Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 System	)	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 UNITED STATES CELLULAR CORPORATION

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United States Cellular Corporation ("USCC"), by its attorneys, respectfully submits its 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*, FCC 06-114 (released. August 10, 2006) ("NPRM")[1] in the above captioned proceedings.

Introduction and Summary

USCC continues to support the Commission's previous determinations that the 700 MHz Band is well suited to advanced services, that fixed and mobile services allocations in this band

[1] *See* In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 04-356, Revision of the Commission's Rules to Ensure compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4 of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309, *Notice of Proposed Rule Making, Fourth further Notice of Proposed Rule Making*, and *Second Further Notice of Proposed Rule Making*, FCC 06-114 (rel. Aug. 10, 2006) ("NPRM"), 71 Fed. Reg. 485-6 (Aug. 21, 2006).

can support the development of those advanced services, that the propagation characteristics of the 700 MHz Band are ideal for two-way mobile communications and that supporting deployment of advanced services in the 700 MHz Band will promote the public interest.[2]

USCC also supports the Commission's focus in these proceedings on proposed changes in its service rules for the 700 MHz band to enhance access to spectrum in rural areas and to adopt modifications to the current 700 MHz band plan to make available smaller service area sizes in addition to Economic Area Groupings ("EAGs"). These modifications will serve the needs of regional, rural and local carriers in rural and other underserved areas and will benefit carriers of all sizes because flexible service area sizes provide options for geographic and spectrum aggregation which are valuable to carriers regardless of their size.

As an incumbent mobile telephone carrier already serving regional and rural market clusters, USCC proposes that the Commission make the following specific changes in its service, licensing and technical rules for the Upper and Lower 700 MHz Band spectrum:

- The Commission should adopt the Rural Telecommunications Group ("RTG") proposals to redesignate the B Block in the Lower 700 MHz band and the C Block in the Upper 700 MHz band from EAG to Cellular Market Areas ("CMAs").

- USCC also proposes that the D Block in the Upper 700 MHz band, currently EAG, be split and redesignated to create two 10 MHz blocks, one using Economic Areas ("EAs") and the other to remain EAG.

Under USCC's proposals, the upcoming 700 MHz auction would include balanced licensing options including 28 MHz to be licensed on an EAG geographic basis, 10 MHz on an EA geographic basis and 22 MHz on a CMA geographic basis. The Commission should recognize in

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[2] *See generally Spectrum Reallocation Policy Statement*, 14 FCC Rcd 19868; Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Notice of Proposed Rulemaking*, ET Docket No. 00-258, 16 FCC Rcd 596, 633, App. D (2001), 16 FCC Rcd at 633, App. D; *See International Telecommunications Union Final Acts of the World Radiocommunication Conference (WRC-2000)*, Istanbul, 2000.

its spectrum policies, as it did in its AWS proceedings,[3] the importance of adopting service area sizes appropriate for incumbents and new entrants large and small to provide them balanced and accessible spectrum resources for service and geographic entry and expansion.

However, USCC does not support proposals made in the NPRM to alter existing Part 27 licensee performance requirements and renewal standards to facilitate the deployment of advanced wireless services in rural areas. USCC believes that such changes would undermine necessary licensee flexibility and not be in the public interest. USCC however, supports extension of "Enhanced 911" and Hearing Aid Compatibility requirements to Part 27 licensees on grounds of regulatory parity.

Discussion

1. Assessment of the Uses to Which the 700 MHz Spectrum Are to be Put by Regional/Rural Carriers Supports Adoption of EA And CMA Service Area Sizes for Regional or Local Deployment.

USCC proposes that EA and CMA licensing be adopted to balance licensing opportunities in the 700 MHz band so that the unique benefits of deploying 700 MHz spectrum for the provision of advanced wireless services are available to regional, rural and local carriers. Regional/rural carriers are likely to use 700 MHz spectrum either to expand their footprints or to increase their capacity to provide voice services and new competitive advanced services and must be in a position to do so in the same timeframe as national carriers acquiring EAG licenses.

The 700 MHz band has technical features that make it particularly well-suited to be an important spectrum resource for use by regional, rural and local competitive carriers to provide

[3] See the Commission's Order on Reconsideration regarding Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Released: August 15, 2005 ("AWS Reconsideration Order"), Para. 14.

cost-efficient advanced wireless services, including broadband wireless services, in rural and other undeserved areas. This is true because lower frequencies travel further at a given power level, which enables a larger area to be served from a single cell site. In congested urban areas, this benefit is less significant since capacity constraints often lead to splitting cells to cover smaller areas than propagation characteristics alone would allow for. But in rural areas, the expanded coverage areas may make initiation, improvement, and expansion of service possible in situations where it was previously not economical to do so. This makes 700 MHz spectrum especially important as a means of providing cost-effective advanced services in rural and underserved areas.

In short, because of the superior technical features of the 700 MHz band, it is essential that additional licensing opportunities be made available for regional, rural and local licensees to acquire EA and CMA licenses so that they can be in a position to provide the same cost effective advanced services as national carriers with the financial resources to acquire licenses covering EAG service area sizes.

2. Selection of EA and CMA Service Area Sizes for at Least 32 MHz of 700 MHz Spectrum is an Appropriate Compromise of the Interests of National and Regional/Rural/Local Carriers and Fairly Balances the Interests of Both Groups.

USCC supports the adoption of modifications to the Commission's current 700 MHz band plan to substitute EA or CMA licensing opportunities for certain EAG licenses in the Upper and Lower 700 MHz bands. As described below, these modifications would serve the needs of regional/rural/local carriers to bid efficiently while providing all carriers, large and small, with the flexibility they need to construct 700 MHz footprints that are tailored to their needs for capacity and coverage.

The selection of small geographic service areas preserves opportunities for regional/local carriers to provide an important source of competition, variety and diversity in rural and less densely populated areas.

USCC supports the initial efforts of RCA and the separate comments filed by RTG to promote adoption of smaller service area sizes in the 700 MHz band. On July 29, 2005, RCA, representing approximately 100 small and rural wireless licensees, filed a Petition requesting that the FCC modify the service areas sizes specified for the unauctioned 60 MHz of Upper and Lower 700 MHz spectrum to provide CMA and possibly EA licensing opportunities. This was followed up in September of 2005 when RTG requested that the Commission modify service area boundaries in the unauctioned portions of the Upper and Lower 700 MHz bands to substitute two CMA blocks, one in Block B in the Lower 700 MHz band and one in Block C in the Upper 700 MHz band. See Attachment A hereto which contains copies of these RTG Upper and Lower 700 MHz band plan proposals.

In February of this year, USCC filed a supplemental proposal to split the 20 MHz D Block in the Upper 700 MHz band into two 10 MHz licenses, one EA and the other remaining EAG. See Attachment B hereto. USCC believes that the combination, quantity and positioning of unauctioned 700 MHz spectrum under the RTG proposal as supplemented by the USCC proposal is an effective way to meet the needs of regional/rural/local carriers while preserving opportunities for carriers with national or super regional coverage needs to bid for the remainder of this spectrum.

The EA and CMA building block approach which USCC supports will permit regional/rural/local carriers such as USCC and many others to provide an important source of competition, variety and diversity in rural and less densely populated areas. Regional and rural

carriers remain effective as competitors to national carriers because within any regional market there are numerous consumers who make almost all of their wireless calls within "cluster" areas which generally correspond to EAs or aggregations of CMAs. In order for regional/rural carriers remain effective competitors, however, they need to b e able to expand coverages in regional or "cluster" areas to match the footprint of the areas where their customers want to originate and receive wireless calls.

As illustrated in the Auction #66 results, the proposed use of EA and CMA building blocks has proved to be an effective way to provide realistic licensing opportunities for entities to serve regional and local coverage areas. For example, slightly less than 70% of the winning bidders in Auction #66 acquired only CMA licenses and an additional 20% acquired only EA or combinations of EA and CMA licenses. This means approximately 90% of all winning bidders in Auction #66, including rural telephone companies, small wireless providers, independent cable entities and new entrants, were able to acquire AWS spectrum because of the Commission's balanced approach to service area size selection. Attachment C hereto contains two maps identifying the bidders in each of these groups and the regional or local coverages which grant these licenses would authorize.

While EAs and CMAs generally coincide with the regional and local economic footprints of regional/rural carriers so that they provide realistic licensing opportunities for these carriers, they also provide potentially valuable aggregation opportunities to carriers of all sizes. For example, in the recently concluded Auction #66, national and new entrant carriers, including Verizon, Cingular, T-Mobile and SpectrumCo acquired EA and/or CMA licenses to supplement capacity in REAG licenses or to piece together superregional coverage areas. See Attachment D

hereto which contains maps showing the combinations of REAG, EA and/or CMA licenses acquired by each in Auction #66.

The bandplan proposals supported by USCC are not intended to deprive national carriers of a fair opportunity to acquire spectrum rights to deploy systems over super-regional or even national areas. Under these proposals carriers with business plans to deploy nationwide or super regional networks will still have the opportunity to win licenses covering super-regional or national areas through aggregation of EAG licenses, i.e. three EAG licenses totaling the 28 MHz of unauctioned 700 MHz spectrum.

USCC strongly supports adoption of a balanced approach to geographic service selection as an appropriate means to foster services in rural as well as non-rural markets. One of the important issues before the Commission is how to encourage licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. The Commission should recognize in its spectrum policies, as it did in its AWS proceeding[4], the importance of adopting service area sizes appropriate for regional/local carriers to provide them adequate spectrum for service and geographic entry and expansion. By affording realistic bidding opportunities to a variety of applicants, the adoption of small service area sizes, such as EA and CMA areas, will enhance competition and promote early deployment of advanced technologies consistent with the objectives of Section309(j) of the Act.

[4] See AWS Reconsideration Order at Para. 14.

3. U.S. Cellular Opposes Exclusive Use of EAG Service Areas For Unauctioned 700 MHz Spectrum Which Effectively Excludes Regional/Rural/Local Carriers From Being Successful Bidders for this 700 MHz Spectrum.

The business plans of most regional/rural/local carriers have been founded on building networks that cover the regional economic footprints of the areas where their customers work, shop and reside – footprints that generally coincide with an EA or combinations of CMA areas. USCC agrees with the Commission's analysis in its AWS proceeding that " ... [CMAs] allow these entities to mix and match rural and urban areas according to their business plans and that, by being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies"[5] and that offering an additional EA block licenses enhances the mixture of large and small geographic area licenses available to applicants for this spectrum.[6] The same is true in the 700 MHz band.

EAG coverages on the other hand are useful to national carriers with a different strategic view and the financial resources to deploy networks on such a large scale. It is this mismatch which makes exclusive use of EAG service area sizes for licensing of 60 MHz of unauctioned 700 MHz spectrum unfair and unworkable for regional/rural/local carriers. The proposals supported by USCC attempt to balance the needs of different types of potential licensees through the use of a combination of service area sizes for 700 MHz licensing.

The problems for regional/rural/local carriers if the foregoing balanced approach is not adopted and the Commission uses only EAG service area sizes are threefold. Regional/rural firms will be either effectively precluded from bidding altogether or will face severe financial challenges to bid for EAG service areas which far exceed the size of any area they might want to serve. For example, USCC, which has widely dispersed network clusters in the six EAGs,

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[5] Ibid.
[6] Id. at Para. 18.

comprising the contiguous United States, would have the formidable burden of bidding for licenses in all six EAGs to win the spectrum needed to overlay its existing clusters. See Attachment E hereto showing that USCC regional operations overlap multiple EAGs. Second, even if regional/rural/local carriers could obtain access to financing to be able to bid for individual EAGs, they would be disadvantaged by the disproportionate financial risk (and the associated transactional costs) of disaggregating spectrum in EAG areas which are not essential to their regional/rural/local service area plans. Third, if any of these carriers were in a position to bid for an EAG license, they would also be severely disadvantaged in any auction where package bidding is used because of the spectrum auction "threshold problem"[7] creates an decisionally significant bias in the selection of winning bidders in favor of national or super-regional license aggregation even when this is inefficient. In this case this bias unfairly favors nationwide bidders at the expense of regional/rural/local bidders, a result which is clearly contrary to the Commission's statutory mandate in Section 309(j) and its objectives in this proceeding.

4. If Regional/Rural/Local Carriers are Unable to Bid Directly on 700 MHz Spectrum, It is Unlikely They will Obtain Timely and Adequate Access to Spectrum via Partitioning, Disaggregation, or Secondary Market Relationships.

Secondary markets for spectrum including spectrum leasing and partitioning/ disaggregation can play a significant role in the efficient allocation of spectrum but they cannot replace the primary marketplace opportunities afforded by spectrum auctions including smaller license areas, fairly contested for in an open and competitive bidding process. The Commission's spectrum leasing policies and partitioning/disagregation rules do not, by

[7] See the Commission's description of this problem in its Public Notice *"Comment Sought on Modifying the Simultaneous Multiple Round Auction Design to Allow Combinatorial (Package) Bidding*, DA 00-1075, May 18, 2000 at 2.

themselves, provide regional and local carriers with timely or adequate access to the spectrum resources they need for four reasons.

First, the industry data to which we have access suggests that national carriers treat their spectrum resources as core strategic assets. This means that a regional or local carrier trying to add any such metropolitan core area to complement its rural footprint cannot rely on the national carriers voluntarily making such additions possible.

Second, even if national carriers ultimately consider selling or leasing some of their spectrum, this is likely be a lower priority item for them than capturing market share and rolling out new services in their principal markets. Competition in major urban areas continues to be aggressive and subject to uncertainties about the spectrum resources needed to remain competitive. The national carriers engaged in this intense competition are unwilling to speculate about their spectrum needs and have strong incentives not to sell or lease spectrum which might put them at a competitive disadvantage.

Third, even if national carriers do ultimately sell or lease spectrum that they do not plan to use, they are highly unlikely to sell it to regional carriers that are potential competitors in their home markets. In fact, it seems likely that they may not sell the spectrum outright to any regional carrier. Rather, they may partner (enter into affiliate relationships) with certain types of regional carriers and allow such regional carriers to use their spectrum in return for a share of the profits and a measure of control over the regional carrier. Some national carriers have been pursuing this business model.

Fourth, it appears that at least some national carriers have unused spectrum capacity which could be used to provide coverage in rural areas. This occurs because the prospective revenue they could earn on sales or leasing of spectrum in rural areas is small when compared to

the disproportionate revenues they obtain from utilizing their licensed spectrum in major urban markets. Rather than devote their valuable corporate development/M&A resources to a relatively low-value sale or lease transaction, they could decide to focus their efforts on pursuing high-profile M&A transactions, capturing market share and/or rolling out new services in their main markets.

In sum, secondary market transactions are not direct substitutes for balanced and accessible licensing at the time of auction. Only in the auction context do all players come to the table to compete on a fair and open basis for spectrum.

5. The Commission's 700 MHz Auction Should Include All of the Licenses for the Spectrum in a Single Auction Without Using Package Bidding Procedures.

USCC strongly supports open eligibility and use of simultaneous multiple-round auction methodologies without package bidding features. Congress directed the FCC in auctioning spectrum licenses to promote "economic opportunity and competition" and to disseminate licenses "among a wide variety of applicants including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[8]

The auction design issues considered in this proceeding should promote the openness of the 700 MHz auction to smaller bidders. A single standard SMR auction will provide bidders with the simplest and most flexible means of obtaining single 700 MHz licenses or aggregations of such licenses.

The Commission should not distort an appropriate balance of small and large licenses by carving off some licenses (even just the EAG licenses) and subjecting them to package bidding. The Commission should structure its bidding procedures for 700 MHz spectrum so as to avoid

[8] 47 U.S.C. 309 (j)(3)(B), 309 (j)(4)(C) and (D).

the so-called "threshold problem" for smaller bidders, which the Commission itself has identified, and thereby diminish the potential under the Commission's current bidding procedures to bias auction results in favor of nationwide or super regional aggregation.

Because of the problems of untested package bidding rules, there is also the threat that some bidders would be deterred from going after the SMR-PB licenses. While the largest bidders would face less competition as they assemble new packages of the SMR-PB licenses, other bidders would face fewer opportunities and more demand in the SMR licenses. This extra burden on smaller bidders would be contrary to the statutory requirements and undermine the benefits of the balanced band plan for 700 MHz spectrum which we support.

6. The FCC Should Leave Existing Part 27 Service Requirements In Place.

The NPRM seeks comment on numerous possible changes in existing Part 27 rules and policies, including the present "substantial service" licensee performance requirements and license renewal standards. Those changes are intended to facilitate rural deployment of advanced wireless service.[9] However, USCC respectfully requests that the FCC not adopt the changes proposed and that it leave the existing Part 27 policies in place.

Since the inception of the cellular service in 1983, the FCC has repeatedly changed the "buildout" requirements of wireless systems for the different wireless services, attempting to balance fairness to existing licensees with a desire to promote competition and new services, particularly in rural areas. However, it is striking what little effect such rule changes have had on the basic economics of the wireless industry.

The cellular rules have provided since the eighties that "unserved areas" may be served by new applicants after the initial five year "build out" period has expired and a system's Cellular

[9] NPRM, ¶¶ 60-84

Geographic Service Area has been established.[10] This rule was intended to facilitate the creation of small, independent cellular systems to be constructed in previously unserved areas by rural carriers. However, for the most part, the rule has provided the means by which established carriers have expanded their systems gradually as additional cells could be justified economically. The coverage of various USCC's cellular systems, for example, has been expanded 271 times through the filing of "unserved area" applications over the past thirteen years. In none of those instances was there a mutually exclusive application filed by a rival applicant.

Through that experience, the FCC came to understand that incumbent wireless carriers want to and will construct base stations anywhere such cells make economic sense. And, generally speaking, in a world of national and regional carriers, tiny one or two cell systems constructed in areas left unserved after an initial build out period make little economic sense, which is why there are so few of them. The present cellular unserved area rules recognize this reality by allowing incumbent carriers, as well as new entrants, to file unserved area applications.

The PCS licensing requirements reflect that experience and provide even more flexibility to incumbent carriers, generally permitting BTA licensees to build out their systems at their own pace after meeting an initial 25% population coverage requirement after five years, while requiring MTA licensees to meet somewhat more stringent 33 1/3 % and 66 2/3% population coverage requirements at the five and ten year intervals.[11] Further, PCS licensees are offered the additional option of providing "substantial service" within their licensed areas within their five and ten year benchmarks.[12] Moreover, the "substantial service" option was intended to cover

[10] See Sections 22.947-27.949 of the FCC's Rules.
[11] See Sections 24.203(a) and (b) of the FCC's Rules.
[12] Ibid.

PCS "specialized users" who might not be able to meet the population coverage requirement.[13] Though the PCS rules admittedly lack the "unserved area" safety valve, there has never been a reason to expect that creating one would result in any substantial change from what has occurred in the cellular service, that is, that the likeliest "unserved area" applicants would remain the incumbent licensees, owing to the obvious economics of scale and scope that such licensees can bring to bear in expanding their systems.

The Part 27 rules offer yet another approach, allowing licensees to provide "substantial service" during their license terms, with such service being defined in that rule part as "coverage to at least 75 percent of the geographic areas of at least 20 percent of the rural areas within its licensed area."[14] That standard assumes, rightly, that carriers will provide coverage to urban and suburban areas first but encourages rural service.

Also, in all the wireless services market partitions and spectrum disaggregation and liberalized forms of spectrum leasing are now permitted and encouraged by the rules, but are not required. Such rules encourage carriers to make unused spectrum available to others, on a permanent or temporary basis.

Thus, by different routes, the FCC rules encourage carriers to provide service on the broadest geographic basis possible, but preserve their essential flexibility in improving and expanding their service areas. In short, the rules with respect to the provision of service have evolved to place maximum reliance on market incentives in preference to regulatory mandates.

However, the NPRM proposes substantial changes in this approach, with which we disagree. For example, the NPRM seeks comment on whether 700 MHz licensees should be subject to population coverage requirements (50% after 5 years; 75% after 10 years) even more

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[13] Second Report and Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2652 (1995).
[14] NPRM, ¶63.

stringent than A and B Block MTA PCS licensees.[15] Especially given the large "EAG" market sizes presently contemplated for 700 MHz licensees, this would be a truly onerous requirement.[16] As "alternatives" the FCC proposes unspecified "geographically based benchmarks" or cellular style "keep what you use" licensing. We submit that requiring 700 MHz licensees to meet difficult population or geographic coverage requirements in order to hold their licenses would be contrary to sound economic principles. Also, while we believe in light of the cellular experience that a "keep what you use" rule would not ultimately make any difference (provided, of course, that licensees in neighboring markets would be able to file "unserved area" applications), it would be wasteful and unnecessary to create a new Phase II unserved area licensing system in the 700 MHz band.

The NPRM is also considering whether freedom of contract should be substantially impaired in the wireless "secondary market." The NPRM seeks comment on whether 700 MHz licensees should be required, under FCC supervision, to engage in "good faith" negotiations with potential spectrum lessees even if they have no desire to lease their spectrum.[17] Potential "good faith" faith requirements might range from designating a "contact representative" for lease negotiations to holding "minimum numbers" of "meetings," to the actual mandatory provision of lease "terms." The Commission is also considering whether to make license renewals dependent on carrier willingness to engage in such "good faith" negotiations, even if licensees face no renewal challenge.[18]

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[15] NPRM, ¶65.
[16] USCC has urged the FCC to adopt smaller, cellular type market sizes for some of the frequency blocks to be auctioned. However the essential point would not be affected even if that change were adopted, as carriers should be free to make their expansion decisions as economic rationality dictates.
[17] NPRM, ¶¶ 71.
[18] NPRM, ¶72.

The NPRM does acknowledge that such unprecedented requirements might be "burdensome" but does not consider what would seem to be an obvious point, namely that licensees which have spent millions of dollars to acquire their licenses should have significant latitude to build out their systems as they see fit and that the FCC should not make them lease their spectrum if they don't want to. In that connection, we would note that these requirements would apply to licensees both in the previously auctioned portions of the 700 MHz band and to the other AWS 2 GHz spectrum recently auctioned as well as to the unauctioned portions of the 700 MHz band. It would be fundamentally unfair to alter so drastically the rules under which such licensees operate after auctions have taken place under another set of rules and assumptions. The FCC should not adopt any such requirement, which would be contrary to basic free market principles. Moreover, adoption of USCC's 700 MHz market size proposals described in Sections 1-3 above would provide a solution to the undoubted problem of rural carrier access to spectrum at the beginning of the licensing process, rather than having to interfere with licensees' legitimate expectations of exclusive use concerning the spectrum they purchased at auction.

With respect to incentives to provide improved service on tribal lands, also discussed extensively in the NPRM (¶¶73-79), USCC supports the existing bidding credit rules, which provide significant incentives to improve wireless service in Indian Country, as well as any modification of the rules necessary to accommodate existing bidding credits to the requirements of the statute governing the 700 MHz auction. However, USCC would oppose changes in 700 MHz performance requirements on tribal lands, or making leasing mandatory on tribal lands, or the creation of separate tribal land market areas. Improved service on tribal lands is best facilitated by bidding credits and universal service support, which change the underlying

economic constraints which previously have made the provision of such service difficult to accomplish. It would be a mistake to adopt bureaucratic mandates premised on the idea that tribal area service problems are the product of irrational carrier failure to grasp an economic opportunity.

Lastly, USCC firmly opposes the FCC's proposal to turn the 700 MHz license renewal process into an obstacle course.[19] We would submit that one of the crucial reasons for the great and undoubted success of the wireless industry, with its hundreds of millions of customers and hundreds of thousands of employees and incalculable contribution to improved national productivity, has been the assurance to carriers, provided by the FCC's wise and reasonable rules, that licenses would be renewed if licensees built out their systems in accordance with the rules and otherwise fulfilled their obligations.

The NPRM proposes nothing less than the elimination of that reasonable assurance. It notes (¶81) that the current rule (Section 27.14) does not specify the factors to be considered in the renewal context if no competing applications are filed. That rule is similar to the renewal standard in Parts 20 and 22. At present, in the cellular and PCS services, if an unopposed renewal applicant has met its buildout requirements and otherwise obeyed the rules, its license is routinely renewed. But the FCC proposes that 700 MHz renewal applicants should be subject to having to justify, to the FCC's satisfaction, without objective standards, that their "current service," "record of expansion" and "investments in the system" are sufficient, as well as specify in their applications any violations, however minor, of the FCC's rules over the previous license period. The Commission also proposes to require "informational" filings regarding whether (a) a renewal applicant's service is really "substantial;" (b) whether its service has ever been

[19] NPRM, ¶¶ 80-84.

"interrupted;" (c) whether the applicant has provided adequate service "in rural areas;" and (d) whether the applicant has entered into leasing arrangements.[20]

In two somewhat murky paragraphs (¶¶82-83), the NPRM also proposes to integrate "substantial service" and "end of term" requirements into the "substantive consideration" of an applicant's renewal application. Whatever those proposals mean, if adopted, the renewal procedures they contemplate would certainly undermine the renewal expectancy that wireless licensees have traditionally enjoyed. This would undercut carrier willingness to invest in systems for the long run. It would also obviously diminish auction revenues, as it would reduce the value of the license assets being auctioned. Also such vague and threatening renewal standards would be a fertile source of competing renewal applications, as speculative filers would suddenly have every incentive to try to seize lucrative markets by depriving incumbent carriers of their legitimate renewal expectancies. Twenty years ago the FCC concluded that attempting to measure proven accomplishments against unsupported promises was not the way to manage the wireless license renewal process. The performance of the wireless industry in the interim has vindicated that judgment and there is no reason to change it now.

7. The FCC Should Apply 911/E911 and Hearing Aid Compatibility Requirements to 700 MHz Licensees.

The NPRM (¶¶ 99-106) tentatively concludes that the FCC should apply the "enhanced 911" and hearing aid compatibility standards, currently applicable to the cellular, PCS and SMR services pursuant to Sections 20.18(a) and 20.19(a) of the FCC's Rules, to both the auctioned and unauctioned portions of the 700 MHz spectrum. USCC agrees with that

[20] Ibid.

conclusion. 700 MHZ licensees should be treated for these purposes as are other types of wireless carriers.

Moreover, regulation which serves a legitimate public safety or public access purpose is more justifiable than regulation of carriers' core economic decision making, such as when and where to build out their wireless systems. Such regulation should itself be reasonable and should not require carriers to exceed the standards of currently available technologies. But in principle it is justifiable on grounds of both regulatory parity and the broader public interest. Enhanced 911 is a vital public service and the wireless industry, in conjunction with its vendors, can and must develop digital handsets compatible with hearing aids.

Conclusion

The most important issue before the Commission in this proceeding is how to create licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies on 700 MHz spectrum in rural as well as all other areas of the U.S. USCC has proposed the adoption of modifications to the Upper and Lower 700 MHz band plans which would add valuable CMA and EA licenses to complement the current EAG license structure. This would be a balanced and fair compromise of the needs of nationwide and regional/rural/local carriers. The Commission should not adopt the proposals in its NPRM to

alter existing Part 27 license performance requirements and renewal standards.

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