

**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

**REPLY OF METROPCS COMMUNICATIONS, INC. TO
OPPOSITIONS TO THE PETITION FOR RECONSIDERATION**

MetroPCS Communications, Inc. ("MetroPCS"),¹ by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules,² hereby respectfully submits its reply to certain oppositions to, and comments on, the Petition of MetroPCS Communications, Inc. for Clarification and

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

² This petition is being filed in accordance with Commission rules; the deadline for replies to oppositions to Petitions for Reconsideration is 10 days after the deadline for filing such oppositions (October 17, 2007). See 72 FR 56074 (Oct. 2, 2007). Thus, this reply is timely under Sections 1.4(b) and 1.429(g) of the FCC Rules. 47 C.F.R. Sections 1.4(b) and 1.429(g).

Reconsideration (the “Petition”) of the Commission’s 700 MHz *Second Report and Order*, FCC 07-132, released August 10, 2007 (the “700 MHz Order”)³ in the above-captioned proceeding.

In reply, the following is respectfully shown:

I. THE COMMISSION SHOULD ADOPT POPULATION-BASED COVERAGE REQUIREMENTS FOR CMA AND EA LICENSES

In earlier stages of this proceeding, MetroPCS and others advocated population-based performance requirements for cellular market area (“CMA”) and economic area (“EA”) licenses in the 700 MHz Band.⁴ In the view of a number of carriers, including MetroPCS, geographic build-out requirements were not necessary or appropriate because (1) wireless carriers already are aggressively extending their networks into rural areas; (2) forced uneconomic build-out is unwise; (3) universal service is a proven tool for encouraging network deployment in rural areas; (4) a plethora of spectrum opportunities exist; and (5) forced build-out will create unintended consequences.⁵ While MetroPCS’ Petition focuses on changes the Commission should make if it insists upon geographic standards, MetroPCS wholeheartedly agrees with the Blooston Rural Carriers that the strict geographic build-out requirements on CMA licenses as currently constituted are “unworkable,” unnecessary, and that the Commission should at the very least substitute a population coverage option for CMA licenses.⁶

³ See *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et, al*, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, and WT Docket No. 07-166, *Second Report and Order*, FCC 07-132 (rel. Aug. 10, 2007) (“700 MHz Order”).

⁴ See MetroPCS 700 MHz Order Reply Comments at 17-24; “Comments and Opposition of CTIA – the Wireless Association,” filed October 17, 2007 at 2 (“CTIA Comments”); “AT&T Opposition to, and Comments on, Petitions for Reconsideration,” filed October 17, 2007 at 6-7 (“AT&T Comments”);

⁵ See CTIA 700 MHz Order Comments at 4-10; MetroPCS 700 MHz Order Reply comments at 17-24.

⁶ “Blooston Rural Carriers Comments on Petitions for Reconsideration,” filed October 17, 2007 at iii (“Blooston Comments”). Indeed, licensing on a CMA basis obviates the need for geographic build-out requirements because the license area is already split into high and low population areas; MSAs and

MetroPCS strenuously opposes the Rural Telecommunications Group (“RTG”) effort to extend the geographic build-out requirements to 700 MHz Band REAG licenses. As noted by CTIA, “RTG’s proposal would only make a bad situation worse by extending the geographic benchmarks to another block of spectrum.”⁷

II. THE COMMISSION SHOULD ADOPT METROPCS’ PROPOSAL TO REFINE THE AREAS THAT MUST BE COUNTED IN CALCULATING GEOGRAPHIC COVERAGE

In the event the Commission does not apply population-based requirements to CMA and EA licenses, the record on reconsideration clearly establishes that the Commission should adopt MetroPCS’ proposals to further refine the geographic-based performance requirements in certain respects. Most of the commenting parties endorsed⁸ MetroPCS’ proposal to exclude certain additional areas from the calculation of the relevant geographic area, including bodies of water, historical areas, zip codes with less than 5 persons per square mile, and any unserved area that was wholly surrounded by served areas – the so called “hole on the doughnut.”⁹ As noted by CTIA, “[e]ach of these scenarios represents a circumstance analogous to the government-owned or administered land that makes coverage ‘impractical,’ and the Commission should expand its geographic build-out exclusion list to include these categories.”¹⁰

Two commenters partially opposed MetroPCS’ proposal. First, while Rural Cellular

RSAs. A MSA licensee will have the incentive to cover as much population as possible, and the RSA licensee will inevitably cover most of the territory because in order to reach any population-based standard they will have to build-out most of the relevant geographic area. Thus, the desire to have rural coverage will be satisfied and the rural carriers will have licenses they can acquire and build.

⁷ See CTIA Comments at 6.

⁸ See CTIA Comments at 7-8; AT&T Comments at 7-8; “Comments of United States Cellular Corporation on Petitions for Reconsideration,” filed October 17, 2007 at 3 (“US Cellular Comments”); Blooston Comments at 1.

⁹ Petition at 11-12.

¹⁰ See CTIA Comments at 7-8.

Association (“RCA”) agrees with MetroPCS that “significant bodies of water or large historic sites present a problem,” it supports a system where a “license can request a waiver of the coverage standard.”¹¹ However, a system based on waivers would not provide potential bidders the certainty needed prior to the auction, would place an unnecessary burden on licensees and on the Commission staff, and create opportunities for speculation. Commission precedent establishes that “[w]hen seeking to deviate from the general rule [on construction requirements] an application faces a heavy burden.”¹² In view of this strict standard, bidders will lack certainty, and will be forced to “bet” on the particular circumstances in which the Commission will grant waivers. This could promote speculation for licenses, as well as depress the market value of such licenses, both of which would not service the public interest. Since the standard for waiver is discretionary, licensees would not be able to plan their businesses and business models with the certainty they need. In the meantime, the licensee and the Commission staff would be burdened with having to process *ad hoc* waiver requests many of which would have similar fact patterns and requests for relief. Such a situation would not end up serving the Commission’s stated objective to serve rural areas since speculators are not oriented to build and operate systems which provide the same kind of service and coverage as carriers. Accordingly, a waiver system may be worse than no relief since it will both cause *bona fide* carriers to refrain from bidding and will cause the licenses to be held by parties not likely to build.

RCA also asserts that there should be no exclusion or waiver flexibility for zip codes with a small population density or unserved area that is surrounded by served area.¹³ As previously

¹¹ See RCA Comments at 3.

¹² See *Applications of Winstar Wireless Fiber Corporation and New Winstar Spectrum LLC and Request for Waiver*; 17 FCC Rcd 7118 at para. 6 (2002), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹³ See RCA Comments at 3-4.

noted by MetroPCS, zip codes with less than 5 persons per square mile encompass only approximately 0.7% of the population.¹⁴ And, MetroPCS pointed to record evidence demonstrating that areas this sparsely populated would be best served by satellite.¹⁵ RCA has not contested these MetroPCS showings. Forcing licensees to cover such sparsely populated areas would not serve the public interest because it may constrain licensees from improving their capacity in other areas of greater public need and divert resources from providing additional new services. In addition, the Commission certainly should exclude “hole in the doughnut” areas. Indeed, “little useful purpose would be served by cancelling the portion of the license covering the doughnut hole since another carrier would be unlikely to be able to provide interference-free service in this area which would be surrounded by proximity co-channel facilities.”¹⁶

The Rural Telecommunications Group (“RTG”) also opposes MetroPCS’ proposed refinements, as it states that the MetroPCS proposal would “muddy the waters and hold rural areas hostage.”¹⁷ That simply is not true. The purpose behind a geographic coverage requirement is to incent the licensee to provide service where it can be provided. The purpose is not to punish a licensee for the failure to serve a particular area; or even worse, have the Commission keep licenses which contain substantial areas that no one can serve economically.¹⁸ The proposed refinements to the Commission’s rules would allow carriers to build out their spectrum economically and efficiently, as well as meet the Commission’s policy of increasing

¹⁴ See Petition at 11.

¹⁵ See *id.* at 11-12.

¹⁶ See *id.* at 12.

¹⁷ See “Opposition of the Rural Telecommunications Group, Inc. to and Comments on Petitions for Reconsideration,” filed October 17, 2007 (“RTG Comments”).

¹⁸ If the purpose is to cause metropolitan carriers to partner with rural carriers, this purpose will also not be served. Unrealistic build-out requirements will harm such opportunities since even rural carriers have no economic incentive to serve sparsely populated areas. Thus, denying this request will not assist rural carriers.

broadband coverage, particularly in rural areas. Indeed, there is a likelihood that this territory would not be built out the second time around, or would be acquired by speculators betting that the Commission will alter its rules once the true uneconomic nature of the potential build-out of these areas is apparent – or even to hold as green mail against the existing licensee to prevent their ability to naturally expand or make changes in their system that are necessitated by ordinary technical actions, such as moving sites, rearranging antennas, increasing power, and the like.¹⁹

The need for relief is particularly acute for rural CMAs, in which any unserved area that is returned to the Commission is likely to have no economic value to anyone. All this will do is preclude the entity with the greatest economic incentive to build the area – the current licensee – from providing service at a later date. Also, the Commission then must consider additional secondary licensing procedures for these unserved areas, when, in actuality, the best chance for these areas to be served is by the existing licensee.

III. THE COMMISSION SHOULD MODIFY THE KEEP-WHAT-YOU-USE RULE TO ALLOW FOR A SMALL EXPANSION AREA

The MetroPCS proposal to allow licenses to keep a small expansion area under the keep-what-you-use rules was generally well received by other commenters.²⁰ Thus, RCA is out of step in arguing that “a change of this nature would be contrary to the purpose of coverage requirements based upon percent of area or population served.”²¹ However, while one goal of the performance requirements is to allow “other interested parties to serve an area left unserved by the prior licensee,”²² the main goal is to “better promote access to spectrum and the provision

¹⁹ See Petition at 15.

²⁰ See CTIA Comments at 13-14; RTG Comments at 6; US Cellular Comments at 4-5; Blooston Comments at 4; AT&T Comments at 8-9

²¹ “Rural Cellular Association Limited Opposition and Comment on Reconsideration Petitions,” filed October 17, 2007 at 3 (“RCA Comments”)

²² RCA Comments at 3.

of service.”²³ Allowing carriers a limited expansion area would recognize the fact that an incumbent carrier serving a nearby major market can more efficiently and effectively serve any growth in population over time at the outskirts of a market area than any newcomer.²⁴ As noted by AT&T, “[a]llowing for this additional ‘retention area’ will serve the public interest by enabling the incumbent licensee to respond quickly to population expansions and other population shifts.”²⁵ The proposed expansion also allows carriers flexibility to adjust to necessary changes in exterior cell sites.²⁶ Indeed, allowing for a limited expansion areas would “produce faster deployment of service in unserved areas.”²⁷

IV. THE COMMISSION SHOULD ADOPT A TRIGGERED KEEP-WHAT-YOU-USE POLICY

RCA also bucks the weight of other commenters by opposing MetroPCS’ triggered keep-what-you-use proposal, claiming that it would force the Commission 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.”²⁸ Contrary to RCA’s suggestion, such a requirement would not require the Commission to undertake an evidentiary hearing to determine who would be a potential *bona fide* bidder.²⁹ Rather, under the MetroPCS proposal, a party would qualify as *bona fide* as long as they have submitted a meaningful upfront payment to ensure that they are

²³ 700 MHz Order at para. 153.

²⁴ Indeed, MetroPCS, though it is beyond its 10 year renewal period for many of its licenses, it still finds itself building additional facilities at the periphery of those markets in order to accommodate population sprawl and shifting demographics. See Petition at 14.

²⁵ See AT&T Comments at 8.

²⁶ See *supra* at p. 6.

²⁷ See AT&T Comments at 9.

²⁸ See RCA Comments at 4. Numerous commenters supported the MetroPCS triggered keep-what-you-use proposal. See CTIA Comments at 11-14; US Cellular Comments at 6.

²⁹ See RCA Comments at 4.

serious about providing service. This proposal is designed to deter speculators from acquiring this spectrum, not to prevent legitimate bidders who have a *bona fide* intent to provide service.

MetroPCS' triggered keep-what-you-use proposal also would ensure that the carrier best positioned to build-out these areas over time is not disenfranchised and that the potential build-out of an area will not be interrupted if no other entity has any interest in that area. MetroPCS' proposal would allow existing licensees to build-out these unserved areas until another potential service provider demonstrates its willingness to do so.³⁰ This would create two powerful incentives that would promote build-out: (1) the incentive for both the incumbent and any newcomers to take steps to serve unserved areas sooner rather than later; and, (2) the reduction of the prospect that forfeited unserved license areas will lie fallow in the Commission's hands.³¹

V. THE COMMISSION SHOULD ADOPT METROPCS' ADDITIONAL UNOPPOSED PROPOSALS FOR THE 700 MHZ BAND

A number of additional MetroPCS proposals should be adopted because they serve the public interest and were either expressly supported or completely unopposed by parties in this proceeding. First, the Commission should adopt MetroPCS' proposal to clarify the circumstances in which licensees will be at risk of being subjected to monetary fines and supplemental license forfeitures for a failure to meet Commission performance requirements.³² This MetroPCS proposal to have the Commission clarify that a licensee will only be subject to monetary fines and further termination of license rights if the licensee has failed to take meaningful steps towards service implementation as of the initial (4 year) benchmark, or fails to provide "substantial service" as of the end of the license term (8 or 10 years), received

³⁰ In addition, whether or not the Commission adopts MetroPCS' triggered "keep-what-you-use" proposal, it should allow the original licensee to participate in any reauction of recaptured license area, without being precluded during an initial 30-day period. *See* Petition at 17.

³¹ *See id.* at 16.

³² *See id.* at 6-10.

considerable support in the record,³³ and would ensure that licensees know the rules well ahead of the auction. In addition, numerous parties representing a broad cross-section of potential bidders asked the Commission to eliminate these vague potential sanctions entirely.³⁴

The Commission also should adopt MetroPCS' unopposed proposals regarding procedures for the 700 MHz Band auction. First, the Commission should adopt MetroPCS' recommendation that the Commission set no reserve price for any subsequent 700 MHz Band auction.³⁵ This would ensure that the Commission satisfies its statutory obligation of depositing the proceeds of the 700 MHz Band auction no later than June 30, 2008.³⁶

Lastly, the Commission should adopt MetroPCS' subsequent auction opt-out proposal to ensure that the Commission's anti-collusion rule will be applied to potential bidders for as limited a period as possible.³⁷ As noted by US Cellular, [u]nder the Commission's 'single auction' concept for Auctions 73/76, many companies will have strong incentives to forego all

³³ See RTG Comments at 7; Blooston Comments at 4; RCA Comments at 5.

³⁴ See CTIA Comments at 9-11; RTG Comments at 6-7; US Cellular Comments at 3; Blooston Comments at 4.

³⁵ Petition at 19-20.

³⁶ *Id.* at 20. Moreover, contrary to Frontline Wireless' assertions in its October 3, 2007 *ex parte* letter to the Commission, MetroPCS is very concerned that the geographic build-out requirements may both deter robust bidding in the auction as well as deter potential bidders from participating in the auction at all. This may not only depress values for the first auction, but any subsequent auction as well. The Commission has a statutory obligation to deposit the proceeds of the 700 MHz Band spectrum auction by June 30, 2008, and thus the Commission cannot have whole blocks of spectrum remain unsold. Accordingly, the Commission must ensure that any subsequent auction does not fail as a result of the auction price not being met. Moreover, Frontline's assertion that parties will be able to game the system by not bidding in the first auction only to win the spectrum in a subsequent auction is completely unsupported. 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. 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. Since Frontline's assertions would require bidders to violate existing Commission rules, the Commission should discount Frontline's concerns.

³⁷ *Id.* at 20-23.

business development activities rather than run the risk that contact with other companies might be found to violate the Commission's anti-collusion rules."³⁸ The Commission could limit this type of behavior by allowing parties the opportunity to opt out of any subsequent auction, as proposed by MetroPCS.³⁹

VI. CONCLUSION

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

Respectfully submitted,

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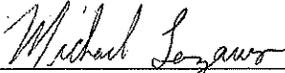
October 26, 2007

³⁸ US Cellular Comments at 11.

³⁹ MetroPCS also supports US Cellular's proposals that opt out certifications be kept confidential until the auction down payment deadline and that the Commission provide each bidder who has opted out a confidential updating competing applicant list which excludes all other bidders who have opted out of the auction. *See* US Cellular Comments at 11.

CERTIFICATE OF SERVICE

I, Michael L. Lazarus, hereby certify that a true and correct copy of the foregoing "Reply of MetroPCS Communications, Inc. to Oppositions to the Petition for Reconsideration" was delivered First-class mail this 26th day of October 2007 to the individuals on the following list:



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