

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and)	WT Docket No. 06-150
777-792 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)	
)	
_____)	

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

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Summary

MetroPCS Communications, Inc. (“MetroPCS”) is submitting these reply comments in response to the Commission’s *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking* (the “NPRM”) in the above-captioned proceedings. Based upon the record in the proceeding, MetroPCS maintains its strong conviction that the Commission must modify its band plan for the unauctioned 700 MHz spectrum in order to advance the public interest and take advantage of the valuable lessons learned during the recently concluded, and highly successful, Auction No. 66.

Many commenters representing a diverse cross-section of industry participants advocate a more balanced 700 MHz band plan that allows spectrum to be licensed in certain smaller spectrum blocks over smaller service areas than those reflected in the Commission’s current allocation plan. MetroPCS submitted its own proposed 700 MHz Band Plan in its comments in this proceeding, but noted that it planned to reach out to other commenters in an effort to promote a consensus plan endorsed by a broad group of interested parties. This effort to forge a balanced consensus has succeeded. As a result, a diverse group comprised of industry groups, industry representatives and carriers of all sizes, with many different business models, and at different stages of development (incumbents and new entrants) is jointly presenting the following Balanced Consensus 700 MHz Band Plan to the Commission today:

BALANCED CONSENSUS 700 MHz BAND PLAN

Upper 700 MHz Band

747		762			777			792			
A	C	D	E	B	Public Safety	A	C	D	E	B	Public Safety
CH. 60	CH. 61	CH. 62	CH. 63	CH. 64	CH. 65	CH. 66	CH. 67	CH. 68	CH. 69		
746		752		758		764		770		776	
782		788		794		800		806			
<u>Block</u>	<u>Frequencies</u>			<u>Bandwidth</u>	<u>Pairing</u>	<u>Area Type</u>	<u>Licenses</u>				
A	746-747, 776-777			2 MHz	2 x 1 MHz	MEA	52*				
B	762-764, 792-794			4 MHz	2 x 2 MHz	MEA	52*				
C	747-752, 777-782			10 MHz	2 x 5 MHz	CMA	734				
D	752-757, 782-787			10 MHz	2 x 5 MHz	EA	176				
E	757-762, 787-792			10 MHz	2 x 5 MHz	EA	176				

Lower 700 MHz Band

698		704		710		716		722		728		734		740		746	
A	B	C	D	E	A	B	C										
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59										
<u>Block</u>	<u>Frequencies</u>			<u>Bandwidth</u>	<u>Pairing</u>	<u>Area Type</u>	<u>Licenses</u>										
A	698-704, 728-734			12 MHz	2 x 6 MHz	REAG	12										
B	704-710, 734-740			12 MHz	2 x 6 MHz	CMA	734										
C	710-716, 740-746			12 MHz	2 x 6 MHz	MSA/RSA	734*										
D	716-722			6 MHz	unpaired	700 MHz EAG	6*										
E	722-728			6 MHz	unpaired	REAG	12										

***Blocks have been auctioned.**

This consensus proposal differs in some respects from the earlier MetroPCS proposal, but is entirely consistent with the allocation principles which formed the basis of that proposal.

Recognizing the value of industry consensus, MetroPCS endorses the Balanced Consensus Plan.

With respect to the other aspects of the 700 MHz allocation, MetroPCS shares the views of a large number of carriers that (1) the previously established 700 MHz service and performance requirements should be maintained; (2) renewal criteria for the 700 MHz Band should be as clear as possible; and (3) the 700 MHz Band license term should be extended for a fifteen year term, or, at a minimum, a ten year term.

Lastly, MetroPCS opposes some of the other proposals for the 700 MHz band which would drastically alter the character of the allocation. The Commission should not adopt NextWave's plan to reappportion the unassigned 700 MHz spectrum to create larger, unpaired blocks devoted to time division duplex systems. The Commission also should not adopt the proposal of DirecTV and Echostar to adopt a license plan that includes a nationwide license or the requests of commenters who advocate combinatorial bidding. Likewise, the Commission should not adopt the proposal of Access Spectrum to offer a "significant bidding preference" to any bidder for the adjacent commercial spectrum that commits to share infrastructure and handset designs with, as well as provide priority access to public safety. Finally, MetroPCS opposes the Cyren proposal to reallocate a portion of the 700 MHz to public safety uses. The success of Auction 66 reflects the fact that there continues to be a substantial unsatisfied demand for paired broadband spectrum that is assigned in a variety of spectrum block sizes and areas using an SMR auction format with flexible rules that enable it to be put to many different beneficial uses. The band plan supported by MetroPCS would meet the identified demand; the alternate proposals discussed above will not.

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REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply comments in response to the *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking*, FCC 06-114, released August 10, 2006 (the “*NPRM*”)² in the above-captioned proceedings. The following is respectfully shown:

¹ For purposes of these Comments, the term “MetroPCS” refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed subsidiaries.

² See *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 04-356, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Section 68.4 of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Notice of*

(continued...)

I. The Comments Support a Balanced 700 MHz Band Plan that Includes a Variety of Spectrum Blocks and Market Sizes

The Commission's *NPRM* acknowledged several recent filings by wireless carriers who recommended changes to the current band plan for spectrum in the 698-746, 747-762 and 777-792 MHz bands (the "700 MHz Band"). The comments filed by MetroPCS in this proceeding agreed with these previous commenters - - such as the Rural Cellular Association ("RCA"), the Rural Telecommunications Group ("RTG") and United States Cellular Corporation ("USCC") - - who supported a reevaluation of the unauctioned portions of the 700 MHz Band due to changed regulatory circumstances, industry developments, and the need for more licenses in smaller spectrum block sizes and smaller geographic areas. MetroPCS also examined the valuable lessons learned from Auction No. 66, observing that: (1) the AWS Auction was successful in no small part because the band plan offered spectrum in several geographic area and spectrum block sizes which accommodated a variety of needs for spectrum by diverse carriers and new entrants in the marketplace;³ (2) bidders who wanted to aggregate licenses into larger areas were successful in the simultaneous multiple-round action format demonstrating that combinatorial bidding is not necessary or appropriate in order to achieve larger license areas or larger license blocks;⁴ (3) Substantial demand exists for smaller geographic areas;⁵ (4) New entrants participated robustly in the auction;⁶ and (5) Demand for smaller spectrum block licenses is

(...continued)

Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making, FCC 06-114 (rel. Aug. 10, 2006) ("*NPRM*"), 71 Fed. Reg. 48506 (Aug. 21, 2006).

³ Comments of MetroPCS at 4.

⁴ *Id.* at 5.

⁵ *Id.* at 6.

⁶ *Id.* at 7.

strong.⁷

Based on those premises, MetroPCS proposed a 700 MHz Band plan that provided for the inclusion of a greater number of smaller services areas, as well as smaller spectrum blocks, while still maintaining some larger service areas to provide the necessary variety for all types of carriers, both incumbents and new entrants, and business plans, both traditional and new. The MetroPCS band plan recommended utilizing the CMA as the license area for the Lower Block B paired channel and subdividing the Upper D Block license into two 10 MHz channels rather than a single 20 MHz channel.⁸ In addition, MetroPCS proposed altering the prior proposed plans in order to maintain more congruence between service areas licensed in the 700 MHz Band and service areas licensed in Auction 66, such as utilizing the REAG license area utilized in Auction No. 66 for the Lower Block A paired channel rather than the 700 MHz economic area grouping (“EAG”) defined by the Commission.⁹

Numerous commenters representing a diverse cross-section of industry participants also advocated in their comments that the Commission adopt a more balanced 700 MHz Band plan that allows for spectrum to be licensed over smaller service areas than the Commission’s original proposal, for reasons similar to MetroPCS.¹⁰ Many of these commenters also agree with

⁷ *Id.* at 9.

⁸ *Id.* at 13-14.

⁹ *Id.* at 12.

¹⁰ Comments of Consumer Federation of America, Consumers Union and Free Press (“Consumer Groups”) at 4 (“The adoption of a band plan with relatively small license areas and spectrum blocks is a necessary step in the first direction.”); Comments of Corr Wireless Communications, LLC (“Corr”) at 2; Comments of Frontier Communications (“Frontier”) at 3-5; Comments of Leap Wireless International, Inc (“Leap”) at 4; Comments of the National Telecommunications Cooperative Association (“NTIA”) at 5-6; Comments of the Organizations for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) at 2-3; Comments of RCA at 4-8; Comments of RTG at 2-8; and Comments of Union Telephone Company at 2-5.

MetroPCS that the Commission should create at least one CMA license in the 700 MHz Band in the unassigned channel blocks,¹¹ as well as split the Upper D Block into two 10 MHz blocks.¹² For example, Aloha Partners, L.P. - - a major holder of lower 700 MHz licenses - - (“Aloha”) urges the Commission to offer licenses in a number of different market sizes, including a CMA of at least 12 MHz bandwidth, in order to “provide service to rural areas,” “provide a bona fide opportunity to small businesses to be a meaningful part of the auction,” and allow the Commission to comply with “its statutory mandate to avoid undue concentration with the licenses that are being auctioned.”¹³ In addition, Aloha notes that “[i]f the Commission does not offer a mix of small, medium, and large markets, then the only companies that will be financially able to participate in the auction will be the 4-6 very large national carriers.”¹⁴ C&W Enterprises, Inc. (“C&W”), a successful bidder in Auction 66, notes that with smaller licenses “various small entities such as C&W are more likely to participate and to increase the revenues generated by such an auction.”¹⁵ RTG - - a leading representative of rural carrier interests - -

¹¹ Comments of Blooston Rural Carriers at 2; Comments of Vermont Department of Public Service et.al. (“Vermont”) at 3; Comments of Aloha at 3; Comments of Corr at 3 (“The virtue of smaller CMA-sized blocks is that they are truly “building blocks” which can be combined in just the right amounts of spectrum and geographic area to meet the need perceived by the licensee.”); Comments of Dobson Communications Corporation (“Dobson”) at 1 (“Smaller carriers clearly do not possess the financial resources to compete for EAG licenses.”); Comments of Frontier at 6 (“[T]he use of RSAs/MSAs . . . will not disadvantage large entities because they can pursue and combine multiple small license areas to create statewide or regional service areas.”); Comments of Leap at 4; Comments of MilkyWay Broadband, LLC (“MilkyWay”) at 2; Comments of NTIA at 6-7; Comments of RTG at 2; Comments of Union Telephone Company at 4; and Comments of USCC at 3-5.

¹² Comments of Blooston Rural Carriers at 4; Comments of Frontier at 7; Comments of Leap at 4; Comments of RTG at 7; Comments of Union Telephone Company at 5; and Comments of USCC at 5.

¹³ Comments of Aloha at 3.

¹⁴ *Id.* at 5.

¹⁵ Comments of C&W at 2.

comments that “the use of smaller size license areas results in greater auctions and market efficiency because it allows bidders to tailor their auction strategy and spectrum acquisitions to meet their business plans.”¹⁶ USCC - - which was a successful participant in Auction 66 as an investor in Barat Wireless, L.P. - - agrees with MetroPCS’ analysis of Auction No. 66, stating that “[a]s illustrated in the Auction #66 results, the proposed use of EA and CMA building blocks has proved to be an effective way to provide realistic licensing opportunities for entities to serve regional and local coverage areas.”¹⁷ Lastly, CTIA also recognizes in its comments that a “balanced approach serve[s] the wireless marketplace well” and that “a mix of different sized geographic area licenses serves the Commission’s goals of balancing efficiency with the dissemination of licenses among a variety of applicants.”¹⁸

Some commenters, representing mainly the large national carriers, including Cingular, AT&T (soon to be sole owner of Cingular), Motorola, Qualcomm and Verizon, oppose changes to the Commission’s 700 MHz Band Plan, and recommend against a split of the 20 MHz Block D license.¹⁹ Verizon argues that “there is no evidence as yet that breaking up spectrum into more than a thousand geographically small licenses will result in better service to rural America”²⁰ Cingular argues that “[a]bsent 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

¹⁶ Comments of RTG at 5.

¹⁷ Comments of USCC at 6.

¹⁸ Comments of CTIA at 5-6.

¹⁹ Comments of Verizon Wireless (“Verizon”) at 3; Comments of Cingular Wireless LLC (“Cingular”) at 5; Comments of Qualcomm Incorporated (“Qualcomm”) at 18; and Comments of Motorola at 5.

²⁰ Comments of Verizon at 4.

spectrum on a CMA basis, the Commission should not modify its 700 MHz band plan.”²¹ However, the comments of MetroPCS and others, as well as the results of Auction No. 66, make clear that having a wide variety of spectrum blocks and license areas available fosters increased competition and serves the public interest.²²

The national carrier's comments are at odds with the Commission's own view of Auction 66. Chairman Martin describes the AWS Auction as the "biggest, most successful wireless auction in the Commission's history," and noted with pleasure the fact that "more than half of the winning bidders were small businesses."²³ Moreover, in its recent 3rd Circuit brief, the Commission noted the extent to which small businesses, rural carriers and other "designated entities" or "DEs" succeeded in Auction 66:

[B]y any objective standard, DEs participated substantially in the AWS auction. DEs comprised 100 out of the 18 qualified bidders and 57 out of the 104 winning bidders.²⁴

In light of this Commission-acknowledged success, the large national carriers should not succeed in their effort to retain a 700 MHz Band plan that will not accommodate local and regional carriers.²⁵ As was correctly noted by Leap Wireless International, Inc. ("Leap") in its comments "Auction No. 66 for AWS-1 spectrum plainly demonstrated that the lion's share of spectrum carved into large geographic regions will quickly move beyond the reach and resources of small

²¹ Comments of Cingular at 9. It is interesting to note that the fourth and fifth largest bidders in the auction were MetroPCS and Leap Wireless, who are regional carriers which can use the AWS System to enter new markets.

²² Comments of MetroPCS at 6-7; and Comments of USCC at 6.

²³ FCC News Release, "Statement of Chairman Kevin J. Martin on the Conclusion of Advanced Wireless Services Auction," September 18, 2006.

²⁴ Council Tree Comm., Inc. et.al. v. FCC, Brief for Respondents at 44, Docket No. 06-2943 (3rd Cir., filed October 16, 2006).

²⁵ It is interesting to note that the only non-national carriers able to garner licenses larger than EA in Auction 66 were the largest regional carriers participating in the auction.

and mid-sized bidders.”²⁶ In contrast, the results of Auction No. 66 establish that the large carriers will participate regardless of the market areas offered.²⁷

As Aloha noted, Sprint/SpectrumCo spent \$2.4 billion and purchased 157 BEA licenses and Cingular spent almost 50% more in the aggregate for CMA and BEA licenses than for regional blocks.²⁸ In addition, RTG points out that the “use of EAs in the AWS auction clearly did not prevent SpectrumCo from being able to aggregate smaller sized licenses into a nationwide footprint.”²⁹ Moreover, as MetroPCS has noted, in Auction No. 66, “with one exception (in Alaska), all of the 20 MHz REAG F Block licenses were acquired by Verizon Wireless or T-Mobile” – both large, national carriers.³⁰ This is in addition to the fact that the nationwide carriers (including SpectrumCo LLC, which consisted of a coalition of cable companies along with Sprint/Nextel) also acquired the vast majority of the 10 MHz REAG licenses and the 20 MHz economic area (“EA”) licenses.³¹ In the meantime, the “vast majority of rural carriers and designated entities tended to gravitate towards the smaller spectrum blocks.”³² The evidence is incontrovertible. Having a wide variety of spectrum license areas available in the 700 MHz Band will advance the interests of all carriers, incumbent and new entrants alike, as well as the overall public interest. By having a mix of market sizes, there will be a larger number of overall bidders resulting in competition for all types of market areas. Most

²⁶ Comments of Leap Wireless International, Inc. at 4.

²⁷ Of the 18 REAG licenses in the continental United States only four were garnered by carriers other than the large national carriers.

²⁸ Comments of Aloha at 6.

²⁹ Comments of RTG at 5.

³⁰ Comments of MetroPCS at 4.

³¹ *Id.* at 5.

³² *Id.*

important, the results of Auction 66 demonstrate that with a proper band plan, new entrants are willing and able to enter into markets and spur competition.

A. MetroPCS Supports the Balanced Consensus 700 MHz Band Plan

As promised in the MetroPCS comments,³³ subsequent to the date long form applications were due for Auction No. 66 MetroPCS entered into a dialogue with other proponents of 700 MHz Band Plans, in an effort to develop a fair and balanced consensus band plan that reflects the common themes of a broad group of entities. This Balanced Consensus Band plan is being jointly filed with the Commission today by the following interested parties:

Alltel Corporation
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
United States Cellular Corporation
Vermont Department of Public Service
Vermont Office of the Chief Information Officer
Vermont Public Service Board
Vermont Telephone Company

The Balanced Consensus Plan is as follows:

³³ *Id.* at 14.

MHz Band, and substitutes a REAG for MetroPCS' proposal of a EAG in the E Block of the Lower 700 MHz band. However, these modest changes are consistent with the principles described by MetroPCS and other commenters above. MetroPCS endorses this consensus band plan as a fair and balanced compromise approach to the 700 MHz Band that will serve a wide variety of varied entities and interests. MetroPCS further notes that the balanced consensus band plan -- which encompasses two REAGs, two EAs, and two CMAs -- benefits all interests of the wireless industry, including large carriers, regional carriers, rural carriers, and new entrants, as well as the public interest, allowing for carriers to pick and choose the license area that is right for their business plan.

II. The Previously Established 700 MHz Service and Performance Requirements Should be Maintained

The *NPRM* sought comment on whether the Commission should revise the existing "substantial service" performance requirement and adopt specific buildout rules for 700 MHz licenses.³⁴ Numerous commenters of all sizes and types agree with MetroPCS that the previously established service and performance requirements should remain in effect for the 700 MHz Band.³⁵ In its comments, MetroPCS advocated the previously established service and performance requirements so that licensees will have the flexibility necessary to build facilities

³⁴ See *NPRM*, para. 61.

³⁵ Comments of Aloha at 8 ("new, more demanding performance requirements cannot legitimately be placed upon existing 700 MHz licensees"); Comments of Blooston Rural Carriers at 7; Comments of C&W at 4; Comments of Corr at 5; Comments of Dobson at 5 ("Commission should adopt for 700 MHz licensees the same substantial service obligations made applicable to AWS licensees."); Comments of Leap at 9; Comments of MilkyWay at 7-8; Comments of USCC at 12-13; Comments of Verizon at 6-10 ("There is no factual basis and no legal justification for imposing new performance, constructions, or negotiation requirements on 700 MHz licensees."); Comments of Cingular at 9-13; Comments of AT&T at 12-15; and Comments of CTIA at 7.

based on their market needs and their own business plans.³⁶ As MetroPCS noted, “stringent construction timetables and benchmarks greatly benefit incumbent carriers and disadvantage all new entrants to a particular market.”³⁷ This is the case because incumbents can add new channels and equipment easily to existing infrastructure to meet buildout requirements while new entrants must build their systems completely from scratch. The Commission also should maintain the previously established service and performance requirements because sufficient economic incentives exist for licensees to build out and perform without regulatory interference. As Corr commented, “sheer economic logic will compel the license holders to pay the highest price for the licenses consistent with a planned productive use, and then actually put the licenses to use in the way most likely to recover the economic cost, plus some profit.”³⁸ This is particularly true for smaller carriers who do not have the financial wherewithal to strand capital with unproductive licenses.³⁹

In addition, many commenters opposed adopting a strict “keep-what-you-use” requirement,⁴⁰ which MetroPCS asserted “could result in newer entrants losing the ability to expand their service after the initial license term, while incumbents with large existing footprints would be able to protect and retain territory much more easily.”⁴¹ Numerous commenters recognized that licensees have sufficient motivation to earn revenues as quickly as possible. As

³⁶ Comments of MetroPCS at 15.

³⁷ *Id.*

³⁸ Comments of Corr at 5.

³⁹ New entrants benefit from the ability to grow their system over time, without the imposition of rigid construction requirements that may not meet their business plans. New entrants offering new services need to have the flexibility to follow the market without having to meet construction requirements designed for traditional services.

⁴⁰ Comments of CTIA at 10; Comments of Dobson at 6 (“Dobson is strongly opposed to the adoption of any such re-licensing methodology.”).

⁴¹ Comments of MetroPCS at 16.

stated by Corr “[t]he Commission’s proposals to require construction benchmarks, substantial service thresholds and negotiations with secondary market parties all run contrary to the remarkable efficiency of letting the invisible hand do its work.”⁴² Furthermore, CTIA agrees that “the Commission should refrain from taking actions that compel licensees to engage in premature, uneconomic, and unsustainable deployment.”⁴³ In addition, Cingular notes, “a keep what you use approach . . . would be inconsistent with the Commission’s long standing policy of relying on the marketplace, rather than regulation, to accomplish its objectives.”⁴⁴ Such an approach may also deter the ability of new entrants and smaller carriers to attract the capital necessary to acquire, build and run their markets because the value of the spectrum, a major component of value for smaller carriers and new entrants, would be diminished over time.

The Commission, therefore, should heed the recommendations of this diverse group of commenters and avoid imposing construction benchmarks and service requirements that will have the effect of imposing artificial government-mandated burdens when market forces are adequate to assure that facilities will be constructed and operated in the public interest.

III. Commenters Agree that Renewal Criteria Should Be As Predictable As Possible

The *NPRM* seeks comment on whether to amend the Commission's rules to clarify or modify the requirements and procedures of the renewal process for licenses in the 700 MHz band.⁴⁵ Many of the commenters on this issue, including CTIA, Dobson, Cingular, and USCC agree with MetroPCS that renewal criteria must be predictable and consistent with prior

⁴² Comments of Corr at 5.

⁴³ Comments of CTIA at 7.

⁴⁴ Comments of Cingular at 11.

⁴⁵ *See NPRM*, para. 80.

requirements.⁴⁶ Having predictability allows licensees to plan accordingly and allows applicants and licensees to attract the capital necessary to acquire the license and fund the construction and operating costs. CTIA notes, correctly, that the Commission should “ensure that 700 MHz Band licensees have the same strong renewal expectancy that applies to other spectrum bands, and it should not devise new criteria or obligations here.”⁴⁷ MetroPCS again urges the Commission to add as much clarity and specificity as it can to the renewal standard in order to add certainty to the renewal process, and to eliminate the prospect for competing applications. As MetroPCS stated in its comments, “the Commission should assess the entitlement of a licensee to receive a renewed license based upon objective, identifiable criteria, and open the license up for new applications only if the renewal standard is not met and the a license is terminated.”⁴⁸

IV. The Record Justifies Extending the 700 MHz License Term

Nearly all commenting on the Commission’s inquiry concerning license terms for the 700 MHz license term agree with MetroPCS that the license term for 700 MHz Band licensees should be extended from its current term. MetroPCS believes that the license term should be extended in order to allow both incumbent licensees and new entrants the flexibility and incentives necessary to develop a broad range of new services.⁴⁹ Commenters agree with MetroPCS that the Commission should establish a fifteen year initial license term for 700 MHz

⁴⁶ Comments of Dobson at 10 (“The Commission should adopt rules which afford 700 MHz band licensees the same renewal expectancy applicable to PCS, cellular, and Part 27 licensees.”); Comments of USCC at 17-18; and Comments of Cingular at 14-15.

⁴⁷ Comments of CTIA at 18. Indeed, this has served the Commission well as was recently demonstrated by the strong bids placed in Auction 66 and the robust competition in the wireless marketplace as shown in the Commission’s recent annual wireless competition report.

⁴⁸ Indeed, MetroPCS is not sure that the Commission has the statutory authority to decide between competing applications other than by auction.

⁴⁹ Comments of MetroPCS at 18-19.

licensees,⁵⁰ or, at a minimum, a license term of at least ten years after the DTV transition deadline.⁵¹ Indeed, the larger the term the more likely new entrants and smaller carriers will be able to finance their participation in the auction. The fifteen year license term and relaxed construction requirements all led to the Commission's success in Auction 66 and wanted to lead to a similar success in the 700 MHz auction.

V. The Commission Should Not Radically Alter the 700 MHz Allocation as Suggested by Some Commenters

The results of Auction 66 indicate that there remains a substantial unsatisfied demand for paired broadband spectrum in a variety of spectrum block sizes and market areas. The success of Auction 66 also indicates that the tried and true auction format utilized in Auction 66 should not be abandoned. Based upon these considerations, MetroPCS opposes the comments of those who want to radically alter the 700 MHz allocation to accommodate other proposed uses or other auction techniques.

Nextwave argues in its comments that more spectrum for frequency division duplexing (“FDD”) technologies is not needed, and that the Commission should reappportion the unassigned 700 MHz spectrum to create larger, unpaired blocks that will accommodate time division duplex (“TDD”) systems.⁵² This radical proposed alteration of the 700 MHz allocation should not be implemented for many reasons. First, NextWave is the only commenter to advocate a proposal

⁵⁰ Comments of Aloha at 10; Comments of C&W at 4; Comments of CTIA at 20 (“CTIA recommends a 15-year license term, followed by 10-year renewal terms.”); Comments of Frontier at 8; Comments of Cingular at 13-14; and Comments of AT&T.

⁵¹ Comments of Blooston Rural Carriers at 8; Comments of Corr at 4; Comments of Dobson at 11; Comments of Motorola at 13; Comments of Qualcomm at 21; Comments of Union Telephone Company at 6; Comments of Verizon at 10; and Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Pegasus Communications Corporation and Telecom Ventures at 35 (“[l]icense term should not be fewer than 10 years from February 18, 2009”);

⁵² Comments of NextWave Broadband Inc. (“NextWave”) at 6.

of this nature. In the meantime, a large number of carriers of all types and sizes have offered comments and band plans that contemplate the retention of the FDD technology, thus evidencing a substantial unsatisfied demand for additional spectrum to be used in this fashion. Second, adopting the NextWave proposal would hinder the healthy pro-competitive growth of alternative two-way broadband services, including voice. One of the most promising results of Auction 66 was the success enjoyed by non-nationwide carriers such as MetroPCS,⁵³ Leap Wireless,⁵⁴ US Cellular⁵⁵ and Atlantic Wireless.⁵⁶ The bidding of these companies indicates that they have two-way broadband business plans which enable them to attract capital and enter new markets. The 700 MHz Band represents the next logical spectrum opportunity for these new market entrants, who are bringing welcome competition to an otherwise increasingly consolidated wireless business. Due to the demonstrated desire of current FDD carriers to increase service options with new spectrum, it is too early to remove spectrum for FDD technologies. In contrast, NextWave has yet to demonstrate that TDD systems will succeed in the wireless marketplace.

Third, there is significant spectrum (both licensed and unlicensed) for high speed data services. Fourth, moving to an unproven allocation may lead to the result that few participants

⁵³ See Auction No. 66 Closing Chart, Bidder Data <http://wireless.fcc.gov/auctions/66/charts/66cls1.pdf>; MetroPCS had net provisionally winning bids approximately \$1.4 billion, making it the 4th largest bidder;

⁵⁴ See Auction No. 66 Closing Chart, Bidder Data <http://wireless.fcc.gov/auctions/66/charts/66cls1.pdf>; Participating through Cricket Licensee (Reaction), Inc. (with net PWBs of \$710 million) and Denali Spectrum License, LLC (with net PWBs of nearly \$275 million, Leap was the 6th highest bidder.

⁵⁵ See Auction No. 66 Closing Chart, Bidder Data <http://wireless.fcc.gov/auctions/66/charts/66cls1.pdf>; Participating through Barat Wireless, LP (with PWBs of \$172 million), making it the 8th largest bidder.

⁵⁶ See Auction No. 66 Closing Chart, Bidder Data <http://wireless.fcc.gov/auctions/66/charts/66cls1.pdf>; Atlantic Wireless had net PWBs of approximately \$75 million.

are attracted to the auction or the spectrum will go unused. The Commission can ill-afford spectrum allocations that are unproven. For example, the Commission already has recognized that the 700 MHz Band Manager experiment has not generated the service developments the Commission has hoped for. This is not the only example. For instance, in the mid 90s the Commission allocated spectrum for interactive television before the technology or services were available. Unfortunately the technology never developed and many of these licenses were returned to the Commission. The Commission cannot afford another such experiment with spectrum as valuable as the 700 MHz spectrum.

The Commission also should not adopt the proposal of DirecTV, Inc. and Echostar Satellite, LLC (the “Satellite Carriers”) to have the Commission create at least one nationwide 700 MHz license.⁵⁷ While the Satellite Carriers attempt to argue in their comments that the spectrum distribution in the recently concluded AWS auction “made it harder for Wireless DBS to create a nationwide service,”⁵⁸ as demonstrated in Auction No. 66, carriers were willing and able to achieve nationwide spectrum coverage if they so desired. Both T-Mobile and SpectrumCo LLC (“SpectrumCo”) were able to create virtually nationwide coverage using the spectrum license areas in the auction – without needing a single nationwide license.⁵⁹ As MetroPCS noted in its comments, SpectrumCo created a virtually nationwide license by purchasing a combination of BEAs and CMAs, utilizing a building block approach to its purchasing.⁶⁰ The Satellite Carriers could have similarly combined spectrum licenses in Auction

⁵⁷ Comments of Satellite Carriers at 3.

⁵⁸ Comments of Satellite Carriers at 5.

⁵⁹ See Auction No. 66 Closing Chart, Licenses by Bidder <http://wireless.fcc.gov/auctions/66/charts/66cls2.pdf>.

⁶⁰ Comments of MetroPCS at 6.

No. 66 to achieve nationwide coverage, but its bidding entity, Wireless DBS LLC, voluntarily decided not to do so. The Commission certainly should not reserve an entire block of spectrum for carriers who voluntarily chose not to create a nationwide license as did other carriers such as T-Mobile and SpectrumCo.⁶¹

The Commission also should reject any requests by commenters in favor of combinatorial bidding, as there is no compelling reason to have combinatorial bidding introduced into the auction process. Allowing combinatorial bidding would add unneeded complexity to the auction and create a serious risk of unintended and undesirable consequences without providing any substantial public interest benefits. By allowing combinatorial bidding, the Commission would introduce a radical change from prior auction procedures which could potentially delay or deter participation by potential bidders.

In the Public Notice announcing the procedures for Auction No. 66, the Commission agreed with those commenters who asserted that a simultaneous multiple round (SMR) auction of the AWS licenses, which included several large regional area blocks, would “provide opportunities for bidders to aggregate licenses in order to obtain nationwide coverage.”⁶² Many prior auction experiences confirm that combinatorial bidding is not necessary to enable carriers to assemble nationwide licenses. For example, the final results in Auction No. 3 demonstrated that carriers interested in assembling a nationwide license were able to do so.⁶³ And, as noted above, in Auction No. 66, Spectrum Co and T-Mobile were able to build virtually nationwide

⁶¹ It is also interesting to note that Spectrum Co and T-Mobile were able to do so without combinatorial bidding. This further demonstrates that combinatorial bidding is not necessary.

⁶² Public Notice, “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006,” rel. April 12, 2006.

⁶³ Of the six licenses offered in the Regional Narrowband PCS Auction, four of the licenses were acquired by a single applicant in each of the five regions, resulting in four nationwide licenses. See *Public Notice*, PNWL 94-27, released November 9, 1994.

coverage without combinatorial bidding. After the extraordinary success of Auction No. 66, the Commission should not make any changes that could potentially diminish the success of future auctions.

Access Spectrum urges the Commission to offer a "significant bidding preference" to any bidder for the adjacent commercial spectrum that commits to share infrastructure and handset designs with, and provide priority access to, public safety. MetroPCS opposes this proposal. First, while there is explicit statutory authority for the award of bidding credits to designated entities,⁶⁴ there is no such authority for the bidding credits proposed by Access Spectrum. In the absence of an express indication of congressional intent, the Commission should avoid making the kind of value judgments inherent in any award of bidding credits based upon a determination that one proposed spectrum use is more publicly beneficial than another.⁶⁵ The fundamental strength of assigning spectrum by auction is that the free market will result in the acquired spectrum being put to the highest and best use. This market driven approach gets skewed whenever one bidder has bidding credits, and such exceptions should be made only in compelling circumstances. The best evidence of such circumstances is a statutory mandate which indicates that a political consensus supports a particular preference. Ad hoc Commission decision making on bidding preferences would not reach the same level.

MetroPCS also disagrees that commercial users need to be compensated for coordinating and cooperating with Public Safety users. There are many instances in which commercial

⁶⁴ 47 U.S.C. § 309(j)(4)(A).

⁶⁵ Moreover, this would require the Commission rather than the market to determine winners and losers. Further, it would be extremely difficult for the Commission to establish the criteria for such a bidding credit. Would a carrier that agreed to provide services to public entities, but never did so, get the same credit as one that actually provides service. This exercise would snare the Commission in the very bids of problems that the departure from comparative license procedures was meant to solve.

wireless carriers have been obligated to incur costs to promote public interest objectives (e.g. E-911 requirements, CALEA requirements, TRS requirements) without being compensated or incented with bidding credits. Access Spectrum has failed to demonstrate that the objectives it is seeking to meet require such an extraordinary grant of bidding preferences to commercial spectrum users.

Finally, the Commission should reject Cyren Call's concurrent proposal to allocate 30 MHz of spectrum in the 700 MHz Band for the specific use of the public safety community for a dedicated broadband network. Cyren Call set forth this proposal in a Petition for Rulemaking to the Commission on April 27, 2006. The Cyren Call proposal would limit the already scarce spectrum necessary to promote two-way broadband services. As the recently concluded Auction No. 66 demonstrates, there remains a strong demand for spectrum for the provision of commercial wireless services. The Commission cannot afford to remove allocations of spectrum as carriers acquire the technology to provide high-speed broadband and 4G services. Many carriers, especially small and rural carriers, need additional spectrum to be able to supply these services on a wide scale. In addition, small rural carriers, and new entrants need to be able to acquire additional spectrum to compete with larger carriers, who have been accumulating spectrum to provide advanced services for a much longer period of time. The Commission should not remove these necessary inputs for the provisioning of these services.

VI. Conclusion

For the foregoing reasons, MetroPCS respectfully asks the Commission to revise its 700 MHz Band plan as proposed, as well as adopt MetroPCS' suggested changes to the rules governing 700 MHz licenses.

Respectfully submitted,

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