

**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
)	

**REPLY COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
IN SUPPORT OF
PETITIONS FOR RECONSIDERATION**

The National Telecommunications Cooperative Association (“NTCA”)¹ hereby submits these reply comments in support of Petitions for Reconsideration of the 700 MHz *Second Report and*

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide

*Order*² filed by the Blooston Rural Carriers³ and the Rural Telecommunications Group (RTG).⁴ NTCA supports both petitioners in so far as they both urge the Commission to eliminate sanctions beyond the “keep what you use” licensing scheme for CMA licensees.

In its *Second Report and Order* the Commission provides that 700 MHz licensees will lose any territory they do not serve. As the Blooston Rural Carriers point out, this mechanism allows a licensee to make reasonable business decisions that there are some areas it cannot feasibly or economically serve.⁵ However, the Commission goes further stating that it may impose the following additional sanctions: 1) It may fine those licensees that do not meet the build-out obligations, but there is no indication about what circumstances would trigger a fine, or how much of a fine would be imposed. 2) If a licensee fails to meet the 4-year interim construction benchmark, the licensee will not only lose two years off of its license term, it “may lose authority to operate in part of the remaining unserved areas of the license.” There are no guidelines for when or how this sanction would be applied and it is unclear whether licensees have 10 years to construct or four. 3) The Commission may terminate an entire CMA or EA license if the licensee “provides signal coverage and offers service at a level that is below the end-of term benchmark.” There is no provision to measure an acceptable level of service.⁶

wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

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

³ Petition for Partial Reconsideration and/or Clarification submitted by the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural telephone clients (the “Blooston Rural Carriers”) (filed September 24, 2007).

⁴ Petition for Reconsideration submitted by the Rural Telecommunications Group, Inc. (RTG) (filed September 24, 2007).

⁵ Blooston Rural Carriers petition, p. 11.

⁶ This rule only applies to the smaller EA and CMA licensees. Pursuant to Rule 27.14, if a large REAG licensee fails to meet the final benchmark, it will not lose its entire REAG license, but only those EAs within the REAG that it failed to adequately serve.

The penalties, if retained, disproportionately impact CMA and EA licensees, which are more likely to be small businesses. They interject an additional layer of uncertainty into an auction fraught with uncertainty. Absent clarity on when or how additional penalties will be imposed, small companies will have difficulty ascertaining the value of a license and an appropriate amount to bid in the auction. As the Blooston Rural Carriers point out, it is conceivable that rural carriers could invest hundreds of thousands, perhaps millions, of dollars acquiring and building out a license territory, only to lose the entire license and/or be subject to fines because they could only cover 65 percent of the geographic area instead of 70 percent.

These additional penalties are not only defined poorly, they lack a rational basis on the record. The Commission did not seek comment, nor did it receive comment on penalties beyond keep what you use. The Administrative Procedure Act requires that the public be given notice of the nature of a proposed rule change before the rulemaking.⁷ The sanctions beyond keep what you use could not have been anticipated and are not a “logical outgrowth” of the notice that was provided. The Commission sought comment on a “keep what you use” provision that would reduce the size or the term of the license. The Commission never suggested and never sought or received comment on a monetary forfeiture that would create a penalty beyond “keep what you use” for failure to meet a construction benchmark. The penalty is beyond the scope of action contemplated in the Commissioner’s Order

Rather than constructing additional obstacles for small carriers seeking spectrum, the Commission should respect the mandates of Section 309(j)(3)(B) of the Communications Act of 1934, as amended. Section 309(j)(3)(B) requires the Commission to promote economic

⁷ *Wagner Electric Corp. V. Volpe*, 466 F.2d 1013, 1020 (3d Cir. 1972).
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opportunities and competition by disseminating licenses among a wide variety of applicants, including small businesses and rural telephone companies. Rather than focusing on penalties, the Commission should put some effort into providing incentives for small businesses and rural telephone companies to participate in the auction and provide spectrum-based services.

NTCA supports requests that the Commission revise its 700 MHz rules so that a CMA or EA licensee will not be subject to enforcement action unless it utterly fails to construct a system. Absent such egregious behavior, a licensee should retain the rights to the license territory constructed at the end of its build out period, pursuant to the “keep what you use” rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Reply Comments in Support for Petitions for Reconsideration of the National Telecommunications Cooperative Association in WT Docket No. 06-150, WT 06-169, PS 06-229, and WT 96-86, FCC 07-72, was served on this 29th day of October 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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