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

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

REPLY COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc. and its subsidiaries (collectively, "Leap") submit these reply comments in response to above-captioned Notice of Proposed Rulemaking ("Notice").

Leap is an interested party in this proceeding, having made an investment in AWS-1 spectrum that exceeds one billion dollars. In reviewing the record, Leap shares the concerns of many parties that mobile transmissions at 2155-2175 MHz could pose a significant risk of interference to adjacent AWS-1 and AWS-2 operations. As the Commission introduces new AWS-3 spectrum into the CMRS marketplace, Leap believes that it is very important for the agency to calibrate the proper policy balance between providing as much flexibility for AWS-3 licensees as possible, but doing so by reference to the significant investment in AWS spectrum that has preceded the development of the AWS-3 spectrum allocation. With that policy balance in mind, Leap offers the following reply comments below.

I. THE COMMISSION SHOULD ADOPT TECHNICAL RULES AND AN AWS-3 BAND PLAN THAT FACILITATE ADDITIONAL CMRS ENTRY AND SERVICE EXPANSION, BUT THAT ALSO PROTECT ADJACENT AWS LICENSEES

In the *Notice*, the Commission noted that limiting the AWS-3 spectrum only to base station transmissions would greatly simplify the treatment of interference issues in the band, and suggested that a downlink-only approach may be the most effective "for obtaining the efficient utilization of the band."[1] These observations are well supported by the current record.

Many parties have confirmed the substantial interference risk to AWS-1 and AWS-2 operations by introducing mobile transmissions into AWS-3 spectrum.[2] To address this problem, Leap agrees that adopting a downlink-only restriction with respect to the use of AWS-3 spectrum is the best way to balance the need to protect the significant investments of AWS-1 licensees with the general desire to promote additional entry and service expansion in the CMRS marketplace. As Motorola observes, such an approach would mitigate mobile-to-mobile interference issues and cause interference considerations with adjacent operations to be "similar for the PCS or AWS base stations transmit bands."[3] At the same time, the use of the AWS-3 band as a downlink would still afford licensees the flexibility to pair AWS-3 spectrum with other frequency bands licensed for CMRS use, including asymmetric

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1 *Notice* at ¶ 21.

2 *See, e.g.*, Comments of CTIA – The Wireless Association at 2-7; Comments of Motorola, Inc. at 3-8; Comments of T-Mobile USA, Inc. at 3-4; Comments of Verizon Wireless at 13-15.

3 Comments of Motorola, Inc. at 7.

pairing with AWS-1 or PCS spectrum to facilitate next-generation wireless data services.[4]

In terms of band plan, Leap agrees with those parties who endorse a "building block" approach with respect to AWS-3 spectrum.[5] Specifically, Leap believes that the optimal AWS-3 band plan should feature two 10 MHz spectrum blocks. The creation of two 10 MHz licenses will facilitate the continued acquisition of AWS spectrum by multiple carriers, while also affording block sizes that are large enough initially to be utilized for asymmetric pairing and advanced broadband services.

Leap also urges the adoption of a similar building block approach with respect to AWS-3 geographic area license sizes. In this regard, Leap believes that the public interest will be well-served by adopting uniform Economic Area ("EA") licensing for AWS-3 spectrum blocks. EA licenses are well-understood and have been already been used in conjunction with the licensing of AWS-1 spectrum. In addition, they are large enough areas to facilitate efficient aggregation by large wireless providers with fewer transactions costs in the event that such carriers desire coverage of larger regions, but are still small enough to permit smaller and regional carriers to obtain access to AWS-3 spectrum. Leap believes that a licensing scheme that serves a diversity of providers in this fashion is in the public interest.

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4 *See id. See also Notice* at ¶ 21; Comments of T-Mobile USA, Inc. at 4. A downlink-only approach also may be important to protect adjacent MSS services. *See* Comments of TerreStar Networks, Inc.

5 *See, e.g.,* Comments of Intel Corporation at 2; Comments of MetroPCS Communication at 8.

II. THE RECORD DEMONSTRATES NO REASON FOR THE COMMISSION TO DEVIATE FROM ITS "SUBSTANTIAL SERVICE" PERFORMANCE REQUIREMENTS FOR AWS SERVICES

Leap agrees that the AWS "substantial service" performance requirement should remain unchanged.[6] The substantial service standard has been adopted with success in a number of other wireless services,[7] and less than four years ago, the Commission expressly rejected a return to geographic- or population-based construction requirements or benchmarks as conflicting with its "market-oriented policies."[8] The Commission at that time did not dispute that inflexible construction benchmarks force inefficient investment and impede both innovation and the marketplace's ability to provide the services most demanded by consumers.

Last year, the Commission made a different judgment in an effort to promote rural area service, re-introducing complicated geographic construction benchmarks in its upcoming licensing of 700 MHz band spectrum.[9] Leap views that decision as

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6 See, e.g., Comments of CTIA – The Wireless Association at 17-21; Comments of MetroPCS at 9-10.

7 *See, e.g., Rural NPRM,* 18 FCC Rcd 20802, 20819 ¶ 34 ("In more recently adopted rules for wireless services, such as our Part 27 rules for private services, Lower and Upper 700 MHz, 39 GHz, and 24 GHz, the Commission established the substantial service standard as the only construction requirement."). *See also* Coalition Proposal at 44. ("There is ample precedent for [a substantial service] approach as the Commission has adopted this very same requirement for operation at 2.3 GHz, the Upper 700 MHz band, the Lower 700 MHz band, the paired 1392-1395 MHz and 1432-1435 MHz bands or the unpaired 1390-1392 MHz, 1670-1675 MHz and 2385-2390 MHz bands.").

8 *Rural Order*, 19 FCC Rcd 19078, 19122 (2004).

9 In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Second Report and Order, WT Docket No. 06-150 (rel. Aug. 10, 2007), at ¶ 153.

unfortunate and its wisdom questionable. The Commission's decision on this point was widely opposed by the wireless industry, and the results of the 700 MHz experiment have not yet culminated in either a successful spectrum auction or any perceived improvement in the incentives for wireless buildout.

In any event, however, the imposition of such requirements would be inappropriate for AWS-3 licenses. History is already proving that the judgment to adopt a "substantial service" benchmark with respect to AWS-1 licensing was the right one, translating into a highly efficient and successful assignment of AWS-1 spectrum licenses at auction, and the current diligent efforts by AWS licensees to clear the spectrum as quickly as possible in order to deploy service to consumers. The record contains zero support for charting a different regulatory course now.

III. THE COMMISSION SHOULD NOT PRESCRIBE BUSINESS MODELS FOR AWS SPECTRUM

The Commission should reject calls by opportunists[10] and well-meaning public interest groups[11] to impose conditions that would dictate pricing plans, minimum data rates or specific AWS service content by regulatory fiat. There is no evidence that such artificial constraints on the manner in which demand for AWS services will be met by the CMRS marketplace are necessary. To the contrary, Leap agrees that permitting service providers the regulatory flexibility to adapt to the

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10 *See* Comments of M2Z Networks, Inc.

11 *See, e.g.*, Comments of Free Press, Media Access Project, New America Foundation, and Public Knowledge at 8-13.

changing marketplace is "critical to bringing consumers new and innovative services."[12]

IV. THE COMMISSION SHOULD AUCTION AWS-3 SPECTRUM, BUT SHOULD NOT ADOPT DETAILED AUCTION RULES UNTIL AFTER THE 700 MHZ AUCTION

With respect to the assignment of AWS-3 licenses, there is no reason for the Commission to alter its standard approach to licensing CMRS spectrum using competitive bidding procedures. However, Leap shares the reservations of other parties regarding the use of combinatorial bidding techniques.[13]

At a minimum, Leap urges the Commission to defer a decision on this point, as well as the implementation of anonymous bidding procedures, until they can be evaluated by reference to the success of the upcoming 700 MHz auction, which is the most fulsome application of these concepts to date. Assessing the operation of the combinatorial and anonymous bidding features in that auction could provide important data points regarding whether the public interest will be serve by replicating or refining them here with respect to AWS-3 licenses.

V. CONCLUSION

Leap respectfully urges that the Commission tailor its AWS-3 service rules in a fashion that is consistent with these Reply Comments.

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[12] Comments of CTIA- The Wireless Association at 12. *See also* Comments of The Consumer Electronics Association at 5 (observing that "a regulatory mandate to adopt a specific business plan or service also undermines a core component of the Commission's spectrum policy – allowing market forces to shape the development of the wireless industry").

[13] *See, e.g.*, Comments of MetroPCS Communications, Inc. at 9; Joint Comments of TDS Telecommunications Corporation and United States Cellular Corporation at 4.

Respectfully submitted,
-/s/-

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