

**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 T-MOBILE USA, INC.

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T-Mobile USA, Inc. (“T-Mobile”) hereby submits its reply comments in the above-captioned proceeding.¹

¹ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 06-150, 01-309, 03-264, 06-169, 96-86, CC Docket No. 94-102, PS Docket No. 06-229, Order and FNPRM (“700 MHz Service Rules FNPRM”) (rel. Apr. 27, 2007).

INTRODUCTION AND SUMMARY

T-Mobile urges the Federal Communications Commission (“Commission” or “FCC”) to adopt rules that will allow the 700 MHz auction to be conducted in an efficient and expeditious manner, and that will enable next-generation wireless services utilizing these bands to benefit from the same market-oriented policies that have fostered the explosive growth of the commercial mobile radio services (“CMRS”) industry. Not only is there no reason to depart from the pro-competitive bidding and service rules that have been used to date, if adopted, certain of the rules proposed for the 700 MHz band would likely inhibit participation in the auction and limit consumer choices.

In particular, T-Mobile opposes the FNPRM’s proposals for geographic buildout, incumbent eligibility restrictions, and so-called “open access”. T-Mobile also requests that the Commission adopt a band plan with both small and large license areas and spectrum blocks, consistent with the Balanced Consensus Plan.² Instead of trying to reinvent the wheel for this rapidly approaching auction, the Commission should stick with the regulatory approach that has consistently produced successful auctions and has allowed the wireless industry to flourish.

I. THE COMMISSION SHOULD NOT ADOPT A GEOGRAPHIC BUILDOUT REQUIREMENT

T-Mobile agrees with CTIA—The Wireless Association™ and numerous other commenters that adoption of a geographic buildout or “keep what you use” requirement is unnecessary and unwise.³ The Commission should maintain consistent construction

² See Letter from Kathleen O’Brien Ham, Managing Director, T-Mobile USA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed Apr. 18, 2007).

³ See CTIA Comments at 3; Verizon Wireless Comments at 27; AT&T Comments, at 17-18; SpectrumCo Comments at 24-29.

requirements for advanced wireless services unless there has been a market failure that calls for a change to a more regulatory approach. No such failure has been identified here. There is no indication that the substantial service or population-based construction rules that the Commission has employed in the past are ineffective, and departing from that approach for services provided in the 700 MHz band would undermine the congressional goals of regulatory parity and promoting growth through competitive market-based forces.⁴

Further, as Verizon notes, a geographic buildout mandate would impose a significant burden on carriers and undermine efficiency.⁵ Instead of constructing based on subscriber need and business objectives, wireless providers would be forced into uneconomic buildouts solely to satisfy regulatory requirements. As CTIA explains, it makes little sense from a public policy perspective to require multiple licensees to overbuild a given area within a limited timeframe without regard to economic feasibility or consumer demand.⁶ Instead, the Commission should allow market forces to work, as in the case of secondary markets. Leasing, partitioning, disaggregation, and other secondary markets transactions, such as

⁴ See generally, Verizon Wireless Comments at 20-22; see also Letter from John T. Scott, Vice President and Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, *700 MHz Band Commercial Spectrum Proceeding*, WT Docket No. 06-150 at 2-3 (filed Apr. 4, 2007) (“Verizon Wireless *Ex Parte* Letter”). In the past the Commission declared that Congress “mandated that similar commercial mobile radio services be accorded similar regulatory treatment under the Commission’s [r]ules.” See *Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7998, 7994 (1993).

⁵ Verizon Wireless Comments at 20, 28; see also Verizon Wireless *Ex Parte* Letter at 2-3.

⁶ CTIA Comments at 3-6.

roaming agreements between carriers, can effectively facilitate full use of spectrum in rural markets.⁷

II. THE COMMISSION SHOULD REJECT INCUMBENT ELIGIBILITY RESTRICTIONS

The Commission seeks comment on a proposal by the *Ad Hoc* Public Interest Spectrum Coalition (“PISC”) to restrict incumbent eligibility for licenses in the 700 MHz band.⁸ Specifically, PISC asks the Commission (1) to exclude incumbent local exchange carriers (“ILECs”), cable operators, and large wireless carriers from eligibility to bid on or acquire in the secondary market 700 MHz band licenses or, in the alternative, (2) to allow incumbents to hold these licenses only through structurally separate affiliates.⁹ Such sweeping restrictions ignore the competitive realities of the marketplace and are contrary to public policy as followed by the Commission for many years. Accordingly, the Commission should reject PISC’s proposal.

A. Restrictions on Incumbent Eligibility Are Inconsistent With the Commission’s Market-Oriented Auctions Policy

Since obtaining auction authority from Congress in 1993, the Commission has repeatedly found that competitive bidding is the most efficient means for licensing spectrum.¹⁰ The Commission has conducted more than 50 auctions and assigned thousands of licenses

⁷ See generally *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd. 17503 (2004).

⁸ See *700 MHz Service Rules NPRM* ¶ 221.

⁹ See *Ex Parte* Comments of the *Ad Hoc* Public Interest Spectrum Coalition (“PISC *Ex Parte*”), PS Docket 06-229, 05-211, 96-86, at 9, 18-19 (filed Apr. 3, 2007).

¹⁰ See, e.g., Eleventh Report, *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 21 FCC Rcd 10947 (2006) (“*11th Annual CMRS Competition Report*”).

successfully under an auction regime. This long-standing policy of allowing market forces, rather than regulation, to ensure that spectrum is put to the highest and best use has served consumers well. Indeed, the wireless industry is the most competitive sector of the telecommunications industry, as acknowledged by FCC Chairman Martin.¹¹ “Multiple carriers with varying business plans and strategies are engaged in head-to-head competition to provide a range of services,” including wireless broadband.¹² Today, more than 150 carriers battle to serve an ever-expanding base of U.S. mobile wireless subscribers—which, according to CTIA, now totals more than 235 million.¹³ Further, as the number of wireless subscribers grows and their minutes-of-use increase, the prices consumers pay for wireless services continue to fall.¹⁴ As Chairman Martin stated, “the competitive marketplace for wireless services is continuing to bring consumers more choice, better services, and lower prices.”¹⁵

Eligibility restrictions on wireless incumbents run counter to the Commission’s long-standing policy of relying on market forces to shape the development of wireless services. Such arbitrary restrictions may, in fact, result in the spectrum being used for a purpose other than its highest and best use. By creating “a category of losers even before the auction commences,” AT&T observes, “[t]hose subject to the restrictions are unable to participate, even if they could

¹¹ Stephen Lawson, *FCC Chief: Wireless Key to Universal Service Access*, InfoWorld, Mar. 27, 2007, available at http://www.infoworld.com/article/07/03/27/HNfccchief_1.html (last visited Jun. 4, 2007).

¹² AT&T Comments at 22.

¹³ CTIA Comments at 11.

¹⁴ CTIA Comments at 11-12.

¹⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WB Docket 06-142, Statement of Chairman Kevin J. Martin (Sep. 26, 2006).

make better use of the spectrum.”¹⁶ Large wireless carriers “have proven track records of designing and deploying highly sophisticated communications networks.”¹⁷ Excluding the companies that have the expertise, the economies of scope and scale, and the financial resources necessary to deploy broadband services in the 700 MHz band would only interfere with the efficiencies of the marketplace and ultimately harm consumers.

In addition, eligibility restrictions would distort the valuation of 700 MHz spectrum. Proceeds from the 700 MHz auction will fund the deployment of interoperable communications systems for Public Safety, as well as a portion of the DTV transition.¹⁸ As Verizon Wireless points out, by restricting eligibility, the resulting reduction in competition would lower the price of spectrum below its true market value and “risk meeting Congress’s fiscal goals for the auction.”¹⁹

The Commission has a recent track record of conducting open, competitively neutral auctions that have enabled small businesses and new entrants to acquire spectrum to meet their business needs. Now is not the time to retreat from this successful policy and risk undermining the potential of such an important auction. Small and midsize carriers routinely participate in FCC auctions with great success. The auction of 700 MHz spectrum is no different.

¹⁶ AT&T Comments at 23.

¹⁷ Verizon Wireless Comments at 33.

¹⁸ See Verizon Wireless Comments at 32. See also Digital Television Transition and Public Safety Act of 2005, Pub. L. No. 109-1171, §§ 3004-3005 (2006) (portion of the Deficit Reduction Act of 2005).

¹⁹ Verizon Wireless Comments at 32-33.

B. There is No Support in the Record For Imposing Eligibility Restrictions

PISC advocates for an eligibility restriction on incumbents to ensure “the greatest likelihood that a new wireless broadband competitor will emerge.”²⁰ Yet, as Verizon Wireless and AT&T note, PISC offers no concrete evidence to support a reversal of the Commission’s policy of open auctions.²¹ Instead, as AT&T persuasively illustrates, “PISC relies on an academic’s theories, unsupported by any evidence, to make specious warehousing claims.”²²

One such claim—that the recent Advanced Wireless Services (“AWS”) auction is an example of spectrum “warehousing”—undermines the very argument PISC attempts to advance. The AWS Auction was a resounding and unqualified success, raising \$13.7 billion for the U.S. Treasury and putting much-needed additional spectrum into the marketplace. T-Mobile was the auction's top bidder—spending nearly \$4.2 billion for 120 licenses that, for the first time, provide T-Mobile with a true, nationwide footprint. With this new spectrum, T-Mobile can now turn its attention to enhancing its coverage and eventually launching advanced voice and data services once the spectrum is cleared of incumbents. Indeed, as the author of the academic study on which PISC relies recognizes, T-Mobile has announced plans to build—and, in fact, is already beginning to deploy—a next-generation wireless broadband network using AWS spectrum.²³

²⁰ PISC *Ex Parte* at 18.

²¹ Verizon Wireless Comments at 32; AT&T Comments at 28.

²² AT&T Comments at 28.

²³ See Simon Wilkie, *Spectrum Auctions Are Not a Panacea: Theory and Evidence of Anti-Competitive and Rent-Seeking Behavior in FCC Rulemakings and Auction Design*, Attachment A to *Ex Parte* Comments of the *Ad Hoc* Public Interest Spectrum Coalition, filed in WT Docket No. 06-150 et al. on Apr. 3, 2007 (originally submitted in WT Docket No. 07-16 on Mar. 26, 2007), at 29.

The AWS auction also paved the way for a variety of new firms to enter the wireless marketplace on a national basis. As CTIA correctly notes, “three new carriers acquired the equivalent of nationwide footprints, Leap Wireless, MetroPCS, and SpectrumCo.”²⁴ Indeed, SpectrumCo represents the cable industry’s first meaningful foray into facilities-based wireless service. Further, designated entities comprised 100 of the 168 qualified bidders and 57 of the 104 winning bidders in the AWS auction.²⁵ While PISC inexplicably chooses not to view these entrants as “genuine new competitor[s]”,²⁶ history shows that competitive pressures—from new entrants and incumbents, alike—will drive wireless carriers “to develop innovative broadband services, content, and applications.”²⁷ Such vigorous rivalry will only benefit consumers.

In sum, barring incumbents from bidding on 700 MHz licenses is inconsistent with the Commission’s long-standing policy of open auctions, and PISC has offered no evidence to support departing from this policy. PISC’s alternative—to allow incumbents to hold these licenses only through structurally separate affiliates—fares no better. As CTIA asserts, the Commission eliminated these restrictions years ago, and “[i]t is unclear what problem the structural safeguards would be intended to address or what would be accomplished” by reintroducing them now.²⁸ To the contrary, it would harm the public interest by denying consumers the benefits of efficiency that integration brings.

²⁴ CTIA Comments at 11.

²⁵ See Brief for Respondent at 44, Council Tree Communications, Inc. et al. v. Federal Communications Commission, No. 06-2943 (3rd Cir. filed Oct. 13, 2006) (citing Auction Number 66 Closure Notice, Attachment A, 21 FCC Rcd. 10521 (2006)).

²⁶ PISC *Ex Parte* at 15-16.

²⁷ AT&T Comments at 32.

²⁸ CTIA Comments at 16.

III. THE COMMISSION SHOULD NOT ADOPT FORCED ACCESS REQUIREMENTS

The Commission also seeks comment on proposals by PISC and the Media Access Project (“MAP”) to impose an “open-access” regime on at least 30 megahertz of 700 MHz commercial services spectrum.²⁹ As T-Mobile and others argued in opposing Skype’s petition seeking wireless *Carterfone* and open-access policies, replacing robust market forces with the heavy hand of regulation—and all the negative effects that entails—would be far more likely to *harm* consumers than to help them.³⁰ As such, the Commission should reject PISC and MAP’s invitation to intervene in the market and unnecessarily regulate the business plans of 700 MHz licensees.

To begin, there is no economic basis for imposing open-access mandates on the wireless industry. As T-Mobile and other commenters have shown, the wireless marketplace is competitive and thriving—far different than the Bell-era wireline monopoly that produced *Carterfone*. Nor is there any evidence, as Verizon Wireless notes, of “market failure that would justify imposition of these requirements.”³¹ Thus, an open-access regime “would conflict with the overarching deregulatory approach to wireless services that Congress and the Commission have followed for over a decade.”³²

²⁹ See 700 MHz Service Rules NPRM ¶ 290. See also Frontline Comments in PS Docket No. 06-229 at 29-31; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 16-19. See also Frontline Mar. 26 *Ex Parte* in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229, Attachment (Frontline’s proposed 47 C.F.R. §§ 27.16, 27.51).

³⁰ See T-Mobile Comments, RM-11361 (filed Apr. 30, 2007).

³¹ Verizon Wireless Comments at 46.

³² Verizon Wireless Comments at 47.

Forced access is also inconsistent with the dynamic nature of the wireless industry. Because wireless spectrum is a shared and scarce resource in which one person's use may significantly affect that of others, "carriers must be able to manage the use of applications that require large amounts of bandwidth or near-constant connection to the network" in order to maximize spectral efficiency.³³ Similarly, "an open-access requirement would prevent wireless carriers from managing their network to minimize interference and optimize service quality."³⁴ Such an approach also raises questions concerning compliance with regulatory mandates, including E911 and emergency alert services.

Finally, the 700 MHz proceeding is not the appropriate forum for addressing whether the Commission should intervene in the wireless market by imposing open-access requirements. Instead, as CTIA and Verizon Wireless recommend, the Commission should develop the record in its recently issued *Broadband Practices Notice of Inquiry*³⁵ and the open proceeding on the Skype petition.³⁶

IV. THE COMMISSION SHOULD ADOPT A BANDPLAN CONSISTENT WITH THE BALANCED CONSENSUS PLAN

As T-Mobile emphasized in its earlier comments filed in this docket, it is important that the Commission structure the auction so as to provide reasonable opportunities for entities of all

³³ CTIA Comments at 23-24.

³⁴ Verizon Wireless Comments at 47.

³⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-46, Notice of Inquiry (rel. Apr. 16, 2007).

³⁶ See CTIA Comments at 24-25; See Verizon Wireless Comments at 48-49.

sizes to bid for and win the spectrum they need.³⁷ T-Mobile therefore supports the Balanced Consensus Plan group's proposal to disaggregate the current 20 MHz D Block in the Upper 700 MHz band into two 10 MHz blocks. In addition, T-Mobile agrees with the group that more than one paired frequency block in the 700 MHz band should be designated for licensing in a geographic area smaller than a Regional Economic Area Grouping ("REAG").

As was the case in the Advanced Wireless Services auction, dividing the 700 MHz spectrum into smaller "building blocks" will help promote robust and efficient use of the band and vigorous competition by enabling smaller entities to bid according to their local spectrum needs. If a larger bidder wants larger blocks of spectrum and larger geographic areas, there is nothing to prevent it from aggregating the licenses. Providing licenses that are sized in this manner would increase opportunities for additional entrants and thereby increase competition for the spectrum and the services that will be provided over the spectrum.

³⁷ See Comments of T-Mobile, WT Docket No. 06-150 (filed Oct. 20, 2006).

CONCLUSION

T-Mobile urges the Commission to adopt auction and service rules for the 700 MHz band that largely retain the approach that consistently has produced successful auctions and has helped spur the remarkable growth of the wireless industry. As set forth above, the Commission should reject geographic buildout and “open-access” requirements and eligibility restrictions. In addition, to ensure that all entities have the best opportunity to participate in the auction and acquire the spectrum they need, the 700 MHz band plan should incorporate both large and small spectrum blocks and license areas.

Respectfully submitted,

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