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
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services	)	WT Docket No. 03-264
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
Declaratory Ruling on Reporting Requirement Under Commission's Part 1 Anti-Collusion Rule	)	WT Docket No. 07-166

PETITION OF METROPCS COMMUNICATIONS, INC. FOR CLARIFICATION AND RECONSIDERATION

Carl W. Northrop
Michael Lazarus
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, D.C. 20005
(202) 551-1700

Mark A. Stachiw
Senior Vice President, General Counsel and Secretary
MetroPCS Communications, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, TX 75231
(214) 265-2550

Its Attorneys

TABLE OF CONTENTS

Page

Summary ii

I. Preliminary Statement 2

II. The Legal Basis of This Petition 5

III. The Commission Should Clarify the Circumstances in Which Licensees Will be Subject to Additional Monetary Fines and License Forfeitures 6

IV. The Commission Should Further Refine the Areas That Must be Counted in Calculating Geographic Coverage 11

V. The "Keep What You Use" Rule Should be Modified to Allow Carriers to Retain a Small Expansion Area 13

VI. "Keep What You Use" Should be Modified to Avoid License Forfeitures Unless an Alternative Service Provider Is Willing and Able to Serve the Unserved Area 14

VII. The Reserve Prices for Any Subsequent 700 MHz Auction Should Not be Set at the Same Levels as in the Initial Auction 19

VIII. The Anti-Collusion Rule Should be Applied for as Limited a Period as Possible 20

IX. Conclusion 24

Attachment 1

Attachment 2

Summary

MetroPCS Communications, Inc. ("MetroPCS") is asking the Commission to clarify and reconsider in the following respects its *Order* that established the band plan and service rules governing 700 MHz commercial spectrum:

- The Commission should clarify the portions of the rules which indicate that a licensee may be subject to monetary fines and supplemental license forfeitures for a failure to meet Commission performance requirements. In its present form, the standard that must be met to avoid these further sanctions is impermissibly vague.
- The Commission should refine its performance requirements by indicating that the following areas need not be included in calculating the percentage of geographic coverage: (i) bodies of water; (ii) historic districts; (iii) areas completely surrounded by the licensee's system; and, (iv) zip codes with population density less than 5 persons per square mile.
- The Commission should adopt a number of changes to the "keep what you use rule" in order to avoid forfeitures that would not serve the public interest.
- The Commission should reconsider: (1) the determination that, for any subsequent 700 MHz auction, the "auction of alternative licenses shall be subject to the same applicable reserve prices as the initial auction of licenses," and (2) the determination that both the initial auction and any required follow-on auction will be treated as a single auction for purposes of the application of the anti-collusion rule. These rules have negative effects on the Commission's ability to meet its statutory deadlines and the ability of carriers to operate their wireless businesses.

MetroPCS urges the Commission to act on this Petition, and on any reconsideration petitions filed by others, prior to the auction application deadline.

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
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services	)	WT Docket No. 03-264
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
Declaratory Ruling on Reporting Requirement Under Commission's Part 1 Anti-Collusion Rule	)	WT Docket No. 07-166

PETITION OF METROPCS COMMUNICATIONS, INC. FOR CLARIFICATION AND RECONSIDERATION

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys and pursuant to Section 1.429(a) of the Commission's Rules,[2] hereby petitions the Commission to clarify certain aspects

[1] For purposes of this Petition, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] 47 C.F.R. section 1.429(a).

and to reconsider other aspects of its *Order*, FCC 07-132, released August 10, 2007 in the above-captioned proceeding.[3] The following is respectfully shown:

I. PRELIMINARY STATEMENT

In the *Order,* the Commission established a band plan for the 698-806 MHz Band (the "700 MHz Band") plan, promulgated service rules, and determined a number of 700 MHz Band auction-related issues. MetroPCS hereby respectfully requests clarification and/or reconsideration of certain aspects of the *Order* as follows:

- First, MetroPCS requests that the Commission clarify the circumstances in which licensees will be at risk of being subjected to monetary fines and supplemental license forfeitures for a failure to meet Commission performance requirements. In the *Order,* the Commission established "significantly more stringent performance requirements" for unauctioned licenses in the 700 MHz Band,[4] and set forth specific sanctions that would be imposed automatically on licensees who failed to meet the applicable benchmarks, (i.e. reduction of license term and reduction of service area). In addition, the *Order* contained language indicating that the Commission may impose further sanctions, including fines and further forfeitures of license rights on licensees who failed to meet the benchmarks.[5] Having already specified severe automatic penalties for failing to meet an applicable benchmark it is inappropriate for the Commission also to propose additional sanctions in the form of fines and license forfeitures when no standard is articulated that

[3] *See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et, al,* WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, and WT Docket No. 07-166, Order, FCC 07-132 (rel. Aug. 10, 2007) ("*Order*"). This petition is being filed within 30 days following the date of publication of the *Order* in the Federal Register, which occurred on August 24, 2007. *See* 72 Fed. Reg. 48814 (Aug. 24, 2007). Thus, the Petition for Clarification and Reconsideration is timely under Sections 1.429(d) and 1.4(b) of the FCC Rules. 47 C.F.R. Sections 1.4(b) and 1.429(d).

[4] *Order* at para. 153.

[5] *See* 47 C.F.R. sections 27.14(g)(1) and 27.14(g)(2).

puts the licensee on adequate notice of what circumstances will invoke these additional penalties. MetroPCS asks the Commission to clarify that a licensee will only be subject to monetary fines and further termination of license rights if the licensee has failed to take meaningful steps toward service implementation as of the initial (4 year) benchmark or fails to provide "substantial service" as of the end of the license term (8 or 10 years).

- Second, MetroPCS requests that the Commission refine its performance requirements. In adopting stringent geographic-based construction benchmarks for the EAs and CMAs, the Commission failed to address a number of modifications and refinements proposed by MetroPCS that, if adopted, would serve to avoid many of the negative unintended consequences of the geographic performance requirements that were adopted.[6] MetroPCS asks the Commission to reconsider its performance requirements and indicate that the following areas need not be included in calculating the percentage of geographic coverage: (i) bodies of water; (ii) historic districts; (iii) areas completely surrounded by the licensee's system; and, (iv) zip codes with population density less than 5 persons per square mile. These changes will serve to maintain the most stringent build out requirements ever, while recognizing that construction is impractical in certain areas.

- Third, MetroPCS requests that the Commission adopt a couple of changes to the "keep what you use rule" in order to avoid forfeitures that would not serve the public interest. Specifically, the Commission should allow the original licensee to retain a small

[6] On July 19, 2007, MetroPCS made oral presentations to several Commissioners' offices and to the Bureau Staff proposing a series of changes to the geographic standards that were under consideration. On July 20, 2007 MetroPCS filed written *ex parte* presentations in the docket documenting its recommended changes to the Commission's performance requirements. *See Ex Parte* of MetroPCS, WT Docket Nos. 06-150, 06-169, 96-86 and PS Docket No. 06-229 (filed July 20, 2007) ("*MetroPCS Ex Parte*"). A copy of one of these *MetroPCS Ex Partes* is included as Attachment 1 hereto. The MetroPCS proposals appear to have gotten overlooked while other higher profile issues were being addressed (e.g., open access) and as a result the Commission's *Order* does not reference or address the MetroPCS proposals or any similar ways to mitigate the harshness of the new rules.

expansion area above and beyond the "Use-it-or-Lose-it" area that is 15% larger than the calculated service area of the existing network. In addition, the original licensee only should lose territory for failing to meet a construction benchmark if a credible third party demonstrates a willingness and ability to serve the unserved area promptly. These rule changes will avoid the undesirable consequence of forcing a licensee to relinquish a license area that would be served over time when no other credible party is planning to initiate service.

- Fourth, MetroPCS seeks reconsideration of two Commission holdings regarding the 700 MHz Band auction procedures. In the first instance, the Commission stated that, in the event a subsequent auction is necessary because an auction block fails reach its applicable reserve price, the "auction of alternative licenses shall be subject to the same applicable reserve prices as the initial auction of licenses."[7] In the other instance, the Commission indicated that both the initial auction and any required follow-on auction will be treated as a single auction for purposes of the application of the anti-collusion rule. Both rules should be reconsidered by the Commission to avoid the negative effects these rules have on the Commission's ability to meet its statutory deadlines and the ability of carriers to operate their wireless businesses.[8]

Finally, MetroPCS urges the Commission to act on this Petition, and on any reconsideration petitions of others, prior to the auction application deadline. It is important for the rules to be finalized before the auction commences. Also, the Commission's existing rules may deter

---

[7] *Order* at para. 308.

[8] MetroPCS expressed its concern about these rules in its comments on the *700 MHz Procedures Notice* but indicated at the time that it would seek reconsideration on these points because the *Order* appears to tie the hands of the Bureau staff in these regards. *See* MetroPCS Comments at 22-25 in *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008, Comment Sought on Competitive Bidding Procedures for Auction 73*, AU Docket No. 07-157, Public Notice, DA 07-3415 (released Aug. 17, 2007) ("MetroPCS Auction Procedures Comments").

participation by potential bidders and may reward speculators who bid on the expectation that the rules will eventually change. Given the importance of the 700 MHz Band auction, the public interest will be served, and a more robust auction will ensue, if the Commission acts upon and grants this petition for reconsideration and clarification.

II. THE LEGAL BASIS OF THIS PETITION

The Administrative Procedures Act ("APA") requires a court to set aside agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[9] This standard imposes a "requirement of reasoned decision-making" upon agency decisions.[10] If Congress has not directly addressed the precise question at issue, and the agency has acted pursuant to an express or implied delegation of authority, the agency's statutory interpretation is entitled to deference, but only as long as the interpretation is reasonable.[11]

The portions of the rules that MetroPCS seeks to change violate the APA in a number of respects, including that (1) the Commission did not rely on any supporting evidence in the record for particular rules; (2) the Commission failed to consider important aspects of the problems the rules sought to redress; (3) in some instances, the adopted rules are impermissibly vague; and, (4) the Commission failed to explain why it rejected less restrictive alternatives for particular rules.

The Commission also will entertain a petition for reconsideration if it is based on new evidence, changed circumstances, or if reconsideration is in the public interest.[12] Clarification

---

[9] 5 U.S.C. § 706(2)(A).

[10] *Celcom Communications Corp. v. FCC*, 789 F.2d 67, 71 (D.C. Cir. 1986).

[11] *Am. Library Ass'n. v. FCC*, 406 F.3d 689, 698-99 (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984)).

[12] *In the Matter of Numbering Resource Optimization*, Fourth Order on Reconsideration, 22 FCC Rcd 8047 at para. 5 (rel. Apr. 26, 2007).

and reconsideration of the rules as requested here by MetroPCS is justified in the public interest as contemplated by Section 1.429(b)(3). The Commission also has stated that "[r]econsideration is warranted . . . if the petitioner cites material errors of fact or law or presents new or previously unknown facts and circumstances which raise substantial or materials questions of fact that were not considered and that otherwise warrant [the] review of [the] prior action."[13] As demonstrated in detail below, clarification and reconsideration of the cited rules is justified under this standard.

MetroPCS also is an "interested person" eligible to petition for reconsideration and clarification of the new construction requirements and the other auction rules challenged herein.[14] MetroPCS has been a very active participant in the 700 MHz proceedings and has stated that it is exploring whether to participate in the upcoming 700 MHz Band auction. This means that MetroPCS will be directly adversely affected if the rules are not changed. As a consequence, MetroPCS has standing to submit this petition for clarification and reconsideration.[15]

III. THE COMMISSION SHOULD CLARIFY THE CIRCUMSTANCES IN WHICH LICENSEES WILL BE SUBJECT TO ADDITIONAL MONETARY FINES AND LICENSE FORFEITURES

The *700 MHz Order* adopted unprecedented geographic-based build-out requirements for the EA and CMA licenses, with harsh *automatic* penalties imposed for failure to meet them. A licensee who fails to serve 35% of its licensed geography in 4 years will have the term of its license reduced from 10 years to 8 years.[16] A licensee who fails to serve 70% of its licensed

---

[13] *Lancaster Communications, Inc.*, 22 FCC Rcd 2438 at para. 20 (rel. Feb. 7, 2007).

[14] *Cf.* 47 C.F.R. Section 1.429(a).

[15] 47 C.F.R. Section 1.106(b)(1) ("any party to the proceeding, or any other person whose interests are adversely affected by an action taken by the Commission ... may file a petition requesting reconsideration of the action").

[16] Newly adopted Section 27.14(g)(1) of the Commission's rules states:

> If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no

geography by the end of its license term (8 years or 10 years as the case might be) will have the portion of its license covering the unserved area terminate automatically.[17] However, in addition to imposing these automatic sanctions, the rule contains vague references to possible *additional* monetary fines and license forfeitures if either the initial or the final performance benchmarks are not met by a licensee. This fine and forfeiture language exists for all licenses to be auctioned in the upcoming 700 MHz auction.

For instance, new rule Section 27.14(g)(1) states that an EA or CMA licensee who fails to meet the 4 year 35% geographic coverage benchmark "may be subject to enforcement action, including forfeitures. In addition, such an EA or CMA licensee may lose authority to operate in part of the remaining unserved areas of the license which applies to EA and CMA licenses."[18] Similarly, Section 27.14(g)(2) contemplates that a licensee failing to meet the end of license term benchmark "may also be subject to enforcement action, including forfeitures. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may be subject to license termination."[19]

> later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years **and such license may be subject to enforcement action, including forfeitures. In addition, such an EA or CMA may lose authority to operate in part of the remaining unserved areas of the license.** (emphasis added)

[17] Section 27.14(g)(2) states:

> If any such EA or CMA licensee fails to provide signal coverage and offer service to at least 70 percent of the geographic area of its license authorization by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. **Such licensee may also be subject to enforcement action, including forfeitures. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may be subject to license termination.** (emphasis added).

[18] *See supra* note 16. This language is mirrored in the new rule 27.14(h)(1), which applies to REAG licenses, and states that "a licenses that provides signal coverage and offers service at a level that is below the interim benchmark may lose authority to operate in part of the remaining unserved areas of the license." 47 CFR 27.14(h)(1).

[19] *See supra* note 17. This language is again mirrored for REAGs, with the Commission's revised rules stating that "[s]uch licensee may also be subject to enforcement action, including forfeitures," and that "a REAG licensee that

The problem with these portions of the new rules is that absolutely no standard is articulated that would put licensees on notice as to when these supplemental sanctions might be imposed. Since the penalties alluded to -- monetary penalties of uncertain magnitude and license forfeiture – are quite severe, it is only fair that licensees be placed on notice of how the rules will be applied. However, the fine and forfeiture language in the rule is extremely vague and there is no discussion in the text of the *700 MHz Order* providing licensees with the guidance on how to avoid further sanctions.

Notably, the Commission gave no indication in its *700 MHz FNPRM*[20] that it was considering retaining to itself the unfettered discretion to impose unspecified fines and license forfeitures over and above those automatically arising from a failure to meet an applicable benchmark.[21] Nor did the Commission cite any support in the record or legal precedent for these far reaching and unprecedented sanctions.[22] In these circumstances, the ill-defined penalties would be found to be arbitrary and capricious. Under the APA, an agency must provide notice of, and an opportunity to comment on, new regulations.[23] It also must produce a rule that is

---

provides signal coverage and offers service at a level that is below the end-of-term benchmark within any EA, may be subject to license termination within that EA." 47 CFR section 27.14(h)(2).

[20] 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, Further Notice of Proposed Rule Making, FCC 07-72 (rel. April 27, 2007) ("*FNPRM*"), 72 Fed. Reg. 24238 (May 2, 2007).

[21] While the Commission requested comment on use-it-or-lose-it rules, it did not request comment, nor receive any comment recommending, a vague rule that would accord it unfettered discretion to impose fines and license forfeitures without any guidelines for licensees to follow.

[22] For cellular, PCS, and AWS spectrum, a failure to meet construction requirements results in a loss of a license but no monetary forfeitures are involved. The 700 MHz lower band rule is discriminatory because other broadband licenses, and certain other 700 MHz licenses, are not subject to these vague supplemental penalties.

[23] 5 U.S.C. § 533(b), (c).

well-reasoned[24] and that finds "support in the record.[25] In addition, the Commission must consider reasonable alternatives to imposing wide-ranging penalties on licensees.[26]

MetroPCS presumes that the intention of the Commission in alluding to possible additional sanctions was to allow it to draw distinctions between licensees who had made material progress toward the construction benchmark (while failing to meet it) and those licensees who had failed to make meaningful strides toward the benchmark and appeared to be "warehousing" spectrum. If this is the case, then the Commission should clarify the rules to read as follows (new language in bold):

> 27.14(g)(1) - If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years. Such license may be subject to enforcement action, including forfeitures, or may lose authority to operate in part of the remaining unserved areas of the license, **if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term.**
>
> 27.14(g)(2) - If any such EA or CMA licensee fails to provide signal coverage and offer service to at least 70 percent of the geographic area of its license authorization by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may also be subject to enforcement action, including forfeitures, and may be subject to license termination, **if the licensee has failed to provide substantial service in the geographic area of the license authorization by the end of the license term.**

---

[24] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42, 52 (1983).

[25] *NAACP v. FCC*, 682 F.2d 993, 997 (D.C. Cir. 1982).

[26] *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) ("[A]n agency has a duty to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.") (internal quotations omitted).

Because the Commission uses parallel monetary fines and forfeiture language in its performance rules governing REAG licenses, as well as in the performance rules governing any subsequent reauction of EA, CMA, and REAG licenses, MetroPCS proposes that the Commission include language similar to the above for each of these instances, which would include revisions to 47 CFR sections 27.14(h)(1), h(2), i(1) and i(2). MetroPCS has included proposed revised language for these rules provisions in Attachment 2, redlined against the Commission's rules to reflect the proposed language changes.

The use of a substantial service standard to govern whether licensees will be subject to further sanctions at the end of the license term is a familiar approach. The Commission already uses a "substantial service" standard in other licensing contexts. For example, Section 27.14 of the rules governing construction and renewal requirements for Advanced Wireless Service (AWS) and Wireless Communications Service (WCS) licensees provides:

> AWS and WCS licensees must make a showing of "substantial service" in their license area within the prescribed license term set forth in §27.13. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.[27]

In addition, there is case law that provides frames of reference for licensees to ascertain whether the service being provided meets this standard "substantial service."[28] Thus, the use of a "substantial service" standard would put the build-out requirements on a much firmer legal footing. And, perhaps more importantly, potential bidders like MetroPCS would not be as likely to be deterred from bidding due to the vagueness of the sanctions alluded to in its original rules.

---

[27] 47 CFR section 27.14.

[28] *See Amendment of the Commission's Rules to Establish New Personal Communications Systems, Narrowband PCS,* Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 at paras. 27-28 (rel. May 18, 2000); *Application of ITV, Inc. to Renew the License for Station KIVD0011,* 22 FCC Rcd 1908 (rel. Jan. 31, 2007).

IV. THE COMMISSION SHOULD FURTHER REFINE THE AREAS THAT MUST BE COUNTED IN CALCULATING GEOGRAPHIC COVERAGE

The Commission's geographic-based performance rules wisely exclude "land owned or administered by government as part of the relevant service area" calculation, if the licensee so chooses.[29] This exemption makes sense because licensees may be unable to place facilities on and serve government lands even if they want to. As noted by the Commission, "covering government land may be impractical, because these lands are subject to restrictions that prevent a licensee from providing service or make provision of service extremely difficult."[30] Moreover, a considerable portion of governmental land is unoccupied and, in many instances, may not be visited at all. As a result, governmental lands may not support the investment required to provide service. For example, the cost to provide service on Mount McKinley would probably never be supported by the use of those facilities.

There are, however, other areas where licensees face similar challenges in siting facilities and providing service. In the *MetroPCS Ex Parte,* MetroPCS asked the Commission to allow licensees to exclude additional areas from the calculation of the relevant geographic area, including bodies of water and historical areas. The Commission failed to address these sound suggestions of MetroPCS.[31]

In addition, MetroPCS asked the Commission to allow licensees to remove from the coverage calculation zip codes with less than 5 persons per square mile. These low density areas were shown to include only approximately 0.7% of the population. MetroPCS pointed to

---

[29] 47 CFR section 27.14(g).

[30] *Order* at para. 160.

[31] Although the *MetroPCS Ex Parte* was filed relatively late in the proceeding, MetroPCS notes that other *ex partes* filed around the same time did in fact get meaningful attention from the Commission. *See Ex Parte* of Verizon Wireless, WT Docket No. 06-150 (filed July 24, 2007), which was cited extensively by the Commission in its *Order* at paras. 208-221.

evidence in the record indicating that areas this sparsely populated are best served by satellite.[32] Indeed, the Commission has rightfully required the 700 MHz D Block licensee to provide at least one handset which has satellite capability, recognizing that certain areas of the United States will not be served otherwise.[33] Consequently, these areas have little need for supplemental service coverage, and serving them would put an undue economic strain on licensees without any corresponding public benefit. Forcing licensees to cover such sparsely populated areas would be likely to force them to forgo improving their capacity and coverage in other areas of greater public need.

Finally, MetroPCS urged the Commission to allow licensees to exclude from the coverage calculation any unserved area that was wholly surrounded by served area – the so-called "hole in the doughnut." When a carrier surrounds an area with coverage while leaving an unserved area in the middle, the situation generally occurs because of a facility sitting problem because the area is not frequented by wireless users. It may be that the unserved area has difficult terrain, or that access to a suitable site has proved to be impracticable because of zoning or other site restrictions, or that the area is so remote that it does not get visited. Obviously, these circumstances are analogous to those that caused the Commission to exempt Government lands. And, little useful purpose would be served by cancelling the portion of the license covering the doughnut hole since another carrier would be unlikely to be able to provide interference-free service in this area which would be surrounded by proximity co-channel facilities.[34]

---

[32] *See Ex Parte* of Cyren Call Communications Corp., PS Docket No. 06-229, RM-11348, WT Docket Nos. 06-150, 06-169 and 96-86 at 14-15 (filed July 9, 2007) ("*Cyren Call Ex Parte*").

[33] This requirement seems to flow from the *Cyren Call Ex Parte* that proposed that areas with a population-density of less than 5 people per square mile should be served by satellite facilities, rather than terrestrial facilities.

[34] Indeed, depending on the criteria used to define the "reliable service area," the situation may be that an area is served, just not with sufficient signal to meet the definition.

In promulgating a rule, the Commission must "consider[] the relevant factors."[35] Indeed, "an agency rule [is] arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem."[36] Here, the Commission failed to consider several meritorious modifications to the performance requirements rules that it adopted. MetroPCS submits that failing to include the additional coverage exemptions MetroPCS proposes would be arbitrary and capricious because there would be no "rational connection between the facts found and the choice made."[37] It would be in the public interest for the Commission to adopt the previously proposed MetroPCS revisions to the Commission's revised performance requirements, as they would satisfy the Commission's stated goal to "better promote access to spectrum and the provision of service, especially in rural areas. . ."[38] The modifications proposed by MetroPCS would still allow the Commission to maintain the strictest geographic coverage requirements in its history, but are realistic enough to allow carriers the opportunity to build-out their spectrum economically and efficiently, without having to build towards an inherently arbitrary government-imposed regulatory requirement. Most importantly, the revised rules proposed by MetroPCS would meet the Commission's policy objective of increasing broadband coverage, particularly in rural areas.

V. THE "KEEP WHAT YOU USE" RULE SHOULD BE MODIFIED TO ALLOW CARRIERS TO RETAIN A SMALL EXPANSION AREA

The *MetroPCS Ex Parte* also recommended that the Commission allow carriers to retain a small expansion area (e.g. +15%) in addition to the area served at the end of the license term. This approach properly recognizes the fact that service area contours tend to be site specific, but

---

[35] *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002).

[36] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

[37] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

[38] *Order* at para. 153.

a licensee has no guarantee that a particular site can be retained in perpetuity. The loss of a perimeter cell site, particularly one where alternative sites providing comparable coverage are not readily available, could result in a loss of service to existing coverage. Regulatory policies should not drive toward such a result.

Giving licensees a small expansion area also would recognize that growth in population over time at the outskirts of a market area can be served most efficiently by an incumbent carrier who is serving the nearby major market, rather than by a newcomer. As MetroPCS pointed out in meetings with the Commission staff, while it is well beyond its 10 year renewal period on many of its licenses, it still finds itself building new facilities at the periphery of its long-licensed markets in order to accommodate population sprawl and shifting demographic patterns. Serving these areas sooner would not have made economic sense for MetroPCS. Yet, had MetroPCS lost the ability to serve these areas, they likely would go unserved by any carrier since they can only be served economically on an incremental basis by a carrier with a substantial presence in the area.

VI. "KEEP WHAT YOU USE" SHOULD BE MODIFIED TO AVOID LICENSE FORFEITURES UNLESS AN ALTERNATIVE SERVICE PROVIDER IS WILLING AND ABLE TO SERVE THE UNSERVED AREA

Under the Commission's revised rules, if a licensee fails to meet its final benchmark after 8/10 years, "that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission."[39] This automatic forfeiture approach risks disenfranchising the very carrier who is best positioned to build out these areas over time. Moreover, the Commission's rules precluding the licensee from

[39] 47 CFR section 27.14(g)(2).

applying for the license for the first 30 days further enhances the risk that either the area will not be served, or that the licensee will be subject to green mail from speculators. The original licensee is best positioned to serve less populous areas economically and has the greatest economic incentive to do so. In addition, there is a considerable likelihood that this forfeited territory either would not be built out the second time around - as it would not be economic for any carrier to do so - or would be acquired by speculators who are betting that the Commission will change their rules once the true extent of the uneconomic nature of the build-out is apparent.

Rather than automatically terminating a carrier's license for these unserved areas, a better approach would be to allow the original carrier to retain the area - - and the right to serve it - - unless and until another potential service provider demonstrates a *bona fide* desire, and the wherewithal, to build-out the spectrum in the unserved market.[40] MetroPCS proposes that the original licensee would only lose unserved areas after the applicable 8 or 10 year benchmark was missed if a credible third party application was filed for the unserved areas. Moreover, the Commission should establish application procedures which will ensure that a third party applicant is serious about providing coverage, by making the party submit a meaningful upfront payment to the Commission that is sufficiently large to deter speculators. The existing licensee would be entitled to keep all areas it is serving without being subject to competing applications. In addition, as described below, the incumbent should be allowed to participate in any auction of this unserved spectrum.

[40] Even if the Commission does not adopt this proposal, it should allow the original licensee to retain an expansion area above and beyond the "use it or lose it" area in order to encourage continued service improvements. Carriers should be able to provide service to a licensee-determined expansion area of 15% greater than the calculated service area of the existing network. This would allow existing carriers to potentially provide coverage to additional areas, or to serve areas where perimeter sites are lost, in lieu of the hard stop proposed by the Commission. *See MetroPCS Ex Parte* at 5.

As envisioned by MetroPCS, the incumbent carrier would be allowed to continue expanding in its service area pending the filing of an unserved area application by a newcomer, and the incumbent would be able to keep any such area. This approach has two public interest benefits. First, it creates a powerful incentive for both the incumbent and the newcomer to take steps to serve an unserved area sooner rather than later. Second, it reduces the prospect that forfeited unserved license areas will lie fallow in the Commission's hands. In contrast, under the Commission's current procedures, it is possible that unserved areas may be stripped from the licenses of an incumbent carrier, and then lie fallow for years to come. Rather than promoting such an outcome that clearly would not serve the public interest, the Commission should allow the existing carrier to continue to build-out these unserved areas until another potential service provider demonstrates that it is willing and able to do so.

MetroPCS recognizes that the triggered use it or lose it plan it proposes would require the development of new filing procedures and application processing procedures applicable to the unserved 700 MHz area. For example, incumbent licensees would be obligated to file, and to update, service area maps so that new potential unserved area applicants could be on notice of possible service opportunities. And, licensing procedures would need to be established to govern 700 MHz unserved area auctions. MetroPCS notes, however, that the Commission successfully implemented licensing procedures in the past for cellular unserved areas,[41] and MetroPCS is confident that the Commission can do so again. Since 700 MHz unserved area applications will not be due for many years, all the Commission need do now is announce its intention to adopt a triggered use it or lose it approach so that applicants in the upcoming auction can bid with confidence that their licensed territory will not be needlessly reduced and can more accurately

[41] *See*, e.g., 47 CFR. section 22.949.

assess the value of licenses. If the Commission leaves this triggered use it or lose it proposal unaddressed, it may encourage insincere bidders who will be betting on rules changes down the line.

Whether or not the Commission adopts the MetroPCS proposal to allow a carrier to continue to utilize unserved spectrum unless and until another credible party files an application, it should allow the original licensee to participate in any reauction of recaptured license area. Under the Commission's current performance requirements, once unserved spectrum is reacquired by the Commission, the Bureau will establish a 30-day window during which third parties may file license applications to serve these areas.[42] However, during this 30-day period, "licensees that lost their authorizations for the areas that they did not serve may not file applications to provide service to these areas."[43] If no application is filed, then the original licensee may file an application for any remaining unserved areas.[44]

It would not be in the pubic interest to preclude original licensees from reacquiring unserved area spectrum during this initial 30-day period. The Commission has not established any compelling reasoning for restricting the reauction of these unserved areas in this way. The fact that a carrier has not constructed an area should not be viewed as warranting an exclusion from the auction since licensees may not construct areas for a variety of legitimate reasons, including difficulties in securing sites, lack of customers, etc. Allowing the current licensee to participate will ensure that the Commission has at least one bidder for the spectrum who can provide service within the year contemplated by the Commission.

---

[42] *Order* at para. 171.

[43] *Id.*

[44] *Id.*

The prospect of having to reacquire a licensed area creates an adequate incentive for the original licensee to build; rendering the licensee ineligible in a reaction is not necessary. Indeed, the Commission in recent years consistently has opposed eligibility restrictions for auctions.[45] The Commission repeatedly has stated that the public interest is best served through an auction of spectrum in which all interested parties can participate with limited eligibility and service rules. The Commission has stated that "[a]n auction is the most likely [means] to assign the license to the qualified licensee that most highly values it if the auction is open to all potentially qualified licensees."[46] In addition, the Commission has noted that "Section 309(j) embodies a presumption that licenses should be assigned as a result of an auction to those who place the highest value on the use of the spectrum," as those parties "are presumed to be those best able to put the licenses to their most effective use."[47] And, "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."[48] In sum, Commission precedent establishes that the agency will rely on "market forces to guide license assignment absent a compelling showing that regulatory intervention to exclude potential participants is necessary."[49] Here, the Commission has made no finding that an eligibility restriction is necessary to avoid harming competition. In

---

[45] *See Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool,* Notice of Proposed Rulemaking and Memorandum Opinion and Order, 20 FCC Rcd 3814 at para. 27 (rel. Feb. 16, 2005); *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands,* 19 FCC Rcd 19263 at para. 69 (rel. Sept. 24, 2004).

[46] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands,* Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5738 (2006).

[47] *NextWave Personal Communications, Inc.,* Order on Reconsideration, 15 FCC Rcd 17500, 17513 (2000).

[48] *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands,* 19 FCC Rcd 19263 at para. 69 (rel. Sept. 24, 2004).

[49] *Id.*

fact, allowing the original license, who is in the best position to build-out the unserved area in a cost-effective manner, is certainly in the public interest.

VII. THE RESERVE PRICES FOR ANY SUBSEQUENT 700 MHZ AUCTION SHOULD NOT BE SET AT THE SAME LEVELS AS IN THE INITIAL AUCTION

The Commission adopted a number of rules governing the upcoming 700 MHz Band auction in its *Order*. For example, the Commission established that there will be reserve prices on each spectrum block for the auction, and that if these reserve prices are not met, a subsequent auction for the relevant spectrum blocks would occur.[50] Any subsequent auction of spectrum blocks that do not meet the applicable reserve price is to occur with less restrictive requirements attached to them.[51] However, the Commission determined that "the auction of alternative licenses shall be subject to the same applicable reserve prices as the initial auction of licenses."[52]

MetroPCS respectfully disagrees that any subsequent auction should have the same reserve prices as the first. This approach would undermine the statutory objectives set by Congress. Having the same reserve prices for a subsequent auction may prevent the Commission from depositing the proceeds from the 700 MHz auction into the DTV Transition Fund by June 30, 2008. Thus, the Commission "will . . . entirely failed to consider an important aspect of the problem" as well as relevant factors surrounding it.[53]

The DTV Act[54] makes clear the congressional desire to fund the DTV transition from the proceeds of the auction of 700 MHz commercial spectrum.[55] This objective would be frustrated

---

[50] *Order* at para. 298.

[51] *Id.* at paras. 306-308

[52] *Id.* at para. 308.

[53] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[54] The DTV Act is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 1230 Stat. 4 (2006).

[55] Indeed, Congress has already earmarked billions of dollars of the potential revenues from the 700 MHz Band auction for various uses.

if the Commission sets too high a bar for the second auction to clear before the proceeds can be deposited to the DTV Fund. The better outcome is to validate the results and deposit the proceeds from the second auction into the DTV Fund on or before June 30, 2008 regardless of the amount raised. This result is compelled by the text of the DTV ACT which amended the Communications Act to provide that the Commission "**shall** deposit the proceeds of such [700 MHz] auction in accordance with paragraph (8) (E) (ii) [pertaining to the DTV Fund] not later than June 30, 2008."[56] This language is compulsory in nature and should be read to mean that the Commission has no authority to conduct a 700 MHz auction after June 30, 2008 since it would be impossible to do so and comply with the requirements pertaining to the depositing of funds. Given this limitation, setting reserve prices for the second auction that risk preventing any timely deposit of funds would violate the legislative intent. At the very least, the statutory language should be read to reflect a clear Congressional bias in favor of upholding rather than invalidating the results of any subsequent auction.[57]

Thus, MetroPCS recommends that the Commission have no reserve price for any subsequent auction to ensure that the spectrum sells. Having no reserve price for any subsequent auction would ensure that the Commission's statutory responsibilities are met.

VIII. THE ANTI-COLLUSION RULE SHOULD BE APPLIED FOR AS LIMITED A PERIOD AS POSSIBLE

In its *Order,* the Commission found that its anti-collusion rule should be applied as if Auction No. 73 and any required follow-on auction were a single auction. The Commission indicated that:

---

[56] 47 U.S.C. § 309(j)(15)(c)(v)(emphasis added).

[57] This result is also justified since the Commission has made no provision for what happens if the spectrum does not sell in any subsequent auction. If the spectrum is continued to be held by the Commission, the Commission will be in violation of the DTV Act. In addition, the Commission's desire to have service in rural areas and a "third pipe" to the home will be frustrated. The better approach is the one outlined by MetroPCS.

> Because licenses for the same spectrum will be offered in both auctions, and the auctions will take place relatively close in time, we conclude that the purpose of our anti-collusion rule requires that the provisions of that rule continue to apply until the down payment deadline for the subsequent auction.[58]

This approach would not serve the public interest because the Commission again has "entirely failed to consider an important aspect of the problem."[59] In this case, the Commission failed to discuss or recognize the difficulties that an extended application of the anti-collusion rule may present to potential bidders. Moreover, the Commission did not consider less restrictive alternatives, such as described below, to this anti-collusion rule determination.[60]

As many commenters previously have pointed out to the Commission the anti-collusion rule can have a chilling affect on normal commercial business discussions which would be pro-competitive and have no direct bearing on the auction.[61] Indeed, the Commission itself has noted in the past that the anti-collusion rule may affect the way in which "auction applicants conduct their routine business during the auction by placing significant limitations upon their ability to pursue business opportunities involving services in the geographic areas for which they have applied to bid for licenses."[62] In addition, the Commission has cautioned auction applicants that "discussions concerning, but not limited to, issues such as management, resale, roaming, interconnection, partitioning and disaggregation may all raise impermissible subject matter for

---

[58] *Order* at para. 316

[59] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[60] As noted above, The Commission has a duty to consider less restrictive alternatives to its chosen action and to explain why it rejected such alternatives. *City of Brookings Mun. Tel.Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) ("[A]n agency has a duty to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.") (internal quotations omitted).

[61] For example, roaming discussions or market partitioning discussions between carriers that commenced without any relationship to an auction might be curtailed during an auction out of an abundance of caution because they might have a tangential affect on a party's bids or bidding strategy.

[62] *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz,* 13 FCC Rcd 374 at para. 456 (rel. Dec 31, 1997).

discussion because they may convey pricing information and bidding strategy."[63] This being the case, there is a distinct public interest benefit in not forcing applicants to be held hostage by the anti-collusion rule for a subsequent auction that they may not want to participate in. The Commission should not subject carriers to the anti-collusion rule any longer than is necessary to protect against improper bidding behavior.

Keeping the anti-collusion rule in effect through any subsequent auction is not necessary. The Commission certainly can envision situations in which a bidder in the first auction has no intention – and perhaps no ability – to participate in a second auction. For example, if a smaller or mid-tier bidder carrier with a finite budget is successful in the first auction in acquiring 700 MHz licenses in the Lower Band, it may not have the inclination – or the financial wherewithal -- to seek additional licenses in a subdivided Upper Band. Such an applicant should be able to opt out in writing from the second auction. In doing so, the applicant should certify that the decision to opt out was not based upon any discussions with other competing bidders of auction strategy, or post auction market structure with respect to a 700 MHz license.[64]

MetroPCS' opt-out proposal serves the public interest by limiting the amount of time that carriers who are no longer interested in the auction may be precluded from negotiating commercial contracts, or other business discussions, due to the anti-collusion rule. Further, because the two auctions could take up to seven months to complete (including the pre and post auction periods that count as part of the anti-collusion period),[65] applicants may find themselves to be precluded from pursing publicly beneficial commercial discussions for an unnecessarily

---

[63] *Id.* at para. 457

[64] The Commission presumably would not disclose who has withdrawn from the auction, but would need to notify any bidders with whom they had mutually exclusive license applications so that they no longer had such mutual exclusivity.

[65] The anti-collusion period runs from the date short form applications are filed and continues until the post-auction down payment deadline. *See* 47 C.F.R. § 1.2105(c).

long period. In the highly competitive wireless industry, seven months is too long to be at a standstill if the risk of collusion has passed.[66] Such a blackout may also discourage applicants who have an interest in licenses being auctioned in Auction No. 73 but cannot afford to forego other opportunities for such a period of time.[67] This would prevent the Commission from having a robust auction which will make it less likely that its reserve prices are met.

[66] Indeed, in less than seven months, three major wireless mergers were announced: AT&T's acquisition of Dobson Communications Corp., Verizon's acquisition of Rural Cellular Corp., and T-Mobile's acquisition of SunCom Wireless.

[67] This is even further exacerbated since applicants going into the auction process will have no idea how long it will last because they have no idea whether there will be any subsequent auction.

IX. CONCLUSION

The foregoing premises having been duly considered, MetroPCS respectfully requests that the Commission clarify its rules regarding penalties for a failure to meet performance requirements, clarify the areas subject to its performance requirements, and reconsider a number of its rules regarding performance requirements and the 700 MHz Band auction procedures, as set forth herein.

Respectfully submitted,

MetroPCS Communications, Inc.

By: /s/ Carl W. Northrop
Carl W. Northrop
Michael Lazarus
PAUL, HASTINGS, JANOFSKY & WALKER LLP
875 15th Street, NW
Washington, D.C. 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Mark A. Stachiw
Senior Vice President, General Counsel and Secretary
MetroPCS Communications, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, Texas 75231
Telephone: (214) 265-2550
Facsimile: (866) 685-9618

Its Attorneys

September 20, 2007

ATTACHMENT 1

Paul Hastings

Paul, Hastings, Janofsky & Walker LLP
875 15th Street, N.W.
Washington, DC 20005
telephone 202-551-1700 • facsimile 202-551-1705 • www.paulhastings.com

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

(202) 551-1862
michaellazarus@paulhastings.com

July 20, 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:

On July 19, 2007, Mark Stachiw, Senior Vice President, General Counsel and Secretary of MetroPCS Communications, Inc. ("MetroPCS"), accompanied by Carl Northrop of Paul, Hastings, Janofsky & Walker LLP and Justin Lilley of TeleMedia Policy Corp., participated in a meeting with Chairman Kevin Martin and Erika Olsen. The oral presentation in this meeting was consistent with the pleadings and *ex partes* filed on behalf of MetroPCS in the above-referenced proceedings.

In addition, MetroPCS made an oral presentation as summarized in the attached handout, copies of which were distributed.

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

Respectfully submitted,

/s/ Michael Lazarus

Michael Lazarus
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Chairman Martin
Erika Olsen

LEGAL_US_E # 75860779.1

PRESENTATION OF
METROPCS COMMUNICATIONS, INC.

700 MHz Service Rules

WT DOCKET NO. 06-150
WT DOCKET NO. 06-169
PS DOCKET NO. 06-229
WT DOCKET NO. 96-86

METROPCS COMMUNICATIONS, INC.
8144 WALNUT HILL LANE, SUITE 800
DALLAS, TEXAS, 75231

July 19, 2007

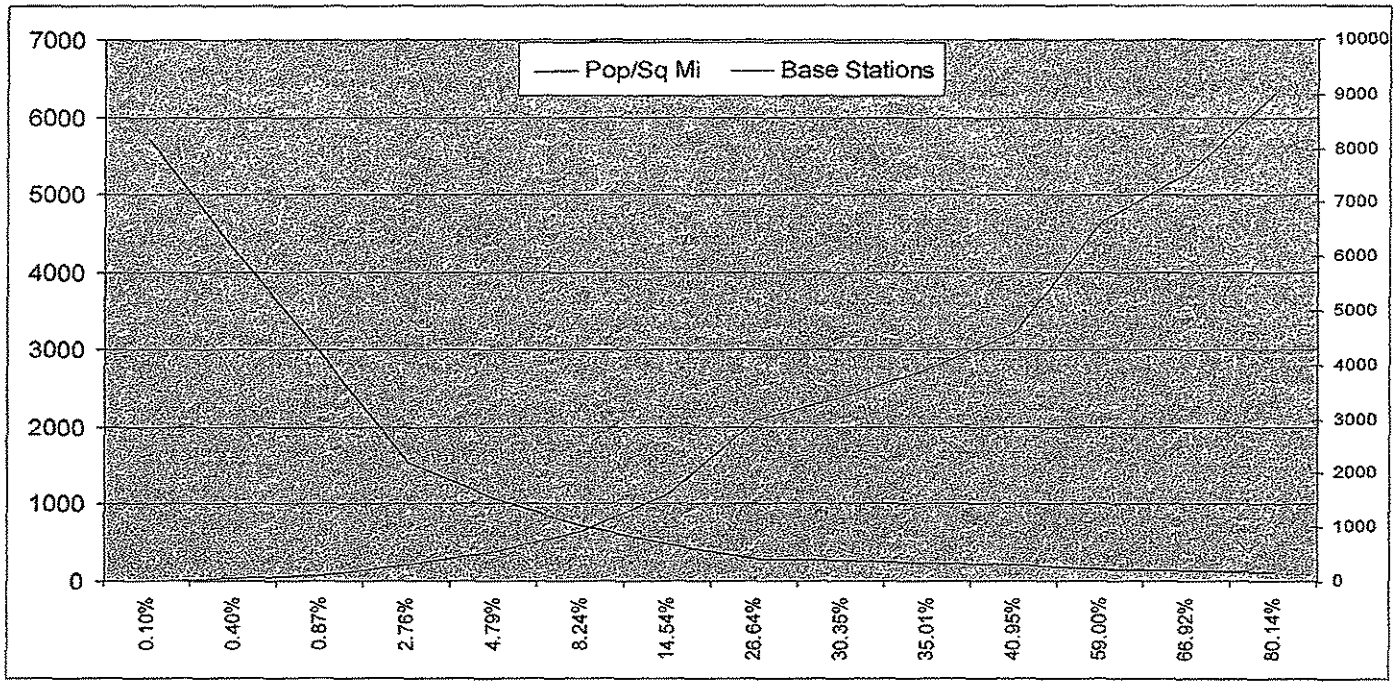
ACCORDING TO RECENT MEDIA REPORTS, THE DRAFT 700 MHZ ORDER CONTAINS THE FOLLOWING PERFORMANCE REQUIREMENTS FOR THE 700 MHZ COMMERCIAL SPECTRUM:

- **Geographic performance requirements for CMA/EA licenses**
  - **35% geographic build-out in 4 years**
  - **70% geographic build-out in 10 years -- however, if the 35% benchmark is not met in 4 years, the 70% benchmark must be met in 8 years rather than 10 years**
  - **Licensees only get to "keep-what-they-use" after the build-out period (8 years or 10 years as the case may be)**
- **Population-based coverage requirements for REAG licenses**
  - **40% of Population in 4 years**
  - **75% of Population in 10 years – if 40% benchmark is not met in 4 years, the 75% benchmark must be met in 8 years rather than 10 years**

IN TRYING TO FASHION THE MOST STRINGENT BUILD-OUT REQUIREMENTS EVER, THE DRAFT ORDER HAS ALLOWED THE PENDULUM TO SWING TOO FAR

- **35% geographic coverage equates to approximately 94% of the population, which is too high compared to the 25% (10 MHz PCS), 33.33%/66.67% (30 MHz PCS), and 40%/75% (700 MHz REAG) population standards applicable to other bands**
- **70% geographic coverage equates to approximately 99.6% of the population, which means that a carrier would have to more than double its coverage area (from 35% to 75%) to pick up only a little more than 5% of the pops**
- **The chart on the next page demonstrates the inverse relation between population covered and cost to provide service resulting in ever diminishing returns**
- **Setting the coverage standard too high will not foster build-out**
  - **Applicants will be discouraged from bidding on licenses with large portions of low density population with the result that more CMAs and EAs will go unacquired, resulting in less service**
  - **The winning bidder, who is in the best position, and has the greatest economic incentive to expand coverage to low population density areas, will be forced to forfeit the ability to serve those very areas they can serve most economically**
- **Since the incremental population picked up by the second benchmark is so small, secondary licensing opportunities are unlikely to emerge**

Inverse Relationship of Base Stations to Population



Demonstrates that cross-over point is around 8.24% of geography or 70% of population

SEVERAL STEPS CAN BE TAKEN TO MITIGATE THE HARSHNESS OF THE PROPOSED GEOGRAPHIC BUILD-OUT STANDARD

- **Reduce the standard to a realistic level**
  - **10% geography (70+% pops) by year 4 (more than double the PCS standard)**
  - **35% geography (90+% pops) by year 10 (year 8 if first 10% benchmark is missed)**
- **Allow the original licensee to retain an expansion area above and beyond the "use it or lose it" area in order to encourage continued service improvements**
  - **Licensee should be able to define an expansion area of no greater than 15% larger than the calculated service area of the existing network**
- **The original licensee would only lose unserved territory if a credible third party application was filed for unserved area after the 8/10 year benchmark was missed**
  - **The new applicant would need to make an upfront payment to demonstrate seriousness**
  - **The incumbent would be allowed to continue to expand pending receipt of an unserved area application and would be able to keep any area served prior to unserved area application**
  - **Incumbent would be allowed to bid for the unserved area to retain it**
  - **Minimum bid should be the minimum opening price of Auction 66 ($0.03/MHz/pop)**
  - **If no bidder on unserved area, incumbent would retain right to continue to expand until another credible application is filed**

- **The following areas should not be counted in ascertaining the percentage of geographic coverage**
  - **Bodies of water**
  - **Federal and state lands**
  - **Historic districts**
  - **Areas completely surrounded by licensee's system**
  - **Zip codes with population density less than 5 persons per square mile**
    - **Cyren Call indicated that areas this sparsely populated are best served by satellite**
    - **These low density areas include only approximately 0.7 % of the population**

ATTACHMENT 2

27.14(g)(1) If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years. ~~and s~~Such licensee may be subject to enforcement action, including forfeitures. ~~. In addition, such an EA or CMA licensee~~ or may lose authority to operate in part of the remaining unserved areas of the license, if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term. ~~.~~

27.14(g)(2) If any such EA or CMA licensee fails to provide signal coverage and offer service to at least 70 percent of the geographic area of its license authorization by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. ~~Such licensee may also be subject to enforcement action, including forfeitures~~. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may also be subject to enforcement action, including forfeitures, and may be subject to license termination, if the licensee has failed to provide substantial service in the geographic area of the license authorization at the end of the license term. ~~–~~In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection.

27.14(h)(1) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area by no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), the term of the license authorization will be reduced by two years. ~~and~~ In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark ~~such licensee~~ may be subject to enforcement action, including forfeitures, or may lose authority to operate in part of the remaining unserved areas of the license, if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term. ~~. In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark may lose authority to operate in part of the remaining unserved areas of the license.~~

27.14(h)(2) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 75 percent of the population in any EA comprising the REAG license area by the end of the license term, for each such EA that licensee's authorization will terminate automatically without Commission action for those geographic portions of its

license in which the licensee is not providing service. In addition, a REAG licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark within any EA ~~Such licensee~~ may also ~~also~~ be subject to enforcement action, including forfeitures, and may be subject to license termination within that EA, if the licensee has failed to provide substantial service in the geographic area of the license authorization by the end of the license term. ~~.~~ In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection. ~~In addition, a REAG licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark within any EA may be subject to license termination within that EA.~~

27.14(i)(1) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 40 percent of the population in its license area by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years. In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark ~~and such licensee~~ may also be subject to enforcement action, including forfeitures, or ~~. In addition, such licensee that provides signal coverage and offers service at a level that is below the interim benchmark~~ may lose authority to operate in part of the remaining unserved areas of the license, if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term. ~~.~~ For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

27.14(i)(2) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 75 percent of the population in its license area by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. In addition, ~~Such licensee~~ such a licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may also ~~also~~ be subject to enforcement action, including forfeitures, and may be subject to license termination, if the licensee has failed to provide substantial service in the geographic area of the license authorization by the end of the license term. ~~.~~ In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection. ~~In addition, such a licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may be subject to license termination.~~ For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.