

**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)	

**Reply of
United States Cellular Corporation**

United States Cellular Corporation ("USCC") hereby replies to two of the Oppositions to the Petitions For Reconsideration filed in the above captioned proceeding. The petitions concern the Commission's August 10, 2007 Second Report and Order.¹ In this Reply, USCC reiterates its support for population-based, rather than geographic-based, signal coverage requirements for all 700 MHz licensees.

¹ See, Service Rules for the 698-796, 747-762, and 777-792 MHz Bands, WT Docket 06-150 et al., Second Report and Order, 22 FCC Rcd 15789 (2007) ("Order")

BACKGROUND

USCC believes that the evolution of the Commission's wireless coverage requirements over a twenty year period prior to the Order served the public interest and thus opposes the Order's repudiation of those policies.

In our earlier comments, USCC agreed with those petitioners who had supported reconsideration of the performance requirements adopted in the Order. The new 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. Also, 700 MHz licensees should not be subject to any "sanctions" except loss of unserved territory for failing to meet coverage requirements. Accordingly, 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.

However, if the Commission retains its geographic performance requirements, USCC 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, historic districts, 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. USCC, however, urges the FCC to adopt population based coverage standards for all service areas to be auctioned in Auction 73.

USCC opposes any attempt to rewrite the ETC rules in this proceeding and supports retention of existing eligibility rules for auction participation, with the exception that the D Block nationwide licensee should not hold any C Block REAG spectrum. We support maintenance of the FCC's existing DE requirements, and oppose "customized" rulemaking to suit the business plans of any applicant.

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

The oppositions and comments of AT&T, Inc., CTIA, and the "Blooston Rural Carriers" also provide strong support for those positions.² However, rather than restate those points of agreement, which would be inappropriate for a "reply" pleading, USCC will concentrate on its central points of disagreement with other filings.

I. The RTG and RCA Oppositions Fail To Make The Case For Geographic Performance Requirements.

The oppositions of the Rural Telecommunications Group ("RTG") and the Rural Cellular Association ("RCA") continue to defend the new requirement, adopted in the Order, that geographic based coverage benchmarks be used to determine compliance with construction requirements for Lower 700 MHz Spectrum Blocks A, B and E.

² In its Comments, the "Blooston Rural Carriers" propose a modification of one of the areas to be excluded from any geographic coverage requirement, namely "zip code areas." They propose to replace that exemption definition with one referring to counties with fewer than twenty-five persons per square mile. USCC agrees that that substitution is sensible. County lines are easier to administer than irregularly shaped zip code areas and twenty-five persons per square mile is still a very rural population density. However, we reiterate that the entire problem of having to "exclude" certain areas from geographic coverage requirements can be avoided by simply not having such requirements.

Interestingly, however, both RTC and RCA agree with USCC and other commenters that the FCC's new rule [Section 27.14(g)(2) of the Rules] imposing possible additional sanctions on licensees failing to meet construction benchmarks is unacceptable as presently drafted.³ Thus, there is unanimity among all filers commenting on this issue that the new rule is arbitrary and should be rescinded. Both RTG and RCA support MetroPCS's "alternative" approach to additional sanctions, under which licensees would not be subject to sanctions in addition to loss of territory, if they have taken "meaningful steps" toward system construction and perhaps if they meet the "substantial service" criteria applicable to other 700 MHz licensees. USCC considers the "substantial service" requirement to be too indefinite to serve as the basis for sanctions in this context, but would support such a standard in preference to the present rule.

However, RCA and RTG both oppose any relaxation of the geographic coverage requirements by excluding from the relevant coverage calculation geographic areas which it is either legally or financially impossible to serve. It is, we submit, deeply unwise, from the standpoint of rational regulation, to hold carriers responsible, on pain of losing territory, for serving areas which they cannot reasonably serve. However, this hardline opposition to a more reasonable rule evidently reflects a strategy on the part of RTG and RCA. They believe that eight or ten years from now, when some of the winning applicants in Auction 73 have failed to meet their geographic based coverage requirements, i.e. sometime in 2017 or 2019, the members of RTG and RCA will be able to file for and obtain the right to serve unserved areas in the affected markets and the larger the area deemed to be "unserved," the more area their members will be able to apply for.

But, as USCC has previously pointed out, such widespread applications by new entrants after a wireless buildout period are unlikely to occur. As USCC discussed in our Comments, in

³ RTG Opposition, pp. 6-7, RCA limited Opposition, pp. 4-5.

the analogous "use or lose" 800 MHz cellular unserved area context, the unserved area rules instead proved to be the means by which incumbent cellular carriers expanded their systems in their own markets by means of "Phase II" unserved area applications. We noted that USCC has done precisely that on 273 occasions in the past fourteen years, unopposed by any competing applicants. Recognizing that reality, the FCC, in the PCS and AWS context, adopted flexible performance requirements, allowing for gradual expansion of wireless systems as economic realities permitted, while eliminating the time and expense involved in filing Phase II applications.

For no good reason, the FCC has now decided to discard that accumulated practical wisdom by imposing onerous buildout requirements, and to make it even more difficult (but not impossible) for incumbents to expand their systems after the expiration of their initial buildout period. We are confident that a decade and more from now, when the cellular unserved area process is essentially replicated in the 700 MHz market, the FCC will recognize that its action was a mistake.

However, there are also present costs to this part of the Order. The onerous CMA and EA coverage requirements can only discourage potential applicants from participating in the auction. This will be especially the case for smaller potential applicants without an already existing tower infrastructure. They will also be deterred by the potential additional sanctions for failure to meet buildout requirements, unless the FCC rescinds that part of the rule. Reducing the number of potential applicants makes it less likely that innovative service approaches will be attempted and probably reduces potential auction revenue as well. RTG states that bidders "must take uninhabitable terrain into consideration on the front-end when determining how much to bid

for licenses."⁴ We ask again, why is having to take "uninhabitable terrain" into account in designing a wireless system in the public interest, as opposed to what some carriers believe (or imagine) to be in their own interest?

Lastly, USCC would reiterate its opposition to RTG's continuing support for imposing geographic-based coverage requirements on C and D Block REAG and nationwide licensees, as well as A, B, and E Block CMA and EA licensees.⁵ USCC agrees with RTG that it is unfair and wrong, not to speak of probably violative of the Equal Protection Clause and the Administrative Procedure Act, to impose more onerous coverage standards on EA and CMA applicants than on REAG and nationwide applicants in the same auction. However, the solution to the problem is not RTG's "misery loves company" approach of imposing the same unworkable standard on REAG and nationwide licensees as on CMA and EA licensees. Rather it is to adopt sensible population-based coverage requirements for all 700 MHz licensees.

⁴ RTG Opposition, p. 5.

⁵ RTG Opposition, p. 4.

Conclusion

For the foregoing reasons and those given in our Comments, USCC urges the Commission to modify its rules as we have proposed.

Respectfully submitted,

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