

**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  
CTIA – THE WIRELESS ASSOCIATION®**

**CTIA – THE WIRELESS ASSOCIATION®**  
1400 16<sup>th</sup> Street, NW Suite 600  
Washington, D.C. 20036  
(202) 785-0081

Michael F. Altschul  
Senior Vice President, General Counsel

Christopher Guttman-McCabe  
Vice President, Regulatory Affairs

Brian M. Josef  
Director, Regulatory Affairs

*Its Attorneys*

June 4, 2007

## SUMMARY

CTIA urges the Commission to act without delay to adopt straightforward, market-oriented rules and conduct the 700 MHz auction in accordance with the deadlines set forth in the DTV Transition and Public Safety Act. Such prompt action is necessary to ensure that the Nation's 235 million wireless consumers have the spectrum they need to continue to enjoy the benefits of broadband investment and innovation by Commission licensees. To that end, CTIA's comments in this proceeding have focused on four proposals that, if adopted, would undermine the success of the auction and service deployment in the 700 MHz band, namely geography-based buildout obligations, eligibility restrictions, the Frontline proposal, and "open access" proposals. The Commission's experience and the record gathered in this proceeding amply demonstrate that the Commission should reject these proposals.

With regard to buildout requirements, CTIA continues to believe that the existing "substantial service" requirement is the appropriate standard for measuring licensee performance. If, however, the Commission concludes otherwise and seeks to impose stricter buildout requirements, such requirements should be population-based, not geographic. Specifically, if the Commission imposes buildout requirements, CTIA proposes that commercial 700 MHz licensees be required to provide coverage to 33.33 percent of the population residing in their license areas within five years from February 17, 2009, and to 75 percent of the license area population within ten years. If a licensee fails to meet the five year benchmark, the time in which the licensee can meet the second 75 percent benchmark will be reduced from ten years to eight. If the licensee meets this second benchmark (whether at eight or ten years), it would be permitted to keep the full market area in its license. If the licensee fails to meet the second benchmark, it will be subject to a "keep-what-it-uses" mechanism and that spectrum becomes available for reauction. This buildout regime would impose strict performance requirements upon 700 MHz licensees, while avoiding the multiple problems associated with geographic buildout requirements.

The record and precedent provide virtually no support for the Commission to bar any existing provider of DSL service, including rural ILECs, any provider of cable modem service, and any "large" wireless carrier from the 700 MHz auction. The Commission should therefore reject such proposals.

The record also demonstrates that the Frontline proposal for an E Block licensee is rife with legal risk, policy flaws, and business uncertainties and should be rejected. CTIA opposes the multiple "poison pills" that are contained in Frontline's plan, including its open access, net neutrality, *Carterfone*, and wholesale business plan proposals. Indeed, even the public safety community – which is the presumed beneficiary – displays a healthy skepticism of Frontline's proposal, concluding that it would not give public safety adequate control over this important resource.

Finally, the record shows that the proposal to impose an "open access" regime in the 700 MHz Band is deeply misguided. Moreover, these issues are already under consideration in two Commission proceedings and should not be prejudged here.

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**REPLY COMMENTS OF  
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”), by its attorneys, hereby replies to comments submitted with regard to the *Further Notice* issued in the above-captioned proceedings.<sup>1</sup>

**I. INTRODUCTION**

The Commission should adopt straightforward, market-oriented service rules and auction 700 MHz spectrum in accordance with the deadlines set forth in the Digital Television (“DTV”)

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<sup>1</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72 (rel. April 27, 2007) (“*Report and Order*” and “*Further Notice*”); see also Order, DA 07-2226 (rel. May 25, 2007) (setting June 4, 2007 deadline for reply comments).

Transition and Public Safety Act, *i.e.*, no later than January 28, 2008.<sup>2</sup> There is little dispute that the 700 MHz band offers significant new opportunities for deploying wireless broadband networks, provided that the Commission’s auction and service rules are simple and designed to prompt the continued extensive investment and dynamic innovation that typify the wireless market today. Simply put, American consumers will reap the benefits of new and innovative services, while the U.S. Treasury will see substantial receipts from successful bidders, if the Commission follows its own experience in the Advanced Wireless Service (“AWS”) auction and conducts an open auction under fair, non-discriminatory, simple auction and service rules.

To that end, CTIA’s comments in this proceeding have been narrowly tailored to address four new proposals regarding the 700 MHz Band that, if adopted, would doubtless undermine the success of the auction and service deployment in the 700 MHz Band. The record to date further underscores the wisdom of rejecting (1) geographic buildout requirements,<sup>3</sup> (2) restrictions on the type of entities eligible to participate in the auction,<sup>4</sup> (3) Frontline’s proposal to create a new 12 MHz E block in the commercial upper 700 MHz band and to subject this new block to numerous, burdensome conditions,<sup>5</sup> and (4) any type of “open access” regime for this spectrum.<sup>6</sup> The Commission should move ahead expeditiously to confirm its open, market-oriented auction rules that have contributed to the success of the wireless marketplace today.

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<sup>2</sup> See *Further Notice*, Comments of CTIA at 1-3 (citing Digital Television Transition and Public Safety Act, Pub. L. No. 109-171 (2006)).

<sup>3</sup> *Id.* at 3-10.

<sup>4</sup> *Id.* at 10-17.

<sup>5</sup> *Id.* at 17-22.

<sup>6</sup> *Id.* at 22-25.

## II. ANY NEW BUILDOUT REQUIREMENTS SHOULD BE POPULATION-BASED.

The Commission should not alter the existing market-based framework for measuring licensee performance by adopting geographic area buildout requirements.<sup>7</sup> The current “substantial service” requirement coupled with appropriate “safe harbors,” as utilized in the service rules for the successful AWS auction, is the appropriate mechanism for measuring licensee performance in the 700 MHz Band.<sup>8</sup> As the Commission has recognized, substantial service requirements, as compared to construction requirements, “provide licensees greater flexibility to determine how best to implement their business plans based on criteria demonstrating actual service to end users.”<sup>9</sup> Numerous commenters representing a wide range of interests in this proceeding also support continuation of the “substantial service” standard for measuring licensee performance.<sup>10</sup> The billions of dollars that continue to be spent each year to

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<sup>7</sup> *Further Notice* at ¶ 212.

<sup>8</sup> *See Further Notice*, Comments of CTIA at 3-10. Indeed, as United States Cellular points out, moving to performance benchmarks would create significant uncertainty, if not outright conflict, with regard to the applicable standards for renewal expectancy set forth in the *Report and Order*. *Further Notice*, Comments of United States Cellular Corp. at 18-19. The *Report and Order* makes clear that “[s]ubstantial service in the renewal context” is different from coverage benchmarks and “a licensee that meets the applicable performance requirements might nevertheless fail to meet the substantial service standard at renewal.” *Report and Order* at ¶ 75. The Commission should not impose different, and potentially conflicting, buildout and renewal requirements, particularly this late in the process.

<sup>9</sup> *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162, 25192 (2003); *see also Facilitating the Provision of Spectrum-Based Service to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Service*, 19 FCC Rcd 19078, 19123 (2004) (finding “licensees can provide a meaningful and socially beneficial service without providing ubiquitous service and that providing licensees with sufficient flexibility to respond to market fluctuations will promote the public interest”).

<sup>10</sup> *See Further Notice*, Comments of AT&T, Inc. at 14-19; Blooston Rural Carriers at 7 (supports substantial service for rural areas only); Coalition for 4G in America at 12-20; Computer & Communications Industry Ass’n at 4; Council Tree Communications, Inc. at 12-15; Leap Wireless International, Inc. at 5-7; MetroPCS Communications, Inc. at 11-12, 29-38; SpectrumCo LLC at 20-28, 29-30; Telecommunications Industry Ass’n at 7-8; Union Telephone Co. at 8; United States Cellular Corp. at 14-19; Verizon Wireless at 19-22.

build out wireless networks is clear testament to the effectiveness of these substantial service policies.<sup>11</sup>

CTIA is concerned however, that the Commission is considering geographic buildout requirements, and that consideration is based on representations to the Commission about the need to address 700 MHz spectrum differently than other commercial mobile radio service (“CMRS”) spectrum assigned by the Commission, and ignores the wireless industry’s 20 year history of delivering service to America. CTIA believes that instead of proposing rules that will facilitate wireless broadband deployment, those proposing geographic buildout rules may, in fact, be hoping to recover unbuilt territory recovered by the Commission as part of this process. The Commission must ensure that its actions are not a tool to hinder deployment, but instead facilitate buildout. The best way to do that is to allow the market to work as competitive markets do, not to impose on auction winners arbitrary timelines (that have no analysis or support for the three-, five- and eight-year proposal in the record) combined with arbitrary geographic requirements (again, with no analysis or support for the 25 percent, 50 percent and 75 percent requirement in the record).

A geographic buildout requirement could have a significant chilling effect. First, investment decisions by new, small and large participants in the auction will be impacted by the substantial uncertainty posed by a new and untested requirement. Second, the geographic requirements will have a yet unknown impact on who can and would bid on both large and small licenses. The economies gained and opportunity costs avoided by purchasing large licenses are reduced when a carrier must, in effect, build or overbuild to a large percentage of the market’s geographic area within three (3) years. Third, due to the short timeframe of the proposed

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<sup>11</sup> See *Further Notice*, Comments of CTIA at 10-14.

buildout requirements, carriers will be forced to make capital expenditure and buildout decisions that may not make economic sense – *i.e.*, carriers will have to devote limited capital expenditure dollars to build to geography, not to where people actually reside, work and travel, or even worse, decide not to build out in high cost rural markets and make a calculated gamble that unserved geography may become available at a lower price through a second auction of the unserved area. Fourth, those short timelines and uneconomic decisions may result in licensees being forced to purchase and install the last generation technology instead of the next generation technology, or construct to the minimum legal requirements rather than to the needs of its customers. In the end, the very people the Commission is trying to benefit, American consumers, may suffer.

Nevertheless, if the Commission concludes that it should alter its proven approach in this regard, the record more strongly supports implementation of population-based performance measures coupled with a “keep-what-you-use” requirement, instead of geographic-based requirements. Indeed, a diverse array of commenters has offered support for some form of population-based buildout requirement for commercial 700 MHz licensees.<sup>12</sup>

Based upon its review of the record, CTIA proposes the following population-based performance requirements:

- For each license area, each commercial licensee must certify that it covers at least 33.33 percent of the population in that license area within five (5) years of February

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<sup>12</sup> See *Further Notice*, Comments of APCO at 18 (supports population-based buildout for E Block licensee); Dobson Communications Corp. at 7 (supports population-based buildout or substantial service requirement for REAG licenses); AT&T Inc. at 19-20; Blooston Rural Carriers at 7 (supports population-based buildout for rural licensees); Cyren Call Communications at 21 (supports population-based buildout for E Block licensee); Motorola at 31-34; National Public Safety Telecommunications Council at 12-13 (supports population-based buildout for E Block licensee); SpectrumCo LLC at 28-30; Verizon Wireless at 28-29.

17, 2009, the firm deadline for the DTV transition and the start of the 10 year license term;<sup>13</sup>

- For each license area, each commercial licensee must certify that it covers at least 75 percent of the population in its license area at the end of 10 years;
- If, however, the licensee fails to meet its population requirement at the 5-year benchmark, the licensee then has only eight (8) years, not 10 years, to satisfy the 75 percent population requirement;
- If a licensee makes the second certification, it will retain the entire market area covered by its license;
- If a licensee cannot make this second certification, the licensee will be subject to a keep-what-you-use rule, which will deprive the licensee of the unserved portion of any market for which it is unable to make the certification; and
- Any unserved area will be relicensed through auction.

By coupling population-based performance requirements with reasonable and measurable benchmarks along with a keep-what-you-use proposal on the back end of the license term, this proposal will clearly serve the Commission's important public policy objective of fostering wireless broadband deployment throughout the United States. The proposal will impose the strictest performance benchmarks on commercial 700 MHz licensees, backed-up with significant sanctions for failure to meet the benchmarks, *i.e.*, losing unused spectrum for missing the second benchmark. Nevertheless, licensees will retain the flexibility to deploy networks and provide services in those areas in which consumers will actually need and use them. Further, by pushing the first benchmark out from three years to five, CTIA's proposal will allow for completion of the 4G standards setting process.<sup>14</sup> This, in turn, will reduce the likelihood that licensees will be

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<sup>13</sup> See *Report and Order* at ¶ 82.

<sup>14</sup> Several commenters, including commenters that support geographic-based buildout requirements, supported modifying the Commission's proposal for a three-year benchmark to five and even eight years. See, e.g., *Further Notice*, Comments of 700 MHz Independents at 9 (advocating a single eight-year benchmark for RSA licensees); Aloha Partners, L.P. at 4 (stating that the initial milestone should be at five not three years); AT&T Inc. at 19-20; Frontier Communications at 11 (supporting the extension of the three-year deadline to five years); National Telecommunications Cooperative Ass'n at 5-6 (advocating

forced to deploy current generation technologies that are already available merely to satisfy arbitrary performance requirements.

A geographic coverage requirement, by contrast, will likely divert valuable capital resources to the construction of minimal networks based upon currently available technologies, ultimately delaying the delivery of 4G broadband services to the public, including service to rural and other underserved areas.<sup>15</sup> Indeed, even commenters that generally favor geographic-based coverage requirements recognize the economic inefficiencies inherent in such performance measures particularly as they would apply to rural areas.<sup>16</sup>

In short, the premise underlying a geographic coverage requirement – that all licensed spectrum must be put into use in the far reaches of each licensed area – simply does not make sound economic sense. Rural markets, by their nature, will generate less demand than more populated urban or suburban markets. Therefore, as the Blooston Rural Carriers put it:

[S]ustainable coverage in sparsely populated rural areas often takes time to develop. In other words, a critical mass must first be attained by providing service in more populated communities and

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a single eight-year benchmark for RSA licensees); Rural Telecommunications Group, Inc. at 9 (supporting exemption from interim three- and five-year benchmarks for RSA licensees); Verizon Wireless at 28-29; Wirefree Partners at 5-7 (supporting five- and ten-year build-out requirements); Wireless Internet Service Provider Ass'n at 13 (supporting exemption from interim three- and five-year benchmarks for RSA licensees).

<sup>15</sup> See, e.g., *Further Notice*, Comments of AT&T Inc. at 17 (“Further, under the Commission’s proposed geography-based construction benchmarks, licensees would have an incentive, in order to satisfy the arbitrary coverage requirement and thus retain geographic license area, to deploy low-cost, low-grade networks rather than invest their capital in providing advanced wireless services where sufficient market demand warrants it.”); United States Cellular Corp. at 17-18 (“Any geographic coverage requirement . . . will create powerful regulatory incentives to engage in economically irrational behavior, that is, building base stations, which would not otherwise be constructed just in order to save licenses.”); Verizon Wireless at 26 (“A three-year build out requirement would force licensees to deploy current technologies that are already available, thereby thwarting the public’s access to next-generation technologies in the near term.”).

<sup>16</sup> See *Further Notice*, Comments of 700 MHz Independents at 8-10; National Telecommunications Cooperative Ass’n at 5-6; Rural Telecommunications Group at 9; Wireless Internet Service Providers Ass’n at 13.

along well-traveled highways before service is economically feasible in smaller towns and along secondary roads.<sup>17</sup>

Moreover, geographic buildout mandates would force multiple licensees to build independent facilities in some areas where there is insufficient population to economically sustain more than a few networks. In essence then, geography-based buildout requirements deny carriers the flexibility they need to build networks in an economically rational manner. As Commissioner Copps observed, the Commission should not “unfairly punish licensees — especially in rural areas — who cannot engage in aggressive build-out for perfectly good economic reasons.”<sup>18</sup>

Moreover, a strict geographic coverage requirement would be difficult to administer for licensees and the Commission. For example, to appropriately measure the coverage area, government lands would have to be clearly delineated and then eliminated from the coverage measurement.<sup>19</sup> Simply identifying all land that is owned or leased by local, state and federal entities will add an enormous layer of complexity to this assessment. Moreover, geography-based requirements would confront other geographic challenges, such as how to calculate coverage over water.<sup>20</sup> This is especially problematic as carriers deploy different digital air interfaces that require different measurement algorithms to predict reliable coverage. Further, what are carriers to do about the enormous swaths of land owned by private citizens?

Finally, and on a related point, the Commission should reject the proposals made by Google and the Ad Hoc Public Interest Spectrum Coalition (“PISC”) to permit the use of unlicensed devices in areas in which a commercial 700 MHz licensee has not yet built out.<sup>21</sup>

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<sup>17</sup> *Further Notice*, Comments of the Blooston Rural Carriers at 8-9.

<sup>18</sup> *Further Notice*, Separate Statement of Commissioner Michael J. Copps.

<sup>19</sup> *Further Notice* at ¶ 213.

<sup>20</sup> *See Further Notice*, Comments of Verizon Wireless at 25; United States Cellular Corp. at 18.

<sup>21</sup> *Further Notice*, Comments of Google, Inc. at 9; PISC at 20.

This is another proposed experiment that should be rejected. Unlicensed devices operating in areas in which 700 MHz licensees will build out will likely create extremely complex interference issues. Unlicensed use in “unused” spectrum will make it virtually impossible for licensees to identify a source of interference to their networks. Users of unlicensed devices will develop an expectation that they can continue to use the devices even after 700 MHz build out occurs in their area, adding a layer of transaction costs and complexity that will discourage deployment. In addition, asking auction participants to spend billions of dollars on spectrum that may soon have to be shared with unlicensed devices would fundamentally alter the nature of this band and undercut the very investment that the Commission seeks to encourage. Indeed, the Commission recently terminated the interference temperature proceeding, which considered the same concepts.<sup>22</sup> In short, this spectrum is too valuable to subject to eleventh hour plans for “innovative” licensing regimes.

### **III. THE RECORD DOES NOT SUPPORT RESTRICTING INCUMBENTS FROM BIDDING FOR 700 MHz LICENSES.**

The Commission should also decline to bar any existing provider of DSL service, including rural ILECs, any provider of cable modem service, and any “large” wireless carrier from the 700 MHz auction.<sup>23</sup> This proposal was also forcefully opposed by a wide array of commenters, including small businesses and new entrants.<sup>24</sup> As these commenters have

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<sup>22</sup> *Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands*, ET Docket No. 03-237, Order, FCC 07-78 (rel. May 4, 2007).

<sup>23</sup> See *Further Notice*, Comments of CTIA at 10-16; see also *Further Notice* at ¶ 221 (citing PISC *Ex Parte* Comments (April 3, 2007)).

<sup>24</sup> See, e.g., *Further Notice*, Comments of 700 MHz Independents at 10-11; ALLTEL at 14; AT&T Inc. at 20-34; Blooston Rural Carriers at 6-7; Computer and Communications Industry Ass’n at 5 (opposing all eligibility restrictions, but supporting separate subsidiary requirement); Enterprise Wireless Ass’n at 3-4; Frontier Communications Solutions at 12-13; MetroPCS at 11-13, 42-45; Motorola at 35-36; National Telephone Cooperative at 7-8; Qualcomm at 8-11; Rural Telecom Group at 12-13; SpectrumCo at 4-5, 7, 30-33; Telecommunications Industry Ass’n at 5-7; Verizon Wireless at 31-35.

demonstrated, the public interest is best served by an auction that is open to those potential bidders that may be best suited to rapidly and efficiently deploy services using the 700 MHz band – by virtue of their expertise, economies of scope, and existing infrastructure. Such bidders have both the economic incentive and the ability to put this new spectrum to its highest and best use and should not be precluded from participating in the auction. Most important, these bidders are best positioned to deliver new wireless products and services to consumers in the shortest possible time.

Nothing on the record compels a contrary conclusion. Indeed, PISC was the only party to support restricting eligibility and it was able to muster only two paragraphs in support of eligibility restrictions.<sup>25</sup> Moreover, PISC provides no evidence or legal argument to support the conclusion that there is “significant likelihood of substantial harm to competition,” and without such evidence the Commission has no basis for adopting eligibility restrictions.<sup>26</sup> In fact, the record shows just the opposite – competition in the wireless market is flourishing and any suggestion that existing broadband and wireless incumbents will not deliver wireless broadband as a third broadband pipe is completely unfounded.<sup>27</sup> Moreover, the Commission’s only experiment with ownership restrictions was a disaster and was ultimately reversed.<sup>28</sup> PISC’s

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<sup>25</sup> See PISC Comments at ii, 5, 34-35.

<sup>26</sup> *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) (“*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.*” (emphasis supplied)).

<sup>27</sup> See *Further Notice*, Comments of CTIA at 10-14; AT&T at 30-34; Verizon Wireless at 30-35.

<sup>28</sup> The Commission originally barred cable and telephone companies from holding A Block LMDS licenses within their franchise area. *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 12 FCC Rcd 12545, 12623-26 (1997). The Commission ultimately agreed to let this restriction sunset in 2000. See *id.*, 15 FCC Rcd at 11587, 11863 (2000).

efforts to turn back the clock to a time when the Commission chose winners and losers by limiting market participation should be rejected.

#### **IV. THE COMMISSION SHOULD DENY THE FRONTLINE PROPOSAL.**

CTIA opposes Frontline's proposal to create a new 12 MHz E block in the commercial upper 700 MHz band and to subject the new block to numerous conditions based on Frontline's specific business model.<sup>29</sup> The record reflects a strong skepticism with regard to Frontline's proposal, even among the state and local government community.<sup>30</sup> Indeed, the joint comments submitted by the National Association of Telecommunications Officers and Advisors ("NATOA") conclude that Frontline's proposal "shortchanges our nation's first responders."<sup>31</sup> Other public safety entities are even more blunt, concluding that Frontline's proposal "will set us backwards in time."<sup>32</sup>

Frontline's proposal violates section 337 of the Communications Act of 1934, as amended, 47 U.S.C. § 337, by essentially converting public safety spectrum, licensed to a qualified public safety organization, into a resource that will be used for Frontline's delivery of commercial service for profit.<sup>33</sup> These fundamental legal concerns notwithstanding, Frontline would have the Commission bless its business plan by crafting auction rules tailored to its needs.

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<sup>29</sup> *Further NPRM* at ¶¶ 268-91. Frontline's proposal initially contemplated a 10 MHz spectrum block (*id.* ¶ 268), but that now appears to have expanded to 12 MHz. *See* Frontline Comments at 51.

<sup>30</sup> Indeed, many public safety entities raise significant concerns regarding Frontline's proposal. *See, e.g., Further Notice*, Comments of City and County of San Francisco at 3; Orange County, California at 2; Fargo (North Dakota) Metropolitan Statistical Area Police, Fire and EMS Agencies at 1; Madison County Communications District at 1-2; Outagamie County Board of Supervisors at 3-4. *See also* Comments of Cyren Call Communications Corp. at 7-10 (noting that public safety entities would have too little control over the network and may not be able to assert management control over service quality and priority).

<sup>31</sup> *Further Notice*, Joint Comments of NATOA, *et al.* at 8.

<sup>32</sup> *Further Notice*, Comments of City and County of San Francisco at 3; Orange County at 2.

<sup>33</sup> *See, e.g., Further Notice*, Comments of CTIA at 16-18; Blooston Rural Carriers at 10-11; City of New York at 5; NATOA at 15; Outagamie County Board of Supervisors at 3; Verizon Wireless at 6.

Frontline’s proposed “poison pill” conditions, *i.e.*, buildout of both the E Block and public safety broadband spectrum, a mandated wholesale business plan, an open access requirement on all licenses held by the E Block licensee, a wireless *Carterfone* obligation, and roaming service – are seemingly intended to limit competition at auction for the spectrum that Frontline seeks by running counter to the way that CMRS providers currently operate. This would obviously diminish the market value for the spectrum. Further, however, the open access/net neutrality and *Carterfone* provisions already are being addressed in ongoing proceedings, while the proposed wholesale and roaming requirements conflict with current CMRS carriers’ business models.

In addition to suppressing auction revenue, Frontline’s proposal would enmesh the Commission in the day-to-day operations of the E Block licensee. Under the detailed rules proposed here, the licensee will need Commission approval each time it needs to change its business plan, wholesale policies, roaming practices, and handsets. Moreover, with each new request for flexibility, the terms under which the licensee took the spectrum will also change in the licensee’s favor, resulting in a windfall for the licensee at the expense of the taxpayers. In short, adoption of Frontline’s proposal would put the Commission on a slippery slope, becoming ever more deeply entangled in the licensee’s business plans.

Even entities that express some support for the concept of a joint public-private partnership in the E block emphasize the need for both a strong, binding “network sharing agreement” that gives public safety a level of control over the network and for Commission rules to prevent discontinuance of service or service disruptions.<sup>34</sup> Also, Commission rules must be

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<sup>34</sup> *See, e.g., Further Notice*, Comments of APCO at 15-16, 20; Hawaii at 4 (favors public safety control over the agreement coupled with reporting requirements); Idaho Fire Chiefs Ass’n at 1-2 (public safety must oversee the network and any commercial service must not degrade service to public safety users); Massachusetts Chiefs of Police Ass’n at 1-2 (public safety must control the network and there must be government funding to facilitate deployment and the system must be evergreen); National Ass’n of EMS Physicians at 1-2 (public safety should not be subordinated to commercial licensee); National Public

designed to protect public safety users in the event that the single licensee defaults;<sup>35</sup> public safety entities should not bear the risk that the licensee fails, leaving an unbuilt or partially built network. Given these concerns, the Commission should reject Frontline’s proposal.

## **V. THE COMMISSION SHOULD REJECT OPEN ACCESS FOR THIS SPECTRUM**

Finally, the Commission should not impose open access requirements in this proceeding. As CTIA and numerous other parties have noted, the 700 MHz auction is not the appropriate forum in which to resolve the many complex issues implicated by “open access.” Specifically, the most competitive industry regulated by the Commission is not the proper test bed for open access. Questions regarding open access are already under examination in two proceedings intended to address these issues on an industry-wide basis, and these proceedings should not be prejudged by promulgating open access rules for licensees in this band.<sup>36</sup> Further, calls for open access represent nothing more than an unwarranted regulatory intervention into the highly competitive wireless broadband market.<sup>37</sup> The Commission, therefore, should refrain from imposing any new regulations in this proceeding that might impede innovation at any layer of the wireless broadband network.

## **VI. CONCLUSION**

For the reasons discussed above and in its comments, CTIA urges the Commission to reject proposals regarding geographic buildout; eligibility restrictions; Frontline; and open

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Safety Telecommunications Council at 9-16 (public safety must have final say regarding any disputes involving the network services agreement and must be involved in technology, deployment, rollout, logistic and administrative decisions involving the network); Oregon Fire Chiefs Ass’n at 1-2 (service rules must state that commercial use of the network is at the discretion of public safety and that such use shall not harm or degrade public safety services on the network).

<sup>35</sup> See *Further Notice*, Comments of Cyren Call Communications at 18-20.

<sup>36</sup> See, e.g., *Further Notice*, Comments of Alcatel-Lucent at 26-27; AT&T Inc. at 8; DataRadio Inc. at 9-11; MetroPCS Communications Inc. at 39-42; Motorola at 29; Qualcomm Inc. at 11-12; Telecommunications Industry Ass’n at 8-9; United States Cellular Corp. at 20.

<sup>37</sup> See *id.*

access, all of which threaten to undermine the success of the auction and service deployment in the 700 MHz band. With regard to buildout, however, if the Commission elects to adopt buildout requirements it should adopt CTIA's proposal for population-based requirements.

Respectfully submitted,

**CTIA – THE WIRELESS ASSOCIATION®**

By: /s/ Brian M. Josef

Michael F. Altschul  
Senior Vice President, General Counsel

Christopher Guttman-McCabe  
Vice President, Regulatory Affairs

Brian M. Josef  
Director, Regulatory Affairs

**CTIA – THE WIRELESS ASSOCIATION®**  
1400 16<sup>th</sup> Street, NW Suite 600  
Washington, D.C. 20036  
(202) 785-0081

*Its Attorneys*

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