

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Service Rules for the 698-746, 747-762 and 777-792 MHz Bands |) | WT Docket No. 06-150 |
| |) | |
| Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules |) | WT Docket No. 06-169 |
| |) | |
| Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band |) | PS Docket No. 06-229 |
| |) | |
| Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 |) | WT Docket No. 96-86 |
| |) | |
| Declaratory Ruling on Reporting Requirement Under Commission’s Part 1 Anti-Collusion Rule |) | WT Docket No. 07-166 |
| |) | |

LIMITED OPPOSITION AND COMMENT ON RECONSIDERATION PETITIONS

Rural Cellular Association (“RCA”),¹ by its attorney, submits this “Limited Opposition and Comment on Reconsideration Petitions” in response to the petitions of The Blooston Rural Carriers (“Blooston”), MetroPCS Communications, Inc. (“MetroPCS”) and Rural Telecommunications Group (“RTG”) that seek partial reconsideration of the *Second Report and*

¹ RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA’s members serve fewer than 500,000 customers. RCA was formed in 1993 to address the distinctive issues facing wireless service providers. The ability to gain reasonable access to auctioned spectrum in the 700 MHz Band presents one such issue.

Order in the above captioned proceeding.² RCA's "limited opposition" and comments concern only the build-out requirements, reporting requirements and sanctions adopted in the Order.

Geographic Area Performance Requirements

Blooston claims that the strict geographic build-out obligation on Cellular Market Area ("CMA") licensees is "unworkable" because it would "...force the licensee of a CMA (which may be a Rural Service Area or RSA) to serve 70% of the land within the license boundaries, even if no one lives or travels there."³ Blooston asks the Commission instead to revise the rule and substitute a population coverage option for CMA licensees.

RCA disagrees with Blooston's characterization of the build-out requirement and notes that no CMA licensee will be "forced" to build uneconomic portions of a CMA. Under the "Keep-What-You-Use" standard adopted in the Order, each CMA licensee has total control of its decision-making and may choose to leave unserved any portion of a CMA, for any reason at all. The Commission considered and rejected the argument Blooston presents in its petition, finding that

stringent benchmarks applied across smaller service areas with effective consequences for noncompliance, when combined with appropriately sized geographic licensing areas, are the most effective way to promote rapid service to the public, especially in rural areas. [Order at para. 155]

Insofar as a licensee's decision not to build and provide service in large portions of a CMA may result in a shortened license term by two years, the Commission reasoned correctly that the portion of a CMA not served after eight years should become available for reassignment to another applicant. The goal is to provide initial licensees a reasonable opportunity to make use of the spectrum and offer service. Areas not served should become available to others whose

² *Second Report and Order*, FCC 07-132, released August 10, 2007 ("Order").

³ Blooston Summary, p. iii.

business plans may allow for a more economical deployment or a different type of service offering altogether.

MetroPCS seeks a modification to the build-out rules to allow licensees to keep a “small expansion area (e.g. +15%) in addition to the area served at the end of the license term.”⁴ RCA disagrees, in that a change of this nature would be contrary to the purpose of coverage requirements based upon percent of area or population served. At the end of 10 years (or 8 years if the first construction milestone was missed) areas not served should be available to others who have an interest in providing service. An expansion area after performance deadlines pass is wholly inconsistent with the goal of allowing other interested parties to serve an area left unserved by the prior licensee.

MetroPCS proposes additional exceptions to the process of how licensees may calculate the percentage of area that is served. After noting that the Commission appropriately excluded “land owned or administered by government as part of the relevant service area” calculation, MetroPCS asks the Commission to exclude bodies of water, historical areas, zip codes with less than 5 persons per square mile, and any unserved area that is wholly surrounded by served area. RCA disagrees and notes that where significant bodies of water or large historic sites present a problem, a licensee can request a waiver of the coverage standard. Advance filing of a waiver request should be followed by reasonably prompt action by the Commission to resolve special situations. As for zip codes with a small population density, there should be no exclusion or waiver flexibility. Persons not served in those areas by the licensee should not be deprived of the prospect that another service provider will find the area possible to serve. Likewise, the Commission should not alter its rules to allow licensees to retain unserved area that is

⁴ MetroPCS Petition at 13.

surrounded by served area. If an unserved area exceeds the minimum size for new applications established by Section 27.14(g)(3), as adopted by the Order, it should be available to another service provider.

MetroPCS also asks that the Commission modify the Keep-What-You-Use standard to avoid license forfeitures unless an alternative service provider comes forward. MetroPCS would have the Commission in the position of determining that another potential service provider “...demonstrates a *bona fide* desire, and the wherewithal, to build-out the spectrum in the unserved market.”⁵ RCA does not agree and notes that the Commission probably would need to conduct an evidentiary hearing to reach the types of conclusions that MetroPCS proposes as a threshold for triggering the Keep-What-You-Use standard. The Commission should maintain the rule as adopted and reclaim the spectrum until such time as another applicant (or the prior licensee, after 30 days passes) comes forward and demonstrates its legal qualifications to obtain the license.

RTG petitions for adoption of a geographic-based service requirement for the Upper Band C-block, to conform to the service requirements placed on licensees in the Lower 700 MHz blocks. RCA’s comments in this proceeding consistently included the same request and RCA agrees that matching geographic-based performance requirements for the Lower Band and Upper Band C-block licenses would be appropriate to encourage build-out of rural areas in the large license areas of the Upper Band.

Enforcement Action

The Order provides auction applicants with clear notice of the amount of time they have as licensees to protect area not served, allowing applicants to adjust their bidding strategies

⁵ MetroPCS Petition at 15, fn. omitted.

accordingly. However, reference in the Order to “possible enforcement action, including forfeitures” in the event that a CMA licensee does not meet the build-out standards,⁶ and in the accompanying rules that state performance requirements,⁷ introduce an element of uncertainty that would best be clarified by the Commission when it acts on reconsideration requests. RCA does not agree with the Blooston request that this language be eliminated. Rather, the rules should be supplemented in order that prospective auction participants and the resulting licensees understand the circumstances where the Commission intends to impose monetary forfeitures when a licensee fails to meet construction requirements. The rule changes proposed by MetroPCS would serve that purpose.⁸

Interim Build-Out Reports

Blooston asks the Commission to exempt small and rural telephone carriers from an obligation, as 700 MHz licensees, to submit interim build-out reports. If the Commission is inclined to grant relief of that nature RCA requests that small and rural wireless carriers also be included in any exemption.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

/ filed electronically /

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October 17, 2007

⁶ Order at para. 153.

⁷ See Sections 27.14(g)(1) and (h)(1).

⁸ MetroPCS petition at 9.

CERTIFICATE OF SERVICE

I, Jill Soroka, hereby certify that I am on this 17th day of October, 2007, delivering copies of the foregoing **LIMITED OPPOSITION AND COMMENT ON RECONSIDERATION PETITIONS** to the following via US Mail:

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