

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Service Rules for the 689-746, 747-762)	WT Docket No. 06-150
And 777-792 MHz Bands)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems.)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible)	
Telephones)	

COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby responds to the Commission's request for comments on the appropriate service rules for the 698-746, 747-762 and 777-792 MHz Bands.¹ Verizon Wireless does not believe that substantial changes to these rules are necessary. Moreover, any effort to make substantial changes to the rules would jeopardize the Commission's ability to meet its statutory obligation to commence an auction of the 700 MHz commercial

¹ In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; and Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Notice of Proposed Rulemaking*, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309 (rel. Aug. 10 2006) ("Notice").

spectrum no later than January 28, 2008, and deposit the proceeds in the Digital Television Transition and Public Safety Fund no later than June 30, 2008.²

In enacting the Digital Television Transition and Public Safety provisions of the Deficit Reduction Act of 2005, Congress made clear its plan to accelerate the transition of existing television broadcasting services to digital technology and its intent to use the proceeds from the auction of the commercial spectrum to implement its plan. The DTV transition will not only benefit the millions of television viewers that will have access to the enhanced entertainment services afforded by digital television technology, but it is critical to the deployment of interoperable emergency communications systems for the nation's first responders that will be constructed in the spectrum currently used for television.

The DTV transition promises to bring substantial benefits to the public in the form of better television, advanced wireless services, and improved communications for public safety. Congress' plan rests, however, on securing substantial funding that is required for a digital-to-analog converter box program and for interoperable communications systems for public safety. That funding will come from the auction of commercial licenses, the value of which the Congressional Budget Office estimated based on the FCC rules and band plan currently in place. Changes to those rules run the risk of reducing the amount of monies collected in the auction, which could jeopardize funding for all elements of the plan.

Congress was aware of the FCC's rules when it enacted the new statute, and had ample opportunity to address potential changes to the rules in the legislation, had it believed that course of action was necessary. In fact, there were several attempts during the course of

² Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 ("DRA"), § 3003(a), 3004.

the enactment of that legislation to urge Congress to mandate that the Commission change its band plan, but Congress rejected any proposed changes to the band plan or performance requirements.³ The Congressional directive is clear – the Commission should maintain the current rules and move quickly to auction the 700 MHz band in order to secure the funding for the public interest goals set by Congress.

I. The Commission Should Make No Changes to the Existing 700 MHz Band Plan

Just last year, in order to “provide additional opportunities for smaller and rural wireless carriers,” the Commission changed its original Advanced Wireless Service (AWS) band plan to accommodate bidders seeking smaller markets.⁴ It did so by reducing the amount of spectrum available on a regional basis, carving out another license for small Economic Areas (EAs) and doubling the amount of spectrum available in the smallest market sizes, Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs).⁵ At the request of many of the same parties that sought, and obtained, a greater number of small licenses in the AWS band plan,⁶ the Commission is now considering making similar changes

³ See DRA, Title III: Digital Television Transition and Public Safety.

⁴ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, WT Docket No. 02-353, at ¶ 1 (rel. Aug. 15, 2005) (“AWS Order on Reconsideration”)

⁵ The Commission refers to MSA/RSA licenses as Cellular Market Areas (“CMA”).

⁶ See Petition to Institute Review and Modification of the Size of Service Areas for Geographic Licensing for the Lower and Upper Bands of 700 MHz Spectrum Not Yet Auctioned, Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Rural Cellular Association (filed July 29, 2005) (“RCA Petition”). See also Comments of the Rural Telecommunications Group in support of RCA Petition at 7-9 (filed Sept. 27, 2005) (“RTG Comments”); *Ex Parte* Filings by USCC, WT Docket No. 99-168, GN Docket No. 01-74 (filed February 3 and 13, 2006).

to the 700 MHz band plan, before the impact of the AWS auction can be known. These parties make unsubstantiated assertions that America's rural spectrum needs will be better met if the 700 MHz spectrum is further divided into hundreds if not thousands of very small licenses. Indeed, some parties have already responded to the RCA Petition, urging the Commission to adopt a band plan that would allocate *two* more licenses to CMAs (in addition to the 12 MHz of spectrum already licensed as CMAs).⁷ While bidding results of Auction No. 66 are known, there is no evidence as yet that breaking up the spectrum into more than a thousand geographically small licenses will result in better service to rural America. In fact, as discussed *infra*, there is ample reason to believe that it will have a negative effect on the deployment of advanced wireless services. The Commission should not rush to make changes to yet another band plan based on unsubstantiated claims about which licensing model will best promote rural deployment, especially if those claims contradict previous Commission findings. Rather, it should evaluate over time whether the recent auction of this significant amount (50 MHz) of spectrum in EAs and CMAs in fact results in improved service to rural America.

The downside of licensing spectrum in such small geographic areas is well known. As the Commission stated in the first 700 MHz Order, “[w]hen areas are inefficiently small, the costs of aggregation during or after the auction in terms of delay and transaction costs may harm both service providers and customers alike.”⁸ By keeping the existing band plan, the Commission will avoid an inefficient auction result and years of carriers attempting to

⁷ See, e.g., RTG Comments at 7-9.

⁸ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Report and Order*, 15 FCC Rcd. 476 (2000) (“700 MHz Order”), ¶ 59 (footnote omitted).

obtain the necessary bandwidth and coverage through post-auction, secondary market transactions. Indeed, the existing band plan would encourage rapid deployment of service, promote interoperability and the setting of standards, and allow economies of scale that will encourage the development of low cost equipment. Developments in the CMRS market confirm the Commission's analysis of six years ago that led to the decision to adopt the current band plan as the best way to promote rapid deployment of a new service.⁹ The efficiencies and economies of scale resulting from expanding a carrier's footprint have driven mobile carriers toward assembling either regional or national service areas. Regional and national "single rate" pricing plans that once were innovative are now the norm.¹⁰ The latest auction provides even more evidence of the move toward strong national and regional carriers. T-Mobile has acquired spectrum depth throughout most of its footprint and both Metro PCS and Leap Wireless have amassed large, regional footprints. Either for existing carriers adding to their holdings or for newly established carriers needing to compete effectively, providers offering service on the 700 MHz bands will need to cover relatively large geographic areas. It is imperative that the Commission keep the existing band plan.

⁹ In its initial order in this docket, the Commission acknowledged that these benefits would flow from auctioning such large areas and explicitly stated that "[t]hese rules should allow post-auction transactions to facilitate the most efficient distribution of licenses." 700 MHz Order, ¶ 57.

¹⁰ Over the years, the Commission has documented both trends in its CMRS Competition Reports. *See, e.g.*, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Eleventh Report*, WT Docket No. 06-17 (rel. Sept. 29, 2006) ("Eleventh CMRS Competition Report") (2006), ¶ 90.

II. Changing the 700 MHz Performance Requirements Would Create Competitive Asymmetries in Violation of Federal Policy that Symmetrical Regulation Serves the Public Interest.

The CMRS industry has been steadily expanding wireless services in rural areas, and recent Commission actions with respect to spectrum leasing have further promoted this expansion. Despite these developments, the Notice requests comment on the adoption of construction benchmarks, “keep what you use” re-licensing mechanisms, or a so-called “good faith” negotiation requirement between 700 MHz licensees and potential spectrum lessees.¹¹ There is no factual basis and no legal justification for imposing new performance, construction or negotiation requirements on 700 MHz licensees.

In the Rural Report and Order released in late 2004, the Commission found that its current policies “are working to provide wireless services in rural areas.”¹² The Tenth CMRS Competition Report, in which the Commission confirms that carriers continue to expand service into previously unserved or underserved areas, further supports this conclusion.¹³ Moreover, it is not necessary for all licensees to offer service in all areas. The Commission has declared that there is no need to equate a lower number of providers in rural areas with a less competitive or robust wireless market. In its most recently released CMRS Competition Report, it once again found that “[d]espite the smaller number of mobile operators in rural areas as compared to urban areas, there is no evidence in the record to

¹¹ See Notice, ¶¶ 64-71.

¹² Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 19078 (2004)(“Rural Report and Order”), ¶ 3.

¹³ See, gen., Eleventh CMRS Competition Report.

indicate that this structural difference has enabled carriers in rural areas to raise prices above competitive levels or to alter other terms and conditions of service to the detriment of rural consumers” and it concluded, “there is effective competition with respect to CMRS in rural areas.”¹⁴ These results are directly due in large part to the Commission’s market-based and flexible regulatory policy.

Given the Commission’s statements regarding the positive state of competition in rural markets and the lack of any evidence that market forces have failed to deliver wireless services to these markets, there is no reason for the FCC to alter its current performance requirements for any licensee in order to force service into a given area. Competition in the wireless industry has flourished precisely because competitors are free to make investments in response to market forces. The cost of spectrum combined with other costs of deploying service has dictated that service is first provided in the most densely populated areas.

Wireless services have been widely deployed throughout urban and suburban areas, and have been extended to many rural areas as well. For example, Verizon Wireless customers can use its “National Access” service (1xRTT or 60-80 kbps and bursts up to 144 kbps) in all counties where we have voice service, more than 50 percent of which are rural as defined by the Commission.¹⁵ This trend will continue for both mobile voice and data services.

Requiring licensees to make investments that are not predicated on economic responses to market forces could distort the competitive wireless marketplace, by potentially stranding

¹⁴ Eleventh Competition Report, ¶88.

¹⁵ In the Rural Report and Order, the Commission establishes the presumption that, unless otherwise specified in the context of specific policies or regulations governing wireless communications services, counties with a population density of 100 persons per square mile or less constitute “rural areas” for purposes of its wireless spectrum policies. Rural Report and Order at ¶ 2.

capital investment in markets where it is not justified and limiting competitors from fully investing in markets where it is. Accordingly, Verizon Wireless opposes the adoption of any new rules that would dictate where, when, and how licensees must provide service or that would reclaim “unused” portions of a geographic licensee, as unnecessary and counterproductive.¹⁶

Of equal concern to Verizon Wireless is that the Commission would apply these changes to only one spectrum band, part of which has already been auctioned. Rules that apply only to some spectrum bands that will be used for CMRS while not applying to others would be in direct conflict with Congressional and Commission findings that a symmetrical regulatory structure best serves the public interest. There can be no lawful basis for departing here from the principle of regulatory symmetry by placing strict performance standards and renewal requirements on a single spectrum band and exempt all others from such restrictions. To the extent that the Commission believes such restrictions may be necessary, which Verizon Wireless does not, it should consider these issues in the context of its open proceeding in which it raises these same questions, but for all CMRS bands.¹⁷

Congress’s 1993 amendments to Section 332 of the Communications Act, the Commission has declared, “mandated that similar commercial mobile radio services be accorded similar regulatory treatment under the Commission’s Rules. The broad goal of this action is to ensure that economic forces – not disparate regulatory burdens – shape the

¹⁶ As the Commission states in the Notice, it already provides positive incentives to encourage rural buildout, namely that the “safe harbor” it adopted in the Rural Report and Order is available to 700 MHz licensees. Notice, ¶ 63. There are no special circumstances here that warrant harsher treatment.

¹⁷ See Rural Report and Order. See also Reply Comments of Verizon Wireless, WT Docket No. 02-381 (filed Feb. 14, 2005).

development of the CMRS marketplace. ... Our first goal is to create a symmetrical regulatory framework for commercial mobile radio services in order to foster economic growth and expanded service to consumers through competition.”¹⁸ The Commission has correctly, and repeatedly, recognized over the past decade that subjecting some competing wireless providers to restrictions that do not apply to their competitors, absent a “clear cut need,” would distort the market and deprive consumers of the benefits of an open marketplace.¹⁹ The Commission has acknowledged elsewhere that 700 MHz spectrum at issue here will likely be used for the same advanced wireless purposes as the recently-auctioned AWS spectrum, for which there are no such requirements.²⁰ Any carrier, either new entrant or existing provider, with 700 MHz holdings would be subject to inequitable regulation. Existing licensees that purchase 700 MHz licenses would have to reconcile conflicting requirements among their various licenses. Such action would be a major departure from Commission policy, where it has worked over time to bring into conformance disparate service rules governing various CMRS bands. Here the Commission would take an unwarranted step backwards if it were to distinguish the 700 MHz band from all other CMRS bands. The Notice does not demonstrate the requisite clear cut need for new requirements to

¹⁸ Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988 (1994), ¶¶ 4, 23.

¹⁹ *E.g.*, Petition of the Connecticut Dep’t of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, *Report and Order*, 10 FCC Rcd. 7025 (1995), ¶10, *aff’d*, Connecticut Dep’t of Public Utility Control v. FCC, 78 F.3d 842 (2d Cir. 1996).

²⁰ “We believe, however, that the arrival of carriers’ 3G-related needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for AWS, upper 700 MHz, and lower 700 MHz.” Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion & Order*, WT Docket No. 04-70, 19 FCC Rcd. 21522 (2004), ¶ 140.

apply to any CMRS licensee and certainly does not explain why such requirements should be applicable only to 700 MHz licensees.

III. The Commission Should Extend the License Term for 700 MHz Licenses

One change that the FCC should make is to modify the license term for the unauctioned 700 MHz licenses. Currently, the term for all licenses is set to expire on January 1, 2015. This date was established based on expected auction dates in 2000 and 2002 and a band clearance date of 2007. However, those expected dates have been modified considerably with the Congressional action described above. While the Commission should strive to conduct the 700 MHz auction as quickly as possible, the DRA does not mandate that broadcasters clear the spectrum until February 17, 2009. Consequently, without a modification to the current license term, 700 MHz licensees would have less than six years to use the spectrum before their initial licenses expire. Given the new dates that Congress established, the Commission should modify its rules and establish a license term of ten years from the time the band is expected to be cleared of incumbent licensees, February 17, 2019.

IV. Conclusion

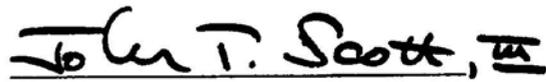
Verizon Wireless does not believe that substantial changes to the 700 MHz service rules are necessary. Moreover, any effort to make substantial changes to the rules would jeopardize the Commission's ability to meet its statutory obligation to commence an auction of the 700 MHz commercial spectrum no later than January 28, 2008, and deposit the proceeds from that auction in the Digital Television Transition and Public Safety Fund no

later than June 30, 2008. Except as noted above with respect to the license term, the Commission should not change any of its 700 MHz service rules and should move quickly to auction this spectrum.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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