

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 System)	CC Docket No. 94-102
)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309

REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION

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TABLE OF CONTENTS

	Page
Introduction and Summary.....	1
Discussion.....	3
1. A Balanced Selection of CMA, EA and REAG Service Area Sizes is an Appropriate Compromise Meeting the Needs of Regional/Rural/ Local Carriers.....	3
2. USCC Opposes Exclusive Use of EAG Service Areas For Unauctioned 700 MHz Spectrum Which Effectively Excludes Regional/Rural/Local Carriers From Being Successful Bidders for this 700 MHz Spectrum.....	5
3. The Commission's 700 MHz Auction Should Include All of the Licenses for the Spectrum in a Single Auction Without Using Package Bidding Procedures or Closed Bidding	10
4. The FCC Should Retain Existing Licensee Performance Requirements and License Renewal Standards.....	11
5. The FCC Should Not Adopt An Entrepreneurs' Block.....	16
Conclusion.....	17

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United States Cellular Corporation, on behalf of itself and its subsidiaries (collectively "USCC") by its attorneys, submits its reply comments in response to comments filed in the above-referenced proceeding.

Introduction and Summary

On the important issue of proposed revisions to service area sizes, the initial comments filed in this proceeding broadly support pro-competitive modifications to the 700 MHz band plan to increase licensing opportunities for new entrants, small business, rural providers and other regional/local wireless providers.

USCC has recently joined with a number of participants in these proceedings, including Alltel Communications, Aloha Partners, L.P., Blooston Rural Carriers, C&W Enterprises, Inc., ConnectME Authority, Corr Wireless Communications, LLC, Dobson Communications Corporation, Leap Wireless International, Inc., Maine Office of the Chief Information Officer,

MetroPCS Communications, Inc., National Telecommunications Cooperative Association, Nebraska Public Service Commission, North Dakota Public Service Commission, Rural Cellular Association, Rural Telecommunications Group, Inc., Union Telephone Company, Vermont Department of Public Service, Vermont Office of the Chief Information Officer, and Vermont Public Service Board, to develop a consensus band plan proposal which is intended to blend the reasonable spectrum needs of nationwide, regional and local incumbents and new entrants in a balanced and fair manner. We believe that this consensus proposal is an important next step to help the Commission to reach a timely and comprehensive decision addressing the promotion of infrastructure build-out and service to rural areas as well as the competitive benefits, unique characteristics, and special needs of regional and smaller wireless carriers.

In our Comments we showed the significant demand in Auction #66 for EA and CMA licensing opportunities for numerous smaller providers. Approximately 90% of all winning bidders in Auction #66, including rural telephone companies, small wireless providers, independent cable entities and new entrants, were able to acquire AWS spectrum because of the Commission's balanced approach to service area size selection. We strongly disagree with Cingular's and AT&T's position that regional, rural and local providers should rely on spectrum leasing and partitioning to acquire the spectrum resources they need to be able to deploy advanced technologies and that the Commission should not alter the Lower and Upper 700 MHz band plans.

We agree with Corr that the best way to promote rural service is to define market areas correctly at the outset, rather than by engaging in retroactive micromanagement of carrier buildout decisions. We disagree with AT&T that the higher price paid per MHz/Pop for some

EAG licenses won in Auction #66 should lead the Commission to conclude that these licensees have greater incentives to serve rural areas than CMA and EA licensees.

USCC supports transparent auctions, open eligibility (no closed licenses) and the use of simultaneous multiple-round auction methodologies without package bidding features. We oppose the attempts by certain commenters in the initial comment round to create a "DE only" spectrum block in the 700 MHz auction. We also support the broadly held view in the Comments that the Commission should not adopt the Notice's proposed changes in present "substantial service" licensee performance requirements and license renewal standards.

Discussion

1. A Balanced Selection of CMA, EA and REAG Service Area Sizes is an Appropriate Compromise Meeting the Needs of Providers of All Sizes.

In its Comments USCC supported the adoption of modifications to the Commission's current 700 MHz band plan to substitute EA or CMA licensing opportunities for certain EAG licenses in the Upper and Lower 700 MHz bands. We described how these modifications would serve the needs of regional/rural/local carriers to bid efficiently while providing all carriers, large and small, with the flexibility they need to construct 700 MHz footprints that are tailored to their needs for capacity and coverage.

Most commenters agreed that a significant portion of the unauctioned 700 MHz band should be licensed using CMAs, EAs or some other smaller geographic area.

For example, comments were filed by or on behalf of numerous rural telephone providers by RCA, RTG, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, Blooston Rural

Carriers, Frontier Communications and Union Telephone supporting smaller service area sizes.¹ Incumbent Lower 700 MHz C Block licensees including Aloha Partners, Milkyway Broadband, C&W Enterprises and Corr Wireless supported adoption of additional CMA or a combinations of CMA and EA licenses.² Regional providers like Dobson, Leap and MetroPCS supported additional CMA licensing opportunities plus EA or other smaller, rather than larger, service areas to replace EAG blocks.³ Consumer advocates and representatives of state governments including the Consumer Federation/Consumers Union/Free Press and Vermont/Nebraska/North Dakota/Maine also proposed expanding CMA licensing and a combination of CMA and other regional licensing opportunities for areas smaller than EAGs, respectively.⁴

USCC also agrees with the reasons they offered in support of expanded licensing opportunities based on smaller service area sizes. A balanced band plan with a mix of geographic areas will make spectrum-based opportunities accessible to licensees with a broad range of business models. It will allow incumbent providers of all sizes to assemble licenses that more closely match their existing licensed footprints, many of which are based on CMAs and other smaller service areas. It will provide opportunities for new market entry, but not only by the handful of large companies with the resources to pursue national footprint strategies; smaller areas will also enable bidders with regional and local-oriented business plans to launch

¹ See Comments of Rural Cellular Association ("RCA") pp. 4-8, Comments of the Rural Telecommunications Group ("RTG") pp. 2-8, comments of the National Telecommunications Cooperative Association ("NTCA") pp. 5-7, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") pp. 2-3, Comments of Blooston Rural Carriers ("Blooston") pp. 2-4, Comments of Frontier Communications ("Frontier") pp. 2-7, and Comments of Union Telephone ("Union") pp. 2-5.

² See Comments of Aloha Partners ("Aloha") pp. 3-6, Comments of Milkyway Broadband ("Milkyway") pp. 2-6, Comments of C&W Enterprises ("C&W") pp. 2-3 and Comments of Corr Wireless ("Corr") pp. 2-4.

³ See Comments of Dobson Communications Corporation ("Dobson") pp. 2-4, Comments of Leap Wireless International ("Leap") pp. 3-5, and Comments of MetroPCS Communications, Inc. ("MetroPCS") pp. 10-14.

⁴ See Comments of Consumers Federation of America/Consumers Union/Free Press ("Consumers et al.") p. 5 and Comments of Vermont Department of Public Service/ Public Service Board/Office of Chief Information Officer, North Dakota Public Service Commission, ConnectME Authority and Maine Office of the Chief Information Officer ("Vermont/Nebraska/North Dakota/Maine") p. 4.

new businesses or expand their footprints. Many of these companies may have a focus on, and experience serving, rural markets and underserved segments of urban markets. The result of a diverse, balanced band plan is a diverse, competitive set of service providers. The EA and CMA building block approach which USCC originally proposed as supplemented in the consensus proposal mentioned above will permit regional/rural/local carriers and new entrants to provide an important source of competition, variety and diversity in rural and less densely populated areas through expanded licensing opportunities for smaller bidders.⁵

2. USCC Opposes Exclusive Use of EAG Service Areas For Unauctioned 700 MHz Spectrum Which Effectively Excludes Regional/Rural/Local Carriers From Being Successful Bidders for this 700 MHz Spectrum.

USCC supports adoption of a balanced approach to geographic service selection as an appropriate means to foster services in rural as well as non-rural markets. One of the important issues before the Commission is how to encourage licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. The Commission should recognize in its spectrum policies, as it did in its AWS proceeding,⁶ the importance of adopting service area sizes appropriate for regional and local carriers and new entrants, which can provide those carriers with adequate spectrum for geographic entry and system expansion. By affording realistic bidding opportunities to a variety of applicants, the adoption of small service area sizes, such as EA and CMA areas, will enhance competition and promote early deployment of advanced technologies consistent with the objectives of Section 309(j) of the Act.

⁵ While USCC does not support aspects of the changes in the band plan proposed by Nextwave, Access Spectrum/Columbia/Pegasus, Tropos and Howard & Jared, it is significant that each of these commentators also supported adoption of expanded CMA, EA or MEA service area sizes. The Commission clearly was right to question in these proceedings whether the public interest would be served by conducting an auction of 700 MHz spectrum solely on the basis of EAG service area sizes.

⁶ See AWS Reconsideration Order at Para. 14.

a. Contrary to Verizon's claims that Congress is opposed to any change in the Commission's current 700 MHz band plan,⁷ we note that final passage of the DTV Transition legislation (Public Law 109-172), cited by Verizon, was limited under the Byrd Rule⁸ so that topics such as rural service, 700 MHz band plan or other important non-budget related topics were deemed not germane and were not considered. Verizon's claim that Congress "rejected any proposed change" in the 700 MHz band plan is simply wrong if it is intended to imply that Congress considered such matters on the merits.

In this connection, on September 29, 2006 the Senate Commerce Committee released its Committee Report to accompany Senator Stevens' telecommunications reform bill (now numbered H.R. 5252) supporting (1) the assignment of smaller service areas to promote rural service and (2) adoption of smaller service area sizes in the 700 MHz band to promote infrastructure build-out and service to rural areas.

This proposed legislation contains spectrum related proposals as described in the Committee Report which plainly contradict Verizon's claims. For example, the following excerpts from the section-by-section analysis of Title XIV - Rural Wireless and Broadband Service contained in that Committee Report:

"Section 1402. Small geographic licensing areas.
Section 1402 would amend section 309(j)(4)(C) of the Communications Act to require the FCC to consider licensing spectrum in smaller geographic areas in order to encourage wireless deployment and build-out in rural and underserved areas."

"Section 1405. 700 MHz license areas.
Section 1405 would require the FCC, within 180 days after enactment, to initiate a rulemaking to reconfigure portions of the 700

⁷ See Comments of Verizon Wireless ("Verizon"), pp. 2-3.

⁸ See Section 313 of the Congressional Budget Act of 1974, 2 U.S.C. § 644

MHz band, including that portion that will contain recovered analog spectrum to be auctioned beginning on January 28, 2008 under the Deficit Reduction Act, for small geographic licenses areas. This section would require that such rulemaking must consider the January 28, 2008 auction and the promotion of infrastructure build-out and service to rural areas as well as the competitive benefits, unique characteristics, and special needs of regional and smaller wireless carriers. The FCC's reconfiguration rulemaking would be subject to the restriction in section 1406."

The language of this proposed legislation is compelling evidence of congressional support for a detailed examination of the many important issues raised in the Commission's Notice.

b. Cingular appears to be arguing that auctioning smaller service area sizes such as CMAs will not promote the rapid development of new technologies and services in rural areas.⁹ We could not disagree more.

The selection of small geographic service areas preserves opportunities for regional and local providers as well as new entrants to provide an important source of competition, variety and diversity in rural and less densely populated areas. As the Commission stated in its AWS Report and Order,

"...while some carriers may desire regional or nationwide service territories, others are interested in localized service areas. Our band plan meets this need by including licensing areas based on MSAs and RSAs. These local service areas will be optimal for incumbent operators who may need spectrum capacity only in limited areas. These local service areas also favor smaller entities, such as rural telephone companies and small service providers, with localized business plans and no interest in providing large-area service. As RCA observes, MSAs and RSAs permit entities who are only interested in serving rural areas to acquire spectrum licenses for these areas alone and avoid acquiring spectrum licenses with high population densities that make purchase of license rights too expensive for these types of entities. These types of service providers could acquire a RSA and create a new service area or they could expand an existing service territory or supplement the spectrum they are licensed to operate in by adding a RSA. They could also combine a few MSAs and RSAs to create a larger but localized service territory. MSAs and RSAs allow entities to mix and match rural and

⁹ See Comments of Cingular Wireless ("Cingular") p. 7.

urban areas according to their business plans. By being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies. Their inclusion in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas."¹⁰

We agree with this analysis of the benefits of a balanced approach, including smaller service area sizes and concur that it is an appropriate means to foster services in rural as well as non-rural markets.

As stated in our Comments, the Auction #66 results showed the significant demand for and benefits from EA and CMA licensing opportunities for numerous smaller providers. For example, slightly less than 70% of the winning bidders in Auction #66 acquired only CMA licenses and an additional 20% acquired only EA or combinations of EA and CMA licenses. This means approximately 90% of all winning bidders in Auction #66, including rural telephone companies, small wireless providers, independent cable entities and new entrants, were able to acquire AWS spectrum because of the Commission's balanced approach to service area size selection. Attachment C to our Comments contains two maps identifying the bidders in each of these groups and the regional or local coverages which grant of these licenses will authorize.

By affording realistic bidding opportunities to a variety of applicants, including many small incumbent wireless providers who want to deploy advanced technologies in and adjacent to the areas they already serve, the adoption of small service area sizes, such as EA or CMA areas, will enhance competition and promote early deployment of advanced technologies consistent with the objectives of Section 309(j) of the Act.

¹⁰ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Report and Order, FCC 03-251, released November 25, 2003, ¶ 35.

c. Likewise we strongly disagree with Cingular's and AT&T's position that regional, rural and local providers should rely on spectrum leasing and partitioning to acquire the spectrum resources they need to be able to deploy advanced technologies.¹¹ Secondary markets for spectrum including spectrum leasing and partitioning/disaggregation can play a significant role in the efficient allocation of spectrum but they cannot replace the primary marketplace opportunities afforded by spectrum auctions, including smaller license areas, fairly contested for in an open and competitive bidding process.

d. We also disagree with AT&T's argument that the higher prices paid in Auction #66 or some REAG licenses indicate that they are "... the ones most likely to be built-out and used."¹² There are too many factors which drive the prices ultimately paid by bidders to conclude that any of these necessarily reflect the scope or pace of future construction build out in rural and underserved areas.

In practice the Commission's substantial service requirements applicable to EAG licensees govern but do not dictate where construction build out in rural and other underserved areas will occur. This occurs because the Commission's substantial service requirements under Section 27.14(a) of its rules were "...established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas."¹³ In other words, licensees of large spectrum blocks, like AWS REAGs, have flexibility to deploy their networks where they believe they can best meet their business needs. Those needs may or may not involve service to rural or other underserved areas so that

¹¹ See Comments of Cingular, p. 8, Comments of AT&T, Inc. (AT&T"), pp. 10-11.

¹² See AT&T Comments, p. 3 and FN 5.

¹³ See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, Notice of Inquiry (FCC 02-325), released December 20, 2002 in WT Docket No. 02-381, Para. 9.

the mere fact that a company has acquired an REAG (or EAG), regardless of the price, is no guarantee that service will be commenced anytime soon in such areas.¹⁴

In contrast to this situation the construction requirements under Section 27.14 (a) of the Commission's rules have a very different impact on EA and CMA licensees because they must be met within the context of a much more limited geographic area. In order to meet substantial service requirements in a rural CMA area, the licensee involved has a build-out obligation that can be met only by deploying facilities in that specific rural area. To assume as AT&T does that EAG or REAG licensees are more likely to serve rural areas sooner than CMA and EA licensees is simply not credible.

3. The Commission's 700 MHz Auction Should Include All of the Licenses for the Spectrum in a Single Auction Without Using Package Bidding Procedures or Closed Bidding.

USCC supports open bidding, open eligibility and use of simultaneous multiple-round auction methodologies without package bidding features. As we described in our Comments (pp. 11-12), the auction design issues considered in this proceeding should promote the openness of the 700 MHz auction to smaller bidders so that their realistic opportunities to acquire licenses such as CMAs, EAs and any other license sizes which are smaller than EAGs are not impaired.

a. The results of Auction #66 show that an efficient aggregation of superregional footprints can occur using smaller service area sizes without the unfairness, complication and delay inherent in package bidding procedures. For example, SpectrumCo was able to combine 137 licenses into near national coverage without package bidding. That they were able to do so at reasonable per MHz-pop prices illustrates that the "exposure problem" can be overcome

¹⁴ Indeed it is possible that a company may even assign higher value to EAG licenses on a MHz/Pops basis because of this added flexibility.

as a practical matter. Efficient remedies for the “threshold problem” faced by smaller bidders have been harder to come by. The Milgrom-Wrege "25% premium" proposal¹⁵ in our view illustrates their perception of the severity of the threshold problem, while offering only a partial solution to this problem.

b. Finally, we note that Auction #66 was very successful, using the standard fully transparent format, even though the eligibility-ratio requirement came very close to not being met. This suggests that "blind bidding" is not needed to provide a competitive auction and an experiment with it in this critically important auction of beach front spectrum would be dangerously risky.¹⁶

4. The FCC Should Retain Existing Licensee Performance Requirements and License Renewal Standards.

In our comments, USCC opposed the NPRM's proposed changes in present "substantial service" licensee performance requirements and license renewal standards. USCC discussed the varying approaches taken by the FCC since 1983 to wireless buildout requirements and demonstrated that such rule changes had had little effect on the basic economics of the wireless industry, which dictate that base stations will be built where wireless service is economically viable. USCC urged the FCC to maintain its existing Part 27 buildout policies, allowing licensees to provide "substantial service" during their license term, with "substantial service" being defined for this purpose as "coverage to at least 75 percent of the rural areas within the licensed area." That standard provides an incentive to serve rural areas, but does not substitute regulatory judgments about appropriate coverage for those of carriers. USCC also opposed

¹⁵ See Comments of Paul Milgrom and Karen Wrege ("Milgrom-Wrege"), p. 8.

¹⁶ The Commission also should consider the unfair information advantage which incumbent 700 MHz licensees would have under closed bidding procedures if the Commission decides to use two-sided auction procedures in the upcoming 700 MHz auction. If the Commission decides to use two-sided auction procedures, it should only do so under open bidding.

any loss of licensee service area once carriers have met substantial service standards through adoption of any form of "use or lose" licensing.

This general position received solid support from most carrier commenters, both large and small.¹⁷ Dobson notes that the five year cellular "use it or lose it" policy may have had some justification in the early nineties, when it may have spurred development of wireless coverage by the cellular systems which were then the only carriers providing such coverage. However, there is no comparable need now, with multiple competing wireless networks and technologies.¹⁸ Dobson also notes the critical point that there is now no common measure of "service" by different digital wireless technologies.¹⁹ Thus, to create an unserved area licensing regime would require a proceeding defining a common service area boundary to fulfill the same function as the Cellular Geographic Service Area ("CGSA"), assuming that such a common measurement were possible.

Moreover, MetroPCS notes that a "keep only what you use" buildout requirement would actually benefit large, not small, carriers, as incumbents can often rely on their own towers and other existing network infrastructure to meet buildout requirements for newly acquired spectrum, whereas new entrants often must construct systems "from the ground up."²⁰

Finally, Cingular echoes USCC's main point in our comments in arguing that carriers will only provide service where there is an economic incentive to do,²¹ and that there is no

¹⁷ See e.g. Comments of Dobson, pp. 6-10; Comments of Verizon, pp. 6-10; Comments of Cingular, pp. 9-13; Comments of MetroPCS, pp. 15-16; Comments of Leap, pp. 9-10; Comments of Corr, p. 7; Comments of Blooston, pp. 5-7; and Comments of Union, pp. 5-6.

¹⁸ Dobson Comments, p. 8.

¹⁹ *Ibid.*, pp. 8-10.

²⁰ MetroPCS Comments, p. 15.

²¹ Cingular Comments, p. 12.

reason to believe incumbent licensees will somehow fail to build cells where "unserved area" applicants would do so.²²

By contrast, commenters supporting strict new building requirements and/or "use it or lose it" licensing requirements do not deal with those fundamental economic realities. The Rural Cellular Association ("RCA"), for example, supports abandonment of the "toothless 'substantial service' standard" and its replacement by a graduated coverage requirement ending with a 75 percent "reliable service" coverage requirement eight years after licensing.²³ In support of that argument, RCA refers to "rural creamskimming" in the universal service context, which allegedly occurs when competitors seek to serve "only the low cost, high revenue customers in a rural telephone company's study area."²⁴ However, "creamskimming" concerns are irrelevant to this proceeding. The "creamskimming" issue arises when a wireless carrier seeks universal service subsidies for its service within a given telephone "study area," which requires the FCC to focus on how much of the study area the wireless carrier serves. In that context, the FCC must grapple with the problem that often wireless service areas and wireline "study areas" do not completely overlap. Thus, "creamskimming" has been found to occur even when a wireless carrier is serving all of its own service area but that area happens to overlap only with the low cost portions of a wireline study area, thus giving rise to concerns that the wireline carrier's ability to serve the entire study area might be undermined by granting USF subsidies (based on wireline costs) to the wireless carrier.²⁵ However, such considerations are obviously irrelevant to this debate, which has to do only with wireless

²² In support of that point, USCC had referred to 271 instances of its filing Phase II cellular unserved area applications to expand cellular service in the past 13 years, not one of which was opposed by a mutually exclusive application.

²³ RCA Comments, pp. 8-12.

²⁴ Quoted in RCA Comments, p. 9.

²⁵ See, e.g. Highland Cellular, Inc., 19 FCC Rcd 6422, 6436-6439 ¶¶ 29-33 (2004).

service within previously defined wireless service areas, and does not involve any intermodal competition or USF subsidy considerations.

The red herring "creamskimming" argument is symptomatic of a failure to cite actual evidence, from the cellular or other wireless services, demonstrating that a flexible licensing system actually results in less service being provided than would be provided if wireless licensees lost their "unserved area" after some arbitrary period of time.

USCC also opposed proposals in the NPRM to require Part 27 licensees to engage in involuntary negotiations regarding the leasing of their licensed spectrum, and to make license renewals dependent on the FCC's ex post facto judgments concerning a renewal applicant's current service, record of expansion, prior system investments, history of service disruptions, rural coverage, and/or spectrum leasing practices.²⁶ USCC also opposed a vague FCC proposal which somehow would connect a new and nebulous concept of "substantial service" with the renewal process, which would, in conjunction with the other new elements referred to above, destroy the renewal expectancy which wireless licensees have enjoyed for more than a decade, which has had considerable public benefits.²⁷

The dangers of these proposals were apparent to other commenters as well. Dobson notes that the FCC should apply the "well settled renewal expectancy rules" applicable to other wireless licensees to Part 27 licensees.²⁸ MetroPCS offers two additional and persuasive arguments against any alteration of renewal standards.²⁹ First, a reasonable renewal expectancy, based on objective and attainable criteria, is crucial to securing necessary financing for the construction of systems. This would obviously be as important to small

²⁶ USCC Comments, pp. 15-18.

²⁷ Ibid.

²⁸ Dobson Comments, p. 10.

²⁹ MetroPCS Comments, pp. 16-17.

carriers as to midsized and national carriers, if not more so. Second, MetroPCS notes the threat posed by a standardless and uncertain renewal process of a return to the days of "strike" applications filed in the hope of securing a payoff in exchange for withdrawing the competitive application. Given its challenges in the coming years in adopting appropriate regulations for the myriad of wireless services soon to be available, truly the last thing the Wireless Bureau should be dealing with are "promise versus performance" renewal hearings. Also, Union Telephone points out the undue burden on smaller carriers inherent in the FCC's contemplated renewal reporting requirements, even if renewal applications do not result in hearings.³⁰

Finally, Corr, a regional and rural CMRS carrier, has eloquently criticized the proposed renewal and related data submission proposals as fundamentally antithetical to free market principles.³¹ Corr argues that the best way to promote rural service is to define market areas correctly at the outset, rather than by engaging in retroactive micromanagement of carrier buildout decisions. As Corr forthrightly states, the FCC staff "is in no position to judge whether economic and business conditions in a particular market would allow construction of a particular system at a particular time," or to assess the "adequ[acy]" of licensee investments.³²

USCC would note once again that the FCC's Part 22, 24 and 27 buildout and renewal rules and policies have worked extremely well in providing the American people with an excellent system of competitive wireless communications. Without government control or subsidy, American's wireless carriers have constructed an interconnected network well positioned to continue its present pace of technological innovation and thus to serve the public interest. The proposals in the Notice discussed above would not promote those goals. They

³⁰ Union Telephone Comments, p. 8.

³¹ Corr Comments, pp. 5-6.

³² Ibid., p. 6.

would send federal wireless policy down the wrong path. It is a path we urge the FCC not to take.

5. The FCC Should Not Adopt An Entrepreneurs' Block.

In Section 1 above, and in our prior comments, USCC has argued for changes in the FCC's 700 MHz market definitions and for spectrum allocations designed to promote rural service and the ability of small, mid-sized and rural carriers to provide that service. We are participating with other carriers in a "consensus" proposal concerning market sizes and spectrum allocations. A band plan containing a sufficient number of small geographic area licenses is the best vehicle for providing bidders of all sizes with a reasonable opportunity to acquire spectrum. It promotes licensee diversity while allowing an efficient auction market to function. USCC has a long record of promoting rural service dating back to the first cellular lotteries through its joint ventures and has supported the FCC designated entity ("DE") program in successive wireless auctions. Bidding credits provide a reasonable framework for assisting small bidders and they should be continued for this auction. However, USCC opposes the proposal of some commenters in the initial comment round to create a "DE only" spectrum block in the 700 MHz auction.³³

As noted above, USCC supports the bidding credits currently granted to DE applicants and understands that the Communications Act supports the grant of licenses to a "wide variety of applicants," including small businesses and "rural telephone companies."³⁴ However, neither NTCA nor OPASTCO cite any precedent which provides that that mandate has to be carried out by means of spectrum set asides. If such set asides are to be adopted, they must be justified on their own merits. And USCC further submits that no public interest reasons have

³³ See, e.g., Comments of National Telecommunications Cooperative Associations ("NTCA"), pp. 8-11; Organization for The Promotion and Advancement of Small Telecommunications Companies (OPASTCO), p. 4.

³⁴ 47 U.S.C. § 309(j)(93)(B), 309(j)(4)(A).

been asserted which would justify a DE spectrum reservation. There is no reason for such a set aside unless the FCC concludes that DEs would provide better wireless service in a given type of market than would non-DE applicants. There is no basis in the record for such a determination.

Once markets have been reasonably defined and DE bidding credits have been factored in, 700 MHz licenses should be awarded to the applicants that have bid the most for them. In this all important auction, the FCC should stick with this basic free market principle.

Conclusion

The most important issue before the Commission in this proceeding is how to create licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies on 700 MHz spectrum in rural as well as all other areas of the U.S. We have joined with other providers to improve our original proposal for band plan revisions and support a consensus plan that offers a balanced and fair compromise of the needs of nationwide, regional and local incumbents and new entrants. We also agree with numerous comments opposing any changes in existing Part 27 license performance requirements and renewal standards.

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