

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

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

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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Summary

MetroPCS Communications, Inc. submits its comments on the *Notice of Proposed Rulemaking* (“*NPRM*”) in the AWS-3 proceeding. As an initial matter, it is premature for parties to make informed comments with respect to many aspects of the *NPRM* – including the optimal band plan, spectrum block sizes, geographic market areas, auction procedures and permissible uses of the AWS-3 spectrum -- without knowing the outcome of the ongoing 700 MHz Band auction. Also, robust debate among and between interested parties, and the formulation of any consensus positions on service rules, geographic market areas, and the band plan, will be inhibited while commenters are subject to the Commission’s anti-collusion rule. Consequently, the Commission must expect and should prepare itself to deal with new or revised proposals in this proceeding after Auctions 73 and, if necessary, Auction 76, are concluded.

MetroPCS also urges the Commission to invite parties to refresh the record in the AWS-2 proceeding and to take steps to consolidate this proceeding with the AWS-2 proceeding, to consider the two spectrum bands together in assessing the band plan, service rules, and geographic areas, and to make all of the AWS-2 spectrum and the AWS-3 spectrum available for application in a single auction. The Commission will be more likely to replicate the recent success of Auction 66, which it is seeking to emulate in Auctions 73 and 76, if it consolidates this remaining spectrum and assigns 40 MHz of spectrum in the next major wireless broadband auction rather than just 20 MHz.

Lastly, in promulgating service rules, the Commission should follow certain core principals that will make the spectrum available in fungible units that can be assembled by applicants at the auction in a building block fashion. This will maximize the prospect that the right amount of spectrum will end up in the hands of the parties who value it most and who are most likely to put it to beneficial use in the public interest.

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MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking*, FCC 07-164 released September 19, 2007 (the “*NPRM*”)² in the above-captioned proceeding. The following is respectfully shown:

I. MANY SUBSTANTIVE ISSUES PERTAINING TO THE AWS-3 BAND DEPEND ON THE OUTCOME OF THE 700 MHZ AUCTION

As noted previously by MetroPCS in its request for partial modification of the comment and reply comment deadlines in this proceeding, it is impossible for commenters to provide fully informed comments on the non-technical issues in this proceeding prior to the conclusion of the 700 MHz auction.³ Also, the normal, useful robust discussion that takes place among and

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).

³ “Request of MetroPCS Communications, Inc. for Partial Modification of Comment and Reply Comment Deadlines,” WT Docket No. 07-195 (filed Dec. 6, 2007).

between interested parties – including discussions of possible consensus service rules, geographic license areas, and band plans – will be inhibited because many interested parties no doubt filed applications to participate in Auction No. 73 (and the subsequent Auction 76) – and thus currently are subject to the Commission’s anti-collusion rule.⁴ Indeed, the anti-collusion rule obligates competing short-form applicants to “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.”⁵ Detailed comments about optimal band plans, spectrum configurations, geographic license sizes, combinatorial bidding and other auction details could be construed to reflect or communicate an applicant’s bids or bidding strategies in the current auction.⁶ The forming of coalitions to jointly advocate a consensus band plan could be inhibited as well. Indeed, given the technical challenges to using this band, it is very important that parties are able to meet and discuss potential solutions with the anti-collusion rule in place, and given the stiff penalties for violations, it is doubtful any meaningful conversations will be able to take place. These inhibitions will remain in place until the anti-collusion rule is no longer in effect following the close of Auction 76. 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

⁴ See 47 C.F.R. § 1.2105(c).

⁵ 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); see also 47 C.F.R. § 1.2105(c)(1).

⁶ Of course, the Commission could take comments under seal, but that would undoubtedly violate the Administrative Procedure Act.

rule, there will be a distinct chilling affect on the preparation and filing of detailed comments and reply comments in this important proceeding.⁷

Moreover, the *NPRM* comes on the heels of a wide-ranging debate regarding the service rules, performance requirements, geographic areas, and band plan for the upcoming 700 MHz Band auction.⁸ This debate reflected widely divergent views as to the highest and best use of the available 700 MHz spectrum, the proper configuration of the spectrum and licenses and the optimal auction rules that should apply to it (*e.g.*, whether anonymous bidding, combinatorial bidding, stringent geographical construction standards and open platforms should be mandated). 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, a vast array of unique service rules were promulgated for the 700 MHz Band, including a nationwide public/private partnership license, a 22 MHz block subject to combinatorial bidding and open access conditions, and strict geographic performance requirements for the lower 700 MHz band.⁹ Further, the Commission used a novel “market” based approach to certain service rules, geographic areas, band plans, and performance requirements that cannot be adequately considered until the auction has completed. Determinations as to whether these somewhat controversial and novel approaches were successful and should be extended to new bands certainly will be informed and influenced by the outcome of the 700 MHz auction.

⁷ The Commission could also waive the anti-collusion rule with regard to comments in this proceeding or give further guidance - - but this also is fraught with risk.

⁸ 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) (“*Order*”).

⁹ See *id.*

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 and the 4G Coalition for America, actively participated via comments, reply comments and *ex partes*, and have indicated intentions to bid for spectrum in the 700 MHz auction. 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.”¹⁰ Given this approach, there is a 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,¹¹ 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 opportunity to both review and analyze new spectrum licenses and their respective markets, as well as the results of the novel approaches used by the Commission in the 700 MHz auction, any accumulated record in this proceeding would be at best incomplete, and at worst speculative. Indeed, because the 700 MHz auction’s results inform differently than prior auctions (e.g. service rules, open access, and geographic build-out requirements), waiting for the results are even more important.

¹⁰ *See id.* at para. 64.

¹¹ *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”).

Since parties are being asked to file comments when significant pertinent factors remain in play, they will no doubt need to make post-700 MHz auction supplemental filings to create a complete record. Based upon these circumstances, MetroPCS at this point is only offering high level conceptual comments that the Commission should take into account in its initial review of the record to determine the AWS-3 service rules. Once the 700 MHz auction is complete, MetroPCS may submit more specific and well informed comments for the Commission's consideration.

II. THE COMMISSION SHOULD CONSOLIDATE ITS CONSIDERATION OF THE SERVICE RULES FOR THE AWS-2 AND AWS-3 BANDS AND PLAN FOR A SINGLE AUCTION OF 40 MHZ OF SPECTRUM

The Commission at present is considering service rules for 40 MHz of spectrum allocated for advanced wireless services: 20 MHz of spectrum in the AWS-3 band, and 20 MHz of spectrum in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands ("AWS-2"). For a number of reasons, the Commission should consolidate its consideration of service rules, geographic licensing areas, performance requirements, and band plans, for these two bands, promulgate all such rules for both bands concurrently and conduct a single auction of the spectrum in both bands. MetroPCS submits that such consolidation is critical in order to maximize the prospect that the spectrum is assigned in the public interest.

The Commission initially solicited comment on the AWS-2 Band on September 24, 2004 – with comments due November 23, 2004 and reply comments due January 7, 2005 (the Commission subsequently extended the reply comment deadline until February 8, 2005).¹² Since February 8, 2005, the Commission has promulgated service rules for both the AWS-1 spectrum

¹² *In the Matter of Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263 (2004) ("AWS-2 NPRM").

(consisting of 90 MHz of spectrum), and the 700 MHz Band (consisting of 60 MHz spectrum). These allocations increased by a substantial amount the available nationwide spectrum (from 220 MHz to 370 MHz). In addition, in the nearly three years since the AWS-2 pleading cycle closed, the usage of wireless services (both data and voice) has increased substantially – and the diversity and types of services being provided and developed over spectrum (i.e., wireless broadband, WiMax, LTE) has changed dramatically. Further, the industry has consolidated considerably and new entrants - - such as SpectrumCo - - have become licensees and other new entrants - - such as Google - - are also poised to become participants. In addition, the Commission has adopted certain other rules which change the regulatory landscape, such as the automatic roaming obligation and the finding that high speed Internet access is an information service. In short, the wireless landscape has changed markedly since February 2005, and the Commission should solicit further comment on the effects of these changes to the existing AWS-2 record and the service rules, band plan, geographic areas, and performance requirements.

In addition, the Commission noted in the *NPRM* the potential interference concerns between transmissions in the AWS-3 Band and the 2175-2180 MHz slice of the AWS-2 Band.¹³ These technical inter-relationships argue in favor of finalizing rules for these two bands together. By receiving comment on possible interference concerns between the bands concurrently, the Commission can ensure that such concerns are adequately resolved on a comprehensive rather than a piecemeal basis. Moreover, the Commission notes in the *NPRM* that certain AWS-3 spectrum may be used in conjunction with certain AWS-2 spectrum, stating that a “downlink approach [for the 2155-2175 MHz band plan] would enable asymmetric pairing of AWS-3 spectrum with AWS-1, proposed AWS-2, or other Commercial Mobile Radio Service (CMRS)

¹³ See *NPRM* at para. 73.

bands.”¹⁴ While taking comment on such a proposal, it is critical that any and all concerns and plans that involve both AWS-2 and AWS-3 spectrum be resolved together. Further, if one possible use of the AWS-3 Spectrum is to pair it with AWS-2 spectrum, the auction for the spectrum should be consolidated to minimize the exposure risk for applicants and to allow for maximum flexibility.

By consolidating the AWS-2 and AWS-3 proceedings, the Commission can auction 40 MHz of spectrum at one time, rather than only 20 MHz. Auctioning a larger block of spectrum in the same auction will allow for a more flexible band plan and will encourage more robust bidding and participation. It also would accord bidders a better opportunity to pursue business plans that utilize both AWS-2 and AWS-3 spectrum, as contemplated by the Commission above. Notably, combining these proceedings should not take additional time, and should not adversely effect the Commission’s voluntary commitment to promulgate service rules for the AWS-3 proceeding in the 9 month allotted time frame. There already is a substantial record in the AWS-2 proceeding, and parties can reasonably be asked to update that record promptly. This will enable the Commission to promulgate rules for both AWS-2 and AWS-3 concurrently. Such a consolidation will promote consistency across the AWS bands, allow for the resolution of all possible interference concerns in a singular fashion, and enable the Commission to take a big picture approach to ensure that this last major allocation of broadband spectrum is optimized.

III. THE COMMISSION SHOULD ADHERE TO CERTAIN CORE PRINCIPLES IN ITS DETERMINATION OF THE AWS-3 SERVICE RULES

The service rules for the AWS-3 and/or AWS-2 Bands should be based on certain core principles in order to promote the assignment of each license to the entity that values it most:

¹⁴ See *id.* at para. 21.

Utilize A Building Block Approach: As advocated previously by MetroPCS, the Commission should adopt a band plan that is flexible and encourages broad participation by utilizing smaller service blocks and smaller geographic areas.¹⁵ By taking a “building block” approach and offering a sufficient amount of spectrum in small geographic areas and spectrum sizes, the Commission would permit meaningful participation in any auction by a diverse group of carriers – including smaller carriers and prospective and new entrants into the marketplace.¹⁶ Such an approach also allows bidders who desire large license areas or spectrum blocks to aggregate licenses into such configurations, as demonstrated by numerous entities in the AWS-1 auction.¹⁷ In adopting a building block approach, the Commission would be following its statutory obligation to ensure “an equitable distribution of license and services among geographic areas” and “avoid [] excessive concentration of licenses . . . by disseminating licenses among a wide variety of applicants. . .”¹⁸ Such an approach increases the prospect that winners and losers will be determined by free market forces, rather than regulatory fiat. Moreover, by utilizing small spectrum blocks and small license areas, the Commission will allow potential bidders the flexibility to construct their networks and business plans in a way of their own choosing – rather than have the Commission predetermine such choices for them.¹⁹

¹⁵ See “Comments of MetroPCS Communications, Inc.,” WT Docket Nos. 06-150, 06-169, and 96-86, PS Docket No. 06-229 at 13 (filed May 23, 2007) (“MetroPCS 700 MHz Comments”).

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 14.

¹⁸ 47 U.S.C. § 309(j)(3).

¹⁹ MetroPCS previously has demonstrated that large spectrum blocks are not necessary for high speed broadband data services, and that smaller spectrum blocks can be utilized to provide such services. See “Reply Comments of MetroPCS Communications, Inc.,” WT Docket Nos. 06-150, 06-169, and 96-86, PS Docket No. 06-229 at 7-12 (filed June 4, 2007) (“MetroPCS 700 MHz Reply Comments”).

Combinatorial Bidding is Unnecessary to Aggregate Spectrum: Notwithstanding the outcome of the debate with respect to the 700 MHz C Block rules, MetroPCS remains steadfast in its view that the Commission should not promulgate auction rules that allow for combinatorial bidding. Many prior auctions confirm that combinatorial bidding is not necessary to enable carriers to assemble nationwide licenses.²⁰ Indeed, in Auction No. 66, SpectrumCo and T-Mobile were able to build virtually nationwide coverage without the use of combinatorial bidding.²¹ Moreover, combinatorial bidding is skewed toward certain large prospective bidders, and would discourage participation of smaller or regional carriers.²²

Geographic Performance Requirements, or a “Keep What You Use” Rule, are Unnecessary: The Commission should not apply arbitrary geographic performance requirements to additional spectrum.²³ As an initial matter, the Commission, in the *NPRM*, notes that AWS-3 spectrum may be used in conjunction with AWS-1, AWS-2, or other CMRS bands.²⁴ Since geographic performance requirements were not applied to the AWS-1 Band, or to any other CMRS band (with the exception of the 700 MHz Band), it would be wholly inconsistent for the Commission to apply such requirements to the AWS-3 Band. Indeed, when the Commission promulgated its rules for AWS-1 spectrum it held that:

²⁰ MetroPCS 700 MHz Comments at 20. Even if the combinatorial bidding process in the 700 MHz auction for the C-Block results in the assignment of a nationwide license to a single provider, it will not disprove the MetroPCS position since the same result could have occurred without combinatorial bidding.

²¹ *Id.* at 20-22.

²² MetroPCS 700 MHz Reply Comments at 12-17

²³ MetroPCS 700 MHz Comments at 29-38.

²⁴ *NPRM* at para. 21 (“a downlink approach would enable asymmetric pairing of AWS-3 spectrum with AWS-1, proposed AWS-2, or other Commercial Mobile Radio Service (CMRS) bands”).

Section 27.14(a)'s substantial service requirement will provide licensees greater flexibility to determine how best to implement their business plans based on criteria demonstrating actual service to end users. This requirement provides the flexibility required to accommodate the new and innovative services we believe will be forthcoming in these bands.²⁵

There is no difference between the AWS-1 spectrum and the AWS-3 spectrum that would necessitate a change in the Commission's prior determination that further regulatory requirements are unnecessary. Any such requirements would create an unlevel competitive playing field in which newcomers to a market operating on the AWS-3 spectrum are at a significant disadvantage because of cost flexibility. Stringent build-out mandates have the effect of imposing artificial government-mandated burdens upon licensees, in lieu of relying upon market forces to drive system development. Indeed, the Commission has repeatedly expressed its preference for market-driven service requirements,²⁶ and this preference should be implemented in the AWS-3 Band. Further, the 700 MHz band has considerably different propagation characteristics which may make covering larger geographic areas easier.²⁷ However, AWS-3 has the same population characteristics as AWS-1 and PCS spectrum and any special rules will create significant regulatory differences in this spectrum and will deter bidding.

The Commission Should Not Restrict Use of the AWS-3 Spectrum: The Commission should not apply unnecessary restrictions to the AWS-3 Band, such as "open access" rules or proposals that require the Commission to overly regulate the spectrum in order to fit a predetermined business plan. Rather, the Commission should use a marketplace-based approach to govern the highly successful and competitive wireless industry and to auction spectrum used

²⁵ See *In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162 at para. 75 (2003).

²⁶ *Id.* at 32-34.

²⁷ This means that even if the AWS A and B Blocks in the 700 MHz auction meet the reserve price such a result is not an indication that the same would occur for AWS-3.

by the wireless industry. Again, the AWS-3 spectrum is similar to AWS-1 and PCS and should have similar service rules. The Commission also should reject the M2Z proposal, or any similar proposals, that seek to dictate by government fiat the types of services to be provided over the AWS-3 Band.²⁸

MetroPCS favors an auction which includes as many fungible licenses as possible with licensees accorded the most flexibility possible. This ensures that the market, not artificial regulatory policies, will determine value and will determine winners and losers. When “command and control” regulatory policies rather than market forces are relied upon, licenses will not be sold for their true market value and often will not be acquired by the bidders who value them most highly. Moreover, applying “open access” type rules,²⁹ or strict usage-restrictions as proposed by M2Z, would cater to the particular business plans of a select few auction participants. Tailoring auction plans to particular applicants is reminiscent of the failed “command and control” spectrum allocation policies of the past. The Commission has stated that “Section 309(j) embodies a presumption that licenses should be assigned as a result of an auction to those who place the highest value on the use of the spectrum,” as those parties “are presumed to be those best able to put the licenses to their most effective use.”³⁰ Indeed, a main conclusion in a report issued by the Commission 15 years ago that set forth the roadmap for a transition to the use of a market allocation of spectrum stated that “[a]n ideal market allocation

²⁸ “MetroPCS Communications, Inc.’s Reply to M2Z Networks, Inc.’s Opposition to Petitions to Deny and Petition for Forbearance,” WT Docket Nos. 07-16 and 07-30 (filed April 3, 2007).

²⁹ Furthermore, the Commission should not impose unnecessary regulation or restrictions where marketplace forces continue to be at work. Indeed, recently, Verizon Wireless announced that it would voluntarily subject its network to certain “open access” specifications. See “Verizon Wireless to Introduce ‘Any Apps, Any Device’ Option for Customers in 2008,” Verizon Wireless Press Release, Nov. 27, 2007.

³⁰ See *NextWave Personal Communications, Inc.*, Order on Reconsideration, 15 FCC Rcd 17500, 17513 (2000).

should impose no restrictions of spectrum uses and users beyond those necessary to limit interference, to prevent anti-competitive concentration, and to comply with international agreements.”³¹ Bearing this principle in mind, the Commission should allow for a flexible auction, consisting of as many fungible units as possible.

IV. CONCLUSION

The foregoing premises having been fully considered, MetroPCS respectfully submits that the Commission take actions in this proceeding consistent with these Comments.

Respectfully submitted,

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³¹ Kwerel, Evan and John Williams, *A Proposal for a Rapid Transition to Market Allocation of Spectrum*, OPP Working Paper 38, Federal Communications Commission at 3-4, November 2002.