rollout has been sufficiently "substantial," and those interested in obtaining spectrum from inactive licensees may not know whether the spectrum will become available. Construction requirements, by contrast, add certainty. Such certainty might encourage licensees to either roll out service or make their licenses available in the secondary market more quickly.

If it does not issue construction requirements for the 700 MHz band, the Commission should consider further clarifications to how the substantial service standard applies in the context of license renewals.<sup>14</sup> DIRECTV and EchoStar believe that those seeking license renewal should be able to explain why their service is substantial,

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶ 64-65.

<sup>13</sup> *Upper 700 MHz First Report and Order*, 15 FCC Rcd. at 505; *Lower 700 MHz Report and Order*, 17 FCC Rcd. at 1079.

<sup>14</sup> *Notice* ¶ 82.

whether service was ever interrupted or discontinued, and where it is provided.

**B. The Commission Should Consider Implementing a Two-Sided Auction.**

Another way to increase the amount of spectrum available at auction would be to permit incumbent 700 MHz licensees to participate in a “two-sided auction.” In such an auction, incumbents could offer their licenses in the auction in return for credits that could be used for other licenses.<sup>15</sup> DIRECTV and EchoStar believe that the Commission should ensure that scarce spectrum resources, once auctioned, are actually used by licensees to provide service to consumers. The concept of a two-sided auction could provide an elegant and economically efficient means of facilitating such use. As such, it represents a positive addition to the more traditional secondary markets for new entrants seeking spectrum resources.<sup>16</sup>

In this regard, DIRECTV and EchoStar would note that the value of any payment to an incumbent for its spectrum increases with the fungibility of that payment. In other words, payment in the form of a credit that can only be used in certain wireless auctions is less valuable than payment in the form of a credit that could be used in all wireless auctions.<sup>17</sup> Likewise, a bidding credit is less valuable than cash. The Commission should consider structuring a two-sided auction to give “license donors” the most fungible form of payment permitted by law.

**C. The Commission Should Not Extend the Term of 700 MHz Licenses.**

The Commission has also raised the possibility of extending the license terms for both unauctioned and already-auctioned 700 MHz spectrum past the current 2015 date, in

---

<sup>15</sup> Notice ¶ 59.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (discussing the use of credits “or other means of compensating incumbents for their licenses”).

part because of delays in auctioning most of the licenses in the 700 MHz band.<sup>18</sup>

DIRECTV and EchoStar are concerned that any such extension would reduce the amount of spectrum in play and therefore make new entry more difficult. The 700 MHz band is one of the most valuable packages of spectrum available for commercial use, and the public interest demands that whomever the Commission licenses to use this spectrum do so in a timely manner. Thus, the Commission should look for ways to encourage the rapid build-out of network infrastructure, and should reject proposals that could enable licensees to warehouse spectrum.

DIRECTV and EchoStar are each highly interested in pursuing business plans to enable the development of nationwide wireless broadband service within the next few years. Other entities have also announced plans to offer wireless broadband service in the wake of recent developments in wireless technology standards. This development, however, depends entirely on the availability of sufficient spectrum. It is thus entirely appropriate for 700 MHz licensees to provide substantial service or meet construction milestones by 2015 – a period of six years after broadcast television operations are scheduled to vacate the band. To the extent some existing 700 MHz licensees may no longer believe that they can provide substantial service by 2015, they should consider making their valuable spectrum available to entities that will do so. Again, one mechanism by which they could do so would be a two-sided auction.

### **III. The Commission Should Not Decrease the Bandwidth of 700 MHz Licenses.**

The Commission seeks comment on whether it should reduce the size of spectrum blocks in the 700 MHz band.<sup>19</sup> In particular, the Commission is considering dividing the

---

<sup>18</sup> *Id.* ¶¶ 84-85; 47 C.F.R. § 27.13(b). 700 MHz spectrum used for broadcast services is subject to separate renewal dates.

<sup>19</sup> *Notice* ¶ 49 *et seq.*

20 MHz Block D license in the Upper 700 MHz band into two or more license blocks.<sup>20</sup> In raising this issue, the Commission suggests that it could increase the number of potential licensees and the number of potential technologies that might be deployed.<sup>21</sup> At the same time, the Commission seems to suggest that carriers may not need 20 MHz of spectrum to provide viable broadband service.<sup>22</sup>

The Commission faces a difficult task in balancing the increase in the potential number of 700 MHz licenses with the fact that, the more bandwidth any one provider has, the higher throughput it can offer using any given technology. In striking that balance, however, the Commission should not assume that carriers can offer viable broadband service with less than 20 MHz of spectrum – at least not the kind of robust and innovative services envisioned by DIRECTV and EchoStar. Indeed, given the expected growth in bandwidth-hungry applications, 20 MHz may not be sufficient for such services.

Technology now under development will allow operators to use larger, contiguous spectrum blocks to enable such next-generation services. Were the size of the Block D license reduced, those technologies could not be used in that spectrum – meaning that the spectrum could, as a practical matter, only be used to supplement existing service. DIRECTV and EchoStar believe the Commission should move in the opposite direction. The Commission should consider other alternatives which would enable the licensing of sizeable contiguous spectrum blocks.

#### **IV. The Commission Should Consider Higher Power Limits for the Upper 700 MHz Band.**

The Commission seeks comment on whether the current power limits in the

---

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* ¶ 52.

<sup>22</sup> *Id.* ¶¶ 55-57.

Upper 700 MHz band should be increased, and specifically references the power limit of 1 kW ERP in Blocks C and D of that band.<sup>23</sup> Higher power has enormous benefits for the kind of broadband service that DIRECTV and EchoStar each seek to provide, as it would enable them to achieve higher data rates and serve larger areas than is possible at lower power levels.

DIRECTV and EchoStar fully expect that, by the time this spectrum is auctioned in 2008 (and particularly by the time the spectrum is entirely cleared in 2009),<sup>24</sup> a host of new or emerging technologies will be available for use in the 700 MHz band. Many of these technologies – such as adaptive and frequency-agile antennas – will allow operations at significantly higher powers than 1 kW ERP without causing any additional interference to other spectrum users. As those technologies continue to develop, DIRECTV and EchoStar will supplement the record in this proceeding with more specific power-level proposals.<sup>25</sup>

---

<sup>23</sup> Notice ¶ 91.

<sup>24</sup> Digital Television Transition and Public Safety Act of 2005 §§ 3003(a), 3004, *codified in* Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

<sup>25</sup> Notice ¶ 93 (seeking specific power limit proposals for the upper 700 MHz band).

\* \* \*

Increasing the availability of broadband services in underserved areas and increasing competition in areas where the current duopoly reigns justifiably rank among the Commission's highest priorities. All sizes of service providers have a role in making these goals a reality. The service rules for the upcoming 700 MHz auction should not discourage local, regional, and nationwide providers from playing their part.

Respectfully submitted,

/s/

---

Linda Kinney  
Vice President, Law and Regulation  
Lori Kalani  
Corporate Counsel  
**ECHOSTAR SATELLITE L.L.C.**  
1233 20<sup>th</sup> St., NW, Suite 302  
Washington, DC 20036  
202-293-0981

/s/

---

Susan Eid  
Vice President, Government Affairs  
Stacy R. Fuller  
Vice President, Regulatory Affairs  
**DIRECTV, INC.**  
444 North Capitol Street, NW, Suite 728  
Washington, DC 20001  
202-715-2330

September 29, 2006