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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
)  
Service Rules for the 698-746, 747-762 and ) WT Docket No. 06-150  
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 )

To: The Commission

**COMMENTS OF DOBSON COMMUNICATIONS CORPORATION**

Ronald L. Ripley, Esq.  
Vice President & Senior Corporate Counsel  
Dobson Communications Corporation  
14201 Wireless Way  
Oklahoma City, OK 73134

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## EXECUTIVE SUMMARY

To promote the prompt availability of wireless services to rural and underserved markets, Dobson requests that the Commission set aside two CMA blocks in the 700 MHz band, one comprised of 20 MHz and the other comprised of 10 MHz. This would provide meaningful opportunities for potential rural operators, including new entrants, and allow existing licensees to complement their systems in particular markets.

Dobson also urges the Commission to adopt a substantial service construction requirement, similar to what the Commission currently requires for AWS licensees, for any new spectrum license in the 700 MHz band.

Dobson is strongly opposed to a “keep what you use” re-licensing mechanism. A “keep what you use” approach would throw the market into flux and have the negative effect of encouraging carriers to inefficiently devote resources to unpopulated or sparsely populated areas solely to preserve future expansion opportunities, without any assurance that a re-taking of the spectrum would even result in efficient or economic development.

Consistent with the policies adopted for PCS, cellular, and Part 27 licensees, the Commission should afford auction winners in the 700 MHz band a renewal expectancy if the applicant has provided substantial service during its past license term.

Dobson supports a uniform 10-year license term, but stresses that the 10-year term should begin no sooner than the date an auction winner receives its license. Lastly, Dobson supports the Commission’s tentative conclusion that services provided in the 700 MHz band should be subject to requirements concerning the 911, E911, and hearing aid-compatible handsets.

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Dobson Communications Corporation (“Dobson”)<sup>1</sup> hereby submits its comments in response to the Commission’s *Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>2</sup> As demonstrated below, the Commission should set forth rules and policies that encourage the efficient use of spectrum and ensure the rapid development of wireless services to rural communities.

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<sup>1</sup> Dobson is a provider of rural and suburban wireless communications services in 16 states, from Alaska to New York, with approximately 1.5 million customers and network operations covering a total population of over 11.9 million as of January 23, 2006. Dobson conducts its operations through two subsidiaries, Dobson Cellular Systems, Inc. and American Cellular Corporation, and offers services under the CELLULARONE® brand in all its markets except for those in western Oklahoma and the Texas panhandle, where Dobson uses the DOBSON CELLULAR SYSTEMS® service mark.

<sup>2</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *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”).

## I. SIZE OF LICENSE AREAS

The Commission seeks comment on whether additional licenses should be created over service area sizes other than the proposed Economic Area Groupings (“EAGs”), including licensing over smaller areas such as the 734 Cellular Market Areas (“CMAs”).<sup>3</sup> To continue to promote the prompt availability of wireless services to rural and underserved markets, Dobson submits that the Commission should create two blocks of CMA licenses for auction in the 700 MHz band.

Dobson opposes the Commission’s proposal to exclusively license the auctionable spectrum in the 700 MHz band on the basis of EAGs. The adoption of that band plan will effectively preclude participation by small and rural entities, a result which will neither serve the public interest nor satisfy the Commission’s statutory obligations. Smaller carriers clearly do not possess the financial resources to compete for EAG licenses. As the Commission has observed, moreover, larger entities “may seek to acquire licenses that cover whole regions of the country, while other entities, such as rural telcos, may be interested in obtaining licenses to serve only particular rural areas.”<sup>4</sup> The Commission has also noted that:

RSAs and MSAs allow 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.<sup>5</sup>

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<sup>3</sup> *Id.* at ¶ 2. The smallest geographic service areas licensed by the Commission are Rural Service Areas (“RSAs”) and Metropolitan Statistical Areas (“MSAs”), of which there are 734 licenses comprising the U. S. and its territories. MSAs and RSAs are collectively known as CMAs.

<sup>4</sup> *Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses, Report*, 19 FCC Rcd 3034, 3086 (2004).

<sup>5</sup> *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Order on Reconsideration*, 20 FCC Rcd 14058, 14066 (2005) (footnoted omitted) (“AWS Reconsideration Order”).

The Commission also assigned other licenses on an MSA and RSA basis, and found that the smaller areas correspond to the needs of customers of small and rural providers.<sup>6</sup> This analysis is very compelling in the context of the 700 MHz licenses at issue in this proceeding because the superior propagation characteristics of this spectrum make it particularly beneficial for service to rural areas. The Commission should take this important factor into account as it considers its 700 MHz licensing alternatives.

Moreover, by modifying its 700 MHz licensing plan to include license areas based on CMAs, the Commission will be fulfilling its statutory duty to promote “economic opportunity and competition” while distributing licenses “among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”<sup>7</sup>

The *NPRM* also asks commenters to consider such factors as “the amount of spectrum that will have been assigned over CMAs by the conclusion of the AWS auction” to determine how much additional spectrum over smaller areas may or may not be needed.<sup>8</sup> The record reflects that there was significant participation by small carriers in the AWS auction -- 73 applicants filed as rural telephone companies and 100 applicants were granted DE status.<sup>9</sup> Moreover, 68 rural telephone companies or small business entities were the high bidders for 247

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<sup>6</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022, 1061-62 (2002). The Commission has found that the inclusion of MSAs and RSAs in the 700 MHz licensing scheme would permit rural telephone companies and small service providers that have localized business plans to have various options, including the potential to combine several MSAs/RSAs if necessary. See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162, 25175-77 (2003) (“AWS Report and Order”).

<sup>7</sup> *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022, 1061 (2002) quoting 47 U.S.C. § 309(j)(3)(B).

<sup>8</sup> See *NPRM* at ¶ 27.

<sup>9</sup> See Comments of CTIA – The Wireless Association, WT Docket No. 05-211, at 2 (filed Sept. 20, 2006).

licenses.<sup>10</sup> This strong turnout by small carriers occurred notwithstanding the fact that AWS spectrum is not ideally suited for use in rural areas. Given the superior propagation characteristics of the 700 MHz spectrum for carriers choosing to serve rural markets, the Commission should anticipate an even higher level of participation by small carriers in the 700 MHz auction. There is therefore no basis, in Dobson’s view, for the Commission to conclude that Auction 66 satisfied the spectrum needs of small entities.

## II. SIZE OF SPECTRUM BLOCKS

To the extent the Commission decides to auction and assign additional license areas in sizes other than the six proposed EAGs, the Commission seeks comment on the appropriate size of the spectrum blocks to accommodate such assignments that may also reflect recent developments.<sup>11</sup>

Dobson submits that the Commission should create two CMA blocks, one comprised of 20 MHz and the other comprised of 10 MHz, so as to provide meaningful opportunities for smaller carriers, including new entrants. The Commission must take into account the considerable participation of rural interests and DEs in the AWS auction. As the Commission recognized when creating the service rules for AWS in the 1.7 GHz and 2.1 GHz bands, “the inclusion of 20 megahertz licensed on an RSA/MSA basis in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas.”<sup>12</sup> As consumer demand for advanced wireless services continues to increase, a 20 MHz block is needed to accommodate future, higher data rates and provide operators with additional capacity

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

<sup>11</sup> See *NPRM* at ¶ 49.

<sup>12</sup> *AWS Reconsideration Order*, 20 FCC Rcd at 14066.

and greater flexibility. In addition to establishing a 20 MHz CMA block, the Commission should also license a 10 MHz CMA block that would enable small and large carriers alike to devise spectrum configurations most appropriate for different markets, and to complement their existing spectrum holdings.<sup>13</sup> With regard to the remaining spectrum, Dobson submits that the public interest will be better served, and increased participation in the auction will be fostered, by the creation of licenses covering smaller, rather than larger, geographic areas.

### **III. PERFORMANCE REQUIREMENTS**

#### **A. Substantial Service**

The *NPRM* asks whether the Commission needs to revise the existing “substantial service” performance requirement, or possibly adopt alternative build-out rules for the 700 MHz band.<sup>14</sup> Dobson submits that the Commission should adopt for 700 MHz licensees the same substantial service obligations made applicable to AWS licensees.<sup>15</sup> When considering what performance requirements should be imposed on AWS licensees, the Commission recognized that a substantial service requirement provides the flexibility required to accommodate the new and innovative services that the Commission believed would be forthcoming in these bands.<sup>16</sup> This logic applies with equal force to anticipated operations in the 700 MHz band, which will include provision of the same new and innovative services. The Commission also acknowledged in the AWS context that interim build-out requirements would have limited utility because interim benchmarks are easily met “by installing a small number of cell sites in an urban market,

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<sup>13</sup> *See id.* at 14066-67.

<sup>14</sup> *See NPRM* at ¶ 61.

<sup>15</sup> *See* 47 C.F.R. § 27.14.

<sup>16</sup> *See AWS Report and Order*, 18 FCC Rcd at 25192.

with few cell sites in rural markets.”<sup>17</sup> This analysis applies as well to operators in the 700 MHz band. For these reasons, the Commission should refrain from adopting interim performance requirements for 700 MHz licensees. Should the Commission determine, however, that alternative build-out rules must be imposed, then Dobson submits that a period of time in excess of the 5-year build-out for PCS licensees -- perhaps seven or eight years -- would be appropriate for 700 MHz band licensees to give them adequate time to construct consistent with prudent business planning.

**B. “Keep What You Use”**

The Commission has also sought comment on the concept of a “keep what you use” re-licensing mechanism. Dobson is strongly opposed to the adoption of any such re-licensing methodology. With 98 percent of the American population living in counties served by three or more mobile wireless providers, there is simply no justification for imposing these types of additional performance requirements in the 700 MHz band.<sup>18</sup> The Commission has correctly developed its policies to increasingly rely on marketplace forces to dictate the efficient allocation and use of spectrum. The Commission is ill-equipped to make the judgments necessary to determine, on a market-by-market basis, whether spectrum is underutilized, nor should it substitute its judgment for that of an efficient marketplace. Requiring licensees to allocate scarce capital and other resources based on avoiding a spectrum take-back, rather than on consumer needs in their license areas, would be a step backwards for the wireless telecommunications industry.

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<sup>17</sup> *Id.*

<sup>18</sup> See *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, *Eleventh Report*, FCC 06-142, at ¶ 2 (rel. Sept. 29, 2006) (“*Eleventh Report*”).

Spectrum take-backs will lead to the unnecessary and likely uneconomic construction of network facilities in sparsely populated areas simply to “save the license.” For example, while there may already be five facilities-based providers in an area that can only economically support two, a licensee will be compelled to build there anyway, with no expectation of achieving a reasonable near-term return on the investment. If the carrier fails to construct within the prescribed period, it may lose the ability to offer services in those areas when it makes economic sense in the future, or the licensee may instead have to buy back the spectrum, potentially from a party who decided to speculate on the spectrum when it came up for auction as “unserved” area.<sup>19</sup> In contrast, the entire spectrum auction program is based on the assumption that licenses should go to those who value them most, and often the value includes the long-term as well as short-term use of the spectrum throughout the market area.

The *NPRM* cites to the “keep what you use” re-licensing approach that was adopted in the 1980s for cellular service.<sup>20</sup> Dobson is quite familiar with the cellular licensing regime - *i.e.*, the unserved area licensing process - having developed cellular systems extensively over the past 15 years, reaching virtually every corner of every RSA and MSA for which it was licensed.<sup>21</sup>

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<sup>19</sup> As noted below, the Commission’s cellular unserved area program was rife with spectrum speculators who filed applications for small areas neighboring larger cellular areas, built minimal facilities needed to “save” their license and then either held the area hostage through above-market roaming rates or simply sold the area for a substantial premium back to the original licensee when the market actually warranted construction of facilities. It would be bad policy to create similar opportunities in the 700 MHz band where the licensee has paid for the right to serve the territory in the future.

<sup>20</sup> See *NPRM* at ¶ 67.

<sup>21</sup> It must be noted that the unserved area licensing process took years of protracted rulemaking proceedings and litigation before finally being implemented. See *Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 5 FCC Rcd 1044 (1990); *Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 6 FCC Rcd 6185 (1991); *Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 7 FCC Rcd 2449 (1992) (“*Unserved Area Second Report and Order*”).

But cellular systems were licensed in spectrum bands using different radio propagation, on a different licensing basis (after the initial 30 markets were licensed through comparative hearings, the balance of cellular licenses were awarded by lottery), with virtually no capital required through the application and licensing phase, and with different expectations as to the need to expand in order to maintain their service area. Cellular was also subject to the 5-year “use it or lose it” policy at a time when the Commission desired rapid development of wireless services in an environment in which only two or fewer carriers were operating. As a result, imposition of a “use it or lose it” unserved area licensing scheme was deemed necessary to spur development by these initial licensees, who otherwise lacked monetary incentives to expand beyond the most populated of areas.<sup>22</sup>

With the advent of auctions and the subsequent marketplace acquisition of wireless licenses, licensees have invested substantial sums of money to obtain their authorizations and have every incentive to put the spectrum to its greatest use. Marketplace forces, and not regulation, are thus driving Dobson and other rural carriers to extend coverage and introduce innovative services to rural areas wherever it is economically feasible to do so, as reflected in the most recent CMRS Annual Competition Report.<sup>23</sup>

Furthermore, the cellular “re-licensing” approach has been fraught with problems, because it is dependent on the identification of areas that are being “used/served.” To implement this program, the Commission created a complex mathematical formula to determine the reliable service area boundary contours that make up a licensee’s cellular geographic service area

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<sup>22</sup> See *Unserved Area Second Report and Order*, 7 FCC Rcd at 2449-50, 2451-52 (subsequent history omitted).

<sup>23</sup> See *Eleventh Report* at ¶ 86.

("CGSA").<sup>24</sup> However, the formula is based on antiquated analog technology even though most cellular systems have long since been upgraded to digital, and so the CGSA boundary does not truly reflect the actual service area boundaries of a cellular system.<sup>25</sup> Rather, carriers continue to work together to assure seamless coverage throughout their own service territories and typically even across CGSA borders. Even though the analog contours do not typically reflect the digital coverage from a cell site, the Commission continues to place administrative costs and burdens on licensees to file site-based applications for system modifications that affect the CGSA so that the Commission can keep track of what few areas of the country remain "unserved."

Moreover, within any particular licensed market, carriers today may be offering CDMA, TDMA, GSM, or other digital technologies, each of which has different "effective coverage" characteristics. Similar problems will exist in trying to mandate a "coverage" standard in the 700 MHz band, where radio propagation characteristics added to technology differences could require a whole new standard.

Simply stated, it would take years of protracted rulemaking to reach an industry consensus on what constitutes, even for existing technologies, an appropriate standard of "coverage" and would waste Commission and industry resources that could be much better spent in service and technology development.

Most significantly, there is no need for such a standard to achieve the Commission's policies. To the contrary, given the substantial competitive forces at play in the industry, any

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<sup>24</sup> See 47 C.F.R. § 22.911.

<sup>25</sup> Even more troubling is that the cellular "analog service" requirement will sunset in December 2007. See *Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, 17 FCC Rcd 18401 (rel. Sept. 24, 2002). After the sunset, there will likely be very little "analog" coverage despite the fact that the "protected service contours" are based on this older technology.

“keep what you use” approach is likely to compel carriers to devote resources inefficiently to unpopulated or sparsely populated areas solely to preserve future expansion opportunities.

If a new entrant’s business case does justify developing underutilized spectrum in a given area, the existing secondary markets initiatives provide interested parties sufficient opportunities to enter the market. But with a “keep what you use” approach, the Commission runs the risk of not only undercutting spectrum leasing but also allowing spectrum speculation and warehousing to occur as parties file to claim relatively small areas of spectrum currently unused by the original licensee.

#### **IV. CRITERIA FOR RENEWAL**

The *NPRM* asks whether the Commission should clarify or modify the rules governing the renewal process as applied to licenses awarded in the 700 MHz band.<sup>26</sup> The Commission should adopt rules which afford 700 MHz band licensees the same renewal expectancy applicable to PCS, cellular, and Part 27 licensees.<sup>27</sup> A license renewal applicant in those services receives a preference or renewal expectancy if the applicant has provided substantial service during its past license term and has complied with the Communications Act and applicable Commission rules and policies.<sup>28</sup> The Commission should continue to apply those well-settled renewal expectancy rules for licensees in the 700 MHz band. Also, in the event that a license is partitioned or disaggregated, the Commission should continue to permit any partitionee or

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<sup>26</sup> See *NPRM* at ¶ 80.

<sup>27</sup> See 47 U.S.C. § 151 *et seq.*; 47 C.F.R. § 22.940(a)(1)(i) (cellular), § 24.16(a) (PCS), § 27.14 (WCS and AWS).

<sup>28</sup> Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. See *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (“WCS”)*, GN Docket No. 96-228, *Report and Order*, 12 FCC Rcd 10785, 10843 (1997).

disaggregate to hold its license for the remainder of the original licensee's license term and obtain a renewal expectancy on the same basis as other licensees in the 700 MHz band.<sup>29</sup>

## **V. LENGTH OF LICENSE TERMS**

The Commission should establish a uniform license term for licenses in the 700 MHz band. The Commission has recognized that a 10-year license term “will help to provide a stable regulatory environment that will be attractive to investors, and thereby encourage development of these frequency bands.”<sup>30</sup> Dobson supports a uniform 10-year license term, but stresses that the 10-year term should begin no sooner than the date an auction winner receives its license. In the *NPRM*, the Commission correctly acknowledges that the period extending from the deadline for the DTV transition, February 17, 2009, to the current January 1, 2015 termination date set forth in Section 27.13(b) is shorter than both the 10-year license term afforded to many other licensees, including CMRS.<sup>31</sup> There is no reasonable basis for adopting a license term for 700 MHz licensees that is effectively shorter than 10 years.

## **VI. 911, E911, AND HEARING AID COMPATIBILITY FOR NEW LICENSEES IN THE 700 MHZ BAND**

Dobson supports the Commission's tentative conclusion that services provided in the 700 MHz band should be subject to requirements concerning the 911, E911, and hearing aid-compatible handsets. The public interest will clearly be served by imposition of these obligations.

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<sup>29</sup> 47 C.F.R. § 27.15(d)

<sup>30</sup> *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 04-356, *Notice of Proposed Rule Making*, 19 FCC Rcd 19263, 19292 (2004).

<sup>31</sup> Generally, the Commission's rules provide for a 10-year license term for wireless licenses. *See, e.g.*, 47 C.F.R. §§ 24.15, 27.13(a).

## **VII. CONCLUSION**

For the reasons set forth above, Dobson respectfully urges the Commission to set forth rules and policies that encourage the efficient use of spectrum and ensure the rapid development of wireless services to rural communities.

Respectfully submitted,

**DOBSON COMMUNICATIONS CORPORATION**

By: /s/ \_\_\_\_\_  
Ronald L. Ripley, Esq.  
Vice President & Senior Corporate Counsel  
Dobson Communications Corporation  
14201 Wireless Way  
Oklahoma City, OK 73134  
(405) 529-8500

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