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 METROPCS COMMUNICATIONS, INC.

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Summary

MetroPCS Communications, Inc. ("MetroPCS") is submitting reply comments in response to the Commission's *Further Notice of Proposed Rulemaking* (the "*FNPRM*") in the above-captioned proceedings. The comments overwhelmingly demonstrate that the Commission should continue using a marketplace-based approach to govern the highly successful and competitive wireless industry and to auction spectrum used by the wireless industry. Specifically, based upon the extensive record in the proceeding, the Commission should adopt its current proposal for the Lower 700 MHz Band, as well as its Proposal 2, or in the alternative, Proposal 5, for the Upper 700 MHz Band, in order to create meaningful opportunities for all prospective bidders, incumbents and new entrants alike, and to assure a competitive auction that is likely to assign licenses efficiently and in accordance with the public interest.

Commenters representing a widespread cross-section of industry participants advocate a "building block" approach to the 700 MHz band plan that offers spectrum in certain smaller spectrum blocks over smaller service areas. Support for the Commission's Lower 700 MHz Band Plan is nearly unanimous. And, a diverse group comprised of industry groups, industry representatives and carriers of all sizes, with many different business models, and at different stages of development (incumbents and new entrants), generally favor either Proposal 2 or Proposal 5 for the Upper 700 MHz Band. This approach permits active participation by smaller and regional carriers, while still allowing large carriers to aggregate spectrum and geography if necessary for their particular business plan.

The record demonstrates that the Commission should reject performance or construction requirements based on geographic benchmarks. An arbitrary high geographic coverage requirement would force licensees to build networks according to a government-imposed

timetable, rather than according to market demands, and would cause carriers to engage in uneconomic contraction which would harm competition. The Commission should heed the comments of a wide majority of industry associations, nationwide carriers, regional carriers, potential entrants, and rural carriers which demonstrate that the Commission should not impose overly restrictive performance requirements which contradict the Commission's market-based policies for CMRS providers.

In addition, the record establishes that the Frontline proposal has not been embraced by the public safety community, the Department of Homeland Security or by the wireless community. Most commenters see through Frontline's scheme of having the Commission earmark 10 MHz of spectrum to match its own business plan for commercial use. Any such earmark would violate Commission precedent and sound auction policy, as well as contravene the admonition of former FCC Chairman Reed Hundt (now of Frontline), who stated that commercial spectrum should be used "any way the auction winners want: no restrictions, no rules, total flexibility." Moreover, there has been no outpouring of broad-based support for the Frontline proposal by representatives of the public safety community. Indeed, a number of commenters which purport to endorse the Frontline proposal do so only with the caveat that substantial changes would be required, many of which are rejected by Frontline. These changes include a dispute over what happens to the 10 MHz of earmarked spectrum in the likely event that the public safety licensee and the E Block winner do not agree on a network sharing arrangement. The Commission would be making a serious mistake, do violence to a host of regulatory principles, and subject public safety and first responders to significant risk were it to endorse the Frontline proposal, or one of its variations as proposed by others.

Lastly, with respect to the other aspects of the 700 MHz auction, MetroPCS shares the views of a substantial majority of commenters that the Commission should allow marketplace forces to govern the auction, rather than regulatory fiat, and (1) should not adopt any form of combinatorial bidding for the 700 MHz auction; (2) should not impose incumbent eligibility rules or "open access" rules to the 700 MHz spectrum; and (3) should not adopt anonymous bidding procedures for the 700 MHz auction.

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REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its reply comments in response to the *Further Notice of Proposed Rulemaking,* FCC 07-72, released April 27, 2007 (the "*FNPRM*")[2] in the above-captioned proceedings. In reply, the following is respectfully shown:

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[1] For purposes of these Reply Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *See 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 License 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*, Further Notice of Proposed Rule Making, FCC 07-72 (rel. April 27, 2007) ("*FNPRM*"), 72 Fed. Reg. 24238 (May 2, 2007).

I. THE COMMISSION'S LOWER 700 MHZ BAND PROPOSAL, AND ITS PROPOSAL 2 FOR THE UPPER 700 MHZ BAND, ENJOY WIDESPREAD SUPPORT FROM DIVERSE PARTIES

In the *FNPRM*, the Commission sought comment on different band plan proposals for the Lower 700 MHz Band and the Upper 700 MHz Band which included the use of Cellular Market Areas ("CMAs"), Economic Areas ("EAs"), and Regional Economic Areas ("REAGs).[3] The commenters are nearly unanimous in their support of the Commission-proposed band plan for the Lower 700 MHz Band. In addition, an overwhelming majority of commenters support Proposal 2, or in the alternative Proposal 5, for the Upper 700 MHz Band. These near-consensus positions are not surprising since these plans – which largely conform to the "Balanced Consensus Plan"[4] endorsed prior to the release of the *FNPRM* by MetroPCS along with a very diverse group of industry groups, industry representatives and carriers of all sizes, with many different business models and at different stages of development – allow entities of all types and sizes to participate meaningfully in the upcoming auction. These band plans offer a variety of smaller license blocks that can be assembled in a "building blocks" approach, and a variety of geographic areas that permit active participation by incumbent carriers both, large and small, and new entrants, while still allowing those carriers and new entrants who want more than the basic building blocks of spectrum or geography to aggregate spectrum and geography for their particular business plans. The result will be a fair and open auction process in which winners

[3] *FNPRM* at para. 176.

[4] The term "Balanced Consensus Plan" *refers* to the plan filed on October 20, 2007 as modified on April 18, 2007. *See* Letter from Alltel, *et al.* to Marlene H. Dortch, Secretary, FCC, Docket No. 06-150 (filed Oct. 20, 2006) ("Balanced Consensus Plan") (Signatories include Alltel, Aloha, Blooston, C&W, ConnectME Authority, Corr, Dobson, Leap, Maine Office of Chief Information Officer, MetroPCS, NTCA, Nebraska PSC, North Dakota PSC, Rural Cellular Association ("RCA"), Rural Telecommunications Group, ("RTG"), Union Telephone, U.S. Cellular, Vermont, *et al*, Vermont Telephone Company), *see Ex Parte* Letter from members of the Coalition Supporting the 700 MHz Balanced Consensus Plan to Chairman Martin, Commissioner Adelstein, Commission Copps, Commissioner Tate, and Commission McDowell, WT Docket No. 06-450 (filed April 18, 2007).

and losers will be determined by free market forces, not by regulatory fiat. In this manner, the Commission has the best chance of replicating the success of its highly acclaimed AWS auction, which was described properly by Chairman Martin as the "biggest, most successful wireless auction in the Commission's history."[5]

A. There is Nearly Unanimous Support for the Commission's Lower 700 MHz Band Plan Proposal

Commenters overwhelmingly support the Lower 700 MHz Band plan.[6] Indeed, even the few commenters who claim that the Upper 700 MHz Band should contain one larger (20 MHz+) spectrum block do not ask the Commission to alter its proposed Lower 700 MHz Band plan. The Commission's proposal for the Lower 700 MHz Band properly allows for a mix of geographic areas. Notably, it includes one CMA, which is extremely important to rural carriers who hold great promise for increasing the penetration of broadband services in rural areas. Equally important, as previously noted, the Commission's Lower 700 MHz Band plan is supported by a broad cross-section of carriers, "including nationwide carriers, large regional carriers, mid-sized carriers, rural carriers, independent phone companies, rural associations, and state agencies."[7]

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[5] FCC News Release, "Statement of Chairman Kevin J. Martin on the Conclusion of Advanced Wireless Services Auction," September 18, 2006.

[6] Comments of US Cellular at 6-9; Comments of Frontier at 2-3; Comments of WCA at 12-13; Comments of Union Telephone at 3-6; Comments of Wireless Internet Service Provider Association at 4-5; Comments of Rural Cellular Association ("RCA") at 11-18; Comments of Centennial Communications Corp. at 2-9; Comments of Cellular South at 8-19; Comments of Rural Telecommunications Group ("RTG") at 3-8; Comments of Dobson Communications Corp. ("Dobson") at 1-2; Comments of Leap at 2-5; Comments of National Telecommunications Cooperative Association ("NTCA") at 2-5; Comments of Alltel Corporation ("Alltel") at 3-4; Comments of SpectrumCo at 3-16; Comments of Sprint Nextel at 2-7; Comments of AT&T, Inc. ("AT&T") at 3-12; Comments of Blooston Rural Carriers at 2-5; Comments of Aloha Partners, L.P. ("Aloha") at 2-3.

[7] Comments of MetroPCS at 23.

B. There is Widespread Support From a Wide Variety of Carriers for Smaller Service Areas and Smaller Service Blocks for the Upper 700 MHz Band

The vast majority of commenters support an Upper 700 MHz Band plan that consists of smaller service areas and smaller service blocks.[8] These comments convincingly demonstrate that the Commission should adopt its Proposal 2, or in the alternative, Proposal 5, for the Upper 700 MHz Band.[9] The commenting parties conclusively establish that substantial benefits result from splitting the 20 MHz block in the Upper 700 MHz Band into two 10 MHz blocks and allocating two of the three service blocks utilizing smaller service areas in the Upper 700 MHz Band.[10] Indeed, supporters of this subdivision include not only members of the Balanced Consensus Plan coalition – who themselves represent a vast cross-section of wireless industry

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[8] Comments of US Cellular at 6-9; Comments of Frontier at 2-3; Comments of WCA at 12-13; Comments of Union Telephone at 3-6; Comments of Wireless Internet Service Provider Association at 4-5; Comments of Rural Cellular Association at 11-18; Comments of Centennial Communications Corp. at 2-9; Comments of Cellular South at 8-19; Comments of Rural Telecommunications Group ("RTG") at 3-8; Comments of Dobson Communications Corp. ("Dobson") at 1-2; Comments of Leap at 2-5; Comments of National Telecommunications Cooperative Association ("NTCA") at 2-5; Comments of Alltel Corporation at 3-4; Comments of SpectrumCo at 3-16; Comments of Sprint Nextel at 2-7; Comments of AT&T, Inc. ("AT&T") at 3-12; Comments of Blooston Rural Carriers at 2-5; Comments of Aloha Partners, L.P. ("Aloha") at 2-3.

[9] MetroPCS still is studying and has not yet formed a position on whether the Commission should eliminate the Guard Band B Block or reduce the Guard Band B block from 4 to 2 MHz, while shifting the location of both the Guard Band A and B blocks within the Upper Band.

[10] Comments of US Cellular at 6-9; Comments of Frontier at 2-3; Comments of WCA at 12-13; Comments of Union Telephone at 3-6; Comments of Wireless Internet Service Provider Association at 4-5; Comments of Rural Cellular Association ("RCA") at 11-18; Comments of Centennial Communications Corp. at 2-9; Comments of Cellular South at 8-19; Comments of Rural Telecommunications Group ("RTG") at 3-8; Comments of Dobson Communications Corp. ("Dobson") at 1-2; Comments of Leap at 2-5; Comments of National Telecommunications Cooperative Association ("NTCA") at 2-5; Comments of Alltel Corporation ("Alltel") at 3-4; Comments of SpectrumCo at 3-16; Comments of Sprint Nextel at 2-7; Comments of AT&T, Inc. ("AT&T") at 3-12; Comments of Blooston Rural Carriers at 2-5; Comments of Aloha Partners, L.P. ("Aloha") at 2-3.

representatives[11] -- but also SpectrumCo (a consortium of cable companies referred to below as the "Cable Wireless Group"), T-Mobile, AT&T,[12] and Sprint Nextel. It is very significant that three of the four nationwide wireless providers,[13] - - as well as the Cable Wireless Group, which succeeded in assembling close to a nationwide footprint in the AWS auction – have joined the already impressive collection of supporters of the Balanced Consensus Plan, to support splitting the large spectrum block in the Upper 700 MHz Band into smaller blocks. The Commission in the past has heralded situations when an industry consensus emerges in the course of a rulemaking proceeding, and has taken allocation steps that accommodate consensus proposals which reflect a strong market signal. Properly viewed, the record provides the Commission with overwhelming evidence that Proposal 2 is the right outcome for all types of providers, regardless of their relative size, geographic coverage or business plan. As noted time and time again in the comments, the Commission should adopt a band plan that maximizes participation in the auction and does not prejudge the auction results – or select winners or losers prior to the auction.[14] Proposal 2 for the Upper 700 MHz Band is just such a proposal because it will give incumbents and new entrants of all sizes a chance to participate and to succeed in the 700 MHz auction while

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[11] *See* Letter from Alltel, *et al.* to Marlene H. Dortch, Secretary, FCC, Docket No. 06-150 (filed Oct. 20, 2006) ("Balanced Consensus Plan") (Signatories include Alltel, Aloha, Blooston, C&W, ConnectME Authority, Corr, Dobson, Leap, Maine Office of Chief Information Officer, MetroPCS, NTCA, Nebraska PSC, North Dakota PSC, Rural Cellular Association ("RCA"), Rural Telecommunications Group, ("RTG"), Union Telephone, U.S. Cellular, Vermont, *et al*, Vermont Telephone Company).

[12] AT&T's band plan proposal supports a split of the large spectrum block into two smaller spectrum blocks, but advocates for 2 blocks in the Upper 700 MHz Band to be REAGs.

[13] While T-Mobile did not file Comments in response to the *FNPRM*, it previously supported the modified consensus band plan proposal in an *ex parte* letter to the Commission. *See Ex Parte* Letter from Kathleen O'Brien Ham of T-Mobile to Marlene H. Dortch, WT Docket No. 06-150 (filed April 18, 2007).

[14] Comments of MetroPCS at 25-28.

providing carriers and new entrants seeking to aggregate spectrum a meaningful opportunity to do so.

The few commenters opposing the division of the 20 MHz spectrum into two 10 MHz blocks, and supporting the use of REAGs for the entire Upper Band, do not provide compelling reasons to do so. Since the building block approach has been used with such great success, those seeking to change it should bear the burden. Both Verizon Wireless and the Coalition for 4G in America[15] advocate an Upper 700 MHz Band plan that incorporates the Alternative BOP plan, a 20 MHz (or 22 MHz) spectrum block, and geographic areas consisting entirely of REAGs. Verizon Wireless argues that an Upper 700 MHz Band plan that consists of a 20 MHz spectrum block and REAGs will "significantly advance deployment and delivery of next generation wireless services."[16] The Coalition for 4G in America argues that, without an 22 MHz block, which it deems necessary to provide substantial broadband services, bidders would face an exposure risk, and be reluctant to bid the full value for each license for fear that they may be outbid for a critical license to another bidder or be forced to pay too much for licenses it does acquire.[17] The Commission cannot overlook the fact that the proponents of this "large-areas/large-blocks" plan are well-heeled companies who face little real risk of being frozen out of licenses they desire. The more likely motivation is their hope that their "bigger is better" band plan would effectively freeze out any meaningful participation from small or regional carriers in

[15] The Coalition for 4G in America includes: The DirectTV Group, Inc., EchoStar Satellite, L.L.C., Google Inc., Intel Corporation, Skype, Inc., Yahoo Inc., and Access Spectrum, LLC.

[16] Comments of Verizon Wireless at 8.

[17] Comments of Coalition for 4G in America at 4-5.

the Upper 700 MHz Band and, as a result, allow the large players to acquire spectrum at an unfair discount.[18]

The Commission should not skew its 700 MHz Band plan to favor any particular carrier or business plan, especially for a small subset of large financially well-off companies, many of which have no experience as winning bidders in previous Commission auctions and/or have not indicated firm plans to bid in the 700 MHz auction. Doing so would reverse wise, long-standing policies against tailoring band plans and regulations to particular competitors or specific business plans.[19] As Sprint Nextel aptly notes, "[r]etaining a 20-megahertz or larger spectrum block in the 700 MHz band will disadvantage participants with fewer resources as well as those who are willing to pay more for strategically important spectrum assets smaller than twenty megahertz. Reservation of such a large portion of the band in a single license could prevent them from being able to participate in the bidding or force them to acquire more bandwidth than they need to deploy wireless broadband services."[20]

The comments convincingly demonstrate that larger blocks are not necessary for high speed broadband data service. These commenters include the vast majority of potential applicants, as well as many of the manufacturers of broadband-related equipment. Qualcomm - - a leader in technological developments in the wireless arena -- notes that even a spectrum block as small as 5 MHz would allow for a choice of broadband technologies, including 3G CDMA technologies.[21] In addition, Ericcson - - another industry leader in wireless technology -- notes that "the record shows that allocating an overly large 22 MHz size block is unnecessary and,

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[18] These carriers do not address the threshold problem for smaller carriers which will result from larger blocks and/or combinatorial bidding.

[19] Comments of MetroPCS at 25.

[20] Comments of Sprint Nextel at 3.

[21] Comments of Qualcomm at 16.

instead, diverts the use of the spectrum away from frequency arrangements that could actually lower the technical requirements for the broadband technologies, and thereby lower the cost to consumers."[22] Ericsson goes on to state - - correctly in the view of MetroPCS -- that "the Commission's decisions should not exclude existing carriers from the auction or slant spectrum allocations and band plans to advantage a specific entry artificially."[23] Ericsson points out correctly that "existing carriers using the 3GPP technologies are already bringing the third broadband pipe to subscribers nationwide."[24] Sprint Nextel also illustrates that "[e]ach of the two, ten megahertz blocks would provide sufficient capacity for three CDMA EVDO channels or two five-megahertz WiMax TDD channels."[25] Notably, the operating experience of MetroPCS also supports this conclusion. In Detroit and Dallas, MetroPCS is licensed for and operating on only 10 MHz of PCS spectrum.[26] Nonetheless, MetroPCS has managed to implement state-of-the-art broadband networks that provide both voice and data services and are enjoying rapid customer acceptance.

The key, though, to the building blocks approach advocated by MetroPCS and others is that proponents of larger spectrum blocks and larger service areas are not precluded in any way from aggregating spectrum to fit their own business plans during the course of the auction or in the secondary market afterwards. Prior auctions and the record in this proceeding clearly demonstrate that carriers who wish to aggregate spectrum are able to do so with smaller spectrum blocks and smaller service areas in a simultaneous multiple round ("SMR") auction

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[22] Comments of Ericsson, Inc. ("Ericsson") at 2.

[23] *Id.* at 3.

[24] *Id.* at 7.

[25] Comments of Sprint Nextel Corporation ("Sprint Nextel") at 2.

[26] MetroPCS currently has 20 MHz of spectrum in Dallas and Detroit (10 MHz of PCS spectrum and 10 MHz of AWS spectrum), but is currently using only the 10 MHz of PCS spectrum to provide service while it is clearing and building its AWS spectrum.

without combinatorial bidding. Thus, if a bidder decided that it needed a 20+ MHz contiguous block to provide a specific type of service, the Commission's Proposal 2 would allow the bidder to aggregate adjacent channels (and adjacent territories) to acquire this spectrum. Carriers can follow the approach of the Wireless Cable Group in Auction No. 66, which aggregated a near nationwide license using a building block strategy. This approach is endorsed by Dr. Coleman Bazelon of the Analysis Group, who demonstrates that past auction experience and economic principles should lead the Commission to adopt a building block approach that favors smaller geographic areas and a division of the Upper 700 MHz Band into three 10 MHz blocks.[27]

Further, there is no need for the Commission to favor in its allocation decisions particular commenters or groups of companies who profess an intention to provide a "3rd broadband pipe into the home." Contrary to the views of those commenters who suggest that specific portions of spectrum need to be earmarked for broadband in order to provide a third pipe to the home, there already is substantial activity pertaining to the provision of broadband services to consumers outside of incumbent cable operators and telephone companies.[28] This activity is coming from new, disruptive technologies, such as broadband-over-powerlines, municipal-Wi-Fi, WiMax, broadband over 2.5 GHz spectrum, and from existing wireless carriers. For example, as has been noted accurately by CTIA, "[w]ireless carriers are not only delivering a broadband pipe to the

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[27] Letter from Michele C. Farquhar, Attorney for SpectrumCo, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed Jan. 8, 2007) ("The Economies of License Sizes in the FC's 700 MHz Band Auction," Coleman Bazelon, Jan. 8, 2007); Letter from Michele C. Farquhar, Attorney for SpectrumCo, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed Mar. 6, 2007) ("Principles for Choosing 700 MHz Block License Sizes," Coleman Bazelon, Mar. 6, 2007); Letter from Michele C. Farquhar, Attorney for SpectrumCo, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed Apr. 20, 2007) ("Why the Exclusive Use of Large Licenses in the Upper or Lower 700 MHz Bands Would Reduce the Efficiency of the 700 MHz Auction," Coleman Bazelon, Apr. 20, 2007). Further, the disappointed bidders can also acquire spectrum in the secondary market.

[28] Comments of MetroPCS at 7-8.

home and the office . . . wireless is delivering service to the person, wherever they are, when they want it."[29] Wireless carriers currently are providing wireless broadband coverage to more than 235 million people across the country.[30] In addition, as AT&T points out, in June 2006, more than 63.3 percent of U.S. zip codes were served by 5 or more high-speed service providers and more than 76% had four or more providers.[31]

The arguments of Verizon Wireless and the Coalition for 4G in America for larger geographic service areas presume that a nationwide license is necessary to provide certain services, or that a nationwide provider may provide services more effectively than a local or regional provider. There is, however, absolutely no evidence in the record demonstrating that a nationwide provider is any more likely to provide high-speed broadband services using 700 MHz spectrum than a regional or rural provider, especially outside of the top 50 metropolitan areas. There also is no reason to assume that a national provider would be able to provide high-speed broadband service more efficiently, more quickly, or to a greater number of people in a served area, than a local or regional provider. Indeed, regional and rural carriers at present have the best track record of providing wireless broadband services to underserved areas. For example, as demonstrated by CTIA, ACS is offering EV-DO-based broadband coverage to areas in Alaska, Cellular South is provide EV-DO coverage to areas in Mississippi, and other companies such as Midwest Wireless and NTELOS, just to name a view, are offering wireless broadband in a variety of areas outside of major markets at this very moment.[32] Thus, it is clear that having a

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[29] Comments of CTIA at 12.

[30] *Id.* at 14.

[31] Comments of AT&T at 33.

[32] Comments of CTIA at 15.

nationwide license is in no way a prerequisite to providing broadband service in unserved areas and may in fact distract a licensee from providing service to unserved areas.[33]

There also is no merit to the argument that the only way to ensure broadband service to rural consumers is to place 700 MHz spectrum in the hands of large, nationwide carriers. As Union Telephone notes, "[t]he suggestion that auctioning 700 MHz spectrum in large license areas will lead to an increase in service to rural areas is unsupported by the results of the FCC's previous spectrum auctions and would unfairly shut out small carriers who are in the best position to serve rural consumers."[34] In addition, Cellular South notes that "[t]here is no reason to believe that a new entrant with a nationwide footprint would deploy advanced wireless services in those areas where national carriers have failed to provide even basic wireless services."[35] Rural carriers can provide wireless broadband service over 700 MHz spectrum just as easily as a nationwide provider - - and perhaps even easier since they already have existing facilities and relationships - - and thus the Commission need not allocate a large spectrum block on a large service area in the Upper 700 MHz Band.

Lastly, MetroPCS opposes any use of a two-sided auction for any of the 700 MHz spectrum, including any of the guard band spectrum. These new procedures would be difficult for the Commission to fully vet through the public comment process, and to implement properly in the short time mandated by the Commission's statutory auction deadlines and could have

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[33] Indeed, given the cost to build a network and the fact that on a nationwide basis most of the demand resides in the top 50 metropolitan markets, a nationwide licensee is more likely to construct the major metropolitan areas first and defer construction for rural areas until later. We note in this regard that the Coalition for 4G in America favors a "substantial service" standard for construction which would allow it to focus its construction in major markets. Licensing in smaller geographic areas allows applicants who have an interest in serving rural areas to begin offering service substantially before those markets would be of interest to a larger national carrier.

[34] Comments of Union Telephone Company ("Union Telephone") at 7.

[35] Comments of Cellular South at 9.

negative consequences. In addition, it is not clear that the Commission has the authority to auction spectrum that it does not hold. A two-sided auction violates the plain language of Section 309 of the Communications Act, which states that the Commission is required to deposit all revenues from spectrum auctions into the U.S. Treasury.[36] Under a two-sided auction, some of these proceeds would go into the hands of the prior owners of the spectrum, instead of the U.S. Treasury.

II. THE COMMISSION SHOULD NOT ADOPT ANY FORM OF COMBINATORIAL BIDDING FOR THE 700 MHZ AUCTION

The Commission should heed the arguments of a wide majority of commenters opposing combinatorial bidding for the 700 MHz auction.[37] Significantly, even Verizon Wireless, who previously supported combinatorial bidding, now properly recognizes that it would be a mistake to implement a hastily crafted combinatorial bidding scheme when the Congressionally-mandated auction commencement date is rapidly approaching.

MetroPCS is on record with its concern that "[a]llowing combinatorial bidding would add unneeded complexity to the auction and create a serious risk of unintended and undesirable consequences without providing any substantial public interest benefits" and in doing so the Commission "would introduce a radical change from prior auction procedures which could potentially delay or deter participation by potential bidders."[38] In addition, using combinatorial bidding would require substantial comment and testing which could delay the auction past the statutorily-mandated auction commencement date. US Cellular also expresses its grave concern

[36] 47 U.S.C. § 309(j)(8)(A).

[37] Comments of US Cellular at 9-14; Comments of RCA at 14; Comments of Cellular South at 20-22; Comments of Verizon Wireless at 38-43; Comments of RTG at 15-16; Comments of Leap at 9-10; Comments of Alltel at 10-11; Comments of SpectrumCo at 16-18; Comments of Blooston Rural Carriers at 9-10; Comments of Aloha at 5-8.

[38] Comments of MetroPCS at 20.

that the Commission is considering, for the first time, auction procedures which would combine a SMR auction procedure and combinatorial procedures in a single auction.[39] Doing so would turn the very important 700 MHz auction into a risky testing ground for a new type of auction procedure. US Cellular points out that there has been no significant real-world experience with combinatorial bidding auctions – and that a large, high-stakes auction such as the 700 MHz auction would not be the proper place to test such a procedure.[40] The use of these combinatorial bidding procedures could cause "significant 'exposure' and strategic complexity problems for smaller bidders because of the combination" of SMR and combinatorial bidding in the same auction."[41] In addition, the Commission has made no specific proposal regarding details of a particular combinatorial bidding scheme and will not be in a position to do so until the band plan is set. With statutory deadlines looming, the Commission would be taking a huge, controversial risk by proposing procedures that would be used for the very first time in such an important auction.

For example, the Commission has yet to adequately consider or provide a solution for problems that may arise if the combinatorial bidding process causes the reactivation of dormant bids. Cellular South notes that, under previously proposed combinatorial bidding schemes, "[a] collection of small bidders who believed that they had been outbid on individual licenses by a package bid may find their "losing" bid active again if another losing bidder increases its bid by a margin that surpasses the package bid amount."[42] In this case, an auction participant may find itself with a high bid that it had given up on previously, and this new "active" bid may effect its

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[39] Comments of US Cellular at 10.

[40] *Id.* at 10.

[41] *Id.* at 13.

[42] Comments of Cellular South at 21.

eligibility, as well as other bids that the auction participant has place subsequently. MetroPCS shares the concern of Cellular South about this "resurrected bid" scenario.[43]

The huge risks associated with applying combinatorial bidding to the upcoming 700 MHz auction are also well stated by Verizon Wireless. Verizon Wireless, previously a consistent supporter of combinatorial bidding, opposes the Commission's proposal to use combinatorial bidding to allow bidders to aggregate REAG licenses into a single nationwide license.[44] Verizon Wireless incorporates into its comments the declaration of Karen Wrege, an expert on the Commission's spectrum auction procedures. Ms. Wrege states that using combinatorial bidding in limited spectrum blocks would introduce unnecessary complexity into the auction process.[45] The Commission offers no details on how it might integrate combinatorial with a traditional SMR auction, and, as Ms. Wrege notes:

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[43] Indeed, this problem still exists in the recent experiments conducted on tiered package bidding. *See* Goeree, Holt, and Ledyard "An Experimental Comparison of Flexible and Tiered Package Bidding," Final Report, May 25, 2007 ("Experimental Report") On Footnote 8, the authors discuss the cycling problem with combinatorial bids and suggest one solution is to consider "current and past bids" which means that "retaining old bids implies they may become winning at a later stage." There are a number of real world problems with the approach discussed in the Experimental Report, including the past provisional bids, cycling, allocation of package bids among individual licenses (which if done improperly may place smaller bidders "out of the auction after an aggressive package bid, fn. 4) and certain inefficiencies. All of this supports MetroPCS' view that combinatorial bidding is not ready for an auction like the 700 MHz auction.

[44] Comments of Verizon Wireless at 38.

[45] *Id.*

> This approach is completely different from anything that has ever been publicly discussed, studied, or developed in connection with the FCC spectrum auction program. As a result, the Commission has not had the benefit of public forums to address the important implementation issues that have been continually brought up over the last seven years by the industry, and the industry has not had the benefit of sufficient time to study the implications of this new approach.[46]

Moreover, adding combinatorial bidding to the 700 MHz auction would add a layer of complexity that could ultimately disrupt the auction. Ms. Wrege describes the experience of Auction No. 65, when the Commission was actually forced to suspend bidding for several days to resolve bugs that resulted from modifications to the auction software.[47] With a statutory deadline looming, the Commission would have less than six months to create new auction software for this new type of auction, an unnecessary risk without compelling corresponding benefits.[48]

Verizon Wireless also notes the significant exposure risk that a hybrid auction could create.[49] The Commission should heed the conclusion of Ms. Wrege, that "[g]iven the lack of public consultation and the limited time before the auction must begin, the FCC should not implement a hybrid combinatorial auction design for the 700 MHz band. . . .the FCC should implement its tested, tried-and-true simultaneous multiple round auction design and use its familiar and reliable software for this important event."[50]

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[46] *Id.* at 40.

[47] *Id.* at 41.

[48] Further since both the auction commencement date <u>and</u> the auction proceeds receipt date are statutorily mandated, the Commission should not undertake a process which may have flaws that could be manifested during the auction. If flaws affect the auction, the Commission would be forced to suspend the auction, devise a solution, and test the proposed solution, all in the course of an auction that must be completed and in which the auction proceeds most be deposited in the U.S. Treasury within 6 months. Since the Commission will have no assurance that any defects can be corrected, tested and implemented in a short period of time, it would be taking a huge risk undertaking a combinatorial auction.

[49] Comments of Verizon Wireless at 42-43.

[50] *Id.* at 43.

A small number of commenters continue to advocate the use of combinatorial bidding, but none of them offer solutions to any of the identified problems.[51] For example, AT&T supports some form of combinatorial bidding for the auction, but does not address any of the substantial risks expressed above.[52] AT&T merely repeats the standard "exposure" argument in favor of combinatorial bidding, which was proven wrong by the Wireless Cable Group's aggregation of a near nationwide footprint in Auction No. 66. As previously demonstrated by MetroPCS, many prior auctions confirm that combinatorial bidding is not necessary to enable carriers to assemble nationwide licenses, including Auction No. 3 and the experience of SpectrumCo and T-Mobile in Auction No. 66.[53]

One suggestion, made by the Coalition for 4G in America, is to have a limited number of packages available for combinatorial bidding. For example, it suggests the Commission should allow for a national package, and perhaps a limited number of other packages for combinatorial bidding, to reduce the level of complexity.[54] However, this would be yet another ill-advised effort of the Government to favor a particular business plan. Endorsing a nationwide package would only benefit larger carriers, who would be able to bid for the nation as a whole. The threshold problem, and the problems with the reactivation of dormant bids, are not necessarily solved by 4G's proposal. Thus, smaller and regional carriers would be unable to compete for a

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[51] Comments of the 4G Coalition for America at 8-10; Comments of AT&T at 34-36; Comments of Frontline at Attachment, 22-23; Comments of Google at 7.

[52] Comments of AT&T at 35-36.

[53] Comments of MetroPCS at 20-21.

[54] Comments of Coalition for 4G in America at 9-10. This seems to relate to the Experimental Report. As shown above, this tiered bidding proposal introduces substantial risks and issues that would need to be resolved before proceeding.

nationwide footprint – even though a smaller or regional carrier may value a particular market more.[55]

If the Commission wants to foster an additional pipe into the home, it should implement policies which encourage both larger and smaller new market entrants to participate, such as establishing smaller spectrum blocks and smaller geographic areas, and not use combinatorial bidding which is skewed towards certain large prospective bidders. After the extraordinary success of Auction No. 66, the Commission should not make any dramatic changes in auction procedures that could potentially diminish the success of future auctions.

III. THE RECORD DEMONSTRATES THAT THE COMMISSION SHOULD REJECT PERFORMANCE REQUIREMENTS BASED ON GEOGRAPHIC BENCHMARKS AND THE "KEEP WHAT YOU USE" RULE

The Commission should reject its proposal to implement construction requirements based on geographic benchmarks and a "keep what you use" rule.[56] Numerous commenters of all sizes and types agree with MetroPCS that the previously established service and construction requirements should remain in effect for the 700 MHz Band.[57] Indeed, the overwhelming majority of commenters agree with MetroPCS that "[a]dopting the Commission's geographic service coverage requirements proposal would mark a radical reversal of long-standing Commission precedent, deter the participation in the auction of certain qualified bidders, drive

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[55] Even if limiting the number of packages reduced overall complexity, the core problem remains: there is not enough time to design, test and vet a combinatorial bidding mechanism which means the risks are unacceptably high.

[56] *FNPRM* at para. 212.

[57] Comments of US Cellular at 14-19; Comments of Frontier at 10; Comments of Union Telephone at 8-13; Comments of Verizon Wireless at 19-30; Comments of CTIA at 3-10; Comments of Dobson at 3-7; Comments of Telecommunications Industry Association ("TIA") at 7-8; Comments of 4G Coalition for America at 12-20; Comments of Leap at 5-7; Comments of Council Tree at 12-15; Comments of SpectrumCo at 20-30; Comments of Motorola at 34-36; Comments of AT&T at 14-20; Comments of Blooston Rural Carriers at 7-9; Comments of Google at 9.

down auction resources earmarked for the Digital Television ("DTV") transition, and require the Commission to resolve a myriad of complex coverage issues."[58] These comments were echoed by industry associations,[59] nationwide carriers,[60] regional carriers,[61] potential new entrants,[62] and even some rural carriers.[63] This diverse group of commenters, many of whom have widely differing views on other issues regarding the 700 MHz spectrum, agree that the Commission should not impose overly restrictive construction requirements which contradict the Commission's market-based policies for CMRS providers. For example, Professor Thomas Hazlett demonstrates in his economic analysis that geographic build-out mandates "would increase the cost of compliance, all else [being] equal, and move away from a system driven by consumer demand to a more regulated system."[64] Verizon Wireless also expresses concern about the uneconomic nature of a geographic build-out requirement:

> 50 percent of the population lives in the most densely populated counties in the country, covering only 3 percent of the geographic area of the nation. Geographic build-out requirements would thus force licensees to divert capital into areas where it is uneconomic to provide additional services, thereby depriving capital investment where it would otherwise be more likely to produce benefits. [65]

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[58] Comments of MetroPCS at 30.

[59] Comments of CTIA at 3-10.

[60] Comments of AT&T at 14-20; Comments of SpectrumCo at 20-30; Comments of Verizon Wireless at 19-30

[61] Comments of MetroPCS at 29-38; Comments of Leap at 5-7; Comments of US Cellular at 14-19; Comments of Dobson at 3-7.

[62] Comments of 4G Coalition for America at 12-20; Comments of Google at 9.

[63] Comments of Blooston Rural Carriers at 7-9; Comments of Union Telephone at 8-13;

[64] Comments of Verizon Wireless at 19-20.

[65] *Id.* at 24.

Strict geographic requirements will tend to homogenize systems and not incent carriers to offer differentiated services.[66] This is especially true for new entrants, such as MetroPCS, who is entering markets to compete with entrenched incumbents, and needs to differentiate itself in the market. This is hard to do when the new entrant faces a severe build out requirement that the incumbent need not meet on previously allocated spectrum. Such a strict requirement would deter investment by new entrants and would deter their participation in the auction. At bottom, since geographic build-out requirements disfavor new entrants, the Commission's adoption of any such requirement could adversely affect auction revenues and imperil the funds necessary for the DTV transition. Further, to the extent the Commission wants new entrants to offer new broadband services, any such requirement will make this objective unlikely to be achieved. On balance, the Commission should heed the words of CTIA which points out that geographic build-out requirements are not necessary because (1) wireless carriers already are aggressively extending their networks into rural areas; (2) forced uneconomic build-out is unwise; (3) universal service is a proven tool for encouraging network deployment in rural areas; (4) a plethora of spectrum opportunities exist; and (5) forced build-out will create unintended consequences.[67]

Moreover, construction of new networks is subject to a number of uncertainties beyond the control of the licensee which may make it impossible to meet these strict geographic build-out requirements and could adversely affect competition. For example, MetroPCS still does not have access to certain key sites in San Francisco nearly five years after its initial roll out date due to difficulties in getting zoning approval. In addition, MetroPCS' experience in its newest markets reveals that it is getting increasingly difficult to build new systems as a result of local

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[66] *Id.* at 25.

[67] Comments of CTIA at 4-10.

zoning and other ordinances and requirements. A geographic build-out requirement could cause carriers to lose licenses in areas where they have every intention and desire to build and would accord local authorities too much leverage to extract concessions from licensees.

Proponents of stricter performance requirements have yet to fully articulate or demonstrate the problem to be remedied. While RCA argues that "the superior propagation characteristics of the 700 MHz Band spectrum make it . . . a likely target for stockpiling or warehousing,"[68] RCA's proposals do not take into account the strong economic disincentives that carriers have for warehousing spectrum when they must pay a market price for spectrum at auction nor the substantial cost arbitrary build-out requirements will have on auction participations and service providers.[69] Moreover, RCA and other proponents provide no evidence or empirical data that demonstrates a problem with the current construction standards which would warrant a radical departure from the well-tested market based construction requirements. And, there has been no demonstration of any need to depart from prior Commission policies and no justification for putting 700 MHz licensees at a competitive disadvantage vis-à-vis incumbents operating on other bands free of arbitrary Government-imposed build out requirements. RCA ignores the fact that carriers are spending substantial amounts for this spectrum, and have a "substantial economic incentive to put the spectrum to beneficial uses as soon as practicable, to partition areas in which the winner many not have an immediate need, and a substantial disincentive to warehouse spectrum for any considerable period of time. These very real economic incentives will cause carriers to build facilities based upon market needs and their own business plans – rather than based upon artificial Commission

[68] Comments of RCA at 6.

[69] Comments of MetroPCS at 31-36.

imposed arbitrary construction deadlines."[70] In addition, it is important to note that the Commission never has required a geographic coverage construction benchmark – in over 50 auctions.[71] Without compelling reasoning to do so – which has not been presented in this proceeding – the Commission should not turn its back on a regulatory policy which has resulted in a wireless industry where carriers compete vigorously on coverage, quality, and price for all consumers.[72]

Significantly, even rural carriers do not unanimously support the RCA proposal. For example, Union Telephone Company notes that the proposed geographic build-out requirements would be "contrary to the FCC's long-standing commitment to a market-based approach and flexible use policies."[73] Nor would it be fair to adopt different rules depending upon the size of the licensed service area. Ironically, the record reflects dramatically opposed views on which areas should be subject to the stricter standard. Some rural commenters suggest that the Commission should limit the "applicability of the proposed geographic benchmarks and the re-licensing mechanism to licensees who obtain large geographic-sized license areas.[74] Another larger carrier claims that the tougher standards should not apply to REAGs.[75] These

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[70] *Id.* at 34.

[71] Comments of Verizon Wireless at 22.

[72] Even though one could argue that AWS deserved substantial service because of its clearing issues, 700 MHz licensees will also have hurdles prior to the use of this spectrum, including local zoning and permitting, access to network infrastructure equipment, and access to subscriber equipment. These hurdles are not insubstantial.

[73] Comments of Union Telephone at 8.

[74] Comments of Union Telephone at 8; Comments of RTG at 9.

[75] Comments of Dobson at 6-7.

contradictory positions emerge because there is no underlying unifying principle that provides a sound intellectual basis for adopting discriminatory standards.[76]

Interestingly, the comments contain a variety of alternate build-out proposals that, when properly viewed, only serve to highlight the completely arbitrary nature of Government-imposed construction standards. Verizon proposes a population-based coverage proposal that it claims would provide "the strictest build out requirements ever."[77] The Coalition for 4G in America proposes substantial service with national or regional licensees being required to comply with substantial service on an EA-by-EA basis within 25% of all covered EAs within 5 years and 100% of all covered EAs within 10 years.[78] There is no principled basis for the Commission to select one of these two proposals over the other. This is arbitrary Government line drawing at its worst.

If the Commission feels constrained to adopt a build-out requirement, the proposal that has the most rational basis is that of AT&T. AT&T properly notes that the original PCS construction requirement (1/3 coverage in 5 years - - 2/3rds coverage in 10 years)[79] served the public well. AT&T notes that this coverage requirement previously only applied to 30 MHz PCS licenses, whereas 10 MHz and 15 MHz licenses were subject to a lesser standard (25% coverage

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[76] These divergent positions appear to be driven by the recognition that imposing these tough construction requirements will cause carriers and new entrants to be harmed. So, proponents do not want the standards to apply to the licenses of greatest interest to them personally.

[77] Verizon's proposal would impose the following requirements: (1) within 5 years, licensees must certify that they have covered at least 50% of the POPs in their license areas; (2) if the licensee has not done so, its license term will be shortened from 10 to 8 years; (3) at the end of the license term (either 8 or 10 years), licensees must certify that they have covered at least 75% of the POPs in their license areas; (4) if it has not done so, the licensee will lose the entire uncovered geographic area; and (5) upon a licensee losing its uncovered geographic area, the Commission should relinquish that unserved portion of the market as a new license via auction.

[78] Comments of Coalition for 4G in America at 17-18.

[79] 47 C.F.R. § 24.203(a).

in 5 years or substantial service).[80] There is, however, some justification for applying the higher standard to all 700 MHz licenses as suggested by AT&T. First, the wireless industry has recovered significantly since the time when the lesser standard was applied to 10 MHz and 15 MHz licenses. And, the Commission could properly conclude that the public interest would be served by raising the bar a bit to encourage accelerated development while still maintaining a proven standard (1/3 / 2/3rds) that has worked in the past. This would satisfy the call to adopt the toughest build-out requirements ever, without risking a series of troubling and probably contested license take backs because the Commission's arbitrary construction standard does not conform to market requirements.

Further, geographic coverage requirements will not ensure that rural areas get covered. Any requirement that is not market based would require urban customers to subsidize rural customers. Cross-subsidies of this nature are impossible to sustain in a highly competitive market. Carriers would be forced to relinquish area that is uneconomic to serve and return it to the Commission some 4-8 years after the fact. This spectrum would be reauctioned with little hope of being built the second time around -- or acquired by speculators who are betting that the Commission will change the rules or waive them once the true extent of the uneconomic nature of the build-out is apparent. The result will be that the original licensee who was best positioned to build out these areas over time will not have the spectrum and the area will not be served. Population-based requirements will better ensure that the substantial portion of the population is served with service extended to less populated areas when economics allow. Significantly, it also is not clear that any spectrum return and reauction is permissible under federal law. Under its statutory mandate, the Commission is required to auction the spectrum and defray the proceeds by June 30, 2008. If the Commission does not sell certain spectrum or as a result of its

[80] 47 C.F.R. § 24.203(b).

rules is required to reauction the spectrum sometime in the future it is not clear whether the Commission will have met its statutory obligations.

Another issue is that geographic coverage requirements may require carriers to build systems where no population exists - - such as large sections of farmland and ranchland in the western United States, on federal and state lands and bodies of water. It is not clear that any public policy purpose would be served by carriers having to charge customers for coverage in remote unpopulated regions. Therefore, in the final analysis, the proper approach is to follow the market-based approach to performance benchmarks that has served consumers so well up to this point. The Commission should not turn its back on years of market-based policies in order to fix a "problem" that has not been demonstrated by any empirical evidence. However, if the Commission believes that specific build-out rules are necessary, it should adopt a variation of its established population-based, rather than imposing inherently random geographic-based requirements.

IV. THE RECORD PROVIDES ABSOLUTELY NO REASON TO COMPEL THE COMMISSION TO APPLY INCUMBENT ELIGIBILITY RULES OR "OPEN ACCESS" RULES TO THE 700 MHZ AUCTION OF COMMERCIAL SPECTRUM

Many Commenters have joined MetroPCS in opposing the proposals by the Media Access Project ("MAP") and the Ad Hoc Public Interest Spectrum Coalition ("AHPISC") to exclude certain classes of carriers from eligibility for licenses in the 700 MHz Band,[81] and to

[81] *FNPRM* at para. 221. It is important to note that AHPISC still has not put forth a definition of "incumbent" for its proposals. Thus, it is unclear whether a provider such as MetroPCS, which was the fourth highest bidder in Auction No. 66 and purchased spectrum in many new markets, would be limited or excluded from bidding in the 700 MHz auction due to the AHPISC proposals. MetroPCS is concerned, however, that a report filed by MAP with the Commission that purported to analyze the bidding patterns in the AWS auction characterized MetroPCS as a "major incumbent" even though MetroPCS did not meet the author's own definition of "major incumbent." The truth is that MetroPCS is, in most instances, a highly competitive and disruptive new entrant in most of the markets it buys at auction. MetroPCS has entered or is poised to enter

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apply a condition on licenses for at least 30 megahertz of 700 MHz spectrum requiring the licensee to provide "open access," including the right of a consumer to use any equipment, content, application or service on a non-discriminatory basis, should be rejected.[82] The few parties who support these anti-marketplace rules provide no compelling evidence for the Commission to abandon market forces and to predetermine the categories of competitors and the types of services to be offered via the 700 MHz spectrum. Indeed, AHPISC utterly fails meet the Commission's stated criteria for applying eligibility restraints on an auction:

> Eligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm.[83]

AHPISC has provided no likelihood, much less any evidence, of substantial harm to competition in specific markets. As AT&T notes, AHPISC "does not dispute that incumbent wireless carriers are vigorously competing with one another to roll-out faster broadband services to the public and it also neglects the history of vigorous competition in the market for wireless voice services."[84] In fact, a diverse group of commenters, including commenters who would potentially be affected positively by the absence of major incumbent wireless providers, oppose

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(...continued)

many new markets successfully through the purchase of spectrum at auction over the past five years, and has introduced new competition in each market in which it has entered. Even though MetroPCS may or may not be considered an incumbent by AHPISC, MetroPCS supports allowing the marketplace to determine winners and losers for the 700 MHz auction – not regulatory fiat. If any eligibility restrictions were to apply to this spectrum, it is clear that they should not apply to MetroPCS.

[82] *FNPRM* at para. 290.

[83] *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands et al.*, WT Docket No, 04-356, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, 19291 (2004).

[84] Comments of AT&T at 28.

the application of eligibility limiting rules and the imposition of "open access" requirements on the 700 MHz spectrum.[85]

The Comments establish that these restrictive proposals seek to radically alter the rules and procedures for the 700 MHz Band from those that apply in other bands, without any showing that there is a market failure justifying such heavy handed regulatory intervention. As Verizon Wireless notes, "[t]here is not a shred of evidence that [incumbent] providers seek to acquire 700 MHZ spectrum for anti-competitive purposes, nor is there a lack of wireless competition that could support such eligibility restrictions."[86] In effect, MAP and AHPISC are proposing that the Commission disenfranchise many of the likely participants in the upcoming auction, and, as well, the beneficial services and technologies that those participants would be able to provide. By proposing limitations on eligibility and imposing "open access" requirements, AHPISC is attempting to stifle the participation of certain mobile wireless carriers who may value the spectrum most and could put it to its highest and best use. Notably, some carriers AHPISC seeks to disenfranchise offer the best promise of providing the "third pipe" for broadband that AHPISC is advocating. The Commission has not adopted broad eligibility restrictions for commercial mobile radio service auctions in the past - - for good reasons - - and AHPISC has not provided any sufficient reasons for it to do so now.[87] To the contrary, the Commission repeatedly has

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[85] Comments of MetroPCS at 38-46; Comments of US Cellular at 21; Comments of Frontier at 12-13; Comments of Union Telephone at 17-18; Comments of Verizon Wireless at 31-35; Comments of CTIA at 10-17; Comments of RTG at 12-13; Comments of Dobson at 9-11; Comments of Qualcomm at 8-11; Comments of TIA at 5-7; Comments of NTCA at 7-8; Comments of SpectrumCo at 30-33; Comments of Motorola at 35-36; Comments of AT&T at 7-8, 20-34; Comments of Alcatel-Lucent at 26-27; Comments of Blooston Rural Carriers at 5-7.

[86] Comments of Verizon Wireless at 31.

[87] The Commission has in the past limited eligibility for certain licenses to designated entities or entrepreneurs, but incumbents who qualified as a designated entity or entrepreneur were eligible.

found the wireless broadband industry to be highly competitive and innovative and therefore the Commission should not change its open eligibility requirements.

Tellingly, no carriers or potential applicants have stepped forward to support these radical proposals. This must be cause for concern to the Commission since the parties advocating this approach are unwilling to enter the auction and bid under the requirements they are proposing. Indeed, parties such as Skype are trying to get the Commission to force other carriers to provide their networks at no charge to Skype so that Skype can build a business without ever having to enter an auction. This does not provide facilities-based competition and therefore should be rejected.

AHPISC has placed into the record an engineering study by CTC entitled, "An Engineering Assessment of Select Technical Issues Raised in the 700 MHz Proceeding."[88] The CTC Study argues that open access can be engineered effectively over a wireless broadband network and that the allocation of a large channel is most likely to result in a technically viable third pipe. One obvious concern about this approach is that the CTC Study does not satisfy the Commission's preference for facilities-based competition. Indeed, implementation of the proposed open access policies would eliminate any incentive for providers to construct and built out competitive networks. Instead, they would just be able to get a free ride on another carrier's already-paid-for infrastructure.

An open access model also would force carriers to adopt the kind of wholesale business model that consistently has failed in the wireless industry. Mandating business plans is wholly inappropriate for a competitive industry such as the wireless industry. In the ongoing Skype proceeding that already is dealing with this open access proposal, the record demonstrates that the wireless industry is subject to effective competition, with carriers competing on price,

[88] Comments of Ad Hoc Public Interest Spectrum Coalition at Appendix A ("CTC Study").

services, and coverage.[89] Moreover, a radio-based carrier is not comparable to a transmission-based wholesale carrier, as opening up access to a carrier network is not the same as simply leasing fiber.

The CTC Study also suffers from a number of false assumptions and technical inadequacies. For example, the CTC Study fails to adequately address the bandwidth problem that arises when the customer premise equipment ("CPE") used by the non-infrastructure provider subscribers competes for bandwidth with CPE used by infrastructure providers subscribers. To accommodate additional non-infrastructure provider subscribers, the infrastructure provider will have to incur the cost of adding additional antennas and required base units to handle the additional traffic to maintain the level of service to its existing subscribers. The CTC Study assumes that such infrastructure can be added without due consideration of practical considerations such as cost, management, required easements or zoning restrictions to placement of new antennas – which is clearly not realistic.

Another significant issue is the cost and complexity of implementing the required back-haul network. The back-haul network is responsible for getting traffic from the base station to the end user. Although acknowledging the back-haul network is one of the most "costly and logistically challenging aspects" of building a broadband wireless network, the CTC Study

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[89] For example, MetroPCS demonstrates in its comments that (1) Unlike the monopoly wireline network at issue in *Carterfone*, there is substantial competition for services and equipment in mobile wireless markets; (2) Skype is attempting to circumvent the Commission's auction process; (3) Spectrum resources are scarce, and carriers must have the ability to offer services of their choice over their networks; (4) Skype overlooks a key aspect of the *Carterfone* decision; and (5) the Skype petition raises thorny technical issues which would require the Commission to engage in extensive regulatory proceedings; *see also* Comments of AT&T, CTIA, LG, Motorola, Qualcomm, Sprint Nextel, T-Mobile, and US Cellular in response to Petition for Declaratory Ruling, RM-11361, filed February 20, 2007, Public Notice, "Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed," Report No. 2807 (CGB rel. Feb. 28, 2007); 47 C.F.R. § 1.405; *Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attached Devices to Wireless Networks*, RM-11361, DA07-1318, Order (rel. Mar. 15, 2007).

appears to require the infrastructure provider to allow non-infrastructure service providers to "free-ride" on the infrastructure service provider's network. The CTC Study suggests that the infrastructure provider simply add additional back-haul infrastructure to handle the extra traffic from the non-infrastructure service providers' subscribers, presumably at the infrastructure provider's expense.[90] Numerous compatibility issues are likely to arise since the infrastructure service provider does not own or control the non-infrastructure equipment. These issues include modifying routing tables, home location registers (HLRs), and visitor location registers (VLRs) to handle the non-infrastructure provider's traffic, as well as monitoring network access status and progression for the non-infrastructure provider's traffic in addition to the infrastructure provider's traffic. For these reasons, it is simply wrong to state - - as set forth in the first sentence on page 5 of the CTC Study - - that there is "no difference" between a single-provider network and the open source network.

The CTC Study also argues that the high costs or barriers to entry associated with the back-haul network can be avoided by having a single large channel that non-infrastructure providers can access.[91] However, this analysis ignores the reality that a single channel infrastructure of this nature does not exist today. Further, the analysis does not indicate who is responsible for bearing the monumental costs of designing, implementing or maintaining the new single channel infrastructure, or which existing infrastructure service providers need to give up their existing networks. In the meantime, the CTC Study also acknowledges - - as it must - - the very real and challenging problems of scarce spectrum, standards requirements and the retail provider's desired level of service – all of which are very real intractable problems for any application of open access principles.

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[90] CTC Study at 4-5.

[91] *Id.* at 12-13.

The CTC Study also argues that 20 Megabits per second (Mbps) is the required transfer rate (10 Mbps uplink and 10 Mpbs uplink) for adequate mobile communications.[92] According to the CTC Study transfer rates of this magnitude are required for mobile technologies to "remain a competitive third pipe" to cable and DSL providers, who "with time," will continue to increase speeds by upgrading electronics and physical plant.[93] Oddly, the CTC Study does not adequately consider that a huge advantage of mobile communication over DSL and cable is convenience, no matter what the data rates. Setting aside convenience, 10 Mbps (5 Mbps uplink and 5 Mpbs uplink) is likely sufficient for the majority of the platforms in question, primarily mobile telephones and personal digital assistants, which generally do not have the large screen or computing capabilities of terrestrial based computer systems such as personal computers (desktops and laptops). In any event, laptops and other more powerful computing platforms can take advantage of numerous WiFi hotspots for Internet connectivity. They do not need the mobile networks of mobile telephone companies.

Finally, the CTC Study argues that a single high capacity channel offered by a single infrastructure provider is preferable and more efficient in terms of peak transmission rates than several lower capacity channels offered by multiple infrastructure providers.[94] While it may be true that the single channel offers a higher possible transmission rate to a particular user at a particular time, the analysis does not take into account the additional overhead that will be required to keep the traffic destined for different retail providers using a single channel separate. At the very least, for example, additional overhead will be required to identify the destination retail provider for the data. While it is difficult to predict the percentage of overhead required

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[92] *Id.* at 9-10.

[93] *Id.*

[94] *Id.* at 10.

will be, it will reduce the effective peak rate available to a user versus multiple channels, where the data goes only to the infrastructure provider providing the data, and the overhead is not required.

The argument that a single channel is the most efficient points out the core flaw with the approach recommended by the CTC Study. In the early days of the telecommunications industry, the wireline telephone monopoly was touted as being the most effective and cost-efficient way to deliver services to the public. Over time, regulators learned that facilities-based competition was preferred, even if competition injected some inefficiencies in to the scheme (e.g. the need for guardbands) and caused some wasteful duplication of services. The Commission should not turn its back now on the pro-competitive policies that have fostered the growth of facilities-based competition.

V. THE RECORD DEMONSTRATES THAT ANONYMOUS BIDDING PROCEDURES SHOULD NOT BE USED FOR THE 700 MHZ AUCTION

The Commission sought comment on whether it should use limited information (or anonymous bidding) procedures for the upcoming auction of new 700 MHz licenses.[95] Most of the commenters on this issue, including nationwide, regional, and rural carriers, oppose the imposition of blind bidding procedures on the 700 MHz auction.[96] Indeed, for the most part, the only proponents of instituting blind bidding procedures are parties that have never bid in an auction, and do not realize the substantial pro-competitive benefits gained by allowing bidders to have as much information as possible during the bidding process.[97] MetroPCS indicated in its

[95] *FNPRM* at paras. 246-250.

[96] Comments of US Cellular at 21-27; Comments of RCA at 18-19; Comments of RTG at14-15; Comments of Dobson at 7-9; Comments of Leap at 8-9; Comments of Alltel at 8-10; Comments of SpectrumCo at 18-20; Comments of AT&T at 36-40; Comments of Blooston Rural Carriers at 9; Comments of Aloha at 8-9.

[97] Comments of Frontline at 56-57; Comments of Ad Hoc Public Interest Group at 30-34; Comments of Google at 9-10.

Comments that, as a mid-sized carrier entering new markets, it needs as much information as possible in order to determine how to value the spectrum it is bidding on.[98] Others now indicate that blind bidding procedures also are detrimental to small, rural carriers. For example, RCA comments that "many of RCA's smaller carriers would be negatively impacted if unable to anticipate the availability of roaming agreements with leading bidders in nearby license areas."[99] RCA continues, correctly, that "[c]loaking auction information would only exacerbate competitive inequities based on entity size."[100] Thus, the Commission should heed the calls of the entities that it would supposedly helping by instituting blind bidding – and not do so.

Significantly, the paper by Gregory Rose - - which relied upon heavily by Media Access in its proposal to have the Commission adopt blind bidding procedures - - was discredited by MetroPCS and others in the comments. As noted by SpectrumCo, the Rose Paper "reveals a fundamental misunderstanding of Commission spectrum auctions and related license valuations."[101] AT&T demonstrates additional flaws with Dr. Rose's conclusions and methodology.[102] Lastly, it should give the Commission additional pause about Dr. Rose's conclusions that one of the incumbents that the Media Access Project's Paper was most concerned about stopping, Verizon Wireless, actually supports the imposition of blind bidding procedures for the 700 MHz auction.

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[98] Comments of MetroPCS at 46-49.

[99] Comments of RCA at 18.

[100] Comments of RCA at 19.

[101] *Id.* at 19.

[102] Comments of AT&T at 38-40.

VI. FRONTLINE'S PROPOSAL HAS NOT BEEN EMBRACED BY THE PUBLIC SAFETY COMMUNITY, THE WIRELESS COMMUNITY, OR BY THE DEPARTMENT OF HOMELAND SECURITY

The comments in this proceeding overwhelmingly demonstrate that the Frontline proposal is wrong for public safety, wrong for the wireless industry, and would not serve the public interest. Representatives of the public safety community, with isolated exceptions, do not endorse the Frontline proposal. Indeed, the two major public safety organizations commenting in this proceeding - - Association of the Public Safety Communications Officials - International ("APCO") and National Public Safety Telecommunications Council ("NPSTC") -- indicate that the Frontline proposal would need substantial changes in order to receive their endorsement. This includes one change, that the spectrum be reauctioned if public safety and the E Block licensee fail to come to an agreement, that Frontline has specifically declined to accept and in fact would violate Congressionally mandated auction commencement dates. Other public safety entities oppose the idea of Frontline's proposal in any respect. These disagreements point out that trying to fix the Frontline proposal only serves to add risk to the approach because the Commission would then have no assurance that any applicant would bid on the E Block. Further, Frontline did not secure the endorsement of the Department of Homeland Security ("DHS"). Without the ringing endorsement of DHS and the public safety community, Frontline's proposal must be rejected.

In addition, most carriers see through Frontline's scheme of trying to have the Commission allocate 10 MHz of spectrum to it for its own business plan and commercial use.[103] As Alltel notes, "the wholesale-only business model, open access requirements, and other

[103] Comments of US Cellular at 19-21; Comments of Union Telephone at 13-16; Comments of Verizon Wireless at 44-61; Comments of CTIA at 17-22; Comments of Alltel at 4-8; Comments of Blooston Rural Carriers at 10-13; Comments of Sprint Nextel at 7-8; Comments of AT&T at 8-13.

burdensome and unnecessary service restrictions proposed by Frontline would force the Commission to implicitly subsidize a particular business model that would make the proposed E Block unattractive to so many potential bidders that it would likely reduce the number of serious contenders for the spectrum (as well as the price of this 700 MHz block)."[104] As Reed Hundt used to say, commercial spectrum should be used "anyway the auction winners want: no restrictions, no rules; total flexibility."[105] Further, the Frontline proposal would endanger the DTV transition by potentially depressing proceeds raised by the auction and delaying the deposit of these proceeds into the United States treasury. In sum, the comments support the view previously espoused by MetroPCS: that the "Commission would be making a serious mistake, do violence to a host of regulatory principles, and be subjecting public safety and first responders to significant risk were it to endorse the Frontline proposal in any significant respect."[106]

A. Frontline's Own Comments Further Undermine Its Position

It is interesting and telling that Frontline chose to begin its comments touting the "benefits of its proposal to the commercial wireless industry."[107] This reveals that Frontline is more concerned with the commercial aspects of its business model than with helping public safety. However, the commercial wireless industry does not share Frontline's enthusiasm for its proposal. Indeed, as CTIA notes, the Frontline proposal holds no promise for the commercial market and leaves public safety "at the mercy of an unknown for-profit entity that has goals for

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[104] Comments of Alltel Corporation ("Alltel") at 5.

[105] "Hundt Outlines 'Seven Commandments' for Telecom Competition," 1996 WL 501856 (F.C.C.), Sept. 6, 1996.

[106] Comments of MetroPCS at 9.

[107] Comments of Frontline Wireless, LLC ("Frontline") at 4-25.

its commercial network that likely differ significantly from public safety's ubiquitous service needs."[108]

Frontline rehashes its unsubstantiated arguments that the wireless market is not competitive in an effort to shift focus away from the fact that it is asking for a special earmark of spectrum that will result in a highly discounted price. From Frontline's comments, one would think that consumers have only two choices for wireless services: Verizon Wireless and AT&T. This skewed view flies in the face of the oft-stated Commission finding - - which repeatedly has been reported by the Commission to Congress - - that the wireless industry is highly competitive and innovative.[109] Surprisingly, Frontline chooses to use a comparison of 1997 and 2005 to demonstrate what it believes is an oligopoly in the wireless market.[110] It is difficult to see how Frontline can make any headway by comparing this earlier era when wireless penetration was low because prices were high and service options were limited – to the situation today when most people have cell phones, and are able to choose between a myriad of providers and services based on a number of different criteria. Indeed, in making this competition argument, Frontline demonstrates how poorly it understands the dynamics of today's wireless market – which could be why it is trying to reattempt a failed business model. For example, Frontline ignores the fact that new competitors are entering the broadband market, and that regional carriers are expanding at an unprecedented pace and bringing increased competition to many additional markets to provide competition in the wireless space, and that non-facilities based competition exists and is

[108] Comments of CTIA at 19.

[109] Comments of MetroPCS at 4-5.

[110] Comments of Frontline at 10.

thriving.[111] The sad irony is that the Frontline proposal, if adopted, would seriously inhibit competition. Disruptive new market entrants, such as MetroPCS and new broadband carriers, will likely be foreclosed from some markets if the Frontline proposal is adopted in any form because 10 MHz of otherwise fungible paired spectrum will effectively be removed from the commercial pool, thus dramatically reducing the prospects of success of MetroPCS and other new entrants at the auction. So, competition would suffer. In the meantime, there will be no adverse consequences on commercial wireless service if the Frontline plan is rejected. Each of the business models that Frontline suggests its wholesale business could support could all exist today – and some do – if the free marketplace desires those services. None of those business models is dependant on the success or failure of the Frontline proposal.

These arguments aside, if Frontline wants to provide additional competition to the wireless industry, it should do what MetroPCS has had to do – purchase spectrum in a freely competitive auction where no spectrum has been earmarked for any particular applicant or service model. Frontline is free to compete in the 700 MHz auction like all other bidders to purchase this 10 MHz spectrum – and to allow open access and resale if it wishes – but it should not have this spectrum set aside in a manner that will result in a special discount. Frontline's proposal essentially asks the Commission to decide that Frontline deserves spectrum for a bargain basement price because the wireless world will be a better place with Frontline as a player. This M2Zesque argument must be rejected by the Commission.

Properly viewed, Frontline's comments reveal its true intentions – to receive discounted spectrum to provide commercial services as a for-profit company. There is no question that Frontline is a profit-driven company. It also claims to be well financed. This being the case, it

[111] Comments of MetroPCS at 6-8. Indeed, MetroPCS understands that one of the mobile virtual network operators, Virgin Mobile USA, has filed a registration statement with the Securities and Exchange Commission to have an initial public offering.

should not be subsidized with discounted spectrum but rather should be required to participate with all other applicants in an auction to secure a license. If the Frontline business plan works, let it compete in the market for spectrum without a helping hand from Uncle Sam.[112] There is nothing compelling about Frontline's commercial proposal that warrants special treatment.[113] If the Commission wants to promote greater competition in the wireless arena, it should not anoint a particular competitor nor dictate the specific types of services to be provided. Rather the Commission should "allow all potential competitors to compete on a level playing field for the spectrum and thus do demonstrate that they value the spectrum most" and are best able to provide meaningful competition. Further, the Commission should foster a band plan, auction rules, and construction requirements which encourage additional bidders - - rather than trying to earmark spectrum to a single provider.

Others also agree that this approach would be a return to the failed managed competition models of the recent past - - such as the mandatory unbundling rules espoused by Reed Hundt when he was Chairman of the Commission. Mr. May points out that "Frontline's proposal embodies the notion of the FCC managing competition by requiring 'unbundling' of a service providers' wholesale and retail operations and implementing a non-discrimination mandate,"

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[112] MetroPCS also disagrees that this spectrum should be licensed on a nationwide basis. As MetroPCS has commented elsewhere, the Commission should not license wireless on a nationwide basis especially since applicants in an auction are able to aggregate spectrum in auctions. Further, to essentially earmark a nationwide license to an applicant which does not even hold a single license, has not demonstrated its technical abilities, and has not demonstrated the financial wherewithal to acquire the spectrum or to actually construct a network, would run the risk of the Commission wasting this valuable spectrum with little chance of recovering it any time soon.

[113] Indeed, the most unique aspect of Frontline's proposal is that it is a risky nationwide wholesale scheme that has failed previously and has never been revived on a national scale in a free marketplace.

similar to the one proposed by then Chairman Reed Hundt on incumbent wireline carriers.[114] Mr. May goes on to foretell that the same fate that awaited the competitive local exchange carriers after unbundling was resumed will occur here:

> While ... led to the creating of hundreds, if not thousands, of new 'competitors' ... we know that the experiment did not turn out well. The competitors lacked any incentive to invest in their own facilities, and so did the telephone company incumbents ... This Commission ... should sideline Frontline's unbundling proposal. It should opt for a market-oriented vision that gives any entity that wishes- - a fair - - not fairer - - opportunity to compete in an auction based on rules unencumbered by managed competition precepts.[115]

Some of the other "benefits" the wireless industry supposedly would enjoy via the Frontline proposal are equally illusory. For example, Frontline attempts to capitalize on the roaming problems in the wireless industry and to use them to further restrict the potential competitors for the 10 MHz of spectrum it wants for itself.[116] It is extremely significant that carriers like MetroPCS, Leap, and other rural carriers – who have argued strenuously for automatic roaming rights – still do not support Frontline's proposal despite the proposed open roaming requirement. The Commission must ask itself, if Frontline's proposal is a good idea, would not the companies that favor increased roaming rights be supportive? The problem is that Frontline's proposal does not solve the real problem -- which is the ability of carriers to roam on carriers with the same technology over the largest possible geographic area. Frontline's proposal would <u>not</u> ensure technical capability, reasonable rates, or significant build-out.

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[114] May, Randolph J. "Sideline Frontline," The Free State Foundation, Vol. 2, No. 15, May 30, 2007 at 2.

[115] *Id.* at 3-4.

[116] Specifically, Frontline would have the Commission require any E-Block licensee to offer unrestricted roaming on all of its spectrum which clearly is a "poison pill" to many nationwide incumbents.

The Frontline proposal also has proved to be uninviting for many rural carriers despite Frontline's effort to woo their support by touting alleged "benefits" that the Frontline proposal would provide to them. As demonstrated by Union Telephone, the Frontline proposal would eliminate 10 MHz of spectrum from the reach of small, mid-sized, and regional carriers, as well as restrict large commercial carriers from bidding.[117] Thus, large commercial carriers would be limited to bidding on the C and D blocks in the Upper Band, and would drive up the prices for such blocks, making it extremely difficult for small, rural, carriers to compete successfully for spectrum.[118] In addition, the Blooston Rural Carriers, another group of carriers that according to the Frontline comments should be thrilled with the benefits Frontline would "give" to it, is concerned about the Commission "creat[ing] a highly subsidized competitor – one that did not pay for its spectrum in a truly competitive bidding process, and that will garner compensation from public safety entities on a sole-source basis."[119] Similarly, US Cellular points out that the Frontline proposal essentially would eliminate bidding for this 10 MHz of spectrum as this earmark would "have large 'cascade' effects with respect to bidding for other spectrum in the proceeding" and "would undermine the flexible bidding and aggregation opportunities put forward in the Balanced Consensus Plan."[120] While a small group of rural carriers, such as Cellular South, endorse the Frontline proposal, these carriers appear to place too much weight on Frontline's "promise" to create a nationwide data roaming provider, without taking into account the substantial hidden costs associated with Frontline's "generosity."

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[117] Comments of Union Telephone at 14. Interestingly, many of these rural carriers rely on the larger carriers for roaming and any restriction on the ability of larger carriers to obtain necessary spectrum will have an adverse effect on the rural carriers.

[118] *Id.*

[119] Comments of Blooston Rural Carriers at 11.

[120] Comments of US Cellular at 19.

Frontline's "poison pills" also will not serve the public interest. For example, Frontline's open access proposal is an inappropriate way for it to attempt to restrict competition for the spectrum. And, as has been convincingly demonstrated in the Skype proceeding in which the Commission actually is reviewing wireless *Carterfone* and wireless net neutrality issues, "open access" for wireless is not in the public interest.[121] The latest "analysis" by Andrzej and Robert Wilson that has been provided by Frontline, does nothing more than recycle prior discredited arguments about open access and wireless competition. This analysis - - if worthy of further consideration - - should only be examined in the Commission's Skype Petition proceeding, not here in this accelerated docket where the Commission needs to meet its Congressionally mandated auction commencement date.

As if the previously proposed poison pills of Frontline were not a big enough deterrent to bidders, in its comments, Frontline seeks to add yet another poison pill to its proposed rules: that the E Block license be required to initiate a real-time open auction communications service on at least 25% of its commercial network capacity.[122] This dynamic spectrum auction limitation - - which derives from a proposal by Google - - is ill-defined and ill-conceived. Moreover, even Frontline's own economist admits that this idea is not ready for prime time.[123] Assuming that it is lawful for the E Block licensee to offer to end users utilizing dynamic real-time auction principles[124] – there is no reason for the Commission to lock all potential licensees into this

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[121] Comments of MetroPCS at 40-42.

[122] Comments of Frontline at 23.

[123] "Parties Begin 700 MHz Comment Party Early," Communications Daily, May 23, 2007. Robert Wilson, a Stanford management economist hired by Frontline, stated that such a dynamic auction "is 5 or 10 years away," which should render the proposal fatal as to the 700 MHz spectrum.

[124] MetroPCS is reserving judgment on this somewhat vague proposal pending comment in response to the FCC's recent public notice. FCC Public Notice, "Comments Sought on Google

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unproven and ill-defined model. After all, this real-time auction of spectrum usage at the user level is based upon the dynamic model Google uses to sell advertisements on its search engine site - - *which model was developed and implemented without any Government mandate*. Why should the Commission impose a scheme on the wireless industry that has developed free of federal intervention through marketplace forces elsewhere? This is exactly the kind of failed industrial policy that the Commission has rejected in the past. Frontline effectively admits that the experimental nature of this ill-formed proposal by arguing that the Commission should only use an open auction architecture to "evaluate the performance and potential of open auctions."[125] The highly important 700 MHz auction is not an appropriate test bed to evaluate radically new dynamic auction techniques that were introduced for the first time nearly 9 months after the Commission first began taking comment on 700 MHz issues.

The Frontline comments also fail to resolve the serious defect of its plan under the Commission's current designated entity ("DE") rules.[126] MetroPCS demonstrated previously that Frontline is unable to either avoid the DE rules or to obtain a waiver of them."[127] Frontline effectively concedes the point by noting that "[i]t is true that the proposed open access, wholesale rules mean than more than 50% of the E Block network's service capacity will be sold to retailers."[128] The Frontline comments fail to provide any legally sustainable basis for the Commission to accord Frontline - - or any other wholesale-only service provider - - status as a Designated Entity without doing violence to its prior ruling. The risk to the Commission of

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Proposals Regarding Service Rules for 700 MHz Band Spectrum," DA 07-2197 (rel. May 24, 2007).

[125] Comments of Frontline at 24.

[126] *Id.* at 58-68.

[127] Comments of MetroPCS at 60-63.

[128] Comments of Frontline at 65.

going down the path suggested by Frontline is significant. As the Commission knows, Council Tree, and others have appealed the prior DE rules. If the Commission changes the DE rules now to accommodate Frontline it runs the risk that the Court of Appeals will perceive this as an admission that the prior rules where ill-conceived and should not have been adopted. This increases the risk that the Court will overturn the results of Auction No. 66. This would be a disaster for the wireless industry as carriers already are engaged in clearing the spectrum and building out their systems. Further, the government agencies have received the funds necessary for them to clear the spectrum. If Auction No. 66 was overturned, all of these proceeds would have to be returned which would throw this government clearing activity and the development of advanced wireless services into turmoil. This clearly would not serve the public interest.

B. The Public Safety Community Has Not Endorsed Frontline's Self-Serving Proposal, and is Rightfully Concerned About Commercial Intrusion Into the Public Safety Spectrum

The public safety community has not endorsed the Frontline proposal as a viable means to promote the creation of an interoperable broadband network for public safety.[129] Some public safety entities suggest that the public safety community will be better off retaining and improving the wideband services that it is already putting into use.[130] Other public safety entities question whether a sole broadband network, built out by a commercial entity, would aid public safety more than it would hinder it. And, many public safety entities question the Commission's decision to end wideband use in the 12 MHz of public safety spectrum now designated for broadband.[131] The Region 33 700 MHz Planning Committee states that "[w]e don't think that

[129] Indeed, outside of a number of fire chiefs associations, all filing brief letters supporting the Frontline proposal, most public safety commenters either ignored the Frontline proposal, opposed the proposal in its entirety, or only supported it with substantial changes.

[130] Comments of Region 43 Regional Planning Committee at 4.

[131] Comments of the Region 33 (Ohio) 700 MHz Planning Committee at 3, 4; Comments of the San Diego County – Imperial County, California Regional Communications System at 11;

(continued...)

one commercial licensee building out one true and adequate 'nationwide' broadband system could do that and expect to survive financially" and that "one sole broadband network will only hamper our ability to provide service to our user agencies."[132]

A number of public safety entities are understandably concerned about the intrusion of commercial interests into the public safety spectrum. As Region 43 notes, "[o]ur greatest concern in response to this *FNPRM* is the potential intrusion of commercial wireless interests into the management and control of critically needed public safety spectrum."[133] In a similar vein, the City of Philadelphia expresses concern that "the development of public safety communications services on the 700 MHz band not be skewed by commercial interests of the licensee charged with its development."[134] The City of New York points out that the "proposal to allow private interests access to the 700 MHz public safety segment on a secondary basis is contrary to law and raises undue litigation risk."[135] The City of New York also shares MetroPCS' concerns that "[u]nder the [Frontline] proposal, any 700 MHz shared spectrum will

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Comments of Region 9 (Florida) 700 MHz Regional Planning Committee at 2; Comments of Mid-America Regional Council at 2; Comments of the State of Ohio Multi-Agency Radio Communications System at 3 ("We can do almost everything we need to on our current 25 KHz. 800 MHz channels. By aggregating three 50 KHz 700 MHz channels up to 150 KHz. there is nothing we have planned for in the future that could not be accomplished. For the Commission to mandate that we wait for someone else's Broadband network to be built out, and to pay an unknown amount for something that we have no control over, either service level or coverage, is a grave disservice to Ohio and its citizens and cannot be tolerated."); Comments of Region 13 Illinois 700 MHz Planning Committee at 2; Comments of Grundy County Emergency Telephone System Board at 2; Comments of Region 40, 700 MHz Regional Planning Committee at 2; Comments of York County at 2.

[132] Comments of the Region 33 (Ohio) 700 MHz Planning Committee at 3, 4.

[133] *Id.* at 7-8.

[134] Comments of City of Philadelphia at 3.

[135] Comments of City of New York at 5.

be dominated by commercial interests, where deployment and maintenance will be evaluated based on a return on investment rather than the effectiveness of emergency response."[136]

Moreover, a collection of local government entities, including the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities oppose the Frontline proposal in its entirety. This group stated that Frontline's proposal is short on specifics, and, like other similar proposals, the plan "shortchanges our nation's first responders."[137] The collection of entities comment that the Frontline proposal is short on financing specifics, does not protect public safety control of the network, would not apply CALEA or E911 obligations to the network (which are public safety obligations in their own right, and "Frontline's avoidance of them gives one pause"), and would leave much of the details and build-out of a public safety network up in the air.[138] In addition, as noted by the Madison County Communications District, "[t]he creation of a monopoly for the successful bidder of this nationwide high-speed data system raises serious concerns regarding the quality of service that can be expected for mission critical data communications."[139] In addition, Madison County states that "[a] one-sized fits-all solution, limiting the system choices of vendors and equipment has historically not been well received by the public safety community. . . open competition is always better for the end-user."[140]

It is hard to imagine that the Commission would seriously consider adopting any version of the Frontline proposal in the face of these stinging criticisms. The Commission bent over

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[136] *Id.* at 7.

[137] Comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities at 8.

[138] *Id.* at 8-15.

[139] Comments of Madison County Communications District at 2.

[140] *Id.*

backwards in order to give Frontline ample opportunity to garner support for its plan from the constituency Frontline contends to be committed to help. The Frontline flag was hoisted by the Commission and the public safety community has failed to salute.

Of equal significance, Frontline has failed to garner support from the Department of Homeland Security ("DHS") for its radical plan. As set forth in detail in the MetroPCS comments,[141] DHS is the Governmental body designated by statute to oversee and coordinate Federal, state and local emergency services. It would be unwise and arguably unlawful for the Commission to usurp the role of DHS by adopting the Frontline proposal, particularly over the objection of many public safety constituencies who have been heard from.

C. Even Those Public Safety Organizations That Support the Frontline Proposal Do So Only With Substantial Revisions

Even the small number of larger public safety organizations that support the idea of a private/public partnership for public safety voice major concerns about the Frontline proposal. For example, APCO states that public safety users must have unconditional preemption rights with respect to commercial access. APCO also indicates that an emergency justifying access may include much of what a first responder agency does on a day-to-day basis meaning, in its view, that public safety must have access to as much as 100% all the time.[142] Clearly, APCO is viewing the Frontline proposal as a *de facto* reallocation of spectrum to public safety use, which certainly is not what Frontline has in mind or what the statute permits. Further, APCO does not address the severe problems that would go along with what it calls "ruthless preemption" of non-public safety access to public safety spectrum. As demonstrated previously by MetroPCS, this type of unconditional priority could have severe consequences for commercial users of this

[141] Comments of MetroPCS at 76-80.

spectrum –who also may be in critical need of their wireless devices during emergency situations.[143]

NPSTC has substantial concerns with the Frontline proposal, noting that it requires "substantial revision."[144] In particular, NPSTC is concerned with the leverage the commercial provider would have over public safety, as well as the "open access" restrictions that Frontline wishes to impose. Likewise, APCO insists that [p]ublic safety must have the final word regarding any network operating in public safety spectrum, and must not be forced into a long term relationship with a party merely because of its high bid in an auction."[145] Unfortunately, a shotgun marriage between the E-Block high bidder and public safety users is the essence of the Frontline scheme. Nonetheless, APCO suggests that the national public safety licensee should have the ability to say no to any sharing agreement with the commercial E Block winner.[146] But, even if the E-Block license is conditioned upon an agreement being reached with the public safety licensees, since the E-Block winner will already have paid for the spectrum, enormous pressures will be brought to bear on any public safety licensee who does not toe the line and sign a long term agreement.[147]

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[142] APCO Comments at 19-20. While MetroPCS agrees that emergencies are not limited to only catastrophic events, this points out the problem with this kind of private/public partnership where investors would be required to pay for a system that may be unusable for commercial services during a significant period of time.

[143] Comments of MetroPCS at 67-71.

[144] Comments of the National Public Safety Telecommunications Council ("NPSTC") at 9.

[145] Comments of APCO at 3.

[146] *Id.* at 16.

[147] The E Block licensee would be under overwhelming pressure to agree to anything proposed by public safety since a failure to receive their endorsement could be fatal to the licensee's application. Any such approach would cause the Commission to end up with only two categories of bidders for the E Block license - - neither of which will provide the system public safety needs - - either speculators, who plan to force changes in the rules over time, or licensees willing to agree to anything but who will fail to live up to their promises.

APCO also is against either binding arbitration or the Commission itself resolving a situation that results if the national public safety licensee and the commercial E Block winner do not agree on a network sharing agreement.[148] Rather, APCO's solution is that the Commission should re-auction the spectrum if no agreement is reached within a specified time period.[149] However, that solution is unworkable solution for many reasons. First, the Commission has a statutory obligation to deposit the proceeds from the 700 MHz auction to the US Treasury by June 30, 2008 and the ability of the E-Block licensee to get its money back (or to deposit the proceeds from a later auction) after that date is uncertain at best. No doubt the entire license reauction process will get embroiled in litigation. Second, the Commission can have no confidence that Frontline, or any other applicant, will be interested in the E-Block license if there is no mechanism in place to resolve a deadlock. Third, if there is a real possibility that the E-Block would have to be re-auctioned, this no doubt will decreased drastically the proceeds from the auction – proceeds that in part will go to aiding public safety interoperability. Fourth, any such reauction requirement will have a chilling effect on bidders and their financial backers. This would reduce the proceeds from this auction that are available for the uses Congress has mandated.

Recognizing the serious practical problems with the APCO approach does not alter the inarguable fact that public safety users must be in control of the design and operation their network. Public safety licencees should not be forced into a long-term deal with a partner who does not put the needs of public safety first and who is chosen not on the ability to provide the network and services needed by public safety but rather by an ability to pay the largest amount of money. Nevertheless, Frontline rightfully is against having public safety actually be in control of

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[148] Comments of APCO at 16.

[149] *Id.* at 17.

its network, noting that "[t]o allow the [national public safety licensee] to decide whether the E Block licensee should issue to the otherwise qualified winning bidder would violate the Commission's statutory licensing responsibility."[150] Frontline notes that giving public safety that much control would "understandably deter investment in applicants, like Frontline, which will need to raise funds first to bid and then construct and operated the shared network."[151] MetroPCS agrees. Indeed, this proves one of the major points of MetroPCS comments - - that the commercial interests of Frontline are diametrically opposed to the needs of public safety. This would be like mixing oil and water. Thus, there is an unbridgeable gulf separating the positions of Frontline and the public safety community which is fatal to the Frontline proposal.[152]

APCO's bottom line is that that "key to success is to ensure that public safety, not a commercial auction, decides the fate of public safety spectrum."[153] But the entire Frontline proposal is premised on the core contention that it maintains the statutory demarcation between the 24 MHz of public safety spectrum and the 60 MHz of commercial spectrum by maintaining the essential commercial character of the E-Block. There is, therefore, no alternative to having the E-Block license - - and the fate of the public safety interoperable network, if the Frontline proposal is adopted - - be sold to the high bidder. It is this inescapable requirement that caused MetroPCS to argue in its comments that a high bidder commercial auction is the worst possible way to help our first responders.

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[150] Comments of Frontline at 44. This makes sense, because Frontline is a commercial operator who wants to build out and operate a commercial network to provide commercial services.

[151] *Id.* at 44.

[152] This gulf would not exist if public safety negotiated on its own terms with multiple carriers, without being forced to deal with a monopoly carrier, as suggested by MetroPCS.

[153] Comments of APCO at 17.

Commissioner Copps compared the Frontline proposal to a toll way. The analogy is apt to explain why the Frontline proposal cannot work. In a typical public/private partnership, the private partnership operates an asset of the public for a fee, and is able to raise funds using the structure of the public financing bond market. The private company has no interest other than to manage the public asset. Here, however, the private party would have two tasks - - one, to serve public safety, and the other, to manage its own assets for a commercial profit. These two duties are ultimately irreconcilable because the use by public safety of the commercial asset will detract from the commercial operator's ability to earn a reasonable profit. Further, to the extent the private partly is obligated to try and get public safety to agree on a common network, standards, etc., such effort will take resources away from earning a profit for the investors. In sum, the comments of Frontline and the public safety community demonstrate that this irreconcilable difference makes the Frontline proposal unworkable. Accordingly, the interests of the public safety community and the public would be better served by implementing one of the alternatives expressed below.

D. The Proposed Revisions of the Frontline Proposal Remain Flawed

Both RCC Consultants, Inc. ("RCC") and Cyren Call Communications Corporation ("Cyren Call") propose complex, self-serving modifications to the Frontline proposal. RCC aptly demonstrates many of the problems of the Frontline proposal, including its questionable legality, its lack of detail, and the fact that under the Frontline proposal, 81% of US land would be uncovered for at least four years, 44% of land would be uncovered for between four and seven years, 39% of land would be uncovered for between eight and ten years, and 29% of US land, under the Frontline proposal, would never be covered.[154] However, RCC's counter proposal would introduce even more uncertainty into the proposal by causing additional negotiations

[154] Comments of RCC Consultants, Inc. at 62.

between local and national parties, including having Regional Planning Committee's play integral roles in the development of the nationwide network.[155] This would introduce yet another complicated and time consuming layer on the process of building a nationwide public safety network.[156] Moreover, RCC's "fixes" to the Frontline proposal do not remedy the major problems with allowing a monopoly-based provider to control the build-out of the public safety broadband network.

Cyren Call in its comments also offers up variations on the Frontline proposal which it states would remove many of the "poison pills" from the Frontline proposal in an apparent effort to craft a scheme that Cyren Call might find enticing.[157] For example, Cyren Call proposes that the requirements for mandatory roaming, open access, and wholesale services be removed. However, Cyren Call's proposed changes still do not remedy many of the worst infirmities of the Frontline proposal. As MetroPCS already noted in its initial Comments, the mere removal of the poison pills would not suffice:

> While these changes might encourage other bidders to participate, they do not solve the fundamental problems with the Frontline proposal – namely: (1) a commercial auction is not a proper vehicle for choosing a suitable partner for public safety; (2) there is a sharp divergence of interests between the commercial E Block licensee and public safety; (3) the public/private partnership model proposed here business model is unproven and exceedingly risky; (4) licensing a monopoly service provider is a very bad idea and would force the Commission to oversee and to micromanage the relationship on an ongoing basis, and (5) that other alternatives would work better and more efficiently for public safety. The simple fact is that Cyren Call, like Frontline and the Coalition for 4G in America, is seeking to stack the rules so as to limit competition for these licenses in its favor – which is something the Commission should avoid."[158]

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[155] *Id.* at 11.

[156] One of the problems Frontline tries to solve is the need for a unifying voice to bring the diverse and varied public safety groups together. The RCC proposal exacerbates this problem by giving additional authority to public safety.

[157] Comments of Cyren Call Communications Corporation ("Cyren Call").

[158] Comments of MetroPCS at 75.

Cyren Call also endorses "express regulatory protections and appropriate regulatory oversight"[159] which would place the Commission in a regulatory morass similar to what it is now involved in with the 800 MHz rebanding debacle.

E. The Commission Can Adopt Better Alternatives to the Frontline Proposal Than Those Suggested by Cyren Call and RCC

The Commission has numerous more sensible alternatives to provide support to public safety in the construction of nationwide interoperability network. As MetroPCS has stated, the Commission can, rather than endorsing a monopoly service provider, provide incentives for all commercial licensees in the upcoming 700 MHz spectrum to forge cooperative arrangements with public safety service providers.[160] The public safety community would be better served by allowing marketplace forces, rather than regulatory strictures, to ensure the cooperation and assistance they may need. To do so, the Commission should establish rules to incent commercial operators to compete to provide public safety with service, rather than forcing public safety users to negotiate with one provider which has complete market power, as per the Frontline plan. The Commission could also provide additional incentives to commercial purchasers of spectrum to provide aid and infrastructure to public safety entities. These additional incentives could be in the form of tax certificates, subsidized service costs, or discounts on universal service fund contributions that would be strong enough to encourage commercial providers to offer service to the public safety community. Then, the public safety community would not have to worry about having to negotiate with one party concerning fees and capacity and could rely on market forces to achieve voluntary agreements.

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[159] Comments of Cyren Call at 11.

[160] Comments of MetroPCS at 80-82.

In addition, the Commission could adopt the Verizon Wireless suggestion to adopt a Request for Proposals process, whereby "Public Safety can identify its requirements, and then negotiate with all qualified commercial entities, rather than relying on Frontline or another auction winner as the single entity with which it must negotiate."[161] Similarly, former NTIA heads Michael Gallagher and Larry Irving both note that "[g]overnment should leverage business models that have succeeded in the commercial wireless industry and other places, such as the Requests for Proposals system, and apply those to the public safety sector. Because public safety will be seeking new and upgraded communications that all meet the national standards of interoperability, their negotiating power will be multiplied."[162] Even some public safety entities agree with this approach, as the Region 43 Planning Committee comments that "expansion of . . . commercial broadband wireless systems, already operational within the region is much more fiscally responsible than the creation of any entirely new entity."[163] Region 43 also asserts that "[i]f commercial broadband providers assess Public Safety Broadband service as a commercially viable prospect, then the FCC should economically encourage these entities to bid on and procure the new bands set aside for auction."[164]

Even Cyren Call appears to endorse the idea of public safety negotiating with other commercial entities for secondary access. Cyren Call notes that, if the national public safety licensee is unable to reach agreement with the E Block winner, the national public safety license "should be permitted to terminate the negotiation process and, at its discretion, consider partnership arrangements with other commercial 700 MHz licensees with authority to permit

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[161] Comments of Verizon Wireless at 58.

[162] Comments of Michael D. Gallagher and Larry Irving at 3.

[163] Comments of Region 43 Regional Planning Committee at 6.

[164] *Id.* at 3-4.

them secondary access to Public Safety's broadband spectrum."[165] According to Cyren Call, the Commission should then relieve the E Block winner of its financial obligations and then reauction the E Block spectrum. If this is acceptable to public safety, then perhaps the best approach would be to proceed in this manner from the outset rather than have public safety be delayed by having to wait for the conclusion of the 700 MHz auction. Maintaining the E-Block as a fungible slice of paired spectrum free of the artificial restrictions imposed by Frontline and others would relieve concerns about whether the proceeds from the auction will be deposited in the US Treasury by the statutory deadline. Also, the E Block will be licensed to the entity that values it most, rather being devalued via strict restrictions to meet a specifically-tailored business plan. Finally, public safety would be able to begin the process of seeking a partner immediately rather than having to wait at least six to nine months for the E Block winner to be selected. This acceleration of the process would allow public safety to get its interoperable network sooner and it would have greater assurance of getting the network that it wants.[166]

As MetroPCS previously has indicated, it simply is wrong to use an auction of commercial spectrum to try to select the optimal qualified partner for a private/public partnership devoted to public safety: "[a]uctions are designed to select a licensee who values commercial spectrum most, not to ascertain who has the inclination and ability to work with public safety or to design systems that would be appropriate for public safety."[167] This concern was repeatedly cited by APCO in its comments. The traditional way partners are chosen for public/private partnerships is through a process where the public entity is able to select the private party based on a number of criteria, including financial considerations, experience, qualifications, etc. To

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[165] Comments of Cyren Call at 15.

[166] There is no reason this process should cost the public safety anything as they would give secondary access to their spectrum and would only be charged for usage of the network.

[167] Comments of MetroPCS at 82.

facilitate this more open process, the public safety licensee should have the flexibility to permit access to the public safety spectrum and be allowed to make its own determination as to which in this private party will earn that access. As stated by Verizon Wireless, the shotgun marriage approach suggested by Frontline "is irrational and could dramatically undermine the effective deployment and operation of the Public Safety broadband network."[168] Public safety should be allowed to say no to any network sharing agreement – and under Frontline's proposal, it would not be able to do so.

Frontline argues in response that large incumbent wireless carriers have had many years to provide a solution to public safety's communications needs, but have not done so.[169] However, Frontline fails to recognize that there are significant changes in circumstances that make the time right for marketplace forces to foster a natural alliance between existing commercial service providers and public safety users. First, and foremost, public safety now has a significant spectrum resource - - 24 MHz of prime 700 MHz spectrum - - some or all that of which it can make available on a lease or secondary usage basis as an incentive to commercial operators. Second, Congressional funding has started to flow, and will be funded in part by the proceeds from the 700 MHz commercial auction, meaning that public safety users will have the wherewithal to pay a commercial operator reasonable fees for infrastructure and services. Third, because the 700 MHz commercial auction is coming not long after Auction 66 (AWS-1), and Auction 58 (PCS), major incumbent wireless service providers have gotten past the critical spectrum shortages that would have deterred them from providing access to public safety

[168] Comments of Verizon Wireless at 56.

[169] Comments of Frontline at 50.

users.[170] And, fourth, as the wireless industry continues to mature, the large incumbent carriers are more focused than ever before on generating new sources of income and new ways to share infrastructure to defray costs. In sum, there is a confluence of events that justifies the Commission in sticking with market forces to produce a successful unforced public/private partnership.

F. The Frontline Proposal is Legally Questionable

Lastly, many commenters demonstrate that the Frontline proposal is legally questionable. As demonstrated by CTIA, the Frontline plans violates Section 337 of the Communications Act.[171] As noted by Sprint Nextel, "[s]everal parties have expressed concern that section 337(a) and (f) [of the Communications Act] would prohibit a commercial operator from using 700 MHz public safety spectrum, even on a secondary basis, pursuant to a lease agreement or other arrangement with 700 MHz public safety licensees."[172] MetroPCS shares this concern. Indeed, Verizon Wireless asserts that [b]oth the structure of Section 337(a) and the plain text of Section 337(a)(1) provide that the Commission has no authority to force Public Safety to share its spectrum with commercial licensees."[173] In addition, the Commission's correct conclusion that adoption of the Broadband Optimization Plan (the "BOP") would violate Section 337 of the Act adds weight to the legal arguments against the legality of the Frontline plan.

The Commission should not conduct the 700 MHz auction under a cloud of legal uncertainty. The worst outcome would be a repeat of the Nextwave debacle. In light of all of the above-cited problems with the Frontline proposal, and the lack of a ringing endorsement by

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[170] The Commission also has approved a number of mergers which have improved the spectrum positions of the major carriers.

[171] Comments of CTIA at 19-22.

[172] Comments of Sprint Nextel at 8.

[173] Comments of Verizon Wireless at 53-56.

public safety and DHS, the Commission should not risk a debilitating legal challenge of the entire auction 700 MHz auction in order to endorse a critically flawed, self-interested, monopoly proposal.

VII. GOOGLE'S REAL-TIME DYNAMIC SPECTRUM USER AUCTION PROCESS SHOULD NOT BE CONSIDERED AT THIS TIME

On May 21, 2007, Google filed an *ex parte* notice asking the Commission to allow companies who are licensed in the 700 MHz Band to allocate network access by using a real-time dynamic auction process similar to that used by search engine companies to allocate advertising space.[174] Google claims that, by using such an auction, licensees may be able to improve their spectrum use and create a market for capacity on a spot basis.

Although this proposal may be worthy of consideration, it is sufficiently different from any prior proposal in this proceeding that it would be inappropriate to consider it at this time. The simple fact is that this Google proposal is being made very late in the course of a proceeding with extremely tight statutory deadlines. The Google proposal is vague and cannot be fleshed out in time. Moreover, Robert Wilson, a Stanford management economist, hired by Frontline, stated that such a dynamic auction "is 5 or 10 years away," which should render the proposal useless as to the 700 MHz spectrum.[175] There is no justification for trying to evaluate this radically different proposal in the closing stages of a proceeding in which there are complex issues raised by a voluminous record that need to be decided prior to the commencement of the 700 MHz auction.

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[174] Letter from Richard S. Whitt, Esq., counsel to Google, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 06-150, 96-86, 06-169, PS Docket No. 06-229 (filed May 21, 2007).

[175] "Parties Begin 700 MHz Comment Party Early," Communications Daily, May 23, 2007.

VIII. CONCLUSION

The Commission should implement the proposals described above by MetroPCS in its upcoming Final Order for the 700 MHz Band. Because potential bidders need at least six months between the time the auction rules are determined and the time short form applications are due, MetroPCS urges the Commission to release its final rules for the 700 MHz Band by the Commission's June open meeting.

Respectfully submitted,

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