

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 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 UNION TELEPHONE COMPANY

Union Telephone Company (“Union”), through its undersigned counsel, respectfully submits these Comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned matter,¹ pursuant to section 1.415 of the Federal Communications Commission’s (“FCC”) rules.²

¹ 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. 94-120, Hearing Aid-Compatible Telephones; WT Docket No. 01-309; *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking*, FCC 06-114 (rel. Aug. 10, 2006), 71 Fed. Reg. 48506 (Aug. 21, 2006) [hereinafter *700 MHz NPRM*]. By Order, DA 06-1880 (rel. Sept. 15, 2006), the comment deadline was extended to September 29, 2006.

² 47 C.F.R. § 1.415 (2006).

I. BACKGROUND

Union was founded in 1914 and has a long-standing history of providing vital telecommunications services in underserved rural areas. Based in Mountain View, Wyoming, Union provides local telephone service to approximately 25 rural communities in parts of Wyoming, Colorado, and Utah. In 1990, Union expanded to cellular service and now provides coverage to an area encompassing over 123,611 square miles. Although Union commenced operations with only eight cell sites, the demand for cellular service has caused this number to multiply to 122 cell sites placed throughout western Wyoming, northwestern Colorado, and parts of Utah. Besides basic telephone and cellular service, Union also offers long distance, Internet, and cable television service. As such, Union has a significant interest in the FCC's efforts to re-examine the band plan and service rules for wireless licenses in the 698-746, 747-762, and 777-792 MHz bands (the "700 MHz band"), particularly as they impact service to rural areas. As discussed herein, Union supports the proposals described below to the extent that they will facilitate access to this spectrum and encourage deployment in rural areas.

II. THE FCC SHOULD LICENSE THE 700 MHZ BAND BASED ON GEOGRAPHIC SERVICE AREAS AND SPECTRUM BLOCKS THAT WILL PROMOTE DEPLOYMENT IN RURAL AREAS

The FCC seeks comment on whether there is a need for small geographic service area 700 MHz licenses in rural areas and, if so, whether to auction additional spectrum in the 700 MHz band over service area sizes other than Economic Area Groupings ("EAGs"), such as Economic Areas ("EAs"), Cellular Market Areas ("CMAs"), or other small or rural areas. Union strongly agrees with the Rural Cellular Association ("RCA"), the Rural Telecommunications Group ("RTG"), U.S. Cellular Corporation ("USCC") and others that significant developments since the adoption of the initial 700 MHz licensing plans justify revising the band plans to make

them more accessible to small and regional wireless carriers.³ Revising the size of the geographic areas and the spectrum blocks to provide rural carriers with a real opportunity to acquire 700 MHz spectrum will serve the public interest by promoting competition and access to wireless services in rural areas. As the FCC acknowledges, the wireless industry has experienced significant growth since the 700 MHz band proceeding was first initiated, fueling increased demand for this valuable spectrum.⁴ The FCC recently announced that during 2005, the number of mobile subscribers in the United States increased from 184.7 million to 213 million, with the volume of text message traffic more than double the amount from 2004.⁵

Union has a strong track record in deploying new and better service to rural areas. In particular, Union currently provides cellular service using CMA-size licenses, which it has found to be the optimal service area size in terms of compatibility with Union's business plans. Union has purchased spectrum at auction, and has also acquired spectrum on the secondary market through the acquisition of smaller market licenses or partitioned/disaggregated spectrum from larger service area licenses. The process of aggregating, disaggregating, and partitioning spectrum add significant costs and complexity, and can delay initiation of service, especially for small rural carriers. Therefore, the initial service areas licensed by the FCC for the 700 MHz band should be licensed over smaller areas so that small rural carriers do not have to rely solely on the secondary market.

For example, Union recently participated in the auction of Advanced Wireless Services ("AWS") licenses in the 1710-1755 MHz and 2110-2155 MHz bands. Union was able to obtain

³ See 700 MHz NPRM at ¶¶ 22-23.

⁴ *Id.* at 24.

⁵ See FCC Adopts Annual Report on State of Competition in the Wireless Industry, News Release, WT Docket. 06-17 (rel. Sept. 26, 2006).

CMA and Basic Economic Area (“BEA”) licenses because they were accessible in terms of Union’s ability to integrate these licenses within Union’s existing service areas and because licenses of this size are economically affordable. As the FCC noted in the AWS auction, “the Commission increased the amount of spectrum licensed on the basis of CMAs from 10 to 20 megahertz in order to provide greater opportunities for smaller providers to obtain access to this spectrum at auction.”⁶ Licensing of additional 700 MHz spectrum on the basis of CMAs would be consistent with the FCC’s decision to license 20 MHz of AWS spectrum over similar service areas. The FCC should continue this policy with respect to the licensing of the 700 MHz band.

In addition to voice service, Union provides text (SMS) and multimedia (MMS) messaging service and mobile web access as part of its wireless calling plans. Union anticipates that it will be able to use the AWS spectrum to upgrade its network with advanced technologies in order to deploy both high-quality voice services and even more innovative data services. Similarly, access to the 700 MHz band will enable Union to continue to expand its mobile data and voice service offerings to rural consumers and enhance its network. Licensing 700 MHz spectrum over CMA service areas in the 700 MHz band will assist smaller carriers such as Union to efficiently integrate the 700 MHz spectrum with existing systems that are licensed over similar geographic areas. Thus, it is crucial that the FCC assign 700 MHz licenses over smaller geographic areas to facilitate the deployment of rural broadband applications.

The FCC also requests comment on whether it should reconfigure or sub-divide existing spectrum blocks within the 700 MHz band, and in particular, dividing the 20 MHz Block D license in the Upper 700 MHz band into two or more license blocks. Union supports licensing

⁶ See *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, Public Notice, FCC 06-47 (rel. April 12, 2006).

the 700 MHz band over smaller spectrum blocks. In the AWS auction, the FCC licensed spectrum over a variety of different size spectrum blocks, including 20 MHz and 10 MHz blocks.⁷ Dividing the current Block D into two 10 MHz paired blocks would be of great benefit to smaller carriers seeking access to the 700 MHz band.

III. AMENDMENTS TO LICENSE TERMS

The FCC also requests comment on possible changes to the terms of all 700 MHz licenses, including those that are yet to be auctioned and those that have already been auctioned. In particular, the FCC indicates that the intent of these proposals is to facilitate access to rural consumers, whether by encouraging small rural carriers to utilize the 700 MHz spectrum or by encouraging larger carriers to roll out services in rural areas.

Union recommends that the FCC retain the “substantial service” performance requirement, with the existing safe harbors. Under the substantial service performance requirement, licensees are entitled to a presumption of renewal where the service provided is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Union believes that the safe harbor standard articulated by the FCC for substantial service in the 700 MHz band, based on providing coverage to at least 75 percent of the geographic area of at least 20 percent of the “rural areas” within the licensed area, will facilitate rural deployment of wireless services in the 700 MHz band. Alternatively, Union suggests that either a population-based construction requirement or a construction benchmark based on geographic coverage would be effective in promoting service to underserved rural areas. These alternative benchmarks would also provide clear guidance to licensees as they are a familiar standard that licensees could likely meet without any significant confusion. However,

⁷ *Id.* at ¶ 11.

Union does not support the “keep what you use” proposal, which may be less viable for rural or smaller carriers that face more challenges in completing build out requirements. While it may be more appropriate for larger carriers or for larger geographic licenses, it would cause an undue economic burden on smaller carriers that may not have the same financial resources.

With regards to modifying the requirements and procedures of the renewal process, Union cautions the FCC against adopting specific renewal criteria beyond the coverage or service requirements described above. The FCC seeks comment on whether to require 700 MHz band licensees to submit informational showings in their renewal applications regarding the level of service, details of service disruption, rural coverage, or data on requests for spectrum leases or the number of spectrum leases actually entered into. While such showings may be appropriate for larger carriers, such detailed reporting requirements for renewal purposes could be overly burdensome for smaller companies. In addition, Union suggests that forfeitures or other penalties beyond relinquishment of the license (or return to the Commission on a “keep what you use” basis) would be excessive for smaller licensees and should not be considered without appropriate exceptions for circumstances beyond the licensee’s control.

In terms of an appropriate license term for 700 MHz licenses that have not yet been auctioned, Union recommends that a ten year license term from the date of issuance would be suitable because it would be comparable to other commercial spectrum licenses. As the FCC notes, the adoption of a ten year license term is consistent with license terms adopted for other services.⁸ Furthermore, a ten year license term would likely provide sufficient time for licensees to develop services in the 700 MHz band if obtained at auction or to acquire spectrum and develop services in the 700 MHz band on the secondary market.

⁸ See *700 MHz NPRM* at ¶ 87, n. 204.

IV. CONCLUSION

Union supports auctioning additional spectrum in the 700 MHz bands on the basis of smaller geographic areas, such as CMAs, especially in rural areas. This will create opportunities for rural carriers to compete for licenses in the 700 MHz band and will foster the deployment of wireless broadband service to rural consumers. Union also encourages the FCC to license the 700 MHz spectrum in different size spectrum blocks to allow carriers to obtain licenses that are most compatible with their business plans. The FCC should also adopt service rules that will encourage the deployment of service in this band, without imposing costly requirements on small rural carriers.

WHEREFORE, THE PREMISES CONSIDERED, Union respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

UNION TELEPHONE COMPANY



Shirley S. Fujimoto

Kevin M. Cookler

MCDERMOTT WILL & EMERY LLP

600 Thirteenth Street, N.W.

Washington, DC 20005

202.756.8000

Its Attorneys

Dated: September 29, 2006