Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
	)	
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harrnonize Various Rules Affecting Wireless Radio Services	)	WT Docket No. 03-264
	)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules	)	WT Docket No. 06-169
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86

To: The Commission

COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDER ASSOCIATION

May 23, 2007

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Summary

The Wireless Internet Service Provider Association ("WISPA"), an association of wireless Internet service providers ("WISPs"), broadband equipment manufacturers and others dedicated to promoting and improving wireless broadband access across the country, provides comments on certain issues of paramount importance raised in the above-captioned proceeding. If the proposals advocated herein are adopted, bidders at the upcoming 700 MHz auction – including WISPs that desire licensed spectrum – can take advantage of lower entry costs, excellent propagation and higher power to bring new and advanced services to rural America.

First, WISPA urges the Commission to use Cellular Market Areas ("CMAs") for both the Lower 700 MHz B Block and the Upper 700 MHz C Block. The AWS-1 auction, concluded last year, showed that designated entities were more successful in acquiring licenses in the rural CMAs than other licenses. WISPA agrees that assigning licenses by CMAs would, in the Commission's words, "provide opportunities for small providers in rural areas, as well as new entrants seeking to establish a nationwide wireless footprint, and to afford bidders flexibility to aggregate smaller markets."

Second, to create more opportunities for small companies to participate in rural markets, WISPA proposes that the Commission adopt rules for rural CMAs only (CMA Nos. 307-734) to give a 20 percent bidding credit to a bidder that certifies that it: (a) does not have a "material relationship" with a "large wireless carrier" or "large cable operator;" and (b) has filed FCC Form 477 for at least one year immediately preceding the start of the auction. This bidding credit would help ensure that small telecommunications companies that are unaffiliated with major national wireless and cable companies will have a better opportunity to succeed in the rural CMAs, consistent with Commission policies, without foreclosing participation through adopting set-asides or other ownership restrictions.

Third, with one modification, WISPA supports adoption of geographic build-out rules with interim benchmarks proposed by the Commission. For the rural CMAs, in recognition of the additional time that it may take to build out large rural areas, WISPA proposes that the three-year and five-year benchmarks not apply, and that licensees need only comply with the eight-year benchmark. WISPA also favors a "keep what you use" rule at the end of the license term, with build-out depicted by maps and other documents, so long as licensees have an opportunity to explain why they were unable to meet the benchmark. As proposed by the Commission, government lands should be excluded from the calculation of geographic coverage.

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The Wireless Internet Service Provider Association ("WISPA"), an association of wireless Internet service providers ("WISPs"), broadband equipment manufacturers and

others dedicated to promoting and improving wireless broadband access across the country, hereby comments on certain issues of paramount importance raised in the above-captioned proceeding.[1] First, WISPA supports the use of Cellular Market Areas ("CMAs") for both the Lower 700 MHz and Upper 700 MHz bands as a means of encouraging small and rural entities to meaningfully participate in the upcoming auctions. Second, in response to the Commission's questions regarding eligibility,[2] WISPA proposes that the Commission adopt a 20 percent bidding credit for winning bidders in "rural" CMAs that do not have a "material relationship" with large wireless and cable companies and that have already demonstrated that they are capable of serving the public. Third, WISPA believes that geographic build-out requirements, with relaxed standards for licensees in rural CMAs, creates the appropriate incentives for licensees to construct systems across a broader area while taking into account that rural markets will be more difficult to build out.

Background

WISPA is an organization founded in 2004 by WISPs dedicated to promoting and improving the WISP industry. WISPA has approximately 105 members, most of which are WISPs operating in license-exempt bands in rural communities throughout the country.[3] By WISPA's count, there are at least 3,000 WISPs providing broadband and data services to more than one million subscribers. Many WISPs are experiencing

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[1] ***In the Matter of Service Rules for*** *698-746, 747-762 and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72 (rel. Apr. 27, 2007) ("*700 MHz* ***FNPRM***"). A summary of the *700 MHz* ***FNPRM*** was published in the Federal Register on May 2, 2007. ***See*** 72 Fed. Reg. 24238 (May 2, 2007).

[2] ***See*** *700 MHz* ***FNPRM*** at 80-81.

[3] ***See*** Statement of Commissioner Jonathan S. Adelstein, Before the Subcommittee on Rural and Urban Entrepreneurship, Small Business Committee, U.S. House of Representatives, May 9, 2007 at 6 ("I have also worked closely with the Wireless Internet Service Provider (WISP) community, which has been particularly focused on providing wireless broadband connectivity in rural and underserved areas").

growth of more than 50 percent a year, proof positive that there is significant demand for broadband services in even the smallest of towns.

Among the issues facing rural WISPs is the ack of suitable spectrum – licensed or otherwise – available to meet consumer demand. In advocating the Commission to place more spectrum in the marketplace, WISPA has participated in other proceedings where the Commission's spectrum management policies have been considered. For instance, earlier this year, WISPA filed comments in the television "white space'' proceeding and urged the Commission to make unused television spectrum available on an unlicensed basis.[4] Moreover, some WISPA members successfully obtained Advanced Wireless Service ("AWS") spectrum at last year's Auction No. 66.

Many WISPs may wish to continue operating on unlicensed spectrum. Others look forward to a time when licensed spectrum can be made available with propagation characteristics and higher power levels that encourage cost-effective deployment in rural areas. The 700 MHz auction will provide the established WISP community with opportunities to expand service, add new advanced wireless services and better serve customers – if the rules are crafted with the appropriate incentives to encourage participation in the auction and lower entry costs for successful bidders in rural markets.

[4] *See* WISPA Comments filed Feb. 20, 2007 in *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket Nos. 04-186, 02-380, 21 FCC Rcd 12266 (rel. Oct. 18, 2006).

Discussion

I. THE COMMISSION SHOULD MAKE LOWER AND UPPER 700 MHz SPECTRUM AVAILABLE IN CELLULAR MARKET AREAS.

WISPA urges the Commission to adopt its proposal to make the Lower 700 MHz B Block licenses available on a CMA basis, and to also make the Upper 700 MHz C Block licenses available on a CMA basis.[5] Using smaller geographic bidding units, in combination with the larger REAGs and EAs, would be consistent with policies intended "to encourage deployment in rural areas."[6] Given that the propagation characteristics of 700 MHz spectrum will result in lower build-out costs in rural areas, the ability to bid on smaller markets to successfully deploy service there is especially important.

For the Lower 700 MHz band, the Commission has proposed no changes to its existing band plan, which would make the 704-710/734-740 MHz paired spectrum (Block B) available in each of 734 CMAs.[7] The Cornmission noted widespread support for this proposition.[8] In particular, the Rural Cellular Association ("RCA") stated that "[b]y reassigning the Block B spectrum to the CMAs, the Commission will encourage small and rural carrier participation in spectrum auctions, facilitate deployment of wireless services in rural areas, and avoid excessive concentration of licenses."[9] Further, the Commission observed that the B Block spectrum is adjacent to the previously auctioned C Block spectrum, which also was awarded for CMAs, creating opportunities to combine spectrum resources. Existing C Block licensees would have the incentive to

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[5] *See 700 MHz FNPRM* at 67-72.
[6] *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services,* 19 FCC Rcd 19078, 19080 (2004).
[7] *See 700 MHz FNPRM* at 67-68.
[8] *Id.* at 68, n.416.
[9] Comments of Rural Cellular Association, WT Docket Nos. 06-150 and 01-309, CC Docket No. 94-102 (submitted Sept. 29, 2006) ("RCA Comments") at 7.

bid on the B Block if licensed on a CMA basis, and the common geographic license areas also would spur secondary market transactions between C Block and B Block licensees.

It is important to appreciate that many of the Lower 700 MHz C Block licensees are small or rural service providers. The vast majority of auction winners benefited from a bidding credit resulting from a small business designation." Thus, such entities, as well as new entrants, logically would have a high interest in bidding in the B Block, consistent with Commission policies designed to encourage their participation.

For the Upper 700 MHz band, the Commission has invited comment on a number of proposals. WISPA urges the Commission to adopt Proposal 2, which would assign the 747-752.5/777-782.5 MHz C Block on either a CMA or EA basis, and requests that this block be assigned according to CMAs. WISPA agrees with the Commission's view that this plan would "provide opportunities for small providers in rural areas, as well as new entrants seeking to establish a nationwide wireless footprint, and to afford bidders flexibility to aggregate smaller markets.. .."[11]

Consistent with the results of the Lower 700 MHz auctions, the results of the recent AWS auction illustrate the interest that small entities have in obtaining spectrum for broadband and other advanced services in rural markets. The table below demonstrates that "Designated Entities," including some WISPA members, were more successful in obtaining CMA licenses than REAG or EA licenses:

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[10] *See* Public Notice, "Lower 700 MHz Band Auction Closes," DA 02-2323 (rel. Sept. 20, 2002), Attachment **A;** Public Notice, "Lower 700 MHz Band Auction Closes,'' DA 03-1978 (rel. June 18, 2003), Attachment A; Public Notice, "Auction of Lower 700 MHz Band Licenses Closes," DA 05-2239 (rel. Aug. 5, 2005), Attachment A.

[11] 700 *MHz FNPRM* at 71-72.

Block	A (RSA)[12]	A (MSA)[13]	B and C	D, E and F
Service Area	CMA	CMA	EA	REAG
Total Licenses	428	306	352	36
DE Winner	113	46	51	5
% DE Winner	26.4	15.0	14.5	13.9

These statistics also indicate that the Commission's practice of including a geographic mix of licenses, including small areas, achieved the desired policy objective of providing entry opportunities for "smaller carriers, new entrants and rural telephone companies."[14] There is no reason to believe that the results of the Upper 700 MHz auction, if the C Block is licensed on a CMA basis, will yield different results.

Another lesson from the AWS auction is that the inclusion of a CMA block did not hinder the ability of large wireless carriers to acquire licenses composing a nationwide or large regional footprint. Five AWS-1 auction winners – T-Mobile License, LLC, Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, MetroPCS AWS, LLC, and Cingular AWS, LLC – each submitted provisional winning bids greater than $1 billion for licenses covering populations of at least 144 million people.[15] Each licensee acquired at least one REAG license and many EA licenses and thus obtained a significant footprint through the auction. While these companies have legitimate interests in putting together large coverage areas, WISPs are interested in serving smaller, primarily rural areas. WISPs should not be required to bid successfully for larger areas just to secure rights to the smaller area they desire.

[12] The RSAs are composed of CMA markets 307-734.
[13] The MSAs are composed of CMA markets 1-306 (including the Gulf of Mexico).
[14] *See Service Rules for Advanced Wireless Services In the 1.7GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, 14066 (2005).
[15] *See* Auction No. *66* round results summary at http://wireless.fcc.gov/auctions/66/charts/66press_3.pdf.

II. THE COMMISSION SHOULD FACILITATE DEPLOYMENT OF WIRELESS SERVICES IN RURAL AREAS BY ADOPTING AN ADDITIONAL BIDDING CREDIT FOR QUALIFIED BIDDERS.

In addition to adopting CMA bidding areas for the Lower and Upper 700 MHz bands, the Commission can take additional steps to encourage deployment of wireless services in rural areas. In acknowledging that more can be done, the Cornmission asks whether incumbents should be required to establish structurally separate affiliates, whether bidding eligibility should be limited to parties not affiliated with in-region incumbents, or whether new entrants should be given bidding credits.[16]

WISPA believes that requiring incumbent local exchange carriers, incumbent cable operators and large wireless carriers to establish separate subsidiaries would not result in either lower entry costs or expedite deployment in rural areas. Requiring a large entity to establish a separate subsidiary does not encourage small, unaffiliated entities to participate in the auction. Likewise, excluding certain in-region incumbents is contrary to Commission policy[17] and also does not reduce entry costs.

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[16] *See 700 MHz FNPRM* at 81.

[17] The Commission has stated that "eligibility restrictions are imposed only when (1) there is a significant likelihood of substantial competitive harm in specific markets, and (2) eligibility restrictions will be effective in addressing such harm." *Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool; Oppositions and Petitions for Reconsideration of 900 MHz Band Freeze Notice*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 20 FCC Rcd 3814, ¶27 (2005). The Commission has in several instances declined to adopt eligibility restrictions for auction participation for new services. *See, e.g., Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785, 10789 (1997) (adopting no eligibility restrictions other than foreign ownership restrictions on WCS participation thus "opening the WCS market to a wide range of applicants will permit and encourage entrepreneurial efforts to develop new technologies and services. We also believe that, given the relatively large amount of spectrum that is available to provide services similar to those that can be operated on the WCS spectrum, providing open eligibility in this instance will not lead to excessive concentration of market power."); *Wireless Operations in the 3650-3700 MHz Band; Rules for Wireless Broadband Services in the 3650-3700 MHz Band; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band; Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 6502 (2005) (adopting no eligibility restrictions other than foreign ownership restrictions); *Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz*

WISPA instead asks the Commission to adopt rules for rural CMAs only (the RSAs) that would give a 20 percent bidding credit to bidders that certify to the following:

- The bidder does not have a "material relationship" with a "large wireless carrier" or "large cable operator;" and
- The bidder has filed FCC Form 477 for at least one year immediately preceding the start of the auction?

This proposal is narrowly tailored to apply only to the rural CMAs (CMA Nos. 307-734) – the bidding credit would not be available in the urban CMAs (CMAs 1-306), EAs or REAGs, consistent with the twin objectives of encouraging broadband deployment in rural areas and permitting participation by the maximum number of bidders in areas where rural interests are less prevalent. Significantly, unlike proposals the Commission rejected, WISPA's proposal also does not foreclose any entity from participating, but merely enables a narrow class of qualified bidders to obtain a bidding credit,"

A. The Commission Will Prevent Further Concentration Of Ownership And Influence Of Dominant Parties If The Bidding Credit Is Not Available To Bidders Having A "Material Relationship" With A "Large Wireless Carrier" Or A "Large Cable Operator."

By preventing bidders eligible for the rural market credit from having a "material relationship" with a "large wireless carriers" or "large cable operator," the Commission will encourage WISPs, small cable companies and other new entrants to participate. These are the entities that should enjoy lower costs to enter the marketplace. For WISPs,

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Bands, Order on Reconsideration, 20 FCC Rcd 14058, 14074 (in declining to adopt AWS set aside for designated entities, the Commission concluded that measures such as bidding credits were preferable to eligibility restrictions in encouraging auction participation by designated entities).

[18] The rural market bidding credit would exist alongside any other bidding credit to which the bidder may be entitled.

[19] The Commission considered but did not adopt proposals that would set aside spectrum for designated entities and would give a class of smaller businesses a *35* percent bidding credit. See 700 *MHz FNPRM* at 26-27. WISPA's proposal differs from these proposals because WISPA does not seek to exclude bidders and is asking that the additional credit be applied only in the rural CMAs to limit the influence and control of a narrow class of dominant broadband providers.

the bidding credit will enable them to economically initiate new services on licensed spectrum with excellent propagation characteristics, either as an overlay to existing unlicensed services or as a new platform for existing subscribers.

WISPA proposes that a "large wireless carrier" be defined as a Commercial Mobile Radio Service ("CMRS") provider with average gross wireless revenues exceeding $5 billion for the three years preceding the auction.[20] Similarly, a "large cable operator" would be defined as a "cable system operator," as defined in Commission rules,[21] that has average gross cable revenues exceeding $5 billion for the three years preceding the auction. When applied, this rule will effectively ensure that the rural market bidding credit is not available to dominant wireless carriers or cable companies that do not need governmental preferences. As the table below shows, the CMRS providers that control more than 90 percent of wireless revenues, and the cable consortium that partnered with Sprint Nextel, are the same companies that accounted for almost $11 billion in AWS auction revenues.[22]

[20] This definition is similar to the standard proposed by Council Tree Communications, Inc. ("Council Tree") in WT Docket No. 05-211. *See* Comments of Council Tree Communications, Inc., WT Docket No. 05-211 (submitted Feb. 24, 2006) ("Council Tree Comments"), at 33-41. As defined in the Council Tree Comments, gross wireless revenues would include revenues derived from provision of CMRS, CMRS roaming and CMRS-related equipment sales. Gross revenues would be attributed under the Commission's existing controlling interest and attribution standards set out in 47 C.F.R. §§ 1.2110(c)(2) and (5). ***Id.*** at 34.

[21] *See* 47 C.F.R. §76.5(cc) (defining "cable system operator" as any "person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system").

[22] According to Council Tree, Cingular, Sprint Nextel, Verizon Wireless, T-Mobile and Alltel control 92 percent of the wireless carrier revenue. *See* Council Tree Written Ex Parte Presentation, WT Docket No. 05-211 (dated Mar. 27, 2006) at 6.

Company	Service Revenues (billions)[23]	% of Total Service Revenues[24]	AWS High Bid (thousands)	% of Total High Bids[25]
Cingular	29.7	27.4	$1,344,610	9.8
Sprint-Nextel	26.3	24.2	$2,377,609[26]	17.3
Verizon Wireless	26.3	24.2	$2,808,599	20.5
T-Mobile	11.3	10.4	$4,182,312	30.5
Alltel	6.2	5.7	0	N/A
Total	**99.8**	**91.9**	**$10,713,130**	**78.1**

If anything, this data shows that large wireless carriers and cable operators demonstrated a clear ability to acquire large geographic footprints without bidding credits.

WISPA also proposes to apply the definition of "material relationship" that the Commission has used in broadcast auctions to determine whether a new entrant is entitled to a bidding permit. Under that definition, an attributable interest will be present:

> if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus debt) of the winning bidder.[27]

As the Commission stated in adopting that rule, "we have consistently found otherwise nonattributable interests in excess of 33% to be 'meaningful' under a cross-interest policy

[23] *Id.*
[24] *See id.* Percentage based on total industry LTM revenue of $108.5 billion.
[25] The net total of high bids was $13,700,267,150. *See* Auction of Advanced Wireless Services Licenses Closes, Winning Bidders Announced for Auction No. 66, DA 06-1882 (rel. Sept. 20, 2006).
[26] Bidding entity was SpectrumCo, which also includes large cable companies in combination with Sprint Nextel.
[27] *See* 47 C.F.R. §73.5008(c).

designed to ensure continued competition and diversity."[28] Council Tree astutely stated that:

> When an already-dominant CMRS provider is the source of that funding or industry guidance, however, the provision of that capital or expertise becomes the vehicle through which industry consolidation is exacerbated. At that point, the benefits of such investment are outweighed by the larger negative effect on the CMRS sector.[29]

The potential for increased concentration is especially true now that the AWS auctions have concluded and the large wireless and cable companies have acquired spectrum covering a substantial part of the country. While the Commission was not compelled to adopt the restrictions urged by Council Tree in Auction No. 66, it should do so here given the additional negative impact that influence and control over even more spectrum will have on bidders in the 700 MHz auction.

B. A Bidder Should Be Eligible For The Rural Market Bidding Credit If It Certifies Compliance With The Commission's Form 477 Reporting Obligations.

In addition to limiting the rural market bidding credit to rural CMAs and restricting participation by large wireless and cable companies, WISPA believes the Commission should adopt one more rule that would help ensure that the eligible bidder has some background in providing telecommunications or information services to the public. WISPA believes that, in order to qualify for the 20 percent credit, the bidder must have filed FCC Form 477 for at least one year immediately preceding the start of the auction.

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[28] *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999) at ¶11.

[29] Council Tree Comments at 50.

FCC Form 477 is required to be filed by facilities-based providers of broadband connections that provide service to end users, including incumbent and competitive local exchange carriers, cable system operators, WISPs, terrestrial and satellite mobile wireless service providers, BRS providers, electric utilities, municipalities and other entities.[30] These entities have a track record of deploying facilities and providing service to the public, qualities that would give the Cornmission a high degree of comfort that the winning bidder would value the spectrum and would be able to economically integrate the 700 MHz spectrum into its existing operations. Further, by filing FCC Form 477, the bidder will have demonstrated its ability to comply with regulatory obligations.

III. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO IMPOSE GEOGRAPHIC BUILD-OUT REQUIREMENTS WITH APPROPRIATE INTERIM BENCHMARKS.

With one modification, WISPA favors the Commission's proposed geographic build-out requirements with interim benchmarks, along with a "keep what you use" rule applied at the end of the initial license term.[31] Specifically, except in rural CMAs, the Commission should require each licensee to cover 25 percent of the geographic area within three years of initial license grant, 50 percent within five years, and 75 percent within eight years, excluding government land in the market.[32] In rural CMAs, WISPA proposes that only the eight-year benchmark would apply, in recognition of the higher costs and additional build-out time associated with covering sparsely populated areas. WISPA believes that these benchmarks fairly estimate a reasonable build-out schedule for the applicable market area.

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[30] See Instructions for Local Telephone Competition and Broadband Reporting Form (FCC Form 477), Instructions for March 1, 2007 Filing, at 1-2.
[31] *See* 700 *MHz FNPRM* at 79.
[32] *See* ***id.*** **WISPA** notes that government land is prominent in rural areas of the country.

WISPA agrees with RCA that imposing geographic build-out benchmarks rather than a population-based build-out requirement will encourage more wide-area service because "left to its own devices, the licensees will build-out its system to serve its low-cost, high-density urban areas and will never extend its services to reach its high-cost, low-density rural areas."[33] As providers of WISP service in rural areas, WISPA well appreciates the high costs associated with serving the sparsely populated areas outside of the small cities and towns – a primary reason they are so interested in the wide-area propagation characteristics associated with the 700 MHz spectrum that forms the basis of its proposals in these Comments.[34]

In the rural CMAs, WISPA proposes that the three-year and five-year benchmarks should not apply. As numerous commenters have shown, the build-out costs in rural areas will be higher, and the winning bidders are more likely to be small businesses that do not have the resources of the larger bidders. As Commissioner Copps warned, "even as we seek to provide licensees with a firm incentive to make use of spectrum, we also need to make sure that we do not unfairly punish licensees – *especially in rural areas* – who cannot engage in aggressive build-out for perfectly good economic reasons."[35] This describes the situation in the rural markets to a "T." WISPA believes that exempting licensees in the rural CMAs from the first two interim build-out benchmarks, but still

[33] RCA Comments at 10.

[34] Notably, the Commissioners acknowledge that geographic build-out requirements will help licensees provide coverage to rural areas. Chairman Martin explained that the proposed benchmarks "would help ensure that the rural and underserved areas of the country will benefit from the provision [of] new services that this spectrum will facilitate." Statement of Chairman Kevin J. Martin, WT Docket No. 06-150 at 2. Commissioner Copps stated that "we must not countenance spectrum warehousing or any other unreasonable delay in putting this spectrum to work." Statement of Commissioner Michael J. Copps, WT Docket No. 06-150 ("Copps Statement") at 3. Commissioner Adelstein similarly observed that "we are looking to ensure that 700 MHz will not become an untapped well for the thirsty and instead will be deployed to all corners of the country." Statement of Commissioner Jonathan S. Adelstein, WT Docket No. 06-150, at 3.

[35] Copps Statement at 3 (emphasis added).

applying the eight-year benchmark – strikes the appropriate balance between promoting service across a wide area and understanding the additional time it may take rural licenses to fund the higher build-out costs.

WISPA proposes that a licensee that fails to meet the applicable benchmarks would not automatically have its license area reduced, but would face a higher level of scrutiny at the end of the license term. There may be legitimate reasons why a licensee will be unable to meet the build-out requirement. For instance, given the propagation characteristics of the 700 MHz spectrum and the irregular shape of the markets, licensees may need to enter into coordination agreements with their neighbors to meet the geographic coverage requirements, a practice common to cellular and BRS/EBS.[36] If neighbors are unwilling to enter into such agreements, it may be difficult for a licensee to cover areas that would enable it to meet its build-out milestones in a timely manner or on reasonable terms. In addition, equipment for wide-area deployment may not be readily available for several years. Rather than automatically reduce a licensee's license area, the Commission should take into account documentation of the reasons why a licensee could not meet the build-out obligations.

[36] *See, e.g.,* 47 C.F.R. $22.913(e) (providing exception in cellular service to height requirements associated with effective radiated power limits where licensees coordinate their operations with affected licensees); §27.55 (stating that EBS and BRS licensees may exceed applicable signal levels at geographic service area boundaries with consent from affected licensees).

Conclusion

WISPA submits that adoption of these proposals will create new opportunities for small rural companies to acquire 700 MHz licenses at entry costs conducive to rapid deployment of wireless services in rural markets.

Respectfully submitted,

THE WIRELESS INTERNET SERVICE PROVIDER ASSOCIATION

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