

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
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Service Rules for Advanced Wireless Services)
in the 2155-2175 MHz Band)
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WC Docket No. 07-195

**REQUEST OF METROPCS COMMUNICATIONS, INC. FOR PARTIAL
MODIFICATION OF COMMENT AND REPLY COMMENT DEADLINES**

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully requests a modification to the pleading cycle pertaining to the *Notice of Proposed Rulemaking*, FCC 07-164 released September 19, 2007 (the “*NPRM*”)² in the above-captioned proceeding. At present, comments with respect to all issues and questions raised in the *NPRM* are due on December 14, 2007 and reply comments are due on January 14, 2008. MetroPCS is concerned that the current schedule will not allow for a robust discussion of certain aspects of the rules because many interested parties at this point may very well have filed applications to participate in Auction 73 -- and thus have Commission’s anti-collusion rule applied to them. MetroPCS proposes instead a bifurcated pleading schedule in which comments and replies with respect to the Technical Issues set forth in Sections IV.D and IV.F of the *NPRM* are filed in accordance

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² See *In the Matter of Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rule Making, FCC 07-164 (rel. September 19, 2007) (“*NPRM*”), 72 Fed. Reg. 64013 (November 14, 2007).

with the current schedule. Comments and reply comments with respect to the remaining issues, including the Band Plan (*NPRM* Section IV.B), the Auction Issues (*NPRM* Section IV.C), Technological Approaches (uplink versus downlink versus mixed uses) to the Band (*NPRM* Section IV.A), Regulatory Issues (*NPRM* Section IV.E), and Competitive Bidding Procedures (*NPRM* Section IV.G) would be deferred to March 31, 2008 and April 14, 2008 respectively.³ MetroPCS respectfully submits that it would be premature for parties to make informed comments with respect to the optimal band plan, spectrum block sizes, geographic market areas, auction procedures and permissible uses of the 2155-2175 MHz (“AWS-3”) spectrum without knowing the outcome of the ongoing 700 MHz Band auction and while subject to the Commission’s anti-collusion rules.⁴

In the *NPRM*, the Commission seeks comment on proposed service rules that would govern the AWS-3 spectrum. The *NPRM* comes on the heels of a wide-ranging debate regarding the service rules and band plan for the upcoming 700 MHz Band auction. This debate reflected widely divergent views as to the highest and best use of the available 700 MHz spectrum, the best configuration of the spectrum and licenses and the auction rules that should apply to it. A realistic and accurate assessment of the manner in which the Commission resolved these difficult issues can only be made after the 700 MHz auction is concluded. For example, determinations as to whether the public interest will be better served by additional smaller spectrum blocks and smaller license areas, or by additional larger frequency blocks licensed on a nationwide basis, as

³ This proposed schedule would not alter the Commission’s voluntary commitment to adopt service rules in this proceeding within nine months following the publication of the *NPRM* in the Federal Register. *See infra*.

⁴ *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, Order, FCC 07-132 (rel. Aug. 10, 2007).

well as the effect of performance requirements and other service rules will be informed by the outcome of the 700 MHz auction.

The 700 MHz proceeding resulted in a vast array of unique service rules for the 700 MHz Band, including a nationwide license, a 22 MHz block subject to open access conditions, and the strictest performance requirements in the Commission's history.⁵ In addition, companies that never participated before in a spectrum auction and have never acted as facility-based providers of commercial mobile radio service, such as Google, actively participated via comments, reply comments and *ex partes*, as well as indicated that they will bid for spectrum in the upcoming auction. Indeed, in adopting the service rules and band plan for the 700 MHz spectrum, the Commission noted "our goals for the 700 MHz Band are to promote dissemination of licenses among a wide variety of applicants . . . meet the various needs expressed by potential entrants seeking access to spectrum and incumbents seeking additional spectrum, and provide for large spectrum blocks that can facilitate broadband deployment in the band."⁶ Based upon this approach, there is a real prospect that the post-700 MHz CMRS marketplace will be considerably different than the pre-700 MHz Band auction marketplace. Just as the decisions the Commission made in the 700 MHz auction were affected and informed in part by the Commission's experience with and the results of the AWS-1 auction,⁷ the outcome of the 700 MHz Band auction will influence parties' positions with respect to the questions posited in the *NPRM*. Indeed, until the 700 MHz Band auction is complete and interested parties have had an

⁵ *See id.*

⁶ *See id.* at para. 64.

⁷ *See id.* at para. 51 ("this mix of geographic license sizes would be consistent with the licensing opportunities and the balance of competing interests that we achieved in the recent auction of AWS licenses"); *see also id.* at para. 304 ("the Wireless Bureau should establish the particular amounts of the block-specific aggregate reserves by taking into account a conservative estimate of market value based on auction results for AWS-1 spectrum licenses").

opportunity to review and analyze new spectrum licenses and their respective markets, any accumulated record in this proceeding would be at best incomplete, and at worst speculative.

Moreover, many interested parties with respect to the AWS-3 band no doubt filed short-form applications with the Commission for Auction 73 (and the subsequent Auction 76). These short-form applications have triggered for them the anti-collusion rule – which could inhibit the robust participation of these parties in the instant rulemaking until the rule is no longer in effect. The anti-collusion rule states that all short-form applicants “must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.”⁸ Furthermore, applicants may not communicate regarding their bids or bidding strategies.⁹ Detailed comments about optimal band plans, spectrum configurations, geographic license sizes etc. could be construed to be based upon or reflect an applicant’s bids or bidding strategies in the current auction. In addition, forming coalitions to jointly advocate a consensus band plan would likely be inhibited. Simply stated, because of the purposefully broad interpretation the Commission has given to the kinds of communications that could run afoul of the anti-collusion rule, there will be a distinct chilling affect on the preparation and filing of detailed comments and reply comments in this important proceeding.

Thus, MetroPCS submits that the Commission should postpone receiving comments and reply comments on specific issues relating to the auction of this spectrum until March 31, 2008 and April 14, 2008, respectively (this would apply to Sections IV.A, IV.B, IV.C, IV.E and IV.G of the *NPRM*). MetroPCS recognizes that the Commission has voluntarily committed to issue an

⁸ See “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, “Public Notice,” AU Docket No. 07-157, DA 07-4171 at para. 16 (rel. Oct. 5, 2007).

⁹ See 47 C.F.R. § 1.2105(c)(1).

order adopting rules in this proceeding within nine months of the publication of the *NPRM* in the Federal Register.¹⁰ MetroPCS' proposed comment and reply comment deadlines will allow the Commission to maintain this schedule, allowing the Commission four months to properly consider all of the comments and reply comments and finalize an order in this proceeding. MetroPCS notes that the Commission has recognized that extending comment and reply comment deadlines is warranted when necessary to ensure that the Commission receives full and informed response to the issues and that affected parties have a meaningful opportunity to develop a complete record for the Commission's consideration.¹¹ In this particular instance, an extension would be necessary in order to ensure that the Commission receives as complete and informed record as possible. Indeed, the Commission partially granted a similar request by CTIA to extend the deadline for comments for the 700 MHz Band service rules.¹²

However, MetroPCS does believe that the Commission can and should continue to receive comment on the current comment and reply comment schedule for the technical related issues specified in Sections IV.D and IV.F of the *NPRM*. Information and comment on various technical issues, as requested by the Commission, will advance the proceeding and put all interested parties in a better position to take informed positions with respect to the best band plan and auction procedures at a future date. This is because many issues regarding the potential band plan and appropriate service rules are dependant upon relevant technical findings concerning potential interference to operations in nearby bands.

¹⁰ See *NPRM* at para. 4.

¹¹ See, e.g., *Elimination of Rate-or-Return Regulation of Incumbent Local Exchange Carriers, Federal-State Joint Board on Universal Service*, Order, 18 FCC Rcd 26307 at para. 2 (2003); *Telephone Number Portability*, Order, 18 FCC Rcd 26604 at para. 5.

¹² 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. 06-169 and WT Docket No. 96-86, Order, DA 06-1880 (rel. Sept. 15, 2006).

By allowing commenters to have information regarding both the outcome of the 700 MHz Band auction, and well as information relevant to potential technical and interference concerns, the Commission will ensure a full and complete record in this proceeding. Moreover, in doing so, the Commission will, in the view of MetroPCS, actually expedite, not slow down, the ultimate promulgation of the AWS-3 service rules. By adopting an orderly process best suited to foster informed comments, the Commission is most likely to develop a full record that can be acted upon quickly. If parties are forced to file comments prematurely when they lack complete and relevant information, they will be forced to make post-700 MHz Band supplemental filings which will only serve to complicate the record. Indeed, because of the importance of Auction 73 and the severe limitations imposed by the Commission's anti-collusion rule, it is likely that to have a sustainable order the Commission may have to refresh the record before adopting rules. It is in the Commission's interest and in the public interest to allow all interested parties to have an opportunity to review and analyze the auction of the 700 MHz Band spectrum as they consider filing comments about the service rules governing AWS-3 spectrum.

Respectfully submitted,

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