

**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

**To: The Commission**

**OPPOSITION OF THE RURAL TELECOMMUNICATIONS GROUP, INC.  
TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION**

The Rural Telecommunications Group, Inc. ("RTG"),<sup>1</sup> by its attorneys, and pursuant to Section 1.429 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby responds to issues raised in various petitions seeking reconsideration of the Commission's *700 MHz Second Report and Order*.<sup>2</sup> Specifically, RTG opposes the request

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<sup>1</sup> RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG's members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets.

<sup>2</sup> *In re Service Rules for the 698-746 and 777-792 MHz Bands*, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) ("*Order*").

that the Commission use population-based coverage benchmarks to determine compliance with construction requirements for the Lower 700 MHz spectrum blocks to be awarded in upcoming auctions 73 and/or 76.<sup>3</sup> As discussed herein, the Commission's adoption of population-based requirements is not consistent with the public interest. RTG also opposes efforts to remove marginal rural areas from the calculation of geographic coverage when determining compliance with the applicable benchmarks. This will defeat the purpose of the "keep-what-you-use" rule.

As set forth in its own reconsideration petition, RTG opposes the imposition of additional penalties for failure to meet construction benchmarks beyond the imposition of "keep-what-you-use" licensing. The potential loss of service area is sufficient incentive to prevent spectrum warehousing. However, to the extent that the FCC insists upon further penalties beyond the loss of service area, RTG agrees with those petitioners that have requested that the Commission clarify with specificity exactly what additional penalties may be imposed and exactly what circumstances would trigger each such penalty. Without such clarification, potential applicants are unable to formulate business plans, weigh risks of auction participation or properly value the spectrum to be auctioned.

Finally, RTG agrees that the Commission should reconsider its decision to not impose spectrum aggregation limits on the acquisition of 700 MHz spectrum. Specifically, the Commission should impose a cap of 50 MHz on all Commercial Mobile Radio Services (CMRS) spectrum below 1 GHz.

#### **I. POPULATION-BASED BENCHMARKS SHOULD NOT APPLY TO THE CMA LICENSES**

In the *Order*, the Commission decided to assign licenses in the Lower 700 MHz A, B and E Blocks on the basis of Economic Areas ("EAs") and Cellular Market Areas ("CMAs"), and the licenses in the Upper 700 MHz C Block on the basis of the huge Regional Economic Area

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<sup>3</sup> Because Auction 76 will be a continuation of Auction 73, all references to Auction 73 include Auction 76 to the extent Auction 76 is necessary.

Groupings (“REAGs”).<sup>4</sup> Licensees of the Lower 700 MHz A, B, and E Blocks must meet 4-year (35%) and 10-year (70%) construction benchmarks based on geographic coverage requirements. For the C Block REAG licenses, however, the Commission adopted population-based rather than geographic-based requirements. Specifically, for REAG-based licenses, licensees must provide signal coverage and offer service to: (1) at least 40 percent of the population of the license area within four years, and (2) at least 75 percent of the population of the license area by the end of the license term. *Order* ¶162.

The Blooston Rural Carriers (“BRCs”) request that the Commission revise its rule to provide a population coverage option for CMA licenses (B Block) similar to the population-based benchmark it adopted for the C Block.<sup>5</sup> For the reasons detailed in its own reconsideration petition, RTG opposes the use of population benchmarks for any of the non-public safety spectrum blocks to be auctioned in Auction 73 and therefore opposes both the Commission’s original decision to use population benchmarks for the C Block spectrum as well as the BRC’s request that the Commission apply population benchmarks to the CMA-based B Block licenses.<sup>6</sup>

The BRC Petition argues that geographic benchmarks for CMA licenses are unworkable and will either discourage rural carriers from bidding in the upcoming auction or force licensees to build facilities where “no one lives or travels.”<sup>7</sup> RTG respectfully disagrees. In adopting geographic-based benchmarks for licenses based on CMAs and EAs, the Commission specifically

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<sup>4</sup> The Commission also decided to assign the license for the Upper 700 MHz D Block on a nationwide basis.

<sup>5</sup> See Petition for Partial Reconsideration and/or Clarification filed by Blooston, Mordkofsky, Dickens, Duffy and Prendergast on behalf of its rural telephone clients (filed September 24, 2007) (“BRC Petition”) at pp. 3-11.

<sup>6</sup> In its petition for reconsideration, RTG did not request reconsideration of the population-based benchmarks applicable to the D Block and the Public Safety Broadband spectrum. While RTG in general questions the wisdom of population-based benchmarks, because of the unique public safety obligations imposed on the D Block license and the complexity of the public/private partnership, RTG takes no position at this time on whether population or geographic-based benchmarks are more appropriate for the D Block and public safety spectrum.

<sup>7</sup> BRC Petition at pp. 3-4.

sought “to promote service across as much of the geographic area of the country as is practicable.”<sup>8</sup> Population-based benchmarks will not accomplish this. Even the BRC Petition admits that “in many RSAs it is possible to cover 80 to 90 percent of the population by putting a signal on less than 50 percent of the land area.”<sup>9</sup> Thus, by the BRC’s own admission, population-based benchmarks will never achieve the Commission’s stated goal. Nor is there any merit to the BRC’s argument that licensees will be required to build out areas that are economically unfeasible to serve.<sup>10</sup> Failure to serve those areas will merely remove them from the licensee’s service area under the Commission’s “keep-what-you-use” policy adopted for this auction. Thus, unlike PCS, where failure to meet construction benchmarks results in the loss of the underlying license in its entirety, the inability to serve an area merely removes that area from the license and increases the chance that service will be available by making that area available for licensing by others. Auction participants should be able to project the areas they are planning to serve within a CMA and to account for the impact of “keep-what-you-use” in valuing the spectrum at auction.

RTG agrees with the BRCs that “a rural build-out is as challenging and costly to a small rural telephone company as a larger, region-wide build-out is to a large, national company.”<sup>11</sup> The BRCs are entirely correct that, in this regard, REAG licensees and CMA licensees are similarly situated and that the same construction benchmarks should apply to both. To accomplish this, however, the Commission should not extend the use of population-based benchmarks to other spectrum blocks as advocated by the BRCs. Rather, the Commission should apply geographic-based benchmarks uniformly across the board, including to the B and C Block licenses.

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<sup>8</sup> *Order* at ¶ 158.

<sup>9</sup> BRC Petition at p. 3.

<sup>10</sup> However, RTG does agree that if the Commission does not eliminate the threat of additional enforcement actions beyond “keep-what-you-use” against licensees as discussed below, or at least provide clear guidance regarding such enforcement action, then rural carriers may be discouraged from bidding. If the Commission eliminates such penalties, or appropriately limits them, however, then rural carriers will be able to value licenses accordingly and to participate in the auction with confidence.

<sup>11</sup> BRC Petition at p.10.

## **II. GEOGRAPHIC BENCHMARKS SHOULD NOT BE REFINED IN A MANNER THAT PREVENTS A PROSPECTIVE NEW LICENSEE FROM PROVIDING SERVICE TO UNSERVED AREAS**

The BRCs and MetroPCS argue that the Commission should refine the geographic area that should be used for the purpose of calculating compliance with the geographic benchmarks and the application of the use-it-or-lose-it rule. The BRCs argue, “[I]n certain RSAs the existence of swampland, mountains, desert and other uninhabitable terrain will make compliance with the 70 percent coverage requirement virtually impossible. In other RSAs, the provision of coverage to 70 percent of the geographic area will literally necessitate the construction of transmitters and related infrastructure in areas that are not inhabited.”<sup>12</sup> MetroPCS requests that the Commission exclude bodies of water, historical areas, zip codes with less than 5 persons per square mile, and unserved areas that are wholly surrounded by served areas in calculating the percentage of geographic area served by a licensee.<sup>13</sup>

Other than excluding large bodies of water such as the Great Lakes and the Great Salt Lake, RTG opposes such refinements as they will serve as an obstacle to bringing ubiquitous coverage to rural area. Many RTG members operate cellular and PCS systems in zip codes with less than 5 people per square mile. Carving out these areas from the geographic benchmarks will allow license winners not to serve the area and to keep others who want to serve such areas from doing so indefinitely. MetroPCS’ proposals to refine what area must be included in determining compliance with the geographic benchmarks will only serve to muddy the waters and hold rural areas hostage.

Bidders must take the uninhabitable terrain into consideration on the front end when determining how much to bid for licenses. This is why it was so important for the FCC to adopt a “keep-what-you-use” approach rather than the Draconian measure of taking away the entire

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<sup>12</sup> BRC Petition at p. 4.

<sup>13</sup> See Petition of MetroPCS Communications, Inc. for Clarification and Reconsideration (dated September 20, 2007) (“MetroPCS Petition”) at pp. 11-13.

license. If the original licensee of an area is unwilling to serve it, then the licensee should move over and let another licensee try. RTG does, however, support the requests of MetroPCS and the BRCs that the area that a licensee is allowed to keep under the “keep-what-you-use” rule include a small area to allow for minor modifications of the incumbent system.

### **III. ADDITIONAL SANCTIONS FOR FAILURE TO MEET APPLICABLE CONSTRUCTION BENCHMARKS SHOULD BE ELIMINATED, LIMITED OR CLARIFIED**

The Commission adopted the “keep-what-you-use” rule to “provide additional methods for making smaller license areas available, thus promoting access to spectrum and the provision of service, especially in rural areas” and to “ensure[] that others are given an opportunity to acquire spectrum that is not adequately built out and [to] provide services to those who reside in those areas.”<sup>14</sup> Thus, if a licensee fails to meet its end of term construction benchmark, it may continue to keep the license for the areas it serves, but its license for the areas which it does not serve will automatically terminate and those geographic areas will become available for re-licensing.<sup>15</sup>

In addition to the “keep-what-you-use” licensing scheme, however, the Commission suggested that licensees that fail to meet applicable construction benchmarks “may also be subject to potential enforcement action, including possible forfeitures or cancellation of license.”<sup>16</sup> The Commission also suggested that a licensee that fails to meet the interim benchmark may be subject to proportional loss of license area. The Commission, however, provided no guidance regarding what circumstances would trigger additional enforcement action or what factors would determine whether a licensee would be subject to such potential enforcement action.

As RTG pointed out in its reconsideration petition, the specter of unspecified additional penalties creates unnecessary ambiguity and risk and may deter many small businesses from participating in the auction because of the unquantifiable exposure. To remedy this situation, the

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<sup>14</sup> *Order* ¶ 156 (footnote omitted).

<sup>15</sup> *See Order* ¶ 170.

<sup>16</sup> *Order* ¶ 153.

Commission should either eliminate the potential for additional penalties or clarify its requirements to provide licensees with concrete guidance as to what penalties will be assessed under specifically delineated circumstances.

MetroPCS argues that the failure to delineate such penalties and circumstances renders the Commission's action both arbitrary and capricious.<sup>17</sup> RTG agrees and does not believe any real danger exists that a party or group of parties will undergo the expense to participate in the upcoming auction and outbid all other bidders for particular spectrum just to block the deployment of new services using that spectrum. Indeed, under a keep-what-you-use regime such a strategy, even if undertaken, would only be temporary at best. If the Commission truly has concerns that parties will be tempted to engage in behavior that would subvert its policies, the Commission should articulate exactly what behavior would be subject to sanctions and what the range of such sanctions would be. This is no less than what the Commission has already determined is required under its general forfeiture authority and in its general forfeiture guidelines.

RTG also supports MetroPCS's proposal that where a licensee has provided "substantial service" by the end-of-term benchmark, such licensee should not be subject to additional enforcement penalties. Substantial service is a Commission defined acceptable level of service, and the level of service applicable to 700 MHz licenses issued in Auctions 44 and 49. As long as a licensee has at least provided substantial service, it should not be subject to additional enforcement actions beyond "keep-what-you-use" licensing. There may be a number of factors that ultimately limit a licensee's ability to fully meet the applicable 70% geographic construction benchmark. If a licensee is providing substantial service, however, then service has been deployed to the public and the unserved area will be available for "keep-what-you-use" licensing. No additional penalties are necessary.

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<sup>17</sup> MetroPCS Petition at p. 9.

#### IV. SPECTRUM AGGREGATION LIMITS SHOULD BE ESTABLISHED

The *Ad Hoc* Public Interest Spectrum Coalition (“PISC”) requests that the Commission reconsider its decision not to impose a spectrum cap applicable to 700 MHz spectrum.<sup>18</sup> PISC argues “Spectrum caps are different from general eligibility requirements, in that they allow the Commission to tailor restrictions on a regional basis, facilitate participation by incumbents with spectrum needs, and insure that sufficient spectrum remains available for other competitors to prevent foreclosure. Recent mergers requiring divestiture of spectrum illustrates that although the Commission may consider CMRS generally competitive on a national basis, it maintains a consistent policy of ensuring that sufficient spectrum remains available for competing providers.”<sup>19</sup>

Frontline requests that the Commission reconsider its decision not to require a 700 MHz applicant to identify whether grant of its long-form application would exceed a certain level of spectrum aggregation in a given market and, if so, to justify why its applications should be granted for such licenses.<sup>20</sup> Specifically, Frontline requests that applicants disclose on their long-form applications whether they would exceed the following limits: (1) 45 MHz or more of the beachfront wireless spectrum, below 1 GHz, or (2) 70 MHz or more of all CMRS spectrum. Frontline requests that, with input from the public and interested parties, the Commission should review and, when appropriate, deny long-form auction applications that would result in spectrum aggregation in excess of such levels.<sup>21</sup>

In 2001, RTG favored elimination of the CMRS spectrum cap. At the time, RTG noted that there were many competitors and that new and innovative services would be developing. That was before the Commission approved a tidal wave of mergers of wireless carriers and allowed the

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<sup>18</sup> See Petition for Reconsideration of the *Ad Hoc* Public Interest Spectrum Coalition (dated September 24, 2007) (“PISC Petition”).

<sup>19</sup> PISC Petition at p.2.

<sup>20</sup> See Petition for Reconsideration of Frontline Wireless, LLC (“Frontline Petition”) at pp. 8-10.

<sup>21</sup> See *id.*

nationwide carriers *carte blanche* to run roughshod over small carriers. RTG is now extremely concerned that an excessive amount of spectrum is consolidated in the hands of too few giants and that this consolidation will only continue with the 700 MHz auction.

This is particularly unfortunate because 700 MHz spectrum is ideally suited to provide service to rural areas. Because of its favorable propagation characteristics and capability of delivering large amounts of data at high speeds, it may be economical to deploy wireless broadband services to many rural areas using 700 MHz that would otherwise be uneconomical to serve with other spectrum bands. This will not happen, however, if a few giant carriers acquire all of the 700 MHz spectrum and concentrate on deploying services to urban and densely populated areas leaving rural areas unserved.

Section 309(j) of the Communications Act of 1934, as amended, directs the FCC to adopt rules that promote the deployment of service to rural areas and disseminate licenses to a wide variety of applicants including small businesses and rural telephone companies. *See* 47 U.S.C. § 309(j)(3)(A)&(B). RTG believes that the time has come for the Commission to limit the amount of spectrum that any one giant carrier may hold in a particular geographic area.

RTG agrees with Frontline that applicants should be required to identify prospective spectrum aggregation in excess of defined limits. The level of total CMRS spectrum, however, should be set at 90 MHz not 70 MHz in light of the significant amounts of recently licensed AWS-1 spectrum and the upcoming auction of 700 MHz spectrum. RTG proposes that the Commission in general impose a spectrum aggregation limit of 50 MHz for spectrum below 1 GHz. Such spectrum is ideally suited to providing service in difficult to serve areas and should not be warehoused by a few large companies. Establishing a spectrum cap of 50 MHz for spectrum below 1 GHz will allow licensees to hold a combination of cellular and 700 MHz licenses or both cellular licenses, but will not allow a licensee to hold both cellular licenses and a 700 MHz license. Evaluating spectrum aggregation limits and, where appropriate, denying excessive aggregation

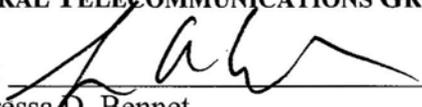
will ensure the dissemination of licenses to a wide variety of licensees and will promote deployment of service to rural areas.

**V. CONCLUSION**

For the reasons discussed above, the Commission should revise its performance obligations to require all licensees, including licensees of C Block spectrum to meet geographic-based benchmarks. The Commission should refine its geographic benchmarks to exclude large bodies of water but not other rural areas. The Commission also should not subject a licensee to additional enforcement action for failing to meet the applicable benchmarks especially where it has not defined the sanctions associated with the bad conduct and appropriate penalty beforehand. Finally, the Commission should adopt a 50 MHz spectrum cap for all spectrum below 1 GHz.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP, INC.**

By: 

Caressa D. Bennet  
Gregory W. Whiteaker  
Bennet & Bennet, PLLC  
4350 East West Highway  
Suite 201  
Bethesda, MD 20814  
(202) 371-1500

Its Attorneys

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