

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

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

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Wednesday, May 23, 2007

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COMMENTS OF MCBRIDE SPECTRUM PARTNERS, LLC

SUMMARY

McBride Spectrum Partners, LLC respectfully submits the following comments. We all remember the Entrepreneurs' C Block PCS auctions. I participated in that auction which was going to be "*the greatest opportunity ever made available to small business*" (Reed Hunt 1996). The 700 MHz spectrum band auction may be a small business dream come true and America's best opportunity for true competition in the broadband market. The Commission will not have another chance like this in a lifetime. That's why it is important that the Commission gets it right and acts quickly. Broadband deployment is vital to our nation. The availability of ubiquitous, broadband access must be available to all Americans, regardless of where they live. The 700 MHz auction is an opportunity for new and existing providers to bring the latest technologies and services to the American people. The 700 MHz spectrum is the most valuable spectrum of all. All Americans should enjoy the benefits of true broadband competition and the availability of high speed Internet access at affordable prices. The upcoming 700 MHz auction presents the single most important opportunity for the Commission to achieve its goal of helping small business play a part in building the next generation broadband network and ensure its place in telecom history.

The Frontline Proposal

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Reed Hundt is Vice Chairman of Frontline Wireless and was the former Chairman of the FCC at the time of the legendary Entrepreneurs' C Block PCS auctions.¹ Reed Hundt's handling of the rules for that auction resulted in the C Block license holders seeking the protection of the bankruptcy courts which ended in a quagmire of colossal litigation that cost the American tax payer billions of dollars.² Almost the entire Entrepreneurs' C Block of PCS licenses (Licenses set aside by congressional mandate for small businesses, rural telephone companies, and businesses owned by women and minorities) are now in the hands of a few companies like the new AT&T ("*Humpty Dumpty all Put Back Together Again*"). The last time Mr. Hundt tested the entrepreneurial waters; it was during the optical bubble, when he co-founded Sigma Networks, a metro optical service provider that raised \$155 million, which promptly went belly-up. Frontline Wireless may have a movie star line-up with the backing of the best in the west, but this is a Government auction open to the public and no one has a VIP card. Frontline Wireless should be treated the same as everyone else in the auction. When the auction ends and the smoke clears lawmakers may decide to use the entire auction proceeds to build a nationwide network for public safety. Only Congress has the authority to decide how to use public funds and it may be unlawful to subsidize a company using valuable public assets ("airwaves") without the approval of Congress. The U.S. Government is very capable of building a nationwide security network and will have an estimated \$10 to \$15 billion dollars in auction proceeds to build a network without the help of Frontline Wireless. The American people can't afford to give

¹ 5/8/1996 PUBLIC NOTICE (DA 96-716) Entrepreneurs' C Block Auction Closes

² 6/3/1998 PUBLIC NOTICE (DA 98-1051) U.S. Department of Justice Approves Debt Forgiveness Personal Communications Service (PCS) C Block

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away billions of dollars in public airwaves to a private company. Frontline Wireless decided not to participate in the lower 700MHz auctions three years ago when it was risky, not knowing if the spectrum could ever be used and the uncertainty of equipment manufactures offering affordable radios to support a business case.

Bidding Preferences

A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years (“small business”) should receive a 75 percent discount on its winning bid. A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years (“very small business”) should receive a 85 percent discount on its winning bids and a bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years (“entrepreneur”) should receive a 95 percent discount on its winning bids for the all licenses in the Lower and upper 700 MHz band. An entrepreneur may bid on all licenses, but bidding credits are not cumulative; a qualifying applicant receives the 75 percent, 85 percent, or 95 percent bidding credit on its winning bid, but only one of them per license. The supporting logic is that the average annual gross revenues of the big three wireless companies AT&T, Sprint and Verizon who control about 90% of all mobile subscribers in the U.S is over \$60 billion with combine assets of 1/2 trillion dollars. A very small business would need a very substantial discount in order to bid in an auction without set aside licenses for small business. AT&T market cap alone is of over \$250 billion dollars. In order for a small business to be on a level playing field with AT&T it would need a 99.9% discount off its gross bid. You don’t need

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a PHD in mathematics from Harvard, its simple math: \$40 million dollars is less than 1/10 of 1% of \$60 billion dollars. Some comment's advocate that the Commission set aside 700 MHz Commercial Services licenses for designated entities or, if not, that the Commission adopt a third small business definition under which eligible applicants would receive a 35% bidding credit. In particular, certain comment's representing rural providers, small entities, and others argue that the Commission should set aside spectrum blocks for designated entities, as it did in 1994 for auctions of PCS spectrum licenses.³ The Commission needs to have a set aside solely for designated entities and small business in the 700MHz. auctions. I disagree with the Commission's contention that it's too difficult implementing such a bidding credit. Difficult is bidding in an auction alongside companies with hundreds of billions of dollars; in fact the odds of winning the California lotto would be better than out bidding AT&T in the 700MHz auction. NextWave and Metro PCS ended up with 90% discounts off its winning bids in the PCS auctions which also had set aside licenses.⁴ In light of the significant concessions that Frontline Wireless requires, set aside licenses for small businesses, rural telephone companies, and businesses owned by women and minorities should be a walk in the park.⁵ The Telecommunications Act

³ See, e.g., NTCA Comments in WT Docket No. 06-150 at 8-11; OPASTCO Comments in WT Docket No. 06-150 at 3-4; RTG Comments in WT Docket No. 06-150 at 8; Council Tree Communications, Inc. (Council Tree) Comments in WT Docket No. 06-150 at 11-13.

⁴ *The bankruptcy court therefore avoided approximately \$894 million of the \$954 obligation to the FCC and allowed the subsidiary debtors to retain the licenses. The FCC now appeals the avoidance judgment, arguing that its appeal of the avoidance judgment is not equitably moot and that the bankruptcy court improperly assumed the FCC's regulatory authority and erred in avoiding \$894 million of the obligation to the FCC. We affirm.*

⁵ One of the statutory objectives the Commission must seek to promote when using its competitive bidding authority is the dissemination of licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned

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requires that the Commission ensure that “designated entities” are given the opportunity to participate in the provision of spectrum-based services and, for such purposes, consider the use of bidding preferences,⁶ Preferences in the form of a 25% discount to very small business in a \$15 billion dollar auction is unrealistic without having set aside licenses that only TRUE small business can bid on. In all prior attempts to meet its mandates, the Commission has failed in providing any meaningful opportunities for designated entities. The auction rules that establish what a very small business is must be questioned before deciding on the size of the discounts a small business should receive. The approach used to qualify a very small business is fundamentally flawed by its own foundation.⁷ A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years (“very small business”) provides no value since designated entities in all passed auctions are entities which have been newly formed and have zero revenues and zero assets.⁸ We note supporting results from pass auctions will establish that the eligibility requirements to qualify as small, very small businesses or entrepreneurs has no importance and is futile unless all the assets and revenues for each person regardless of the proportion of interest in the applicant be counted as one applicant.

by members of minority groups and women, sometimes collectively referred to as “designated entities.” 47 U.S.C. §309(j)(3)(B).

⁶ 47 U.S.C. §309(j)(4)(D).

⁷ See <http://wireless.fcc.gov/auctions/66/charts/66cls2.pdf> (providing auction results); see, generally, <http://wireless.fcc.gov/auctions/66/> (providing additional information on the AWS auction).

⁸ Reiter/McBride and McBride state that the Commission should revisit its definition of very small businesses. Comments of Reiter/McBride at 2; Reply Comments of McBride at 2. The Commission adopted small business definitions for licenses in the Lower 700 MHz band in the *Lower 700 MHz Report & Order* at ¶¶ 169- 179, and therefore the Bureau did not seek comment on this issue. Because this issue has been addressed by the Commission, we will not address it in this public notice. See 47 U.S.C. § 309(j)(3).

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License forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution must be enforced on any small business, very small business, or entrepreneur that game the system as Cingular and AT&T Wireless have done in the past. Any person that has a 5% or more interest in the applicant or controls a company or trust or membership, or business interest in any company or business with a net worth of more than \$40 million would be the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues and total assets for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small, very small businesses or entrepreneur, this information must be provided for each consortium member. Setting aside 700 MHz Commercial Services licenses is essential to ensuring service in particular areas, especially rural areas. Significant measures that directly serve this goal **MUST BE MADE**. For example, use of smaller geographic areas reduces the cost of some licenses, creating opportunities for more potential licensees, including those focusing on serving rural areas in particular CMAs. More stringent small business size requirements must be adopted and strictly imposed to help promote service to rural and underserved areas. Finally, statutory mandates with respect to bidding preferences to provide an opportunity for designated entities to engage in the provision of spectrum-based services. As

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noted above, bidding credits up to 95% in conjunction with the other policies may afford sufficient opportunity. The Commission must adopt a third small business definition to provide a third level of bidding credit. Consideration in the adoption of an additional bidding credit is in fact needed, pursuant to the current size of the bidders likely to bid in the upcoming auctions. In light of the strong interest expressed by big bidders an additional bidding credit tier would increase opportunities for small bidders with no other access to spectrum. Revising the sizes of the geographic area licenses to all CMA licenses and having no EA licenses would also help and would increase opportunities for small bidders. All of the above revisions plus an additional small business definition to provide a third level of bidding credit with respect to the new CMA licenses is necessary to assure designated entities sufficient opportunity in this band. The conclusion is consistent with the statutory objectives of the Commission who must seek to promote the dissemination of licenses among a very wide variety of applicants, including very small businesses rural telephone companies, and businesses owned by members of minority groups and women, sometimes collectively referred to as “designated entities.” Furthermore, the performance of designated entities in the lower 700MHz. auctions demonstrate the strength of the Commission’s additional bidding credits (third size) in creating opportunities for small businesses, such a credit would be easy to define and meet compliance.

Mix of Geographic Service Area Sizes

All of the upper and lower 700MHz. licenses should be offered in CMA service sizes allowing a very small business to participate for all of the licenses not just a limited number of licenses in

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the auction.⁹ A company that wants to build a nationwide broadband network can bid on any licenses it wishes to bid on but for the Commission to facilitate a nationwide broadband network via the auction rules at the expense of small business is financial bias and patently wrong.¹⁰ Any bidder can buy the licenses it needs in the auction or in the robust secondary market. The Commission may allow small business the possibility of teaming up with a larger license holder. CMA markets would generate higher auction revenues; distribute the licenses among many bidders, offer true bidder competition and create real license values. With the adoption of limited information auction rules maybe true small business can win some licenses in the auction. The Commission has the ability to ensure that the 700 MHz auction is an extraordinary success for small business and at the same time ring-up the largest revenue in auction history. I implore the Commission to take precise action to shelter small business from unfair big business financial bullying.

Secondary Markets

The Commission should provide access to spectrum by promoting the development of robust secondary markets with spectrum usage rights, removing unnecessary regulatory barriers and allowing entities seeking access to spectrum to enter into spectrum leasing arrangements with

⁹ *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1059 ¶ 90; see also 47 C.F.R. § 27.6(c)(1). Blocks A and B are each 12-megahertz paired blocks consisting of two 6-megahertz segments; the E Block is a 6-megahertz unpaired block. See *supra* Figure 3.

¹⁰ Proceeding: 06-150 Type Code: NO Date Received/Adopted: 04/23/07 Date Released/Denied: Document Type: NOTICE Total Pages: 3 File Number/Community: DA/FCC Number: Filed on Behalf of: MetroPCS Communications, Inc. Filed By: Paul Hastings Janofsky & Walker Attorney/Author Name: Carl W. Northrop Date Posted Online: 04/24/07 Complete Mailing Address: 875 15th Street, NW 12th Floor Washington, DC 20005 [COMMENT](#)

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existing licensees.¹¹ DEs should not have limits on leasing arrangements as this can provide capital for network deployment.

Competitive Bidding Procedures

To consider or authorize the use of package bidding only provides a cash rich bidder an even larger edge over small business but the Commission should consider the adoption of limited information or anonymous bidding in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities. The Commission must make sure the gamesmanship of the auction is as fair and equal as possible for small entities. Anonymous bidding is the best way to achieve a fair and equal game. Picture playing in a poker game with nine out of ten players in the game knowing what each other's hold cards are, it would be easy for the nine other players to systematically win all of the chips on the table. The spectrum auctions is like a game but the buy-in is huge, so huge that many of the big players will have elaborate war rooms with million dollar super computers to map out every possible move just to get that small edge which separates the winners from the losers. Winning in this game is almost impossible for the very small bidder. A band plan with a greater number of small licenses is very appropriate along with anonymously bidding rules. The Commission must take great

¹¹ 127 Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604, 20649-77 ¶¶ 93-181 (2003) (*Secondary Markets Report and Order*). The spectrum leasing policies adopted in the *Secondary Markets Report and Order* applied generally to services licensed under Parts 22, 24, 27, 90, and 101 of the Commission's rules, including all Commercial Mobile Radio Services (CMRS) and various other services in which the licensee holds an "exclusive use" right. *Id.* at 20643 ¶ 84, fn. 181.

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steps to minimize unfair auction rules that could impact small entities that take part in the 700 MHz auction.¹²

Anonymously Bidding

From my Santa Monica CA apartment I made a net high bid of \$4.1 million dollars in auction number 35 in round 38 for the Atlantic City N.J. PCS license. In round 40 Verizon Wireless made a net bid of \$6.7 million dollars and from round 40 to the end of the auction round 101 not a single bid was made for the Atlantic City Market. AT&T, Voice Stream, (“T Mobile”) and Cingular all passed. I respectfully ask the Commission to consider the facts of the matter and to implement anonymously bidding rules in the auction of 700MHz. licenses. One way to close the gap and eliminate any questions about the fairness of the auctions rules. An entrepreneur willing to risk everything at a chance of entering the wireless telecom business against all the odds needs to know the game he is playing in is fair and equal.

Chart # 1 PCS Auction No. 35 Total Net Bids \$17 Billion

ROUND	MARKET NAME	BLOCK	HIGH BIDDER	NET BID
1	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 234,000
2	Atlantic City, N.J.	F	Salmon PCS / Cingular	\$ 281,000

¹² AWS AUCTION STUDIES PROVE INCUMBENTS USED RULES TO BLOCK NEW ENTRANTS; RULES ALLOWED “SIGNALING” TACTICS MAP RECOMMENDS CHANGES TO DETER MANIPULATION AND MAXIMIZE REVENUE Media Access Project today released two studies by Dr. Gregory Rose of Economic Research Services analyzing the “advanced wireless services,” or AWS-1, Auction conducted by the Federal Communications Commission (FCC) in August and September 2006.

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3	Atlantic City, N.J.	F	Salmon PCS / Cingular	\$ 281,000
4	Atlantic City, N.J.	F	AT&T Wirelss PCS LLC	\$ 323,000
5	Atlantic City, N.J.	F	Salmon PCS / Cingular	\$ 388,000
6	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 466,000
7	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 606,000
8	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 788,000
9	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 1,016,000
10	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 1,016,000
11	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 912,000
12	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 912,000
13	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 1,428,000
14	Atlantic City, N.J.	F	NorthCost Communications	\$ 1,197,750
15	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 1,772,000
16	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 1,772,000
17	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 1,431,750
18	Atlantic City, N.J.	F	NorthCost Communications	\$ 1,558,800
19	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 2,274,000
20	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 1,956,750
21	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 2,931,000
22	Atlantic City, N.J.	F	Vincent D. McBride	\$ 2,244,250
23	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 3,604,000

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24	Atlantic City, N.J.	F	Vincent D. McBride	\$ 3,048,750
25	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 4,732,000
26	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
27	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
28	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
29	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
30	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
31	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
32	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,017,750
33	Atlantic City, N.J.	F	Alaska Native Wireless,LLC	\$ 4,222,500
34	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,055,000
35	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,055,000
36	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,055,000
37	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,055,000
38	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,078,500
39	Atlantic City, N.J.	F	Vincent D. McBride	\$ 4,078,500
40	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,000
41	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,001
42	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,002
43	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,003
44	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,004

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45	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,005
46	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,006
47	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,007
48	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,008
49	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,009
50	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,010
51	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,011
52	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,012
53	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,013
54	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,014
55	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,015
56	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,016
57	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,017
58	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,018
59	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,019
60	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,020
61	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,021
62	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,022
63	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,023
64	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,024
65	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,025

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66	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,026
67	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,027
68	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,028
69	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,029
70	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,030
71	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,031
72	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,032
73	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,033
74	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,034
75	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,035
76	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,036
77	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,037
78	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,038
79	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,039
80	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,040
81	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,041
82	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,042
83	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,043
84	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,044
85	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,045
86	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,046

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87	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,047
88	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,048
89	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,049
90	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,050
91	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,051
92	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,052
93	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,053
94	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,054
95	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,055
96	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,056
97	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,057
98	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,058
99	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,059
100	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,060
101	Atlantic City, N.J.	F	Cellco Partners /Verizon Wireless	\$ 6,793,061

Performance Requirements

The Commission should keep the performance requirements of its rules for licenses in the 746-764 and 776-794MHz Bands. The rules outlined in Section 27.14 (a) require licensees to provide

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“substantial service” within ten years of license issuance.¹³ The longer the build out window is for a small business the less likely it is that a very small business license would be terminated automatically¹⁴. The records show that almost all radio licenses that have been terminated automatically are licenses of very small business. No major wireless carrier has ever had its licenses terminated automatically for not meeting the construction requirements of the license.

The construction requirements of each license should be based on the size preferences of the company that holds the license and the financial abilities and size of each company especially those licenses in rural areas.¹⁵ **It is not the small business license holder that warehouses spectrum in order to hinder the competition in the market.**

It is common knowledge that many large carriers buy surplus spectrum in their markets, just to prevent others from competing with them. It is in their financial interest to buy spectrum that may never be used efficiently. And they have the financial means to easily do so. A small business does not have that luxury.

¹³ 47 C.F.R. § 27.14 (a). This section defines “substantial service” as “service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.” *Id.*

¹⁴ One of the statutory objectives the Commission must seek to promote when using its competitive bidding authority is the dissemination of licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, sometimes collectively referred to as “designated entities.” 47 U.S.C. §309(j)(3)(B).

¹⁵ 5/9/2007 LETTER (DA 07-2037) [Scott D. Reiter Application pdf - Word](#)

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License Terms

A term not to exceed 10 years from February 17, 2009, should be used for authorizations in all of the upper and lower 700 MHz Commercial Services Band, and that subsequent renewal terms should be 10 years from February 17, 2009. In addition, this period will offer licensees regulatory certainty and help promote investment in the band.¹⁶ In similar fashion, current licensees in the 700 MHz Commercial Services Band would only have approximately six years of access to their spectrum free from broadcasters. A longer period should be made available to all licensees in order to provide sufficient time for the recovery of costs related to the development and deployment of new services, especially those based on technologies that are more advanced, more expensive, and which may take longer to develop. The 700 MHz Commercial Services Band is a likely band for the use of these more advanced technologies and a license term that expires too soon from the DTV transition provides too short a time period.

Conclusion

The Commission must take into account congressional mandate and take actions that facilitate the rights of small business to participate in the auctions of the public airwaves. This would give small business the needed edge to play an essential role in bringing the latest technologies and services to the American people. As a true small business that has personally participated in five FCC spectrum auctions, including the first Entrepreneurs' C Block auction, and won licenses in each one of the five auctions including the first two auctions of the Lower 700MHz licenses, I feel that the auction rules are once again being primed for the spectrum rich, who already control

¹⁶ Aloha Comments in WT Docket No. 06-150 at 10-11; CTIA Comments in WT Docket No. 06-150 at 19-20; Frontier Comments in WT Docket No. 06-150 at 8-9.

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the wireless market place in the United States. I trust the Commission hears the voice of small business and will endeavor to facilitate its auction rules in a way that supports all small business and encourages small business to compete with AT&T heads-up on a more level playing field. I think we can all learn a lesson from what happened in the cable industry. Customers in places with access to only one Cable Company are paying dearly. We thank the Commission for understanding the vast difficulties and financial peril of small businesspeople currently competing against the current behemoths that presently control the multi-billion dollar wireless telecommunications industry. Competition is good for America.

Respectfully submitted,

Vincent D. McBride