

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Reallocation of 30 MHz of 700 MHz) RM No. 11348
Spectrum (747-762/777-792 MHz))
from Commercial Use)
)
Assignment of 30 MHz of 700 MHz)
Spectrum (747-762/777-792 MHz))
to the Public Safety Broadband Trust for)
Deployment of a Shared Public Safety/)
Commercial Next Generation Wireless Network)

ORDER

Adopted: November 3, 2006

Released: November 3, 2006

By the Acting Bureau Chief, Public Safety and Homeland Security Bureau:

1. This order addresses a Petition for Rulemaking (the "Petition") filed by Cyren Call Communications Corporation ("Cyren Call") seeking reallocation of 30 MHz of commercial spectrum in the 747-762 megahertz ("MHz") and 777-792 MHz bands and assignment of that spectrum without auction to a single licensee for deployment of a nationwide, broadband network for shared commercial and public safety use. For the reasons set forth below, we dismiss Cyren Call's petition without prejudice.

2. In section 337(a) of the Communications Act of 1934, as amended ("the Act"), Congress mandated that the Commission allocate "spectrum between 746 megahertz and 806 megahertz, inclusive" by designating 24 MHz of the spectrum "for public safety services" and 36 MHz of the spectrum "for commercial use to be assigned by competitive bidding pursuant to section 309(j)." As directed by Congress, the Commission allocated 24 MHz of this spectrum for public safety use at 764-776 MHz and 794-806 MHz and 36 MHz of this spectrum for commercial use at 746-764 MHz and 776-794 MHz. In section 309(j)(15)(C)(v) of the Act, enacted as part of the Digital Television Transition and Public Safety

1 Petition for Rulemaking of Cyren Call Communications Corporation, RM 11348, filed April 27, 2006.

2 See 47 U.S.C. § 337(a), as enacted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

3 Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order, 12 FCC Rcd 22953 (1997). The commercial portion at 746-764 MHz and 776-794 MHz includes the spectrum that is the subject of the Petition and two blocks of paired "guard band" spectrum at 746-747 MHz and 776-777 MHz, and 762-764 MHz and 792-794 MHz. See 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, WT Docket Nos. 06-169, 96-86, Notice of Proposed Rulemaking, FCC 06-133 (rel. Sept. 8, 2006). The Commission has not yet auctioned the commercial spectrum in the 747-762 MHz and 777-792 MHz bands.

Act of 2005 (the “DTV Act”), Congress mandated that the Commission conduct an auction of “recovered analog spectrum” – defined as the frequencies between 698 and 806 megahertz, inclusive, other than the spectrum required by section 337 to be made available to public safety services and the spectrum auctioned prior to the date of enactment of the DTV Act – by commencing the bidding not later than January 28, 2008.⁴ Accordingly, the Commission is required by sections 337(a) and 309(j)(15)(C)(v) to auction the 30 MHz of spectrum for which Cyren Call seeks reallocation and assignment.

3. We recognize the unique communications needs of public safety entities and the instrumental role that spectrum in the 700 MHz band can play in meeting those communications needs. To that end, we remain committed to ensuring effective and efficient communications between first responders.

4. We conclude that Cyren Call’s Petition is inconsistent with Sections 337(a) and 309(j)(15)(C)(v)’s auction requirement.⁵ Even in its most recent response, “Cyren recognizes that Congressional action will be needed before its proposal could be implemented. But the FCC clearly has the authority to develop a public record . . .”⁶ Indeed, in its Petition, Cyren Call recognizes that the spectrum it seeks has been designated to be auctioned for commercial purposes and indicates that it “has committed itself to pursuing legislative relief.”⁷ As such, the Commission has no authority to take further action on the request at this time, and will dismiss the Petition without prejudice, leaving the docket open.

5. ACCORDINGLY, IT IS ORDERED, pursuant to Section 1.401(e) of the Commission’s rules, and pursuant to authority delegated by Sections 0.191(f) and 0.392 of the Commission’s rules, that the Petition for Rulemaking filed by Cyren Call Communications Corporation on April 27, 2006, is hereby DISMISSED without prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran, Acting Chief
Public Safety and Homeland Security Bureau

⁴ See 47 U.S.C. § 309(j)(15)(C)(v), (vi), as enacted by the Digital Television Transition and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, 22, § 3003(a)(2)(2006).

⁵ See 47 C.F.R. § 1.401(e) (“Petitions [for rulemaking] which . . . plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.”).

⁶ Letter from Morgan E. O’Brien, Chairman of the Board, Cyren Call, to The Honorable Kevin J. Martin, RM-11348 (filed November 2, 2006) at 3.

⁷ Petition at vi, footnote 4.