

**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
)	
Revisions 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 ALOHA PARTNERS, L.P.

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SUMMARY

Aloha is the nation's largest 700 MHz licensee, holding licenses that cover more than 60% of the US population. Aloha's interest in 700 MHz stems from its appreciation of the inherent propagation advantages of the 700 MHz band. These include, among other things, greater propagation, superior penetration, and the associated reduced build-out costs resulting from those spectrum characteristics.

It is essential that the Commission offer a mix of different license sizes, including CMAs and BEAs, each having at least 12 MHz bandwidth. This will facilitate services being provided to rural areas and will increase small business participation in the auction. There will be no counterbalancing disadvantages from this auction arrangement. Experience with prior auctions demonstrates all of this to be the case.

In the event that the Commission establishes additional performance requirements for 700 MHz, it should do so on a prospective basis. To do otherwise would be inequitable to existing licensees and would raise due process and other procedural issues. The same principal should apply to any changes in the substantial service rules.

The Commission should establish uniform 15 year terms for all 700 MHz licensees, regardless of what service they offer.

With respect to maximum permissible power, the Commission should treat 700 MHz licensees in the same manner as all other wireless licensees with respect to calculation methodology.

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COMMENTS OF ALOHA PARTNERS, L.P.

Aloha Partners, L.P. ("Aloha"), by counsel and pursuant to the Commission's Order of September 15, 2006,¹ hereby submits its Comments in the captioned proceedings.²

By these Comments, Aloha responds to the inquiries posed by the Commission in its NPRM. Chief among these is the issue of proper license market size in the upcoming 700 MHz auction scheduled for January 2008. On that critical issue, Aloha urges the Commission to offer licenses in a number of different market sizes; including Cellular Market Areas ("CMAs") for the 12 MHz B Block consisting of channels 53 and 58. The offering of licenses in different

¹ Order, in DA 06-1880, released September 15, 2006 ("Order"). Pursuant to the Order, these Comments are timely submitted.

² Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309, 71 Fed. Reg. 48506-01 (August 21, 2006), _____ FCC Rcd ____ (2006) ("NPRM")

market sizes is the single most critical step the Commission can take to make the upcoming 700 MHz auction a successful one.

I. ALOHA QUALIFICATIONS

Aloha is the largest licensee in the Lower 700 MHz Band.³ Aloha is licensed in 245 CMAs for Lower 700 MHz Band spectrum. Its licensed markets include over 60% of the U.S. population. Aloha has generated over \$75 million in gross revenues for the U.S. Treasury and has made all its payments in a timely manner.

The 700 MHz Band has significant advantages for delivering Wireless Broadband, mobile video and other service to rural markets, Public Safety and small businesses as compared to frequency bands over 1 GHz. First, 700 MHz can cover an area 2-3 times as large as that which could be covered by PCS spectrum (1800-1900 MHz) or MMDS spectrum (2500 MHz). This permits very significant savings of capital expenditures and system operating costs. Build-out of 700 MHz in rural areas is expected to be less than one-half of the costs of those for PCS spectrum, and even a smaller percentage of 2.5 GHz Broadband Radio Service (“BRS”) spectrum build-out costs. These most significant savings make the 700 MHz Band far more economical for rural broadband and mobile video applications than any higher frequency.⁴ Secondly, 700 MHz is significantly better at accommodating terrain obstructions such as leaves,

³ That band consists of frequencies 698-746 MHz (the “Lower 700 MHz Band”).

⁴ Most certainly, and in response to the Commission’s inquiry, there are no corresponding costs that offset these significant cost savings.

foliage or structures. This makes 700 MHz significantly more effective at penetrating inside buildings in both urban and rural areas.

Aloha's considerable knowledge and interest in 700 MHz matters causes it to be particularly well qualified to comment in this proceeding.

II. DISCUSSION

A. The Commission should offer CMAs and a mix of different market sizes.

The most pivotal question posed by the Commission in its NPRM was “what is the most appropriate market size, or sizes, for unauctioned spectrum in the 700 MHz Band.” NPRM at para 2. Specific inquiry was made regarding the possible use of CMAs and other smaller markets. *Id.*

Providing CMA licenses of at least 12 MHz bandwidth is the single most important change that the Commission should make prior to the 2008 auction. CMA licensing is essential to furthering the public interest for a number of reasons. First and foremost, it is the best way to provide service to rural areas. Second, it is the best way to provide a bona fide opportunity to small businesses to be a meaningful part of the auction.⁵ Lastly, inclusion of CMAs and other small market license areas is critical to the Commission complying with its statutory mandate to avoid undue concentration within the licenses that are being auctioned. 47 U.S.C. § 309(j)(3)(B)

The benefits of small market licensing are both self-evident and interwoven. When the Commission licenses spectrum in large market sizes, the winning bidders focus on building out

⁵ The Communications Act requires, among other things, that in prescribing regulation for auction, it “ensure” that small businesses “are given the opportunity to participate in the provision of spectrum-based services....” 47 USC 309(j)(4)(D).

the most dense and most lucrative areas first. Unfortunately, these winning bidders many times do not build-out the rural areas at all because they have satisfied the Commission's build-out requirements. A review of ten year build-out data submitted to the FCC by all licensees of PCS MTA spectrum shows that, on average, only 80% of the population in those markets is able to receive minimal signal strength at their home. Aloha estimates that many of those people are in fringe areas and that the actual number of people who can make calls from their homes is more like 65%. Unfortunately, most of that 35% who can't make cell phone calls from their homes are in the rural areas or small markets.

Historically, small independent telephone companies and entrepreneurs are the entities that have purchased the small markets and provided service to them. That will not happen in this auction unless the Commission changes the size of markets offered for bids, because small companies will be unable to afford the \$6 million upfront payment needed to bid on a single license area. Even if a small company could afford the upfront payment, it definitely can not afford the \$200–300 million needed to actually buy a license.

There is yet another reason why smaller markets result in service being provided to less urban and more rural areas: the parties who acquire small market licenses often live in and do business in these service areas. As a result, they have a vested interest in building-out their licenses.

Small markets also offer the best means for the Commission to fulfill its statutory obligation to provide a meaningful opportunity for small businesses to participate in the upcoming auction. 47 U.S.C. § 309(j)(3). There is a strong correlation between the size of a wireless carrier and the type of market sizes that it wins in the auction. Auction No. 66 offers the

most recent confirmation of this proposition. Small companies acquired nearly half the CMA licenses in auction 66. Similarly, national carriers acquired nearly 70% of the large Regional licenses. Mid-sized regional carriers were in the middle and had about an equal share of small, medium and large sized markets.

Finally, the cost to purchase a single regional license is estimated to be \$200- 300 million based on the average cost paid in the AWS auction. If the Commission does not offer a mix of small, medium, and large markets, then the only companies that will be financially able to participate in the auction will be the 4-6 very large national carriers. As a result, all 30 regional licenses could become concentrated in the hands of 4-6 very large companies.

As a result, Aloha urges that the Commission consider a mix of license sizes similar to auction 66. Aloha believes that having at least one 12 MHz block available for CMAs is essential. Aloha also believes that having another 12 MHz block available for BEAs will help maximize participation and revenues. The remaining blocks should be Regional licenses. Thus, Aloha advocates the “combination” approach outlined in the NPRM, at paras 15 and 40. This is the same approach that the Commission spoke of with approval in its Rural Wireless Order, 19 FCC Rcd 19078, 19087 (2004). It is also the same approach that the Commission used successfully in the recently complete AWS Auction. Service Rules for AWS, 18 FCC Rcd 25162 (2003).

Some parties have indicated that if the 700 MHz auction includes small license areas then the major national carriers will either not participate in the 700 MHz auction or bid less aggressively than for smaller license areas. The results of the recent AWS auction suggest just the opposite result. The results of the AWS auction indicates that having a mix of license sizes

brings in a much larger number of bidders and creates significant competition for many mid sized and small license areas. For example:

- 1) Sprint/Spectrum Co. spent \$2.4 billion and purchased 157 BEA licenses.
- 2) Cingular spent almost 50% more for CMA and BEA licenses than for regional blocks (\$835 million versus \$500 million)
- 3) 176 BEA licenses in the “C” block sold for almost as much as 6 Regional licenses in the “D” block (\$1.5 billion versus \$1.7 billion)
- 4) Iowa City IA (population 111,000) sold for almost 4 times as much per pop as the San Francisco BEA (population 9 million). (\$.97 per pop for Iowa City vs. \$.25 per pop for San Francisco)

Aloha would argue that a mix of license areas will actually generate more revenues than just offering 6 regional blocks because: there will be significantly more bidders for small and mid sized markets; over \$1 billion of revenues from small and regional carriers would never have even showed up at the AWS auction if only regions were available; and large national carriers have demonstrated that they will pay what is necessary to aggregate regions when they need to.

B. Additional Spectrum for Rural Areas

In a related context, the Commission asked whether additional spectrum was needed in rural areas. Based on Aloha’s discussions with many rural telephone companies, additional 700 MHz spectrum is needed in rural markets. The reason that additional 700 MHz spectrum is needed when other PCS spectrum is already available and under utilized is that 700 MHz can cover as much as 1000 square miles of rural area per cell site compared to only 200 square miles for 1900 MHz PCS spectrum. As a result, a 700 MHz network can be deployed at up to an 80% lower cost per customer.

In sum, the public interest would be well served by the Commission auctioning 700 MHz spectrum in a wide variety of market sizes, including CMAs and BEAs, each having at least 12 MHz of bandwidth. It would facilitate service to those areas most in need of it, and would substantially increase participation by small and mid sized businesses and potentially increase auction revenues.

C. CMA Allocations Must Be For At Least 10-12 MHz to be Useful

Aloha believes that at least one 12 MHz license should be allocated for CMA service. Aloha believes that rural operators will require at least 10-12 MHz of paired spectrum in order to provide broadband service. The only 700 MHz broadband equipment that is available today requires at least 10-12 MHz of paired spectrum. Most industry experts agree that to consistently deliver broadband speeds, an operator needs at least 10-12 MHz of spectrum. Whereas, various parties may hold different views of precisely how much spectrum is needed to provide different services, it seems clear that at least 10-12 MHz is needed to provide licensees with the flexibility to be able to provide a variety of services.

D. CMA and Other Small License Areas Should Be Made Available In the Lower 700 MHz Band

Whereas Aloha has no strong preference for which 700 MHz Band (Upper or Lower) should include CMA allocations of at least 10-12 MHz, Aloha believes that it would be more efficient and less disruptive simply to revise licensing boundaries for the existing B Block in the Lower 700 MHz Band. Selecting the “B” block for CMA licensing would also put it contiguous to the “C” block which was also licensed in CMAs. That will make it easier for existing 700 MHz operators to combine spectrum and offer broadband service. This would involve less reconfiguration by the Commission and, given the tight time frame for the congressionally

mandated January 2008 auction, presents less risk for unintended adverse consequences to surface.

E. Heightened Performance Requirements Should Not Be Applied to Existing Licensees

Properly concerned that many areas would not be properly and timely served in the absence of certain additional incentives from the Commission, the Commission raised the specter of establishing additional performance standards to encourage service to areas that may otherwise not be served with the 700 MHz spectrum to be auctioned in 2008.

Performance standards are a complex issue. At this time, Aloha comments only on the possible applicability of such standards to existing 700 MHz licensees. Simply put, new, more demanding performance requirements cannot legitimately be placed upon existing 700 MHz licensees. Those entities made business determinations when they bought and paid for their licenses that took into consideration core obligation of licensees, such as the then-existing performance standards. Those performance standards were based on the uncertainty surrounding when the broadcasters would vacate the 700 MHz spectrum and were based on the uncertainty about the availability of 700 MHz applications, uses and equipment availability. While the uncertainty in these areas has been reduced in the last year, there are still significant issues that need to be addressed before this spectrum is useable. To change the rules after the fact would be arbitrary and capricious in violation of both the Administrative Procedure Act and the Communications Act of 1934, as amended. It would also violate fundamental elements of equity and due process.

F. The Substantial Service Definition Associated with Renewal Should Not be Revised or Applied Differently

The Commission asked whether its existing substantial service criteria should be revised, or applied regardless of whether there are challenges to a renewal application. For the reasons set forth below, Aloha submits that no changes should be made.

When the Commission initially established its substantial service criterion, it did so in a manner designed to maximize flexibility for licensees. The intent was not to lock into quantitative standards or to dictate the nature of offerings to be made. Instead, the totality of the licensees' offerings could be considered. This process appears to have worked very well. Since the inception of the renewal process for high tech wireless services such as cellular and PCS, there have been no reported disputes in the context of renewal procedures regarding whether substantial service has or has not been provided. Given such a sterling track record, Aloha submits that no changes should be made. Indeed, the doctrine of unanticipated consequences argues against making changes where no changes are necessary.

Nor should the Commission broaden the scope of application of the substantial service rules to include all license renewals and not merely contested renewals. There are several reasons for this. First, there is no known need for such a change. The renewal process works quite well as it now operates. Second, given the considerable volume of renewal applications that are filed annually, inclusion of a comprehensive substantial service requirement would present at least two genuine risks. First, if the Commission were to review all such submissions carefully, such review would completely overwhelm the Commission's staff. In the alternative, if renewal applications were granted without substantial review of such submissions, it would create problems due to applicants appropriately relying on submissions that had previously been

associated with other, granted applications, only to later learn of possible failings with them. Among other things, this could result in issues of the type of disparate treatment that reviewing courts have frowned upon in Melody Music and its progeny. Any broadening of applicability of the substantial service standard would also add considerably to licensee workload. Notably, there would be no meaningful counterbalancing benefit to any of the considerable costs noted above.⁶

G. The Commission Should Establish Uniform Fifteen Year Terms for All 700 MHz Licenses

The current license term limits are unnecessarily complex and were developed when there was little overlap between service offerings. Today's IP based digital networks make it increasingly difficult to differentiate between types of applications being transmitted on the same network. Video, voice and data are all compressed into bits and bytes and transmitted over the same frequencies. As a result, the same network could be used for broadcasting, voice and data services. Thus, with the advent of digital compression, it becomes impractical to differentiate between different types of service offerings in determining term limits.

When existing terms were set, genuine questions existed with respect to whether, and if so when, broadcasters would vacate the new wireless spectrum. Further questions existed regarding how the provision of various different services would be impacted by the DTV transition. Such uncertainty resulted in there being different license terms for the same class of licenses.

⁶ As a result, such regulation could well violate the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 603 by presenting unwarranted burden on small businesses.

With the passage of time, the ambiguities that warranted such disparate licensing remain no longer. Thus, there is no need for licenses to expire at one date if permissible broadcasting services are provided, but upon a different date if more traditional wireless offerings are provided. Nor is there any justification for providing for different license terms depending on which auction in which the licenses at issue were obtained. Rather, all 700 MHz licenses, whether new or existing, should be provided fifteen-year terms. Among other things, this will reduce confusion in the industry and obviate any need to address issues such as what happens to license terms if broadcasting services are provided, and then terminated.

H. 700 MHz Licensees Should Be Governed By the Same Power Measurement Mechanisms That the Commission Adopts in WT Docket No. 03-264.

In WT Docket No. 03-264 (the 2002 Biannual Review), the Commission is considering how most appropriately to calculate permissible power in this era of multiple bandwidth and operating techniques. In that proceeding a clear consensus position within the wireless industry has emerged. The consensus view is that the Commission should revise its rules so that wideband operations not be penalized by virtue of more narrow bandwidth operations being permitted to operate at a higher spectrum density than those with wider bandwidths. By an ex parte submission of July 18, 2006, Aloha voiced its support of that proposal and demonstrated why it is both equitable and can be provided without any risk of interference. Here, Aloha confirms that 700 MHz should be subject to the same approach to measuring power levels as the other frequency bands.

I. With Regards to E-911 Obligations, the Commission Should Treat 700 MHz Licensees the Same Way it Treats Other Wireless Licensees.

There is nothing peculiar about 700 MHz spectrum that warrants unique treatment with respect to E911 matters. Rather, it is the services to be provided that are most important here, and 700 MHz licensees should be subject to the same (no less, and no more) E-911 requirements as other licensees providing services where E-911 obligations exist.

J. The Commission Should Not Coerce Licensees to Negotiate Lease Arrangements of Partitioning of Disaggregation Agreements.

Aloha applauds the Commission for inquiring as to whether it should “encourage” 700 MHz licensees to negotiate with potential lessees, but urges the Commission not to open what promises only to be a very complex can of worms that offers no material public interest benefit. Initially, we note that spectrum leasing does not constitute the type of facilities based operations that the Act intended when it authorized auctions – and that only months ago the Commission recognized this very point. See Second Report and Order in WT Docket No. 05-211, 21 FCC Rcd 4753 (2006) and Order on Reconsideration in WT Docket No. 05-211, 21 FCC Rcd 6703 (2006). Aloha also reminds the Commission that its overall leasing program remains in an infant stage without any proven track record of success. But even more fundamentally, it is not the government’s role, absent harsh need not here present, to require private parties to negotiate spectrum usage agreements. This is particularly the case as the Commission has been so successful in making available more spectrum for public use, and is wholly consistent with Commission rulings that reduce (or eliminate) resale and roaming agreements.

All of the problems, and absence of benefits, inherent in any form of mandating leasing arrangements are equally applicable to any form of mandatory partitioning or disaggregation. Thus, Aloha urges that all three of these tentative proposals be abandoned immediately.

III. CONCLUSION

Spectrum allocations, market sizes and auction processes are not simple matters. The Commission astutely arrived at arrangements that work, most recently in its AWS auction, and before that in its Rural Wireless Order. Chief among the keys to success has been the offering of varying market sizes in a single auction. Such offerings facilitate service to rural and sparsely populated areas, provide for meaningful participation by small businesses and potentially increase auction proceeds. The Commission should thus implement a similar plan as it did in the AWS auction for the upcoming 700 MHz auction scheduled for January 2008. Specifically, in that auction the Commission should allocate at least 12 MHz for licensing on a CMA basis, and at least 12 MHz for licensing on a BEA basis.

Respectfully Submitted,

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