

**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 RURAL CELLULAR ASSOCIATION

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SUMMARY

The Commission's tentative decision to adopt stringent performance requirements based on geographic benchmarks and a "keep what you use" rule is the most promising solution to the challenge of providing rural America with the types of communications services that this century's economy will demand. While critics of the Commission proposal complain that the proposal is onerous and unnecessary, RCA disagrees and in this reply explains why:

(1) The current "substantial service" requirements are insufficient. Without the addition of geographic-based construction milestones during the initial license term, "substantial service" as a minimum requirement at the end of the license term will exclude millions of Americans from the benefits available through 700 MHz services. It would be sadly ironic to allow 700 MHz spectrum, which is so well suited for use in rural areas, to lie fallow just because a licensee has no need to serve an area to protect its license for the area. The Commission has a unique opportunity in this proceeding to raise the quality of life and foster economic development in rural America.

(2) Population-based requirements are not an appropriate solution. Population-based requirements motivate licensees to deploy services in densely populated areas. The Commission's PCS license data base contains hundreds of examples of minimum build-out under a POPS-based standard where service does not reach rural areas. What may have been a reasonable standard for PCS at 1.8-1.9 GHz should not be a minimum standard for 700 MHz spectrum.

(3) Geographic-based requirements are necessary. Performance standards based on geographic coverage assure that areas not served are relinquished for use by others after

reasonable periods of time. The administrative burdens alleged by critics are theoretical and overstated, if they exist at all. More importantly, they pale in import when balanced against the benefits of rapid service deployment and a release of spectrum rights to unserved areas.

(4) Construction milestones are essential. The Commission's proposed milestones for geographic coverage during the initial license term are not arbitrary if adopted with the purpose of promoting a national goal of improving the availability of broadband service in rural areas. Rapid and continuous progress in service deployment is consistent with all public interest considerations.

(5) "Keep what you use" is a market-based solution that addresses genuine concerns. Concern by some over uneconomic construction simply to meet FCC build-out requirements is resolved by a system that does not result in automatic forfeiture of a license as long as some portion of the market is served. At the same time, "keep what you use" allows spectrum not used in other areas to be re-licensed or leased to others with a different business model.

(6) Geographic-based requirements are suitable for all sizes of license areas and all sizes of licensees. While RCA is well aware of the challenges small carriers face in build-out, because rural areas are most in need of rapid construction, RCA is convinced that the standard must remain uniform for all sizes of licensees in all EAs and all CMAs. Uniform geographic performance requirements will promote expeditious roll-out to locales in need of high-speed wireless broadband services.

Finally, the Commission should adopt a band plan that makes 700 MHz spectrum available in small and mid-sized license areas in both the Lower and Upper 700 MHz bands. This will allow a diversity of providers to compete for the opportunity to deliver these services to consumers who must have access to them.

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REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”),¹ by its attorney, submits these reply comments in response to comments submitted by numerous parties regarding the Commission’s *Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned dockets.²

¹ RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA’s members serve fewer than 500,000 customers. RCA was formed in 1993 to address the distinctive issues facing wireless service providers. The ability to gain reasonable access to auctioned spectrum in the 700 MHz Band presents one such issue.

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

The Commission’s proposals for 700 MHz auction and regulation must facilitate a thorough and expeditious roll-out of wireless broadband throughout America. This goal can best be achieved by adoption of the Commission’s tentative decision to use performance requirements based on geographic benchmarks and a “keep what you use” rule.³ Equally important to the success of the auction and the near-term availability of advanced wireless services in rural areas is making available sufficient amounts of spectrum with license areas of various sizes.⁴

A. Stringent Geographic-Based Performance Requirements Are Essential to Assuring that Advanced 700 MHz Services Reach Both Rural and Urban Areas

There is considerable disagreement among commenters about the Commission’s proposed geographic area performance requirements and a “keep what you use” approach. Those who don’t fully agree or strongly disagree with the Commission’s proposal do so for several reasons: (1) they believe the current “substantial service” requirements are sufficient; (2) they claim that population-based requirements are appropriate; (3) they quarrel with geographic-based requirements in general; (4) they take exception to the three proposed construction milestones; (5) they argue “keep what you use” is not a market-based solution; and (6) they suggest that

³ Supporters of performance requirements include: Embarq (Mid-sized ILECs) (favors stringent build-out requirements, p.5), Rural Telecommunications Group, Inc. (supports the adoption of interim performance benchmarks but proposes RSA exemption from three and five year requirements), Cellular South Licenses, Inc. (supports geographic performance requirements with 3, 5 and 7-year milestones and build-out showings), McBride Spectrum Partners, LLC (suggesting performance requirements be based on license size), 700 MHz Independents (support the use of the three and five year benchmarks for non-RSA license areas and the use of the eight-year benchmark for all license areas. p.9), Computer & Communications Industry Association (supporting performance requirements and a “Keep what you use” enforcement mechanism. pp. 4-5), Public Knowledge (advancing “use or lose” license conditions. p. iii) and The Wireless Internet Service Provider Association (In favor of RCA proposal with 3 and 5 year benchmark waiver for rural CMAs, p.12. Also, a licensee that fails to meet the applicable benchmarks should not automatically have its license area reduced, but would face a higher level of scrutiny at the end of the license term. p.14.).

⁴ Supporters of licensing the 700 MHz spectrum in a mix of sizes include: Alltel Corporation, Blooston Rural Carriers, Cellular South Licenses, Inc., Centennial Communications Corp., Cyren Call, Dobson, Embarq (Mid-sized ILECs), Frontier Communications, Frontline Wireless LLC, McBride Spectrum Partners, LLC, Metro PCS Communications Inc., Office of Advocacy, U.S. Small Business Administration, Union Telephone Company, United States Cellular Corporation, the Wireless Communications Association International, Inc., 700 MHz Independents, Rural Telecommunications Group, Wirefree Partners III, LLC and The Wireless Internet Service Provider Association.

geographic-based requirements will be too onerous for smaller licensees. To the contrary, it was thoughtful consideration of how the rules should implement the Commission's service-oriented policy goals that led the Commission to a reasonable and appropriate proposal for licensee performance.

1. "Substantial Service" Alone is an Inadequate Performance Requirement

Current Commission performance requirements require licensees to provide "substantial service" within 10 years. Verizon states that this generally has required licensees to "provide service to approximately 25 percent of the population before the end of the license term."⁵ Simply put, the current standard alone will not result in deployment of wireless high-speed broadband access to a great many Americans. This is not the direction in which the Commission should proceed -- 700 MHz spectrum is too valuable a public resource.

In defense of "substantial service," the Telecommunications Industry Association (TIA) argues that "[t]here is no incentive, or ability, for the carriers to buy spectrum and not put it to its highest and best use," and that the current standard is working.⁶ RCA does not disagree that in a perfect market economic logic should compel productive use; rather, RCA's proposal corrects for the possibility of any manner of market failure. More importantly, the performance requirement safeguards only kick-in when the license is under-utilized, at which time the license is made available to other interested competitors. If requirements are better met by sale of the license in a secondary market prior to the required benchmark, that option is fully available to the licensee. TIA's contention (1) does not argue against a more stringent standard, and (2) is not

⁵ Verizon Comments at 29 (May 23, 2007) (citing Verizon Ex Parte (April 4, 2007)).

⁶ Telecommunications Industry Association Comments at 4 (May 23, 2007); this point is echoed by MetroPCS Comments at 34 (May 23, 2007) ("winners of this spectrum have a substantial economic incentive to put the spectrum to beneficial uses as soon as practicable").

a reason to risk spectrum dormancy in the future.

Commissioners and commenters alike have spoken to the value of the 700 MHz spectrum given its unique ability to propagate, lending it to innovative uses and superior build-out efficiencies. A stringent standard is called for and the Commission is allowed, if not obliged, to improve upon weak performance standards of the past.⁷ Arguing that an incentive to build-out already exists both fails to state a reason the new standard is improper and fails to address the wasteful effect of spectrum lying fallow in areas of lesser population.⁸ Second, even if “substantial service” were sufficient in the past, a point RCA does not concede, the Commission is in no way tied by an obligation of symmetry. It has reasonable discretion under Section 332 of the Communications Act to impose new performance requirements on spectrum to be auctioned, and it should use that discretion now.

TIA argues that stringent build-out requirements create an incentive for “[1] uneconomic buildout or [2] the buildout of marginal networks simply to preserve territory.”⁹ Addressing these two points in order: First, though rural build-out is not always economically efficient at the start, it is a national priority and the Commission’s proposal creates no compulsion to build-out against a carrier’s will or economic self-interest. The “Keep what you use” standard instead makes any “uneconomic” area available to anyone with a different business model, at which point the new licensee has the opportunity to serve rural areas that the initial licensee elected to leave unserved. Second, addressing the possibility for sub-par networks, a wireless network that fails to employ a signal level sufficient to provide adequate service will not meet the Commission’s reliable

⁷ RCA is amenable to reasonable exceptions from geographic coverage, e.g., government lands, wild-lands and lakes, but when providers put an undue emphasis on the profits that can be derived in areas of greater population density, rural consumers lose.

⁸ Commenters that request specific examples of warehousing are addressed *infra*, under “Keep what you use.”

⁹ Verizon argues similarly that a population-based standard is better for reason [1]. Verizon Comments at 29.

service standards and will ultimately be reoffered at auction and made available for licensing to a provider willing and able to undertake these build-out requirements.¹⁰ The reality is that geographic build-out requirements are the best solution to reverse the present course of rural America's slipping farther behind other nations in broadband deployment.¹¹ When MetroPCS speaks for rural carriers, it should be noted that agreement with MetroPCS is limited to their endorsement of small and varied license areas and does not extend to their view on geographic performance requirements.¹²

Both MetroPCS and the 4G Alliance (4G) call for "Substantial Service" based upon the "flexibility" it provides.¹³ That "flexibility" translates into an unacceptably slow build-out in rural areas while permitting licensees to maximize profits by focusing on high-population-density areas. RCA believes the resulting effect to be contrary to the country's best interests. While "Substantial Service" with safe-harbors was expected to ensure prompt delivery of service in rural areas, protect from warehousing and promote investment, opponents of a change do not make clear why geographic performance requirements will not better achieve these goals. Meeting a past goal of serving 25 percent of a population aims too low; advocates should bear the burden of proof in arguing against a change.¹⁴

¹⁰ AT&T similarly suggested "low-grade networks" may result. AT&T Comments at 17 (May 23, 2007) ("AT&T"). RCA would advise these carriers against building networks of poor quality and instead propose these areas be resold in the secondary market to which Motorola alludes, n. 7, *infra*.

¹¹ *See, e.g.*, Organization for Economic Cooperation and Development, Broadband Statistics to December 2006 (showing that the U.S. has dropped to fifteenth worldwide in broadband subscribers per 100 inhabitants), available at www.oecd.org/sti/ict/broadband. While some may cite the low population density of large areas of the U.S. as a reason for its low ranking, the U.S. is ranked below other countries with substantial rural areas, such as Canada, Norway, and Sweden.

¹² MetroPCS Comments at 36

¹³ MetroPCS Comments at 31; 4G Comment at 13-14 (May 23, 2007).

¹⁴ Referencing Verizon's indication that "Substantial Service" leads to 25 percent population coverage over the term of a license, *supra* at 3.

2. The Problem with a Population-Based System (POPS)

Verizon proposes an alternative POPS-based plan requiring 50 percent POPS coverage of the population in their license areas within five years; if a licensee misses the mark the license term would be shortened from ten to eight years. If 75 percent POPS coverage were not achieved by the second benchmark, within eight or ten years depending on earlier compliance, the remaining unserved area would be returned for re-auction.¹⁵ Verizon's POPS-based plan delays too long the build-out for rural areas. Under Verizon's plan underserved areas must wait an additional three years while the carrier decides whether to build-out and utilize the spectrum. RCA's plan, *infra*, allows a reasonable, three-year, period of time for an initial stage of completion. At that point the license area would be reduced according to the percentage coverage requirement so that relinquished areas can be available to a more willing service provider.

Moreover, POPS-based requirements are inappropriate because they incent high-revenue-producing urban build-out while failing to promote construction in rural areas, to the detriment of rural consumers. Rules that allow spectrum to lie fallow in rural areas most certainly would not promote the availability of wireless broadband services in rural areas. Continuing delay in deployment of these necessary services to rural consumers is neither acceptable nor inevitable. The Commission's current proposal will result in rules that facilitate carrier decisions in seeking a balance of profit and consumer welfare. In a geographically based system, the licensee keeps the area it uses and more, according to the relevant percentage of area requirement during the initial license term. This strikes the proper balance between carriers' rights to pursue profit opportunities and the public policy goal of expediting the availability of wireless broadband services to rural areas. If the prospects for return on investment are not alluring to one bidder, the

¹⁵ Verizon Comments at 29.

license may go to another bidder with a different business plan.

3. Geographic-Based Requirements Strike the Proper Balance and are Not Burdensome

MetroPCS cites the need for new entrants to build from the ground up and notes an incumbent advantage due to this fact.¹⁶ Yet this is not a public policy problem. Prospective entrants are free to bid on whatever license(s) they can reasonably commit to building-out in the allotted time. Market participants are neither compelled to bid nor compelled to build-out areas they find economically impractical. To the extent consumer service obligations reduce auction proceeds – a theory not yet borne out – the public benefit of promoting a national service that is equal must also be valued. To the extent incumbents have advantages through existing footprints, the better the result for the public if it allows faster deployment of service.

It has also been suggested that geographic coverage monitoring and administrative burdens are too great.¹⁷ However, a licensee should know where its signal is reliable, and it is not too great a burden to share that information with the public. The Wireless Telecommunications Bureau, just two months ago, asked service providers to submit, in electronic format, their CMRS coverage maps to better allow the Commission to evaluate the status of market competition.¹⁸ The Commission now has the opportunity to require 700 MHz licensees to file maps and data that demonstrate reliable service. RCA believes this is a reasonable and verifiable process. Carrier submissions should ease, rather than exacerbate, any administrative fact-finding burden. Additionally, the task of re-auction can be minimized by the Commission's scheduling

¹⁶ MetroPCS Comments at 35.

¹⁷ Verizon Comments at 30 (arguing they are greater than population-based metrics); MetroPCS Comments at 30, 36 (May 23, 2007). (adopting Commission's proposal would drive down auction resources earmarked for the Digital Television ("DTV") transaction; regulation is overly cumbersome).

¹⁸ Public Notice, "WTB Seeks Comment on CMRS Market Competition," WT Docket No. 07-71 (DA 07-1652), released April 6, 2007, at 3.

of periodic auctions for all relinquished areas.

Finally, several commenters noted the uncertainty regarding the RCA plan's effect on bidding. Verizon implies that the RCA plan may "delay or foreclose" service if, after unused spectrum is reclaimed, no new bidder materializes.¹⁹ This mis-frames the issue. The current licensee has failed to provide service, so to imply RCA's plan causes diminished service is a red herring. Re-auctioning the spectrum, possibly without a reserve price, provides another interested party the opportunity. MetroPCS argues that RCA's plan may "deter the participation in the auction of certain qualified bidders."²⁰ Performance Requirements only deter those prospective licensees who are not committed to providing service to rural and urban consumers alike.²¹

4. The Three Proposed Construction Milestones are Reasonable and Necessary to the Goal of Promoting 700 MHz Service Availability in Rural Areas as Well as Urban Areas

The Commission proposes that each licensee of 700 MHz Commercial Service within three years must provide coverage to 25% of the geographic area of its license, 50% of this area within five years and 75% of the area within eight years with the possibility for exclusion of government land in each case.²² Under the "Keep what you use" approach, licensees that fail to meet these requirements see their license area reduced until the area covered meets the relevant interim benchmark.²³

¹⁹ Verizon Comments at 30.

²⁰ MetroPCS Comments at 30.

²¹ Because there is no ready substitute for 700 MHz spectrum - it is a more inelastic good than other commodities, such as oil or coal (which can be brought in from off-shore sources) - any negative effect derived from these very necessary requirements will be tempered.

²² RCA has no qualms with extending the federal exemption to significant uninhabitable tracts of land and water, nor would it oppose a Commission decision to limit exclusions to those with a minimum amount of acreage.

²³ RCA would not object to a modification of the construction benchmarks during the initial license term to base the starting reference date on the deadline for broadcasters to clear the 700 MHz spectrum, February 17, 2009, rather than the initial license grant date. *See* 4G Comments at 18.

MetroPCS faults the proposed standards, claiming they are arbitrary in nature, stating

There is no objective, defensible basis for ascertaining whether 25% is too low or 75% is too high; or whether 4 years is too short or 8 years is too long. And, there is no reason to assume that the optimal economically justified build out will be the same in a densely populated northeastern state and a sparsely populated state in the western plains.²⁴

These requirements are no more arbitrary than past population coverage requirements and, as absolute minimums of acceptable service provision, are decisive and necessary to adequately inform licensees of their build-out obligations. The prices paid for licenses at auction will reflect the value differentials in sparsely and densely populated regions (licenses in Northeastern states and those in Western plains will not likely be won at the same price). Smaller license area sizes ensure proper valuation based upon specific geographic characteristics of the license area. “Optimal economically verified” build-outs will integrate license cost differentials and any reasonable business plan will account for performance requirements in the bidding price. If some applicants are “discouraged” from acquiring licenses in less-densely-populated areas, more efficient service providers will prevail. If an area’s build-out costs are high, a lower license price will reflect this.

Urgency of the build-out is also a key element. 4G suggests that developing a service standard could take three years; Verizon suggests a five-year initial date certain would be more appropriate.²⁵ This was not an issue in the context of PCS. The Commission left the showing of “reliable service” undefined so as to enable the carrier to submit a showing reflective of its technology selection. RCA does not object to a definition of reliable service if the Commission concludes it may proceed with the auction on schedule and arrive at that definition when

²⁴ MetroPCS Comments at 36.

²⁵ 4G Comments at 14, Verizon Comments at 28 n.62.

circumstances permit.

5. “Keep What You Use” Rule Is the Optimal Market-based Enforcement Mechanism to Advance the Commission’s Rural Service Goals

A “Keep what you use” system is fully consistent with the pursuit of market-based goals; it adds to such a system by curbing inefficiencies. The two major criticisms of this system are that (1) there is no real world problem to be addressed; and that (2) “Keep what you use” is not a market based solution.

First, MetroPCS claims there is no compelling evidence of spectrum warehousing.²⁶ In response, RCA would direct attention to the PCS licenses purchased in FCC Auction #4 that were subject to population-based build-out requirements and that permitted licensees to avoid service to rural areas for the entire license term and possibly decades to come. Large wireless carriers with Major Trading Area (MTA) licenses could demand favorable roaming terms from rural carriers as a trade-off for abstention from construction under MTA licenses in rural areas.

Second, AT&T argues that “Keep what you use” breaks with the Commission policy of relying on the marketplace; Motorola adds that secondary markets are sufficient to eliminate any potential for waste.²⁷ These sentiments overlook the fact that “Keep what you use” is indisputably a market-based solution. The auction process allows various competitors to determine what the proper market value of unused spectrum should be, while the added value of re-licensing areas not served is that it avoids spectrum waste. Whereas unused spectrum can be warehoused when secondary markets are exclusively relied upon, “Keep what you use” assures that areas not served are available to others after a reasonable time has passed for carriers to offer

²⁶ MetroPCS at 31.

²⁷ AT&T at 17; Motorola Comments at 34-35 (May 23, 2007).

service.²⁸ Carriers are allowed, and encouraged, to engage in secondary markets, but there must be a check on the potential for deliberate actions that are harmful to consumers. 4G's footnoted comment citing the possibility for a compelling case that no regulatory obligations should be necessary given the high prices for which 700 MHz spectrum will be auctioned indicates a disturbing logic – one that suggests a licensee is entitled to reduce competition if a high-enough price is paid.²⁹

6. Geographic-Based Requirements are Not Too Onerous for Smaller Licensees

The Commission proposed to apply geographic performance requirements on an EA and CMA basis only. Rural Telecommunications Group, Inc., (RTG) and the 700 MHz Independents seek exemptions for small carriers. Though fully cognizant of the difficulties small carriers face in build-out, because rural areas are most in need of rapid construction, RCA is convinced that the standard must remain uniform for all sizes of licensees in all EAs and all CMAs.³⁰

B. A Mix of License Area Sizes Should Be Auctioned

No one would explicitly argue against a competitive auction. However, that is the practical effect of any arrangement that allots licenses on a large geographic basis to the exclusion of mid-sized and smaller-sized license areas.

Whereas Verizon would prefer that the auctions be geared to “allow carriers to focus on build out rather than spectrum acquisition,” RCA believes a mix of license area sizes is fully appropriate; the over \$13 billion success of the AWS-1 auction testifies to mixed-sized auction

²⁸ RCA proposed that all areas not served by the end of the initial license term be relinquished so that they are available for re-licensing to anyone other than the company (and its affiliates) that elected not to serve the area.

²⁹ 4G Comments at 13 n.16.

³⁰ 700 MHz Independents at 9 (May 23, 2007); Rural Telecommunications Group, Inc. at 8 (May 23, 2007).

success.³¹ When large carriers argue that they need big license sizes they are essentially asking for less competition in the auction and, in all probability, a discount on their purchases. When large carriers claim they need big license areas in order to “focus on build out,” and then argue against strict geographic-based build-out requirements, the inescapable conclusion is that large carriers are hoping for exclusive access to an auction that would allow valuable 700 MHz spectrum to be locked down in large areas for decades to come.

By comparison, rules that provide for licensing spectrum with blocks that include EAs and CMAs still allow large carriers to target areas that they genuinely intend to serve. A balanced mix of license area sizes also allows for provision of service to rural and underserved high-cost areas by small carriers and new entrants.

In conclusion, RCA asks that the Commission adhere to its proposed geographic-based performance requirements for markets of all sizes. It is vital that people in all areas of this nation have the opportunity to benefit from this limited public resource.³²

Respectfully submitted,

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³¹ Verizon Comments at 9 (May 23, 2007); FCC, *Summary of Round Results: FCC Advanced Wireless Services Auction No. 66*, http://wireless.fcc.gov/auctions/66/charts/66press_2.pdf (last visited May 17, 2007). Commenters have asked why the 700 MHz spectrum requires more protection than that of the spectrum in the AWS-1 auction. 700 MHz spectrum has better propagation characteristics than AWS spectrum. This Commission should not be bound by a build-out standard that applied to 2 GHz spectrum when it adopts rules for 700 MHz licenses.

³² These reply comments were prepared with the assistance of W. Adam Thomas, law student at the University of Pittsburgh.