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 Harmonize 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 Requirements Through the year 2010	)	WT Docket No. 96-86

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliated companies ("Leap") hereby offers the following Comments in connection with the Further Notice of Proposed Rulemaking ("Further Notice") issued in the above-captioned proceedings.

Leap continues to believe that the Upper and Lower 700 MHz bands will be critical sources of additional spectrum to be used by wireless carriers to provide innovative mobile voice and data services to U.S. consumers. Leap supports many of the changes that the Commission has made to date to provide increased flexibility for commercial operations in the 700 MHz bands, which will facilitate the development of new and innovative wireless services. Leap strongly believes that this policy principle of commercial flexibility should be carried through to other key issues raised in the *Further Notice*, and responds accordingly below.

I. THE COMMISSION SHOULD ADOPT UPPER AND LOWER 700 MHZ BAND PLANS THAT WILL PROVIDE FOR MEANINGFUL PARTICIPATION BY REGIONAL, SMALL AND RURAL CARRIERS

Leap has long been an advocate in this proceeding of a balanced 700 MHz band plan that will provide for a mix of licenses of varying sizes and geographic regions.[1] In particular, Leap has urged the Commission – and reiterates the plea here – to adopt band plans that will promote the participation of small, regional and

[1] *See, e.g.*, Balanced Consensus Plan *Ex Parte* (April 18, 2007); Balanced Consensus Plan *Ex Parte* (October 20, 2006).

rural wireless carriers, who bring essential public interest benefits to consumers that may not be well served by the nation's largest carriers, and who should not be frozen out of opportunities to innovate at 700 MHz. As Leap observed in an earlier phase of this proceeding, one lesson of Auction No. 66 for AWS licenses is that the lion's share of spectrum carved into large geographic regions will quickly move beyond the reach and resources of small and mid-sized bidders. Thus, creating a variety of licenses that can accommodate the needs of many different carriers and consumer needs is essential.

With these observations in mind, Leap supports the Lower 700 MHz band reconfiguration proposed in the *Further Notice*, which would leave unaltered the Lower 700 MHz band plan spectrum blocks as currently sized and aligned, and in terms of geographic coverage, license the A Block on an Economic Area ("EA") basis, the B Block on a Cellular Market Area ("CMA") basis, and the unpaired E Block on a Regional Economic Area Group ("REAG") basis.[2] CMA and EA licenses will provide good points of access for small, rural and regional carriers. Leap also agrees that assigning the E Block on a REAG basis will allow licensees to more easily take advantage of economies of scale in developing new technologies and services that can utilize unpaired spectrum.[3]

Leap supports a similar approach with respect to reconfiguring the Upper 700 MHz band. Specifically, the Commission should split the current Upper 700

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[2] *See Further Notice* at ¶¶ 178-181 and Figure 5.

[3] *See id.* at ¶ 179.

MHz 20 MHz D Block into two 10 MHz blocks, which will ensure uniform block sizes among the C, D and the new E blocks in the Upper 700 MHz band, and introduce additional smaller license service areas (CMAs or EAs) into the Upper 700 MHz band. Proposal 2 and Proposal 5 in the *Further Notice* set forth band plans consistent with these recommendations.[4] In this regard, Leap supports Proposal 2 as proposed.

Leap also would support Proposal 5, with one deviation from the proposal in the *Further Notice*: If the Commission proceeds with Proposal 5, the D Block should be licensed on a REAG basis, and the C block should be assigned on an EA basis. Licensing the paired 5.5 MHz C blocks on an EA basis will make it easier for these licensees to manage cross-border interference issues with an extra 0.5 MHz that can used as a guard band. For example, if CDMA technology is used, there is room for only 3 channels in either a 5 or 5.5 MHz bandwidth. Similarly, there is only room in such bandwidths for 1 WCDMA channel. So for either technology, the extra 0.5 MHz is available for a guard band. If GSM technology is used, because GSM channels are 2 KHz wide, there is extra flexibility to coordinate cross-border interference issues afforded by the 2 extra channels that can be squeezed into a 0.5 MHz guard band. There will be many more operators, and therefore many more operator boundaries, with EA licenses that will make the added flexibility from the additional bandwidth extremely desirable for these operators. By contrast, REAG operators will have far fewer boundary interference issues to address and will be

[4] *Id.* at ¶¶ 192-193, Figure 7, 204-206 and Figure 10.

able to utilize 5 MHz D-block pairs more effectively.

II. THE COMMISSION SHOULD MAINTAIN ITS "SUBSTANTIAL SERVICE" PERFORMANCE REQUIREMENTS AND SHOULD NOT ADOPT A "KEEP-WHAT-YOU USE" STANDARD

700 MHz band services currently are subject to a performance requirement of "substantial service" at the end of the license term.[5] As set forth in Leap's earlier comments in this proceeding, Leap sees absolutely no reason to alter this performance requirement, or to change the existing safe harbors that provide examples of what would be considered "substantial service" in the offering of 700 MHz services.[6] The *Further Notice's* more extensive inquiry into a complex, geography-based, "keep-what-you-use" standard is alarming. Leap believes strongly that the adoption of such a standard is unnecessary and ill-advised.

The Commission has now implemented the "substantial service" requirement across a number of wireless services.[7] In so doing, the Commission has recognized that "construction benchmarks focusing solely on population served or geography covered may not necessarily reflect the most important underlying goal of ensuring

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[5] *See* 47 C.F.R. § 27.14(a); *Notice* at ¶ 16.

[6] For mobile services, the safe harbor would be met if a licensee can demonstrate coverage for 20 percent of the population of its licenses service area at the license-renewal mark. *Notice* at ¶ 16 (*citing Upper 700 MHz Order* at ¶ 70, *Lower 700 MHz Order* at ¶ 151).

[7] *See, e.g., Rural NPRM,* 18 FCC Rcd 20802, 20819 ¶ 34 ("In more recently adopted rules for wireless services, such as our Part 27 rules for private services, Lower and Upper 700 MHz, 39 GHz, and 24 GHz, the Commission established the substantial service standard as the only construction requirement."). *See also* Coalition Proposal at 44. ("There is ample precedent for [a substantial service] approach as the Commission has adopted this very same requirement for operation at 2.3 GHz, the Upper 700 MHz band, the Lower 700 MHz band, the paired 1392-1395 MHz and 1432-1435 MHz bands or the unpaired 1390-1392 MHz, 1670-1675 MHz and 2385-2390 MHz bands.").

public access to quality, widespread service."[8] The Commission has determined that a substantial service standard (i) better enables the Commission to take into demonstrations of adequate deployment in rural areas, to niche markets, or to discrete populations or regions with special needs, and (ii) encourages licensees to provide the best possible service and avoid construction merely to meet regulatory requirements rather than market conditions.[9] These observations remain true today and there is no meaningful evidence to the contrary in the record.

By contrast, a geography-based construction approach such as "keep-what-you-use" could have particularly unfortunate consequences for 700 MHz providers. First, such an approach generally restricts innovation in tailoring services to customer needs. As the Commission has recognized previously in nodding to the "trend towards licensing services on a geographic-area basis," Commission licensees "can provide a meaningful and socially beneficial service without providing ubiquitous service and . . . providing licensees with sufficient flexibility to respond to market fluctuations will promote the public interest."[10] In addition, a "keep-what-you-use" approach is likely to be extremely cumbersome to administer, as demonstrated with the Commission's experience in overseeing its unserved area rules in the Part 22 cellular service. It is also likely to generate high transactions

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[8] In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order,* 21 FCC Rcd 5606 (2006) ("Broadband Order"), ¶ 276.

[9] *Id.*, ¶ 277.

[10] *Rural Order*, 19 FCC Rcd 19078, 19123 ¶ 78 (2004).

costs and disputes between incumbent licensees and new applicants – a disadvantage that the Commission has previously recognized.[11]

Leap has one of the best track records in the wireless industry in building out markets quickly, even in smaller markets in which it has obtained licenses. In 2006, Leap tripled its capital investment and expanded its coverage from 25 million potential subscribers to 48 million – and it did not need a complex buildout rule to stimulate such results. A more stringent performance requirement at 700 MHz will do nothing but increase compliance and administrative costs for carriers, the Commission, and ultimately, consumers – with *zero* public interest gain. The Commission recently reiterated its view that "a market-oriented approach to spectrum policy that utilizes a substantial service standard to meet build out requirements best ensures actual deployment of wireless facilities and broader provision of wireless services."[12] There simply is no evidence that this statement is not and will not remain true with respect to the deployment of services in the 700 MHz bands, including in rural areas.[13]

III. THE COMMISSION SHOULD NOT ADOPT COMBINATORIAL OR ANONYMOUS BIDDING FOR AUCTIONS OF 700 MHZ SPECTRUM, AND SHOULD CONTINUE TO WORK TO ENSURE THAT 700 MHZ

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[11] *Rural NPRM,* 18 FCC Rcd at ¶ 15 (*citing* "Wireless Telecommunications Bureau Approves Settlement Agreement between WWC License L.L.C. and WWC Holding Co., Inc. and N.E. Colorado Cellular Inc.," *Public Notice*, 17 FCC Rcd 26148 (rel. December 23, 2002)).

[12] *Broadband Order*, 21 FCC Rcd at ¶ 278; *see Rural Order*, 19 FCC Rcd 19078, 19122 ¶¶ 77-78 (2004).

[13] The Commission has consistently concluded that "on the whole, our current policies are working to provide wireless services in rural areas." *Rural Order*, 19 FCC Rcd at 19081, ¶ 3.

SPECTRUM IS CLEARED AS QUICKLY AS POSSIBLE

With respect to auction issues, Leap urges the Commission to retain and promote transparency in its 700 MHz auctions, and not to impose an "anonymous bidding" regime.[14] The Commission's simultaneous multiple round ("SMR") methodology has an excellent track record, is well understood by the wireless industry, and provides both small and large bidders with a high degree of flexibility to consider and bid on a variety of license aggregation alternatives. The success of the Commission's recent AWS auction, also critical to the wireless industry's future, highlights the point – Auction No. 66 was transparent, highly competitive, and hailed by Chairman Martin as "the biggest, most successful wireless auction in the Commission's history."[15]

The 700 MHz auctions promise to be as important to the wireless industry's future as AWS. As such, it is very important that potential bidders or financing sources to be able to assess as much information regarding licensed markets as possible, including the identity, size and technological configurations of competitors also bidding in the auctions. A transparent auction will help insure that bidders are able to deploy their capital most efficiently. By contrast, the lack of information attending an anonymous bidding process will greatly increase the risk of sub-optimal license purchases. Anonymous bidding could directly affect bidders' access to capital to fund the acquisition of spectrum licenses, as well as funds available for

[14] *Further Notice* at ¶ 246.

[15] "Statement Of Chairman Kevin J. Martin On The Conclusion Of Advanced Wireless Services Auction" (rel. Sept. 18, 2006).

post-auction build-out, depending on who owns licenses in markets when identities are ultimately revealed. Furthermore, for small, rural and regional bidders in particular attempting to acquire spectrum that is still waiting for the marketplace to dictate equipment design and infrastructure, Leap agrees that there is a "strategic dependency" on seeing large carrier bids in the auction, which will communicate essential real-time valuation information to smaller participants.[16]

The bottom line is that the imposition of anonymous bidding is unnecessary, will introduce uncertainty into the 700 MHz auctions, and is likely to directly affect smaller bidders' risk and level of participation. In the end, it will severely weaken the ultimate success of assigning 700 MHz licenses by competitive bidding. The FCC should auction 700 MHz spectrum with full transparency as to license selections, upfront payments, and round-by-round results. To do otherwise will not serve the public interest.

For similar reasons, Leap urges the Commission to reject combinatorial bidding with respect to any aspect of the 700 MHz auctions or associated frequency blocks.[17] Leap agrees that the Commission should not introduce a "new, untried, as-yet-not-even-fully-defined type of auction procedure in this important upcoming auction."[18] There is unanimity among all of the Commissioners as to the

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[16] *See* U.S. Cellular Corporation, "Ex Parte Discussion: Upper and Lower 700 MHz Band Plan, WT Docket No. 06-150 (Mar. 23, 2007).

[17] *See Further Notice* at ¶ 191.

[18] *Ex Parte* "Statement of Robert J. Weber, the Frederic E. Nemmers Distinguished Professor of Decision Sciences at the Kellogg School of Management, Northwestern University," WT Docket No. 06-150 (Mar. 7, 2007) (filed on behalf of United States Cellular

(continued...)

significance of the upcoming 700 MHz auctions.[19] The stakes simply are too high for the Commission to experiment further with combinatorial bidding here.

Finally, the Commission generally should continue to do all that it can to facilitate the DTV transition and ensure that bidders who invest hundreds of millions of dollars in 700 MHz licenses have the opportunity to make full use of that spectrum as quickly as possible in order to introduce innovative wireless services to consumers. In the wake of the recent AWS license auction, the deployment of systems and introduction of commercial service has been slowed in that spectrum by issues attending the relocation of government users. While the incumbent issues are different in the 700 MHz bands, the principle is the same: the Commission has been and should remain focused on promoting the introduction of wireless broadband services on the quickest practicable time frame. That result requires clear spectrum at 700 MHz, and rigid adherence to DTV transition deadlines.

IV. CONCLUSION

Leap urges that the Commission's rules be amended as set forth above.

Respectfully submitted,

/s/

James H. Barker
LATHAM & WATKINS LLP
555 11TH Street, NW, Suite 1000

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Corporation).

[19] *See Further Notice*, Separate Statements of Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell.

Washington, DC 20004
(202) 637-2200

Robert J. Irving, Jr.
Senior Vice President and General Counsel
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121

Counsel for Leap Wireless International, Inc.

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