

**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

**LIMITED REPLY & COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP, INC.
RE OPPOSITIONS AND COMMENTS RE PETITIONS FOR RECONSIDERATION**

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, and pursuant to Section 1.429 of the rules and regulations of the Federal Communications Commission (“FCC”

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed

or “Commission”), hereby replies to oppositions and comments filed in response to petitions seeking reconsideration of the Commission’s *700 MHz Second Report and Order*.² RTG’s response is limited to the desirability of using geographic-based construction benchmarks and the need for a mechanism to allow small businesses to “opt-out” of Auction 76 to avoid a prolonged anti-collusion period.

I. THE COMMISSION SHOULD UTILIZE GEOGRAPHIC BENCHMARKS AND KEEP-WHAT-YOU-USE LICENSING TO ALLOW THE MARKETPLACE TO DETERMINE WHAT AREAS ARE TOO MARGINAL TO SERVE

Many of the oppositions and comments address the use of population verses geographic based benchmarks. Commenters generally agree that the same benchmarks should apply to both the upper and lower bands, but disagree as to whether they should be population or geographic. A number of commenters also address tinkering with what area must be included in the calculation of geographic coverage.

RTG, supported by the Rural Cellular Association (“RCA”), continues to request that the Commission apply geographic-based benchmarks to all non-public safety licenses and across virtually all geographic area.³ These benchmarks, coupled with the “keep-what-you-use” rule, will ensure the widest deployment of service to the public in the most efficient manner.

delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

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) (“*Order*”).

³ *See* Limited Opposition and Comment on Reconsideration Petitions of the Rural Cellular Association at p. 4 (filed Oct. 17, 2007) (“*RCA Comments*”). The Blooston Rural Carriers (“*BRC*’s”) also support use of consistent benchmarks and agree that the Commission should apply geographic benchmarks to the Upper 700 MHz C Block if the Commission does not use population based-benchmarks for the Lower 700 MHz blocks. *See* Comments on Petitions for Reconsideration of the Blooston Rural Carriers at pp. 2-3 (filed Oct. 17, 2007).

These licensing tools will encourage innovation and allow the marketplace to determine what services are provided, where they are provided, and by whom.

Specifically, as RCA correctly notes, these rules “provide initial licensees a reasonable opportunity to make use of the spectrum and offer service.” RCA Comments at p. 2. Bidders can value licenses based on the areas that they intend to serve. Areas that the licensee does not serve during the initial license period, however, “should become available to others whose business plans may allow for a more economical deployment or a different type of service offering altogether.” RCA Comments at p. 2-3. In this way, the market can determine who, if anyone, will provide service to “marginal” areas.

As RCA correctly comments, there is no need for the Commission to eliminate purported marginal areas from the calculation of the geographic benchmark. Instead, the FCC should allow the market to determine in what areas service is viable. If a licensee has not provided service in a given area within the initial license term, then any potential provider should be able to step up to the plate to try. Even the original licensee will have the opportunity to provide service in such areas unless another interested party has filed an “unserved area” application immediately after the expiration of the initial construction period.

II. THE COMMISSION SHOULD ALLOW BIDDERS TO OPT-OUT OF AUCTION 76 TO REDUCE THE ADVERSE IMPACT OF A PROLONGED BLACKOUT PERIOD

RTG supports the request of United States Cellular Corporation (“USCC”) that the Commission adopt a mechanism to allow bidders to “opt-out” of Auction 76 and to resume the normal conduct of business.⁴ As USCC correctly explains, and as the Commission is undoubtedly aware, the anti-collusion and anonymous bidding rules severely restrict communications among and between companies in the wireless industry during the anti-

⁴ See Comments of United States Cellular Corporation on Petitions for Reconsideration at pp. 10-11. (filed Oct. 17, 2007).

collusion period of an auction. RTG's members are small companies. The individuals that will be involved in bidding decisions generally are the same individuals involved in other key business development activities such as negotiations regarding roaming arrangements, spectrum acquisition, marketing, etc. Thus the restrictions of the anti-collusion period will severely limit the ability of small companies to engage in normal business development activities during Auctions 73 and 76. Small companies can endure these restrictions for a short period of time. If the anti-collusion period extends for a long period of time, however, then small companies will suffer significant set-backs and loss, and the prospect of such harm will deter them from participating in Auction 73.

In order to minimize the adverse impact on small businesses, the FCC should allow a bidder to opt-out of Auction 76 under certain circumstances. Specifically, the FCC should allow a bidder to opt-out of Auction 76 if: (1) such bidder has no interest, and has never had any interest, in the licenses that are to be auctioned in Auction 76, or (2) such bidder was the successful high bidder for licenses in Auction 73 in a license block that met the block-specific reserve price, and such bidder has no additional resources with which to acquire licenses in Auction 76. For example, as a practical matter and with few exceptions, small companies will only be able to bid on the Lower 700 MHz B Block licenses. If the aggregate bids for the B Block exceed the block-specific reserve price, then the auction is "over" for small companies. They either won licenses or they didn't, but they will have no interest or ability to participate in Auction 76 if, for example, the C Block failed to meet the block-specific reserve price in Auction 73, and is the only block available in Auction 76. In such a scenario, small company participants in Auction 73 should be able to opt-out of Auction 76 and to resume normal business negotiations during Auction 76. Adopting an opt-out mechanism will balance the need for the Commission to maintain the integrity of the Auction 73/76 process while minimizing the adverse impact on small businesses.

For the reasons stated herein, and in RTG's Petition for Reconsideration and Comments in this proceeding, RTG requests that the Commission reconsider the *Order* as requested in RTG's petition and also allow small companies to opt-out of Auction 76 as discussed herein.

Respectfully submitted,

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