
**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 Systems)	CC Docket No. 94-102
)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309
)	

To: The Commission

REPLY COMMENTS

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REPLY COMMENTS

Cingular Wireless LLC ("Cingular") hereby replies to comments submitted in response to the *Notice of Proposed Rulemaking* in the captioned proceeding.¹

SUMMARY

The reallocation of 700 MHz band spectrum for commercial use has been a long arduous process. The band plan for this spectrum was adopted after the compilation and review of an extensive record. The Commission determined that the best approach for this spectrum was to adopt a mix of service areas — Economic Area Groupings ("EAGs"), Major Economic Areas ("MEAs"), and Cellular Market Areas ("CMAs") — to accommodate the needs of a variety of

¹ See *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").

potential 700 MHz licensees.² EAGs were selected as the geographic licensing area for the bulk of the commercial 700 MHz spectrum because, among other things, they were “the most efficiently sized geographic areas” and would best promote the development of new technologies.³ The competing objectives of Section 309(j) were fully considered and the Commission determined that the existing band plan struck the appropriate balance.⁴ The record fails to demonstrate why the Commission should reverse this well-considered determination.

The record also supports the retention of the existing performance requirements for 700 MHz licenses. Strict performance requirements, such as geographic- or population-based coverage requirements were overwhelmingly opposed. The existing “substantial service” performance requirement is a market-oriented approach to spectrum policy which relies on market forces rather than regulations to determine build-out of wireless facilities. The record fails to demonstrate why new performance requirements should be adopted which would interfere with market forces.

Cingular initially suggested that the Commission should award commercial 700 MHz licenses for an initial 15 year term, followed by 10 year renewal terms. After reviewing the record, however, Cingular agrees with those commenters favoring a uniform 15 year license term. This approach will promote additional investment in the 700 MHz band.

Most commenters, including Cingular, agreed with the Commission that 700 MHz licenses “should be subject to the 911/E911 and hearing aid-compatibility requirements”

² 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*”).

³ See *Upper 700 MHz Order*, 15 F.C.C.R. at 501-02.

contained in Part 20. The public interest benefits associated with these requirements outweigh the few objections.

Cingular generally supports the existing power limits for 700 MHz licensees, but suggests that the public interest may be served by increasing the power limit for operations in rural areas within the Lower 700 MHz band. Moreover, the record demonstrates that the current power limit definitions should be revised to include a power spectral density limit “so that all technologies, regardless of their bandwidth, are treated equally.”⁵

Finally, a few parties submitted proposals involving bidding credits and auction procedures. These proposals are beyond the scope of the proceeding and should be rejected.

I. THE CURRENT BAND PLAN SHOULD NOT BE ALTERED

A. CMA Licensing is not Necessary to Promote Service to Rural Areas

The Commission compiled a full record prior to adopting the current band plan for commercial 700 MHz spectrum.⁶ The Commission determined that the best approach was to adopt a mix of service areas — EAGs, MEAs, and CMAs — to accommodate the needs of a variety of potential 700 MHz licensees.⁷ EAGs were selected as the geographic licensing area for the bulk of the commercial 700 MHz spectrum because, among other things, they were “the most efficiently sized geographic areas” and would best promote the development of new technologies.⁸

⁴ *Upper 700 MHz Order*, 15 F.C.C.R. at 501-01; *Lower 700 MHz Order*, 17 F.C.C.R. at 1060-62.

⁵ Comments of Motorola, Inc., WT Docket No. 06-150 *et al.*, at 10 (filed Sept. 29, 2006) (“Motorola Comments”).

⁶ See *Upper 700 MHz Order*, 15 F.C.C.R. at 498-503; *Lower 700 MHz Order*, 17 F.C.C.R. at 1052-62; *Lower 700 MHz MO&O*, 17 F.C.C.R. at 11617-30.

⁷ See *Upper 700 MHz Order*, 15 F.C.C.R. at 501-02; *Lower 700 MHz Order*, 17 F.C.C.R. at 1022; *Lower 700 MHz MO&O*, 17 F.C.C.R. at 11613.

⁸ See *Upper 700 MHz Order*, 15 F.C.C.R. at 501-02.

The underlying rationale for utilizing EAGs as the license area for the bulk of 700 MHz spectrum⁹ is largely ignored by proponents of smaller geographic areas.¹⁰ These parties generally allege that the use of CMAs will make it easier for smaller carriers to acquire licenses and to provide service in rural areas.¹¹ The Commission already has divided the 700 MHz

⁹ *Id.*

¹⁰ No proponent of CMA licensing addressed each of these factors and the only comments even to identify each of the factors were jointly filed by Doug Howard and Farooq Javed. *See* Comments of Doug Howard and Farooq Javed, WT Docket No. 06-150 *et al.*, at 13-18 (filed Sept. 29, 2006) (“Joint Commenters”). Although the Joint Commenters identify each of the bases for the Commission’s decision to utilize EAGs for most 700 MHz licenses, they do not rebut each of these factors. The Joint Commenters fail to address the Commission’s finding that EAGs will encourage the development of new applications. Moreover, these comments do not rebut the Commission’s other findings; they merely disagree. For example, in response to the Commission’s determination that EAGs will “provide optimum opportunity for alternative aggregation approaches,” the Joint Commenters merely state that 700 MHz licensees may not desire to offer nationwide service. *Id.* at 14.

¹¹ *See, e.g.*, Comments of Aloha Partners, L.P., WT Docket No. 06-150 *et al.*, at 3-5 (filed Sept. 29, 2006) (“Aloha Comments”); Comments of the Blooston Rural Carriers, WT Docket No. 06-150 *et al.*, at 2-3 (filed Sept. 29, 2006) (“Blooston Rural Carriers Comments”); Comments of C&W Enterprises, Inc., WT Docket No. 06-150 *et al.*, at 2-3 (filed Sept. 29, 2006) (“C&W Comments”); Joint Comments of Consumer Federation of America, Consumer Union and Free Press, WT Docket No. 06-150 *et al.* at 4-5 (filed Sept. 29, 2006) (“Consumer Federation Comments”); Comments of Corr Wireless Communications, Inc., WT Docket No. 06-150 *et al.*, at 3-4 (filed Sept. 29, 2006) (“Corr Wireless Comments”); Comments of Dobson Communications Corporation, WT Docket No. 06-150 *et al.*, at 4-5 (filed Sept. 29, 2006) (“Dobson Comments”); Comments of Frontier Communications, WT Docket No. 06-150 *et al.*, at 5-6 (filed Sept. 29, 2006) (“Frontier Comments”); Joint Commenters at 9-12; Comments of Leap Wireless International, Inc., WT Docket No. 06-150 *et al.*, at 3-6 (filed Sept. 29, 2006) (“Leap Comments”); Comments of MetroPCS Communications, Inc., WT Docket No. 06-150 *et al.*, at 11-15 (filed Sept. 29, 2006) (“MetroPCS Comments”); Comments of MilkyWay Broadband, LLC, WT Docket No. 06-150 *et al.*, at 2 (filed Sept. 29, 2006) (“MilkyWay Comments”); Comments of NextWave Broadband Inc., WT Docket No. 06-150 *et al.*, at 2, 8 (filed Sept. 29, 2006) (“NextWave Comments”); Comment of the National Telecommunications Cooperative Ass’n, WT Docket No. 06-150 *et al.*, at 5-8 (filed Sept. 29, 2006) (“NTCA Comments”); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, WT Docket No. 06-150 *et al.*, at 2-3 (filed Sept. 29, 2006) (“OPASTCO Comments”); Comments of the Rural Cellular Ass’n, WT Docket No. 06-150 *et al.*, at 1 (filed Sept. 29, 2006) (“RCA Comments”); Comments of the Rural Telecommunications Group, WT Docket No. 06-150 *et al.*, at 2-3 (filed Sept. 29, 2006) (“RTG Comments”); Comment of Union Telephone Company, WT Docket No. 06-150 *et al.*, at 4-5 (filed Sept. 29, 2006) (“Union Telephone Comments”); Comments of United States Cellular Corp., WT Docket No. 06-150 *et al.*, at 2 (filed Sept. 29, 2006) (“USCC Comments”); Comments of the Vermont
(continued on next page)

spectrum into a mix of license areas, however, and awarded 700 MHz licenses on a CMA basis as part of Auction 49.

Moreover, the record lacks hard data to support the claim that additional spectrum is needed to serve rural areas. The Commission has cautioned against assigning licenses designed primarily to serve rural areas without first evaluating the need for such licenses: “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.”¹² 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.¹³ This data does not reflect the recently completed AWS auction which allocated additional spectrum in rural areas on a CMA basis. No party has demonstrated that rural areas would not be served if the band plan is not modified.

B. EAG Licensing is Consistent with Section 309(j) of the Act

Some parties¹⁴ argue that a mix of small and large license areas is necessary to comply with the statutory directive contained in Section 309(j) to promote the broad dissemination of licenses.¹⁵ This is not the sole objective of Section 309(j) which requires the Commission to balance a number of conflicting factors when awarding licenses pursuant to auction, including:

Dept. of Public Service *et al.*, WT Docket No. 06-150 *et al.*, at 4, 8 (filed Sept. 29, 2006) (“Vermont Comments”).

¹² *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*”).

¹³ *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).

¹⁴ *See, e.g.*, Aloha Comments at 3-5; CTIA Comments at 5-6; Blooston Rural Carrier Comments at 4; Corr Wireless Comments at 3; Leap Comments at 4-6; MetroPCS Comments at 11-15.

¹⁵ 47 U.S.C. § 309(j)(3)(B).

- The creation of radio communications services that are “rapid, efficient, [and] Nation-wide”;¹⁶
- The development and rapid deployment of new technologies products and services to the public, including those residing in rural areas;¹⁷
- The deployment of new technologies without delay;¹⁸
- The promotion of economic opportunity and competition by avoiding the excessive concentration of licenses and by disseminating licenses among a wide variety of applicants;¹⁹
- The recovery of a portion of the value of the public spectrum resource;²⁰ and
- The efficient and intensive use of the spectrum.²¹

The Commission has previously concluded that EAG licensing best promotes a wide variety of business plans, including the statutory directive to promote the development of nationwide footprints.²² The Commission also has concluded that smaller service areas, such as CMAs, would invariably create inefficient aggregation costs in terms of delay and transaction costs.²³ Accordingly, the current band plan which utilizes EAGs as the geographic area for most 700 MHz licenses is consistent with Sections 1 and 309(j) of the Communications Act. Conversely, the use of CMAs would undermine these objectives.

¹⁶ *Id.* at § 151 (Section 1 of the Communications Act); *see also id.* at § 309(j)(3) (stating that the Commission’s auction methodologies should “promote the purposes specified in Section 1 of the Act”).

¹⁷ *Id.* at § 309(j)(3)(A).

¹⁸ *Id.*

¹⁹ *Id.* at § 309(j)(3)(B).

²⁰ *Id.* at § 309(j)(3)(C).

²¹ *Id.* at § 309(j)(3)(D).

²² *See Upper 700 MHz Order*, 15 F.C.C.R. at 501.

²³ *Id.*

The Commission also has concluded that EAG licensing would best promote the development and deployment of new technologies,²⁴ a key Section 309 objective. Smaller service areas are inefficient and impose costs that impede the development of new applications.²⁵ No party has rebutted this Commission determination.

Proponents of CMA licensing claim that EAGs were selected because the Commission was faced with a short deadline for auctioning the 700 MHz spectrum. These parties recognize that auctioning CMA licenses would be more time consuming than an auction utilizing EAGs, but argue a CMA auction should be reconsidered now that Congress has extended the deadline for concluding the 700 MHz auction.²⁶ The new deadline does not justify, however, revamping the entire 700 MHz band plan. Section 309(j)(3)(A) states that the Commission should move forward and auction licenses without delay. The adoption of a new band plan will cause administrative and judicial delay. The new band plan must be written and reviewed by the Commission and then will be subject to challenge. Conversely, the existing band plan has already been written and is no longer subject to review. Moreover, it is undisputed that an auction utilizing EAGs will be quicker than an auction utilizing CMAs. Thus, retention of the existing band plan will comply with Section 309(j)(3)(A).

The record also demonstrates that the existing band plan is best-suited for recovering value for the public spectrum.²⁷ The recovery of value is particularly important in the context of

²⁴ *Id.*

²⁵ *Id.* at 501-02.

²⁶ See Comments of Paul Milgrom and Karen Wrege, WT Docket No. 06-150 *et al.*, at 3 (filed Sept. 20, 2006) (“Milgrom/Wrege Comments”); RTG Comments at 2-3.

²⁷ See, e.g., Comments of DirecTV, Inc. and EchoStar Satellite L.C.C., WT Docket No. 06-150 *et al.*, at 5 (filed Sept. 29, 2006) (“DirecTV Comments”) (noting that spectrum values are depressed in auctions involving licenses covering small geographic areas that are difficult to aggregate); Motorola Comments at 7 (noting that auction values for smaller license areas are discounted substantially due to future transaction costs); Declaration of Dr. Gregory L. Rosston and Dr. Scott Wallsten, WT Docket No. 06-150 *et al.*, at 9, 14-15 (filed Sept. 29, 2006) (continued on next page)

this proceeding because Congress has tied the funding for the DTV transition and interoperable public safety communications systems to proceeds from the 700 MHz auction.²⁸ Funding was premised on auction values estimated by the Congressional Budget Office based on the current band plan.²⁹ Alterations to this band plan that would reduce auction values thus would jeopardize funding for these important programs. Licensing the commercial 700 MHz band on a CMA basis certainly would have this result.

Spectrum licensed on a CMA basis is less valuable than spectrum licensed for larger geographic areas.³⁰ For example, according to the Declaration of Dr. Gregory L. Rosston and Dr. Scott Wallsten:

- “[P]revious auctions have demonstrated that large geographic areas tend to be valuable, suggesting that licenses should cover relatively large areas”;³¹
- “It has long been recognized that commercial wireless services are provided efficiently over relatively large geographic areas. The Commission initially allocated cellular licenses over 734 relatively small areas [CMAs] across the country. However, these areas were too small. . . . The results of the AWS auction also support this observation — the REAG licenses sold for a substantial premium over the small geographic licenses, in part due to the risk associated with trying to aggregate licenses into larger areas. The high aggregation risks may lead to inefficient license assignments that are not correctable in the secondary market.”³²

Others demonstrated that smaller license areas create an “exposure problem” — the risk a bidder faces in trying to aggregate licenses — that de-values the licenses.³³

(“Rosston Declaration”) *filed as an attachment to* Comments of Access Spectrum, LLC *et al.*, WT Docket No. 06-150 *et al.* (filed Sept. 29, 2006) (“Access Spectrum Comments”).

²⁸ See Comments of Verizon Wireless, WT Docket No. 06-150 *et al.*, at 2 (filed Sept. 29, 2006) (“Verizon Wireless Comments”).

²⁹ *Id.*

³⁰ See Rosston Declaration at 9; DirecTV Comments at 5; Motorola Comments at 7.

³¹ Rosston Declaration at 9.

³² *Id.* at 14-15.

³³ See, e.g., DirecTV Comments at 5; Motorola Comments at 7; Rosston Declaration at 9, 14-15; Milgrom/Wrege Comments at 5.

Proponents of additional CMA licensing argue that the lower value associated with CMA licensing would promote wider participation in the auction and a broader dissemination of licenses.³⁴ They thus claim that CMAs are consistent with Section 309(j). These arguments ignore the other Section 309(j) criteria discussed above. Moreover, the current band plan cannot be evaluated in isolation. The existing band plan utilizes a wide variety of geographic areas for licensing the commercial 700 MHz spectrum — EAGs, MEAs, and CMAs. This band plan *did* ensure the wide dissemination of licenses with the Lower 700 MHz auction awarding licenses to 35 different applicants.³⁵

C. Any Modifications Should be Limited to the Upper 700 MHz Band

If, despite the foregoing, the Commission determines that the current band plan should be modified to provide additional opportunities for smaller carriers, these modifications should be limited to the Upper 700 MHz band. The record shows that the Lower 700 MHz band is ideally suited for new mobile applications given its higher maximum power which requires large license areas. Moreover, a portion of the Lower 700 MHz band already has been licensed and many carriers purchased spectrum and developed business plans based on the band plan in place at the time of auction. Given that the Upper 700 MHz spectrum has yet to be subject to an auction, any band plan changes should be limited to this spectrum.

If the Commission determines that EAG licensing would prohibit participation by smaller carriers³⁶ and that such participation is necessary, and the Commission determines that CMAs

³⁴ See, e.g., Joint Commenters at 9; Dobson Comments at 5; Aloha Comments at 5; Corr Wireless Comments at 2-4.

³⁵ See Summary of Auction No. 49, Federal Communications Commission, at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=49.

³⁶ If such a finding were made, the Commission also must explain why these carriers could not participate in bidding consortia. See *Upper 700 MHz Order*, 15 F.C.C.R. at 500; see also, e.g., *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (“[A]n
(continued on next page)

should be used for licensing some portion of the 700 MHz band, this licensing scheme should be limited to the Upper 700 MHz C block. The Lower 700 MHz band plan — which generally has been lauded by smaller carriers — calls for one-quarter of the spectrum to be licensed on a CMA basis. If the Upper 700 MHz C block were licensed on a CMA basis, one-third of the Upper 700 MHz spectrum (excluding the guard bands) would be licensed on a CMA basis. The remaining spectrum should continue to be licensed on an EAG basis.³⁷

D. 700 MHz Spectrum Should Not be Set-Aside for Particular Entities or Technologies

A few commenters urge the Commission to set-aside a portion of the commercial 700 MHz spectrum for licensing to a special class of applicants,³⁸ such as designated entities (“DEs”)³⁹ or rural carriers, or particular technologies.⁴⁰ The Commission’s role, however, “is not to pick winners or losers, or select the ‘best’ technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.”⁴¹ Accordingly, proposals for set asides should be rejected.

agency changing its course must supply a reasoned analysis.” (internal quotation marks omitted)).

³⁷ If the Commission feels additional spectrum is needed for smaller blocks, the Upper 700 MHz D block could be divided into two smaller 10 MHz spectrum blocks — one block licensed pursuant to economic areas (“EAs”) and the other licensed pursuant to EAGs. *See* USCC Comments at Attachment B. This would increase the number of licenses available in the D block from 6 to 182. EAs are not as small as the 734 CMAs and, therefore, should reduce some of the problems associated with CMA licensing. *See* Cingular Comments at 6-7 (discussing problems with CMA licensing). On the other hand, EAs are considerably smaller than EAGs and should be small enough to encourage participation by smaller carriers. Moreover, EAs are the building blocks for EAGs so they can be more easily aggregated than CMAs which bear little relation to EAGs.

³⁸ *See* Comments of Council Tree Communications, Inc., WT Docket No. 06-150 *et al.* at 11-13 (filed Sept. 29, 2006); NTCA Comments at 8; OPASTCO Comments at 4.

³⁹ *See* 47 C.F.R. § 1.2110.

⁴⁰ *See* NextWave Comments at 6-10.

⁴¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*; CC Docket No. 98-147, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 F.C.C.R. 24011 (1998) (“*Advanced Services Order*”); *Inquiry Concerning the Deployment of* (continued on next page)

Such an approach would be consistent with the Commission's prior determinations that set-asides are generally unwarranted.⁴² As the Commission noted last year:

[I]n recent auctions of spectrum in the Multichannel Video Distribution and Data Service (MVDDS) and the Lower 700 MHz band, even in the absence of a spectrum set-aside, designated entities won a majority of licenses sold at auction. Moreover, in examining all auctions of non-broadcast licenses where no spectrum was set aside for designated entities, we have determined that designated entities won approximately 53 percent of all of the licenses won in these auctions.⁴³

Given the success of DEs in the absence of set-asides, there is no reason to restrict eligibility for 700 MHz spectrum. Such action would be inconsistent with the Commission's "general policy of allowing market forces, rather than regulation, to shape the development of wireless services."⁴⁴

For similar reasons, the Commission should summarily reject the proposal set forth by Tropos Networks ("Tropos") to designate the A and B blocks within the Lower 700 MHz band for contention based unlicensed operations.⁴⁵ Auctions are designed to place spectrum in the hands of those that value it the most. If the Tropos proposal, which is beyond the scope of the rulemaking, would put the spectrum to its highest and most efficient use, then Tropos will be able to obtain the necessary spectrum for its unlicensed operations through the auction process.

Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, Report, 14 F.C.C.R. 2398, 2401-02 (1999) ("706 Report").

⁴² See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Order on Reconsideration*, 20 F.C.C.R. 14058, 14074-75 (2005).

⁴³ *Id.* at 14074 n.102 citing *Opposition of the Cellular Telecommunications and Internet Ass'n*, WT Docket No. 02-353, at 4 (filed Apr. 27, 2004).

⁴⁴ See, e.g., *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 9462, 9477 (1996).

⁴⁵ See *Comments of Tropos Networks*, WT Docket No. 06-150 *et al.*, at 1-12 (filed Sept. 29, 2006).

II. RIGID PERFORMANCE REQUIREMENTS ARE UNNECESSARY

Thirty-four comments were filed in this proceeding and the vast majority opposed changes to the current performance requirements for commercial 700 MHz licensees.⁴⁶ Only seven comments supported new, more restrictive performance requirements such as the keep-what-you-use (“KWYU”) and triggered KWYU proposals.⁴⁷ Rigid performance requirements are unnecessary, however, and would be inconsistent with the Communications Act.

Numerous commenters correctly note that the adoption of new, restrictive performance requirements for commercial 700 MHz licensees would violate Section 332 of the Communications Act which mandates that similar commercial mobile radio services should be subject to similar regulatory treatment.⁴⁸ Many of these parties are smaller carriers.⁴⁹ For example:

- The Blooston Rural Carriers urged the Commission to retain the existing performance requirements and opposed a KWYU approach because it “would threaten the ability of [rural] licensees to roll out service in the manner most logical given the obstacles of a rural build. Instead, these

⁴⁶ See Cingular Comments at 9-11; Comments of AT&T Inc., WT Docket No. 06-150 *et al.*, at 12-15 (filed Oct. 5, 2006); Verizon Wireless Comments at 6-8; Aloha Comments at 8; Blooston Rural Carriers Comments at 6-7; Corr Wireless Comments at 5; Dobson Comments at 5-6; Leap Comments at 9-10; MetroPCS Comments at 15-16; Union Telephone Comments at 5; USCC Comments at 3, 12-18; Comments of CTIA – The Wireless Association, WT Docket No. 06-150 *et al.*, at 8-9 (filed Sept. 29, 2006) (“CTIA Comments”); Comments of QUALCOMM Inc., WT Docket No. 06-150 *et al.*, at 19-20 (filed Sept. 29, 2006) (“QUALCOMM Comments”).

⁴⁷ See OPASTCO Comments at 5; RCA Comments at 8-9; RTG Comments at 8-9; Vermont Comments at 8-11; C&W Comments at 4; Joint Commenters at 25; Comments of Navajo Nation Telecommunications Regulatory Commission, WT Docket No. 06-150 *et al.*, at 2-3 (filed Sept. 20, 2006) (“Navajo Nation Comments”).

⁴⁸ See, e.g., Verizon Wireless Comments at 8-9; CTIA Comments at 20 n.59; Aloha Comments at 8; MilkyWay Comments at 7.

⁴⁹ See, e.g., Aloha Comments at 8 (opposing new performance requirements for existing 700 MHz licensees); Dobson Comments at 5-10; Leap Comments at 9-10; MilkyWay Comments at 7-9 (opposing new performance requirements for existing 700 MHz licensees); Union Telephone Comments at 5-6; USCC Comments at 12-15.

licensees would have to base their deployment decisions on which areas are license to be 'raided' under the keep-what-you-use rule."⁵⁰

- Corr Wireless stated: "The beauty of [an auction] system is that it eliminates the need for close supervision by the Commission of how the licenses are being used; the 'invisible hand' of economic logic will drive licensees to optimize the use of the licenses. In most cases, this will mean prompt build-out . . . In a few cases, it might actually mean not building a market until the equipment costs and market conditions were adequate to profitably allow service to commence. By letting the market work, the Commission will both avoid artificial build-outs in areas that cannot economically sustain service and also ensure the fastest possible build-out where areas dictate. The Commission's proposals to require construction benchmarks, substantial service thresholds and negotiations with secondary market parties all run counter to the remarkable efficiency of letting the invisible hand do its work."⁵¹
- MetroPCS opposed the adoption of stricter performance requirements because: "[t]he problem with adopting a fixed population or geographic coverage standard, and setting an interim construction deadline, is that such requirements assume that every area merits service on each license according to the identical timetable. This assumption is incorrect. Giving licensees greater flexibility allows them to take into account variances in the competitive landscape, population density, and other important demographics pertaining to particular services and licenses. This is especially true for . . . 700 MHz spectrum."⁵²

The Commission has noted that the "broad goal" of Section 332 "is to ensure that economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace."⁵³ Consistent with this market-oriented approach to spectrum policy, the Commission generally has allowed economic forces to determine build-out of wireless facilities.⁵⁴ Nothing in the record justifies a departure from this approach.

⁵⁰ Blooston Rural Carriers Comments at 7.

⁵¹ Corr Wireless Comments at 5.

⁵² MetroPCS Comments at 15.

⁵³ *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 92-252, *Third Report and Order*, 9 F.C.C.R. 7988, 7994 (1994).

⁵⁴ *See Rural NPRM*, 18 F.C.C.R. at 20818.

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

In its comments, Cingular supported the adoption of a 15 year term for commercial 700 MHz licenses, followed by 10 year renewal terms.⁵⁵ Upon reflection, Cingular agrees with those commenters that support a uniform 15 year license term.⁵⁶ As noted in Cingular's comments, the Telecommunications Act of 1996 eliminated the term length limit for wireless licenses.⁵⁷ A 15 year license term, coupled with a renewal expectancy for subsequent 15 year terms, would provide licensees sufficient time to recoup the costs associated with acquiring the spectrum and deploying a network.⁵⁸ This financial certainty likely would cause more significant investment in the 700 MHz auction.⁵⁹

IV. THE RECORD SUPPORTS EXTENDING 911/E911 AND HAC REQUIREMENTS TO CERTAIN 700 MHz LICENSEES

The record overwhelmingly supports the extension of the 911/E911 and HAC requirements to 700 MHz licensees offering real-time, two-way voice service that is interconnected to the public switched network.⁶⁰ The sole opposition to the extension of these requirements to 700 MHz licensees does not outweigh consumers' expectations and the public interest benefits associated with 911/E911 services and HAC-compliant handsets.⁶¹

⁵⁵ See Cingular Comments at 13-15.

⁵⁶ See Aloha Comments at 11; Frontier Comments at 9; C&W Comments at 4-5; Navajo Nation Comments at 3. Cingular still believes, however, that the current Part 27 renewal rules should be modified to incorporate the comparative renewal procedures from Part 22. See Cingular Comments at 15.

⁵⁷ Pub. L. No. 104-104, Title II, § 203, 110 Stat. 56, 112 (1996).

⁵⁸ See Frontier Comments at 9.

⁵⁹ *Id.*

⁶⁰ See Aloha Comments at 12; AT&T Comments at 16; Blooston Rural Carriers Comments at 8; CTIA Comments at 21; Dobson Comments at 11; Comments of the Hearing Industries Assoc., WT Docket No. 06-150 *et al.*, at 2 (filed Sept. 28, 2006); Leap Comments at 11; Comments of NENA, WT Docket No. 06-150 *et al.*, at 2 (filed Sept. 29, 2006); USCC Comments at 3, 18-19.

⁶¹ See RTG Comments at 9.

V. THE POWER LIMITS FOR 700 MHz LICENSEES SHOULD BE MODIFIED

After reviewing the record, Cingular agrees with Motorola that the current power limit definitions should be revised to include a power spectral density limit “so that all technologies, regardless of their bandwidth, are treated equally.”⁶² Regulations should be technologically neutral and should not determine the success or failure of particular technologies or services.⁶³ As noted above, the Commission’s role “is not to pick winners or losers, or select the ‘best’ technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.”⁶⁴

The record also demonstrates that, with the exception of rural areas, the existing 50 kW ERP power limit for the Lower 700 MHz block should be retained.⁶⁵ As the Commission found, this approach “will promote efficiency and maximize flexibility to the extent practicable by allowing the greatest number of different services to co-exist.”⁶⁶ The Commission should consider, however, increasing the power limits for Lower 700 MHz operations in rural areas to 100 kW ERP to further promote and expedite service to those areas.⁶⁷ Increasing the power limit in this manner should substantially increase the ability of licensees to serve rural areas economically without substantially increasing the potential for interference.

⁶² Motorola Comments at 10.

⁶³ See *706 Report*, 14 F.C.C.R. at 2401-02.

⁶⁴ See *supra*, note 42.

⁶⁵ See AT&T Comments at 11-12; CTIA Comments at 20; C&W Comments at 5; QUALCOMM Comments at 22.

⁶⁶ *Lower 700 MHz Order*, 17 F.C.C.R. at 1064.

⁶⁷ See AT&T Comments at 12.

VI. PROPOSALS REGARDING AUCTION RULES ARE BEYOND THE SCOPE OF THE PROCEEDING

The instant *NPRM* seeks comments regarding the following: (1) the size of service areas for commercial 700 MHz licenses; (2) the size of spectrum blocks for commercial 700 MHz licenses; (3) whether rule changes could expedite the provision of service over 700 MHz spectrum to consumers; (4) whether the renewal criteria for 700 MHz licenses should be modified; (5) the appropriate license term; (6) whether the power limits for 700 MHz operations should be altered; and (7) whether the 911/E911 and HAC requirements should be extended to 700 MHz licensees. Proposals that go beyond these areas, and are not a logical outgrowth of these inquires, are beyond the scope of this proceeding and should not be considered.⁶⁸

In this regard, Access Spectrum urges the Commission to award bidding credits to certain licensees that agree to provide service to public safety.⁶⁹ All CMRS licensees currently can provide service to public safety on an equitable basis and many have developed wireless priority services. Such a bidding credit would create distortions in the marketplace. In addition, this proposal bears no relation to the instant *NPRM* and, therefore, should be rejected. Similarly, a few parties suggest that the Commission utilize package/combinatorial bidding to award the remaining commercial 700 MHz licenses.⁷⁰ These proposals also are beyond the scope of the *NPRM* and should be disregarded.⁷¹

⁶⁸ See *Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990). The “logical outgrowth” test is satisfied if commenters “should have anticipated” the agency’s final course in light of the initial notice. *Crawford v. FCC*, No. 04-1031 (D.C. Cir. Aug. 5, 2005) citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983); *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996).

⁶⁹ See Access Spectrum Comments at 35.

⁷⁰ See Milgrom/Wrege Comments at 7-9; DirecTV Comments at 7-8.

⁷¹ 1998 *Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules*, WT Docket No. 98-143, *Report and Order*, 15 F.C.C.R. 315, 353 (1999) (finding proposals “beyond the scope of this proceeding because either they are the subject of another rulemaking proceeding or they involve rule sections which we did not propose to amend and are (continued on next page)

CONCLUSION

For the foregoing reasons, the Commission should retain EAGs as the service areas for the New 700 MHz Spectrum. Licenses in these bands should not be subject to rigid performance criteria and should be awarded for a 15 year license term. Cingular generally supports the existing power limits, but suggests that the public interest would be served by increasing the power limit for Lower 700 MHz operations in rural areas. Cingular also supports extending the Commission's 911, E911, and hearing aid compatibility rules to 700 MHz licensees that offer two-way voice service. Finally, proposals regarding bidding credits and the competitive bidding process are beyond the scope of this proceeding and should be rejected.

Respectfully submitted,

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not a logical outgrowth of the rules originally proposed to be amended") (emphasis added) (citations omitted).