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 METROPCS COMMUNICATIONS, INC.

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Summary

MetroPCS Communications, Inc. ("MetroPCS") is commenting in response to the Commission's *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking* (the "*NPRM*") in the above-captioned proceedings. Specifically, MetroPCS is requesting that the Commission modify its proposed band plan for the unauctioned 700 MHz spectrum in order to take advantage of the valuable lessons learned during the recently concluded, and highly successful, Auction 66.

MetroPCS conceptually agrees with previous commenters who support a reevaluation of the unauctioned portions of the 700 MHz Band due to changed regulatory circumstances, industry developments, and the need for more licenses on a smaller size basis. Based on these premises, as well as its recent experiences in Auctions 58 and 66, MetroPCS proposes the following band plan for the unauctioned 700 MHz spectrum:

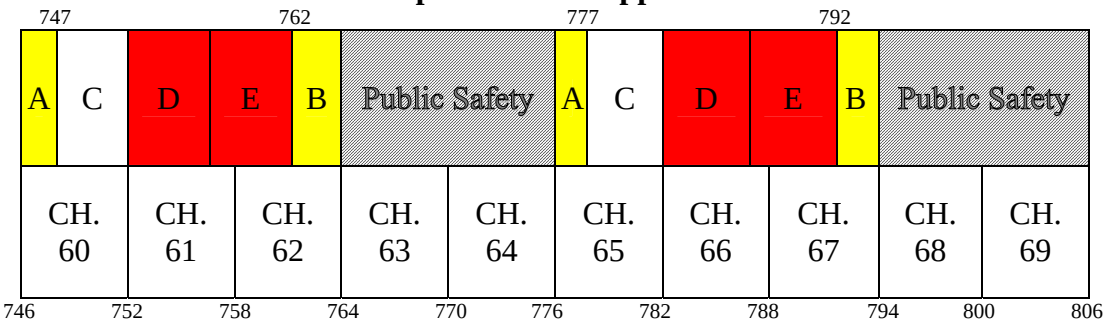
MetroPCS Proposed Plan – Lower 700 MHz Band

698 704 710 716 722 728 734 740 746

A	B	C	D	E	A	B	C
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	700 MHz REAG	12
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734*
D	716-722	6 MHz	unpaired	700 MHz EAG	6*
E	722-728	6 MHz	unpaired	700 MHz EAG	6

MetroPCS Proposed Plan – Upper 700 MHz Band



Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	746-747, 776-777	2 MHz	2 x 1 MHz	MEA	52*
B	762-764, 792-794	4 MHz	2 x 2 MHz	MEA	52*
C	747-752, 777-782	10 MHz	2 x 5 MHz	EA	52
D	752-757, 782-787	10 MHz	2 x 5 MHz	EA	176
E	757-762, 787-792	10 MHz	2 x 5 MHz	MEA	52

*Light Grey highlighted blocks have been auctioned.

MetroPCS' proposed band plan shares a number of similarities with prior proposed plans by RTG and USCC, including support for the inclusion of a greater number of smaller service areas and for smaller spectrum blocks. MetroPCS does suggest some alterations from the prior proposed plans, however, in order to maintain more congruence between service areas licensed in the 700 MHz band and service areas licensed in Auction 66, and in order to better serve the public interest.

In addition, MetroPCS comments on other aspects of the *NPRM* relating to the rules for 700 MHz licenses. In particular, MetroPCS favors the previously established service and performance requirements so that licensees will have the flexibility necessary to build facilities based on their market needs and their own business plans. Furthermore, MetroPCS believes that renewal criteria for licenses in the 700 MHz spectrum should be as predictable as possible, so that licensees are able to plan accordingly. Lastly, MetroPCS proposes that the 700 MHz

license term be extended, in order to allow both incumbent licensees and new entrants the flexibility and incentives necessary to develop a broad range of new services.

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking,* FCC 06-114, released August 10, 2006 (the "*NPRM*")[2] in the above-captioned proceedings The following is respectfully shown:

[1] For purposes of these Comments, the term "MetroPCS" refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed subsidiaries.

[2] *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. 48506 (Aug. 21, 2006).

I. Introduction

MetroPCS is a dynamic, rapidly growing, facilities-based wireless telecommunications carrier that provides wireless broadband personal communications services ("PCS") to over two million subscribers in a number of major metropolitan areas throughout the United States. MetroPCS targets a mass market utilizing calling plans that differentiated from the more complex and long-term plans required by other carriers. MetroPCS offers wireless voice and data services on a no-contract, flat rate, unlimited usage basis, with rate plans beginning as low as $30/month. These innovative plans attract customers who are largely underserved by the national wireless carriers.

MetroPCS is one of the fastest growing wireless carriers in the United States. MetroPCS commenced its initial services in 2002 in the Miami, Atlanta, Sacramento and San Francisco metropolitan areas. Most recently, MetroPCS launched service in the Tampa/Sarasota markets in October 2005, in the Dallas/Ft. Worth metropolitan markets in March 2006 and in the Detroit metropolitan market in April 2006. Royal Street Communications ("Royal Street"), a company in which MetroPCS owns a non-controlling interest, acquired licenses in Auction 58 in Orlando, parts of northern Florida, and Los Angeles. Royal Street is aggressively building its networks and expects to begin selling services in Orlando and parts of northern Florida in 2006 and in Los Angeles in the second quarter of 2007.

MetroPCS also was an active participant in Auction 66, the recently concluded Advanced Wireless Services ("AWS") auction. MetroPCS AWS, LLC, a wholly-owned subsidiary of MetroPCS, was the fourth largest bidder (by net provisionally winning bid totals) in Auction 66

with high bids in the aggregate amount of $1,391,410,000.[3] MetroPCS was the high bidder on six (6) C Block BEAs and two (2) D Block REAGs.[4] These license areas encompass the entire U.S. east coast corridor from Philadelphia to Boston, including New York City, the remainder of the state of New York as well as the entire states of Connecticut and Massachusetts. In the Western U.S., the territory within these Auction 66 licenses includes San Diego, Portland, Seattle and Las Vegas. In sum, once the Auction 66 licenses are granted and built, MetroPCS will have access to spectrum, and will be providing highly competitive services, in 9 of the top 12 metropolitan areas in the United States.

MetroPCS plans to continue to grow and expand into new metropolitan areas and offer new services. As a consequence, it expects to participate actively in the auction of spectrum in the 698-746, 747-762 and 777-792 MHz bands (the "700 MHz Band"). Thus, MetroPCS has a considerable interest in assisting the Commission in adopting a band plan for the 700 MHz Band that will replicate the recent success the Commission enjoyed in Auction 66. Also, based upon the extensive participation of MetroPCS in the AWS auction, and prior auctions,[5] MetroPCS has a substantial basis in experience for informed comment in this proceeding.

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[3] *See* Auction No. 66 Reports, Top Bidders, http://wireless.fcc.gov/auctions/66/charts/66press_1.pdf.

[4] *See* Auction No. 66 Closing Chart, Licenses by Bidder http://wireless.fcc.gov/auctions/66/charts/66cls2.pdf; BEA010-C (NYC-Long Island, NY-NJ CT), BEA057-C (Detroit, Ann Arbor, Flint, MI), BEA 062-C (Grand Rapids-Muskegon, MI), BEA088-C (Shreveport-Bossier City, LA), REA 127-C (Dallas-Forth Worth, TX-AR), BEA 153-C (Las Vegas NV-AZ-UT), REA001-D (Northeast), and REA006-D (West).

[5] In 1996, General Wireless, Inc. (MetroPCS' predecessor company) participated in the FCC's C Block auctions of broadband PCS spectrum. MetroPCS also participated in auctions 58 and 66. In addition, principals of MetroPCS have also participated in numerous other auctions.

II. Valuable Lessons Can Be Learned From Auction No. 66

In the recently concluded Auction 66, one hundred and four winning bidders won a total of 1,087 licenses raising (in net bids) a total of $13,700,267,150. Chairman Martin has characterized the auction, correctly, as the "biggest, most successful wireless auction in the Commission's history."[6] Industry analysts also consider the auction to have been a great success given the variety of bidders who competed for and won licenses and the large amount of spectrum that was successfully auctioned.[7] In the view of MetroPCS, the Commission should draw upon this recent success to fashion a band plan for the 700 MHz Band that will have a similar pro-competitive effect.

The following lessons can be learned from Auction 66:

Variety Is Good. One notable attribute of the AWS band plan was the conscious Commission decision to offer spectrum in several geographic areas and spectrum block sizes in order to accommodate a variety of needs for spectrum by diverse carriers and new entrants in the marketplace.[8] An analysis of the results of Auction 66 indicates that this objective was achieved. Not surprisingly, the larger national carriers tended to favor the larger geographic market sizes and spectrum blocks. For example, with one exception, all of the 20 MHz REAG F Block licenses were acquired either by Verizon Wireless or T-Mobile.[9] In addition, the incumbent

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[6] Statement of Chairman Kevin J. Martin on the Conclusion of Advanced Wireless Services Auction, Public Notice (rel. September 18, 2006.)

[7] BIA Perspectives, Industry Outlook and Analysis of Auction No. 66 – Advanced Wireless Services (AWS) Spectrum, September 26, 2006 ("BIA Analysis").

[8] *See* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, 20 FCC Rcd 14058 at para. 10-20 (rel. Aug. 15, 2005).

[9] The one exception was the AW-REA007-F license in Alaska which was acquired by MTA Communications.

nationwide carriers, or established communications companies with which they were affiliated,[10] acquired the vast majority of the remaining 10 MHz REAG licenses and 20 MHz EA licenses.[11] Conversely, the vast majority of rural carriers and designated entities tended to gravitate towards the smaller spectrum blocks (e.g., the 10 MHz C Block licenses covering EAs or the A Block licenses which were issued on a CMA basis).[12] This outcome indicates that there is substantial demand for broadband wireless spectrum by a diverse group of existing and new competitors of all sizes. The Commission's decision to offer a broad array of bandwidths and service areas in Auction 66 clearly was vindicated, and a similar approach should be taken, to the extent possible.[13]

Aggregation Works. The results of Auction 66 also validate the premise that the simultaneous multiple-round auction format is well-suited to bidders who want to establish a large geographic footprint by aggregating contiguous licenses, and that combinatorial bidding is not necessary or appropriate in order to achieve larger license areas or larger license blocks. For example, in the first rounds of bidding in Auction 66, all of SpectrumCo LLC's ("SpectrumCo") provisional winning bids were for large REAG licenses (D, E, and F Blocks).[14] By round 15, however, it found itself outbid on all but one of the REAG licenses and began bidding on a

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[10] Sprint/Nextel participated with a coalition of cable companies under the applicant name SpectrumCo LLC.

[11] *See* Auction No. 66 Closing Charts Bidder Data http://wireless.fcc.gov/auctions/66/charts/66cls3.pdf.

[12] *Id.*

[13] 90 MHz of spectrum was available in the AWS auction; 60 MHz is available in the 700 MHz band. This necessitates fewer alternatives in the 700 MHz band. MetroPCS recommends that the Commission account for this difference by moving away from the allocation a 20 MHz (10 x 5 MHz) paired channel in the upper band.

[14] Bidder Summary, SpectrumCo LLC, Rounds 1-10 Results, FCC Integrated Auction System.

combination of BEAs and CMAs in an effort to assemble a large service area.[15] By the end of the auction, SpectrumCo had assembled a nationwide footprint made up of 133 Block B BEA licenses and one Block C BEA license.[16] This result supports the Commission's prior practice of adopting a "building block" approach in designing band plans. The SpectrumCo success also confirms that the Commission need not resort to licensing exclusively large geographic areas in order to enable bidders to garner licenses in contiguous areas.[17]

Substantial Demand Exists For Small Geographic Areas. Several commenters on the AWS band plan contended that the public interest would be better served if the AWS band plan was heavily skewed towards larger geographic areas.[18] Various arguments were offered in support of this contention, including the claim that the wireless business was increasingly becoming a wide area business and that the larger carriers, who tended to favor larger service areas, were the ones most in need of additional spectrum.[19] The results in Auction 66 disprove these claims. The highest price per MHz POP in Auction 66 was garnered in the Washington, D.C.-Maryland-VA CMA, which sold for $1.59 per MHz POP.[20] The CMA licenses, which serve an average population of 397,499, went for a weighted average price per MHz POP of $0.40.[21] This compares favorably to the $0.46 for the economic area (EA) group licenses. All in

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[15] Bidder Summary, SpectrumCo LLC, Round 15 Results, FCC Integrated Auction System.

[16] *See* Auction No. 66 Closing Chart, Licenses by Bidder http://wireless.fcc.gov/auctions/66/charts/66cls2.pdf.

[17] The SpectrumCo result also indicates that the use of combinatorial bidding is not necessary in order to enable a company to assemble a nationwide footprint.

[18] Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Notice of Proposed Rulemaking*, 17 FCC Rcd 24135 at para. 38 (rel. Nov. 25, 2003) (CTIA Comments at 6; U.S. Cellular Comments at 5-8; Verizon Wireless Comments at 8).

[19] Although this is true, the larger area is more like EAs and MEAs than REAGs or EAGs.

[20] BIA Analysis, p. 1

[21] *Id.*

all, Auction 66 reflected spirited bidding for many of the smaller market areas and smaller spectrum blocks, thereby establishing that there remains a robust market demand for licenses configured to serve smaller geographic areas.

New Entrants Participated Robustly in the Auction. One outcome not predicted by many commentators was the surprisingly strong showing of companies other than the major incumbent nationwide carriers.[22] Regional carriers with specialized business plans such as MetroPCS and Leap Wireless, and new participants such as SpectrumCo, placed a significant number of the net winning bids in the auction.[23] In the case of SpectrumCo, it is a "new entrant" everywhere it bid. In the cases of MetroPCS and Leap, many of their bids are in market areas where they have no current presence and thus, they too qualify as "new entrants" in these markets. The Commission must be pleased, particularly after a period of significant consolidation in the wireless business, that so much new facility-based competition is on the horizon.[24]

The AWS band plan did accommodate a variety of diverse needs of these new market entrants. But, in hindsight, not enough spectrum was available in small blocks and geographic areas to maximize the prospects for increased competition. For example, there was only one 10 MHz block of spectrum available on less than a regional economic area grouping basis in each metropolitan area. many auction participants, including incumbents, new entrants, and designated entities, found the smaller area 10 MHz spectrum block to be very attractive. As a

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[22] By new entrants, MetroPCS means both new entrants to wireless generally (such as the cable firms) and existing licensees who seek licenses outside their existing geographic licensed areas.

[23] SpectrumCo was the third largest bidder in the auction with $2,377,609,000 in provisionally winning bids. MetroPCWS was fourth and Leap-related entities Cricket and Denali were 6th and 7th, respectively.

[24] Of course many of the smaller licensees may also be new entrants.

consequence, during the course of the AWS auction, this 10 MHz block of spectrum often became a point of significant contention in major metropolitan areas. The result in many cases was that only one new entrant was able to garner a license to provide new competitive services in a new major metropolitan area.

Another result was that the prices for this 10 MHz block of spectrum in the major metropolitan areas in many cases was substantially above the per MHz prices for both smaller geographic areas and for larger amounts of spectrum.[25] This is an anomaly which indicates a flaw in the band plan. The error was assigning too much spectrum either in larger spectrum blocks (e.g., 20 MHz blocks over 10 MHz blocks) or over service areas that were too large.[26]

The other drawback of larger spectrum blocks and larger geographic areas is that they may become a deterrent to new entrants. The auction results suggest that it was the total amount of money to be spent for a license, rather than the price per MHz pop, that drove a potential bidder's decision on whether to continue to bid on the spectrum. MetroPCS believes that many more new entrants would have succeeded in garnering spectrum had the Commission utilized 10 MHz instead of 20 MHz blocks in the cellular license area and basic economic area licenses. For example, designated entities would have enjoyed greater success had this change been made.

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[25] One of the problems with much of the post-auction analysis is that average statistics are calculated based on all licenses across many diverse geographic areas. When the major metropolitan areas are separated from the other metropolitan areas, in many instances the price per MHz cost of the 10 MHz economic area license is significantly more than the 20 MHz economic area license. For example, high bids in New York City, Dallas, Los Angeles, Philadelphia, and Detroit for 10 MHz economic area licenses were more than double the 20 MHz license for the same area.

[26] MetroPCS does <u>not</u> favor blocks smaller than 10 MHz given that it believes that at least 10 MHz of spectrum is necessary in order to provide a robust wireless service. For example, in a CDMA system, 10 MHz will allow a carrier to provide 3 channels, which MetroPCS believes is adequate to serve a metropolitan area with the improvements that MetroPCS understands are coming with lower rate vocoders, CMDA EVDO Rev. A (with VoIP), six sector technology, and smart antennas.

Demand for Smaller Spectrum Block Licenses is Strong. Perhaps the most surprising result of Auction 66 is that the 10 MHz EA licenses sold for approximately fifteen percent more on a price per MHz POP basis than the 20 MHz EA licenses.[27] Once again, this result indicates that demand remains strong for licenses configured in this fashion. In part, this is because of the growth of business plans which can be implemented on a 10 MHz license.[28] This also is a result of the fact that a 10 MHz license is a critical building block for a carrier who desires a greater amount of spectrum in a particular geographic area since nearly all incumbent carriers, designated entities, and new entrants purchased 10 MHz economic area licenses. Once again, the lesson to be learned is that the public interest is served by offering licenses in a variety of configurations which are capable of serving diverse commercial market needs.

The existing plan also does not take maximum advantage of the building block approach. The 30 MHz portion of the upper band is divided into a single 10 MHz (2 x 5 MHz) paired block and a single 20 MHz (2 x 10 MHz) paired block. The smaller number of licenses due to the 20 MHz allocation reduces the possibility for broad-based participation in the auction for this valuable spectrum and could lead to the same anomalies as the AWS auction.

The inescapable conclusion compelled by the foregoing analysis is that the Commission should change its current 700 MHz band plan. For example, the existing Commission proposal is to use exclusively economic area groupings (EAGs) as the geographic area for all initial upper and lower band channels.[29] The analysis of the Auction 66 success suggests that an approach with a greater aggregation of geographic area would be a mistake since it does not strike the best

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[27] BIA Analysis, p.1.

[28] MetroPCS has successfully devised a strategy to allow 10 MHz of spectrum to be sufficient to provide service in metropolitan areas, including Miami, Sacramento, San Francisco, and Detroit.

[29] *See NPRM*, paras. 10,13.

commercial balance between existing carrier and new carrier needs and national and regional carrier needs.

III. The MetroPCS 700 MHz Band Plan

The *NPRM* acknowledges several recent filings by wireless carriers and representatives who recommend changes to the current 700 MHz band plan.[30] These proposals seek the assignment of additional 700 MHz Band licenses over smaller service areas. Specifically the general proposal of the Rural Cellular Association ("RCA") has garnered considerable support, with both the Rural Telecommunication Group ("RTG"), and US Cellular Corporation ("USCC") offering concrete band plans implementing, in slightly varied fashions, the RCA concept.[31] Conceptually, MetroPCS agrees with these commenters who support a reevaluation of the unauctioned portions of the 700 MHz Band to reflect changed regulatory circumstances, industry developments, and the need for more licenses on a less than regional basis. MetroPCS also has reviewed the specific band plans offered by RTG and USCC in light of its recent experiences in Auction 58 and Auction 66. As a consequence, MetroPCS has come up with a slightly modified plan, as follows:

[30] *See NPRM*, paras. 22-23.

[31] *See NPRM*, para. 23.

MetroPCS Proposed Plan – Lower 700 MHz Band

698 704 710 716 722 728 734 740 746

A	B	C	D	E	A	B	C
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	700 MHz REAG	12
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734*
D	716-722	6 MHz	unpaired	700 MHz EAG	6*
E	722-728	6 MHz	unpaired	700 MHz EAG	6

MetroPCS Proposed Plan – Upper 700 MHz Band

747 762 777 792

A	C	D	E	B	Public Safety	A	C	D	E	B	Public Safety

CH. 60	CH. 61	CH. 62	CH. 63	CH. 64	CH. 65	CH. 66	CH. 67	CH. 68	CH. 69

746 752 758 764 770 776 782 788 794 800 806

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	746-747, 776-777	2 MHz	2 x 1 MHz	MEA	52*
B	762-764, 792-794	4 MHz	2 x 2 MHz	MEA	52*
C	747-752, 777-782	10 MHz	2 x 5 MHz	EA	52
D	752-757, 782-787	10 MHz	2 x 5 MHz	EA	176
E	757-762, 787-792	10 MHz	2 x 5 MHz	MEA	52

*Light Grey highlighted blocks have been auctioned. Dark Grey highlighted areas indicated changes from FCC plan.

Attachment 1 hereto, contains a chart which compares the current FCC plan, the RTG proposal, the USCC proposal and the MetroPCS plan for both the upper 700 and lower 700 MHz bands. The Commission will note a considerable degree of conceptual similarities between the RTG, USCC and MetroPCS plans. They share the common elements of supporting the inclusion

of smaller service areas and, in most instances, the critical need for smaller (i.e., 10 MHz to 12 MHz) spectrum blocks. MetroPCS does, however, suggest a few alterations. The reasons for the variations suggested by MetroPCS are as follows.

- With regard to the lower band, MetroPCS suggests utilizing the REAG license area utilized in Auction 66 for the Block A paired channel rather than the 700 MHz EAG defined by the Commission.[32] MetroPCS sees a benefit in replicating to the extent feasible the service areas utilized in Auction 66 for the 700 MHz band auction. There certainly will be circumstances in which carriers are seeking in the 700 MHz auction additional spectrum in existing market areas, and fulfilling this need will be facilitated if there is a congruence of the spectrum licensed on a regional basis in the 700 MHz auction with the spectrum licensed on a regional basis in the AWS auction. The Commission should not add yet another license area grouping to its current mix of service areas.[33] Another license area grouping would only bring added confusion to the Commission's overall licensing scheme. Using the same large geographic area licenses will enable companies greater consistency in acquiring and matching up their licensed spectrum.[34]

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[32] Economic Area Groupings ("EAGs") are separated into 6 distinct areas that together cover the United States. This is in contrast to the regional economic area groupings ("REAGs") utilized by the Commission in the recently concluded advanced wireless spectrum ("AWS") auction. ("Auction 66"). REAGs are separated in 12 distinct areas that together cover the United States.

[33] The Commission already has licensed wireless broadband spectrum on cellular market areas, basic trading areas, major trading areas, economic areas, and regional economic area group basis.

[34] Greater consistency in license areas also will facilitate roaming. Some national carriers seek, unfairly in the view of MetroPCS, to draw distinctions between “in-market” and “out-of-market” roaming rates. It is difficult to implement these roaming arrangements when service areas in different bands are not congruent. Further, to the extent licensees received some, but not all, of the regional licenses they wanted in the AWS auction, having the same license area for

(continued...)

- MetroPCS suggests utilizing the CMA as the license area for the Block B 12 MHz (2 x 6 MHz) paired channel. As the Commission knows, the CMA market areas largely track the MSA/RSAs and thus this MetroPCS proposal is very similar to the proposals of RTG and USCC. But, the CMA has been slightly refined by the Commission.[35] Again, MetroPCS sees a benefit in maintaining some congruence between the license areas utilized in the AWS Auction and the 700 MHz auction, which argues in favor of using CMAs in lieu of the older MSA/RSA designation.[36]

- With respect to the upper band, MetroPCS, like USCC, advocates subdividing the D Block license into two 10 MHz (2x5 MHz) channels rather than a single 20 MHz (2x10 MHz) channel. This change is consistent with the view that a greater number of smaller license areas will better serve the public interest, while still enabling carriers to aggregate spectrum utilizing a building block approach. Positioning two 10 MHz licenses continuously in the upper frequency band also offers the opportunity for any carrier that needs more than 10 MHz spectrum to couple together two licenses for 20 MHz in order to implement a particular technology choice. However, positioning the entire spectrum auction to satisfy a carrier which may need 20 MHz in a market for a particular

(...continued)

regional areas would facilitate their ability to license the area they need without overlapping areas that they do not need (and in which another carrier may be willing to pay more).

[35] *See* 47 C.F.R. Section 27.6(c)(2).

[36] MetroPCS also believes that, like in the AWS auction, a single CMA should be sufficient. Further, since the AWS auction included a 10 MHz CMA license, that license coupled with a 10 MHz license in 700 MHz should be sufficient to meet the needs of carriers selling a CMA license.

technology choice would not serve the public interest.

- MetroPCS, consistent with the USCC proposal, advocates assigning the 10 MHz (2x5 MHz) E Block license on an MEA basis rather than on an REAG basis as proposed by the Commission and RTG. The objective is to foster a greater variety of license areas capable of serving a greater number of market demands. Further, the MEA substantially tracks an MTA which allows existing broadband PCS carriers to acquire spectrum which comports with their existing licenses.

- Unlike both RTG and USCC, MetroPCS advocates assigning the 10 MHz (2x5 MHz) C Block on an EA basis. This proposal is based upon its perception that the RTG and USCC proposals are too heavily weighted towards the smaller CMA license area. Since there was substantial demand shown in the AWS auction for EA licenses, an EA rather than CMA would be appropriate. In addition, since the 700 MHz spectrum has better propagation characteristics than the AWS spectrum, an EA license area is more appropriate because the licensee will have an easier time covering a larger area than it would with AWS spectrum.

Because the anti-collision rule is still in effect from Auction 66, MetroPCS has been inhibited from discussing with third parties the variations it proposes to the band plans offered by RTG and USCC. MetroPCS plans, however, to enter into a dialogue with other proponents of 700 MHz band plans prior to filing reply comments in this proceeding in the hope that a consensus plan can emerge.

IV. MetroPCS Favors the Previously Established Service and Performance Requirements

The *NPRM* seeks comment on whether the Commission should revise the existing "substantial service" performance requirement and adopt specific buildout rules.[37] MetroPCS opposes making changes in this regard. The results in Auction 66 indicate that wireless broadband spectrum sold at auction will fetch a substantial purchase price. This means that the licensees have a substantial economic incentive to put the spectrum to beneficial uses -- and to partition areas in which the initial licensee may not have an immediate need -- and not to "warehouse" spectrum. These economic incentives will cause carriers to build facilities based upon market needs and their own business plans, rather than based upon Commission imposed construction deadlines which are, by nature, somewhat arbitrary. The problem with adopting a fixed population or geographic coverage standard, and setting an interim construction deadline, is that such requirements assume that every area merits service on each license according to the identical timetable. This assumption is incorrect. Giving licensees greater flexibility allows them to take into account variances in the competitive landscape, population density, and other important demographics pertaining to particular services and licenses. This is especially true for spectrum, such as the 700 MHz spectrum, which will be used for advanced services and may be deployed differently by each licensee.

Most important, stringent construction timetables and benchmarks greatly benefit incumbent carriers and disadvantage all new entrants to a particular market. An incumbent carrier can rely upon existing network infrastructure in order to meet a buildout requirement with regard to a new channel. In stark contrast, a new entrant must construct a system from the ground up. This inherent disadvantage creates a serious risk that a strict population or

[37] *See NPRM*, para. 61.

geographic-based coverage requirement, particularly one that falls during the midst of the license terms, would severely prejudice a new entrant seeking to bring a valuable competitive service to a marketplace, and benefit of incumbent carriers. This same consideration causes MetroPCS to oppose the "keep what you use" proposal on which the Commission seeks comment in the *NPRM*.[38] Any such rule could result in newer entrants losing the ability to expand their service after the initial license term, while incumbents with large existing footprints would be able to protect and retain territory much more easily.

V. Renewal Criteria Should Be As Predictable As Possible

The *NPRM* seeks comment on whether to amend the Commission's rules to clarify or modify the requirements and procedures of the renewal process for licenses in the 700 MHz band.[39] MetroPCS urges the Commission to add as much clarity and specificity as it can to the renewal standard in order to add certainty to the renewal process, and to eliminate the prospect for competing applications.

As the Commission knows, the cost of spectrum acquisition is only the starting point with regard to the financing of broadband services. The design and construction of a network, as well as the implementation of a system, can be expected to cost as much (or more) as underlying spectrum acquisition cost. This means that every 700 MHz licensee will have a substantial investment in each license that deserves to be protected. MetroPCS has completed a number of recent financings, and knows that lenders routinely focus attention on the nature and extent of a licensee's "renewal expectancy" in making a lending decision. The *NPRM* properly points out,

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[38] *See NPRM* para. 67. New entrants will be disadvantaged by such a proposal because they would have greater difficulty covering all areas that may be licensed in any period shorter than the license term. Further, considerable value accreted to the license in the licensees ability to build out a larger area in the future.

[39] *See NPRM*, para. 80.

however, that the current comparative renewal prospect faced by 700 MHz licensees can create significant uncertainty. Based on these considerations, MetroPCS urges the Commission to award 700 MHz licensees a renewal expectancy if they build sufficient facilities to meet one of the end of license term safe harbor benchmarks.

MetroPCS also supports the Commission proposal to eliminate the filing of competing applications at renewal time and, instead, adopt a process by which licenses revert back to the Commission for reauction if a license is not renewed.[40] The prospect of comparative renewal proceedings in the wireless broadband services harkens back to an old era in both the broadcast and common carrier services where competitors were known to file "strike" applications against a renewal in the hope of getting a payoff.[41] The public interest is not served by renewal processes that could encourage this type of conduct. Rather, the Commission should assess the entitlement of a licensee to receive a renewed license based upon objective, identifiable criteria, and open the license up for new applications only if the renewal standard is not met and the a license is terminated.[42]

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[40] *See NPRM*, para. 83.

[41] A strike application is one in which the principal or incidental motive for filing is to obstruct or delay another applications. *Camden Broadcasting Co., Inc., Camden, Tenn. For Construction Permit; Carroll Broadcasting Corp. (Assignor); and Huntingdon-McKenzie Broadcasting Co. (Assignee) For Assignment of License of Station WKTA (FM), McKenzine, Tenn.*, 53 FCC 2d 512 at para. 10 (1975); *see also Applications of John C. Roach, Calhoun, Ga. For Construction Permit; Gordon County Broadcasting Co. (WCGA), Calhoun, Ga. For Renewal of Broadcast License*, 20 FCC 2d 255 (1969) (Commission denied application partly due to participation in filing a strike application).

[42] Indeed, MetroPCS is not sure that the Commission has the statutory authority to decide between competing applications other than by auction.

VI. The 700 MHz License Term Should Be Extended

As the Commission is aware, the Commission decided to give AWS Licensees who secure their licenses before December 31, 2009 a fifteen year license term.[43] In the view of MetroPCS, this extended license term was one of the factors that led to the successful auction and the participation of many new entrants. Because of the geographic breadth of the license areas served by broadband wireless service providers, and due to the great variety of services that are offered and can be offered on broadband spectrum, the provision of services is becoming increasingly capital intensive. Both incumbents and new entrants will be more inclined to participate in the 700 MHz auction, and have greater incentive to develop a full suite of services that cover the broadest possible geographic area, if they are accorded a longer license term.

Because of the increasing proliferation of wireless services, there are severe challenges that must be met by new licensees in the construction of systems. First and foremost is the lack of availability of new infrastructure equipment and handsets. This delay in availability of equipment tends to deter investors and consequently new entrants. Although the manufacturers have been quite diligent in making new equipment available for other wireless broadband services, it has taken time. To the extent that the initial license term is shorter than 15 years, the initial licensee will be paying for something that it may be unable to use until an indefinite time in the future.

In addition, space on existing tower locations is becoming increasingly scarce, and the ability to build new towers, particularly in congested metropolitan areas, is becoming increasingly difficult due to zoning, environmental and aesthetics concerns. Given these

[43] 47 C.F.R. § 27.13(g).

potential obstacles, it would serve the public interest for the Commission to take steps to lengthen the 700 MHz license term to fifteen years as is the case with certain AWS licenses.

If for any reason the Commission is disinclined to grant initial 700 MHz band licenses for fifteen years, it should, at the very least, extend the term for a period not less than ten years from the date of initial license issuance. The current license term extending from the new firm deadline for the DTV transition (February 17, 2009) to the current January 1, 2015 termination date set forth in Section 27.13(b) of the FCC rules, is significantly shorter than both the ten year license term generally afforded to most CMRS licensees and shorter than the eight year average time which the Commission referenced when the current license term rule was adopted in 2000.[44] There would appear to be absolutely no reason for 700 MHz licensees to receive less than the ten year license term which generally has been the minimum license term for CMRS licenses.

VII. Conclusion

For the foregoing reasons, MetroPCS respectfully asks the Commission to accept its suggested changes for the 700 MHz Band plan, as well as its suggested changes to the rules governing 700 MHz licenses.

[44] *See NPRM*, para. 85.

Respectfully submitted,

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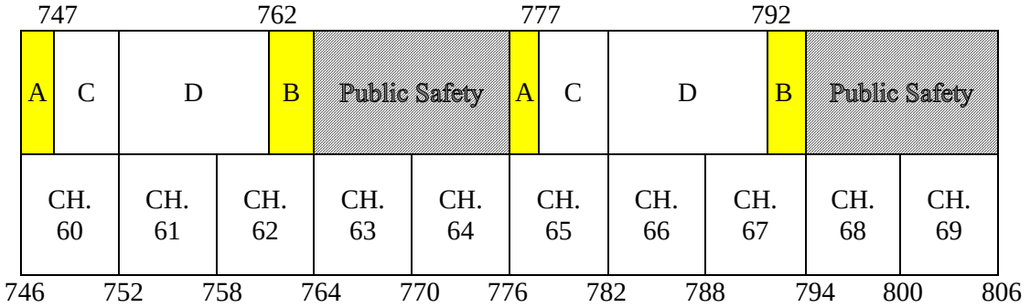
Its Attorneys

September 29, 2006

Attachment 1

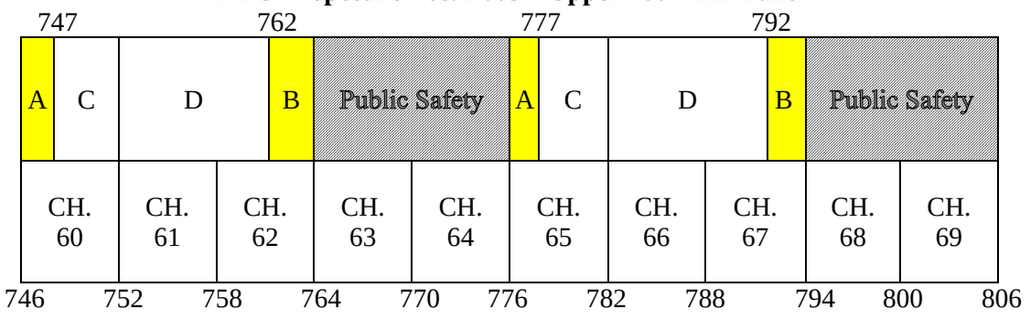
UPPER 700 MHZ BAND PLANS

Current FCC Plan – Upper 700 MHz Band



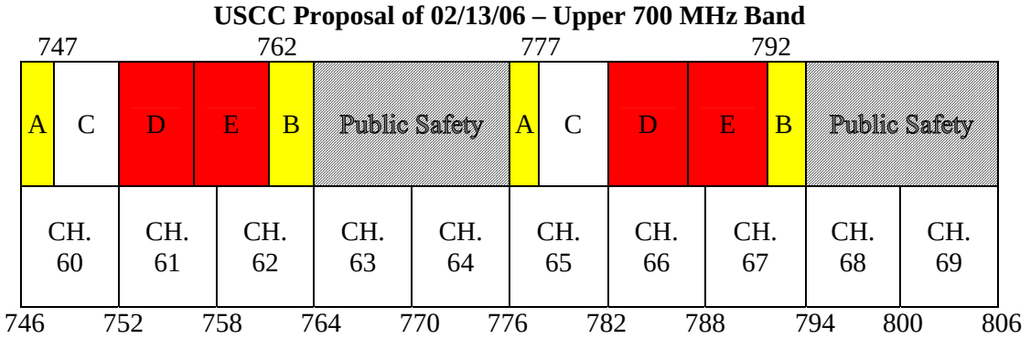
Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	746-747, 776-777	2 MHz	2 x 1 MHz	MEA	52*
B	762-764, 792-794	4 MHz	2 x 2 MHz	MEA	52*
C	747-752, 777-782	10 MHz	2 x 5 MHz	700 MHz EAG	6
D	752-762, 782-792	20 MHz	2 x 10 MHz	700 MHz EAG	6

RTG Proposal of 09/27/05 – Upper 700 MHz Band



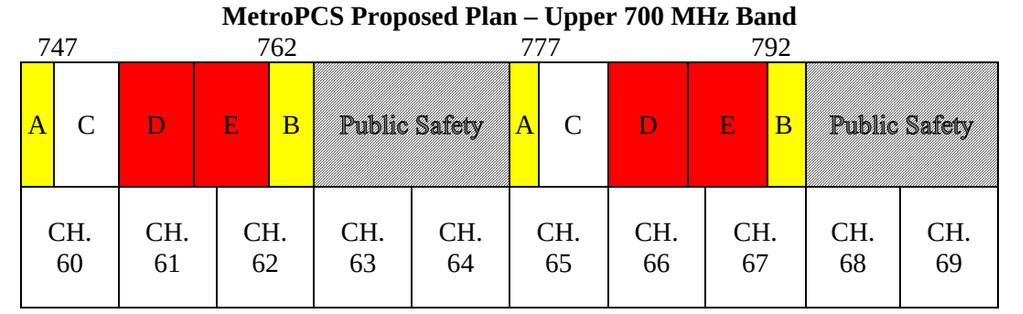
Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	746-747, 776-777	2 MHz	2 x 1 MHz	MEA	52*
B	762-764, 792-794	4 MHz	2 x 2 MHz	MEA	52*
C	747-752, 777-782	10 MHz	2 x 5 MHz	MSA/RSA	734
D	752-762, 782-792	20 MHz	2 x 10 MHz	700 MHz EAG	6

USCC Proposal of 02/13/06 – Upper 700 MHz Band



Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	746-747, 776-777	2 MHz	2 x 1 MHz	MEA	52*
B	762-764, 792-794	4 MHz	2 x 2 MHz	MEA	52*
C	747-752, 777-782	10 MHz	2 x 5 MHz	CMA	734
D	752-757, 782-787	10 MHz	2 x 5 MHz	EA	176
E	757-762, 787-792	10 MHz	2 x 5 MHz	MEA	52

MetroPCS Proposed Plan – Upper 700 MHz Band



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B	762-764, 792-794	4 MHz	2 x 2 MHz	MEA	52*
C	747-752, 777-782	10 MHz	2 x 5 MHz	EA	52
D	752-757, 782-787	10 MHz	2 x 5 MHz	EA	176
E	757-762, 787-792	10 MHz	2 x 5 MHz	MEA	52

*Blocks have been auctioned. Red highlighted areas indicated changes from FCC plan.

LOWER 700 MHZ BAND PLANS

Current FCC Plan – Lower 700 MHz Band

698 704 710 716 722 728 734 740 746

A	B	C	D	E	A	B	C
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	700 MHz EAG	6
B	704-710, 734-740	12 MHz	2 x 6 MHz	700 MHz EAG	6
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734*
D	716-722	6 MHz	unpaired	700 MHz EAG	6*
E	722-728	6 MHz	unpaired	700 MHz EAG	6

RTG Proposal of 09/27/05 – Lower 700 MHz Band

698 704 710 716 722 728 734 740 746

A	B	C	D	E	A	B	C
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	700 MHz EAG	6
B	704-710, 734-740	12 MHz	2 x 6 MHz	MSA/RSA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734*
D	716-722	6 MHz	unpaired	700 MHz EAG	6*
E	722-728	6 MHz	unpaired	700 MHz EAG	6

USCC Proposal of 02/13/06 – Lower 700 MHz Band[45]

698 704 710 716 722 728 734 740 746

A	B	C	D	E	A	B	C
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	700 MHz EAG	6
B	704-710, 734-740	12 MHz	2 x 6 MHz	MSA/RSA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734*
D	716-722	6 MHz	unpaired	700 MHz EAG	6*
E	722-728	6 MHz	unpaired	700 MHz EAG	6

MetroPCS Proposed Plan – Lower 700 MHz Band

698 704 710 716 722 728 734 740 746

A	B	C	D	E	A	B	C
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	700 MHz REAG	12
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	734*
D	716-722	6 MHz	unpaired	700 MHz EAG	6*
E	722-728	6 MHz	unpaired	700 MHz EAG	6

*Light Grey highlighted blocks have been auctioned. Dark Grey highlighted areas indicated changes from FCC plan.

[45] USCC endorses the RTG proposal, but indicated it would support alternatives.