

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
And 777-792 MHz Bands)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones)	
)	
Biennial Regulatory Review – Amendment)	WT Docket No. 03-264
Of Parts 1, 22, 23, 27, and 90 to Streamline)	
And Harmonize Various Rules Affecting)	
Wireless Radio Services)	
)	
Former Nextel Communications, Inc. Upper)	WT Docket No. 06-169
700 MHz Guard Band Licenses and Revisions)	
To Part 27 of the Commission's Rules)	
)	
Implementing a Nationwide, Broadband)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	
)	
Development of Operational, Technical and)	WT Docket No. 96-86
Requirements for Meeting Federal, State and)	
Local Public Safety Communications)	
Requirements Through the Year 2010)	
)	
Declaratory Ruling on Reporting Requirement)	WT Docket No. 07-166
Under Commission's Part 1 Anti-Collusion)	
Rule)	

**Comments of
United States Cellular Corporation
On Petitions for Reconsideration**

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Table of Content

	<u>Page</u>
INTRODUCTION AND SUMMARY	i
I. The Commission Should Reconsider The Performance Requirements Adopted In The Order.....	1
A. Licensees Should Not Be Subject To Forfeitures, Loss of Existing Territory and Potential License Termination In Addition To Loss of "Unserved" Territory If They Fail To meet Performance Requirements.....	3
B. The Commission Should Modify Its Geographic Coverage Areas To Exclude Hard To Cover Areas.....	4
C. Wireless Carriers Should Be Allowed to Retain a Small Expansion Area to Allow For Natural System Expansion.	4
D. The Commission Should Adopt Unserved Area Rules Similar To Those In The Cellular Service.	5
E. The Commission Should Adopt Sensible Population Based Coverage Requirements For All Markets in This Auction.	6
II. USCC Opposes the NTCH Proposal To Require A Block Licensees to Provide Service on a Discounted Wholesale Basis to ETCs In Each Licensed EA.....	7
III. The Commission, With One Exception, Should Retain Its Existing Rules Regarding Licensee Eligibility.	8
IV. The Commission Should Maintain Its Existing DE Requirements.	10
V. Bidders in Auction 73 Should Be Permitted to Opt Out of Auction 76 in Order to Limit the Duration of Anti-Collision Restrictions.....	10
CONCLUSION.....	12

Introduction and Summary

United States Cellular Corporation ("USCC"), a participant in the above-captioned proceeding, hereby files its Comments on certain of the issues raised in the Petitions for Reconsideration of the Second Report and Order¹ in this proceeding. These Comments are filed pursuant to the relevant Federal Register notice.²

The FCC should reconsider the performance requirements adopted in this proceeding. The geographic coverage requirements for CMA and EA licenses are unreasonable in that they will require system buildout in areas which cannot support wireless service. Moreover, they are discriminatory, as REAG and nationwide licensees will only have to meet population coverage requirements.

700 MHz licensees should not be subject to any "sanctions" except loss of unserved territory for failing to meet coverage requirements. Also the newly adopted rule which provides that licensees failing to meet their coverage targets may also be subject to potential forfeitures, loss of additional territory and cancellations of their licenses should be rescinded.

USCC also supports additional rule changes to make the coverage requirements more reasonable, including modification of geographic coverage requirements to exclude "hard to cover" areas such as government lands, bodies of water and very sparsely populated areas, and allowing carriers to retain a small area for natural system expansion after their initial license terms. USCC also supports adoption of "unserved area" rules modeled on the cellular service and adoption of population based coverage standards for all markets in Auction 73.

¹ See Service Rules for the 698-746, 747-762, and 777-792 MHz Bands, Second Report and Order, WT Docket No. 06-150 and related proceedings, FCC 07-132 (rel. August 10, 2007) ("Order").

² See "Federal Communications Commission, Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding," Federal Register, Vol. 72, No. 190, p. 56074, released October 2, 2007.

USCC opposes any attempt to rewrite the ETC rules in this proceeding and believes that the FCC should retain its existing eligibility rules for auction participation, with the exception that the D Block nationwide licensee should not hold any C Block REAG spectrum. Holdings of C and D Block spectrum by the same applicant would create too great a degree of 700 MHz spectrum concentration. We also believe the FCC should maintain its existing DE requirements and not modify those rules to suit the "business plans" of any applicant.

Lastly, USCC submits that bidders in Auction 73 should be able to "opt out" of Auction 76 to limit the duration of anti-collision restrictions, which can act as a substantial deterrent to routine and desirable business activities, which have nothing to do with auction strategies.

I. The Commission Should Reconsider The Performance Requirements Adopted In The Order.

In our Comments (pp. 12-14) and Reply Comments (pp. 19-23) in this proceeding, USCC strongly opposed the licensee performance requirements proposed in the Further Notice of Proposed Rulemaking³ and supported retention of the existing "substantial service" requirements. USCC argued that the proposed geographic coverage build out requirements and "keep what you use" licensing standard would constitute an unwarranted and counter-productive reversal of the Commission's existing wireless buildout and licensing policies, which had been developed over decades of experience and proven their worth in wireless network construction.

USCC also argued that the proposed requirements would have a variety of undesirable side effects, including the Commission having to determine a technique of measuring signal contours, despite the difficulties inherent in measuring the signal strength of varying digital signal formats. Finally, USCC stressed the threat posed to the wireless industry's reasonable expectations of system continuity by the combination of unworkable performance requirements with the uncertain 700 MHz license renewal standard adopted in the companion Report and Order to the Further Notice.⁴

However, the actions taken by the Commission in the Order have, if anything, exacerbated the "performance requirement" problems previously identified by USCC. CMA and EA licensees will indeed be required to meet stringent geographic coverage requirements (35

³ 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 Communication's Rules, WT Docket 06-169, Implementing a Nationwide, Broadband, Interporable 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. 98-86, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72 (rel. April 27, 2007) ("Further Notice").

⁴ Further Notice, (licensee meeting performance requirements still might not meet "substantial service" renewal criteria), ¶ 75.

percent, 70 percent) at four and ten year intervals.⁵ REAG licensees will be subject to population based coverage requirements, namely 40 percent coverage of each REAG's constituent EAs within four years and 75 percent of each of the EA's populations within the ten year license term.⁶

For all licensees subject to the Order, failure to meet the four year coverage requirement will result in a shortening of the license term to eight years.⁷ At the end of those eight years a licensee would lose any territory left "unserved" and would not be able to apply to serve the remaining area unless no one else did so within an initial 30 day period.⁸ However, the Order also indicates that a 700 MHz licensee failing to meet its build out requirement might also be subject to further Commission enforcement action, including additional loss of territory, forfeitures, and even cancellation of their licenses.⁹

USCC again notes its opposition to all of these changes in the rules, especially the vague but menacing threat of additional sanctions for buildout shortfalls. They are contrary to the public interest, both in the substantive standards they adopt and in the uncertainty about renewal expectancies they will inevitably promote. Wireless licensees will simply not invest the billions of dollars necessary to construct third and fourth generation networks unless they have some reasonable assurance that their licenses will be renewed if they meet clear and achievable coverage requirements. As presently structured, the performance requirements for the licenses to be auctioned in Auction 73 do not provide that assurance.

At a minimum, we recommend that the Commission take the following actions now in light of the petitions for reconsideration which have been filed.

⁵ Order, ¶ 157

⁶ Order, ¶ 163.

⁷ Order, ¶¶ 157, 163.

⁸ Order, ¶ 171.

⁹ Order, ¶ 153.

A. Licensees Should Not Be Subject To Forfeitures, Loss of Existing Territory and Potential License Termination In Addition To Loss of "Unservd" Territory If They Fail To meet Performance Requirements.

USCC agrees with MetroPCS and the "Blooston" group that the Commission cannot and should not threaten licensees with sanctions in addition to loss of unserved territory for failing to meet geographic or population coverage requirements.¹⁰ Such a threat is explicitly included in Section 27.14(g)(2) of the new Commission Rules governing the 700 MHz licenses to be auctioned in January.

Such additional sanctions were not proposed in the Further Notice and would be imposed without any announced standard to govern their applicability, a state of affairs arbitrary and capricious almost by definition.¹¹ Moreover, as Blooston notes, the method of calculating 700 MHz coverage is not defined in the Rules and thus the imposition of such sanctions could be the result of a disputed coverage measurement.¹² Also, as USCC stated in our Comments, such uncertainty about the validity of licenses can only undermine the reasonable certainty of license renewal which underlies necessary network investments.

The Commission should reconsider and repeal the "additional sanctions" portion of the rule. It constitutes regulatory overreaching. If licensees fail to meet whatever coverage requirement the Commission sets within the time allotted, they should lose whatever territory they don't cover. No other "punishment" is warranted or necessary.¹³

¹⁰ See Petition of MetroPCS Communications, Inc. For Clarification and Reconsideration, ("MetroPCS Petition") pp. 6-10; Blooston, Mordkofsky, Dickens, Duffy and Pendergast, LLP Petition For Partial Reconsideration And/Or Clarification, ("Blooston Petition"), pp. 11-18.

¹¹ MetroPCS Petition, p. 9, Blooston Petition, pp. 13-16.

¹² Blooston Petition, p. 12.

¹³ USCC disagrees with MetroPCS's proposed alternative rules, pursuant to which the additional sanctions could be imposed if a carrier had not taken "meaningful steps" toward service implementation by the end of its license term.

B. The Commission Should Modify Its Geographic Coverage Areas To Exclude Hard To Cover Areas.

The Commission's new geographic coverage requirements exclude "land owned or administered by government as part of the relevant service area."¹⁴ However, this exclusion, entirely justified as it is, is not the only one which should be adopted. As a general principle, wireless carriers should not be held responsible for providing service either to areas they cannot serve for reasons beyond their control or should not serve because there are no people there to serve.

USCC accordingly agrees with Blooston that licensees should not be held accountable for service to tribal areas where the relevant tribe refuses to permit the licensee to provide service.¹⁵ Moreover, we also agree with MetroPCS that historic districts, bodies of water, and unserved areas wholly surrounded by served areas should be excluded from this calculation.¹⁶ USCC also supports MetroPCS's proposal that zip code areas with fewer than 5 persons per square mile be excluded from the calculation. Such extremely rural areas cannot, in most instances, be served on an economically rational basis and the Commission's Rules should not require carriers to operate at a loss in any part of their systems in order to avoid sanctions.

C. Wireless Carriers Should Be Allowed to Retain a Small Expansion Area to Allow For Natural System Expansion.

Blooston and MetroPCS also recommend that new Section 27.14(g) of the Commission's Rules be modified to permit carriers to retain a small "unserved" expansion area (MetroPCS

(MetroPCS Petition, p. 9). We believe that that alternative standard is also vague and standardless and thus likely to produce the same problems of uncertainty of application as the Commission's proposed rule.

¹⁴ See Section 27.14(g) of the FCC Rules.

¹⁵ Blooston Petition, p. 19.

¹⁶ MetroPCS Petition, pp. 11-12.

recommends 15%) at the end of the license term.¹⁷ This makes eminent sense. Neighboring wireless systems using the same frequencies need "buffer" zones between them to prevent interference. This is usually handled by power limits but the rules as adopted include no such limits for boundaries between incumbent and unserved area systems. Moreover, wireless systems need to replace base stations periodically and should not be precluded from doing so by the fact that there might be a very small expansion of a cell's service area as the consequence of a new cell location. Lastly, permitting an "expansion area" would permit natural extensions of a wireless system outside its existing service area, as population and demand for service increases.

D. The Commission Should Adopt Unserved Area Rules Similar To Those In The Cellular Service.

The Order adopts a "keep what you use" rule for the affected 700 MHz licenses, pursuant to which licensees failing to meet their geographic or population coverage benchmarks automatically "lose" the geographic area in which the licensee is not providing service.¹⁸ The Order then requires that for a 30 day period, the incumbent licensee "losing" the area will be ineligible to apply to serve it. After that, it will be eligible.¹⁹ It also appears that applicants must apply for the entire unserved area and must complete construction within a year of obtaining their license.²⁰

USCC opposes both the 30 day exclusion and the evident requirement that the entire unserved area be served by any successor licensee.²¹ USCC has argued in our Comments that if the Commission is determined to adopt a "use it or lose it" regime, what would make the most

¹⁷ MetroPCS Petition, P. 13-14; Blooston Petition, p. 19.

¹⁸ Order, ¶¶170-171.

¹⁹ Ibid, ¶172.

²⁰ Order, ¶ 173.

²¹ If that is not what the Commission meant to require, that should be clarified.

sense would be adoption of rules comparable to the cellular unserved area rules.²² While those rules certainly permit the establishment of small, independent wireless systems, for the most part, the rules have provided the means by which established carriers could expand their systems gradually as additional calls could be justified economically. In USCC's Comments (p. 16), we noted that USCC cellular systems have been expanded 273 times in the past fourteen years by means of unserved area applications, none of which has attracted competing applications. We submit that there is no good reason not to adopt similar rules here. Also any unserved area applicant should be permitted to apply to serve an area defined by the applicant. Thus service can be provided when justified by the underlying economic "fundamentals," and not to satisfy bureaucratic requirements which do not take economic rationality into account.

MetroPCS, in its Petition (pp. 14-17), proposes a variation on this idea. Under its proposal, incumbent licensees would continue to be licensed for unserved areas and could continue to "build out" within them, until another bona fide applicant could demonstrate the "desire and wherewithal" to serve the remaining unserved area. That applicant could then compete with the incumbent licensee and other applicants in an auction if they chose to file competing applications. USCC does not object to this proposal but believes that the cellular "unserved area" rules have been successful for many years and would be a better and simpler model to follow here.

E. The Commission Should Adopt Sensible Population Based Coverage Requirements For All Markets in This Auction.

In the hope of promoting better wireless service in rural areas, the Commission has adopted geographic coverage requirements for the A, B, and E Block CMA and EA service areas, while adopting a population coverage requirement for the C Block's six REAGs and the D

²² See Section 22.949 of the FCC's Rules.

Block's nationwide license. In our view, this decision was both discriminatory, in that it imposes a heavier coverage burden on those smaller and regional carriers likely to apply for CMAs and EAs, and violative of the principles of economic rationality. The Petition For Reconsideration filed by RTG seeks to rectify the injustice by imposing geographic-based coverage requirements on the C Block. We believe that is the wrong approach. On the contrary, USCC submits that the only fair approach is to apply population coverage requirements to all markets. The Blooston petition (pp. 3-11, Attachment B) provides irrefutable evidence in support of this argument. It demonstrates, in detail, the folly of geographic coverage requirements by describing many RSA markets where the vast majority of the population can be covered by a signal encompassing only a tiny fraction of the geographic area. In Nevada RSA #1, for example, 72 percent of the population can be covered by providing a reliable signal over 2.3 percent of the RSA's land area. To require 70 percent geographic coverage in such circumstances makes no economic or other sense and thus does not serve the public interest.

The 40 percent/75 percent population coverage requirement would make far more sense in all non-nationwide markets. And, if there is an actual unmet need to provide service in very sparsely populated rural areas, the unserved area rules will permit those wishing to apply for them to do so.

II. USCC Opposes the NTCH Proposal To Require A Block Licensees to Provide Service on a Discounted Wholesale Basis to ETCs In Each Licensed EA.

NTCH, Inc., in its Petition for Reconsideration, makes a somewhat odd proposal. It proposes that Lower Band A Block EA licensees be required to provide wireless service "on a discounted wholesale basis" to Eligible Telecommunications Carriers (ETCs) in each EA. It is not clear if this proposal would apply to both wireline and wireless ETCs. Somehow the

provision of this discounted service would enable the Commission to "phase out" the present "high cost" financial support provided to ETCs through the Universal Service Fund.

This proposal should not be adopted. The Commission is currently considering both the contribution and eligibility portion of the ETC programs in comprehensive proceedings.²³ Obviously, those proceedings are the appropriate venues to consider possible modifications to the ETC program. Moreover, it should be noted that the provision of high cost universal support in an era of multiple telecommunications providers is a complex subject, and one with many "stakeholders" including ETC customers in "high cost" areas. An eight page petition in another proceeding cannot begin to do justice to the issues involved. The Commission should reject this petition summarily.

III. The Commission, With One Exception, Should Retain Its Existing Rules Regarding Licensee Eligibility.

In our Comments and Reply Comments in this proceeding, USCC opposed any restrictions on eligibility to participate in the January, 2007 700 MHz auction. We also stated that if the Commission is concerned about excessive spectrum concentration, it could re-establish a "spectrum cap," perhaps on a per county basis, under which wireless spectrum in excess of a certain amount could be divested. However, the imposition of such a cap would have to follow a separate proceeding, in which the Commission would examine the issues of concentration and market power in the current wireless marketplace, bringing to bear antitrust and other relevant expertise. However, what the Commission should not do is to adopt the self-interested proposals of 700 MHz applicants to limit auction eligibility. For example, the Commission should not

²³ Universal Service Contribution Methodology et al, WC Docket Nos. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (rel. June 27, 2006); In the Matter of Federal – State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (March 17, 2005) 20 FCC Rcd 6371 (2005).

adopt the Frontline²⁴ proposal to require "critical examination" of any long form 700 MHz application that would either place 45 MHz of "beachfront" 800 MHz cellular and/or 700 MHz spectrum or 70 MHz of wireless spectrum generally in the hands of any one licensee in a given market.

An obvious effect of adopting this proposal would be to reduce the number of incumbent licensees likely to bid on the 700 MHz spectrum which Frontline also wishes to acquire. Frontline, however, does not cite any of the type of evidence necessary to demonstrate anti-competitive effects from the Commission's present eligibility rules. Nor does it attempt to meet the objections to its proposal which incumbent licensees would cite, such as economies of scale, financial ability to finance innovative services, or network effects. In any case, such considerations should not be weighed in the reconsideration context in this docket but rather in a separate proceeding.

USCC does, however, endorse the request of the Ad Hoc Public Interest Spectrum Coalition²⁵ that the Commission prohibit the nationwide D Block licensee from also holding any of the six REAG C Block licenses. The D Block license is a national license involving 10 MHz of 700 MHz spectrum. Each of the six C Block REAG licensees will have 22 MHz of neighboring 700 MHz spectrum. The six REAGs can be combined into a national license as well. Despite our general opposition to auction eligibility restrictions, it is impossible for us to see how the public interest could ever be served by the same entity holding both C and D Block licenses in the same area, let alone the whole country. We agree with PISC that Section 309(j)(3)(B) of the Act, with its instruction to the Commission to "promote competition" by

²⁴ Petition for Reconsideration of Frontline Wireless, LLC, pp. 8-11.

²⁵ Petition for Reconsideration of the Ad Hoc Public Interest Spectrum Coalition ("PISC"), pp. 3-5.

"avoiding excessive concentrations of spectrum" gives the Commission all necessary authority to act to prevent this particular concentration of spectrum and that the Commission should do so.

IV. The Commission Should Maintain Its Existing DE Requirements.

In the Order, the consistently applied existing regulations with respect to Designated Entities (DEs).²⁶ Frontline strongly objects to this decision, alleging that it is an arbitrary and capricious rejection of its prospective "business model," which relies on wholesaling. We submit that this is an inappropriate context for the Commission to reconsider its DE rules. The relevant rule forbids DEs from receiving a bidding credit if they propose to lease or resell "more than 50 percent of their spectrum capacity," which is precisely what Frontline proposes. The rule was adopted because the Commission wanted to make sure that DEs would themselves be service providers. Adoption of Frontline's proposal would negate the rule, and is a perfect illustration of the perils of "customized" rulemaking. The Commission has to make rules of general applicability in what it believes to be the public interest and applicants must conform their business plans to those rules. If Frontline's request is accommodated, it will have many successors in other proceedings. The FCC's Designated Entity rules especially and probably other rules as well will cease to be rules and will become merely first drafts for creative applicants and lawyers to rewrite on an ad hoc basis.

V. Bidders in Auction 73 Should Be Permitted to Opt Out of Auction 76 in Order to Limit the Duration of Anti-Collision Restrictions.

We agree with MetroPCS that there are foreseeable, chilling and disruptive consequences for normal business discussions among wireless industry stakeholders, large and small, if the Commission does not take steps to diminish the extended application of its anti-collusion rules

²⁶ Order, pp. 535-537.

during Auctions 73/76.²⁷ The Commission should adopt less restrictive alternatives to its anti-collusion rule determination which threatens to hold all bidders hostage until the down payment deadline for Auction 76.

The Commission's policies recognize that its anti-collusion rules are not intended to prohibit all non-auction related business negotiations between auction applicants.²⁸ Nonetheless they do not adequately address the full range of ongoing business opportunities which might be the subject of discussions between Auction 73 applicants who are not participating in Auction 76. Under the Commission's "single auction" concept for Auctions 73/76, many companies will have strong incentives to forego all business development opportunities rather than run the risk that contact with other companies might be found to violate the Commission's anti-collusion rules.

MetroPCS has proposed, and we support, giving bidders in Auction 73 the opportunity to opt out of Auction 76 by filing a written certification.²⁹ At a minimum, non-public discussions between bidders who have opted out of Auction 76 should not be subject to the Commission's anti-collusion rules. We believe that the Commission's concerns about the impermissible disclosure of bids and bid strategies can be adequately met (1) by requiring that opt out certifications be kept confidential until the Auction 76 down payment deadline and (2) by providing each bidder who has opted out with a confidential updated competing applicant list which excludes all other bidders who have opted out of Auction 76.

²⁷ MetroPCS Petition, pp. 20-23.

²⁸ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5GHz Transferred from Federal Government Use 4660-4685 MHz, 13 FCC Rcd 374 (December 31, 1997).

²⁹ MetroPCS Petition, p. 22.

Conclusion.

For the foregoing reasons, USCC argues the Commission to modify its rules as proposed above and in the Petitions For Reconsideration we cite.

Respectfully submitted,

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