

March 26, 2007



Marlene H. Dortch  
Secretary  
Federal Communications Commission  
TW-A325  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WT Docket Nos. 05-211, 06-150  
PS Docket No. 06-229

Dear Ms. Dortch:

On March 23, 2006, Harold Feld of Media Access Project, Michael Calabrese of New America Foundation, and Dr. Gregory Rose, an independent economist consulting for MAP (collectively "MAP/NAF"), met with Bruce Gottleib and John Branscome of Commissioner Copps' office, with regard to the above captioned proceedings. MAP/NAF had substantially identical meetings with Barry Ohlson of Commissioner Adelstein's office and Angela Giancarlo of Commissioner McDowell's office. MAP/NAF made the following points:

***Support for the Frontline Proposal:*** The recent proposal by Frontline to auction a 10 MHz national license, subject to the specified license conditions, would serve the public interest. Adopting the Frontline proposal would make 24 MHz of important spectrum available to both the commercial sector and public safety on a wholesale, open access basis. This would have several salutary effects. First, it would ensure that public safety has access to needed spectrum in an efficient manner. It would facilitate the development of interoperable public safety communication equipment, while leveraging the economies of scale from the consumer market – a public interest benefit the Commission has recognized in the past.

More importantly, the license condition imposing an open access, wholesale business model meets critical needs not yet met in the wireless commercial market. Because the Commission has consistently declined to impose such conditions on existing carriers, the Frontline proposal represents the only way consumers can "vote with their feet" and demonstrate a market demand for a neutral network that permits any network attachment. Further, because the license is national, it will provide businesses interested in providing wireless services – particularly those in underserved rural and minority communities – with affordable spectrum access. Neither auctions nor secondary markets have made sufficient spectrum available for small businesses, such as WISPs, that have repeatedly stated their interest in leasing licensed spectrum.

In response to a question as to whether others would bid on the proposed license, MAP/NAF replied that Frontline proposes a very profitable business model that will certainly attract bidders. Indeed, the problem is how to prevent incumbents from blocking new entrants from winning a license that introduces a viable wholesaler into the wireless market.

Staff also asked how to prevent the winner of the proposed E Block from charging public safety entities high fees for access, thus limiting the willingness of public safety entities to interrupt commercial lessees on E Block. MAP/NAF suggest that rather than regulate rates, the Commission merely require that any rates charged for access be reciprocal between the Public Safety Trust Licensee and the E Block Licensee. Because E Block Licensee will far more often seek to access public safety spectrum, E Block will have incentive to keep rates low. Because PST Licensee wants to encourage use by smaller entities, PST has an incentive to keep rates low.

***Support for anonymous bidding and other proposed bidding changes:*** Echostar proposes to allow package bidding and other forms of combinatorial bidding in response to the failure of new entrants to create a national footprint in the AWS auction. The ability and willingness of incumbent wireless and cable companies to frustrate efforts by DBS providers to create a national footprint in the AWS auction were entirely predictable. Indeed, MAP and the consumer organizations that urged the FCC to adopt anonymous bidding *did* predict it. To the extent package bidding makes it easier for new entrants, MAP/NAF supports package bidding. But this will not address the overall problem of incumbents targeting new entrants.

The Commission should permit interested bidders to provide their own proposed packages, but must also have a mechanism for eliminating those packages submitted for the purpose of blocking new entrants. Incumbents can easily “game the system” by submitting multiple packages of licenses mutually exclusive with acquiring a national footprint. Inclusion of such packages will provide an easy means for incumbents to block new entrants to the detriment of competition. Allowing such a result would also suppress auction value, since the ability of incumbents to block by winning a relatively few key license packages will eliminate competitor high-bids over a larger number of licenses. Furthermore, the Commission must permit package bidders to submit packages anonymously. Given the identity of a package designer, strategists can develop blocking strategies based on their knowledge of the package designer’s system.

Finally, MAP/NAF once again urge the Commission to adopt anonymous bidding, as was initially proposed in the AWS auction. Unless the Commission adopts anonymous bidding, it will squander the last best hope for a genuinely disruptive new entrant in wireless services.

***Support for certain elements of the Band Optimization Plan:*** MAP/NAF generally

support the “first stage” of the band optimization plan, although it confers free spectrum to the private licensees of the guard bands. The proposal will consolidate guardband licenses while returning spectrum to the Commission for auction, increasing overall utility while minimizing the potential for an unjust enrichment to private licensees. To the extent the BOP represents an uncompensated gain to private licensees, the overall greater value to public safety and to the public interest justifies any such gain.

***Opposition to “reverse auctions”:*** MAP/NAF oppose any form of “reverse auction,” which would permit a private licensee to auction access to its spectrum as part of the 700 MHz auction. A reverse auction violates the plain language of the statute, which requires that the FCC deposit all auction revenues in the U.S. Treasury. It further violates the command of Section 310(d), that the Commission make an individualized approval of every license transfer. Finally, the Commission should recall that when it sought to use reverse auctions to clear the 700 MHz band, Congress moved swiftly to chastise the Commission and prohibit any such action.

***Rural license size:*** MAP/NAF generally support providing smaller licenses for rural carriers. However, this depends in part on resolution of the pending DE rulemaking. If the Commission continues to permit DEs to maintain material relations with large wireless incumbents, then creating smaller licenses merely creates opportunities for large incumbents, working through “captive” DEs, to win licenses at a substantial discount.

In accordance with Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. I regret that this notice is filed late, but unanticipated family demands delayed drafting. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld  
Senior Vice President

cc:  
Bruce Gottlieb  
John Branscome