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

In the Matter of)
)
Service Rules for the 698-746, 747-762 and 777-) WT Docket No. 06-150
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 CINGULAR WIRELESS LLC

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October 5, 2006

SUMMARY

Cingular Wireless LLC (“Cingular”) supports retention of the existing 700 MHz band plan which utilizes Economic Area Groupings (“EAGs”) as the service area for unauctioned spectrum in the Upper and Lower 700 MHz bands. The Commission determined that EAGs should be utilized because:

- They provide “optimum opportunity for alternative aggregation approaches to suit a wide variety of services and business plans”;
- Smaller service areas would invariably create inefficient aggregation costs in terms of delay and transaction costs;
- They were best-suited to allow licensees to take advantage of economies of scale for developing standard protocols and equipment;
- They would achieve the statutory objective of avoiding excessive concentration of licenses;
- Smaller service areas would pose problems associated with protecting incumbent TV operators from interference; and
- EAGs would facilitate an expeditious auction.

The rationale for utilizing EAGs remains sound.

At the behest of a few parties, the FCC seeks to revisit this issue to determine whether Cellular Market Areas (“CMAs”) should replace EAGs in order to facilitate service to rural areas. The Commission has rejected the use of CMAs, however, as the service area for most new services. Moreover, the Commission already has allocated nearly 15% of the commercial portion of the 700 MHz band for licensing on a CMA basis to address rural concerns. CMAs also were utilized to award 20 MHz of AWS spectrum. The Commission previously cautioned against awarding licenses to rural areas without first determining whether such action is economically viable: “if there were more than an efficient number of providers in a market, absent other support such as subsidies, in the long run these providers would go out of business, causing a loss of service and other inconvenience to consumers.” Spectrum leasing and partitioning opportunities further obviate the need for additional spectrum on a CMA basis.

Cingular also opposes the imposition of strict performance requirements, such as geographic- or population-based coverage requirements. The Commission correctly adopted a market-oriented approach to spectrum policy which relies on market forces rather than regulations to determine build-out of wireless facilities. Pursuant to this approach, the Commission moved away from performance requirements mandating specific coverage in favor of a general “substantial service” requirement. Moreover, the Commission has concluded that the substantial service requirement is best suited to promoting service to rural areas.

Similarly, a “keep what you use” re-licensing approach or a “triggered keep what you use” approach should not be adopted because it would be inconsistent with the Commission’s long-standing policy of relying on the marketplace, rather than regulation, to accomplish its objectives and would have a chilling effect on the development of secondary markets.

Consistent with the treatment of similar services, commercial 700 MHz licenses should be awarded for 15 year terms and the Part 22 renewal procedures should be incorporated into Part 27 rules governing 700 MHz licensees. Finally, Cingular supports the Commission’s tentative conclusion that 700 MHz licenses “should be subject to the 911/E911 and hearing aid-compatibility requirements” contained in Part 20.

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To: The Commission

COMMENTS

Cingular Wireless LLC ("Cingular") hereby submits comments in response to the *Notice of Proposed Rulemaking* in the captioned proceeding.¹ In particular, Cingular supports the existing band plans for the Upper and Lower 700 MHz bands.² The basis for the Commission's

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking*, FCC 06-114 (rel. Aug. 10, 2006) ("NPRM"). Comments were due on September 29, 2006. As a participant in Auction 66, however, Cingular was prohibited by the anti-collusion rule from disclosing to other auction applicants information regarding its Auction 66 bidding strategy, including matters related to the post-auction market structure, until 6:00 pm ET on October 4, 2006. See *Auction of Advanced Wireless Services Licenses Closes*, Report No. AUC-06-66-F (Auction No. 66), *Public Notice*, DA 06-1882, at 8 (rel. Sept. 20, 2006). Accordingly, because comments in this pleading could be construed to reflect Cingular's view of the interrelationship between the AWS 1 band and the 700 MHz band, Cingular postponed filing its comments in this docket until after the close of the anti-collusion period and respectfully requests that the Commission accept its late-filed comments.

² The Lower 700 MHz Band refers to the 698-746 MHz spectrum currently occupied by TV channels 52-59. The Upper 700 MHz Band generally refers to the 746-806 MHz spectrum
(continued on next page)

decision to utilize Economic Area Groupings (“EAGs”) for 60 MHz of this spectrum and Cellular Market Areas (“CMAs”) for 12 MHz of the spectrum remains sound and should not be changed. Moreover, consistent with prior Commission decisions, licenses awarded for this spectrum should not be subject to rigid performance criteria. Licenses in these bands should be awarded with a 15 year license term and licensees should be entitled to renewal expectancies. Finally, the public interest would be served by extending the Commission’s 911, E911, and hearing aid compatibility rules to 700 MHz licensees that offer two-way, interconnected voice service.

INTRODUCTION

The demand for wireless services continues to grow. In adopting its 11th Annual Report to Congress on the state of competition in wireless telephony, the FCC observed that subscribership has grown from 184.7 million to 213 million over the last year, increasing the penetration rate to approximately 71%.³ In addition, approximately 99% of the U.S. population lives in counties with some form of next generation wireless broadband deployment.⁴ The Commission also noted that the amount of time mobile subscribers spend talking and texting has increased significantly.⁵

currently occupied by TV channels 60-69. For the purpose of these comments, however, the Upper 700 MHz Band only refers to the 747-762 and 777-792 MHz bands. The remaining portion of the Upper 700 MHz Band has been set aside for use by public safety or as guard bands and is beyond the scope of this proceeding.

³ See *FCC Adopts Annual Report and State of Competition in the Wireless Industry, News Release* (rel. Sept. 26, 2006) (“11th Report News Release”); Statement of Chairman Kevin J. Martin, *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services*, FCC 06-142 (rel. Sept. 26, 2006).

⁴ See Presentation of the Wireless Telecommunications Bureau, “Report to Congress, Eleventh Annual CMRS Competition Report,” at Slide 6 (presented Sept. 26, 2006) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267612A1.pdf.

⁵ See *11th Report News Release* at 1.

Consumers are no longer satisfied with basic wireless service and now demand capabilities that require large amounts of bandwidth at high speeds to work properly, such as:

- streaming video;⁶
- high-speed Internet transmission;⁷
- multimedia messaging capabilities;⁸
- the delivery of pictures over cell phones;⁹
- high-end gaming (such as real-time multiplayer games);¹⁰
- music offerings;¹¹ and
- location-based services¹²

Spectrum is the essential resource for satisfying these consumer demands. The results of Auction 66 underscore this demand. The auction closed after 161 rounds of bidding with total gross bids of nearly \$13.9 billion. This spectrum alone will not satisfy the demand, however, and the 700 MHz spectrum auction may be even more competitive.¹³ As Chairman Martin has

⁶ See, e.g., Greg Sandoval, *Mobile TV Gets on a Roll*, CNET NEWS.COM (Jan. 27, 2006).

⁷ See, e.g., *Company to Watch: RF Interference Killer On the Loose*, BROADBAND BUSINESS FORECAST (Aug. 9, 2006) (“Today’s cellphones are more than phones - they have browsers built in and they can send and receive digital images. In effect, they are mini digital terminals. The result is rapidly increasing demand for bandwidth. . .”).

⁸ See, e.g., *id*; Ben Charney, *Cell Phones: They Do Voice Calling Too?*, CNET NEWS.COM (March 4, 2005) (“The arrival of the photo-centric phones has spawned dozens of new ‘multimedia’ services to be introduced....”).

⁹ *Id.*

¹⁰ See, e.g., *Mobile Ready Entertainment Announces YOUR GAME Promotion*, MARKET WIRE (Aug. 2, 2006) (“A new Mobile Gaming brief from eMarketer finds that mobile gaming is growing in the U.S. and globally, with \$2.5 billion in worldwide mobile gaming revenue for 2005.”).

¹¹ See, e.g., *Sony Ericsson Can’t Meet Demand for Walkman Phone*, CELLULAR-NEWS.COM (Aug. 9, 2005).

¹² See, e.g., *Michael McManus, GPS to Drive 3G: 315 Million GPS-based LBS Subscribers Expected in Five Years*, DIGITIMES TELECOM (Sept. 27, 2006).

¹³ See, e.g., Thomas Wiesel Partners Equity Research, *Sold! Auction 66 Closes as Carriers Appear Poised for High Speeds, Network Expansion for Some; Bidding More Competitive Than Estimated*, at 5 (Sept. 20, 2006) (“[T]he general market sentiment is that the upcoming 700 MHz auction will be highly competitive as less bandwidth of a more valuable spectrum will be available.”); Jeffrey Silva, *New, Old Faces Line Up for AWS Auction*, RCR WIRELESS NEWS (July 17, 2006) (reporting that major Internet companies and others are “taking passes on the AWS auction” to hold out for the 700 MHz auction and that the 700 MHz auction is “far more

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observed, the availability of 700 MHz spectrum is particularly important for the delivery of new, advanced services because of its propagation characteristics.¹⁴ Transmissions over this spectrum can reach farther and penetrate walls better than higher frequencies, such as the AWS spectrum.¹⁵ Thus, 700 MHz networks can be constructed more quickly and with less capital than other networks.

The Congressional Research Service recently noted that commercial wireless communications typically rely on bandwidth below 3 GHz because of limitations in current technology and that “American competitiveness in advanced wireless technology may be constrained by the limited amount of exploitable bandwidth that is available.”¹⁶ Spectrum below 3 GHz is extremely congested and it takes years to clear portions of this spectrum for new allocations.¹⁷

Congress recently set a firm date of February 17, 2009 to end the DTV transition and reclaim the 700 MHz spectrum band.¹⁸ Congress reaffirmed that 60 MHz of the spectrum must be auctioned for commercial use and directed the auction to commence no later than January 28, 2008. Thus, the auctions for the remaining spectrum in the Upper and Lower 700 MHz Bands should be scheduled without further delay.

attractive than the AWS auction for wireless broadband technologies like WiMAX both in terms of signal reach and infrastructure costs.”)

¹⁴ See Stephen Lawson, *Spectrum Auctions to Unleash Mobile Data Frenzy*, INFOWORLD (April 6, 2006).

¹⁵ See *id.*; Aloha Partners, *Spectrum Valuation White Paper* (April 18, 2005) available at <http://www.alohapartners.net/whitepaper.htm> (noting that “[e]ach tower broadcasting at 700 MHz can cover twice as large an area as a transmitter broadcasting at 1900 MHz spectrum (and four times as large an area as a transmitter broadcasting at 2500 MHz WiFi spectrum).”).

¹⁶ Linda K. Moore, CRS Report for Congress: “Wireless Technology and Spectrum Demand: Advanced Wireless Services,” at 2 (Jan. 20, 2006).

¹⁷ This reallocation process requires identifying candidate bands and conducting rulemakings to develop service rules, relocation processes, and auction procedures.

¹⁸ See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

I. THE COMMISSION SHOULD RETAIN THE CURRENT BAND PLAN AND AWARD THE REMAINING LICENSES IN THE UPPER AND LOWER 700 MHz BANDS PURSUANT TO EAGs

The reallocation of the 700 MHz spectrum band for new public safety and commercial uses has been a long, arduous process. In 1997, Congress determined that 84 MHz within the 700 MHz band should be reallocated for commercial use.¹⁹ New service rules and band plans to effectuate this objective were adopted by the Commission by mid-2002.²⁰ After compiling a full record, the Commission determined that geographic license areas for the bulk of the commercial 700 MHz spectrum (approximately 80%) should be based on EAGs. The Commission concluded that EAGs were the best option because:

- They provide “optimum opportunity for alternative aggregation approaches to suit a wide variety of services and business plans”;
- Smaller service areas would invariably create inefficient aggregation costs in terms of delay and transaction costs;
- They were best-suited to allow licensees to take advantage of economies of scale “for developing standard protocols for particular applications and for manufacturing equipment to operate a specific frequencies”;
- They would achieve the statutory objective of avoiding excessive concentration of licenses;
- Smaller service areas would pose problems associated with protecting incumbent TV operators from interference; and
- They would facilitate an expeditious auction.²¹

A number of commenters favored allocating the entire Lower 700 MHz band (48 MHz) according to Cellular Market Areas (“CMAs”),²² but the Commission rejected this approach.

¹⁹ See Balanced Budget Act of 1997, Pub. L. 105-33, § 3004, 111 Stat. 251 (1997).

²⁰ See *Service Rules for the 746-762 and 777-792 MHz Bands*, WT Docket No. 99-168, *First Report and Order*, 15 F.C.C.R. 476 (2000) (“*Upper 700 MHz Order*”); *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, *Report and Order*, 17 F.C.C.R. 1022 (2002) (“*Lower 700 MHz Order*”); *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, *Memorandum Opinion and Order*, 17 F.C.C.R. 11613 (2002) (“*Lower 700 MHz MO&O*”).

²¹ *Upper 700 MHz Order*, 15 F.C.C.R. at 501-02.

Instead, the Commission decided to set aside a single 12 MHz block of 700 MHz spectrum (approximately 15% of the spectrum) for licensing on a CMA basis.²³

Largely at the urging of the Rural Cellular Association (“RCA”),²⁴ the Commission now seeks comment on whether it should revise its rules to award portions of the 700 MHz Band on a CMA basis. It should not.

The Commission rejected the use of CMAs as the relevant service area for most new services, including the Personal Communications Service, Specialized Mobile Radio Service, Multiple Address Systems, and Local Multipoint Distribution Service. The Commission deemed CMAs inappropriate for these services because:

- The ten-year history of the cellular service evidenced that CMA boundaries generally are too small for the efficient provision of regional or nationwide mobile service.²⁵
- The aggregation of CMAs into larger service areas imposes large transaction costs and increases the cost of providing service;²⁶
- CMAs are too small to create a viable wide-area service and would result in an administrative burden for the Commission;²⁷ and
- Many CMAs do not have significant commercial centers.²⁸

²² CMAs are comprised of Metropolitan Statistical Areas and Rural Service Areas.

²³ See *Lower 700 MHz Order*, 17 F.C.C.R. at 1061. The remaining spectrum was set aside for guardband use and assigned according to the 6 Economic Area Groupings (“EAGs”). See *Upper 700 MHz Order*, 15 F.C.C.R. at 501.

²⁴ RCA filed a petition on July 29, 2005 requesting that the Commission consider assigning additional 700 MHz Band licenses according to CMAs. Three parties filed in support of this proposal: the Rural Telecommunications Group; RVW, Inc.; and U.S. Cellular Corporation.

²⁵ See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 F.C.C.R. 4957 (1994).

²⁶ See *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131, *Report and Order*, 10 F.C.C.R. 9589 (1995).

²⁷ See *Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, *Report and Order*, 15 F.C.C.R. 11956, 11982 (2000).

²⁸ See *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131, *Report and Order*, 10 F.C.C.R. 9589, 9604-05 (1995).

These flaws associated with utilizing CMAs as service areas remain true today. In fact, the Commission rejected the widespread utilization of CMAs for 700 MHz licensing due to concerns that they were too small and would inevitably result in large scale aggregation by carriers seeking optimal scale, which in turn would trigger unproductive regulatory and transaction costs.²⁹ Retention of the existing band plan would avoid most of these costs, yet would allow licensees to take advantage of broader economies of scale and reduce the need for and cost of interference coordination between neighboring licensees.

The premise behind the new movement for CMA licensing is the mistaken belief that this approach will serve the public interest by promoting the rapid deployment of new technologies and services in rural areas.³⁰ The Commission has cautioned against assigning licenses designed primarily to serve rural areas without first evaluating the need for such licenses.³¹ The Commission has noted that, because of economies of scale in wireless networks and lower population densities in rural areas, the economically efficient number of providers likely will be fewer than can be viable in more urban areas.³² These economic factors cannot be ignored because, as the Commission has recognized, “if there were more than an efficient number of providers in a market, absent other support such as subsidies, in the long run these providers would go out of business, causing a loss of service and other inconvenience to consumers.”³³

²⁹ See *Upper 700 MHz Order*, 15 F.C.C.R. at 501-02.

³⁰ See *NPRM* at ¶ 23 citing Comments of the Rural Telecommunications Group, Inc. in Support of Modification of License Area for 700 MHz Spectrum, GN Docket No. 01-74, at 5, 7 (filed Sept. 27, 2005).

³¹ See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities For Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Notice of Proposed Rulemaking*, 18 F.C.C.R. 20802, 20807 (2003) (“*Rural NPRM*”).

³² *Id.*

³³ *Id.* As Dobson previously noted: “[t]he bottom line is that wireless carriers are in the business of providing service in areas where people can use it” and “[i]t is unreasonable to expect that any
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In the last CMRS Competition Report, the Commission concluded that there was effective competition in rural areas with an average of approximately 3.6 competitors in rural counties.³⁴ This data reflects competitive conditions in 2005 and, since then, the Commission completed the AWS auction which allocated 20 MHz (22% of the AWS spectrum) on a CMA basis.

Moreover, the availability of spectrum leasing and partitioning is spurring deployment in rural areas.³⁵ Many parties in the Rural Docket³⁶ cited to hundreds of secondary market, partitioning, and disaggregation transactions that have taken place over the last few years as evidence that spectrum is available to those interested in serving rural areas.³⁷ As the Commission has recognized:

[O]ver 60 percent of all counties in the broadband PCS service have been partitioned at least once. . . . For example, of the partitioned broadband PCS counties, 72 percent are counties with a

carrier will extend service into an area in which costs make that service uneconomic.” Dobson Communications Corporation Comments, WT Docket No. 02-381 at 7-8 (filed Dec. 29, 2003).

³⁴ 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 ¶ 86 (rel. Sept. 29, 2006).

³⁵ See Comments of Cingular Wireless LLC, WT Docket Nos. 02-381, 01-14, 03-202, at 3 (filed Jan. 14, 2005) (“Cingular Comments”) (noting that the Commission has concluded that its “current policies are working to provide wireless services in rural areas” and that “CMRS providers are competing effectively in rural areas”); Comments of CTIA - The Wireless Association, WT Docket Nos. 02-381, 01-14, 03-202, at 13-16 (filed Jan. 14, 2005) (“CTIA Comments”); Comments of Dobson Communications Corporation, WT Docket Nos. 02-381, 01-14, 03-202, at 5-10 (filed Jan. 14, 2005) (“Dobson Comments”); Comments of Sprint, WT Docket Nos. 02-381, 01-14, 03-202, at 2-6 (filed Jan. 14, 2005) (“Sprint Comments”); Comments of T-Mobile USA, Inc., WT Docket Nos. 02-381, 01-14, 03-202, at 3-4, 6 (filed Jan. 14, 2005) (“T-Mobile Comments”); Comments of Nextel Partners Inc. WT Docket Nos. 02-381, 01-14, 03-202, at 2-3, 17-18 (filed Jan. 14, 2005) (“Nextel Partners Comments”).

³⁶ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services* WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 F.C.C.R. 19078 (2004).

³⁷ See Cingular Comments at 7; CTIA Comments at 8-10; Dobson Comments at 8; Sprint Comments at 5-6; Nextel Partners Comments at 2.

population density of 100 persons per square mile or less. In addition, 77 percent of the partitioned broadband counties are contained within RSAs.³⁸

Absent evidence that there is insufficient spectrum available to satisfy demand for additional spectrum in rural areas and that there is an economic basis for allocating spectrum on a CMA basis, the Commission should not modify its 700 MHz band plan.

II. RIGID PERFORMANCE REQUIREMENTS ARE UNNECESSARY FOR LICENSES AWARDED PURSUANT TO COMPETITIVE BIDDING

The Telecommunications Act of 1996 (“1996 Act”) was adopted to ensure that a “pro-competitive, de-regulatory national policy framework” was applied to the communications industry.³⁹ This congressional mandate recognized that the operation of market forces better serves the public interest than regulation and is embodied in the Commission’s stated intention “to place ultimate reliance on the market, rather than on regulation to direct the course of development in the CMRS and other markets.”⁴⁰

Consistent with this market-oriented approach to spectrum policy, the Commission generally has allowed economic forces to determine build-out of wireless facilities.⁴¹ The Commission has moved away from performance requirements mandating specific coverage requirements in favor of a general “substantial service” requirement.⁴² The substantial service

³⁸ *Rural NPRM*, 18 F.C.C.R. at 20835-36.

³⁹ See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996).

⁴⁰ *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, *Report and Order*, 15 F.C.C.R. 9219, 9231 (1999). This approach also is incorporated into the Commission’s first objective for competition policy: “the Commission shall . . . place primary reliance on market forces to stimulate competition, technical innovation, and development of new services for the benefit of consumers.” Draft Strategic Plan, Competition Policy, Objective 1.

⁴¹ *Rural NPRM*, 18 F.C.C.R. at 20818.

⁴² See *Service Rules for the 746-764 and 776-794 Bands*, WT Docket No. 99-168, *Second Report and Order*, 15 F.C.C.R. 5299, 5332 (2000); *Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rulemaking*, 12 F.C.C.R. 18600, 18623 (1997); *Amendment of Parts* (continued on next page)

approach was intended to provide flexibility for licensees operating within spectrum such as the commercial 700 MHz bands that is suited for a wide variety of uses for the spectrum (*i.e.*, fixed or mobile, voice or data).⁴³

Although the substantial service requirement was adopted for the commercial 700 MHz bands, the Commission now seeks comment on whether this approach should be modified to facilitate the provision of service to rural areas and whether a “keep what you use” re-licensing mechanism or a “triggered keep what you use” approach should be adopted.⁴⁴ No modifications are necessary. The Commission previously compared the substantial service requirement with construction benchmarks that mandated population- or geographic-specific coverage and concluded that the substantial service requirement best promoted service to rural areas.⁴⁵ Moreover, the Commission has stated that the substantial service requirement for 700 MHz “requires the licensee to buildout in rural areas”⁴⁶ and has adopted a safe harbor that deems the substantial service requirement satisfied if the licensee “provides coverage to at least 75 percent of the geographic area of at least 20 percent of the ‘rural areas’ within its licensed area.”⁴⁷ The existing substantial service requirement thus promotes service to rural areas and should not be modified.

1, 2, 21, and 25 of the Commission’s Rules, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration*, 12 F.C.C.R. 12545, 12659 (1997). Substantial service generally means service that is sound, favorable, and substantially above a level of mediocre service. See 47 C.F.R. §§ 22.940(a)(1)(i), 27.14(a).

⁴³ See *Rural NPRM*, 18 F.C.C.R. at 20818-19.

⁴⁴ *Id.* at 20816-17.

⁴⁵ See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 F.C.C.R. 19078, 19119-23 (2004) (“*Rural Order*”).

⁴⁶ *Upper 700 MHz Order*, 15 F.C.C.R. at 505 (indicating that the substantial service requirement will not be satisfied in the renewal context unless service has been provided in rural areas).

Similarly, a “keep what you use” re-licensing approach⁴⁸ or a “triggered keep what you use” mechanism should not be adopted because it would be inconsistent with the Commission’s long-standing policy of relying on the marketplace, rather than regulation, to accomplish its objectives:⁴⁹

[W]e believe that trusting in the operation of market forces generally better serves the public interest than regulation. The Commission should consider imposition of regulation when there is an identifiable market failure and imposition of the regulation would serve the public interest because it is targeted to correct that failure. Even in those situations, the Commission should endeavor to craft narrowly any regulation to impose only the minimum restraint on the market necessary to achieve the public interest.⁵⁰

⁴⁷ *Rural Order*, 19 F.C.C.R. at 19123. This safe harbor is one tool that can be used to demonstrate compliance.

⁴⁸ See *Rural NPRM*, 18 F.C.C.R. at 20836. The re-licensing approach would essentially impose the cellular build-out model on other wireless services. Under this model, a licensee would have a specified period of time to serve the entire geographic area associated with its license. Any area unserved at the end of this period would be made available to others and re-licensed. Cingular addressed this issue extensively in the *Rural Docket* and hereby incorporates its comments by reference. Cingular Comments at 4-8.

⁴⁹ See, e.g., *Telephone Company-Cable Television Cross-Ownership Rules*, CC Docket No. 87-266, *Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry*, 7 F.C.C.R. 300, 305 (1991) (noting that “Market demand, rather than governmental edict, should stimulate the construction and use of advanced telecommunications networks, including broadband networks”); *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Report and Order*, 18 F.C.C.R. 20604, 20607 (2003) (noting that spectrum leasing policies should “continue our evolution toward greater reliance on the marketplace”); *2002 Biennial Regulatory Review — Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket 02-277, *Report and Order and Notice of Proposed Rulemaking*, 18 F.C.C.R. 13620, 13828 (2003); *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Second Memorandum Opinion and Order and Fifth Report and Order*, 17 F.C.C.R. 6685, 6687 (2002); *Southwestern Bell Mobile Systems, Inc.*, 14 F.C.C.R. 19898, 19902 (1999); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 F.C.C.R. 10030, 10036 (1999); see also 47 U.S.C. §§ 160, 161.

⁵⁰ *1998 Biennial Regulatory Review — Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, *Notice of Proposed Rulemaking*, 13 F.C.C.R. 25132, 25135 (1998).

There is no evidence of a market failure that would warrant the imposition of any keep what you use regime. Further, in order to protect against the loss of spectrum a keep what you use approach actually encourages build-out in urban areas rather than rural areas and is thus inconsistent with the FCC's desire to stimulate service in rural areas.

This re-licensing approach was addressed extensively in the Rural Docket, with most commenters opposing adoption.⁵¹ These parties agreed with prior Commission determinations that existing, market-based regulations are spurring deployment in rural areas.⁵² Hundreds of secondary market, partitioning, and disaggregation transactions were cited as evidence that re-licensing is unnecessary.⁵³

Moreover, re-licensing does not guarantee the establishment of additional competitors throughout rural areas. For example, even though the Cellular Radiotelephone Service was subject to a re-licensing requirement, portions of many very rural markets either remain unserved by cellular carriers or are served by a single cellular provider. The fact that cellular unserved areas still exist underscores the Commission's conclusion that licensees will provide service only where there is an economic incentive to do so.⁵⁴ As noted *supra*, "if there were more than an efficient number of providers in a market, absent other support such as subsidies, in the long run these providers would go out of business, causing a loss of service and other inconvenience to consumers."⁵⁵

⁵¹ See Cingular Comments at 2-8; CTIA-Comments at 13-16; Dobson Comments at 5-10; Sprint Comments at 2-6; T-Mobile Comments at 3-4, 6; Nextel Partners Comments at 2-3, 17-18.

⁵² See Cingular Comments at 3 (noting that the Commission has concluded that its "current policies are working to provide wireless services in rural areas" and that "CMRS providers are competing effectively in rural areas"); CTIA Comments at 13-16; Dobson Comments at 5-10; Sprint Comments at 2-6; T-Mobile Comments at 3-4, 6; Nextel Partners Comments at 17-18.

⁵³ See Cingular Comments at 7; CTIA Comments at 8-10; Dobson Comments at 8; Sprint Comments at 5-6; Nextel Partners Comments at 2.

⁵⁴ *Rural Order*, 19 F.C.C.R. at 19146.

⁵⁵ *Rural NPRM*, 18 F.C.C.R. at 20807.

The imposition of re-licensing also would have a chilling effect on the development of secondary markets. Re-licensing would interfere with natural market forces by creating an incentive for prospective lessees or purchasers to wait for spectrum rather than seek it out in secondary markets. Instead of leasing or purchasing spectrum earlier, many parties may opt to wait and see if the spectrum becomes available less expensively at a later date. These flaws, along with those previously identified in this Rural Docket, outweigh any perceived benefits from re-licensing.

Finally, Cingular supports the Commission's decision "to establish an open regulatory framework [for the 700 MHz band] with the potential to accommodate both existing and future technologies."⁵⁶ Strict, service-specific rules for commercial services will artificially constrain the ability of interested parties to put spectrum to the highest and best use.⁵⁷ Service rules lag well behind technological advances and parties must often seek waivers or rule changes to deploy new and innovative services. Flexibility is necessary "to permit [a] flexible and agile response to technological and economic factors."⁵⁸ Accordingly, the Commission should not deviate from the "flexible, market-based approach" it has followed to date with respect to 700 MHz.⁵⁹

III. LICENSES SHOULD BE AWARDED FOR A 15 YEAR LICENSE TERM WITH A RENEWAL EXPECTANCY

The Commission seeks comment on the appropriate license term for commercial 700 MHz spectrum and whether modifications to the existing Part 27 renewal rules are necessary.⁶⁰

⁵⁶ *Upper 700 MHz Order*, 15 F.C.C.R. at 479.

⁵⁷ Thus, such rules are inconsistent with Section 7 of the Communications Act of 1934, as amended, which states that it is the policy of the United States to promote the deployment of new technologies. 47 U.S.C. § 157.

⁵⁸ FCC Strategic Plan FY 2003 – FY 2008 at 15.

⁵⁹ *Upper 700 MHz Order*, 15 F.C.C.R. at 478.

⁶⁰ *Rural NPRM*, 18 F.C.C.R. at 20841-43.

Consistent with the treatment of similar services, commercial 700 MHz licenses should be awarded for 15 year terms. No other modifications or clarifications of the renewal rules are warranted.

Historically, the Commission awarded commercial wireless licenses for 10 year terms, the maximum length permitted by the Communications Act of 1934.⁶¹ The Telecommunications Act of 1996, however, eliminated the term length limit for wireless licenses.⁶² The Commission exercised its new authority in the AWS Docket by establishing an initial license term for licensees in the 1710-1755 and 2110-2155 MHz bands of 15 years and subsequent renewal terms of 10 years.⁶³ The Commission theorized that: (i) the initial license term for AWS should be longer than the traditional 10 year license term in order to encourage the investment necessary to develop the bands; and (ii) “an initial 15-year license term followed by 10-year renewal terms will provide investors with the necessary assurances that a sufficient amount of time will be available to recoup the initial costs of developing and deploying advanced wireless networks in these bands.”⁶⁴

700 MHz licensees will face the same start-up challenges faced by AWS licensees. Accordingly, 700 MHz licenses should be subject to similar rules, including the same license terms.

The Commission also should maintain the strong renewal expectancy already adopted for Part 27 licensees.⁶⁵ The Commission determined that the renewal expectancy provisions

⁶¹ See 47 U.S.C. § 307(c) (1996).

⁶² Pub. L. No. 104-104, Title II, § 203, 110 Stat. 56, 112 (1996).

⁶³ 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 F.C.C.R. 25162, 25190-91 (2003) (“*AWS Order*”).

⁶⁴ *Id.*

⁶⁵ See 47 C.F.R. § 27.14. This section provides a renewal applicant with a renewal expectancy if “the applicant has provided substantial service during its past license term and has complied with
(continued on next page)

contained in Part 27 “will help to provide a stable regulatory environment that will be attractive to investors, and thereby encourage development of these frequency bands.”⁶⁶ Moreover, most of the commercial wireless licensees with whom 700 MHz licensees will compete are entitled to renewal expectancies.⁶⁷ Applying different renewal criteria for 700 MHz licensees would violate principles of regulatory parity.⁶⁸

As currently written, the Part 27 renewal rules set provide some basic information regarding the comparative renewal process. The rules fail to set forth detailed procedures for the filing and treatment of competing renewal applications. To avoid uncertainty, the current Part 27 renewal rules should be modified to incorporate the comparative renewal procedures from Part 22.⁶⁹

IV. 700 MHz LICENSEES SHOULD BE SUBJECT TO 911/E911 AND HAC REQUIREMENTS

Cingular supports the Commission’s tentative conclusion that 700 MHz licenses “should be subject to the 911/E911 and hearing aid-compatibility requirements” contained in Part 20.⁷⁰ Under this approach, 700 MHz licensees must comply with the 911/E911 rules to the extent they meet the criteria set forth in Section 20.18(a) and the *E911 Scope Order*, such as offering real-time, two-way voice service that is interconnected to the public switched network.⁷¹ Similarly,

the Communications Act and applicable Commission rules and policies.” See *AWS Order*, 18 F.C.C.R. at 25190-91.

⁶⁶ *Id.*

⁶⁷ See, e.g., 47 C.F.R. §§ 27.14 (governing AWS and WCS licensees), 22.935 (governing cellular licensees); 24.16 (governing PCS licensees); 90.743 (governing SMR licensees).

⁶⁸ See *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 F.C.C.R. 7988, 8011 (1994).

⁶⁹ See 47 C.F.R. §§ 22.935 thru 22.943.

⁷⁰ See *Rural NPRM*, 18 F.C.C.R. at 20849.

⁷¹ See 47 C.F.R. § 20.18; *Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding*

(continued on next page)

700 MHz licensees would be required to comply with the requirements of the Hearing Aid Compatibility Act “to the extent they offer real time, two-way switched voice service that is interconnected to the public switched telephone network, and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls.”⁷² Consumers’ expectations and the public interest clearly would be served by extending these rules to 700 MHz licensees.

and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission’s Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band, CC Docket No. 94-102, Report and Order and Second Further Notice of Proposed Rulemaking, 18 F.C.C.R. 25340, 25347 (2003) (establishing four criteria for determining whether a licensee is subject to the E911 rules).

⁷² *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Report and Order, 18 F.C.C.R. 16753, 16765 (2003).*

CONCLUSION

For the foregoing reasons, the Commission should retain EAGs as the service areas for the remaining Upper and Lower 700 MHz bands. Licenses in these bands should not be subject to rigid performance criteria and should be awarded for a 15 year license term with the opportunity for licensees to qualify for a renewal expectancy. Finally, the public interest would be served by extending the Commission's 911, E911, and hearing aid compatibility rules to 700 MHz licensees that offer two-way voice service.

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