

**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
)	
Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309
)	
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services)	WT Docket No. 03-264
)	
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 WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), an association of more than 100 wireless Internet service providers (“WISPs”), broadband equipment

manufacturers and others dedicated to promoting and improving wireless broadband access across the country, hereby submits its Reply Comments in response to certain Comments filed in this proceeding.¹

In adopting rules for the 700 MHz auctions and service, the Commission must adhere to its Congressional directive to promote both “an equitable distribution of licenses and services among geographic areas”² and “economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”³ In furtherance of this statutory mandate, it is clear from the Comments that the Commission should take a number of important steps. First, the record demonstrates support for auctioning both Lower and Upper 700 MHz bands according to Cellular Market Areas (“CMAs”), especially from small and rural entities that can be expected to bid if provided the opportunity to bid on small areas. Second, given that eligibility restrictions that would prevent certain classes of companies from participating in auctions generally are disfavored, WISPA continues to urge adoption of its proposal for a 20 percent bidding credit that would be available in rural CMAs to new entrants meeting certain eligibility criteria.⁴ Third, consistent with the views of WISPA and other organizations representing the interests of rural entities, the Commission should change its “substantial service” performance obligations to a standard based on geographic build-out benchmarks, and

¹ *In the Matter of Service Rules for 698-746, 747-762 and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72 (rel. Apr. 27, 2007) (“700 MHz FNPRM”). WISPA filed its Comments on May 23, 2007. *See* Comments of the Wireless Internet Service Provider Association, WT Docket No. 06-150 (filed May 23, 2007) (“WISPA Comments”).

² 47 U.S.C. § 309(j)(4)(C).

³ 47 U.S.C. § 309(j)(3)(B).

⁴ *See* WISPA Comments at 7-12.

should exempt licensees in rural CMAs from the first three- and five-year benchmarks in order to ensure that more rural areas of the country can access advanced wireless services. By adopting these rules, the Commission will fulfill its Section 309(j) obligations by promoting opportunities for small and rural entities “to participate in the provision of spectrum-based services.”⁵

Discussion

I. THE RECORD SUPPORTS AUCTIONING LOWER AND UPPER 700 MHz BLOCKS ACCORDING TO CELLULAR MARKET AREAS.

The record reflects overwhelming support for the Commission’s proposal⁶ to auction the Lower 700 MHz B Block according to CMAs.⁷ There is no reason why the Commission should depart from its plan to assign licenses in the Lower 700 MHz band according to its stated proposal.

⁵ 47 U.S.C. § 309(j)(4)(D). *See also Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078 (2004).

⁶ *See 700 MHz FNPRM* at 67-68.

⁷ *See, e.g.*, WISPA Comments at 4-5; Comments of Rural Cellular Association, WT Docket No. 06-150 (submitted May 23, 2007) (“RCA Comments”) at 11; Comments of the Rural Telecommunications Group, Inc., WT Docket No. 06-150 (submitted May 23, 2007) (“RTG Comments”) at 3-5; Comments of the National Telecommunications Cooperative Association, WT Docket No. 06-150 (submitted May 23, 2007) (“NTCA” Comments”) at 3-4; Comments of the Blooston Rural Carriers, WT Docket No. 06-150 (submitted May 23, 2007) (“Blooston Comments”) at 2-3; Comments of AT&T Inc., WT Docket No. 06-150 (submitted May 23, 2007) (“AT&T Comments”) at 3-4.

For the Upper 700 MHz C Block licenses, nearly every wireless trade association⁸ and at least one wireless carrier⁹ supported adoption of Proposal 2 with the C Block auctioned on a CMA basis, making compelling points consistent with the mandate of Section 309(j). As NTCA observed, “[p]roposals that would offer spectrum only according to REAGs and/or EAs ensure that all of the Upper 700 MHz spectrum will be won by large, nationwide or regional carriers, with no opportunities for small enterprises.”¹⁰ That said, the inclusion of a CMA block should not prevent large carriers from aggregating spectrum. WISPA and others demonstrated that the combination of REAG, EA and CMA licenses in the AWS auction still allowed large carriers to create nationwide footprints and created opportunities for small and rural bidders.¹¹ In fact, some commenters stated that a CMA block would create opportunities for large carriers to fill in holes in their geographic coverage.¹² Like small and rural carriers, they should not have to incur the additional costs of acquiring licenses for areas they do not intend to serve, especially since “[s]mall carriers simply lack the resources to financially compete for licenses covering large swaths of territory.”¹³ In sum, the record shows that

⁸ See WISPA Comments at 4-6; Blooston Comments at 2-5; RTG Comments at 3-8; NTCA Comments at 3-5. RCA agreed that the Commission should adopt Proposal 2 for the Upper 700 MHz band, but did not specify whether the Commission should auction the Upper 700 MHz band according to EAs or CMAs, instead stating that generally that Proposal 2 would “provide all interested bidders an opportunity to aggregate smaller markets.” RCA Comments at 14. CTIA – The Wireless Association took no position on the band plans. See Comments of CTIA – The Wireless Association, WT Docket No. 06-150 (submitted May 23, 2007) (“CTIA Comments”). The Wireless Communications Association International, Inc. favored proposals that would, in its view, facilitate public safety interoperability along the Mexican and Canadian borders. See Comments of the Wireless Communications Association International, Inc., WT Docket No. 06-150 (submitted May 23, 2007) at 5-9. WISPA submits that the nationwide benefits and opportunities created by adopting Proposal 2 and auctioning the C Block according to CMAs outweighs any regional benefit that this proposal encompasses.

⁹ See Comments of Alltel Corporation, WT Docket No. 06-150 (submitted May 23, 2007) (“Alltel Comments”) at 3-4.

¹⁰ NTCA Comments at 4.

¹¹ See WISPA Comments at 6; RTG Comments at 7-8; Blooston Comments at 5; Alltel Comments at 4.

¹² See Blooston Comments at 4.

¹³ NTCA Comments at 5. See also RTG Comments at 6 (discussing cost benefits of 700 MHz spectrum relative to other spectrum); WISPA Comments at 5-6.

auctioning the Upper 700 MHz C Block according to CMAs creates the best of all worlds – opportunities for small and rural entities to participate in the auction and opportunities for incumbents to fill in coverage holes, while retaining a large amount of REAG and EA spectrum for wide-area deployments.

Entities that already have established large wireless footprints or were big winners in the AWS auction ask the Commission to foreclose opportunities for small and rural companies to obtain 700 MHz spectrum. SpectrumCo argues that the Commission should adopt Proposal 2 for the Upper 700 MHz band, but suggests that there is not sufficient demand for CMA licenses.¹⁴ This argument fails to account for the fact that the Lower 700 MHz B Block will be most attractive to existing licensees of the Lower 700 MHz C Block, who will look to double their spectrum holdings. This would leave no meaningful opportunity for new entrants to participate in the auction and offer services competitive with those offered by the combined B Block/C Block licensee, as well as the successful bidders for the REAG and EA blocks.

AT&T claims that auctioning two Upper 700 MHz blocks on a REAG basis and one Upper 700 MHz block on an EA basis “will provide adequate opportunities for bidders whose business plans do not call for wide geographic reach to pursue more localized strategies.”¹⁵ This argument by a large incumbent carrier can be given no weight in light of the overwhelming support among representatives of small carriers that there is demand for license areas even smaller than EAs that allow for greater localization in the provision of wireless services.

¹⁴ See Comments of SpectrumCo LLC, WT Docket No. 06-150 (submitted May 23, 2007) (“SpectrumCo Comments”) at 11.

¹⁵ AT&T Comments at 7.

II. THE RECORD SHOWS THAT, WHILE THE COMMISSION SHOULD NOT IMPOSE ELIGIBILITY RESTRICTIONS, IT SHOULD ADOPT AN ADDITIONAL BIDDING CREDIT FOR CERTAIN BIDDERS IN THE RURAL CELLULAR MARKET AREAS.

WISPA¹⁶ and numerous other commenters¹⁷ opposed efforts to prevent incumbent local exchange carriers, incumbent cable operators and large wireless carriers from participating in the 700 MHz auction.¹⁸ Among other things, parties cite the Commission's policy generally disfavoring ownership restrictions¹⁹ and note that eligibility exclusions may not have been effective in other licensed services.²⁰

A few parties responded to the Commission's request for comments on whether it should adopt eligibility restrictions or extend the use of bidding credits to other classes of bidders. CCIA requested adoption of rules requiring incumbent carriers to establish structurally separate subsidiaries.²¹ SpectrumCo noted its opposition to bidding credits for new entrants unaffiliated with wireline broadband service providers, but its rationale is predicated on the *exclusion* of incumbents and not on the allocation of bidding credits to certain bidders.²² Alltel endorsed a "bid premium" under which "ILEC-affiliated bidders" holding "significant and attributable CMRS spectrum" would be assessed a 25 percent premium on licenses they acquired.²³

¹⁶ See WISPA Comments at 7.

¹⁷ See, e.g., Comments of Verizon Wireless, WT Docket No. 06-150 (submitted May 23, 2007) at 31-32; AT&T Comments at 20-34; SpectrumCo Comments at 30-33; RTG Comments at 12-13; CTIA Comments at 10-17. NTCA and Blooston opposed eligibility restrictions for rural incumbents and did not address the broader eligibility issue. See NTCA Comments at 7; Blooston Comments at 5-7.

¹⁸ See 700 MHz FNPRM at 81.

¹⁹ See WISPA Comments at 7 n.17; AT&T Comments at 21; Comments of the Telecommunications Industry Association, WT Docket No. 06-150 (submitted May 23, 2007) ("TIA Comments") at 6.

²⁰ See RTG Comments at 13 (regarding eligibility restrictions in the LMDS auction); TIA Comments at 6-7 (same); SpectrumCo Comments at 32 n.98 (regarding restrictions preventing cable companies from holding BRS authorizations).

²¹ See Comments of the Computer & Communications Industry Association, WT Docket No. 06-150 (submitted May 23, 2007) ("CCIA Comments") at 5.

²² See SpectrumCo Comments at 30.

²³ Alltel Comments at 14.

As stated in its Comments, WISPA believes that the Commission can advance its Section 309(j) mandate by adding a 20 percent bidding credit that would be available only in rural CMAs only (the RSAs) to bidders certifying that: (a) they do not have a “material relationship” with a “large wireless carrier” or “large cable operator;”²⁴ and (b) they have filed FCC Form 477 for at least one year immediately preceding the start of the auction.²⁵ WISPA believes that this bidding credit would reduce entry barriers for bidders in rural markets without excluding potential bidders – large or small – that may desire spectrum for localized service or to fill in a larger regional area. Given that the Commission has long utilized bidding credits to promote access to spectrum-based services for small entities, there is ample basis for adopting WISPA’s proposal to facilitate new entry in rural markets.

III. THE RECORD SUPPORTS ADOPTION OF GEOGRAPHIC BUILD-OUT REQUIREMENTS, WITH REQUIREMENTS EASED FOR RURAL CELLULAR MARKET AREAS.

WISPA²⁶ and other commenters representing rural interests²⁷ supported the Commission’s proposal to adopt build-out benchmarks based on a percentage of the geographic area covered rather than under a more lenient “substantial service” standard. Moreover, RTG, NTCA and Blooston joined WISPA in demonstrating that the rural CMAs should be exempt from the three- and five-year build-out benchmarks, and instead should be required to meet the eight-year benchmark.²⁸ As these parties showed,

²⁴ WISPA proposed that a “large wireless carrier” and a “large cable operator” be defined as a CMRS provider or “cable operator” (as defined in Commission rules) with average gross wireless revenues exceeding \$5 billion for the three years preceding the auction. *See* WISPA Comments at 9.

²⁵ *See id.* at 8-11.

²⁶ *See id.* at 12-14.

²⁷ *See* RCA Comments at 5-11; RTG Comments at 9-10; NTCA Comments at 5-7. *See also* CCIA Comments at 4.

²⁸ *See* RTG Comments at 9; NTCA Comments at 6; Blooston Comments at 7-8.

licensees in rural markets do not enjoy the economies of scope and scale that large carriers and large license areas can support, adding time and cost to construction.²⁹

Further, equipment manufacturers direct their efforts on meeting the demands of large licensees serving larger and urban markets, and leave the rural market for a later time.³⁰

Opponents of the Commission’s plan to adopt geographic build-out requirements argue that the existing “substantial service” rules have promoted market-oriented build-out and that the Commission should not force licensees to serve sparsely populated areas where it is not economical to do so.³¹ They even go so far as to suggest that potential bidders may avoid the auction altogether.³² These statements confirm that large incumbents holding a huge amount of spectrum desire only to serve densely populated urban areas and appear to have little interest in serving rural areas despite having the financial means to subsidize rural service. It is significant to note that WISPA’s members – and members of other organizations representing rural interests – favor the adoption of geographic build-out rules and the challenges that will be associated with such a requirement.

Moreover, geographic build-out requirements promotes interoperability and facilitates roaming. Although an area may be sparsely populated, licensees will be encouraged to provide coverage or relinquish territory if they do not. The benefits of roaming may be sufficient incentive for licensees to choose to meet the build-out requirement rather than relinquish spectrum under a “keep what you use” rule.

²⁹ See RTG Comments at 9; NTCA Comments at 6.

³⁰ See *id.*

³¹ See SpectrumCo Comments at 24; CTIA Comments at 5-6; AT&T Comments at 16.

³² See SpectrumCo Comments at 26; AT&T Comments at 16.

WISPA does not support RTG’s proposal to establish a “bright line” for determining whether a licensee has met its build-out benchmarks.³³ Rather, WISPA endorses RCA’s more flexible proposal, which would require the licensee to demonstrate, for paired spectrum, that a reliable signal can be received both at the base station and the end user.³⁴ Moreover, as WISPA proposed in its Comments, the Commission should afford licensees flexibility in demonstrating compliance with the build-out standard to account for legitimate reasons why the build-out requirement could not be met³⁵ and should allow government lands to be included at the licensee’s option.³⁶ By contrast, the “bright line” standards proposed by RTG may over time be inadequate predictors of reliable coverage (especially given the lack of equipment at this time) and does not account for changes in technology that might render the standards obsolete for the service actually deployed in the market. WISPA urges the Commission to not adopt “bright line” coverage standards at this time, and instead allow licensees flexibility in demonstrating to the Commission how they met their build-out benchmarks.

³³ See RTG Comments at 10.

³⁴ See RCA Comments at 5.

³⁵ See WISPA Comments at 14.

³⁶ See RCA Comments at 6.

Conclusion

WISPA submits that adoption of the proposals discussed in its Comments and Reply Comments will, consistent with Section 309(j), create new opportunities for small and rural companies to acquire 700 MHz licenses at entry costs conducive to rapid deployment of wireless services.

Respectfully submitted,

**THE WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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By: /s/ John F. Scrivner
John F. Scrivner, President
P.O. Box 1582
Mt. Vernon, Illinois 62864
(618) 244-6868