

**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 of)	WT Docket No. 03-264
Parts 1, 22, 24, 27 and 90 to Streamline and)	
Harmonize Various Rules Affecting Wireless)	
Radio Services)	
)	
Former Nextel Communications, Inc.)	WT Docket No. 06-169
Upper 700 MHz Guard Band)	
Licenses and Revisions to Part 27 of)	
the Commission's Rules)	
)	
Implementing a Nationwide,)	PS Docket No. 06-229
Broadband, Interoperable Public)	
Safety Network in the 700 MHz Band)	
)	
Development of Operational, Technical and)	WT Docket No. 96-86
Spectrum 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)	

To: The Commission

REPLY COMMENTS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural telephone carrier clients (the “Blooston Rural Carriers”) and pursuant to Section 1.429 of the Commission’s Rules, hereby submits these reply comments concerning petitions for reconsideration of the *Second Report and Order* in the above-captioned proceeding governing the 700 MHz auction (Auction No. 73).¹ In particular:

1. Coverage Exclusions: The record reflects strong support for the suggestion of MetroPCS Communications, Inc.² that the Commission should exclude the following areas from any geographic coverage requirement: (1) bodies of water; (2) historic districts; (3) areas completely surrounded by licensee coverage; and (4) zip codes with a population density of less than 5 persons per square mile.³ There is also strong support for the suggestion of the Blooston Rural Carriers that the Commission should exclude from any coverage requirement Tribal lands where the Tribal government does not grant permission to the licensee for 700 MHz wireless operations.⁴ These reasonable and minor rule changes would protect licensees from situations over which they have little or no control.

RTG argues (at pp. 5-6 of its Comments) that the MetroPCS exclusions should not be adopted, because “[b]idders must take the uninhabitable terrain into consideration

¹ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, WT Docket No. 06-150 and related proceedings, FCC 07-132 (*rel.* August 10, 2007) (“*Second Report and Order*”).

² See September 20, 2007 Petition of MetroPCS Communications, Inc. for Clarification and Reconsideration, at pp. 11-13.

³ See October 17, 2007 Comments of CTIA-The Wireless Association (“CTIA”) at pp. 7-8; October 17, 2007 Comments of United States Cellular Corporation (“USCC”) at p. 4; October 17, 2008 Comments of AT&T Inc. (“AT&T”) at pp. 7-8; October 17, 2007 Comments of Blooston Rural Carriers at p. 2. The Rural Cellular Association (“RCA”) argues that entities faced with such coverage obstacles should be forced to file individual waiver requests and await Commission action. October 17, 2007 Comments of RCA at p. 3. However, this process would introduce delay and uncertainty during the build out process, and unnecessarily burden the Commission’s resources.

⁴ See Comments of CTIA at p. 8; Comments of USCC at p. 4.

on the front end when determining how much to bid for licenses. . . .If the original licensee of an area is unwilling to serve it, then the licensee should move over and let another licensee try.” The Blooston Rural Carriers understand the reason for this sentiment. However, as discussed below, taking the impact of not serving uninhabitable areas on bid price is not an answer, so long as a licensee may face severe fines and/or license cancellation by not serving these areas; and in many circumstances allowing an incompatible operation to wedge in amongst the incumbent licensee’s coverage at the CMA level will cause more harm than good.

2. Population Coverage Option for CMAs and EAs: While the MetroPCS and Tribal land refinements would help to make the geographic area coverage requirement less onerous, the record in this proceeding demonstrates that the best solution is to offer CMA and Economic Area (EA) licensees a population coverage option instead, for the reasons set forth in the Blooston Rural Carriers’ September 24, 2007 Petition for Reconsideration and/or Clarification. Several carriers experienced with wireless build out issues strongly support the extension of a population coverage option to the smaller licenses.⁵

The Rural Telecommunications Group, Inc. (RTG) and RCA argue against giving a population option to CMA and EA licensees. RTG seeks to refute the Blooston Rural Carriers’ showing that a geographic coverage requirement will force CMA and EA licensees to cover areas where no one lives or travels, by arguing that such licensees are free to cover where they want, because the only consequence will be a take back of unserved areas. RTG Comments at p. 4. RCA similarly argues that under the “keep what

⁵ See See Comments of CTIA at p. 2-5; Comments of USCC at pp.6-7; Comments of AT&T at pp. 6-7.

you use” rule, “each CMA licensee has total control of its decision-making and may choose to leave unserved any portion of a CMA, for any reason at all.” RCA Comments at p. 2. Unfortunately, under the current version of the rules, smaller licensees do not enjoy such freedom of choice. First, if they choose to leave areas unserved “for any reason at all”, they may face an onerous fine, or a catastrophic cancellation of their license! In order for the RTG/RCA rationale to apply, the Commission *must* delete these additional penalties from the rules. Otherwise, CMA and EA licensees are conducting their build out under the point of a regulatory bayonet.

Second, as pointed out in the Blooston Rural Carriers’ Petition, CMA licensees will end up with a “swiss cheese” license under the geographic coverage requirement, because covering 70 percent of the geography of a CMA will often prove illogical and economically infeasible. Unfortunately, this will allow the creation of a patchwork of differently-owned wireless systems operating on the same spectrum in the same RSA. And there is a key distinction between systems built under the cellular fill-in rule and those that will be build under the 700 MHz “keep what you use” rule: When cellular fill-in systems were being built, “cellular was cellular”. There was a common technical format, and every inch of new coverage built by a fill-in applicant would benefit the original licensee’s customers. However, the 700 MHz band (like PCS) is likely to feature multiple and incompatible technical formats. Moreover, 700 MHz (unlike PCS) will likely be used for a wide variety of services offered by different licensees. Some will offer full mobility voice and data, while others will offer limited “walk around” service, and still others will offer fixed-only internet access. Therefore, different licensees crammed into the same RSA may lead to areas that are forever “dead zones” for the original licensee’s customers, not to mention incompatible sources of interference under

the vague take-back rule. Therefore, it is respectfully submitted that the proper course is to offer a population coverage option to CMA and EA licensees.

3. Expansion/buffer zone: There is strong support for the suggestion of MetroPCS that the Commission factor in a 15 percent “expansion zone” to CMA/EA coverage, when reclaiming areas under the “keep what you use” rule.⁶ This suggestion is consistent with the Blooston Rural Carriers’ request that the Commission define a “buffer zone” to ensure compatible, interference-free operation between an auction winner and subsequent “fill in” licensees.⁷ RTG agrees with the proposals of MetroPCS and the Blooston Rural Carriers for an area that will accommodate minor modifications to an incumbent system.⁸

One commenter, RCA, disagrees with this proposal.⁹ According to RCA, this expansion area would be contrary to the purpose of the coverage requirements. *Id.* However, this argument ignores the reality that, over the course of time, changes in site availability and customer needs inevitably require minor modifications to a wireless system’s coverage. Moreover, as the Blooston Petition pointed out, interference protection considerations dictate some sort of buffer zone, since such protection is not clearly delineated in the Commission’s rules. Several carriers who have substantial experience with wireless system build outs, such as Metro PCS, USCC and AT&T, agree with the Blooston Rural Carriers and RTG that a buffer or expansion zone is needed. A buffer zone is particularly important in the 700 MHz band because, as discussed

⁶ See Comments of CTIA at p. 11; Comments of USCC at pp.4-5; Comments of AT&T at pp. 8-9; Comments of Blooston Rural Carriers at p. 4.

⁷ See Blooston Rural Carriers Petition at p. 19; Comments of USCC at pp. 4-5.

⁸ Comments of RTG at p. 6.

⁹ See Comments of RCA at p. 3.

previously, this band has enhanced propagation; and unlike cellular, there are likely to be widely varying technical formats and uses of the spectrum by neighboring systems, leading to incompatibility issues.

4. Additional Penalties: The overwhelming majority of commenters in this proceeding agrees with the argument of The Blooston Rural Carriers and others that the threatened additional enforcement actions of fines and license cancellations are vague, and introduce uncertainty into the bidding process that may hinder bidding.¹⁰ There is a range of opinion as to how the Commission should address this problem, with some commenters asking for clarification of when and how the new penalties will be applied, while others agree with the Blooston Rural Carriers that the penalties are not necessary or appropriate, and should be deleted in their entirety. However, no commenter has refuted the Blooston Rural Carriers' argument that these sanctions take the rational economic decision-making process out of the hands of licensees, and will only discourage participation in Auction No. 73.¹¹ More importantly, no one has refuted the showing of the Blooston Rural Carriers, MetroPCS and CTIA that the fines and license cancellation penalties exceed the scope of the Notice of Proposed Rule Making in this proceeding, exceed the terms of the Commission's statutory forfeiture authority and are contrary to

¹⁰ See Comments of RTG at pp. 6-7; Comments of RCA at p. 5; Comments of CTIA at pp. 9-10; Comments of USCC at p. 3; MetroPCS Petition at pp. 6-8; Blooston Rural Carriers Petition at pp. 13-18.

¹¹ Blooston Rural Carriers Petition at pp. 11-13.

Section 309 of the Act; and therefore these sanctions are not valid.¹² Accordingly, the unrefuted record indicates that the penalties should be deleted from the auction rules.

5. Anti-Collusion Rule Opt-out: The Blooston Rural Carriers agree with MetroPCS and USCC that the Commission should not extend application of the anti-collusion restriction throughout the entirety of time between Auctions 73 and 76. A number of small, rural carriers must operate under a “gag order” during each auction, because they hold a minor interest in a cellular partnership or other joint telecommunications effort in which certain other members may be bidding on overlapping areas. It is one thing to recuse a company from its participation in venture for 8 to 10 weeks. However, an extended application of the anti-collusion rule through the end of Auction 76 could force a rural carrier to remain uninvolved in decisions that may have a significant impact on its operations, for up to six months. The benefit of having this disruptive outcome is not clear. The Commission should adopt less restrictive alternatives to its multi-auction anti-collusion restriction.

MetroPCS and USCC have proposed, and the Blooston Rural Carriers support, giving bidders in Auction 73 the opportunity to opt out of Auction 76 by filing a written certification. At a minimum, non-public discussions between bidders who have opted out of Auction 76 should not be subject to the Commission's anti-collusion rules. The Blooston Rural Carriers support the suggestion that the Commission's concerns about the impermissible disclosure of bids and bid strategies can be adequately met (1) by requiring that opt out certifications be kept confidential until the Auction 76 down payment deadline and (2) by providing each bidder who has opted out with a confidential updated

¹² Blooston Rural Carriers Petition at pp. 11-18; MetroPCS Petition at pp. 7-9; Comments of CTIA

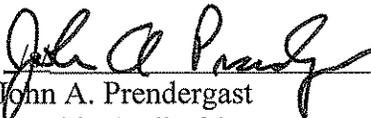
competing applicant list which excludes all other bidders who have opted out of Auction 76.

Conclusion

Based on the foregoing, it is respectfully submitted that the Commission should modify its Auction 73/76 rules on reconsideration, to remove aspects creating uncertainty and impossibility of compliance. In the absence of such changes, based on feedback from rural carrier clients, Blooston expects that there will be fewer applicants and restrained bidding in the upcoming 700 MHz auctions.

Respectfully Submitted,

The Blooston Rural Carriers

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Filed: October 29, 2007

CERTIFICATE OF SERVICE

I, John A. Prendergast, hereby certify that a copy of the foregoing Reply Comments on Petitions for Reconsideration was served this 29th day of October, 2007, by hand delivery, email or by U.S. Mail, postage prepaid, to the following individuals at the addresses listed below:

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