

To: The Commission

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I. INTRODUCTION

1. The Commenters, who represent states with significant rural populations, submit these Reply Comments in support of the proposals that the Commission has put forward in its Report and Order and Further Notice of Proposed Rulemaking (FNPRM) of April 27, 2007, to revise its service rules for the 700 MHz bands in order to include more small license areas and raise performance standards for licenses granted in the upcoming auction. We believe that these are important steps toward improving wireless services in rural unserved and underserved areas.

2. Since we originally provided comments last fall, the importance of providing wireless services throughout states like Maine, Nebraska, North Dakota, and Vermont has not diminished. Ensuring coverage is a high public priority. For example, in Vermont, in a March 2007 survey conducted at annual Town Meetings throughout the state, 82% of respondents said that statewide cell service and broadband were important to the state's economy.¹ In May 2007, the Vermont General Assembly passed, with the support of Governor Jim Douglas, an act committing the state to achieving universal access to broadband and cellular service.² The 700 MHz spectrum has the potential to greatly assist places like those found in our states to reach the goal of having service available to all of our citizens.

II. THE COMMISSION SHOULD ADOPT ITS PROPOSAL FOR HIGH PERFORMANCE REQUIREMENTS

3. We applaud the Commission's proposal to adopt a modified version of the Rural Cellular Association's recommended performance requirements for licensees. This will raise the bar for these licenses from "substantial service" to a minimum 25% geographic coverage by year three, 50% coverage by year five, and 75% coverage by year eight. We believe that this change will

¹ <http://billdoylevt.com/2007/04/16/town-meeting-day-survey-%e2%80%94-march-2007/>

² Bill H. 248 of the 2007-2008 biennium.

benefit the public by setting an expectation that licensees will provide service widely throughout the license area, including in more rural areas.

4. The Commission has sought comment on other ways it might impose build-out requirements. We are content with the geographic benchmarks the Commission has proposed. We note, however, that our comments of September 29, 2006, urged the Commission to adopt a high population-based coverage requirement, with a geographic-based alternative standard similar to the one the Commission is now proposing. Most importantly, the standard must be high enough to require licensees to serve rural areas, not just the already better-served urban and suburban areas. Now as then we stress, if the Commission is to use a population-based coverage requirement, it must be higher than comparable population-based coverage requirements that the Commission has adopted in the past, to ensure that licensees must provide service beyond the major population centers in their license areas.³

5. We also support the Commission's proposal that the performance requirements for large-area REAG licenses be measured not across the license area as a whole, but on each of the smaller EA areas contained within the REAG. We support including small license areas in the band plan for 700 MHz, but for those areas which may be licensed over larger geographic areas, we believe that the Commission can obtain some of the benefits of small area licensing by at least measuring the licensee's performance not just in the aggregate, but in the various parts of the license area. We believe the Commission's proposal would be a positive step in this direction.

³ In our September 29, 2006, comments, we proposed a standard requiring service to 90% of the population in the license area within eight years of commencement of the license, with an interim milestone of 50% coverage by population at the five-year point.

6. The Commission has sought comment on the consequences for licensees that fail to meet the interim requirements to cover a minimum percentage of the geographic area of their license area. We encourage the Commission to adopt a policy like that described in our comments of September 29, 2006. We urged that in cases of failure to meet performance requirements, the Commission should impose financial penalties up to the amount of the winning bid for the license area, depending on the extent of non-performance, in addition to relicensing some or all unserved areas, depending on a judgment by the Commission as to the degree to which the requirement is missed.⁴ We believe the deterrent of potentially strong penalties, including financial penalties, is appropriate. The license is a commitment, and communities are harmed when they are not provided service in a timely fashion by licensees that have committed to do so.

7. The Commission has asked if the measurement of performance on a geographic area should exclude government land. We believe that if the Commission decides to provide this option to licensees, it should do so only if it requires the licensee to declare within one year which such lands it does not intend to serve, and make those areas available for immediate relicensing. There is a value to service provided even over government land, and licensed spectrum should not be locked away by a licensee which has no intention of providing service to an area for which it is licensed.

III. THE COMMISSION SHOULD ADOPT A “KEEP-WHAT-YOU-USE” POLICY

8. We strongly support the Commission’s proposal to adopt a “keep-what-you-use” policy for areas to which licensees do not build out. This policy will increase the chances that licenses

⁴ As we previously stated, the extent to which the Commission imposes financial or re-licensing penalties should depend upon the degree to which the licensee fails to meet performance requirements. For example, it might very well be appropriate for the Commission to respond to a licensee who has not undertaken timely site acquisition efforts and grossly misses coverage requirements with license revocation and a heavy financial penalty. On the other hand, in the case of a licensee who has undertaken substantial site acquisition and construction efforts, and comes within a few percentage points of achieving the required coverage, it may be more appropriate to levy a small financial and relicensing penalty.

will be in the hands of those who are willing to build them and serve the public. Also, by making the license a “perishable commodity,” it will encourage primary licensees who do not wish to build parts of a license area to actively seek out those who do in secondary markets.

9. A keep-what-you-use policy should apply to all licensees, not just those which have missed performance requirements. Unused areas should be reclaimed at the end of a license term, as well as potentially when a licensee has missed an interim or final performance requirement. A keep-what-you-use policy is not merely a penalty mechanism for those licensees who fail to meet the requirements of the licenses. It is first and foremost an equal opportunity mechanism for those parts of the country that licensees have not served. After a licensee has had a reasonable opportunity to build a license, others should have the opportunity to do what the initial licensee has not done.

10. At this time we also repeat our previously-stated position that the Commission should not wait until the end of a license term or until a performance milestone is missed to implement a keep-what-you-use policy. Licensees should have no more than three years to declare what parts of their license area they intend to serve within the term of their license (which should of course not be less than the required coverage). Any remainder should immediately be returned for relicensing.

11. The Commission has asked for comment on how spectrum reclaimed under a “keep-what-you-use” policy should be relicensed. We believe that it should be relicensed in a competitive process with the winner being the qualified bidder willing to provide the greatest coverage within a reasonable period of time, such as over the next five years. We believe initial licensees should be excluded from this process only if the licensed area was reclaimed for failure to meet performance requirements. The Commission has inquired about other potential limits on what entities would be eligible for relicensing in the interest of promoting competition. We do

believe that competition is desirable as a general matter, but we believe that the hierarchy of interests in areas which have no service should be availability first, competition second. The license should go to the entity that is most ready and able to build it. If there are no bidders for the area in the relicensing process, the unserved area should be made available on an ongoing basis on a first-come-first-served basis to entities which are willing to commit to providing service.⁵

12. The Commission has asked if unserved areas should be reclaimed on a whole county basis under a keep-what-you-use policy. We believe that doing so is more likely to lead to areas with no service. We note that county boundaries are often different than important geological boundaries which impact radio signal propagation. For example, a county may be divided by mountainous terrain, and it may make sense to provide service from different sources on different sides of the county. All unserved areas, whether a whole county or part of a county should be reclaimed.

IV. THE COMMISSION SHOULD INCLUDE SMALL LICENSE AREAS IN BOTH 700 MHz BANDS

13. The Commission has proposed to modify its band plan for the 700 MHz bands to include a greater mix of small, medium and large license areas, including additional CMA blocks. We believe that this change is in the public interest, and will promote interest and activity in the auction by a range of entities, including those with a focus on serving rural areas.

14. We fully support the Commission's proposed reconfiguration of the lower 700 MHz band. The mix of large and small license areas, with the emphasis upon small areas at the lower-

⁵ If the Commission needed additional time to promulgate detailed rules regarding relicensing, it could do so after first adopting the mechanism through which it would reclaim unused spectrum.

frequency end of the spectrum, will provide opportunities both to small rural operators and to large and very large operators.

15. In the upper 700 MHz band, the Commission has made multiple proposals, including proposals which depend on decisions regarding the guard bands in this part of the spectrum. Without endorsing any of the specific proposals, we urge the FCC to adopt one that includes a CMA block. The Second Proposal for the upper band included in the FNPRM includes an option such an assignment for the C block, but there appears to be no reason why any of the other proposed reconfigurations of the band could not have a block auctioned by CMA as well.

V. CONCLUSION

16. By proposing to support higher performance requirements and a more diverse mix of license areas, the Commission has placed the greater public good above more narrow interests. This is the right focus. The 700 MHz spectrum represents a great opportunity to help broadband and mobile wireless services reach all corners of our country. The Commenters from Maine, Nebraska, North Dakota, and Vermont encourage the Commission to recall that in each community, large or small, the Commission is determining the ability of that community to benefit or not from this prime spectrum. We appreciate the steps that Commission is proposing to take to expand the access of those communities.

Respectfully submitted this 4th day of June, 2007.

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