

**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

**JOINT COMMENTS
OF
CONSUMER FEDERATION OF AMERICA,
CONSUMERS UNION
AND
FREE PRESS**

Consumer Federation of America, Consumers Union and Free Press (collectively, “Joint Commenters”), respectfully submit these Joint Comments in response to the “Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making, FCC 06-114, (“Notice” or “NPRM”) released August 10, 2006 by the Federal Communications Commission (“FCC” or Commission”).

I. Statement of Interest

The Consumer Federation of America is an advocacy, research, education and service organization established in 1968. CFA has as its members some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people. As an advocacy group, CFA works to advance pro-consumer policy on a

variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts.

Consumers Union, the publisher of Consumer Reports® is an independent, nonprofit testing and information organization serving only consumers. CU does advocacy work from four offices in New York, Washington, San Francisco, and Austin. CU's public policy staff addresses a broad range of telecommunications, media and other policy issues affecting consumers at the regional, national and international level. CU staff members frequently testify before Federal and state legislative and regulatory bodies and participate in rulemaking activities at the Commission and elsewhere.

Free Press is a national nonpartisan organization working to increase informed public participation in crucial media policy debates, and to generate policies that will produce a more competitive and public interest-oriented media system with a strong nonprofit and non-commercial sector.

CFA, CU and Free Press view the upcoming auction of 700 MHz spectrum as a last, best chance for the Commission to provide a meaningful opportunity for new entrants to acquire directly the prime licensed spectrum they will need to bring much-needed broadband service to rural and other underserved areas, and to compete with the handful of large national companies that currently dominate the wireless industry. The regulatory framework for auctioning the remaining frequencies in the 700 MHz band should be one that addresses, and finally resolves, the concerns that designated entities, rural companies and other prospective new entrants have repeatedly expressed regarding access to licensed spectrum.

II. Discussion

a. The Scope of the NPRM

The Commission raises many questions, but advances virtually no “proposals” – or even tentative conclusions -- with respect to many important issues. The Commission seeks comments on a wide range of issues including license area size (paragraphs 27-48), band plan (paragraphs 49-59), performance requirements (paragraphs 60-79), renewal criteria (paragraphs 80-83), length of license terms (paragraphs 84-89) and power limits (paragraphs 90-98). Only in two relatively discrete areas (911/E911 and hearing aid-compatibility, at paragraphs 99-106) does the Commission reach tentative conclusions.

Although the NPRM is broad in its scope, it ignores several issues of vital importance to all new entrants, including designated entities (DEs), hoping to acquire and make productive use of 700 MHz spectrum. As in its earlier auction proceedings, the Commission has issued a Notice seeking comment on spectrum and license-related issues, but leaves auction design and bidder eligibility issues to be addressed in a future proceeding. The fundamental flaw in this sequential approach is obvious. These issues are inextricably intertwined. Decisions made in this proceeding can be effectively nullified in the next. At the end of the day, the size of geographic licensing areas is irrelevant *unless* the Commission adopts appropriate performance measures in *this* proceeding and also, in the *subsequent* proceeding, prohibits the current handful of giant companies which already control enormous amounts of wireless spectrum from acquiring licenses, either directly or via investments in sham DE partnerships.

b. Comments on Specific Issues

i. Band Plan and License Areas

Joint Commenters submit that, other factors being equal, selection of a band plan and designation of license areas should both be based on the principle “small is beautiful.” Large license areas and very large spectrum blocks equate to higher spectrum acquisition costs and inhibit auction participation by prospective bidders who desire to serve rural and other underserved areas.

There is a desperate need for broadband service in many rural and low-income areas not served by either DSL or cable.¹ The United States continues to languish in 16th place worldwide in broadband penetration, due in large measure to the persistent digital divide. A recent report entitled *Broadband Reality Check II: The Truth Behind America’s Digital Decline*² (“BBRC2”) found that the most important factors contributing to low broadband penetration are household income and poverty; that nearly one in ten households has no access to any broadband service provider; and that the penetration rate of broadband services among farm households is roughly half the penetration rate of households nationwide. In addition, BBRC2 found that it is the price of broadband service, and not necessarily the lack of a home computer, that is the key barrier to broadband adoption by low-income households.

The auction of the remaining 700 MHz spectrum provides the Commission with an opportunity to pave the way for a wireless alternative to DSL and cable, the long-sought-after “third pipe” into the home that will drive down prices in areas where

¹ See, e.g., “Rural Areas Left in Slow Lane of High-Speed Data Highway”, New York Times, September 28, 2006.

² <http://www.freepress.net/docs/bbrc2-final.pdf>

wireline competitors exist and provide service in areas where it has been unavailable. The adoption of a band plan with relatively small license areas and spectrum blocks is a necessary first step in this direction.

Although a simultaneous multiple round auction with many licenses to be awarded does increase the administrative burden on the Commission, this should not be the deciding factor. By now, the Commission has amassed sufficient experience and expertise to be able to handle an auction involving a substantial number of licenses to be awarded for relatively small (e.g., Cellular Market Area or CMA) territories.

Joint Commenters do not recommend that the Commission place substantial reliance on the alternative means of acquiring spectrum, through post-auction partitioning and disaggregation. In the secondary market, prospective new entrants often find themselves at the mercy of license holders, particularly those who already offer service in the same territory, who exhibit an “unwillingness to divide spectrum and service areas.” Whether this “unwillingness” is due to legitimate financial considerations or a manifestation of a desire to engage in “spectrum warehousing” to forestall competition, the result is the same: denial of access to spectrum in the secondary market. For this reason, the Commission should adopt a band plan and license areas that provide reasonable opportunities for DEs and other new entrants to acquire licenses directly at auction.

ii. License Term, Performance Requirements and Transferability

Joint Commenters believe that the Commission, in establishing the initial license term, performance requirements and transfer restrictions, must take care to strike an appropriate balance. A term that is too short, especially when combined with stringent

performance requirements and substantial restrictions on license transfer may prevent prospective new entrants from attracting needed capital. We look forward to reading the comments of other parties on these issues. The Commission must adopt transfer restrictions that prevent large wireless carriers from using “sham” DEs to obtain spectrum at a discount, without unnecessarily preventing license transfers for legitimate business reasons. With regard to performance requirements, there is no obvious winner among the approaches the Commission has employed in the past, including “substantial service” requirements, construction milestones and “keep what you use” rules. Here, too, we look forward to reading the comments of other parties, particularly those interested in serving rural or isolated communities or other underserved areas. One possibility that comes to mind is the application of population density or income weighting to performance measures, giving “extra credit” to licensees demonstrating coverage of sparsely populated or low income areas within the overall license territory.

III. CONCLUSION

Joint Commenters, representing the interests of consumers nationwide, respectfully request that the Commission give careful consideration to the views expressed in these Initial Comments as it develops rules and policies for the licensing of the remaining 700 MHz spectrum. In particular, the Commission should remain mindful of the interaction between the licensing and service rules it adopts in this proceeding and the auction eligibility and bidding rules. Unless the Commission implements anonymous bidding and other safeguards against bid signaling and the use of “sham” DE partnerships, any measures it takes in this proceeding to pave the way for new entrants may be for naught.

Respectfully submitted,

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