

**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
)	

To: The Commission

REPLY COMMENTS OF THE BLOOSTON RURAL CARRIERS

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SUMMARY

On review of the record, a large and diverse group of those commenting have urged the FCC to use CMA licensing for multiple spectrum blocks in both the Upper and Lower 700 MHz Bands. Likewise, a significant majority of commenters has urged the FCC to reject restrictions on incumbent carrier participation in the 700 MHz auctions. The record shows significant support for retaining a substantial service buildout option for commercial operations, and opposition to a geographic coverage requirement. If the FCC should choose to impose any type of geographic-based coverage requirement, an exemption should be available for rural areas, since the sparse population of such areas often will not support a geographic coverage approach. Finally, the record shows a lack of consensus on the issue of a “keep-what-you-use” performance requirement for CMA licenses. If the Commission should nonetheless choose to move forward with this type of re-licensing framework, it should recognize the challenges that are unique to serving rural areas and exempt all RSAs from this requirement.

Table of Contents

	<u>Page</u>
SUMMARY	i
I. A Large and Diverse Cross-Section of Commenters Have Urged the FCC To Adopt CMA Licensing in Both the Upper and Lower 700 MHz Bands	2
II. The Record Shows No Rational Basis for Imposing Eligibility Restrictions on Incumbent Service Providers, Much Less Rural ILECs	4
III. The Commission Should Reject Geographic Buildout Requirements and Retain a Substantial Service Construction Benchmark for Rural Areas	6
IV. There is a Lack of Consensus on the Wisdom of “Keep What You Use” Performance Requirements and “Keep What You Use” Should Not be Used for RSA Markets in Any Event	8
V. A Majority of Commenters Disfavors the Use of Blind Bidding and Combinatorial Bidding Auction Procedures	9
CONCLUSION	13

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The law firm of Blooston Mordkofsky Dickens Duffy & Prendergast, LLP (“Blooston”), on behalf of its rural telephone clients (the “Blooston Rural Carriers”) and pursuant to Section 1.419 of the Commission’s Rules, hereby submits reply comments in the above-captioned proceedings. On review of the record, a large and diverse group of those commenting have urged the FCC to use CMA licensing for multiple spectrum blocks in both the Upper and Lower 700 MHz Bands. Likewise, a significant majority of commenters has urged the FCC to reject restrictions on incumbent carrier participation in the 700 MHz auctions. The record shows significant support for retaining a substantial service buildout option for commercial operations, and opposition to a geographic coverage requirement. If the FCC should choose to impose any type of geographic-based coverage requirement, an exemption should be available for rural areas, since the sparse

population of such areas often will not support a geographic coverage approach. Finally, the record shows a lack of consensus on the issue of a “keep-what-you-use” performance requirement for CMA licenses. If the Commission should nonetheless choose to move forward with this type of re-licensing framework, it should recognize the challenges that are unique to serving rural areas and exempt all RSAs from this requirement.

I. A Large and Diverse Cross-Section of Commenters Have Urged the FCC To Adopt CMA Licensing in Both the Upper and Lower 700 MHz Bands

A large and diverse group of commenters in the 700 MHz dockets have urged the FCC to adopt CMA licensing for channel blocks in both the Upper and Lower 700 MHz bands.¹ The Commission has considerable experience with CMA licensing, and bidding in recent auctions has shown that CMA licenses provide a wide range of bidders with the ability to obtain the licenses needed to serve their intended service area, large or small.

In their initial comments, the Blooston Rural Carriers pointed out that the creation of two CMA-sized blocks would benefit small and rural carriers by creating multiple bidding opportunities, thereby mitigating the impact of a larger bidder aggregating multiple CMAs. The comments of Sprint Nextel Corporation provide the Commission with a variety of compelling arguments for licensing two (2), ten-megahertz blocks in the Upper 700 MHz band on a CMA basis, from the viewpoint of a large carrier. In this regard, Sprint Nextel points out that capacity requirements differ throughout the country

¹ See, e.g., Alltel Corporation Comments at pp. 5-6; Blooston Rural Carriers at pp. 2-5; Dobson Communications Corporation Comments at pp. 2-3; Frontline Wireless, LLC Comments at p. 51; McBride Spectrum Partners Comments at pp. 7-9; NTCA Comments at pp. 3-5; Rural Telecommunications Group Comments at pp. 5-7; Sprint Nextel Corporation Comments at pp. 5-6. United States Cellular Corporation Comments at p. 8.

and not all carriers need 700 MHz band spectrum over large geographic areas;² that offering a single, twenty-megahertz license would discourage competitive entry into the 700 MHz band³; and that smaller geographic licensing areas permit multiple carriers of varying sizes to enter the market and to deploy service rapidly without having to acquire or disgorge spectrum on the secondary market.⁴

Adopting large geographic licensing areas for a significant portion of the 700 MHz band – spectrum which is widely viewed as being ideal for the provision of service to remote and underserved areas – could lead to spectrum warehousing and would not be in the public interest. Accordingly, the FCC should expand upon its proposal to offer CMA licensing for the Lower 700 MHz B-Block and use CMA licensing for two new 10 megahertz blocks in the Upper 700 MHz Band. Offering multiple CMA licensing opportunities is the single best way to realize the 700 MHz band’s potential as an incubator for the rapid deployment of new and innovative broadband technologies.

² Sprint Nextel Comments at p. 5.

³ *Id.* at p. 6.

⁴ *Id.*

II. The Record Shows No Rational Basis for Imposing Eligibility Restrictions on Incumbent Service Providers, Much Less Rural ILECs.

A significant majority of commenters to the *Further Notice* believes the FCC should not impose any type of auction eligibility restrictions or secondary market restrictions on incumbent carriers.⁵ The record reflects that incumbent eligibility restrictions are, among other things, unfounded and anticompetitive,⁶ contrary to the requirements of Section 309(j) of the Communications Act,⁷ inconsistent with the Commission's observations in the Advanced Wireless Services (or "AWS") proceeding,⁸ and not certain to guarantee a national, wireless broadband alternative.⁹

Indeed, as a coalition of independent and rural 700 MHz licensees has suggested, LEC restrictions could actually result in a failure in the 700 MHz equipment market, such as what happened with the Local Multipoint Distribution Service ("LMDS").¹⁰

The FCC has previously considered and rejected the notion of eligibility restrictions for the 700 MHz band, so it cannot adopt such restrictions now without a

⁵ See, e.g., Comments of 700 MHz Independents at pp. 10-11; Comments of AT&T, Inc. at p. 21; Comments of Blooston Rural Carriers at pp. 5-7; Comments of CTIA – The Wireless Association at pp. 10-17; Comments of MetroPCS, Inc. at pp. 38-39; Comments of National Cable & Telecommunications Association at pp. 5-78; Comments of National Telecommunications Cooperative Association at pp. 7-8; Comments of Rural Telecommunications Group, Inc. at pp. 12-13; Comments of Qualcomm, Inc. at pp. 9-11; Comments of United States Cellular Corporation at p. 21; Comments of Verizon Wireless at pp. 31-35.

⁶ Comments of Verizon Wireless at p. 31.

⁷ See, e.g., Comments of National Telecommunications Cooperative Association at p. 7; Comments of Blooston Rural Carriers at p. 5.

⁸ Comments of CTIA at 11 *citing* 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 at 19291 (2004). ("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.")

⁹ Comments of National Cable & Telecommunications Association at p. 7.

¹⁰ Comments of 700 MHz Independents at p. 11.

reasoned basis.¹¹ The record is devoid of any evidence of market failure to justify such heavy-handed regulatory intervention.¹² Moreover, such restrictions would undermine the Commission’s stated goal of getting 700 MHz spectrum into the hands of small and rural carriers and other new entrants.¹³ As the Rural Telecommunications Group correctly observes, “rural wireline carriers and their affiliates represent the predominant class of entity interested in bringing advanced broadband services to rural areas.”¹⁴ Preventing these same entities from being able to participate in the 700 MHz auctions or hold 700 MHz licenses would clearly hinder the deployment of advanced wireless services to rural areas and be contrary to the public interest.

The Blooston Rural Carriers agree with AT&T that any imposition of incumbent eligibility restrictions would be inconsistent with the FCC’s well-established policy of allowing market forces – and not governmental rules – to dictate how the wireless industry develops.¹⁵ In the absence of marketplace failure, the Commission should let the largest possible pool of bidders participate in the 700 MHz auctions and sort out the highest and best use of this valuable spectrum resource.

¹¹ Comments of AT&T, Inc. at p. 21, *citing* Service Rules for the 746-764 and 776-794 MHz Bands, WT Docket No. 99-168, *Third Report and Order*, 16 FCC Rcd 2703, ¶ 42 (2001).

¹² Comments of MetroPCS at p. 39.

¹³ Comments of The 700 MHz Independents at pp. 10-11.

¹⁴ Comments of Rural Telecommunications Group, Inc. at p. 13

¹⁵ Comments of AT&T, Inc. at p. 21. *See, e.g.*, Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, *Policy Statement*, 14 FCC Rcd 19868, 19871-72 (1999); Separate Statement of Chairman Kevin J. Martin, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eleventh Report*, 21 FCC Rcd 10947 (2006) (noting that “a competitive marketplace – rather than economic regulation – provides the greatest benefits to the American consumer”); Separate Statement of Commissioner Kevin J. Martin, Application of EchoStar Communications Corporation, CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559 (2002) (stating that “Generally, I believe market forces are the most effective means of delivering choice, innovation, and affordability to consumers”).

III. The Commission Should Reject Geographic Buildout Requirements and Should Retain a Substantial Service Construction Benchmark for Rural Areas

A majority of commenters that are experienced in deploying commercial wireless networks has urged the FCC not to impose geographic buildout requirements on commercial 700 MHz band licenses.¹⁶ Adopting a geographic service coverage requirement would mark a radical reversal of long-standing FCC precedent, deter the participation in the auction of certain qualified bidders, drive down auction resources earmarked for the DTV transition, and require the Commission to resolve a myriad of complex coverage issues.¹⁷ Instead, the Blooston Rural Carriers agree with MetroPCS that the Commission should follow the same successful formula it used for AWS and rely upon the more flexible substantial service rules for commercial services in the 700 MHz Bands.¹⁸ The Blooston Rural Carriers also agree with SpectrumCo LLC that geographic-based performance requirements are likely only to impede rural wireless deployment and that such requirements are unnecessary if the Commission adopts a 700 MHz band plan providing for more smaller geographic area licenses.¹⁹ SpectrumCo correctly observes:

Even with the propagation characteristics of the spectrum band, and even if a more attractive mix of geographic area license sizes are ultimately offered in the 700 MHz auction, the Commission's proposed performance requirements would raise the risk of license forfeiture and reduce the flexibility of wireless operators to design and deploy their networks in a manner that best promotes their business plans.²⁰

¹⁶ See, e.g., Comments of Blooston Rural Carriers (representing 30 rural and independent telephone companies); Comments of Leap Wireless International, Inc. at p. 5; Comments of MetroPCS, Inc. at pp. 29-38; Comments of SpectrumCo, LLC at pp. 20-29; Comments of United States Cellular Corporation at pp. 14-19;

¹⁷ Comments of MetroPCS, Inc. at p. 30.

¹⁸ *Id.*

¹⁹ Comments of SpectrumCo, LLC at p. 20.

²⁰ *Id.* at p. 26.

Eliminating the substantial service option in favor of a one-size-fits-all geographic performance benchmark will pose unfair burdens on those bidders that seek to provide service in the rural Midwest and western states, where individual counties (and the FCC's service areas) are often vast and sparsely populated.

If the FCC decides to impose some type of geographic coverage or interim performance benchmarks, it should exempt RSA licenses from these obligations. As NTCA correctly points out, geographic benchmarks only serve their purpose, ensuring rural build out and avoiding spectrum hoarding, when imposed on large carriers that obtain licenses covering large geographic territories or licenses covering urban areas. There is no evidence of rural carriers focusing build out on urban centers and leaving rural communities unserved because RSA license areas, by definition, do not contain urban centers. Therefore, any carrier that provides service to an RSA service area is providing service to rural communities.²¹

The Blooston Rural Carriers believe that increasing the power levels at which licensees are permitted to operate rural 700 MHz Band wireless networks – as the Commission has wisely done in its 700 MHz *Report and Order* – should help rural licensees to extend their networks more quickly into less densely populated areas. The Commission should trust that these revised technical rules, and the flexibility provided by its existing “substantial service” construction benchmark (which was designed to allow licensees to serve niche and underserved markets), will be sufficient to bring advanced wireless services to sparsely populated rural areas.

Circumstances faced by rural carriers have not changed all that significantly since

²¹ Comments of NTCA at pp. 5-7.

the Commission adopted its Rural Wireless *Report and Order* in the summer of 2004, and the particulars of the 700 MHz Band Service have not changed at all. The Blooston Rural Carriers firmly believe that the flexibility afforded by a substantial service option will free 700 MHz Band commercial licensees to develop construction plans and tailor the deployment of services to needs that are otherwise unmet, such as the provision of service to rural or niche markets.

IV. There is a Lack of Consensus on the Wisdom of “Keep What You Use” Performance Requirements and “Keep What You Use” Should Not be Used for RSA Markets in Any Event

A review of the record in these proceedings shows a lack of consensus on the wisdom of imposing “keep-what-you-use” performance requirements on the remaining 700 MHz band spectrum, much less 700 MHz licenses that correspond to Rural Service Areas (or “RSAs”). Contrary to the intent of Section 309(j), the Blooston Rural Carriers believe that keep-what-you-use requirements will only delay the provision of service to remote areas, since commercial licensees will logically construct the most economically viable areas first (to preserve the license where it is most valuable) rather than using their limited resources to extend coverage to new and underserved areas. The Blooston Rural Carriers also agree with SpectrumCo that a “keep-what-you-use” policy would be unjust and unduly punitive, would be difficult to administer, would provide a “fertile environment for greenmail,” and would hinder secondary market transactions by making it more difficult to determine the geographic areas that can properly be assigned and leased under a given license.²²

²² Comments of SpectrumCo LLC at p. 29.

If the Commission adopts “keep-what-you-use” performance criteria, it should exempt RSA licenses from this requirement. As the Blooston Rural Carriers noted in their initial comments, sustainable coverage in sparsely populated rural areas often takes time to develop, with service provided first to more populated communities and along well-traveled highways.²³ In some cases, the extension of service to very rural areas does not become economically feasible (if at all) until a second license term. If these unserved areas must be “returned” to the FCC, the Commission will likely find itself stuck holding vast amounts of low value spectrum with no guarantee that any company would be willing to acquire it in a subsequent re-auction. The added flexibility of a “substantial service” buildout requirement – and exemption from “keep-what-you-use” performance criteria – is the best way for the FCC to ensure that service is extended as soon as possible, and as widely as possible, in RSA markets.

V. A Majority of Commenters Disfavors the Use of Blind Bidding and Combinatorial Bidding Auction Procedures

A majority of commenters has urged the Commission not to adopt “blind bidding” auction procedures for the 700 MHz auctions.²⁴ The record in this proceeding shows that blind bidding would disadvantage small businesses and rural carriers. In this regard, the Blooston Rural Carriers agree with Aloha Partners, L.P. that the use of blind bidding “would remove one of the core integrity checks in the auction: the fact that all bidders have access to the same information about competing bids and bidders.”²⁵ This is because, even with blind bidding, larger bidders will have access to expert economists and expensive software packages and will be able to infer who is placing particular bids.

²³ Comments of the Blooston Rural Carriers at p. 9; see also Comments of Aloha Partners at pp. 8-9;

²⁴ See, e.g., Comments of Leap Wireless International, Inc. at p. 8; Comments of SpectrumCo., LLC at pp. 18-20;

Smaller companies will not have this type of resource and will be at a competitive disadvantage. Knowledge as to how the larger, more established players are bidding is crucial for smaller bidders and their continued willingness to participate in an auction as prices rise. Last year's AWS auction was a success in large part because transparent auction procedures were used. The record from Auction No. 66 should provide clear and irrefutable evidence that small business and rural telephone-affiliated bidders are able to bid with confidence, and to bid aggressively, when they know whom they are bidding against and whether their spectrum neighbors are likely to adopt compatible technology and enable roaming capability. There are no new or different developments that have emerged for the 700 MHz auction that should lead the Commission to change significantly the approach taken in the AWS auction.

Likewise, combinatorial bidding (or "package bidding") procedures should not be used for any of the remaining 700 MHz licenses. Commenters believe that package bidding procedures are complex and untested,²⁶ that a first-time implementation presents risks of bidders "gaming the system" as well as other unforeseeable problems,²⁷ that it is "an option that works only to the advantage of large carriers (who can utilize it) and to the detriment of small carriers (who can virtually never use it),"²⁸ and that it would be "tantamount to giving away the spectrum on a nationwide basis."²⁹ The Blooston Rural

²⁵ See Comments of Aloha Partners, L.P. at pp. 5-8.

²⁶ See, e.g., Comments of Aloha Partners, L.P. at p. 8; Comments of Cellular South Licenses, Inc. at p. 16; Comments of MetroPCS at p. 22; Comments of Rural Cellular Association at p. 18; Comments of Rural Telecommunications Group at p. 16.

²⁷ Comments of SpectrumCo., LLC at pp. 16-18 ("the implementation of a new, complicated auction format on a tight timeline is likely to be difficult and fraught with challenges, adding unnecessary risk to one of the Commission's most important remaining auctions.")

²⁸ Comments of Aloha Partners, L.P. at pp. 7-8.

²⁹ Comments of ALLTEL Corporation at p. 10.

Attachment A

The Blooston Rural Carriers

All West Communications, Inc.	Kamas, UT
BEK Communications Cooperative	Steele, ND
Big Bend Telephone Company	Alpine, TX
Cannon Valley Communications, Inc.	Bricelyn, MN
CC Communications	Fallon, NV
Chibardun Telephone Cooperative, Inc.	Dallas, WI
Clear Lake Independent Telephone Company	Clear Lake, IA
Command Connect, LLC	Sulphur, LA
Communications 1 Network	Kanawha, OA
Eastern Colorado Wireless, LLC	Wiggins, CO
FMTC Wireless, Inc.	Nora Springs, IA
Hancock Rural Telephone Corp d/b/a Hancock Telecom	Maxwell, IN
Harrisonville Telephone Company	Waterloo, IA
Haviland Telephone Company, Inc.	Haviland, IN
Heart of Iowa Communications	Union, IA
Interstate Telecommunications Cooperative	Clear Lake, SD
Kennebec Telephone Company, Inc.	Kennebec
Ligtel Communications, Inc.	Ligonier, IN
Manti Telephone Company	Manti, UT
Mid-Rivers Telephone Cooperative, Inc.	Glendive, NT
Midstate Communications, Inc.	Kimball, SD
Nucla-Naturita Telephone Company	Nucla, CO
Ponderosa Telephone Company	O'Neals, CA
Red River Rural Telephone Association, Inc.	Abercrombie, ND
Santel Communications Cooperative	Woonsocket, SD
Smithville Telephone Company	Ellettsville, IN
South Slope Cooperative Communications Co.	North Liberty, IA
Venture Communications Cooperative	Highmore, SD
Webster Calhoun Cooperative Telephone Association	Gowrie, IA
Yadkin Valley Telephone Membership Corp.	Yadkinville, NC