

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

Reallocation of 30 MHz of 700 MHz Spectrum)
(747-762/777-792 MHz) from Commercial Use)
)

Assignment of 30 MHz of 700 MHz Spectrum)
(747-762/777-792) to the Public Safety Broadband)
Trust for Deployment of a Shared Public Safety)
Commercial Next Generation Wireless Network)
)
)
)

RM No. 11348

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply comments in opposition to the Petition for Rulemaking (the “Petition”) filed by Cyren Call Communications Corporation (“Cyren Call”), which seeks reallocation of 30 MHz of commercial spectrum in the 747-762 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.² MetroPCS submits these reply comments to properly place in context the comments filed in this proceeding, as well as to highlight for the Commission the concerns of the Region 24 700 MHz Regional Planning Committee.

¹ For purposes of these Comments, the term “MetroPCS” refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed subsidiaries.

² Petition for Rulemaking of Cyren Call Communications Corporation, RM 11348, filed April 27, 2006.

As an initial matter, MetroPCS would like to note a substantial recent congressional development. On December 6, 2006, Congress passed the "Call Home Act of 2006."³ This legislation set a firm deadline of September 30, 2007 for the award of "no less than \$1,000,000,000 for public safety interoperable communications grants . . . subject to the receipt of qualified applications as determined by the Assistant Secretary," pursuant to the DTV provisions in the Deficit Reduction Act.⁴ MetroPCS applauds this congressional action to provide additional funding for public safety entities. This Congressional action indicates that efficient interoperable public safety networks can and will be developed without resort to the risky and untested public/private partnership over spectrum, such as the one suggested by Cyren Call.

I. THE RECORD MAY NOT ACCURATELY REFLECT PUBLIC SENTIMENTS ABOUT THE CYREN CALL PROPOSAL

Over 1300 comments have been filed in the docket left open by the Commission for the Cyren Call Petition for Rulemaking. The overwhelming majority of these comments are very brief, virtually identical "cookie cutter" comments that appear to have been submitted using the "point and click" function on the Cyren Call website. Specifically, the Cyren Call website generates a form letter in support of the Cyren Call Petition that can be filed electronically with the Commission merely by having the filer provide their contact information to Cyren Call. (Cyren Call currently is using a similar method to solicit support both for reply comments to the Commission: http://ga3.org/campaign/reply_comments and for letters to Congress: http://ga3.org/campaign/urg_congress2). Because of the active solicitation by Cyren Call of supporting comments and the ease with which Cyren Call has enabled a person or party to file

³ S. 2653, "Call Home Act of 2006," 109th Congress, 2D Session, December 6, 2006.

⁴ *Id.* at Section 4.

electronic comments in this proceeding, these duplicative form comments should not be viewed as reflecting passionate support for the Cyren Call proposal and cannot be considered to fully reflect what will serve the public interest. Indeed, the number of entities that chose to file these pre-packaged comments could be read to indicate that not many members of the public safety community consider the Cyren Call proposal to be important enough to warrant or merit individualized attention and comment.

A. The Record May Not Accurately Reflect the Level and Extent Of Opposition By Carriers Who Support Retaining the Commercial Allocation

As noted by MetroPCS in its initial comments, the fact that the Commission is taking comments on the Cyren Call proposal after the Petition already has been dismissed by the Commission for lack of jurisdiction is unusual and unprecedented.⁵ Indeed, Cingular notes in its comments that “[t]his 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.”⁶ MetroPCS agrees. Because of this dismissal, the Commission must be concerned that the record does not fully and accurately reflect the positions of interested parties. MetroPCS knows there are carriers who oppose the petition but decided that no comments were necessary since the Commission could not take action. For example, many wireless carriers are on record in the 700 MHz band plan proceeding (WT Docket No. 99-168) that all of the 700 MHz spectrum should be used for commercial wireless services and therefore should not be allocated in the way Cyren Call proposes. For example, MetroPCS notes that many major wireless industry players - - including Verizon Wireless, T-Mobile, Sprint Nextel, Leap Wireless, ALLTEL, US Cellular, and

⁵ Comments of MetroPCS at 1; Reallocation of 30 MHz of 700 MHz 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*, RM No. 11348 (rel. Nov. 3, 2006).

⁶ Comments of Cingular Wireless LLC at 3.

Dobson - - filed substantial comments in the ongoing proceeding to finalize the upper and lower 700 MHz commercial band plan.⁷ The 700 MHz spectrum plans supported by these carriers specifically contemplate that the 30 MHz of spectrum sought by Cyren Call will be auctioned and devoted to commercial uses. Thus, absent a clear indication to the contrary, all commentators who support one of the alternate band plans covering the entire 60 MHz of as-yet-unlicensed commercial spectrum should be properly viewed as opponents of reallocating the spectrum to public safety use. The Commission should consider the lack of comment by these major wireless industry players in this proceeding to reflect the fact that the Cyren Call Petition was dismissed by the Commission; not that these wireless carriers are ambivalent to the proposal or support the Cyren Call proposal.

II. THE COMMENTS OF THE REGION 24 700 MHZ REGIONAL PLANNING MERIT ATTENTION

The Comments of the Region 24 700 MHz Planning Committee (“Region 24”) filed on November 29, 2006, deserve attention by the Commission. Region 24 was the second Commission-designated Regional Planning Committee to have its 700 MHz regional plan approved by the Commission, and the first to submit a plan proposing usage of the 700 MHz 50 KHz wideband data channels. As such, the observations of Region 24 regarding the extent to which the Cyren Call plan will meet identifiable needs for service are noteworthy. Interestingly, these observations echo a number of concerns with the Cyren Call proposal that MetroPCS identified in its comments, including that (1) the 24 MHz of existing spectrum already allocated for public safety use may be sufficient for public safety needs; (2) that the public safety community has not agreed either that broadband services are necessary or exactly what services

⁷ In addition, while CTIA filed a brief comment to the Commission urging dismissal of the Cyren Call Petition on jurisdictional grounds (prior to the Commission’s dismissal), its filing did not include any substantive discussion of the Petition. Letter from CTIA to Chairman Martin, dated October 31, 2006.

are needed and; (3) that there are risks associated with implementing the untested Cyren Call public/private partnership under the auspices of a "Trustee". For instance Region 24 states that:

- There has been a "lack of planning" to date by public safety users; their vision is "still in development."⁸
- "Region 24 feels the Cyren Call proposal, as provided, does not represent adequately the needs of the local public safety community in Missouri."⁹
- "Public Safety has yet to define the best use of the 12 MHz of Wideband Spectrum initially allocated by the Commission and should be allowed to better define its broadband needs with the use of this spectrum before engaging to utilize additional spectrum in the 700 MHz band."¹⁰
- "Only two (2). . . of the eight (8) Commission designated 700 MHz regional planning committees regions that have filed plans with the Commission have included the existing wideband data allocation channels that take up half of the public safety allocation. . . [m]ore interest in wideband data, utilized within the context of today's rules, would be more evident of public safety user data needs and priorities."¹¹
- "The Cyren Call proposal cites today's lack of broadband use by public safety users as a crisis, which we believe is a premature conclusion. . . ."¹²
- "The priority of such [a public safety] initiative should be on local shared public safety/commercial wireless initiatives and deployment with clearly defined goals

⁸ Comments of Region 24 700 MHz Regional Planning Committee at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3

¹¹ *Id.* at 10.

¹² *Id.* at 3.

and capabilities as topics, not something managed at the national level by those with little [or] no public safety experience.”¹³

- Region 24 "opposes national oversight and management of any [public safety] initiative...."¹⁴
- The Cyren Call conclusion that "eventual public safety broadband capabilities can only be derived from allocating 30 MHz of commercial spectrum to a Public Safety Broadband Trust ... is inaccurate."¹⁵
- "[U]biquitous interoperability ... will not automatically be created with ... the Cyren Call proposal."¹⁶
- "The idea that the public safety community is at risk because they are not today capable of seamless wireless broadband capabilities does not accurately reflect public safety's needs nor does it acknowledge that state and local agencies across the country have diverse voice and data needs."¹⁷

The Comments of Region 24 indicate that there is not widespread agreement on whether additional spectrum is necessary for public safety entities, or even over whether a broadband network is necessary at all. The comments also point out several of the serious shortcomings in the Cyren Call approach. While the public safety community may be unsure of its needs, it is quite clear that the commercial wireless industry has an extreme and immediate need for additional spectrum.¹⁸ Thus, due to the pressing need for spectrum in the commercial wireless

¹³ *Id.* at 5.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 7-8.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 8.

¹⁸ Comments of MetroPCS at 11-12.

market, the statutory deadlines imposed by Congress for the auctioning of 700 MHz spectrum, and the lack of evidence or agreement as to what the public safety community actually needs, the allocation of commercial spectrum in the 700 MHz band should remain unchanged.

III. CONCLUSION

In sum, in the best case, adopting the Cyren Call proposal will require the Commission to embark on an unproven and untested public/private partnership which could strand valuable spectrum for years for uses which may not even exist, while denying commercial operators the spectrum needed for fourth generation services. In the worst case, the Commission will be diverting substantial scarce assets to a commercial operator without any compensation or revenues to the public. In either outcome, the public interest is not served. For the foregoing reasons, MetroPCS respectfully requests that the proposals in the Cyren Call Petition be denied.

Respectfully submitted,

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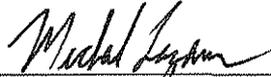
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CERTIFICATE OF SERVICE

I, Michael L. Lazarus, hereby certify that a true and correct copy of the foregoing Comments of MetroPCS Communications, Inc. was delivered via UPS this 14th day of December 2006 to the individual on the following list:



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