

Atlanta
Beijing
Brussels
Chicago
Hong Kong
London
Los Angeles
Milan
New York
Orange County
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Stamford
Tokyo
Washington, DC

(202) 551-1725
carlnorthrop@paulhastings.com

July 16, 2007

The Honorable Kevin J. Martin, Chairman
The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert M. McDowell
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

Re: WT Dockets 06-150, 06-169 and 96-86; PS Docket No. 06-229

Dear Mr. Chairman and Commissioners:

This letter is being submitted by MetroPCS Communications, Inc. (“MetroPCS”) to correct the misimpression created by certain media reports that only large nationwide incumbent wireless carriers oppose so-called “open access” requirements for portions of the 700 MHz spectrum.¹

MetroPCS is on record in the 700 MHz proceeding opposing the adoption of Government-mandated open access requirements for any of the 700 MHz licenses. This opposition draws upon the extensive comments that MetroPCS filed earlier in opposition to the Skype Petition.² In brief summary, MetroPCS opposes an “open access” requirement for the 700 MHz band for the following reasons:

- MetroPCS favors a 700 MHz auction which includes as many fungible licenses as possible. This will ensure that the SMR auction process functions efficiently and results in the market, not artificial regulatory policies, determining value. When “command and control” regulatory policies, not the market, set the auction value, licenses will not be sold for

¹ See “FCC Draft Auction Rules a Win for Google, Hi-tech Industry”, Dow Jones Newswires, 07-10-07 (0715ET) (characterizing the open access issue as a battle between Google, YAHOO, Skype and Intel on the one hand and Verizon Wireless and AT&T on the other).

² MetroPCS incorporates by reference its Comments in response to the Petition for Declaratory Ruling, RM-11361, filed February 20, 2007, Public Notice, “Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed,” Report No. 2807 (CGB rel. Feb. 28, 2007); 47 C.F.R. § 1.405; *Petition to Confirm a Consumer’s Right to Use Internet Communications Software and Attached Devices to Wireless Networks*, RM-11361, DA07-1318, Order (rel. Mar. 15, 2007).

July 16, 2007

Page 2

their true market value and will not necessarily be acquired by the bidders who values them most highly. Placing an open access requirement on one or two blocks of spectrum in the Upper Band destroys fungibility, reduces substitutability and risks creating anomalous, non-market-based outcomes.

- MetroPCS, as a new market entrant in many of the markets in which it acquired spectrum in recent auctions, is forced to compete with entrenched incumbents who have many advantages over MetroPCS. MetroPCS' ability to compete effectively will be further undermined if the spectrum it acquires in the 700 MHz auction is saddled with regulatory requirements (e.g. open access) that incumbent competitors do not have. Unequal regulatory requirements of this nature result in an uneven playing field which inhibits robust competition and benefits the incumbent carriers over new entrants – at the very time when the Commission is trying to foster new entry into the wireless market. Thus, subjecting the 700 MHz band to unique open access requirements will inhibit competition from new entrants, and from mid-tier and smaller carriers, which have been a positive pro-competitive force in prior auctions and in the marketplace.
- Open access requirements cater to the particular business plans of a select few prospective auction participants. Tailoring auction plans to particular applicants is reminiscent of the failed “command and control” spectrum allocation policies of the past.
- An open access requirement would require small and regional carriers to dedicate precious resources to defining technical standards for their systems. This will divert critical resources which would be better devoted to building networks and providing service to the public in the rural and less served areas of the United States. Carriers also would have to divert scarce resources to troubleshooting customer service issues with non-carrier supplied handsets. All of this would distract the smaller and regional carriers from their core mission of providing service in their area.
- The proposed open access mandate in the 700 MHz band is unnecessary because the wireless industry is extremely competitive as evidenced by the Commission's own 11th Annual CMRS Competition Report. As a practical matter, an open access requirement is more appropriate for monopoly markets, such as the old monopoly telephone market, than the vibrantly competitive wireless market. There is no shortage of handsets or new technology being deployed in wireless networks and it is doubtful that an open access requirement will have the same effect that the Carterfone decision did so many years ago.

July 16, 2007

Page 3

- Open access requirements on the licenses in the Upper 700 MHz band will put undue bidding pressure on the licenses in the Lower 700 MHz band. As a result, applicants, such as smaller and regional carriers with limited financial resources, interested in providing services in smaller areas or niche markets, will have greater difficulty acquiring the spectrum they need in order to provide 4G services. This will once again increase the barriers to entry for new entrants and limit the opportunities for new competition to incumbent carriers.

- To the extent that the open access requirements generate system uses which consume inordinate amounts of spectrum, substantial harm will be done to carriers such as MetroPCS which provide a sorely needed fixed price “all-you-can” eat wireless voice service. Indeed, requirements such as open access have the possibility of killing the “golden goose” by causing carriers to reconsider whether to offer unlimited wireless plans which customers clearly favor. No new intended opportunities will be created for third-party applications requiring unlimited wireless services when these unlimited plans are removed from the market.

In sum, any characterization of the open access debate as a battle between nationwide incumbents and the hi-tech industry is mistaken. MetroPCS -- and other small and mid-tier carriers who are attempting to provide substantial competition in the wireless industry -- would be the main losers of any open access requirement. By adopting open access restriction on a portion of the 700 MHz Upper Band, the Commission would be sacrificing the proven competitive benefit of small and mid-sized carriers for the entirely speculative gains of an open access network.

This letter is being filed pursuant to Section 1.1206 of the Commission’s rules. 47 C.F.R. § 1.1206.

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

Respectfully submitted,
/s/ Carl W. Northrop

Carl W. Northrop
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Erika Olsen
Aaron Goldberger
Barry Ohlson
Bruce Gottlieb
Angela Giancarlo