

**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
)	
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
)	

REPLY COMMENTS OF CELLULAR SOUTH LICENSES, INC.

Cellular South Licenses, Inc. (“Cellular South”)¹, by and through its counsel, submits these Reply Comments in response to the rulemaking portion of the Federal Communication Commission’s (“Commission” or “FCC”) *Report and Order and Further Notice of Proposed Rulemaking*² in the above-captioned dockets.

As Cellular South stated in its initial Comments, the upcoming auction for spectrum in the 698-806 MHz (“700 MHz”) Band presents an important and final opportunity for wireless

¹ Cellular South is the nation’s largest privately-held wireless carrier based on number of subscribers and serves all of Mississippi as well as portions of Florida, Alabama, Tennessee and Arkansas.

² *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, FCC 07-72, released April 27, 2007 (“FNPRM”).

carriers to acquire spectrum suitable for delivering advanced wireless services, particularly to rural areas.³ In those Comments, Cellular South discussed several issues raised by the Commission in the *FNPRM*. Cellular South takes this opportunity to elaborate on the need for geographic build out requirements, to further emphasize its support for a band plan that includes a mix of geographic license areas, and to address both the Frontline proposal and the issue of combinatorial bidding.

I. The Commission Should Adopt Stringent Geographic Build Out Requirements

The Commission was correct in the *FNPRM* to propose stringent geographic build out requirements in the 700 MHz auction.⁴ Many parties submitted Comments supporting the concept of geographic build out requirements for the 700 MHz spectrum.⁵ Wireless service in rural areas is sorely lacking which indicates that current performance requirements are not sufficiently promoting coverage in these areas. A new performance requirement is necessary to encourage licensees to provide wireless service in rural areas, and the Commission is right to propose geographic build out requirements as a remedy. Cellular South believes that the Commission should use a proportionate “keep what you use” approach as proposed by the Rural Cellular Association (“RCA”).⁶

A. Geographic Build Out Requirements Do Not Force Uneconomic Investment

Some of the parties submitting Comments in this proceeding contend that these requirements would force carriers to make uneconomic decisions when deploying wireless networks. This misstates the effect of “keep what you use” geographic build out requirements.

³ Cellular South Comments in WT Docket No. 06-150, et al. at 2 (May 23, 2007).

⁴ *FNPRM*, para. 212.

⁵ See e.g. Rural Cellular Association (“RCA”) Comments in WT Docket No. 06-150, et al. at 5 (May 23, 2007); Aloha Partners, L.P (“Aloha Partners”) Comments in WT Docket No. 06-150, et al. at 3-4 (May 23, 2007); Rural Telecommunications Group (“RTG”) Comments in WT Docket No. 06-150, et al. at 8 (May 23, 2007).

⁶ See RCA Comments in WT Docket No. 06-150, et al. at 7-8 (May 23, 2007); RCA Comments in WT Docket No. 06-150 at 8-10 (September 29, 2006); RCA Reply Comments in WT Docket No. 06-150 at 4-7 (October 20, 2006).

Under the proposal being considered by the Commission, no carrier would be required to provide service in an uneconomic area – licensees can continue to build out high-profit areas and ignore rural areas if they choose. If a licensee determines that it will not serve an area for one reason or another, it simply relinquishes that area and allows those residents an opportunity to receive service from another carrier. Opponents of geographic build out requirements fail to explain why a licensee should have the exclusive rights to an area it does not intend to serve, particularly when the 700 MHz spectrum will allow carriers to provide broad geographic coverage more efficiently than ever before.

Opponents of geographic build out requirements further argue that these requirements will force carriers to deploy second-rate “placeholder” networks to preserve their license areas and that this will slow the deployment of third generation or fourth generation networks in these areas. It is difficult to believe that rural areas lack coverage simply because carriers are waiting for the most advanced network possible before providing service to rural customers.

Ultimately, there may be areas in which it is not feasible to provide wireless service. However, this should not be the decision of just one licensee. Under geographic build out requirements, rural consumers will be denied wireless services only if all carriers determine that it is not feasible to provide coverage in those areas.

B. A Three-Year Benchmark is Reasonable

Some Commenters voiced concern over the initial 3-year build out benchmark in the proposed geographic build out requirements. In the *FNPRM*, the Commission proposed that the time period begin at the date of the grant of the initial license.⁷ Cellular South believes this is a reasonable proposal and that any licensee who is serious about serving its license area can provide 25% geographic coverage within 3 years from the date of the initial license grant.

⁷ *FNPRM*, para. 212.

However, if the Commission determines that it should modify the date of the proposed benchmarks, it should consider Aloha Partners' suggestion to base the benchmarks on the date that incumbents are finally required to exit the 700 MHz spectrum⁸, but should retain the 3, 5 and 8 year benchmarks. This would allow a minimum of 3 years for licensees to meet the initial 25% geographic coverage requirement, and could provide additional time if an incumbent clears a particular license area early.

A second concern noted by some commenters is the question of equipment availability. Specifically, there is concern that 700 MHz equipment will not be available in enough quantities to allow licensees to meet the Commission's build out requirements. While Cellular South believes that demand for 700 MHz equipment will provide a sufficient incentive for equipment manufacturers to produce the necessary hardware, if this does not occur licensees still have the ability to re-band 800 MHz equipment in order to provide service in the 700 MHz spectrum and meet geographic build out requirements. Furthermore, Cellular South has confidence that the Commission can and will respond appropriately if there is an industry-wide inability to acquire the necessary equipment to satisfy the proposed geographic build out requirements.

C. Coverage Should Be Measured According to Uniform Standards but Should Not Include Large Tracts of Government-Owned Land

Cellular South continues to support the requirement that licensees demonstrate compliance with benchmarks by filing maps and other supporting documentation with the Commission based on a uniform standard.⁹ Cellular South suggested that coverage should be measured by mapping areas that provide a sufficient signal level for uplink and downlink transmissions for those licenses that have paired spectrum and/or use the spectrum for two-way

⁸ Aloha Partners Comments in WT Docket No. 06-150, et al. at 4 (May 23, 2007).

⁹ Cellular South Comments in WT Docket No. 06-150, et al. at 5 (May 23, 2007).

communication.¹⁰ Cellular South encourages the Commission to implement some form of objective measurement for determining whether a licensee is providing coverage in area.

Undoubtedly, there will be certain portions of license areas that carriers simply cannot cover such as areas in Alaska that encompass large amounts of government-owned land. The Commission proposes to exclude government land from relevant service areas when determining whether a carrier has satisfied build out requirements.¹¹ Cellular South supports this proposal and suggests that the exclusion be limited to government-owned parcels exceeding a *de minimis* amount of land. Additionally, Cellular South supports RCA's proposal to allow carriers to claim coverage of government land while excluding government land from requirements.¹² Licensees should not be penalized for failing to provide coverage in portions of their license areas comprised of government land, but should get credit if they do choose to cover those areas.

II. The Commission Should Establish Band Plans That Use a Mix of Geographic License Areas

Cellular South supports the FCC's commitment to adopt a mix of small, medium and large geographic license areas for the 700 MHz auction.¹³ Cellular South has strongly advocated using a mix of small, medium and large geographic license areas¹⁴ and is pleased that the FCC has recognized the importance of using a mix of license sizes in the 700 MHz auction. It is important for the Commission to ensure that bidders of all sizes have a fair opportunity to compete for licenses of various geographic sizes in the 700 MHz auction.

¹⁰ *Id.* at 6.

¹¹ *FNPRM*, para. 213.

¹² RCA Comments in WT Docket No. 06-150, et al. at 6 (May 23, 2007).

¹³ *FNPRM*, para. 44.

¹⁴ *Digital Future of the United States: Part III: Spectrum Opportunities and the Future of Wireless*, Before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, 110th Congress (April 19, 2007) (Written Testimony of Victor H. "Hu" Meena, President, Cellular South Licenses, Inc.).

A. Lower 700 MHz Band

The Commission has made the correct determination on how best to allocate the available spectrum in the 698-746 MHz (“Lower 700 MHz”) Band. The Commission proposed not to change the spectrum blocks as currently sized and aligned and further proposed to license the E Block on a Regional Economic Area Grouping (“REAG”) basis, the A Block on an Economic Area (“EA”) basis, and the B Block on a Cellular Market Area (“CMA”) basis.¹⁵ Many commenters expressed support for the Commission’s Lower Band proposal¹⁶, and Cellular South continues to believe that this is the best band plan for the Lower 700 MHz spectrum.

B. Upper 700 MHz Band

Cellular South encourages the Commission to configure the 747-762 and 777-792 MHz (“Upper 700 MHz”) Band in a manner so as to ensure that bidders of all sizes have an opportunity to bid on a mix of geographic license areas, just as in the Lower 700 MHz Band. Cellular South continues to support any proposal that would establish three blocks of spectrum with one block designated as EA license areas and another block designated as a nationwide license with service rules based on the Frontline proposal. This could be accomplished with Proposal 2 if the Commission eliminates Guard Band Block B, and either Proposal 4 (the “Second Additional Proposal Based on Modified Guard Bands”) or Proposal 5 (the “Second Additional Proposal Based on Modified Guard Bands”) if the Commission chooses to relocate and resize the Guard Bands.

These plans offer the greatest flexibility for license aggregation and, therefore, encourage participation by bidders with varied business plans. As stated in its Comments, Cellular South

¹⁵ *FNPRM*, para. 178-81

¹⁶ *See, e.g.* RCA Comments in WT Docket No. 06-150, et al. at 11 (May 23, 2007); RTG Comments in WT Docket No. 06-150 at 3 (May 23, 2007); Frontier Communications (“Frontier”) Comments in WT Docket 06-150, et al. at 3 (May 23, 2007); Aloha Partners Comments in WT Docket No. 06-150, et al. at 2-3 (May 23, 2007) (generally supporting the Commission’s proposal for Blocks A and B, but requesting EA license areas in Block E).

believes the Commission is better served to adopt a band plan that suits many business models rather than a plan that is over-tailored to suit one particular model.¹⁷ It is important for the Commission to utilize a band plan that will accommodate a number of business models. The one exception where the Commission would be justified in restricting a block of spectrum to a specific type of business model is in establishing an E Block in the Upper 700 MHz Band based on the Frontline proposal. The benefits that would inure to public safety entities and, by extension, the public at large as a result of the Frontline proposal are great enough to excuse a deviation from the principle of not designing spectrum blocks to fit a particular business plan.

1. Proposal 2 is the Best Proposal if the Commission Eliminates the Guard Band B Block

If the Commission eliminates the Guard Band B Block in the Upper 700 MHz Band, Proposal 2 offers the best method of dividing the available spectrum. This proposal would “approximate the balanced mix of geographic licensing sizes adopted by the Commission in the recent AWS-1 auction” by allocating the Upper 700 MHz spectrum into an 11 MHz C Block licensed on either a CMA basis or an EA basis, an 11 MHz D Block licensed on an EA basis, and a 12 MHz E Block licensed on a REAG basis.¹⁸

Small license areas allow bidders of all sizes to participate in the auction because carriers can bid on the precise areas they intend to serve, and bidders have the flexibility to aggregate smaller markets. This plan would allow a large new entrant to aggregate a number of small and medium license areas to create a national footprint. As noted by some commenters, several bidders have used this method in other recent spectrum auctions to create large footprints.¹⁹

¹⁷ Cellular South Comments in WT Docket No. 06-150, et al. at 11 (May 23, 2007).

¹⁸ *FNPRM*, para. 192.

¹⁹ See, e.g. Aloha Partners Comments in WT Docket No. 06-150, et al. at 5 (May 23, 2007); RTG Comments in WT Docket No. 06-150 at 16 (May 23, 2007).

2. Proposals Based on Modified Guard Bands

If the Commission determines that it is possible to modify the 700 MHz Guard Bands and also chooses to adopt the Frontline proposal, then Proposal 4 and Proposal 5 offer the same benefits to the public and to the promotion of a competitive auction. Without Frontline's proposal, Cellular South supports Proposal 5.

b. Proposal 4

The Commission's fourth proposal would divide the Upper 700 MHz Band into an 11 MHz C Block licensed on a REAG basis, an 11 MHz D Block licensed on a REAG basis, and a 10 MHz E Block licensed on an EA basis.²⁰ The Commission could designate the D Block on an EA basis and the E Block as a nationwide license in order to accommodate the Frontline proposal.²¹ If the Commission adopts the Frontline proposal for the E Block, then Proposal 4 would offer small and regional carriers an opportunity to participate in the auction and to secure a nationwide roaming partner. The ultimate beneficiary under this proposal is the consumer, in particular the rural consumer.

c. Proposal 5

The fifth proposal for the Upper 700 MHz Band would allocate the available spectrum into an 11 MHz C Block licensed on a REAG basis, an 11 MHz D Block licensed on an EA basis, and a 10 MHz E Block licensed on an EA basis. Additionally, it would allow combinatorial bidding for the C Block.²² This band plan would allow the Commission to adopt the Frontline proposal by changing the designation of the E Block from an EA geographic basis to a nationwide license. If the Commission took this approach, Proposal 5 would mirror Proposal 4.

²⁰ *FNPRM*, para. 202.

²¹ *FNPRM*, para. 203.

²² *FNPRM*, paras. 204, 206.

If the Commission chooses not to adopt the Frontline proposal or some similar plan that would provide a nationwide wholesale roaming provider, Cellular South supports Proposal 5. A number of commenters voiced their support for this band plan which would encourage broad participation from carriers of various sizes. This proposal would create three, roughly equal blocks of spectrum and because two of the spectrum blocks are divided into EA geographic license sizes which will allow a large number of bidders to participate. However, the proposal could be improved by auctioning one of the blocks on a CMA basis. This would allow small and regional carriers to bid on spectrum in the Upper 700 MHz Band, which would promote rural wireless build out.

III. The Commission Should Incorporate Frontline’s Proposal in the Auction Rules and Should Reject Any Use of Combinatorial Bidding

As stated throughout its Comments, Cellular South supports the Frontline proposal.²³ Frontline’s plan would provide a nationwide interoperable public safety broadband network, and a nationwide data roaming provider that will cooperate with small and regional carriers. The need for an interoperable public safety broadband network is apparent, and several parties submitting Comments noted the need for a nationwide wholesale roaming partner.²⁴ Frontline’s proposal would provide solutions to both problems. Cellular South supports Frontline’s proposal and encourages the Commission to adopt the proposal with license conditions that ensure the E Block licensee will put the spectrum to its intended use.

As a final note, the Commission should not use combinatorial bidding in this auction. Aloha Partners has plainly shown that combinatorial bidding adds unnecessary complexity to the

²³ Cellular South Comments in WT Docket No. 06-150, et al. (May 23, 2007).

²⁴ See e.g. RCA Comments in WT Docket No. 06-150, et al. at 17 (May 23, 2007); Frontier Comments in WT Docket 06-150, et al. at 9 (May 23, 2007); Embarq, CenturyTel and Citizens/Frontier (“Mid-Sized ILECs”) Comments in WT Docket No. 06-150, et al. at 3 (May 23, 2007).

auction process and favors the largest bidders at the expense of all other participants.²⁵ The Commission is on the right path to implementing auction rules that will broaden competition for the 700 MHz spectrum and promote the deployment of advanced wireless services – including broadband – to rural areas. Combinatorial bidding would only serve to frustrate this progress.

IV. Conclusion

Based on the foregoing, Cellular South requests that the Commission implement geographic build out requirements, establish a band plan that uses a mix of small, medium and large geographic license areas, adopt the Frontline proposal, and reject combinatorial bidding.

Respectfully Submitted,

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²⁵ See Aloha Partners Comments in WT Docket No. 06-150, et al. at 5-8 (May 23, 2007); Letter from Charles C. Townsend, President & CEO, Aloha Partners, LP to Marlene H. Dortch, Secretary, Federal Communications Commission, (March 16, 2007) WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309.