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VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Ex Parte Communication
WT Docket No. 06-150
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands**

Dear Ms. Dortch:

SpectrumCo LLC (“SpectrumCo”)¹, by its attorneys, submits this *ex parte* letter and accompanying analysis to provide further support for the adoption of (1) a mix of geographic service areas, and (2) a mix of spectrum blocks in the upcoming auction of the remaining spectrum in the 700 MHz (698-746, 747-762 and 777-792 MHz) band. The attached white paper prepared by Dr. Coleman Bazelon – which includes a detailed analysis of the recently completed Advanced Wireless Service (“AWS”) auction, an explanation of auction theory, and economic analysis supporting this position – bolsters the strong record in this proceeding and the overwhelming support for a reduction in size of both the geographic service areas and spectrum blocks in the 700 MHz auction.²

Overview

As an active and successful participant in the Commission’s recent AWS auction, SpectrumCo is familiar with the benefits of a “building block” approach to assembling a national wireless network by winning multiple licenses covering smaller markets. During the AWS auction, SpectrumCo bid on many different licenses of interest, but ultimately aggregated a nationwide footprint through its high bids on 137 Economic Area (“EA”) licenses. SpectrumCo’s experience in the AWS auction – as well as sound economic theory,

¹ SpectrumCo is a Delaware limited liability company, managed by C Spectrum Investment, LLC, a subsidiary of Comcast Corporation. Class B equity owners of SpectrumCo are C Spectrum Investment, LLC; Time Warner Cable LLC, a subsidiary of Time Warner Inc.; Cox Wireless, Inc., a subsidiary of Cox Enterprises, Inc.; and Bright House Networks, LLC.

² Coleman Bazelon, “The Economics of License Sizes in the Upcoming 700 MHz Band Auction” (“Bazelon”).

Congressional auction mandates, precedent established in successful Commission auctions for similar spectrum, and changed circumstances since the Commission established the initial 700 MHz band plan – clearly demonstrate the rationale and the necessity for auctioning spectrum in smaller geographic areas and block sizes, particularly focusing on mid-sized EA licenses. As explained in Dr. Bazelon’s white paper, smaller licenses facilitate a bidder’s ability to meet its demand through the auction by allowing bidders to determine the optimal service area sizes and the most efficient spectrum configurations for their business purposes.³ Bidders can thereby reduce post-auction transaction costs, which will promote faster deployment of wireless services and provide related consumer benefits. Also, auctions that include a mixture of license sizes should generate a greater number of interested bidders and promote buildout in rural areas. SpectrumCo’s proposed band plan would help to accomplish these vital policy goals while facilitating strong demand for 700 MHz spectrum among incumbent carriers of different sizes as well as new entrants, fostering competition and providing consumers more choices and lower prices.

SpectrumCo Band Plan Proposal for Diversifying License Sizes in the 700 MHz Band

As summarized in the *Notice of Proposed Rulemaking*,⁴ the Commission’s current band plan divides previously unauctioned 700 MHz spectrum into five blocks on the basis of six very large, super-regional geographic service areas throughout the entire United States (using only Economic Area Groupings, or “EAGs”). Specifically, the present band plan divides the unauctioned portions of the Upper 700 MHz band into one 10 MHz block (the C Block) and one 20 MHz block (the D Block), with both blocks scheduled to be auctioned on an EAG basis. The unauctioned portions of the Lower 700 MHz band include two 12 MHz blocks (the A and B Blocks) and one 6 MHz block (the E Block), all three of which are also slated for auction on an EAG basis.

As described herein and in the white paper, a band plan containing nothing but extremely large licenses forces even large, well-financed entities to buy more spectrum than they may need and diminishes the flexibility to determine the best configuration of licenses for their planned wireless service. Inflexible auction design choices force inefficient outcomes and lead to the potential warehousing of undesired spectrum by license holders unwilling or unable to bear the transaction costs of partitioning and selling spectrum rights in secondary markets.⁵ Moreover, the assignment of all available licenses into EAG-wide, super-regional geographic service areas would likely foreclose participation in the upcoming auction by all but the largest incumbent carriers and exceedingly well-financed companies – shutting out numerous potential new entrants as well as regional and rural wireless carriers that could neither use nor likely afford licenses covering such a large potential service territory.⁶ Instead, the Commission should reconfigure the 700 MHz band plan to provide an additional 10 MHz block and a mix of geographic service areas that conform with the service areas offered in the recent AWS auction

³ See *id.* at 4-7.

⁴ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Notice of Proposed Rulemaking*, FCC 06-114, ¶¶ 10-15 (rel. Aug. 10, 2006) (“*Notice of Proposed Rulemaking*”).

⁵ See Bazelon at 3-4.

⁶ See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, 20 FCC Rcd 14058, ¶ 10 (2005) (“*AWS Reconsideration Order*”) (“Specifically, we find . . . that a 30 megahertz REAG block is too large for most bidders and should be broken into smaller components that could be aggregated, and that offering an additional block licensed on an EA basis would help enhance the mixture of large and small geographic area licenses available to applicants.”).

and that allow aggregation opportunities with adjacent bands. Doing so would allow licensees like SpectrumCo to augment their spectrum holdings in a more tailored fashion, while still allowing bidders to aggregate large-sized spectrum blocks.

Proposed Band Plan: Therefore, in the Upper 700 MHz band, the Commission should divide the 20 MHz block into two 10 MHz blocks for the auction. The resulting three 10 MHz blocks in the Upper 700 MHz band will increase the number of bidding opportunities in each market, while still enabling bidders to combine two or three of these blocks where larger aggregations of spectrum are desired. The Commission should auction all three of these 10 MHz blocks on the basis of mid-sized EA licenses rather than super-regional EAG geographic areas. The mid-sized EA geographic service areas can be used effectively by very small and very large bidders alike, as demonstrated in the AWS auction, and will facilitate aggregation of 700 MHz and AWS spectrum by licensees. As the Commission noted in reconfiguring the AWS band plan, “[i]ncreasing the amount of spectrum licensed on an EA basis will offer applicants the option of combining spectrum blocks and service areas to suit their business plans,” noting commenters’ suggestions that the EA spectrum blocks are optimally sized to be aggregated with other EA licenses as well as with larger or smaller-sized spectrum blocks.⁷

In the Lower 700 MHz band, the Commission should auction the A Block on an EA basis, the B Block on a Cellular Market Area (“CMA”) basis (facilitating aggregation opportunities with the adjacent C Block in the Lower 700 MHz band, which has already been auctioned on a CMA basis), and the E Block on a Regional Economic Area Grouping (“REAG”) basis (similar to the adjacent D Block, auctioned on an EAG basis). This “building block” approach would ensure the availability of a mix of geographic areas for potential bidders, preserving some larger-area licenses while creating smaller-area licenses that winning bidders could either use on a local basis or aggregate into a larger footprint. In addition, as the Commission stated in revising the AWS band plan, “by placing spectrum blocks with the same type of geographic area licenses adjacent to one another, we enable licensees to employ a variety of aggregation possibilities.”⁸

SpectrumCo also respectfully requests that the Commission use REAGs rather than EAGs as the largest-sized areas to be auctioned in the 700 MHz band, to ensure consistency with the licenses auctioned in the AWS auction.⁹ Doing so would ensure that AWS licensees have opportunities to add spectrum without unnecessary overlap with existing holdings.¹⁰ Currently, the six super-regional EAGs for the 700 MHz band do not match any of the license areas in the AWS auction (REAGs, EAs, and CMAs), which will make it difficult for carriers to efficiently expand capacity and broaden local, regional, and national coverage.

The charts below illustrate the Upper 700 MHz and Lower 700 MHz band plans proposed by SpectrumCo:

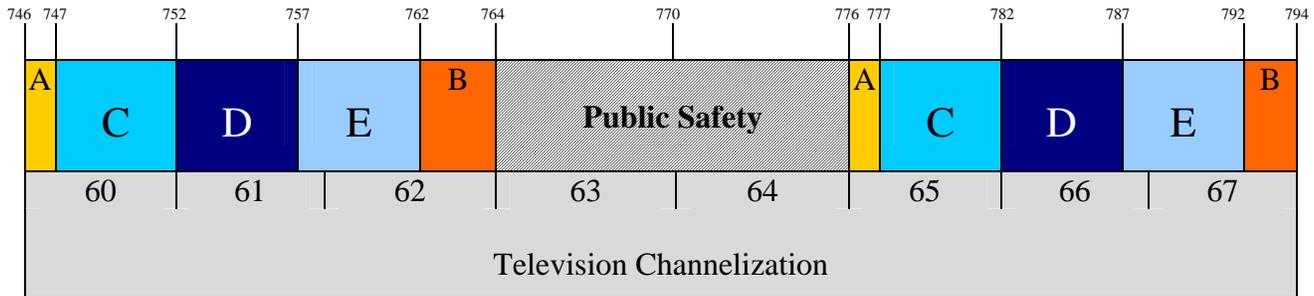
⁷ *Id.*, ¶ 18; *see also* Ex Parte Communication of Verizon Wireless, WT Docket No. 02-353, at 1-2 (filed May 27, 2005) (proposing revisions to the AWS band plan to include “a variety of geographic and frequency blocks, allowing for efficient aggregation of spectrum” and specifically urging the Commission to “provide[] more flexibility for prospective licensees” by revising the AWS band plan in order “to place contiguously the EAs and REAGs, or spectrum ‘building blocks,’ permitting both efficient geographic and frequency aggregation”).

⁸ *AWS Reconsideration Order*, ¶ 18.

⁹ *See id.*, ¶ 20.

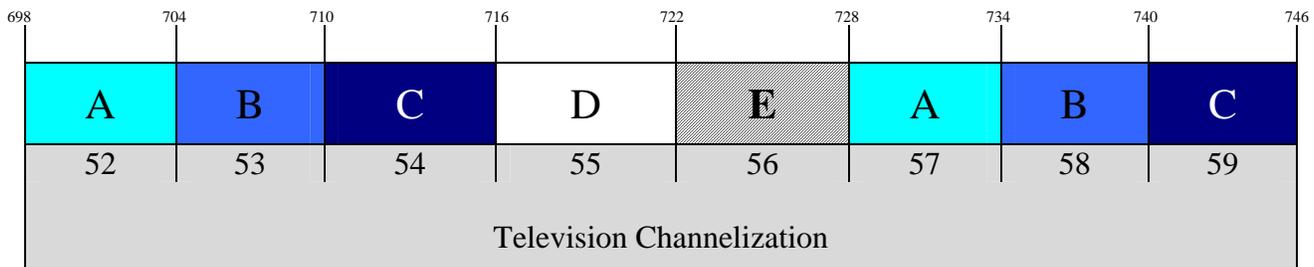
¹⁰ *See* Bazelon at 5 (discussing demand in the AWS auction from bidders seeking to fill in coverage areas in existing networks).

Proposed Upper 700 MHz Band Plan



<u>Block</u>	<u>Frequencies (MHz)</u>	<u>Bandwidth</u>	<u>Pairing</u>	<u>Geographic Area Type</u>	<u>No. of Licenses</u>
A (Guard Band)	746-747, 776-777	2 MHz	2 x 1 MHz	Major Economic Areas	52
B (Guard Band)	762-764, 792-794	4 MHz	2 x 2 MHz	Major Economic Areas	52
C	747-752, 777-782	10 MHz	2 x 5 MHz	Economic Areas	176
D	752-757, 782-787	10 MHz	2 x 5 MHz	Economic Areas	176
E	757-762, 787-792	10 MHz	2 x 5 MHz	Economic Areas	176

Proposed Lower 700 MHz Band Plan



<u>Block</u>	<u>Frequencies (MHz)</u>	<u>Bandwidth</u>	<u>Pairing</u>	<u>Geographic Area Type</u>	<u>No. of Licenses</u>
A	698-704, 728-734	12 MHz	2 x 6 MHz	Economic Areas	176
B	704-710, 734-740	12 MHz	2 x 6 MHz	MSA/RSA (CMAs)	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA (CMAs)	734
D	716-722	6 MHz	unpaired	700 MHz EAG	6
E	722-728	6 MHz	unpaired	700 MHz REAG	12

SpectrumCo's AWS Auction Experience Demonstrates the Value of Including Smaller License Areas in the 700 MHz Auction

SpectrumCo's AWS auction experience demonstrates that large spectrum blocks and large geographic service area licenses are not necessary for bidders to acquire a nationwide spectrum footprint. As detailed in the attached white paper, SpectrumCo was successful in purchasing enough licensed spectrum to obtain a nationwide footprint. Several parties filing comments in response to the *Notice of Proposed Rulemaking* noted that the availability of EA-sized licenses in the AWS auction enabled SpectrumCo (and potentially other new entrants) to

obtain a nationwide footprint,¹¹ despite the active bidding of several large incumbent wireless carriers. Therefore, it is incorrect for commenters in this proceeding to argue that EAG-sized blocks or even a single nationwide license are necessary or preferable to provide nationwide opportunities in the 700 MHz band.¹²

The AWS auction was widely considered a success for bidders of all sizes, and for incumbents and new entrants alike.¹³ New entrant SpectrumCo was the third highest bidder in this auction and, as described below, successfully aggregated a nationwide footprint through its high bids on 137 EA licenses. The AWS auction also allowed incumbent national carriers and other larger providers to fill gaps in existing networks by obtaining and aggregating EA-sized licenses. Regional and smaller carriers also successfully added new markets and expanded their coverage in existing markets. In fact, the Rural Cellular Association (“RCA”) reported that 70 of the 104 winning bidders in the auction were rural carriers or small businesses.¹⁴

As the white paper demonstrates, of the 168 eligible bidders in the AWS auction, 153 bidders that represented 200 million upfront bidding units, and that ultimately purchased 355 licenses for \$220 million, likely would not have entered the AWS auction if only large REAG licenses had been available. These 153 bidders never placed a bid on an REAG-sized spectrum block during the AWS auction, and 152 of them did not have enough initial eligibility to purchase even the smallest of the continental REAG licenses.¹⁵ Yet, as the white paper illustrates, this group of bidders placed bids on licenses in every state in the continental United States and in license areas almost covering the entire country – and they succeeded in winning licenses in almost all of the areas where they placed bids.¹⁶ It is fair to conclude, therefore, that had the AWS auction only included super-regional REAG licenses, the auction may not have turned out to be “the biggest, most successful wireless auction in the Commission’s history.”¹⁷

In the AWS auction, SpectrumCo first bid on REAG licenses, but eventually focused its bidding on EA licenses. Using this approach, SpectrumCo won 137 licenses covering 260.5 million people at a total price of almost \$2.4 billion.¹⁸ SpectrumCo’s successful aggregation strategy proves that the auction of smaller spectrum blocks and smaller geographic area licenses does not inhibit the creation of very large and even nationwide footprints. As the white paper explains, smaller spectrum blocks provide efficient optionality to bidders – meaning that bidders intent on purchasing a national package of licenses can do so by using aggregation strategies that minimize the risk of failed aggregations, while bidders that demand smaller service areas and spectrum blocks can bid on licenses of optimal size for their less expansive coverage needs. The same cannot be said of larger EAG license areas.

¹¹ See, e.g., Reply Comments of the Rural Telecommunications Group at 1-6 (filed Oct. 20, 2006); Erratum to the Comments of MetroPCS Communications, Inc. at 5-6 (filed Sept. 29, 2006); Reply Comments of MetroPCS Communications, Inc. at 2 (filed Oct. 20, 2006).

¹² See, e.g., Joint Comments of DIRECTV, Inc. and EchoStar Satellite L.L.C. at 3-7 (filed Sept. 29, 2006); Comments of AT&T Inc. at 4-10 (filed Oct. 5, 2006); Comments of Cingular Wireless LLC at 5-9 (filed Oct. 5, 2006); Comments of Verizon Wireless at 4-5 (filed Sept. 29, 2006); Comments of Motorola, Inc. at 6-8 (filed Sept. 29, 2006); Comments of Qualcomm Incorporated at 16-17 (filed Sept. 29, 2006).

¹³ See Bazon at 1-3.

¹⁴ *Id.* at 3.

¹⁵ See *id.* at 9.

¹⁶ See *id.* at 10-11, Figures 3 and 4.

¹⁷ *Id.* at 1 (quoting Chairman Martin’s statement as reported in Kathryn Balint, *Wireless firms win spectrum auction; S.D. companies NextWave, Leap bid successfully*, San Diego Union-Tribune, Sept. 20, 2006, at C-1).

¹⁸ *Id.* at 8-9, Figure 2.

Economic and Auction Theory Support Use of a Mix of License Sizes in the 700 MHz Band

As demonstrated below and in the white paper, large spectrum blocks and geographic areas serve a narrow interest, affording only the largest incumbent carriers or large new entrants able to finance a national strategy with a realistic opportunity to bid and acquire these licenses.¹⁹ Although some of the proponents of larger spectrum blocks argue that post-auction disaggregation through secondary market transactions will meet the needs of carriers that have smaller demands for spectrum,²⁰ this claim concedes that there is demand for smaller licenses. These proponents simply prefer secondary markets to an auction as the means to satisfy that demand, ignoring the substantial and unnecessary transaction costs associated with these after-auction options²¹ and the potential for large amounts of spectrum to lay fallow if secondary market transactions do not occur. Moreover, relying on secondary markets permits incumbent licensees to determine whether there will be additional entry and to select the entities, if any, to which they will transfer spectrum.²²

The attached white paper explains, however, that there is significant value in designing auctions that allow bidders to purchase licenses that are specifically tailored to their business plans and/or complementary to their existing spectrum holdings or other assets, thereby allow auction participants to bid flexibly in order to obtain spectrum necessary to filling coverage holes or serving particular regions of the country.²³ Indeed, a number of state agencies filing joint comments in this proceeding have cited the “serious public policy issue” created by wireless coverage gaps in their states, and have called for smaller license areas to promote service in rural markets.²⁴ As noted by Dr. Bazelon, “[o]nly by starting with reasonably small building blocks can bidders have the flexibility to configure the set of licenses that best meets their needs.”²⁵

Auctioning the remaining 700 MHz spectrum exclusively in a few massive EAG-sized license blocks would fail to recognize the bidder-specific nature of demand for new spectrum, and would reduce potential interest in the available spectrum by severely limiting bidders’ ability to define and bid on the packages of licenses they value most. The Commission should not ignore the efficiency of allowing bidders to choose which grouping of licenses they most desire, something which is not possible with larger licenses.²⁶

To maximize economic efficiency as well as flexibility, the 700 MHz auction should include some smaller spectrum blocks, and these should align with the EA and CMA geographic service areas used in the AWS auction.²⁷ As stated in the white paper, the use of the AWS band

¹⁹ See, e.g., Comments of United States Cellular Corporation at 8-9 (filed Sept. 29, 2006) (describing the “formidable burden” that even larger regional carriers would face in bidding for EAG-sized licenses).

²⁰ See Comments of Cingular Wireless LLC at 8; Comments of AT&T Inc. at 10-11.

²¹ See Comments of United States Cellular Corporation at 9 (noting that secondary markets play an important role in the efficient allocation of spectrum but arguing that these mechanisms “cannot replace the primary marketplace opportunities afforded by spectrum auctions including smaller license areas, fairly contested for in an open and competitive bidding process”).

²² See 47 U.S.C. § 310(d) (prohibiting the FCC from determining, in reviewing transfer of control or assignment applications, whether the public interest would be served by a different entity rather than the proposed transferee or assignee).

²³ See Bazelon at 4-7.

²⁴ Comments of Vermont Dept. of Public Service *et al.* at 1-5 (filed Sept. 29, 2006).

²⁵ Bazelon at 6.

²⁶ See *id.* at 5-6.

²⁷ See *id.* at 11-12.

plan model in the 700 MHz auction is likely to be even more successful than in the AWS auction because of the numerous licensees that now have licenses covering REAG, EA, and CMA areas. The 104 winners from the AWS auction will have demands that will most efficiently be met by 700 MHz licenses of the same geographic scope as those obtained in the AWS auction.²⁸

SpectrumCo's Band Plan Proposal is Supported by Congressional Auction Mandates and Commission Auction Precedent, and Will Not Delay the 700 MHz Auction

A decision to create smaller geographic service areas and spectrum blocks would be more faithful to Congressional auction mandates and Commission precedent than preserving the extremely large service areas in the present 700 MHz band plan. Long-standing statutory mandates, including provisions in Section 309(j) of the Communications Act,²⁹ require the Commission to design competitive bidding processes that promote “an equitable distribution of licenses and services among geographic areas,”³⁰ and “avoid[] excessive concentration of licenses . . . by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”³¹ Over the past 12 years, the Commission has achieved these mandates in its auction policies by making smaller license areas and blocks available, attracting a wide variety of applicants and spurring explosive growth in consumer use of wireless services. If smaller service areas and spectrum blocks are not offered in the 700 MHz band plan, these goals likely will not be achieved in this auction.

In addition, Commission experience using smaller geographic areas and spectrum blocks in major auctions of spectrum suitable for mobile services, particularly the PCS and AWS auctions, counsels in favor of using smaller areas and blocks in the 700 MHz band.³² By contrast, the current 700 MHz band plan would force the Commission to embark upon the untested experiment of offering only very large geographic areas for prime mobile spectrum that is highly sought after by a wide range of potential bidders. The 700 MHz band is too valuable, and interest in the spectrum is too great, to justify such an experiment.

Furthermore, proponents of the current band plan drastically overestimate the delays that might be associated with revising the 700 MHz band plan, particularly given the Commission’s experience with smaller sizes in earlier auctions for similar spectrum. When faced with similar circumstances in the AWS auction, the Commission adjusted the AWS band plan in August 2005 to create smaller geographic areas and provide more opportunity for small and rural bidders.³³ Although these changes were made just ten months before the planned start of the auction, the AWS auction proved to be the Commission’s most successful auction in history. With a year to go before the start of the 700 MHz auction, there is no reason why a similar result could not occur here.

²⁸ *Id.* at 11.

²⁹ *See* 47 U.S.C. § 309(j)(3), (j)(4)(C), (j)(4)(D).

³⁰ *Id.* § 309(j)(4)(C).

³¹ *Id.* § 309(j)(3)(B).

³² *See, e.g.,* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5532, ¶¶ 5-7 (1994) (“*PCS Auction Order*”) (establishing initial auction procedures for broadband PCS licenses); *see also* *AWS Reconsideration Order*, ¶ 17.

³³ *See* *AWS Reconsideration Order*, ¶¶ 15, 17.

Notably, one commenter, Cingular, asserts without any substantiation that utilizing smaller license sizes and increasing the number of licenses auctioned will result in a longer auction.³⁴ There is no necessary link, however, between the number of licenses in an auction and the length of time the auction takes, and a more relevant factor could be, for example, the minimum opening bids and bidding increments set by the Commission.³⁵ Even accepting as true Cingular's argument, however, there is no basis to conclude that the increase in the number of licenses advocated in SpectrumCo's band plan proposal would significantly slow the pace of the auction or extend the time it takes to conclude the auction. The AWS auction opened on August 9, 2006, and concluded on September 18, 2006 – ending after five-and-a-half weeks.³⁶ The six blocks offered in the AWS auction were partitioned into 1,122 licenses. If the Commission were to adopt SpectrumCo's proposal for the remaining 700 MHz band spectrum – partitioning the spectrum into six blocks with a license configuration of one REAG block, four EA blocks, and one CMA block – the 700 MHz auction would include a total of 1,450 licenses. Even if one assumed that there would be a proportional increase in auction time relative to the five-and-a-half week AWS auction (although such a proportional increase is not supported by past Commission auction data), this would still result in the 700 MHz auction concluding in under two months.

Changed Circumstances Provide Further Support for Revising the 700 MHz Band Plan

The wireless marketplace has changed a great deal since the Commission first adopted the 700 MHz band plans. These changes, and the policies that guided the Commission's successful AWS auction, strongly favor adopting the AWS model for the 700 MHz band. The factors arguing in favor of improved access to spectrum for multiple carriers in the AWS band apply with equal or greater force here, as industry consolidation and other pressures continue to make spectrum suitable for deployment of mobile services harder to obtain. Likewise, a mix of licenses in the 700 MHz band can facilitate demand, spur deployment in underserved areas, and promote competition among existing carriers and new entrants, thereby benefiting consumers and the public interest.

The Commission developed its band plans for the Upper and Lower 700 MHz bands in 2000 and 2002, respectively, in a very different stage in the development of wireless service and without the benefit of the wide range of commenters that responded to the *Notice of Proposed Rulemaking* in the present proceeding.³⁷ At the time of the Upper 700 MHz band plan decision, for example, the demand for mobile voice service was exploding as a result of the introduction of large-bucket mobile calling plans, and national carriers were desperate to add spectrum to large

³⁴ Reply Comments of Cingular Wireless LLC at 7 (filed Oct. 20, 2006).

³⁵ Past FCC auction data demonstrates that auction timing is not proportionally related to the number of licenses auctioned. For example, in Auction 65, where only two 800 MHz air-ground licenses were awarded, the bidding lasted 144 rounds. See Wireless Telecommunications Bureau Auction 65 summary, available at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=65 (last visited Jan. 7, 2007). By comparison, 1,087 licenses were won in Auction 66, yet the bidding lasted only an additional 17 rounds, representing a 12% increase in the number of rounds despite the award of 543 times as many licenses.

³⁶ See Wireless Telecommunications Bureau Auction 66 summary, available at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=66 (last visited Dec. 28, 2006).

³⁷ See generally Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, 15 FCC Rcd 476 (2000) (“*Upper 700 MHz First Report and Order*”); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Memorandum Opinion and Order*, 17 FCC Rcd 11613 (2002) (“*Lower 700 MHz MO&O*”).

areas within their growing footprints. At the same time, the CMRS spectrum cap continued to apply to non-700 MHz mobile spectrum (it was not eliminated until 2002),³⁸ and the AWS auction was still several years away.

The Commission also faced tight Congressional deadlines for auctioning this spectrum (giving the Commission limited time to deliberate the appropriate license area and block sizes), and needed to account for the uncertain timing as to when broadcast incumbents would transition from the band. Since then, elimination of the spectrum cap, consolidation in the wireless industry and completion of the AWS auction have allowed national and regional wireless carriers to acquire significant amounts of additional spectrum. Furthermore, increased certainty regarding the Digital Television transition has made the 700 MHz band a far more valuable investment than it was during previous 700 MHz Auctions 44 and 49, which took place in 2002 and 2003.³⁹ As reflected by the multitude of comments in this proceeding, the 700 MHz band is now more attractive to a wider range of potential bidders, including both existing carriers and new entrants.

In the *Notice of Proposed Rulemaking*, the Commission recounts the following reasons for establishing predominantly larger geographic areas in the original 700 MHz band plans: facilitating construction of a nationwide footprint by providers; allowing existing technologies to grow while also encouraging development of new technologies; providing economies of scale; addressing problems associated with incumbent TV stations; and facilitating completion of the auction in a timely manner.⁴⁰ As explained more fully below, these reasons, while perhaps valid in their time, no longer justify continued use of the EAG license boundaries. Therefore, SpectrumCo urges the Commission to take into account the changed circumstances and the current wireless marketplace in reevaluating the merits of utilizing only EAG-sized licenses for the upcoming 700 MHz auction.

The highly successful (and highly aggregated) mobile wireless industry was built on blocks of CMAs, BTAs and MTAs,⁴¹ rather than nationwide or super-regional licenses. Accordingly, in light of the nationwide footprint and national service plans established by large incumbent carriers using CMA, BTA, and MTA-sized spectrum blocks, it is unreasonable for certain commenters favoring the current band plan to suggest that economically practicable deployment of nationwide service or the realization of economies of scale depends on national spectrum licenses.⁴² SpectrumCo's experience in the AWS auction also clearly demonstrates

³⁸ See 47 C.F.R. § 20.6(f) (noting that the CMRS spectrum cap ceased to be effective January 1, 2003).

³⁹ The DTV Transition is now mandated by law to end on February 17, 2009. See 47 U.S.C. § 309(j)(14). The 700 MHz band auction will end by the Spring of 2008, meaning that there will be less than one year between the conclusion of the auction and the date on which the spectrum will be fully available to 700 MHz licenses. See *Notice of Proposed Rulemaking*, ¶ 9 (noting that 47 U.S.C. § 309(j)(15)(C)(v) requires the Commission to commence the auction of recovered analog broadcast spectrum in the 700 MHz band by January 28, 2008, and to deposit the auction's proceeds by June 30, 2008).

⁴⁰ *Notice of Proposed Rulemaking*, ¶ 28 n.106.

⁴¹ CMAs divide the U.S. into 734 distinct geographic markets; BTAs divide the U.S. into 493 distinct geographic markets; MTAs divide the U.S. into 51 distinct geographic markets. See 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*, 21 FCC Rcd 10947, ¶¶ 14 n.26, 62, 63 n.131 (2006).

⁴² See Comments of AT&T Inc. at 2; Comments of Cingular Wireless LLC at 17; Comments of Qualcomm Incorporated at 17; Comments of Verizon Wireless at 4; Comments of Motorola, Inc. at 3-6; Joint Comments of DirecTV, Inc. and EchoStar Satellite L.L.C. at 3-7.

that it is possible for a new entrant to acquire at auction an essentially national footprint by bidding on mid-sized EA licenses.⁴³

Moreover, a mix of geographic service areas, as proposed by SpectrumCo, will allow existing technologies to grow while also encouraging development of new technologies. Given the bidder-specific nature of demand for spectrum, a range of license sizes will enable proponents of new technologies to tailor their bidding strategy to their deployment needs and to obtain sufficient spectrum without needing to bid on and win one particular-sized license. Those opposed to smaller geographic service areas and spectrum blocks overstate the stimulus effect that super-regional and nationwide licenses have on buildout and deployment of services.⁴⁴ These proponents of the current band plan tend to ignore the fact that a mix of larger and smaller licenses will allow for both expansion of existing service and introduction of service using new technologies, thus spurring development of equipment for the band.

Most significantly, the incumbent TV station issues driving the Commission's initial 700 MHz band plans have since been addressed by Congress. Initially, the Commission anticipated auctioning all of the 700 MHz band licenses well before the conclusion of the Digital Television Transition.⁴⁵ It was further anticipated that the more lightly encumbered Upper 700 MHz band would contain sufficient spectrum prior to the completion of the DTV Transition for wireless carriers to commence some commercial operations while broadcasters continued to operate in the band.⁴⁶ Under these conditions, larger licenses would have increased the likelihood that a licensee would have large amounts of usable spectrum in its license area prior to the conclusion of the DTV Transition. This concern is no longer germane. The DTV Transition is now mandated by law to end on February 17, 2009,⁴⁷ and the 700 MHz band auction will end in early 2008.⁴⁸ With less than one year between the conclusion of the auction and the full availability of the licensed spectrum, this reason for larger license blocks no longer exists.

Given all of the circumstances that have changed since the release of the *700 MHz Orders* in 2000 and 2002, the public interest now strongly favors a mix of license sizes including smaller licenses in the 700 MHz band auction.

The Majority of Commenters Support Smaller Geographic Areas in the 700 MHz Band

The overwhelming majority of commenters in the 700 MHz proceeding support smaller geographic areas, including nationwide wireless carrier T-Mobile and large equipment

⁴³ See Bazelon, App. 2. Other AWS auction participants also acquired significant spectrum by aggregating smaller licenses. For example, T-Mobile spent \$1.3 billion and Cingular spent \$837 million on non-REAG licenses. *Id.*; see also *Lower 700 MHz MO&O*, ¶ 89 n.256 (noting, in discussing the benefits of geographic area licensing, that this approach “facilitates aggregation by licensees of smaller service areas into seamless regional and national service areas, allows development of strategic and regional business plans, provides licensees with greater build-out flexibility and is efficient for the Commission to administer”).

⁴⁴ See, e.g., Joint Comments of DIRECTV, Inc. and EchoStar Satellite L.L.C. at 2 (asserting that “the satellite industry’s track record over the last decade suggests that nationwide players can often serve – and spur competition in – rural America better than their local and regional competitors” while neither substantiating the claim nor explaining how experiences providing video service using a small number of geostationary satellites may be relevant in the context of delivering wireless spectrum-based services on a local basis).

⁴⁵ See, e.g., Congressional Budget Office, *Completing the Transition to Digital Television*, at Summary (Sept. 1999).

⁴⁶ *Id.* at 13-15.

⁴⁷ 47 U.S.C. § 309(j)(14).

⁴⁸ See *supra* note 39.

manufacturer Intel, as well as the Small Business Administration, several state government parties (representing Vermont, North Dakota, Nebraska, and Maine), consumer groups, and many regional and smaller wireless carriers.⁴⁹ In its reply comments, for example, T-Mobile urges the Commission to revise the 700 MHz band plan “so as to provide reasonable opportunities for entities of all sizes to bid for and win the spectrum they need.”⁵⁰ United States Cellular Corporation supports smaller license sizes in order to provide opportunities for regional and rural carriers but also because the availability of smaller licenses “provid[es] all carriers, large and small, with the flexibility they need to construct 700 MHz footprints that are tailored to their needs for capacity and coverage.”⁵¹ These comments reflect strong demand for 700 MHz spectrum among different-sized carriers and new entrants, as well as a recognition of the benefits of smaller licenses by regulators and consumer advocacy groups.

SpectrumCo’s proposal is similar to the band plans advocated by many proponents in this proceeding, including the Balanced Consensus Proposal supported by twenty-one different entities. SpectrumCo notes, however, that the plan described in this letter fosters greater benefits by incorporating additional mid-sized EA geographic service areas that are well-suited for new entrants, smaller carriers, and nationwide providers alike. SpectrumCo’s proposal also includes licenses to be auctioned in smaller CMA-sized and larger REAG-sized blocks, affording bidders flexibility in defining the package of licenses most tailored to their business needs or suitable for complementing their existing holdings.

Conclusion

For all these reasons, and on the basis of the detailed analysis provided in the attached white paper prepared by Dr. Bazelon, SpectrumCo respectfully submits that the public interest would be served by revising the current 700 MHz band plan to adopt the band plan described in this letter. Should you have any questions concerning this submission, kindly contact the undersigned.

Sincerely,

/s/ Michele C. Farquhar

Michele C. Farquhar
Attorney for SpectrumCo, LLC

⁴⁹ Commenters favoring smaller license areas include the supporters of the Balanced Consensus Proposal (including Alltel Corporation, Aloha Partners, Blooston Rural Carriers, C&W Enterprises, ConnectME Authority, Corr Wireless Communications, Dobson Communications Corporation, Leap Wireless, Maine Office of the Chief Information Officer, MetroPCS Communications, NTCA, Nebraska PSC, North Dakota PSC, Rural Cellular Association, Rural Telecommunications Group, Union Telephone Company, United States Cellular Corporation, Vermont Department of Public Service, Vermont Office of the Chief Information Officer, Vermont Public Services Board, and Vermont Telephone Company), and T-Mobile USA, OPASTCO, Consumer Federation of America, NextWave Broadband, Frontier Communications, Milky Way Broadband, Council Tree Communications, Doug Howard and Farooq Javed, and Access Spectrum.

⁵⁰ Reply Comments of T-Mobile USA, Inc. at 2 (filed Oct. 20, 2006).

⁵¹ Comments of United States Cellular Corporation at 4.

Marlene H. Dortch, Esq.

January 8, 2007

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Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate
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Bruce Liang Gottlieb, Legal Advisor to Commissioner Copps
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