

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

_____ )	
In the Matter of )	
Service Rules for the 698-746, 747-762 and )	WT Docket No. 06-150
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 of )	WT Docket No. 03-264
Parts 1, 22, 24, 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
Spectrum 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 )	
_____ )	

**OPPOSITION OF METROPCS COMMUNICATIONS, INC. TO THE PETITION FOR  
RECONSIDERATION OF FRONTLINE WIRELESS, LLC**

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

	<u>Page</u>
Summary .....	ii
I. THE COMMISSION SHOULD NOT ALTER THE ESTABLISHED RESERVE PRICES FOR THE 700 MHZ AUCTION .....	2
II. THE COMMISSION SHOULD NOT REVISE THE AUCTION STRUCTURE FOR THE 700 MHZ AUCTION .....	8
III. THE COMMISSION SHOULD NOT COUNTENANCE FRONTLINE'S LATEST ATTEMPT TO LIMIT COMPETITION BY REQUIRING THE D BLOCK LICENSEE TO UNDERTAKE A "NEW BUILD".....	12
IV. CONCLUSION .....	15

### Summary

MetroPCS Communications, Inc. (“MetroPCS”) opposes certain portions of petition of Frontline Wireless, LLC which seek reconsideration of various aspects of the Commission’s *700 MHz Order* that established the band plan and service rules governing 700 MHz commercial spectrum.

The Commission should not alter the established reserve prices for the upcoming 700 MHz auction. The recently adopted reserve prices are in the public interest and Frontline’s arguments do not provide a compelling basis for the Commission to change its measured course. The current reserve prices, which were recently affirmed by the Wireless Telecommunications Bureau, are appropriate and lawful.

In addition, the Commission’s proposed auction structure should not be revised. The proposed auction structure implements a carefully crafted compromise to ensure that the adoption of unprecedented encumbrances does not entirely strip the highly valuable 700 MHz Band spectrum of its value. Moreover, this structure did not violate the Administrative Procedures Act in any respect.

Lastly, the Commission should not adopt Frontline’s latest poison pill for the 700 MHz Band auction. There is no reason, short of allowing Frontline to acquire the D Block at a substantially reduced price, for the Commission to require the D Block license winner to undertake a “new build” for the public safety network. Rather, the Commission should welcome the participation of all bidders, particularly incumbent carriers who can expedite the build-out of the public safety network by utilizing existing infrastructure where possible.

**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

**OPPOSITION OF METROPCS COMMUNICATIONS, INC. TO THE  
PETITION FOR RECONSIDERATION OF FRONTLINE WIRELESS, LLC**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys and pursuant to Section 1.429(f) of the Commission’s Rules,<sup>2</sup> hereby respectfully submits its opposition to portions of the Petition for Reconsideration (the “Petition”) of Frontline Wireless, LLC (“Frontline”) which asks the Commission to reconsider various aspects of the Commission’s 700 MHz *Second*

<sup>1</sup> For purposes of this Petition, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

<sup>2</sup> This petition is being filed within 15 days following the date of publication of the Frontline Petition in the Federal Register, which occurred on October 2, 2007. *See* 72 FR 56074 (Oct. 2, 2007). Thus, this opposition to the Frontline Petition is timely under Sections 1.429(f) and 1.4(b) of the FCC Rules. 47 C.F.R. Sections 1.4(b) and 1.429(f).

*Report and Order*, FCC 07-132, released August 10, 2007 (the “700 MHz Order”)<sup>3</sup> in the above-captioned proceeding.<sup>4</sup> In opposition, the following is respectfully shown:

**I. THE COMMISSION SHOULD NOT ALTER THE ESTABLISHED RESERVE PRICES FOR THE 700 MHZ AUCTION**

In its Petition, Frontline argues that the proposed reserve prices for the upcoming 700 MHz Band auction are too high, and that the Wireless Telecommunications Bureau (the “Bureau”), under the guidance of the Commission, set them in a completely arbitrary and capricious manner.<sup>5</sup> MetroPCS submits, in opposition, that the current reserve prices - - which recently have been reaffirmed by the Bureau<sup>6</sup> - - are appropriate and lawful.

As an initial matter, it is unclear at this point exactly what action Frontline wants the Commission to take. Frontline correctly observes that the Commission delegated responsibility for setting the final reserve prices to the Bureau, and Frontline does not appear to question the legal authority of the Commission to delegate this function. Frontline also notes that the Commission offered “guidance” to the Bureau on how to go about setting these prices.<sup>7</sup> Frontline does express its view that the Commission’s guidance was arbitrary, capricious and unlawful.<sup>8</sup> What Frontline does not make clear is whether, at this point, it is asking the Commission to change its guidance to the Bureau, or instead asking the Commission to alter the

---

<sup>3</sup> 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) (“700 MHz Order”).

<sup>4</sup> In this Opposition, MetroPCS opposes Frontline’s requests to decrease the reserve prices, change the auction structure, and require a “new build” for the D Block licensee.

<sup>5</sup> Petition at 12.

<sup>6</sup> See “Auction of 700 MHz Licenses Scheduled for January 24, 2008, Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76,” Public Notice, DA 07-4171 (rel. Oct. 5, 2007) (the “Procedures Order”).

<sup>7</sup> Petition at 12.

<sup>8</sup> *Id.* at 13.

reserve prices by substituting its judgment for that of the Bureau.<sup>9</sup> If the former, a petition for reconsideration of the *700 MHz Order* is a proper vehicle for the relief Frontline is seeking. If the latter, Frontline needs to file an application for review by the full Commission of the recent *Procedures Order*. In the final analysis, however, it makes no difference how Frontline elects to proceed since its substantive position is unmeritorious.

Frontline's basic claim that the proposed reserve prices for the 700 MHz Band auction are too high is unfounded. Having itself been a major architect of the encumbrances placed on the C Block and D Block, Frontline now argues that the spectrum is devalued because (i) the D Block "depends on a still-to-be-negotiated network sharing agreement with Public Safety" and (ii) the C Block "has open access provisions that are entirely new in the wireless markets."<sup>10</sup> Because of these "risk" factors, Frontline proposes reserve prices that are substantially less than proposed by the Bureau, under the guidance and direction of the Commission.<sup>11</sup>

The reserve prices were set as a part of a delicate balance between the public interest benefit of meeting the earmarks and scoring set by Congress for the spectrum and the desire of the Commission to experiment with additional regulatory requirements on the spectrum. Throughout the 700 MHz proceeding, many commenters - - including MetroPCS - - expressed concern that the encumbrances Frontline and others proposed for the C Block and D Block spectrum were "poison pills" that would drive away interested bidders and artificially depress the auction value of the spectrum.<sup>12</sup> MetroPCS pointed out that the Congressionally-mandated competitive bidding procedures were intended to enable the public to receive fair value for

---

<sup>9</sup> The confusion in the relief Frontline is seeking is furthered by its observation that "it is the Bureau's responsibility to correct these fatal errors ... [t]he Commission itself need not take this step unless the Bureau fails to do so."

<sup>10</sup> Frontline Auction Procedures Comments at Attachment A, 6.

<sup>11</sup> *Id.* at Attachment A, 16-17.

<sup>12</sup> Indeed, Frontline proposes yet another "poison pill" to deter incumbents from bidding on the D Block in its Petition, with its request to require D Block licensees to construct a network with a "new build." *See infra* at 13-14.

valuable spectrum rights that were assigned to private parties, and that the public interest would not be served by allocation policies that devalued the spectrum unnecessarily. Also, Congress made clear in the DTV Act<sup>13</sup> its desire to fund both the digital transition and important public safety initiatives with the proceeds of the 700 MHz Band auction. In the face of these legitimate concerns, the Commission took the defensible approach of putting reserve price safeguards in place to protect against excessively low prices as a result of regulatory encumbrances.<sup>14</sup>

Frontline has failed to offer any compelling reason for the Commission to abandon its measured course. The Commission consistently has recognized that the 700 MHz Band spectrum is especially valuable and at least as valuable as the advanced wireless services (“AWS”) spectrum because it has particularly robust propagation characteristics.<sup>15</sup> The Commission observed that “spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS-1 spectrum,”<sup>16</sup> and noted that “as of February 18, 2009, the 700 MHz Band spectrum will be completely unencumbered, while full access to AWS-1 spectrum requires the relocation of both Government and commercial incumbent users.”<sup>17</sup> Likewise, the Bureau in the *Procedures Order* noted the “value-enhancing propagation characteristics and relatively

---

<sup>13</sup> The DTV Act is the Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 1230 Stat. 4 (2006).

<sup>14</sup> Frontline’s concerns are not shared by all potential bidders. Notably, at least one potential bidder already has indicated that the restrictions attached to the 700 MHz Band spectrum blocks do not significantly devalue it in relation to AWS spectrum. Frontline’s concern that the “risks” applied to particular blocks will drive down auction prices is completely undermined by Google’s bid price proclamation of July 20, 2007. Google announced that it would “commit a minimum of \$4.6 billion to bidding in the upcoming auction,” if the Commission applied even more restrictive provisions to the C Block spectrum than it ultimately adopted. *Ex Parte* of Google, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed July 20, 2007). In light of this expression of interest, which has not been countermanded by Google since the *700 MHz Order* was released, *See* “Google CEO Says Mobile Auction Bid Still Probable,” *eweek*, Aug. 22, 2007, the Commission should not credit the Frontline claim that the 700 MHz Band spectrum may not be comparable in value to the AWS spectrum.

<sup>15</sup> *See 700 MHz Order* at paras. 203, 299. For example, Commissioner Adelstein correctly observed in his *700 MHz Order* statement that “[t]hese 700 MHz licenses are the finest crown jewels the FCC has to put up for auction.” *Id.* at Statement of Commissioner Jonathan S. Adelstein.

<sup>16</sup> *Id.* at para. 304. This view is supported by the fact that a 700 MHz site will cover over two times the coverage of a comparable AWS site based on the propagation characteristics of 700 MHz.

<sup>17</sup> *Id.*

unencumbered nature of the 700 MHz Band Spectrum “which meant that its reserve prices are based on “conservative estimates.”<sup>18</sup> Thus, the Commission properly concluded that “other factors, aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value on a per-megahertz basis than AWS-1 licenses.”<sup>19</sup> These analyses and the recent sale of Aloha Partners<sup>20</sup> undermine the pure speculation by Frontline that 700 MHz spectrum is less valuable than the recently auctioned AWS spectrum.

Frontline also argues that volatility in the capital markets may have a negative effect on auction prices.<sup>21</sup> However, many of the major potential bidders in the 700 MHz auction (Google, AT&T, Verizon) would appear either to have no need to utilize the capital markets for the purchase of spectrum or no problem raising funds. In addition, Frontline fails to acknowledge that the condition of the capital markets today does not necessarily reflect the likely state of the capital markets four months from now when the auction commences or seven to nine months when it may close. Indeed, there has been a marked improvement in the economic outlook - - including an all time high in the Dow Jones Industrial stock index - - in the period just since the Frontline Petition was filed.<sup>22</sup> Under these circumstances, the last thing the Bureau should do is adopt a reserve price based on a prediction of what the capital markets will do four months from now. That would be the worst possible use of “command and control” spectrum allocation

---

<sup>18</sup> *Procedures Order* at para. 54.

<sup>19</sup> *700 MHz Order* at para. 304.

<sup>20</sup> As further proof that the 700 MHz spectrum is particularly valuable, Aloha Partners recently announced the sale of its 700 MHz spectrum at a price that implies a fifty cent per MHz pop premium over the reserve prices set by the Commission. *See* “AT&T Acquires Wireless Spectrum From Aloha Partners,” AT&T Press Release, October 9, 2007.

<sup>21</sup> Petition at 14.

<sup>22</sup> The market for debt has also markedly improved. In early June the debt markets were under stress, but in the last several weeks a number of companies were able to tap the debt markets with over \$1.75 billion of debt offered to the market. This illustrates why the financial markets cannot be used as measure of what the reserve prices should be because the financial markets can turn around quite quickly.

techniques. Rather, if spectrum blocks do not meet the reserve prices that are based on Auction No. 66 results, the Commission should remove the regulatory restrictions that it has placed upon the spectrum, as it has proposed.<sup>23</sup> This is particularly true since Congress has scored the 700 MHz Band auction at over \$10 billion, and already has allocated billions of dollars of proceeds from the auction for DTV transition and various public safety interoperable funds.<sup>24</sup> Thus, the Commission cannot lower the reserve prices to the levels requested by Frontline, and allow the possibility of spectrum being sold at severe discounts due to the very regulatory restrictions sought by Frontline, without completely disregarding Congressional intent.

Moreover, Frontline's claim that spectrum values have "sharply declined" since the AWS auction does not have any basis in fact.<sup>25</sup> Frontline's lone support for this claim is the erosion of the stock of Leap Wireless prior to MetroPCS' bid for Leap.<sup>26</sup> This "analysis" is completely flawed, as it assumes that the entire enterprise value of Leap is based upon the value of its raw spectrum. That is wrong and demonstrates that Frontline has no real understanding of the wireless market. At present, the going concern value of Leap has much more to do with its operating results than with the asset value of its spectrum. Based on Leap's results for the three month period ending June 30, 2007, Leap has over 2.6 million subscribers, over \$350 million in service revenues, and over \$115 million in OIBDA.<sup>27</sup> Based on Leap's current trading price,

---

<sup>23</sup> It could be argued that one of the reasons for the Aloha 700 MHz spectrum being sold at a fifty cent per MHz pop premium over the 700 MHz reserve price is the fact that the build-out and technical requirements are more favorable than the build-out requirements imposed on the 700 MHz spectrum to be auctioned in Auction 73/76. If this is the case, the Commission was wise to set a failsafe reserve price and allow for a reauction free of encumbrances.

<sup>24</sup> Notably, congressional mandates regarding the uses for revenues from the 700 MHz Band auction total approximately \$10.1825 billion. *See 700 MHz Order* at para. 304.

<sup>25</sup> Petition at 14.

<sup>26</sup> *Id.*

<sup>27</sup> This is operating income before depreciation and amortization. *See* "Leap Reports Second Quarter 2007 Adjusted OIBDA of \$115 Million, Up 48% Compared to Prior Year Quarter, New Markets in Aggregate Begin Contributing Positively to Adjusted OIBDA," Leap Press Release, August 7, 2007.

Leap also has an enterprise value in excess of \$6 billion. There are numerous reasons for the rise and fall of a wireless stock, including subscriber growth rates, churn, revenue per unit, pending transactions, etc. – none of which are determined by the value of spectrum alone.

Lastly, Frontline utterly fails to support its claim that high reserve prices will incite strategic behavior among bidders to suppress their bids in the first auction to cause a second auction. The unsupported supposition in this claim is that an auction participant will bid less than it would be willing to pay in the initial auction in order to stay below the reserve price in the hope that it could acquire the same spectrum in a subsequent auction free of encumbrances. The suggestion that a rational bidder would forego a “bird-in-the-hand” and cast its fate to the uncertainties of a future auction cannot be taken seriously. And, strategic behavior of this nature would require a bidder to withhold a bid while risking that another bidder would bid a sufficient amount to meet the reserve price. In the final analysis, given the number of licenses being auctioned, it is unlikely that a scheme to underbid the reserve price would succeed without express collusion between bidders. Of course, this type of collective strategic behavior among bidders alluded to by Frontline is prohibited by the Commission’s anti-collusion rule and the blind bidding procedures.<sup>28</sup> Under Frontline’s theory, all bidders would have to collectively limit their bids in order to force a subsequent auction – a highly unlikely scenario considering the wide variety of potential bidders and new entrants that participated in this proceeding and the auction rules which have been designed purposefully to preclude collective anti-competitive action.

It also is clear from the comments in this proceeding that many potential bidders have reduced interest in the spectrum as presently configured and encumbered in the first auction, but

---

<sup>28</sup> The anti-collusion rule prevents bidders from engaging in discussion regarding bids and bidding strategy during the auction. The blind bidding process prevents bidders from knowing who is bidding on particular licenses and eliminates signaling.

would be more interested if the spectrum ends up being reconfigured and unencumbered in the second auction. For example, many rural and regional carriers have made clear that they only will be in a position to bid meaningfully on the Upper C Block if it is subdivided into two 11 MHz channels and assigned on a smaller geographic area (e.g., a CMA or EA) basis.<sup>29</sup>

Similarly, others have expressed concern over the chilling effect resulting from the open access requirements and the stringent build-out standards.<sup>30</sup> As a consequence, a bidder in the first auction who deliberately suppresses bids to keep the reserve price from being met faces the very real prospect of a much more robust reaction with a greater number of auction participants and a likelihood of significantly higher prices. In light of this identifiable risk, the Commission cannot accept Frontline's idle assertion that there will be strategic behavior to suppress bids. In sum, the Commission should reject Frontline's request that the Commission reduce the reserve prices for the first auction.

## **II. THE COMMISSION SHOULD NOT REVISE THE AUCTION STRUCTURE FOR THE 700 MHZ AUCTION**

Frontline claims that the Commission took an "unprecedented step" by mandating that, if the reserve prices are not met, the C Block spectrum will be stripped of "open access" requirements.<sup>31</sup> Frontline asks the Commission to reconsider this action and to retain the open access requirements in any reaction. This would make no sense.

---

<sup>29</sup> See Letter from Alltel, *et al.* to Marlene H. Dortch, Secretary, FCC, Docket No. 06-150 (filed Oct. 20, 2006) ("Balanced Consensus Plan") (Signatories include Alltel, Aloha, Blooston, C&W, ConnectME Authority, Corr, Dobson, Leap, Maine Office of Chief Information Officer, MetroPCS, NTCA, Nebraska PSC, North Dakota PSC, Rural Cellular Association ("RCA"), Rural Telecommunications Group, ("RTG"), Union Telephone, U.S. Cellular, Vermont, *et al.*, Vermont Telephone Company), see *Ex Parte* Letter from members of the Coalition Supporting the 700 MHz Balanced Consensus Plan to Chairman Martin, Commissioner Adelstein, Commission Copps, Commissioner Tate, and Commission McDowell, WT Docket No. 06-450 (filed April 18, 2007).

<sup>30</sup> See CTIA 700 MHz Order Comments at 24; Verizon 700 MHz Order Reply Comments at 15; MetroPCS 700 MHz Order Reply Comments at 25-27; Leap Wireless 700 MHz Order Comments at 6; Union Telephone 700 MHz Order Comments at 8.

<sup>31</sup> Petition at 17.

Properly viewed, the Commission adopted a carefully crafted compromise to ensure that the adoption of unprecedented encumbrances did not entirely strip the spectrum of its value. Section 309(j)(3) requires the Commission to balance several statutory objectives and empowers the Commission to use reserve prices to achieve these objectives.<sup>32</sup> In doing so, the Commission cogently stated its reasoning for allowing for a reauction of a block of spectrum with fewer restrictions if particular reserve prices were not met. The Commission noted that its “statutory authority to provide for reserve prices enables us to withhold assignment of licenses so that they may be offered again in the future under circumstances that will more effectively benefit the public.”<sup>33</sup> The Commission determined that offering “more flexible, less conditioned licenses” would “address the possibilities that license conditions adopted today significantly reduce values bidders ascribe to those license and/or have unanticipated negative consequences.”<sup>34</sup>

Moreover, the Commission specifically considered and rejected the argument that its proposal to reauction reconfigured C Block licenses without open access restrictions was merely an allocation decision driven by revenue considerations.<sup>35</sup> The Commission determined that “treatment of these licenses under such a reauction scenario . . . reflects our determination that the cost of the open platform requirements to wireless service providers – evidenced by the magnitude of devalued bids – would reveal a significant problem with the requirements, such as a greater negative impact on network operations than we are predicting.”<sup>36</sup> Such an occurrence

---

<sup>32</sup> 47 U.S.C. § 309(j)(7)(A). If Frontline is correct that the reserve prices violate the restriction on allocation decisions based on the expectation of federal revenues, then the statute would not have empowered the Commission to set reserve prices.

<sup>33</sup> *700 MHz Order* at para. 307.

<sup>34</sup> *Id.* at para. 307.

<sup>35</sup> *Id.* at para. 313.

<sup>36</sup> *Id.*

would change the Commission’s “assessment of the net public benefit of imposing these requirements,” and would “provide sufficient evidence to conclude that [the Commission] have weighed the public interest imbalance incorrectly, and that the cost of the open platform restrictions was too high – not because the auction would have failed to generate enough Federal revenue, but because the low level of bidding would indicate inherent problems with operating a wireless system under this type of open platform regime.”<sup>37</sup> Thus, the Commission determined correctly that not reaching the reserve price was effectively a proxy for whether or not its proposed restrictions were balanced correctly in the public interest.

Frontline’s arguments reveal that it considers the “open access” requirements to be of the utmost of importance for the 700 MHz Band auction. However, the Commission, in a lawful exercise of its broad discretion, reached a different conclusion and chose to balance a number of considerations for the auction – not merely factors Frontline considers to be important. For example, in order to ensure that the Congressional mandate for funds was met and delivered by a date certain, the Commission had to ensure that it could immediately commence a reauction without restrictive limitations in the event the limitations severely deterred bidding, and thus demonstrated inherent problems with the Commission’s proposed restrictions.

The Commission did not violate the Administrative Procedures Act (“APA”) by adopting a reauction structure for the 700 MHz Band auction, and the Commission certainly is not “abandoning its responsibility to make current allocations decisions” by its reauction structure. Rather, the Commission carefully considered many aspects of a subsequent reauction, including the speed of the auction and procedures for the subsequent auction to argue in a timely fashion.<sup>38</sup> Frontline makes no credible argument that this does not “constitute an attempt at rational

---

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at paras. 306-317.

decision-making.”<sup>39</sup> The Commission rationally considered each factor necessary to undertake a possible reauction structure due to the onerous restrictions placed upon the 700 MHz Band spectrum.

The Commission also should not seriously consider Frontline’s claim that parties did not have adequate notice in this proceeding of the reauction prospect. Section 553(b) and (c) of the APA requires agencies to give public notice of a proposed rule making that includes “either the terms or substance of the proposed rule or a description of the subjects and issues involved” and to give interested parties an opportunity to submit comments on the proposal.<sup>40</sup> The notice “need not specify every precise proposal which [the agency] may ultimately adopt as a rule;” it need only “be sufficient to fairly apprise interested parties of the issues involved.”<sup>41</sup> In particular, the APA’s notice requirements are satisfied where the final rule is a “logical outgrowth” of the actions proposed.<sup>42</sup>

Here, the Commission certainly provided adequate notice. The Commission requested comment on “open access” requirements with respect to at least 30 MHz of 700 MHz Band spectrum.<sup>43</sup> The Commission also requested comment on different band plans, performance requirements, and many other issues with respect to the 700 MHz Band auction. Although the Commission did not specifically request comment on a reauction of spectrum, such a reauction

---

<sup>39</sup> Petition at 21.

<sup>40</sup> See 5 U.S.C. § 553(b), (c).

<sup>41</sup> *Nuvio Corp. v. FCC*, 473 F.3d 302, 310 (D.C. Cir. 2006) (internal quotations omitted).

<sup>42</sup> *Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990).

<sup>43</sup> 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 at para. 290 (rel. April 27, 2007) (“FNPRM”), 72 Fed. Reg. 24238 (May 2, 2007).

would clearly be a “logical outgrowth” of the Commission’s *FNPRM* to maintain open access requirements in some respects and have a subsequent auction without such requirements.<sup>44</sup>

Most importantly, Frontline had actual prior notice of the Commission’s specific reauction proposal, as demonstrated by Frontline’s July 23, 2007 *ex parte* which “suggested that a decision to reauction reconfigured C Block licenses without open platform restrictions in the event that the bids for the C Block licenses fail to meet the reserve price, is ‘an allocation decision being driven by revenue considerations,’ in violation of Section 309(j)(7)(A), and not by the public interest value of these requirements.”<sup>45</sup> The Commission specifically cited this letter and gave substantive consideration to Frontline’s arguments in the *700 MHz Order*.<sup>46</sup> Under these circumstances, Frontline should not be heard to claim a lack of notice when it was not harmed, had actual notice of the Commission’s exact proposal, and submitted argument on it that was taken into account by the Commission.<sup>47</sup>

### **III. THE COMMISSION SHOULD NOT COUNTENANCE FRONTLINE’S LATEST ATTEMPT TO LIMIT COMPETITION BY REQUIRING THE D BLOCK LICENSEE TO UNDERTAKE A “NEW BUILD”**

Frontline’s proposal that the D Block license undertake a “new build” is yet another “poison pill” proposed by Frontline in an effort to limit potential bidders, drive down prices, and to allow it to acquire spectrum for itself at a vastly reduced price. Frontline argues that, without

---

<sup>44</sup> Ironically, it is Frontline who keeps inviting the Commission to impose restrictions that go far beyond the proposals set forth in any of the Commission’s notices (*e.g.*, Frontline’s “new build” proposal that would preclude incumbents from using existing infrastructure).

<sup>45</sup> See *700 MHz Order* at para. 313; see also Frontline July 23, 2007 *Ex Parte* letter at 2.

<sup>46</sup> See *700 MHz Order* at para. 313.

<sup>47</sup> In *Riverbend Farms Inv. v. Madigan*, 958 F.2d 1479 (Ninth Cir. 1992), the court held that an agency's failure to provide a notice of proposed rule making in the Federal Register, while violative of the APA's notice and comment requirement, constituted harmless error because interested parties had been fully aware of meetings at which they had an opportunity to comment on the question at issue. The FCC has applied this rule to its own proceedings, see *e.g.*, *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling systems*, 16 FCC Rcd. 18982, (released October 17, 2001).

this additional requirement, the incumbents will incorporate the public policy shared network into their existing, out-of-date networks . . . [and that] public safety would have to settle for a network insufficient for its needs today and in the future.”<sup>48</sup> This claim is completely unfounded. Under the Commission’s rules for the D Block, public safety has substantial control over the type of network that will be built for it. And, a D Block licensee which does not agree to meet the public safety requirements will not be granted the D Block license, will be subject to substantial default penalties, and if they do not properly build the required network, the D Block licensee’s license could be revoked and the Commission could mete out substantial fines and forfeitures. The main concern is not whether a brand new network is installed – rather the key is whether the network in question matches public safety’s needs; something public safety will have substantial control over and which the D Block licensee is already incented to do based on the Commission’s current rules.

Clearly Frontline’s “new build” proposal is intended to promote its own narrow private interests, not the public interest, or the interest of public safety. The public interest and public safety are best served by rapid deployment. Frontline refuses to acknowledge that existing licensees can roll out public safety service more quickly because they already have the necessary sites, backhaul facilities, and infrastructure to do so. Incumbents are better situated than a start-up company without any recent build-out experience. In order to ensure that the existing licensee does not stray from building out the network needed by public safety, the Commission has given public safety considerable control over the network construction.

---

<sup>48</sup> Petition at 21.

Frontline essentially admits that the only reason it requests this new “requirement” is that “incumbents would have a large advantage in the auction.”<sup>49</sup> But, the overriding objective of the proposed public private partnership is to promote the prompt, cost-efficient implementation of a nationwide interoperability public safety network. This being the case, the Commission should welcome the participation of all potential bidders, including incumbent carriers who can expedite the build-out by utilizing existing infrastructure where possible. Indeed, in many meetings with Commission staff on the prospect of a commercial public safety partnership, MetroPCS was asked if there were changes that could be made to incent MetroPCS to participate in developing a public safety network, since the Commission saw substantial benefits in encouraging experienced carriers with “boots on the ground” and infrastructure in place to opt into the D Block proposal. In view of this reasonable Commission desire to encourage, not discourage, incumbents to bid on the D Block, the Frontline “new build” proposal must be viewed not only as transparent and self-serving, but also as wrong headed. The Commission should reject Frontline’s latest effort to obtain 10 MHz of highly valuable commercial spectrum on the cheap.<sup>50</sup> The Commission should welcome as many bidders as possible to provide the network that public safety needs and deserves – and not limit potential bidders in order to allocate 10 MHz of spectrum in accordance with Frontline’s whims.

---

<sup>49</sup> *Id.* at 21.

<sup>50</sup> *See Ex Parte* from Christopher Guttman-McCabe, CTIA, to Marlene Dortch, Commission, WT Docket Nos. 06-150, 06-169 and 96-86; PS Docket No. 06-229, AU Docket No. 07-157 (filed Oct. 4, 2007) (listing the “poison pills” requested by Frontline for the 700 MHz Band auction).

#### IV. CONCLUSION

The foregoing premises having been duly considered, MetroPCS respectfully requests that the Commission decline to reconsider the *700 MHz Order* in the manner requested by Frontline.

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

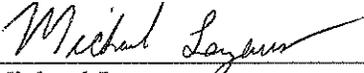
Mark A. Stachiw  
Senior Vice President, General Counsel and Secretary  
MetroPCS Communications, Inc.  
8144 Walnut Hill Lane, Suite 800  
Dallas, Texas 75231  
Telephone: (214) 265-2550  
Facsimile: (866) 685-9618

Its Attorneys

October 17, 2007

CERTIFICATE OF SERVICE

I, Michael L. Lazarus, hereby certify that a true and correct copy of the foregoing "Opposition of MetroPCS Communications, Inc. to the Petition for Reconsideration of Frontline Wireless, LLC" was delivered First-class mail this 17th day of October 2007 to the individual on the following list:

  
\_\_\_\_\_  
Michael Lazarus

Jonathan D. Blake  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
*Counsel For Frontline Wireless, LLC*