

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

REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”),¹ by its attorney, submits these reply comments concerning proposed changes to the rules governing wireless licenses in the Lower and Upper 700 MHz spectrum bands. *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, FCC 06-114 (Aug. 10, 2006) (“*NPRM*”). RCA continues to recommend that the Commission:

(1) reconfigure the Lower and Upper 700 MHz band plans to make spectrum available with a balance of service area sizes, including a change of Block B (704-710 MHz and 734-740 MHz) in the Lower 700 MHz Band to be licensed to serve the nation’s 734 Cellular Market Areas (“CMAs”); and

(2) adopt performance requirements based upon the geographic area served by licensees, with interim construction requirements during the initial licensee term for all 700 MHz licenses to be

¹RCA is an association representing the interests of more than 90 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA’s members serve fewer than 500,000 customers. RCA was formed in 1993 to address the distinctive issues facing wireless service providers. The ability to gain reasonable

auctioned.

In furtherance of proposal (1) RCA is a supporter of the *Balanced Consensus Plan* that is being submitted to the Commission today.

I. Introduction

700 MHz spectrum is unique among all recent and anticipated spectrum offerings for commercial service in that it has propagation characteristics that allow service to be offered over large areas with a minimal terrestrial build-out. As a result, it will be possible for a licensee of 700 MHz spectrum to offer service in rural populated areas that could not be served economically using other spectrum available for commercial purposes.

The Commission should seize this one-time opportunity to adopt rules that best assure that wireless services of the most advanced nature reach rural and metropolitan areas alike. Both license service areas and performance requirements need to be changed to achieve that goal.

II. Smaller Service Areas are Needed to Promote Service to Rural Markets

Last year RCA filed a petition requesting the Commission to review and modify the Commission's licensing plan that would offer all Lower and Upper 700 MHz licenses according to large Economic Area Groupings.² The Commission responded by issuing the *NPRM* and inviting comments on a variety of licensing issues including size of service areas and performance requirements. RCA and many other interested parties welcomed the opportunity to file comments on these issues.

access to auctioned spectrum in the 700 MHz Band presents one such issue.

² See "Petition to Institute Review and Modification of the Size of Service Areas for Geographic Licensing for the Lower and Upper Bands of 700 MHz Spectrum Not Yet Auctioned," GN Docket No. 01-74, at 3-4 (filed July 29, 2005).

RCA's Comments urged the Commission to revisit the 700 MHz licensing plan and re-designate the B-Block in the Lower 700 MHz Band for CMAs. RCA also suggested that the Commission consider reconfiguring the Upper 700 MHz Band to include a variety in the size of service areas. RCA continues to believe that these changes are needed to provide meaningful opportunities to companies of all sizes to participate in the auction, and that a variety in the size of the bidders and service areas will lead to 700 MHz service offerings in rural and large markets alike.

It was apparent from comments filed in response to the *NPRM* that many other parties had similar concerns and proposals.³ A large group of commenters including RCA have been able to agree upon a plan that is submitted today as the Balanced Consensus Plan. That plan provides for a mix of licenses of varying sizes and geographic regions.⁴ It will promote competitive and rapid deployment of innovative wireless services in the 700 MHz bands. In this manner the Balanced Consensus Plan will advance the goals of promoting economic opportunity and competition, and of disseminating licenses among a wide variety of applicants, as called for by Section 309(j) of the Communications Act. RCA considers the Balanced Consensus Plan to be an enhancement to its own

3 In addition to RCA the following commenters supported CMAs for at least some of the spectrum to be offered: Aloha Partners, L.P. (Comments at 3-6); Consumer Federation of America, Consumers Union and Free Press (Joint Comments at 5); Corr Wireless Communications, LLC (Comments at 2-4), C&W Enterprises, Inc. (Comments at 2-3); Dobson Communications Corporation (Comments at 2-4); Doug Howard and Farooq Javed (Comments at 9-11); Frontier Communications (Comments at 2-7); Leap Wireless International, Inc. (Comments at 3-6); MetroPCS Communications, Inc. (Comments at 13); MilkyWay Broadband, LLC (Comments at 2-6); National Telecommunications Cooperative Association (Comments at 6-8); Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") (Comments at 2-3); Polar (Letter); The Blooston Rural Carriers (Comments at 2-4); The Rural Telecommunications Group, Inc. ("RTG") (Comments at 2-8); Union Telephone Company (Comments at 2-5); United States Cellular Corporation (Comments at 3-9); Vermont Department of Public Service, Vermont Public Service Board, Vermont Office of the Chief Information Officer, North Dakota Public Service Commission, Nebraska Public Service Commission, Connecticut Authority, and Maine Office of the Chief Information Officer (the "VT-ND-NE-ME Commission Comments") (Comments at 3-4).

4 While CTIA-The Wireless Association is not a party to the Balanced Consensus Plan its Comments

proposal and respectfully asks that the Commission adopt the plan as submitted.⁵

III. Strict Performance Requirements Should Be Associated with All 700 MHz Band Licenses to Be Auctioned

RCA noted that the superior propagation characteristics of 700 MHz Band spectrum make it a uniquely valuable resource and a likely target for “stockpiling or warehousing.” 47 U.S.C. § 309(j)(4)(B). RCA urged the Commission to abandon its current toothless “substantial service” standard of 47 C.F.R. § 27.14(a) in favor of more enforceable performance requirements for the remaining portions of the 700 MHz Band.

RCA suggests that the Commission adopt construction benchmarks based on geography, not population. In particular, RCA suggests that all 700 MHz Band licenses to be acquired at auction be subject to the following requirements during the initial ten-year (or longer) license term:

- (1) By the three-year anniversary of license grant, the licensee must cover at least 25% of the license area;⁶
- (2) By the five-year anniversary of license grant, the licensee must cover at least 50% of the license area;
- (3) By the eight-year anniversary of license grant, the licensee must cover at least 75% of the license area; and
- (4) At the end of the ten-year license term, the licensee must submit a map and supporting data to the Commission depicting the areas where reliable service is provided. All unserved area rights would be forfeited by the licensee and the Commission would auction licenses for the unserved areas.

recommend a “balanced approach” for the size of service areas. (Comments at 6).

⁵ To the extent that the Balanced Consensus Plan includes proposals for the Upper 700 MHz Band it is without prejudice to the signatories’ ability to support or oppose the Cyren Call proposal that would remove the Upper 700 MHz Band from the auction.

⁶ RCA suggests that the Commission initiate a further rulemaking to define reliable service for 700 MHz Band systems. Reliable service should be defined with respect to both downlink and uplink transmissions.

As to the first three benchmarks, if construction occurs but is less than sufficient to meet the interim coverage requirement, the licensee could retain a portion of its license area and surrender its rights to a portion of the market as needed in order to meet the applicable benchmark. The surrendered area, preferably according to entire counties, would become available for re-licensing to others who have a business plan to serve the area. In this way rural unserved areas need not remain unserved.

Large carriers that would keep large EAG service areas for all licenses also want no change to the current “substantial service” performance requirement.⁷ Verizon Wireless argued that symmetry in performance requirements “best serves the public interest.” (Comments at 8) It refers to the Commission’s implementation of Congress’s 1993 amendments to the Communications Act for the principle “...similar commercial mobile radio services be accorded similar regulatory treatment under the Commission’s Rules.”⁸ Quoting the Commission: “Our first goal is to create a symmetrical regulatory framework for commercial mobile radio services in order to foster economic growth and expanded service to consumers through competition.”⁹ Yet the Commission in that same statement went on to explain that

...consistent with that objective, the Commission’s role is to establish an appropriate level of regulation for the administration of CMRS. Such a regulatory regime will ensure that the marketplace – and not the regulatory arena – shapes the development and delivery of mobile services to meet the demands and needs of consumers, **except where relying on market forces might lead to a result that is harmful to competition or to consumers.** [fn omitted, emphasis added]¹⁰

7 AT&T Inc. (Comments at 3-10 and 12-16); Cingular Wireless LLC (Comments at 5-9 and 9-13); Verizon Wireless (Comments at 3-5 and 6-10).

8 Verizon Wireless Comments at 8, citing Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 930252, 9 FCC Rcd 7966 (1994) (“Third R&O”), paras. 4, 23.

9 *Id.*

10 Third R&O, para.23.

There is no statutory requirement of symmetry in performance requirements, nor in fact is there symmetry in the Commission's Rules as to construction requirements for all commercial radio service licenses of a certain type.¹¹ The Commission has reasonable discretion under Section 332 of the Communications Act to impose new performance requirements on spectrum to be auctioned. Here that discretion should be used to adopt performance requirements that promote the rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.¹²

Other commenters agreed with RCA that performance requirements must be revised if rural areas are to be served in the near term. "It is essential that the Commission revise its performance requirements for the 700 MHz bands to be auctioned so that not only do they not discourage business plans that include rural and small markets but ensure that those receiving licenses covering rural areas will in fact provide service to rural areas." (VT-ND-NE-ME Commission Comments at para. 12) Direct TV and EchoStar urge the Commission to "tighten service requirements"¹³ while others suggest a "triggered keep what you use" approach to encourage build-out and make available spectrum to others when it is not put to use by the licensee.¹⁴ While RCA believes that geographic coverage requirements during the initial license terms will be most effective, the goal is to assure

11 See, for example, Section 24.203(b) which sets out a different construction obligation for 15 MHz C-Block PCS licenses that resulted from disaggregation according to a particular Commission Report and Order than for 15 MHz C-Block licenses that result from disaggregation for other reasons.

12 See Section 309(j)(3)(A) of the Communications Act which states such a requirement for the "Design of Systems of Competitive Bidding."

13 Comments at 9.

14 OPASTCO Comments at 5-6; RTG Comments at 8-9.

that licensees are motivated to serve rural areas in a reasonably prompt manner. Where that does not occur, others who have a plan to do so must have the opportunity to secure spectrum rights without extended delay.

IV. Conclusion

RCA members, about 90 nationwide, need 700 MHz spectrum to deliver the next generation of wireless services to rural America. But under the Commission's current licensing plan with large regional service areas it is very unlikely that any RCA member would succeed in securing a 700 MHz license at the auction. At a minimum RCA requests a change in the band plan so that Block B in the Lower 700 MHz Band will be offered with CMA boundaries. And the comprehensive changes that RCA supports through the Balanced Consensus Plan would provide a wide range of market sizes to make the auction accessible to all interested companies.

Performance requirements are the best and probably only way to assure that rural markets receive the benefits of next generation wireless services. RCA proposes a series of geographic-based build-out requirements during the initial license term to assure the availability of 700 MHz services in rural areas. If the initial licensee does not build the rural areas it should be obligated to get the spectrum into the hands of someone who will, or surrender rights to a portion of the license area. RCA's proposal may not be well received by those who have no plans to serve rural areas but it will result in spectrum transfers and spectrum forfeitures that will allow willing carriers to perform.

Waiting 10 years or more for next generation services in rural America is not an acceptable plan.

Respectfully submitted,

/s/

David L. Nace
Attorney for
Rural Cellular Association

LUKAS, NACE, GUTIERREZ & SACHS, CHARTERED
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
(703) 584-8661
E-mail: dnace@fcclaw.com

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