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April 23, 2007

## VIA ELECTRONIC PILING

Chairman Kevin Martin  
Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Tate  
Commissioner Robert McDowell  
Federal Communications Commission  
445 12th Street, S.W.  
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 Chairman Martin, Commissioner Copps, Commissioner Adelstein, Commissioner Tate, and Commissioner McDowell:

On behalf of Cellular South Licenses, Inc. (“Cellular South”),<sup>1</sup> this *ex parte* letter is filed in recognition of the Commission’s plans to consider a *Report and Order and Further Notice of Proposed Rulemaking* in the above-referenced docket on April 25, 2007.<sup>2</sup>

On April 19, 2007, Victor H. Meena, CEO of Cellular South testified before the House Subcommittee on Telecommunications and the Internet regarding the future of wireless services in America. In that testimony Mr. Meena offered his company’s views, based upon more than 15 years of providing wireless service to rural markets, on how the Commission could best assure that the upcoming auction of 700 MHz spectrum will benefit rural market customers through the

<sup>1</sup> Cellular South is the nation’s largest privately-owned wireless carrier serving all of Mississippi and portions of Alabama, Tennessee, Arkansas and Florida. Most of the area served by Cellular South is rural in nature.

<sup>2</sup> Commission Meeting Agenda, *FCC To Hold Commission Meeting Wednesday, April 25, 2007*, released April 18, 2007. The agenda states that, “[w]ith respect only to item #4 listed below [referring to the above-referenced proceeding], the Commission is waiving the sunshine period prohibition contained in section 1.1203 of the Commission’s rules, 47 C.F.R. § 1.1203, until 5:30 pm, Monday, April 23, 2007. Thus, presentations with respect to item #4 will be permitted until that time.”

availability of high-speed wireless broadband service, Cellular South is a member of the Rural Cellular Association (“RCA”) and, through RCA, Cellular South provided similar comments to the Commission, in particular as a supporter of RCA’s Reply Comments filed in the Commission’s WT Docket No. 06-150 on October 20, 2006, and in subsequent oral *ex parte* communications by RCA representatives to Commissioners and Commission staff.<sup>3</sup>

There are three aspects to the proposed 700 MHz auction and service rules that will have a dramatic effect on the potential for near-term availability of high speed broadband service in rural areas of America, and Cellular South requests the Commission to take the following actions to best assure that the full promise of the available 700 MHz spectrum is realized:

**1. Implement Geographic Build-Out Requirements**

Population-based build out requirements are not the solution for delivering service to rural America. This type of requirement measures a carrier’s progress according to the percentage of the population that the carrier serves., This encourages wireless carriers to build out in densely-populated metropolitan areas and can penalize carriers **who** serve rural areas.

The best way to ensure that 700 MHz spectrum is actually used for the benefit of all Americans – including rural Americans – is to require winning bidders to meet certain geographic build out objectives in their license areas within a designated period of time. To that end Cellular South proposes adoption of a rule that will require carriers to meet specific geographic coverage requirements that are intended to assure that service is extended beyond major population centers. Any carriers who provide service, but who are unable to meet a required geographic benchmark for service, will be permitted to keep their licenses for areas actually served but according to the terms of the rule forfeit their license rights to portions of their markets that are left unserved. Cellular South offers in an attachment to this letter specific language as to how a Commission rule could achieve this objective.<sup>4</sup>

**2. Offer a Mix of Geographic License Sizes**

A second and equally important aspect of the 700 MHz auction is that small carriers and new market entrants must have a realistic opportunity to participate because these are the companies who are most likely to build out and serve rural areas. Cellular South asks that the Commission adopt a 700 MHz band plan that includes the following:

- a. In the lower band, offer one paired frequency block of 12 MHz on a Cellular Market Area (“CMA”) basis, and one paired frequency block of 12 MHz on an Economic Area (“EA”) basis.

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<sup>3</sup> Notices of oral *ex parte* communications were filed concerning each presentation by **RCA**

<sup>4</sup> The proposed rule includes a solution for the problem some licensees may face if their markets include large areas of federal land., See subsection (d) in the attachment

- b In the upper band, subdivide the 20 MHz frequency block into two 10 MHz paired frequency blocks
  
- c After subdividing the upper band frequency block, make one of the two subdivided frequency blocks available with a geographic area smaller than REAG<sup>5</sup>

**.3. Reject Package Bidding / Combinatorial Bidding**

It is important to make sure that any rules promoting small carrier participation are not offset by other auction rules. In particular, rules that allow “package” or “combinatorial” bidding could undo all the benefits of having small geographic license areas. Allowing bidders to bid on a group of licenses as a package would benefit the companies who are able to bid on numerous licenses across the country, but would harm smaller companies who focus on local markets and contiguous licenses. Whatever theoretical gains may come from package bidding, in practice package bidding would virtually eliminate the opportunity for smaller and rural carriers to acquire licenses in the 700 MHz auction.

In summary, the Commission has before it an extraordinary opportunity to promote the availability of broadband services to rural America. Wireless carriers can extend broadband technology to unserved areas using the capabilities offered by 700 MHz spectrum, but the rules adopted in this proceeding will determine to a large extent whether or not wireless carriers will accomplish that goal. Cellular South respectfully urges the Commission (i) to adopt geographic area build-out requirements for the 700 MHz licenses, (ii) to make available licenses with a mix of geographic license sizes, and (iii) to reject “package” /combinatorial bidding as an option for participants in the upcoming auction. These actions will not only facilitate a successful auction but they are the best way to assure that rural areas will receive the benefits of wireless broadband services.

Sincerely,



David L. Nace

Attorney for Cellular South Licenses, Inc.

- cc: Cliainnan Kevin Martin (by email)  
Commissioner Michael Copps (by email)  
Commissioner Jonathan Adelstein (by email)  
Commissioner Deborah Tate (by email)  
Commissioner Robert McDowell (by email)

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<sup>5</sup> Cellular South is a member of the Rural Cellular Association which supported the Balanced Consensus Plan that requested two paired CMA frequency blocks, one of which would be in the upper band

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Construction Requirements For 700 MHz Licenses Granted in the Year 2008 and Later

(a) Licensees must serve with a signal level sufficient to provide adequate service in their license areas according to the following schedule:

(1) By the three-year anniversary of the DTV transition date, licensees must serve at least 25% of the license area.,

(2) By the five-year anniversary of the DTV transition date, licensees must serve at least 50% of the license area,

(3) By the eight-year anniversary of the DTV transition date, licensees must serve at least 75% of the license area,

(b) To demonstrate compliance with (a), licensees must submit a map and supporting data to the Commission depicting the areas where adequate service is provided. If any licensee provides adequate service to an area that is less than the applicable required percentage requirement, the licensee shall apply, by the applicable construction deadline, for Commission authorization to retain a specified partitioned license area that complies with the applicable percentage requirement or the licensee. Failure by any licensee to meet these requirements will result in forfeiture of the license

(c) By the initial license expiration date and as a condition to renewal of licenses, licensees must submit a map and supporting data to the Commission depicting the areas where adequate service is provided. Upon acceptance of a construction showing by the Commission, any area that does not receive adequate service will be excluded from the license area upon renewal of the license.

(d) In determining the portion of a license area where a licensee provides adequate service according to (a) and (b), licensees may exclude from the total number of square

miles in the license area any area(s) owned by the federal government or where the federal government is the lessee