

June 6, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in: WT Docket Nos. 06-150, 05-211, 96-86
PS Docket No. 06-229

Dear Ms. Dortch:

On June 6, 2007, members of the *Ad Hoc* Public Interest Spectrum Coalition (PISC) had two separate meetings with an FCC Commissioner and with FCC staff.

PISC members Gigi Sohn, John Bergmayer and Kim Maynard of Public Knowledge, Harold Feld of Media Access Project, Michael Calabrese of New America Foundation, and Dr. Gregory Rose, a consulting economist, were present at both meetings.

The first meeting was with Commissioner Robert M. McDowell and Legal Advisor Angela E. Giancarlo. Also present was an FCC law clerk.

The second meeting was attended by Paul Murray, Fred Campbell, James Schlichting, Jennifer Salhus, John Branscome, Jennifer Tomchin, John Spencer, Erik Salvaara, and Nese Guendelsberger, all of the Wireless Telecommunications Bureau.

The purpose of these meetings was to discuss issues presented in our recent filings in the above captioned proceedings regarding the upcoming 700Mhz spectrum auction.

Two handouts were distributed by PISC. One, a page of charts illustrating engineering aspects of Open Access, is available as page 6 of Appendix A of the comments of PISC filed in the above-captioned proceedings on May 23, 2007. The second, a page summarizing positions PISC has taken on the upcoming spectrum auction, is attached to this letter.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,



John Bergmayer
Law Clerk

Public Knowledge

cc:

Commissioner Robert M. McDowell

Angela E. Giancarlo

Paul Murray

Fred Campbell

James Schlichting

Jennifer Salhus

John Branscome

Jennifer Tomchin

John Spencer

Erik Salvaara

Nese Guendelsberger

700 MHz Spectrum Auction

Broadband Competition or More of the Same?

The Federal Communications Commission is poised to set the terms of the most valuable auction of spectrum—the public airwaves over which broadcasters and cell phone companies operate—we will likely ever see. This auction involves a large portion of spectrum that broadcasters are to return as part of the nation’s transition to digital TV. The characteristics and location (in the 700 MHz band) of this spectrum make it ideal for the development of a third, nationwide broadband Internet provider that could compete with the powerful incumbent telephone and cable companies which control 96% of broadband lines in this country. But unless the FCC takes a very different course than it has in past auctions, this valuable resource will most likely end up in the hands of those very companies.

The Public Interest Spectrum Coalition (PISC) is asking the FCC for specific “auction rules” (which determine who can bid and how they bid) and “service rules” (which determine the terms by which the winning bidders will operate) that will provide the best opportunity for new broadband competition.

Open Access

An open access service rule would require winning bidders for half of the spectrum to make access to that spectrum available to third parties at wholesale rates. This model has a proven track record -- it led to an explosion of competitive Internet Service Providers in the 1990’s. It is also the model adopted by those countries that are far ahead of the United States in terms of broadband speeds, prices and services.

The open access model PISC envisions requires no complex arrangements or new technology. It would simply require the licensee to sell interconnection to third parties at a gateway in the network, which would permit any number of competitors.

Network Neutrality/Right to Attach

PISC is seeking a service rule that requires all licensees to operate their networks in a manner that “protects the consumer’s right to use any equipment, content, application or service on a non-discriminatory basis without interference from the network provider.” This protects against the licensee giving favorable speeds or quality of service to content, applications and services in which it has a financial interest. It also ensures that the consumer can attach any non-harmful equipment to the network. The FCC’s 1968 *Carterfone* decision mandated this attachment principle for wireline networks, but it has yet to be extended to wireless.

Fair Bidding

The bidding patterns of recent auctions demonstrate that communication and collusion between bidders enable the largest companies to lock out potential new entrants and keep prices low. The best way to prevent such anticompetitive behavior is through anonymous bidding—if bidders cannot identify one another, signaling and blocking behavior become more difficult.

Limits on Incumbent Eligibility

The best method for ensuring that the spectrum is not simply bought by incumbent broadband providers is by limiting their eligibility to bid—either through a flat prohibition or spectrum caps. The 1994 PCS auction had such caps and generated significant revenues. As an alternative, the FCC could give a bidding credit to new entrants.

“Use it or Lose it”

The FCC must ensure that winning bidders do not simply let the spectrum lie fallow. “Warehousing” may be particularly attractive to incumbents who do not want to compete with their own wireline broadband services. Thus, PISC seeks rules that ensure a timely build-out and make unused spectrum available for other unlicensed and other uses.

Pro-Competitive Band Plan

The FCC should adopt band plans that allow competitive national broadband providers to achieve the necessary economies of scale. Therefore, PISC is seeking to maximize the number of large spectrum blocks in the upper 700 MHz band.

* *Public Knowledge, Consumer Federation of America, Champaign-Urbana Community Wireless Network, Consumers Union, Educause, Free Press, Media Access Project, New America Foundation, U.S. Public Interest Research Group*