

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Reallocation of 30 MHz of 700 MHz Spectrum) RM No. 11348
(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)

To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC (“Cingular”), by its attorneys, hereby submits its comments in support of the Public Safety and Homeland Security Bureau’s (“Bureau”) dismissal¹ of the Petition for Rulemaking (“Petition”) filed by Cyren Call Communications Corporation (“Cyren Call”).² The Petition sought to reallocate 30 MHz of 700 MHz spectrum (747-762/777-792 MHz) from commercial to public safety use. The Digital Television Transition and Public Safety Act (“DTV and Public Safety Act”), however, mandates that this spectrum be auctioned for commercial use no later than January 28, 2008. Even Cyren Call recognized that statutory

¹ *Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use*, RM No. 11348, *Order*, DA 06-2278 (rel. Nov. 3, 2006) (“*Order*”).

² Petition of Cyren Call Communications for Rule Making, RM No. 11348 (filed Apr. 27, 2006); *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Report No. 2794, *Public Notice*, (rel. Oct. 30, 2006) (“*Notice*”).

changes would be necessary before its proposal could be adopted.³ Accordingly, the Commission lacked jurisdiction to act on the proposal and the Bureau properly dismissed the Petition.⁴ Even assuming the FCC has jurisdiction to take comments on the proposal, the decision to keep the “docket” open sets a bad precedent whereby the Commission accepts comments on a proposal that has been dismissed on jurisdictional grounds.

Cingular supports efforts to improve public safety communications and has worked extensively with a variety of vendors to develop a suite of broadband services targeted for public safety use.⁵ Cingular also is an active participant in the National Security Telecommunications Advisory Committee’s Emergency Communications and Interoperability Task Force, which was formed to analyze potential interoperability approaches and provide solutions to public safety needs. In addition, Cingular is an active participant in the standardization of globally applicable technical specifications for digital mobile broadband technology aimed at the public safety and disaster response sectors (*e.g.*, Project MESA).

Public safety communications needs are extremely important, but Cyren Call’s proposal is not the solution. Specifically, Cyren Call’s proposal calls for the 30 MHz of reallocated spectrum to be placed in a trust with “a qualified third party such as Cyren [engaged] to manage

³ See *Order* at 2 (*citing* Letter from Morgan E. O’Brien, Chairman of the Board, Cyren Call, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, RM-11348, at 3 (filed Nov. 2, 2006)); *see also* Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, FCC, to Michael W. Grady, Vice President, Technology, Engineering and Quality and Sector Chief Technical Officer, Northrop Grumman Information Technology, DA 03-2940 (Sept. 24, 2003).

⁴ See *Order* at 2.

⁵ On May 2, 2006, at Rash Field in the Inner Harbor of Baltimore, Maryland, Cingular participated in a demonstration of the wide variety of public safety/national security applications possible over commercial UMTS/HSDPA networks via a commercial IP multimedia subsystem (“IMS”). A similar demonstration was conducted last month in Washington, DC. IMS permits the sharing of different media during a single transmission — *i.e.*, numerous applications such as voice communications, video feeds, and file transfers can be utilized simultaneously.

the deployment and ongoing coordination of the network.”⁶ Rather than benefit public safety, the proposal actually threatens critical public safety programs. After decades of work, negotiation, compromise, and technological advances, Congress finalized the DTV conversion. In doing so, it affirmed the allocation plan adopted in 1997 for the returned 700 MHz spectrum: 24 MHz is allocated for public safety services and the remaining 36 MHz of available spectrum is allocated for commercial use to be licensed by auction.⁷ Further, Section 309(j) was amended to require the Commission to commence the auction no later than January 28, 2008.⁸ Congress committed nearly \$11 billion from the anticipated auction revenues for several priority programs, including \$1 billion for public safety interoperability grants.⁹

Cyren Call’s proposal seeks to withdraw a large portion of the spectrum set to be auctioned, which would substantially lower the revenue generated by the auction and, therefore, jeopardize the nearly \$11 billion Congress has committed to important programs from the auction proceeds. Indeed, the FCC’s Independent Panel on Hurricane Katrina, which issued a series of recommendations earlier this year on public safety communications, urged the government to maintain the 700 MHz auction schedule to fund the public safety interoperability grant program.¹⁰ Cyren Call’s proposal would undermine critical public safety programs and delay the 700 MHz auction. Thus, even if the Commission had jurisdiction to reallocate the 700

⁶ Petition at vii.

⁷ See 47 U.S.C. § 309(j)(15)(C)(v), (vi), as enacted by the DTV and Public Safety Act, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 3003(a)(2) (2006); see also 47 U.S.C. § 337(a).

⁸ See Pub. L. No. 109-171, § 3003(a)(2).

⁹ *Id.* §§ 3004-3012.

¹⁰ See *Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission*, at 38 (June 12, 2006).

MHz spectrum as proposed by Cyren Call, the Petition should have been denied on policy grounds.

Although the Bureau properly dismissed the Petition, it also should have terminated the proceeding. Instead, the Bureau left “the docket open.”¹¹ This irregular action creates much uncertainty. Once Cyren Call’s Petition was dismissed, there was no basis for the public to file supporting or opposing comments.

Cingular has noted in numerous proceedings that certainty in spectrum allocations and regulations is critical for investors, manufacturers, and carriers.¹² The spectrum sought by Cyren Call was allocated for commercial services years ago and investors, manufacturers, and carriers dedicated substantial resources developing equipment and business plans based on this band plan. The wireless industry widely supported a date certain for completion of the DTV transition in order to provide certainty as to when this spectrum will become available. Indeed, the existing 700 MHz band plan coupled with the statutory obligation to auction the spectrum targeted by Cyren Call in the near future, likely played a significant role in the auction strategies developed for the recent AWS auction. The Bureau’s statement that docket would be held open, even though there is no docket to be left open, has injected unnecessary uncertainty into the wireless market. Accordingly, the Bureau should clarify that the pleading cycle established for the Petition terminated upon dismissal of the Petition. The Petition was dismissed without prejudice and a new pleading cycle can be initiated if and when the necessary statutory changes are made and Cyren Call re-files its proposal.

¹¹ *Order at 2; but see Amendment of Sections 1.46(b) and 1.415(e) Rules of Practice and Procedure, Order, 64 F.C.C.2d 928, 928-29 (1977) (noting that motions and comments filed in response to a petition for rulemaking occur before docketing).*

¹² *See Comments of Cingular Wireless LLC on Federal Communications Commission Strategic Plan for FY 2006-2011, at 6-8 (filed Aug. 5, 2005); Comments of Cingular Wireless LLC, ET*
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