

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLIES OF VERIZON WIRELESS

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SUMMARY

Other than extending the term for 700 MHz licenses to coincide with a 10-year period after the spectrum becomes available for use, a change no commenter opposed, Verizon Wireless opposes changes to the 700 MHz service rules. Requisite factual support for other changes was not provided. There is no evidence that the Commission needs to adopt a band plan with smaller geographic licenses, nor do the comments offer any justification for changing spectrum block sizes. Moreover, any effort to make substantial changes to the rules could jeopardize the Commission's ability to meet its statutory obligation to commence an auction of the 700 MHz commercial spectrum no later than January 28, 2008, and deposit the proceeds from that auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. Drawn-out debate over altering the rules, particularly in the absence of facts justifying doing so, would inject needless uncertainty into the market as parties and their investors make plans for the upcoming auction. The Commission should confirm its existing band plan and service rules, and should move quickly to auction this spectrum.

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REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby responds to comments filed in response to the Commission's Notice seeking comment on the appropriate service rules for the 698-746, 747-762 and 777-792 MHz Bands.¹ No party presents sufficient evidence that substantial changes to these rules are necessary. On the contrary, because any effort to make substantial changes to the rules could jeopardize the Commission's ability to meet its statutory obligation to commence an auction of the 700 MHz commercial spectrum no later than January 28, 2008, and deposit

¹ *In the Matter of 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; and Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Notice of Proposed Rulemaking, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, 21 FCC Rcd. 9345 (2006) ("Notice").

the proceeds in the Digital Television Transition and Public Safety Fund no later than June 30, 2008,² the public interest should lead the Commission to affirm its existing band plan. Drawn-out debate over altering the rules, particularly in the absence of facts justifying doing so, would inject needless uncertainty into the market as parties and their investors make plans for the upcoming auction. As Verizon Wireless outlined in its comments to this proceeding,³ the Congressional directive is clear. The Commission should thus maintain the current rules so it can move quickly to auction the 700 MHz band in order to secure the funding for the public interest goals set by Congress.

I. NOTHING IN THE RECORD PROVIDES FACTUAL SUPPORT OR A PUBLIC INTEREST RATIONALE FOR CHANGING THE EXISTING 700 MHZ BAND PLAN.

Commenters advocate several variations of the band plan to meet their particular needs, ranging from changing just the Lower 700 MHz B Band license to a Cellular Market Area (“CMA”) license,⁴ to various combinations of CMA, Economic Areas (“EA”) and Major Economic Areas (“MEA”) licenses,⁵ to converting at least one of the Economic Area

² Deficit Reduction Act of 2005, Pub. L. No. 109-171, §§ 3003(a), 3004, 120 Stat. 4, 22 (2005) (“DRA”). Given its past experience with the time frames needed to conduct an auction, collect auction revenues, process applications, and transfer revenues to the U.S. Treasury, the FCC will need to begin the auction well before January 28, 2008 to meet the June 30, 2008 deadline.

³ See Comments of Verizon Wireless at 1-3 (filed Sept. 29, 2006).

⁴ This is in addition to the CMA licenses auctioned in 2002, 2003 and 2005. Comments of Rural Cellular Association at 1.

⁵ See, e.g., Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Pegasus Communications Corporation and Telcom Ventures, LLC (“Access Spectrum”) at 23-24, Comments of Corr Wireless at 3, Comments of Leap Wireless International, Inc at 4-6, Comments of MetroPCS at 10-14.

Groupings (“EAGs”) to a nationwide license.⁶ Recommended bandwidth changes include splitting the upper band into a variety of differently sized licenses, from three 10 MHz licenses,⁷ to three 11 MHz licenses,⁸ to two 15 MHz licenses,⁹ to no paired spectrum in either the upper or lower band,¹⁰ to designating a portion of the lower band for unlicensed use.¹¹ A few parties even suggest that the Commission should set aside some or all the spectrum for designated entities (“DEs”). Parties assert a great deal, yet provide little “evidence based on changed legal circumstances, the state of technology, the demand in rural areas, spectrum access constraints, the fungibility of 700 MHz Band spectrum with other bands, and relevant costs, such as those related to acquiring spectrum.”¹² The Commission cannot change the band plan based on so little evidence.¹³

A. There is No Evidence that the Commission Needs to Adopt a Band Plan with Smaller Geographic Licenses.

Most commenters who support changing the existing band plan assert that licensing a portion or most of the spectrum based on CMAs will accelerate the deployment of wireless

⁶ Comments of DIRECTV and EchoStar at 3-7.

⁷ Comments of Leap. at 4-6.

⁸ Comments Access Spectrum at 11.

⁹ Comments of Corr Wireless at 3.

¹⁰ Comments of NextWave at 7-8.

¹¹ Comments of Tropos at 9-11.

¹² Notice, ¶ 27

¹³ Manufacturers also agree that maintaining larger license sizes will “result in more efficient and faster deployment of spectrum for commercial wireless services.” *See* Comments of Motorola, Inc. at 3; *see also* Comments of Qualcomm at 17 (“The economies of scale in the wireless industry continue to be quite strong, which argues in favor of the big geographic area licenses as provided in the existing 700 MHz band plan.”).

broadband services to rural areas, but provide no evidence to support these claims.¹⁴ Others suggest that small licenses will “foster continued participation of rural telephone carriers in the acquisition of spectrum at auction and provision of advanced wireless services to less populated areas in America.”¹⁵ Indeed, a few provide as “evidence” of a need for the 700 MHz band to include more geographically small licenses the fact that the Commission has already auctioned 12 MHz of CMA spectrum, which was purchased by companies with rural interests.¹⁶ If anything, prior awards of CMA spectrum undercuts any alleged need for further awards in such small blocks.

Still others would have the FCC create new band plans incorporating CMAs, EAs and MEAs. For example, Leap observes that “taking too granular an approach to geographic area licensing. . . will increase transactions costs unduly.”¹⁷ Leap concludes that to avoid such transaction costs, the Commission should auction most of the licenses as EAs, but provides no evidence for reaching this conclusion, except that EAs fall in size somewhere between CMAs and MEAs.¹⁸ The several competing proposals do nothing to illuminate a clear path for the Commission to follow.

Moreover, the FCC is not auctioning the 700 MHz spectrum in a vacuum. As CTIA notes, the FCC “should take into account the full 700 MHz Band and AWS-1 licensing

¹⁴ Comments of RTG at 4, Comments of RCA at 7, Comments of NTCA at 2, Comments of OPATSCO as 2-3, Comments of MilkyWay at 2.

¹⁵ Comments of Blooston Rural Carriers at 1.

¹⁶ Comments of MilkyWay at 4; Comments of NTCA at 4.

¹⁷ Comments of Leap at 4.

¹⁸ *Id.* at 5.

frameworks, as well as the secondary markets opportunities that exist today.”¹⁹ The Commission has already auctioned 18 MHz of spectrum in the lower 700 MHz band, including 12 MHz based on CMAs.²⁰ Just a month ago it concluded the auction of the AWS spectrum, which included 30 MHz of EA licenses and 20 MHz of CMA licenses – more than 1000 licenses in all.²¹ Last week the Commission announced that it will permit the use of hundreds of MHz in the television broadcast bands for fixed broadband service,²² which is directly relevant to this proceeding given that several commenters predict that licensees will use the 700 MHz spectrum for fixed broadband, particularly in rural areas.²³ Furthermore, as several commenters note, the Commission’s rules allow for an efficient operation of the secondary markets to serve such needs.²⁴ Even if there were any record evidence that geographically small licenses are necessary to promote broadband deployment in rural

¹⁹ Comments of CTIA at 6.

²⁰ *Lower 700 MHz Band Auction Closes; Winning Bidders Announced*, (Auction No. 44), Public Notice, 17 FCC Rcd. 17272 (2002), *Lower 700 MHz Band Auction Closes; Winning Bidders Announced*, (Auction No. 49), Public Notice, 18 FCC Rcd. 11873 (2003), *Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60*, Public Notice, 20 FCC Rcd. 13424 (2005).

²¹ *Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66*, Public Notice, DA 06-1882 (rel. Sept. 20, 2006).

²² *FCC Takes Steps to Allow New Low Power Devices on Vacant TV Channels*, News Release (rel. Oct. 12, 2006).

²³ See, e.g., Joint Comments of Consumer Federation of America, Consumers Union and Free Press at 4-5. (“The auction of the remaining 700 MHz spectrum provides the Commission with an opportunity to pave the way for a wireless alternative to DSL and cable, the long-sought-after “third pipe” into the home that will drive down prices in areas where wireline competitors exist and provide service in areas where it has been unavailable.”)

²⁴ See Comments of CTIA at 11-12; see also Comments of US Cellular at 14. Leap has even announced that it intends to sell portions of its AWS licenses once granted. See Paul Kirby, *Leap May Sell Some Spectrum Won in Recent AWS Auction*, TR Daily, Oct. 5, 2006.

America, which there is not,²⁵ in light of the myriad opportunities available to acquire spectrum to provide services in rural areas, it is completely unnecessary to further divide the 700 MHz spectrum. Put another way, prior Commission actions have already made ample spectrum available on a very small geographic basis.²⁶ No further CMA-based licensing is warranted.

B. The Comments Do Not Offer Any Justification for Changing Spectrum Block Sizes.

There is similarly no factual basis offered by commenters to alter the existing band plan's license bandwidths. Most of the licenses are either a total of 10 or 12 MHz, with only one license of 20 MHz that could arguably be called a "large bandwidth" license. We agree with CTIA, which finds the Commission's decisions on the AWS band plan instructive, and supports retaining the 20 MHz license and "keeping a range of sizes for spectrum blocks."²⁷ The Commission recognized the benefits of wider bandwidths in the NPRM.²⁸ Having found that 20 MHz blocks should be licensed for AWS, the FCC should not reverse course now. Moreover, many 700 MHz band applicants would have the same bandwidth needs as AWS applicants. We agree with Qualcomm and Motorola that wider spectrum blocks allow more efficient deployment of certain wireless systems and promote the continued development of

²⁵ There is ample reason to believe that large license sizes, such as in the current band plan, will encourage rapid deployment of service throughout the United States and allow economies of scale that will encourage the development of low cost equipment. *See infra*, Section II; *see also*, Verizon Wireless at 4-5.

²⁶ Many CMAs comprise *only one* county.

²⁷ Comments of CTIA at 7.

²⁸ *See, e.g.*, Notice, ¶ 54 and ¶ 55, n. 144.

broadband services.²⁹ Because of the potential for some large bandwidth applications, the Commission should not alter the band plan at all and certainly keep the one 20 (2x10) MHz paired license.

C. The Commission Should Not Set Aside Spectrum for Designated Entities.

Some commenters suggest that the Commission should set aside either some or all of the 700 MHz spectrum solely for DEs.³⁰ However, these few parties proffer no facts that could warrant a reversal of Commission policy that there should be no DE-type eligibility restrictions imposed on the 700 MHz spectrum. Council Tree can only point to Commission statements from 1994 that “without insulation of the entrepreneurs’ block the record strongly supports the conclusion that measures such as bidding credits will prove ineffective for broadband PCS.”³¹ Clearly time and facts have caused the Commission to conclude otherwise in many auctions since then. The Commission’s efforts at distribution of C and F block PCS licenses to designated entities did not produce service to the public that would justify a set-aside of any of this spectrum for one class of carriers. While there have been several reauctions of large swaths of C and F block spectrum, there have been almost no reauctions for A, B, D or E block PCS licenses, which were made broadly available for all

²⁹ See Comments of Qualcomm Incorporated at 18; see also Comments of Motorola, Inc. at 5.

³⁰ Comments of NTCA at 8, Comments of OPATSCO at 3, Comments of RTG at 8, Comments of Council Tree at 11.

³¹ Council Tree at 12, citing *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 414-15 (1994).

classes of licensees.³² As a result of these early entrepreneurs' block policies that included setting aside spectrum, it took nearly a decade and several private and public auctions for much of that spectrum to be put to use. Wisely, the Commission since has chosen not to set aside spectrum, and instead successfully uses bidding credits to ensure that DEs are well represented in auctions.³³

³² Of the nearly 250 licenses reaucted in Auction No. 58, 32 were A, D and E block licenses, Auction No. 35 included only C and F block licenses, and Auction No. 22 in April 1999 included 6 E block licenses.

³³ Since the first PCS auctions, the Commission repeatedly has declined to set aside additional spectrum for DEs. *See, e.g., Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058 (2005), ¶ 30 (finding that there was no evidence of need for a set aside and further finding that even in those auctions without set asides, DEs have acquired a significant number of licenses) and ¶ 30, n. 99 (citing to previous decisions not to set aside spectrum, specifically *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476, 506, 530 (2000); *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10942, 11077 (1997); *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development Of Paging Systems; and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 930253, 12 FCC Rcd 2732, 2820 (1997); *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Notice of Proposed Rule Making and Order, ET Docket No. 95-183, PP Docket No. 93-253, 11 FCC Rcd 4930, 4975 (1995); *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, GN Docket No. 96-228, 12 FCC Rcd 10785, 10882 (1997)). The only exceptions to this long-standing policy have been Auctions No. 35 and 58, which were *reauctions* of already set aside PCS C and F block spectrum, and even in those cases, the Commission did not choose to set aside all the spectrum.

II. THERE IS NO NEED FOR THE COMMISSION TO ADOPT SPECIAL PERFORMANCE REQUIREMENTS FOR 700 MHZ SPECTRUM.

Most commenters believe there is no public interest rationale for changing the 700 MHz performance requirements.³⁴ As Corr Wireless states, “the fundamental premise that underlies the award of licenses by competitive bidding is that it puts the licenses in the hands of the firms which will put the licenses to their highest and best use” and “eliminates the need for close supervision by the Commission of how the licenses are being used.”³⁵

On the other hand, the few parties that maintain the Commission should change these rules suggest draconian rules that in some cases would require constant Commission oversight.³⁶ None provides any objective evidence that the FCC’s current policies with respect to buildout are not working or any logical rationale for disparate treatment of 700 MHz licensees vis-à-vis licensees in other bands. The only evidence is to the contrary, and it is the FCC’s own findings in its recently released Eleventh CMRS Competition Report,³⁷ which shows how flexible performance requirements, such as those that apply to 700 MHz licensees, have yielded significant benefits for the American public. There, the Commission states, as it has stated previously, that the industry is effectively competitive.³⁸ Furthermore,

³⁴ See, e.g., Comments of Aloha Partners at 8; Comments of Blooston at 5; Comments of Corr Wireless at 5-6; Comments of Dobson at 5-6; Comments of Leap at 9-10; Comments of MetroPCS at 15; Comments of MilkyWay at 7; Comments of US Cellular at 12; Comments of CTIA at 7.

³⁵ Comments of Corr Wireless at 5.

³⁶ See, e.g., Comments of Vermont Dept. of Public Service, et al.

³⁷ In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Eleventh Report*, WT Docket No. 06-17 (rel. Sept. 29, 2006) (“Eleventh CMRS Competition Report”) (2006).

³⁸ *Id.* ¶ 2.

the Commission has found evidence that competitive pressure continues to drive carriers to provide service throughout the nation and introduce innovative service offerings.³⁹ Without any regulatory requirement to do so, CDMA carriers upgraded their digital networks to 1xRTT, to the point where 1x is now available to nearly 100 percent of the U.S. population,⁴⁰ just six years since the technology was first tested and deployed in a U.S. mobile network. In the few years since CDMA carriers began introducing true mobile broadband services, these services are already reaching more than 60 percent of the population.⁴¹ Accordingly, Verizon Wireless opposes the adoption of any new rules that would dictate where, when, and how licensees must provide service or that would reclaim portions of a geographic license that are not constructed in a manner prescribed by the Commission rather than based on market needs. Such rules are unnecessary and counterproductive. To the extent there is any concern that more rural areas will not be served, the AWS auction has just granted spectrum for literally thousands of small areas, many as limited as a single county. All of those have substantial service buildout obligations as will 700 MHz licensees. No additional rules are warranted.

III. THE COMMISSION SHOULD NOT ALLOW ISSUES OUTSIDE THE SCOPE OF THIS PROCEEDING TO SLOW PROGRESS TOWARD THE AUCTION OF THE 700 MHZ SPECTRUM.

The Commission specifically excluded from the scope of the instant proceeding issues related to the 700 MHz Guard Band spectrum.⁴² The Commission will address those

³⁹ *Id.* ¶ 3.

⁴⁰ *Id.* at Table 8.

⁴¹ *Id.*

⁴² Notice, ¶ 1, n.6.

issues in a separate Notice of Proposed Rulemaking, which it released on September 8, 2006. The Commission made clear in that proceeding that it would not make any changes to the Guard Band rules that would impede its ability to promptly auction the 700 MHz licenses, as directed by Congress.⁴³ It reiterated that intent when it later denied a request from Access Spectrum L.L.C. and Pegasus Communications (“Access Spectrum”) to combine the comment periods for both proceedings, noting that it did not wish to “unduly delay” the 700 MHz proceeding.⁴⁴ We agree with and support the Commission’s recognition that the Guard Band proceeding be kept distinct, and urge the Commission to promptly conclude the instant proceeding and move to auctioning the 700 MHz spectrum, in furtherance of Congress’ mandate.⁴⁵

⁴³ *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, Notice of Proposed Rulemaking, 21 FCC Rcd. 10413, 10415 (2006) (“700 MHz Guard Band NPRM”). Chairman Martin noted the importance of the Commission meeting its obligations under the DRA, stating “as we move forward in this proceeding, however, we must not overlook the digital television transition and our statutory mandate to soon commence an auction of 700 MHz spectrum.” *Id.* at 10448.

⁴⁴ “We are mindful of our statutory obligations and find that providing this limited additional time will not unduly delay this proceeding and future auction of the 700 MHz Band.” *In the Matter of 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; and Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Order, 21 FCC Rcd. 10264, ¶ 3 (2006).

⁴⁵ For reasons discussed *supra* at 2-7, the Commission should reject those aspects of the Access Spectrum proposal that would change the band plan for the soon to be auctioned 700 MHz spectrum. It can address the public safety and guard band aspects of the proposal in the separate 700 MHz Guard Band NPRM.

IV. CONCLUSION

Other than extending the term for 700 MHz licenses to coincide with a 10-year period after the spectrum becomes available for use, a change no commenter opposed, Verizon Wireless opposes changes to the 700 MHz service rules. Requisite factual support for other changes was not provided. Moreover, any effort to make substantial changes to the rules would delay the auction of this spectrum – an auction that is needed to secure numerous congressional goals as envisioned by the Digital Television Act. The Commission should confirm its existing band plan and service rules, and should move quickly to auction this spectrum.

Respectfully submitted,

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