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July 11, 2007

57739-000020

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket No. 06-150, 06-169, 96-86 and PS Docket No. 06-229)

Dear Ms. Dortch:

This letter is being submitted by MetroPCS Communications, Inc. ("MetroPCS"),¹ by its attorneys, to correct the numerous inaccurate statements made by Frontline Wireless in its July 3 letter (the "Frontline Letter") filed with the Commission in response to the June 29, 2007 letter to Chairman Martin from a bipartisan group of Members of the House of Representatives Energy and Commerce Committee, including Representatives Barton, Upton, Hastert, Stearns, Whitfield, Deal, Green, Gonzalez, Butterfield, Melancon, Shadegg, Buyer, Radanovich, Ferguson, Rogers, and Sullivan (the "Member Letter") relating to the *Further Notice of Proposed Rulemaking*, FCC 07-72, released April 27, 2007 (the "FNPRM")² in the above-captioned proceedings.

All ten of the captioned claims in the Frontline Letter fail to correspond to the facts, the record, or to Frontline's and public safety's prior public positions. Thus, it is Frontline, not the elected Members of Congress, whose position is based upon "misinformation." The inaccurate Frontline claims are quoted in numbered paragraphs below, followed by a rebuttal which sets the record straight.

¹ For purposes of this *ex parte* letter, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² See *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 License 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, Report and Order and Further Notice of Proposed Rule Making, FCC 07-72 (rel. April 27, 2007) ("FNPRM"), 72 Fed. Reg. 24238 (May 2, 2007).*

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1. “Under Frontline’s Plan, public safety will be free to negotiate with the auction winner and other carriers.”³

The Member Letter criticized the Frontline plan for forcing public safety to negotiate with one winner, of one auction with one pre-determined business plan, which meant that public safety would be stranded without any assistance in building a network if was unable to reach agreement for any reason. Frontline counters that it “has proposed” a one-way arbitration process that is not binding on public safety and after which the public safety licensee could contract with others.⁴ Frontline conveniently fails to mention that its one-way arbitration proposal did not surface until after the Member Letter was in circulation.⁵ Regardless, Frontline’s last minute attempt to salvage its flawed plan by imposing one-way arbitration fails to solve the identified problems and actually raises serious new concerns.

Frontline’s modified approach still would obligate public safety to negotiate in good faith for 120 days – or more⁶ -- with one E block licensee who is forced to use a Government-mandated wholesale business plan.⁷ In the absence of an agreement, public safety then would be forced into an arbitration process.⁸ Public safety would have to participate in this process even if the E-Block licensee -- who might or might not be Frontline -- is considered by public safety not to have the necessary technical ability, funding, resources, or business acumen to build and operate a shared public/private network. And, throughout this extended process, the public safety licensee would be at a standstill while critical public safety needs go unfulfilled. Further, Frontline’s proposed rules do not provide a mechanism for public safety to share the use of its spectrum with an alternative network provider if it fails to reach agreement with the E block licensee -- making its ability to negotiate with a third party illusory.

³ Member Letter at 1.

⁴ *Id.*

⁵ The Member Letter is dated June 29, 2007. The Frontline one-way arbitration proposal first surfaced in an *ex parte* filed July 3, 2007 in WT Docket Nos. 06-150, 06-169 and PS Docket No. 06-229.

⁶ Experience dictates that regulatory deadlines for negotiated agreements end up getting honored in the breach.

⁷ Public safety would be subject to charges of not negotiating in good faith if they also were negotiating with another carrier before the good faith negotiation process, the arbitration process and the appeal period with the E-Block licensee had run.

⁸ No doubt any failure to reach an agreement would give rise to allegations of a refusal to negotiate in good faith since the stakes will be so high.

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Worst of all, the one-way arbitration process creates perverse incentives and results.⁹ The E-block licensee would benefit by having public safety walk away from the arbitrated result, at which point the E block winner would hold spectrum unencumbered by the public safety obligations that no doubt had been acquired at a discounted sale price. This is one reason public safety repeatedly has indicated that the Commission must reauction the E block rather than allow the E block licensee to retain its license if public safety and the E block licensee are unable to reach agreement.¹⁰

On the other hand, the arbitrator could favor the public safety party and mandate an agreement that is unattractive or undesirable to the E block licensee. At that point, the parties will be forced into a “shotgun marriage” which is doomed to failure. And, forcing the E Block licensee into an unwanted position may jeopardize the licensee’s ability to secure the funding necessary to abide by the arbitrator’s decision. Accordingly, public safety can take little comfort, even if it were able to secure a favorable arbitration decision, that it would in fact end up with a network built to its specifications.

These inherent problems in the one-way arbitration process explain why no such one-way provisions are found in normal commercial arms length arrangements. There are huge risks associated with implementing an experimental arrangement of this nature.

The Commission also can take no comfort in the Frontline proposal that regional public safety licensees be allowed to opt out of the cooperative arrangement. While this concession attempts to address the serious problem that multiple regional public safety entities have opposed the Frontline plan, the fall-back opt-out approach destroys the nationwide compatibility that is a core public safety objective. Notably, the National Public Safety Telecommunications Council considers nationwide inoperability to be so fundamental to a public safety network that the license must be auctioned as a nationwide license rather than as regional licenses.¹¹

2. *“Frontline’s Plan allows incumbents to participate in the auction.”¹²*

Whether or not incumbents are “allowed” to bid on the E block, Frontline’s proposal is larded up with what the Member Letter properly characterizes as “blatant

⁹ Indeed, it would be extremely rare to find a one-way arbitration provision in any commercial, arms-length agreement. This proposal only serves to illuminate the desperation of Frontline’s position.

¹⁰ See, e.g., National Public Safety Telecommunications Council (“NPSTC”), 700 MHz Position Summary, dated July 6, 2007 (“700 MHz Position Summary”) at 2.

¹¹ 700 MHz Position Summary at 1.

¹² Frontline Letter at 1.

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poison pills” known by Frontline to make the E block unattractive to incumbent wireless carriers (*e.g.*, restrictions on retail service, unprecedented open access requirements, and unique roaming obligations).¹³ And, while Frontline has been quick to pounce upon any commenter proposing unacceptable changes to its plan, Frontline has not opposed the repeated requests by the *Ad Hoc* Public Interest spectrum Coalition for a ban on incumbent participation in the Upper 700 MHz band.¹⁴ In addition, Frontline’s own economists have supported such a ban. In a report dated June 11, 2007, submitted to the Commission on June 26, 2007, Frontline’s economists stated:

Because the spectrum cap that the FCC established before the PCS auctions was removed, the chief remaining instruments available now focus on exclusion of the 800 MHz licensees and/or bidding credits for small businesses. Measures of this kind are necessary lest the 800 MHz duopoly is extended to the 700 MHz spectrum to fully and permanently consolidate their dominance.¹⁵

Additionally, in a June 27th Report, Frontline’s economists argued for “spectrum caps, set-asides, bidding credits, and an open access requirement.”¹⁶ Thus, Frontline is being less than candid when it claims to favor an auction where all parties are invited to participate.

It also is outrageous for Frontline to claim that incumbents will participate in the E-block auction by indicating that AT&T has expressed interest in bidding. AT&T explicitly disavowed the blog report upon which Frontline bases this claim in an *ex parte* letter filed with the Commission on July 2, 2007. The AT&T letter directly confirms the

¹³ Interestingly, NPSTC, who press reports suggest support Frontline’s proposal, does not support an open access requirement “partly due to the absence of a commonly agreed upon definition of what open access means.” *700 MHz Position Summary* at 2.

¹⁴ Comments of *Ad Hoc* Public Interest Spectrum Coalition.

¹⁵ P. Crampton, A. Skrzypacz, and R. Wilson, *Economic Comments on the Design of the 700 MHz Auction*, June 11, 2007 at 3 (as submitted to the Commission in an *ex parte* on June 26, 2007 in Docket Nos. 96-86, 06-150, 06-169 and PS Docket No. 06-229). Similarly, in a May 23, 2007 article in *Broadband Daily* by Cheryl Bolen, Frontline’s economists are quoted as saying “Because they [incumbent carriers] have an undue incentive to deter entry, they should either be banned from bidding on the E block or bidding credits should be given to new entrants.” Cheryl Bolen, “Economists Bolster Frontline Plan as Company Prepares to File at FCC,” *Broadband Daily*, May 23, 2007.

¹⁶ P. Crampton, A. Skrzypacz, and R. Wilson, *Auction Revenues in the 700 MHz Spectrum Auction*, June 27, 2007 (“*Auction Revenues*”).

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criticisms of the Frontline plan in the Member Letter by referring to “the ‘poison-pill’ laden proposal put forth by Frontline.”¹⁷

3. *“The Frontline Plan will not result in lower auction revenues.”¹⁸*

No serious consideration can be given to the Frontline claim that its effort to hardwire the E block in its favor will not reduce the E block purchase price. The poison pills proposed by Frontline will reduce the number of bidders which inevitably will reduce auction proceeds.¹⁹ In addition, the stringent build-out obligations that Frontline is proposing will impose costs on the winner that must reduce the amount that a rational bidder is willing to pay and/or deter new entrants which will make the auction less robust.²⁰ And, Frontline is proposing bidding credits which will further reduce revenues. Indeed, Dr. Jeffrey Eisenach indicates that an encumbered E block license may be sold for as little as \$650 million, which is much less than the spectrum would be sold for without Frontline’s proposed encumbrances.²¹ Thus, the concerns expressed in the Member Letter are well founded that the Frontline proposal threatens to reduce the auction proceeds.²²

4. *“Frontline’s open access and wholesale proposals are designed to benefit public safety.”²³*

Frontline’s claim here directly contradicts what major public safety organizations have said about the Frontline open access proposals.²⁴ While various public safety

¹⁷ Letter from Robert W. Quinn, Jr, AT&T to Marlene H. Dortch, Commission Secretary, WT Docket No. 96-86, 06-150, 06-169; PS Docket No. 06-229 (filed July 2, 2007).

¹⁸ Frontline Letter at 1.

¹⁹ The claim that new entrants will not participate or will drop out early if the Commission adopts a “status quo” 700 MHz band plan is belied by the results of Auction 66 which saw significant participation and success by participants other than the nationwide wireless incumbents.

²⁰ In meetings MetroPCS has had, Commission staff members have acknowledged that auction proceeds are likely to decrease as build-out requirements increase. See also Google *ex parte* at 4. Letter from Richard S. Whitt, Google to Marlene H. Dortch, FCC, Docket Nos. 06-150, 06-129, and 96-86 and PS Docket No. 06-229 at 4 (filed July 9, 2007) (“Google *Ex Parte*”) (“[T]he spectrum simply has more economic value and usefulness to incumbents like Verizon or AT&T, than to a would-be new entrant like Google.”).

²¹ Jeffrey A. Eisenach, “Due Diligence: Risk Factors in the Frontline Proposal,” June 28, 2007.

²² Since the auction proceeds from the 700 MHz auction will be used to fund various Congressional mandates, such as the \$1 billion fund for public safety interoperability and the Digital Television transition, the loss of these proceeds will cause a shortfall in the funding for these mandates.

²³ Frontline Letter at 2

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organizations differ in their positions on certain aspects of the Frontline proposal, the public safety community has been steadfast in its opposition to “open access” requirements on any spectrum for public safety. Indeed, in an *ex parte* to the Commission on June 20, 2007, the International Association of Fire Chiefs, the International Association of Chiefs of Police, National Sheriffs Association, Major Cities Chiefs Association, Major County Sheriffs Association, and APCO stated that “we do not support limiting the relevant spectrum block (a.k.a. the “E-block”) to bidders proposing “open access.”²⁵ Thus, Frontline must distort facts and completely mischaracterize the positions of others in order to continue to defend its open access requirement.²⁶ In contrast, the Member Letter properly reflects the skepticism of the public safety community over the Frontline approach.

5. “Frontline’s Plan is timely and would prevent a regulatory decision that fails to serve the American people.”²⁷

Frontline has irreparably disrupted the 700 MHz allocation process. Its initial proposal was filed nearly 6 months *after* comments were due on the 700 MHz band proceeding, and it continues to modify its proposal even though the Commission already has missed its target date for finalizing the auction rules and procedures. Despite a near consensus view at the Commission not long ago that the public interest would be served by commencing the 700 MHz commercial auction this fall, Frontline now has succeeded in jeopardizing the ability of the Commission to meet the January 2008 deadline if applicants are to be given adequate time to prepare (a minimum of six months after the adoption of the band plan and auction procedures). Worst of all, Frontline now is proposing that these issues be postponed even further, requesting that the Commission

²⁴ It is not entirely clear what Frontline believes open access entails since its proposed rules allow the retail service providers to limit the kinds of handsets and services sold or provided on the E block network and the applications which can be run over the service. Indeed, the net neutrality aspect only applies to the network operator *not* the retail providers. Even NPTSC is unclear what open access means. For example, NPTSC states that it “does not believe that ‘open access’ should be a requirement for the E Block, partly due to the absence of a commonly agreed upon definition of what open access means.” *700 MHz Position Summary* at 2.

²⁵ Letter from Robert M. Gurs, APCO, to Marlene Dortch, WT Docket Nos. 06-150, 06-169, 96-86; PS Docket No. 06-229 (filed June 20, 2007). *See also 700 MHz Position Summary* at 2.

²⁶ Frontline recently has withdrawn its proposal that open access conditions on the E Block apply to other licenses held by the winning bidder. Frontline “Procedural Recommendations Based Upon Recent Developments,” filed in WT Docket Nos. 06-150, 06-169 and 96-86 and PS Docket No. 06-229 at 3 (July 9, 2007) (“Frontline Procedures *Ex Parte*”). Nonetheless, it still is advocating that “open access” conditions apply to the E Block – which remains directly opposed to the view of major public safety organizations.

²⁷ Frontline Letter at 2

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resolve implementation issues of its plan “by early or mid-September.”²⁸ The Member Letter clearly is justified in criticizing Frontline for its 11th hour proposal that disrupts the carefully crafted Congressional demarcation between public safety and commercial spectrum.

6. “Frontline’s team has extensive experience and an impressive record of building start-up high tech businesses.”²⁹

Frontline seeks to rely upon the prior business experience of certain investors in Frontline as evidence that it “can get this job done.”³⁰ However, it is completely unclear whether there will be *any* direct involvement in the day-to-day operations of Frontline by the individuals who had some prior involvement with Google, Federal Express, Netscape or McCaw.³¹ What we do know is that the Chairman of Frontline, Janice Obuchowski, was one of the founders of NextWave, a wireless company whose bankruptcy led to perhaps the greatest licensing and public interest fiasco in Commission history, and Reed Hundt, another principal of Frontline, was the Chairman of the Commission at the time the rules were fashioned that led to the NextWave debacle.³² *Not surprisingly, reference to NextWave has been purposefully omitted by Frontline in its laundry list of companies in which its principals have been involved.*³³ No doubt this is because of the disturbing similarities between the Frontline wholesale-only business plan and the failed NextWave business plan.³⁴

²⁸ Frontline Procedures *Ex Parte* at 9. Notably, to the extent that individuals connected with Frontline who have these cited ties are identified on the Frontline website, they are not listed as managers, but rather as “partners.” See <http://www.frontlinewireless.com/team.php>

²⁹ *Id.*

³⁰ Frontline Letter at 2. Frontline also makes references to the viability of its business plans and offers to make available representatives of Citibank to vouch for its plan. The time has long past for proffers of this nature. If Frontline has concrete information pertaining to its business plan that is relevant to this proceeding, it should have filed it with the Commission long ago.

³¹ Indeed, in several cases, the individuals cited as having involvement with Frontline were on the board of these companies and not involved in the day-to-day operations of the business. It is hard to see how their experience would translate here to being able to make the difficult choices the construction and operation of a one-of-a-kind national network would entail.

³² These similarities include a wholesale only business plan, the use of government credits, and the desire for a nationwide license.

³³ Frontline Letter at 2.

³⁴ A view of the post-bankruptcy NextWave website fails to reveal any noted accomplishments in terms of the actual construction and operation of communications networks. See www.nextwave.com.

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In addition, Reed Hundt's reputation has been established as a lawyer and regulator, not as a network operator. For example, one communications business venture with which Mr. Hundt has been identified was a dark fiber wholesale operation that also ended in bankruptcy.³⁵ And, while Haynes Griffin does have wireless operating experience, the reality is that Vanguard Cellular was a short-lived wireless service provider whose principal legacy is the "lottery-stacking" controversy in which its founders became embroiled, not its record of public service.³⁶

Even if Frontline were able to claim the experience of its passive investors, the Commission must note that none of the cited experience relates to building interoperable networks for public safety.³⁷ Commissioner Copps has made the compelling point that there are fundamental differences between commercial systems and public safety systems, which caused him to wonder whether a public/private partnership was a good idea.³⁸ Nor have any of the Frontline principals been involved in the kind of network build-out that is contemplated by Frontline's proposed rules – a 99% coverage of all of the United States population in ten years.

All Frontline has managed to do by highlighting the experience of its participants is resurrect the concern that its true objective here is to build a commercial network to enrich its financial investors. As many commenters have pointed out, it makes no sense to use a high bid commercial auction process to try to select the optimal qualified partner for a private/public partnership devoted to public safety: "[A]uctions are designed to select a licensee who values commercial spectrum most, not to ascertain who has the inclination and ability to work with public safety or to design systems that would be appropriate for public safety."³⁹ This concern was repeatedly cited by APCO in its comments. The traditional way partners are chosen for public/private partnerships is through a process where the public entity is able to select the private party based on a number of criteria, including financial considerations, experience, qualifications, etc. As stated by Verizon Wireless, the shotgun marriage approach suggested by Frontline "is

³⁵ See "Sigma Networks To Liquidate: Decision comes just 11 months after launching with \$450 million," at <http://www.carrierhotels.com/news/January2002/sigma0122.shtml>; "Sigma Networks goes dark" at <http://gigaom.com/2002/03/13/sigma-networks-goes-dark/>.

³⁶ Order Designating Applications for Hearing" in Christina Communications (Christina), DA 87-374, released April 3, 1987, 2 FCC Rcd 1971 (1987).

³⁷ Netscape, Federal Express, and Google do not operate any wireless networks. Indeed, Google admits that it is a "web-based software applications company, not a service provider, with little pertinent experience in the wireless market." Google *Ex Parte* at 4.

³⁸ See *FNPRM* at Statement of Michael J. Copps.

³⁹ Comments of MetroPCS at 82.

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irrational and could dramatically undermine the effective deployment and operation of the Public Safety broadband network.”⁴⁰

7. “Public Safety has supported the Frontline Plan.”⁴¹

Frontline cites an isolated comment from a single public safety official as evidence that public safety supports the Frontline plan. At best, the cited support is lukewarm and is based on the perception -- which may be mistaken -- that there is no other available means to fund an interoperable network. In the meantime, both APCO and NPSTC, which Frontline singles out in its letter,⁴² have noted in written comments their substantial concerns with the Frontline proposal.⁴³ Other public safety organizations have expressed the view that the public safety community will be better off retaining and improving the wideband services that it is already putting into use,⁴⁴ and question whether a sole broadband network, built out by a commercial entity, would aid public safety more than it would hinder it. Some public safety entities question the Commission’s decision to end

⁴⁰ Comments of Verizon Wireless at 56.

⁴¹ Frontline Letter at 2.

⁴² *Id.*

⁴³ NPTSC has recently filed the *700 MHz Position Summary* which describes its views on a private/public partnership and illustrates the significant differences between Frontline’s and the NPTSC’s positions. First, NPTSC states that if the public safety community is unhappy with the arbitration results, the E block license would be re-auctioned. Under Frontline’s proposal, the E Block licensee would retain the license. Second, NPSTC is advocating a 75% geographic coverage requirement whereas Frontline is only advocating a population based coverage requirement. Third, NPTSC advocates that public safety will select the network technology used at initial deployment and during the life of the network while Frontline’s proposed rules only require it to “consult” with public safety. Fourth, NPTSC advocates that the E block be combined to “form a single, shared, nationwide, broadband, interoperable network that provider public safety with priority access” while Frontline’s proposed rules only allow public safety “emergency preemption” to the E block of spectrum. Fifth, NPTSC seems to advocate that there be a single license without any ability of local or regional licensees to opt-out of the process. Frontline explicitly contemplates regional licensees opt-ing out of the national network. Sixth, NPTSC’s position seems to be that Frontline will bear all of the costs of the shared network whereas Frontline clearly contemplates that public safety would pay for access to the network. Seventh, Frontline also contemplates 10 MHz of public safety spectrum being placed into the private/public partnership while NPTSC seems to advocate all 24 MHz of public safety spectrum being placed into the private/public partnership. Eighth, last but not least, NPTSC does not support open access which Frontline has made a centerpiece of its proposal.

⁴⁴ Comments of Region 43 Regional Planning Committee at 4.

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wideband use in the 12 MHz of public safety spectrum now designated for broadband.⁴⁵ The Region 33 700 MHz Planning Committee states that “[w]e don’t think that one commercial licensee building out one true and adequate ‘nationwide’ broadband system could do that and expect to survive financially” and that “one sole broadband network will only hamper our ability to provide service to our user agencies.”⁴⁶

A number of public safety entities are understandably concerned about the intrusion of commercial interests into the public safety spectrum. As Region 43 notes, “[o]ur greatest concern in response to this *FNPRM* is the potential intrusion of commercial wireless interests into the management and control of critically needed public safety spectrum.”⁴⁷ In a similar vein, the City of Philadelphia expresses concern that “the development of public safety communications services on the 700 MHz band not be skewed by commercial interests of the licensee charged with its development.”⁴⁸ The City of New York points out that the “proposal to allow private interests access to the 700 MHz public safety segment on a secondary basis is contrary to law and raises undue litigation risk.”⁴⁹ The City of New York also shares the Commenter’s concerns that “[u]nder the [Frontline] proposal, any 700 MHz shared spectrum will be dominated by commercial interests, where deployment and maintenance will be evaluated based on a return on investment rather than the effectiveness of emergency response.”⁵⁰

Moreover, a collection of local government entities, including the National Association of Telecommunications Officers and Advisors, the National Association of

⁴⁵ Comments of the Region 33 (Ohio) 700 MHz Planning Committee at 3, 4; Comments of the San Diego County – Imperial County, California Regional Communications System at 11; Comments of Region 9 (Florida) 700 MHz Regional Planning Committee at 2; Comments of Mid-America Regional Council at 2; Comments of the State of Ohio Multi-Agency Radio Communications System at 3 (“We can do almost everything we need to on our current 25 KHz. 800 MHz channels. By aggregating three 50 KHz 700 MHz channels up to 150 KHz. there is nothing we have planned for in the future that could not be accomplished. For the Commission to mandate that we wait for someone else’s Broadband network to be built out, and to pay an unknown amount for something that we have no control over, either service level or coverage, is a grave disservice to Ohio and its citizens and cannot be tolerated.”); Comments of Region 13 Illinois 700 MHz Planning Committee at 2; Comments of Grundy County Emergency Telephone System Board at 2; Comments of Region 40, 700 MHz Regional Planning Committee at 2; Comments of York County at 2.

⁴⁶ Comments of the Region 33 (Ohio) 700 MHz Planning Committee at 3, 4.

⁴⁷ *Id.* at 7-8.

⁴⁸ Comments of City of Philadelphia at 3.

⁴⁹ Comments of City of New York at 5.

⁵⁰ *Id.* at 7.

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Counties, the U.S. Conference of Mayors, and the National League of Cities oppose the Frontline proposal in its entirety. This group stated that Frontline's proposal is short on specifics, and, like other similar proposals, the plan "shortchanges our nation's first responders."⁵¹ In addition, as noted by the Madison County Communications District, "[t]he creation of a monopoly for the successful bidder of this nationwide high-speed data system raises serious concerns regarding the quality of service that can be expected for mission critical data communications."⁵² In addition, Madison County states that "[a] one-sized fits-all solution, limiting the system choices of vendors and equipment has historically not been well received by the public safety community. . . open competition is always better for the end-user."⁵³

Moreover, even Frontline admits that "there is not yet agreement on when to issue the E Block license or whether the NPSL should be able unilaterally to deny that license to a winning bidder that is willing to abide by the Commissions arbitral decision about any disputed term on the network."⁵⁴ This further demonstrates that, based upon the record, the Member Letter clearly was correct in noting that public safety has not endorsed the Frontline Plan, but rather is highly skeptical of it.

8. *"Frontline's approach allows for a great variety of license sizes, spectrum blocks, and providers."*⁵⁵

Frontline claims that its wholesale, open access model will encourage diversity and provide opportunities for all types of service providers. This, though, is non-facilities-based service which generally is not considered by the Commission to be as important as facilities-based competition. The reality is that there are few if any non-facility-based wireless service providers who have had a major positive impact on the wireless industry. There are, however, numerous examples of failed businesses of resellers or mobile virtual network operators (MVNOs). Most recently, the high profile failure of MVNO Amp'd Mobile demonstrates again the risks associated with building a business on a network that you do not own, manage and control.⁵⁶ And, even if Frontline could demonstrate that resale businesses promoted diversity, Frontline has not shown there to be any lack of

⁵¹ Comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities at 8.

⁵² Comments of Madison County Communications District at 2.

⁵³ *Id.*

⁵⁴ Frontline Procedures *Ex Parte* at 6.

⁵⁵ Frontline Letter at 2.

⁵⁶ Kelly Hill, "Strike Two For New MVNO," RCR Wireless News (June 9, 2007).

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resale opportunities in the wireless market. The reality is that numerous MVNOs today which are purchasing network access from the major wireless carriers. The Commission can expect the major wireless carriers to continue to provide services to MVNOs without regard to the Frontline plan⁵⁷

Frontline also should not be allowed to capitalize on the roaming problems in the wireless industry. It is extremely significant that mid-tier carriers like MetroPCS, Leap, and several rural carriers – all of whom who have argued strenuously for automatic roaming rights – do not support Frontline’s proposal despite the proposed open roaming requirement. The reality is that Frontline’s proposal would not ensure technical capability, reasonable rates, or significant build-out for voice roaming.⁵⁸

Once the wholesale access to the E block is taken out of the equation, there can be no doubt that the Frontline proposal will reduce the diversity of geographic license sizes and spectrum blocks as indicated in the Member Letter. A single nationwide license that is saddled with public safety obligations, usage limitations, open access requirements and onerous build out requirements will effectively remove 10 MHz of sorely needed from the commercial pool for most bidders and reduce the opportunities for new competition. If Frontline was a blessing to new entrants, the Commission should see a groundswell of non-affiliated new entrants supporting its proposal. That hasn’t happened.

9. *“Frontline is the only commercial entity to propose extensive buildout requirements.”⁵⁹*

This is simply not true. The Rural Carrier Association (“RCA”) has proposed much more extensive build-out requirements than Frontline. In fact, under the RCA proposal, a licensee would be required to build out and provide service to 25% of the licensed geographic area within three years, 50% within five years, and 75% within eight years.⁶⁰ The Frontline build-out requirements are not as significant or aggressive as RCA’s. Frontline’s final geographic build-out percentage is just 68% of the land mass of

⁵⁷ A natural predicate to Frontline’s position is that the wireless markets are lacking in competition – which is false. As the Commission has observed in its 11th Competition Report, the wireless market is robustly competitive. *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*, Eleventh Report, FCC-06-142 at para. 2 (rel. Sept. 29, 2006)

⁵⁸ The Frontline rules limit roaming to “CMRS operators whose customers are using compatible equipment.”

⁵⁹ Frontline Letter at 3.

⁶⁰ See *FNPRM* at para. 212. The undersigned companies do not support these more stringent build out requirements, but the fact is that Frontline has not proposed the most aggressive build out schedule – RCA has.

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the United States,⁶¹ which is significantly less than RCA's proposal and less than what NPTSC has proposed.⁶²

Frontline not only is mistaken in claiming to be the only proponent of strict geographic buildout requirements, but also is mistaken in suggesting that the Commission should credit promises of this nature. In the early days of spectrum licensing by comparative hearing, the Commission used to grant comparative preferences to newcomers who promised the moon. It soon became clear, however, that promises made in an effort to garner a license were unreliable. It was in part due to these recurring "promise versus performance" discrepancies that the Commission moved over time toward auctions as the preferred licensing methodology.

The simple fact is that coverage promises made by Frontline are unrealistic. The likely result of adopting coverage standards of this nature will be that the Commission will be faced with requests for waiver in the future. It is not good policy to assign spectrum and then to allow the winner to renegotiate the terms of its license after the fact. The better approach is to allow marketplace forces, not government mandates, to dictate construction priorities and timetables.

10. *"Forcing public safety to wait for commercial entities to help them has been a proven failure, and the government has chosen not to fund the buildout."*⁶³

Frontline argues that large incumbent wireless carriers have had many years to provide a solution to public safety's communications needs, but have not done so. However, Frontline fails to recognize that there are significant changes in circumstances that make the time right for marketplace forces to foster a natural alliance between existing commercial service providers and public safety users. First, and foremost, public safety now has a significant spectrum resource -- 24 MHz of prime 700 MHz spectrum -- some or all that of which it can make available on a lease or secondary usage basis as an incentive to commercial operators. Indeed, Frontline itself has stated that the possibility of using this spectrum on a secondary basis would provide the necessary leverage for it to negotiate with public safety. Second, Congressional funding has started to flow, and will be funded in part by the proceeds from the 700 MHz commercial auction, meaning that public safety users will have the wherewithal to pay a commercial operator reasonable fees for infrastructure and services. Third, because the 700 MHz commercial auction is coming not long after Auction 66 (AWS-1), and Auction 58 (PCS), major incumbent wireless service providers have gotten past the critical spectrum shortages that would have

⁶¹ Frontline Letter at 2.

⁶² 700 MHz Position Summary at 2 ("99.3% population/75% CONUS landmass").

⁶³ Frontline Letter at 3

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deterred them from providing access to public safety users.⁶⁴ Fourth, as the wireless industry continues to mature, the large incumbent carriers are more focused than ever before on generating new sources of income and new ways to share infrastructure to defray costs. Fifth, as part of the debate regarding 700 MHz, the Commission for the first time is contemplating a nationwide public safety licensee which would make such private/public partnership possible since otherwise commercial carriers would have to negotiate with a multiplicity of local licensees with conflicting views. Sixth, and perhaps most important, the Commission will be clarifying that public/private partnerships are being allowed and encouraged so that commercial entities now can work out arrangements with public safety confident that they are acting within the law. In sum, there is a confluence of events that justifies the Commission in sticking with market forces to produce a successful unforced public/private partnership.

In light of these changes in circumstances, the proposal put forth in the Member Letter to allow public safety to negotiate with any commercial wireless licensee to build out a public safety wireless broadband network is a far better approach to aid public safety than the risky Frontline scheme.

In the final analysis, the Commission must find that the serious concerns about the Frontline plan cited in the Member Letter are well founded, and the Frontline response is wholly inadequate. The Commission also should note that Frontline is wrong to suggest that only the two largest wireless carriers, AT&T and Verizon Wireless, are opposed to the Frontline proposal. As evidenced by this letter, and other filings in the record, many small and midsized wireless providers are wholeheartedly opposed to the Frontline proposal.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,

/s/ Carl W. Northrop

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⁶⁴ The Commission also has approved a number of mergers which have improved the spectrum positions of the major carriers.

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cc: The Honorable Joe Barton, Ranking Member, Committee on Energy & Commerce

The Honorable Fred Upton, Ranking Member, Subcommittee on Telecommunications and the Internet

The Honorable J. Dennis Hastert

The Honorable Ed Whitfield

The Honorable Gene Green

The Honorable G.K. Butterfield

The Honorable John B. Shadegg

The Honorable George Radanovich

The Honorable Mike Rogers

The Honorable Cliff Stearns

The Honorable Nathan Deal

The Honorable Charles A. Gonzalez

The Honorable Charlie Melancon

The Honorable Steve Buyer

The Honorable Mike Ferguson

The Honorable John Sullivan

FCC Chairman Kevin Martin

Commissioner Michael J. Copps

Commissioner Jonathan S. Adelstein

Commissioner Deborah Taylor Tate

Commissioner Robert M. McDowell