

**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 AT&T INC.

James J. R. Talbot
Gary L. Phillips
Paul K. Mancini

Attorneys for
AT&T Inc.
1120 20th Street, NW
Washington, D.C. 20036
(202) 457-3048 (phone)
(832) 213-0300 (fax)

October 5, 2006

TABLE OF CONTENTS

	Page
Summary and Introduction	1
I. The Commission should continue to license 700 MHz Spectrum based on EAG service Areas to Encourage the Rapid Deployment of New Services and Optimize Consumer Benefits	3
1. The Commission Has Found Significant Benefits from Licensing Upper 700 MHz Band Spectrum Based on EAGs	4
2. EAGs Continue to Provide Major Advantages over Smaller License Areas	6
3. The Commission’s Existing Secondary Market Policies Will Facilitate Deployment in Rural Areas and Additional Requirements Are Unnecessary	10
II. The Commission Should Not Reduce Power Limits	11
III. The Commission Should Not Increase Performance Requirements for Unauctioned 700 MHz Spectrum	12
Conclusion	16

**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 AT&T INC.

AT&T Inc., on behalf of its affiliates, (“AT&T”) hereby submits the following comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.¹

SUMMARY AND INTRODUCTION

To ensure that U.S. consumers receive the greatest benefits from the wide range of existing and potential next generation applications and services that may be provided over the 700 MHz Band, the Commission should employ licensing rules that will best promote optimal usage of this spectrum and the rapid, nationwide deployment of new services. The Commission has previously affirmed its reliance on “market forces [to] assign this spectrum to its highest valued use and thereby determine the ultimate use of the [700 MHz] band,” and should continue to follow this approach in considering possible adjustments to the existing 700 MHz Band

licensing rules in light of the acceleration of the DTV transition.² Notably, in furtherance of this market-based approach, the Commission should maintain the Economic Area Grouping (EAG) license areas, which the Commission has found are “the most efficiently sized geographic areas” for 700 MHz Band spectrum licensing.³ The use of EAG license areas, complemented by market-based secondary market arrangements, will ensure optimal development and deployment of new services using this spectrum in all geographic areas.

The Commission also should retain its other market-based licensing rules and policies for this spectrum and, in particular, should not mandate that licensees engage in negotiations for partitioning, disaggregation and leasing arrangements or increase licensee build-out obligations through more onerous performance requirements or a “keep what you use” approach. Imposing such new and burdensome regulations would increase provider costs and discourage investment in new services for consumers, contrary to the Commission’s goal to foster the development and sustainable nationwide deployment of new infrastructure and services over 700 MHz Band spectrum.

(Footnote continued from previous page)

¹ Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, FCC 06-114 (rel. Aug. 10, 2006) (“Notice”).

² *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, 1025 ¶ 65 (2002) (“Lower 700 MHz Band Order”). *See also id.*, ¶ 70.

³ *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, First Report and Order, 15 FCC Rcd. 476, ¶ 57 (2000) (“Upper 700 MHz Band Order”).

I. THE COMMISSION SHOULD CONTINUE TO LICENSE 700 MHZ SPECTRUM BASED ON EAG SERVICE AREAS TO ENCOURAGE THE RAPID DEPLOYMENT OF NEW SERVICES AND OPTIMIZE CONSUMER BENEFITS

The Commission established its existing EAG license areas for 700 MHz Band spectrum based primarily on its findings that the efficiencies associated with large license areas would provide the greatest opportunity for the development and rapid deployment of a wide variety of new services to benefit U.S. consumers. To optimize the potential consumer benefits from commercial use of this spectrum, the Commission should continue to rely on market forces to assign this spectrum to its highest value by using the more efficient EAG license service areas rather than the smaller areas suggested by the Notice (¶ 35).

The Commission's rationale for licensing 700 MHz Band spectrum based on EAGs provides compelling support for the continued use of these license areas. As described below, EAGs continue to provide significant advantages over the smaller license areas advocated by rural carriers and would best achieve the statutory objectives of promoting "the development and rapid deployment of new technologies, products and services," including to rural areas, in addition to "promoting economic opportunity and competition" and "efficient and intensive" spectrum usage.⁴ In the recently concluded AWS auction, licenses covering larger geographic areas brought significantly higher MHzPop values, on average, than licenses covering smaller geographic areas.⁵ The significant differential demonstrates that EAG-licensed service areas are the most valued and thus are the ones most likely to be built-out and used.

⁴ 47 U.S.C. Sect. 309(j)(3).

⁵ The higher potential auction values for large 700 MHz Band geographic license areas is indicated by the higher average prices for larger license area spectrum in the recently concluded AWS auction. See BIA Financial Network, Analysis of Auction 66, Sept. 26, 2006 (showing weighted average prices of \$0.66 per MHzPop for Regional Economic Area Grouping (REAG) licenses, \$0.46 per MHzPop for Economic Area (EA) licenses, and \$0.40 per MHzPop for CMA licenses).

1. The Commission Has Found Significant Benefits from Licensing Upper 700 MHz Band Spectrum Based on EAGs

As the Commission noted in establishing the existing Upper 700 MHz Band licensing rules, these spectrum bands may be used to deploy a wide range of broadband services, both fixed and mobile, including high speed Internet access, next generation, high speed mobile services and new “broadcast-type” services.⁶ The Commission accordingly established “flexible service rules to enable the most efficient and intensive use of this spectrum” and similarly established Lower 700 MHz Band licensing rules allowing “a multitude” of potential uses “that the market may demand.”⁷ The Commission’s intent, as emphasized in the Lower 700 MHz Band Order, was “that market forces assign this spectrum to its highest valued use and thereby determine the ultimate use of the band.”⁸

Consistent with this market-based approach, the Commission determined that “the best approach” was “to attempt to determine as a starting point the most efficiently sized geographic areas” for Upper 700 MHz Band spectrum licensing.⁹ Based on its analysis, the Commission found that EAGs would best promote the rapid deployment of new technologies, products and services.¹⁰ “[T]he overall advantages of larger sized areas for this band” include “optimum opportunity for alternative aggregation approaches” to suit different business plans, including building a national footprint or providing service on a regional basis; fostering the growth of existing technologies and the development of new applications; and benefiting from economies

⁶ *Id.*, ¶ 4.

⁷ Lower 700 MHz Band Order, ¶ 70.

⁸ *Id.*, ¶ 65. *See also id.*, ¶ 70.

⁹ Upper 700 MHz Band Order, ¶ 57.

¹⁰ *Id.*

of scale in protocol development and the manufacturing of equipment to operate at the frequencies of this spectrum.¹¹

Similarly, in establishing Lower 700 MHz Band service rules, the Commission determined that EAGs allow flexibility and opportunity for a wide variety of different potential uses of this spectrum by allowing providers to achieve economies of scale and to build nationwide service, while also serving the needs of providers with regional interests.¹² For these reasons, the Commission adopted EAG license areas for four out of five Lower 700 MHz Band spectrum blocks, although most commenters in that proceeding requested much smaller areas.¹³

A key consideration for the Commission was its finding that EAGs were more readily aggregated or disaggregated than other proposed license areas. The Commission emphasized that EAGs “readily allow aggregation into a nationwide service area” by new providers or existing carriers, and would “enable multiple parties to bid on this spectrum.”¹⁴ Additionally, unlike the nationwide licenses advocated by a number of commenters in the Upper 700 MHz Band proceeding, EAGs would “more easily allow partitioning where appropriate to serve the needs of small users and rural communities.”¹⁵ The use of EAGs for all licenses thus provided “maximum flexibility to the parties to adjust their operating area most efficiently given marketplace and technological needs.”¹⁶

¹¹ *Id.*, ¶ 59.

¹² Lower 700 MHz Band Order, ¶¶ 93-94. *See also, id.*, ¶ 90 (“Such large areas can provide economies of scale to offer new technologies. This approach is consistent with the belief, expressed in the Spectrum Reallocation Policy Statement, that the Lower 700 MHz Band ‘can be used to make a variety of new technologies and services available to the American public.’”)

¹³ *Id.*, ¶¶ 88, 94.

¹⁴ Upper 700 MHz Band Order, ¶ 60.

¹⁵ *Id.*, ¶ 61.

¹⁶ *Id.* *See also*, Lower 700 MHz Band Order, ¶ 94 (“EAGs are easier to partition than

2. EAGs Continue to Provide Major Advantages over Smaller License Areas

For similar reasons, EAGs remain the optimal geographic service area sizes for unauctioned 700 MHz Band spectrum. The use of six EAG geographic licensing areas facilitates the development of national footprints by avoiding the transaction costs and significant uncertainty over whether smaller license areas can be aggregated to provide regional or national service. EAGs accordingly promote increased competition among both nationwide and regional providers of services over 700 MHz Band spectrum and thereby optimize the benefits for consumers.

As the Commission found in establishing the present rules based on these license areas, larger sized license areas allow the achievement of greater efficiencies than smaller areas, and thus encourage the rapid development and deployment of new services.¹⁷ Similarly, the Commission has more recently affirmed that “larger areas may be more effective than smaller areas where spectrum use is to be transitioned to new services” and “may result in a quicker and more successful transition throughout the nation and thus enable the development and deployment of new services.”¹⁸

Large geographic service areas continue to provide greater opportunities for efficiencies allowing more rapid, large scale deployment of new services. The potential drawbacks of

(Footnote continued from previous page)

nationwide licenses” and “aggregating EAGs into nationwide areas is an administratively straightforward process”).

¹⁷ As noted earlier, this fact was demonstrated by the higher per-pop values achieved for EAG licenses in the recent AWS auction.

¹⁸ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities For Rural Telephone Companies to Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, WT Dkt. No. 02-381, 19 FCC Rcd. 19,078, ¶ 23 (2004) (“Rural Report and Order”).

reliance on smaller license areas to ensure adequate development and deployment of new mobile broadband services are highlighted by the difficulties often faced by roaming wireless customers today. The Commission has found that “in many cases a consumer who is roaming on another carrier’s network does not have access to the full range of features offered by the consumer’s own carrier and supported by the handset the consumer is carrying.”¹⁹

Large geographic service areas also provide opportunities for efficiencies in protocol development and equipment manufacture that are particularly important to the development of new mobile broadband services.²⁰ Since prospective technology suppliers require the prospect of high volume markets to invest scarce resources in research and development for new equipment and services, the use of a multitude of smaller license areas with differing business plans and services is likely to slow, or perhaps reduce, potential supplier investment in the development of new services, handsets and other equipment to exploit the full potential benefits of this spectrum.

Savings in roaming costs are a further significant benefit of large service areas for mobile services. As the Commission has noted, service provided over owned facilities is usually less costly than through roaming agreements, “generating marginal cost reductions that, in a competitive marketplace, are likely to benefit consumers through lower price[s] and/or increased service[s].”²¹ Indeed, the Commission has repeatedly noted the consumer benefits resulting from “expanded footprints for nationwide [wireless] carriers,” which allow the provision of “competitive service to more consumers across the country,” and “enhanced services and/or

¹⁹ *Applications of AT&T Wireless Service, Inc. and Cingular Wireless Corp.*, Memorandum, Opinion and Order, FCC 04-255, 19 FCC Rcd. 21,522, ¶ 219 (2004) (“AT&T Wireless Cingular Order”).

²⁰ Upper 700 MHz Band Order, ¶ 59; Lower 700 MHz Band Order, ¶ 91 (“[l]arge areas can provide economies of scale to offer new technologies”).

²¹ AT&T Wireless/Cingular Order, ¶ 219.

lower prices because of factors such as the wider area in which the carrier's full handset functionality is operative and the carrier's lessened reliance on roaming agreements to fill out coverage."²²

As the result of such efficiencies, and the intense competition among CMRS providers, national wireless carriers have led the introduction of innovative, low-priced, nationwide wireless pricing plans that have increased U.S. wireless call usage to the highest level of any country in the world.²³ Likewise, the highly competitive nature of the broadband marketplace will ensure that efficiency benefits resulting from the use of large 700 MHz spectrum licensing areas are rapidly passed through to consumers of the next generation services provided over this spectrum.²⁴

²² *Id.*, ¶ 217.

²³ See *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 Dkt. No. 06-17, ¶¶ 2, 88 (rel. Sept. 29, 2006) ("Eleventh CMRS Report") (finding "effective competition in the CMRS marketplace" and that "CMRS providers are competing effectively in rural areas") & ¶ 192 ("The United States widened its lead in mobile voice usage in 2005, with average MOUs estimated to be approximately 798 per month in the fourth quarter of 2005. This compares to an average across Western Europe of 142.6 MOUs"). See also, *id.*, ¶ 133 ("carriers continue to pursue marketing strategies designed to differentiate their brand from rival offerings based on dimensions of service quality, such as superior network coverage, reliability and voice quality"); AT&T Wireless/Cingular Order, ¶ 161 ("it is the nationwide carriers, rather than regional carriers, that have taken the lead in introducing innovations in national plans such as national single-rate pricing plans, free night and weekend minutes, and free mobile-to-mobile calling.").

²⁴ Commission data show increased nationwide deployment of broadband services. High speed services were available in 88 percent of zipcodes with the lowest population densities in December 2005 – the most recent period covered by Commission data – up from 43 percent of zipcodes with the lowest population densities four years earlier. See *High-Speed Services for Internet Access: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, Jul. 2006, Table 18. Indeed, 99 percent of all zipcodes have at least one high speed provider, and 83 percent of zipcodes have three or more high speed providers. *Id.*, Table 17.

Importantly, consumers in rural areas will also benefit from the greater potential efficiencies fostered by the use of service areas based on EAGs. The improved propagation characteristics of 700 MHz spectrum providing greater geographic coverage will facilitate the broad deployment of new services using this spectrum, and market incentives will ensure that licensees will seek to serve every potential consumer as soon as it is economically feasible to do so. Thus, there is no basis to claims that the further allocation of 700 MHz spectrum to small market areas is essential to rural broadband deployment. To the contrary, service areas based on EAGs are more likely to provide the market scope and scale to encourage sustainable deployment in all geographic areas. As the Commission noted in establishing EAG service areas for this spectrum, the use of “inefficiently small” license areas would impose aggregation costs that “may harm both service providers and customers alike.”²⁵ Indeed, it is likely that the economics of deploying service in rural areas has played a much larger role in any lack of rural broadband service than the costs of acquiring the necessary spectrum, especially given the Commission’s Secondary Market initiatives and incentives to deploy in rural areas.

Moreover, the Commission already has licensed the Lower 700 MHz Band C Block under MSAs and RSAs specifically to accommodate the requests in the Lower 700 MHz Band proceeding for the use of smaller geographic areas.²⁶ Small business entities won more than five hundred licenses in the auctions for this Lower 700 MHz Band spectrum held in 2002 and 2003.²⁷ There are also numerous other options available today for the provision of fixed and mobile broadband services in rural areas, including use of wireless broadband services using unlicensed 900 MHz, 2.4 GHz and 5.8 GHz spectrum in rural areas. The Advanced Wireless

²⁵ Upper 700 MHz Band Order, ¶ 59.

²⁶ Lower 700 MHz Band Order, ¶ 96.

Services (AWS) auction for 1.7 GHz and 2.1 GHz Band spectrum also has made available additional spectrum capable of providing fixed and mobile broadband Internet access and other high speed information and entertainment services in smaller geographic areas comprising both RSA/MSAs and Economic Areas (EAs).²⁸ Small business entities comprised “[m]ore than half of the winning bidders” in this recently-completed auction.²⁹

To provide U.S. consumers the benefits of large service areas in promoting the development and rapid large scale deployment of next generation services over the 700 MHz Band, and to avoid aggregation costs and other inefficiencies that would limit optimal usage, the Commission should maintain the use of EAGs for the unauctioned blocks of this spectrum.

3. The Commission’s Existing Secondary Market Policies Will Facilitate Deployment in Rural Areas and Additional Requirements Are Unnecessary

The market-based incentives created by secondary markets encourage the most efficient usage of licensed spectrum in all geographic areas, including rural areas. As described by the Notice (¶ 70), the partitioning of geographic area licenses and disaggregation of spectrum permitted by the licensing rules for this band, together with the availability of spectrum leasing arrangements, stimulate efficient spectrum usage by facilitating the leasing or transfer of spectrum to providers with higher value uses. These policies not only ensure that providers failing to make maximum potential usage of their licensed spectrum face a significant

(Footnote continued from previous page)

²⁷ Notice, Appendix, ¶ 14.

²⁸ *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, WT Dkt. No. 02-353, ¶ 20 (rel. Aug. 15, 2005) (“AWS Reconsideration Order”) (establishing license areas for 20 megahertz on an RSA/MSA basis and 30 megahertz on an EA basis).

²⁹ FCC News Release, *FCC’s Advanced Wireless Services (AWS) Spectrum Auction Concludes*, Sept. 18, 2006.

opportunity cost, but also serve the interests of smaller providers able to use this spectrum more efficiently.³⁰ These partitioning, disaggregation and leasing arrangements provide a highly flexible market mechanism allowing providers to tailor the sizes of their geographic market areas in accordance with their particular services and capabilities.

However, the Commission should not undermine this flexible, market-based approach to geographic area re-sizing by *mandating* that licensees make “good faith” efforts to negotiate with potential spectrum lessees, or by requiring licensees to establish contact with or communicate with all interested parties, as suggested by the Notice (¶ 71). Any such regulation would, at a minimum, add unnecessary cost and delay to these transactions and would also likely further burden licensees (and the Commission), such as by encouraging requests for further Commission intervention in these commercial negotiations in support of efforts to obtain access to this spectrum at below-market prices.

II. THE COMMISSION SHOULD NOT REDUCE POWER LIMITS

To avoid limiting opportunities for potential new services over 700 MHz spectrum, the Commission should not reduce existing power limits for this band. In particular, the Commission should not restrict the broad scope of potential new services permitted by the higher power limit for the Lower 700 MHz Band by reducing this limit, as suggested by the Notice (¶ 95). The Commission established the higher maximum power limit of 50 kW ERP for the Lower 700 MHz Band with the specific purpose of promoting maximum flexibility in the development and deployment of new services and emphasized that “such a power limit will produce the most

³⁰ See e.g., *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities For Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Proposed Rulemaking, WT Dkt. No. 02-381, 18 FCC Rcd. 28802, ¶ 66 (2003) (“over 60 percent of all counties in the broadband PCS service have been partitioned at least once” and 72 percent of partitioned broadband PCS countries have “population density of 100 persons per square mile

efficient use of this spectrum resource.”³¹ This existing limit will maximize the potential scope of potential new services requiring the higher power limit in the Lower 700 MHz Band, including new video and entertainment services, and raises no potential issues regarding possible interference with public safety spectrum.³² The Commission, therefore, should continue to promote efficient usage of this spectrum and optimize consumer benefits by maintaining this existing limit.

The Commission also should consider increasing power limits in rural areas, in order to assist the provision of service those areas, particularly for the Upper 700 MHz Band, similar to the higher power limits for rural areas now permitted for cellular, PCS and AWS services.³³

III. THE COMMISSION SHOULD NOT INCREASE PERFORMANCE REQUIREMENTS FOR UNAUKTIONED 700 MHZ SPECTRUM

The Commission also should avoid establishing rigid performance requirements for 700 MHz Band licensees that would impose unnecessary costs and require the uneconomic provision of services. In particular, the stricter performance standards described by the Notice (¶¶ 64-68) would limit investment and the development of new services to bring consumers the full potential benefits of this spectrum. The Commission instead should continue to apply the existing “substantial service” standard to provide assurance of spectrum use. That standard, allows licensees greater flexibility to develop and deploy the wide range of new services that

(Footnote continued from previous page)

or less”).

³¹ Lower 700 MHz Band Order, ¶ 103.

³² *Id.*

³³ Rural Report and Order, ¶ 86.

may be delivered over this spectrum in an economically viable manner in accordance with their unique business plans and market demands.³⁴

The Commission highlighted the importance of a flexible performance standard to optimize usage of the 700 MHz Band in adopting this existing requirement. As the Commission found, the “substantial service” standard provides “flexibility to offer the full range of services under the allocations table and accommodate new and innovative technologies” in compliance with the performance requirement obligations of Section 309(j)(4)(B) of the Act.³⁵ In applying the same build-out standard to the Lower 700 MHz Band “to accommodate the new and innovative services that are permitted,” the Commission rejected claims by rural carriers that stricter performance requirements were required for this spectrum to increase build-out in rural areas.³⁶

The Commission should again reject such arguments in this proceeding and should continue to encourage optimal 700 MHz spectrum usage through the greater flexibility afforded by the existing Part 27 substantial service. As described above, market incentives will ensure that 700 MHz Band licensees seek to serve every potential customer in all geographic areas as soon as economically feasible, regardless of FCC build-out requirements, and the propagation qualities of this spectrum will further encourage broad deployment. The existing substantial service “rural safe harbors” also provide further incentives for rural deployment. However, the

³⁴ Under current safe harbors, construction of four links per million population is deemed to comprise substantial service for fixed point to point service and coverage of 20 percent of the service area population is deemed to comprise substantial service for mobile and fixed point to multipoint service. *See* Notice, ¶ 16. Under the additional “rural safe harbors” established in 2004, mobile wireless service coverage of at least 75 percent of the geographic area of at least 20 percent of the rural areas within each license area also fulfills the substantial service requirement. Rural Report and Order, ¶ 79.

³⁵ Upper 700 MHz Band Order, ¶ 70.

adoption of stricter performance standards requiring 700 MHz Band licensees to engage in uneconomic service deployment inevitably will raise costs and limit incentives to invest in and develop this spectrum, and will thus reduce the utility and value of this band for providers and customers alike. In particular, the Commission should not adopt the stricter construction benchmarks or “keep what you use” approaches described by the Notice (¶¶ 64-68), which would limit provider flexibility and impede the effectiveness of the Commission’s market-based approach to encourage the highest valued uses of this spectrum.³⁷

As the Notice recognizes (¶ 65), more extensive population-based construction benchmarks may have the counter-productive effect of discouraging construction in rural areas by leading to multiple provider coverage of the same heavily-populated areas rather than increased rural build-out. Similarly, the Commission has previously acknowledged that “keep what you use” forfeiture requirements for unused spectrum may “yield certain unintended and potentially detrimental consequences,” such as “chill[ing] investment,” encouraging “uneconomic construction,” the imposition of “numerous legal and administrative costs,” and the loss of secondary market spectrum leasing opportunities.³⁸ Any such requirement would likely lead to rural deployment that could not be justified by demand and bring lesser service and higher prices for all.

A “triggered keep what you use approach” also would likely have counter-productive

(Footnote continued from previous page)

³⁶ Lower 700 MHz Band Order, ¶¶ 148, 150.

³⁷ The adoption of stricter performance requirements for the unauctioned 700 MHz Band spectrum also would treat these new licensees more onerously than AWS and WCS broadband licensees, which are also subject to the Part 27 substantial service standard. *See* 47 C.F.R. Sect. 24.14

³⁸ Rural Report and Order, ¶ 153.

results, such as by encouraging deployment to protect more valuable areas of high demand rather than rural build-out.³⁹ Further, all such requirements for the forfeiture of unused spectrum would undermine the Commission's secondary market policies by providing incentives for prospective spectrum lessees to seek to obtain spectrum through re-licensing rather than by negotiating market-based partitioning, disaggregation or leasing arrangements.

The Commission accordingly should maintain the substantial service performance standard for unauctioned 700 MHz Band spectrum and also should continue the existing renewal expectancies for licensees that provide substantial service within the license term, and comply with the Communications Act and applicable Commission rules and policies.⁴⁰ Notice, ¶ 80. The continuation of this existing renewal expectancy based on the fulfillment of performance standards will promote investment and the development of new services and will provide new licensees of this spectrum the same renewal expectancy already possessed by other Part 27 licensees, including licensees of previously-auctioned 700 MHz Band spectrum.

To provide additional certainty in order to stimulate investment and the development of new services using this spectrum, the Commission should license 700 MHz spectrum based on 15-year initial license terms similar to those adopted for AWS licenses.⁴¹ The Commission determined that 15-year license terms would promote the development and deployment of advanced wireless networks over AWS spectrum by providing investors "necessary assurances"

³⁹ A further major difficulty would be defining "use" for this purpose. Notice, ¶ 69. As the Commission has previously recognized, the "specific usage definitions" that would be an integral part of "keep what you use" regulation are not only "difficult to devise" but "may be neither practical nor desirable as a means of promoting the rapid deployment of new services, including broadband applications." Rural Report and Order, ¶ 156, n.470. *See also, id.* (specific usage definitions may also "discourage[e] the development of spectrally efficient equipment and applications").

⁴⁰ 47 C.F.R. Sect. 27.14.

of sufficient time to recover development costs.⁴² Similarly here, the Commission should establish initial license terms of 15 years, followed by 10-year renewal terms, to increase incentives for investment in next generation networks, services and applications to provide the full potential benefits of this new commercial spectrum to consumers.

In addition, AT&T supports the application of 911/E911 and hearing aid-compatibility requirements to services provided over 700 MHz spectrum meeting the requirements for such treatment, including the provision of two-way voice services interconnected to the public switched network, as the Commission tentatively concludes in the Notice (§ 99).

CONCLUSION

For the foregoing reasons, in order to optimize the benefits to U.S. consumers from existing and potential next generation services through commercial use of this spectrum, the Commission should license unauctioned 700 MHz Band spectrum based on the existing EAG service areas. To encourage the development and deployment of new services using this spectrum, the Commission also should continue its other market-based rules and policies, and should not mandate secondary market negotiations or establish stricter performance standards. The Commission also should license this spectrum for initial terms of 15 years and should apply 911/E911 and hearing aid-compatibility requirements to services provided over this spectrum meeting the requirements for such treatment.

(Footnote continued from previous page)

⁴¹ *Id.*, Sect. 27.13(g).

⁴² *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd. 25162, ¶ 70 (2003)

Respectfully submitted,

By: /s/ James J. R. Talbot

James J. R. Talbot
Gary L. Phillips
Paul K. Mancini

Attorneys for
AT&T Inc.
1120 20th Street, NW
Washington, D.C. 20036
(202) 457-3048 (phone)
(832) 213-0300 (fax)

Dated: October 5, 2006.