

April 20, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
12th Street Lobby, TW-A325  
Washington, D.C. 20554

**Re: *Ex Parte* Communication, CC Docket 94-102; PS Docket No. 06-229; WT Docket Nos. 96-86, 06-150, 06-169**

Dear Ms. Dortch:

In accordance with Section 1.1206(b) of the FCC's rules, this letter serves as notice that, on behalf of CTIA – The Wireless Association® (“CTIA”), I had a telephone conversation with Aaron Goldberger, Legal Advisor to Commissioner Deborah Taylor Tate on April 19, 2007, concerning issues included in the above-referenced proceedings. Specifically, we discussed potential action on testing requirements for Enhanced 911 (“E-911”) technologies as well as proposals made in the 700 MHz proceedings by Frontline Wireless, LLC (“Frontline”) and the *Ad Hoc* Public Interest Spectrum Coalition (“AHPISC”).

During the conversation, I noted reports regarding the Commission's consideration of a testing requirement for E-911 technologies that could impose new, more granular accuracy testing by wireless carriers, as originally put forward in a Request for Declaratory Ruling filed by the Association of Public-Safety Communications Officials - International (“APCO”). I expressed CTIA members' willingness to work with the Commission and Public Safety groups to pursue feasible, more-accurate testing methods, but highlighted our procedural concerns with the Commission issuing a Declaratory Ruling without seeking notice and comment from interested parties on the APCO Petition.

Consistent with CTIA's April 5, 2007 letter to Chairman Martin, I noted CTIA's opposition to the Frontline plan.<sup>1</sup> The Commission is being asked in an unrealistic timeframe to review and act on a plan full of legal risk, policy flaws, and business uncertainties – a plan that, if adopted, would create significant uncertainty for both the commercial and public safety spectrum.<sup>2</sup> Frontline proposes that the

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<sup>1</sup> See Letter from Steve Largent, President and CEO, CTIA, to Kevin Martin, Chairman, FCC, WT Docket No. 06-150 (Apr. 5, 2007).

<sup>2</sup> See e.g. Letter from John Blevins, Counsel to Frontline Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 *et al.* (Mar. 26, 2007).

Commission allow commercial use of spectrum allocated to Public Safety in contravention to Section 337 of the Communications Act. The proposal, moreover, reverts back to “command and control” spectrum policy management with a laundry list of license conditions designed to favor a single entity, Frontline. The combination of conditions – buildout of the E Block and public safety broadband spectrum, E block spectrum subject to preemption for public safety emergency use, a wholesale business plan, an open access requirement on all licenses held by the licensee, a wireless *Carterfone*-type obligation, and roaming service – render the prospects of business success a real and open question. If Frontline’s proposal truly is a viable business and results in the best use of the spectrum, it should participate in bidding at auction like all other interested bidders without the need for these special license conditions. Public Safety, moreover, has no choice in the matter – it is forced to rely on the auction winner to operate this pre-ordained business plan and build out and manage the public safety nationwide broadband network.

Ultimately, the proposal so devalues the spectrum that it jeopardizes auction proceeds already earmarked for worthy projects including public safety interoperability. The Commission’s competitive bidding program is premised on the view that the entities who value licenses most highly are most likely to put them to the highest valued use. The Frontline plan would, if adopted, skew these incentives, thereby limiting the potential of the 700 MHz band to be the source of new, nationwide wireless broadband competition. The Commission should dismiss the proposal and move forward with the auction in a timely manner, consistent with the requirements of the DTV Act.

We also discussed AHPISC’s proposal that the Commission apply open access and *Carterfone* rules to at least 30 MHz of the 60 MHz of 700 MHz spectrum being auctioned,<sup>3</sup> as well as its suggestion that the Commission either prohibit wireline and large wireless incumbents from bidding or require that they bid through structurally separate affiliates.<sup>4</sup> Like the Frontline proposal, the AHPISC proposals seek to use the Commission’s service and auction rules for the 700 MHz band to predetermine the business plan and entities that will prevail in the 700 MHz auction. In addition to the fact that the Commission recently initiated proceedings on net neutrality and Skype’s proposal to impose *Carterfone* rules on the wireless industry, CTIA firmly believes that the market should determine how best to put this spectrum to use. The government should refrain from imposing a single business plan – novel and untested – on the 700 MHz spectrum. If a new entrant wins spectrum at auction, as was the case with SpectrumCo in the Advanced Wireless Services auction, that is fine. Predetermining what type of company should win, however, is a step backwards for the Commission’s spectrum assignment process.

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<sup>3</sup> See *Ex Parte* Comments of the *Ad Hoc* Public Interest Spectrum Coalition, filed April 5, 2007.

<sup>4</sup> See *Ex Parte* Comments of the *Ad Hoc* Public Interest Spectrum Coalition, filed April 3, 2007.

AHPISC's license conditions, together with its proposal to prohibit or limit wireline or large wireless providers from participating, is a clear attempt to favor non-incumbents in this auction. The Commission, however, has consistently and wisely chosen to refrain from picking winners and losers in this manner, and instead relies on market forces to determine auction winners. As the Commission observed in the AWS proceeding: "[E]ligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm."<sup>5</sup> As confirmed by the Commission's own most recent report on the state of competition in the commercial mobile services market, existing carriers have been deploying broadband technologies at breakneck speed, refuting the notion that competition would somehow be impaired if wireless providers were to win 700 MHz licenses.<sup>6</sup> AHPISC has not shown any basis for imposing the restrictions it proposes, and in the absence of a strong showing to that effect, the Commission should not adopt rules that, either explicitly or effectively, would limit the participation of entities in the competitive bidding process.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being electronically filed with your office. If you have any questions regarding this submission, please contact the undersigned.

Sincerely,

*/s/ Christopher Guttman-McCabe*

Christopher Guttman-McCabe

cc: Aaron Goldberger

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<sup>5</sup> *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, 19 FCC Rcd 19263, para. 69 (2004).

<sup>6</sup> The Commission found that "CDMA 1xRTT and/or 1xEV-DO has been launched in at least some portion of counties containing 283 million people, or roughly 99 percent of the U.S. population, while GPRS, EDGE, and/or WCDMA/HSDPA has been launched in at least some portion of counties containing 269 million people, or about 94 percent of the U.S. population. The higher speed technologies, EV-DO and WCDMA/HSDPA, are available in counties containing 63 percent and 20 percent of the U.S. population, respectively.: *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*, WT Docket No. 06-17, *Eleventh Report*, FCC 06-142, para. 117 (rel. September 29, 2006).