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
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229

COMMENTS OF COX COMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

Cox, one of the nation's leading communications companies, was a successful winning bidder in the Commission's recent 700 MHz auction. The company is fully committed to becoming a significant commercial mobile radio service ("CMRS") provider and to bringing the most advanced wireless and mobile broadband services to its customers. Although Cox believes it is well positioned to be a vigorous new entrant in the marketplace, it continues to have a need for spectrum. Accordingly, in the event the Commission holds a D Block auction that does not include the 700 MHz Public/Private Partnership condition, Cox urges the Commission: (1) to utilize the Cellular Market Areas ("CMA") as the geographic service area in order to afford all interested parties an equal opportunity to access this block of 700 MHz spectrum; and (2) to adopt specific service and auction rules that maximize opportunities for new competitors.

Large licenses simply are economically unavailable to most smaller wireless providers and new entrants, who are unable to bid on spectrum in markets larger than geographic areas justified by their business plans. At a time of continued consolidation in the wireless marketplace, the Commission should be doing what it can to promote market entry, not tipping the scales in favor of the few largest providers. CMAs are small enough to be available to all participants in an auction, but are able to be aggregated so as to be attractive to larger carriers as well as small. Utilizing CMAs as the service area for D Block spectrum will serve the public interest by creating an equal opportunity for all auction bidders.

In addition to utilizing smaller geographic service areas, the Commission should adopt service and auction rules to maximize opportunities for new competitors in the event of a D Block auction without the 700 MHz Public/Private Partnership condition. Specifically, Cox urges the Commission to: (1) maintain any eligibility restrictions that it has imposed in a prior auction; (2) establish build out requirements based on population; (3) refrain from revisiting the paired 5-megahertz band plan; (4) allow partitioning and disaggregation; and (5) decline to adopt anonymous bidding. Cox believes that these rules will create the proper incentive structure and provide necessary flexibility to ensure that potential new entrants into the CMRS marketplace are able to participate fully in a D Block auction that does not include the 700 MHz Public/Private Partnership condition.

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Cox Communications, Inc.,[1] by its attorneys, files these comments in response to the Second Further Notice of Proposed Rulemaking ("*FNPRM*") of the Federal Communications Commission ("FCC" or "Commission") seeking comment on the status of the Upper 700 MHz D Block (758-763/788-793 MHz) ("D Block") and the associated 700 MHz Public/Private Partnership that has been established by the Commission in the upper portions of the 698-806 MHz band ("700 MHz Band").[2] Cox was a successful winning bidder in the Commission's

[1] Cox Communications, Inc., submits these comments on behalf of itself and its affiliates, including its subsidiary Cox Wireless, Inc. For purposes of these Comments, "Cox" is intended to refer to Cox Communications, Inc., and all of its affiliates collectively.

[2] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Second Further Notice of Proposed Rulemaking, WT Docket 06-50, PS Docket No. 06-229 (rel. May 14, 2008) ("*FNPRM*"). The *FNPRM* was published in the Federal Register on May 21, 2008. 73 Fed. Reg. 29582 (May 21, 2008).

recent 700 MHz auction, and the company is fully committed to entering the commercial mobile radio service ("CMRS") market and to bringing the most advanced wireless and mobile broadband services to its customers. Cox's comments are limited to one component of the *FNPRM*: potential service and auction rules in the event of an auction of the D Block that does not include the 700 MHz Public/Private Partnership condition. As a relatively new entrant, Cox urges the Commission, in the event it holds such a D Block auction: (1) to utilize the Cellular Market Areas ("CMA") as the geographic service area in order to allow all interested parties an equal opportunity to access this block of 700 MHz spectrum; and (2) to adopt specific service and auction rules that maximize opportunities for new competitors.

I. BACKGROUND AND INTRODUCTION

Cox is one of the nation's leading media and communications companies with interests in broadcast television, radio, newspapers, cable television, and telephony. As the country's third largest cable operator, Cox has invested over $16 billion in a broadband network that carries voice, video, and data. It has over six million customers across 18 states in a total of 22 diverse markets. Cox already has significant experience in providing voice services as well, as it has been providing facilities-based local telephone service since 1997 and currently provides telephone service to more than 2 million households. Finally, Cox offers broadband access to 99.4% of its homes passed and has over 3.8 million customers subscribing to its high speed internet services.

Cox also has a long history with the wireless sector and intends to focus substantial resources in the near future on becoming a significant wireless competitor. Cox helped engineer the world's first Personal Communications Service ("PCS") call via cable television infrastructure in 1992 and, as a result received a Pioneer's Preference PCS license for the Southern California Major Trading Area. Cox's PCS network later became part of the Sprint network. More recently, Cox is a participant in the SpectrumCo joint venture that successfully won 137 Advanced Wireless Service ("AWS") licenses for $2.377 billion in Auction 66. Cox is presently engaged in supporting the AWS spectrum clearing process and is actively developing a wireless infrastructure for these spectrum holdings.

In an effort to complement SpectrumCo's AWS holdings, Cox was a successful participant in Auction 73. Having bid just over $300 million, the company is the high bidder for 22 licenses located throughout the United States; all of which overlap in some manner with existing Cox operations. Cox intends to use the AWS and 700 MHz spectrum to develop wireless and mobile broadband products that build on the significant content, data, and voice services already provided to its customers. While Cox believes that it is well positioned to be a vigorous new entrant into the CMRS marketplace, it continues to have a need for spectrum that could be alleviated by an auction that is designed to promote opportunities for new entrants if the D Block spectrum is made available without the 700 MHz Public/Private Partnership condition.

II. DISCUSSION

A. In The Event The D Block License Is Re-Auctioned Without A 700 MHz Public/Private Partnership Obligation, The FCC Should Auction The Spectrum On A CMA Basis To Maximize Opportunities For New Entrants In The CMRS Marketplace.

While Cox considers the 700 MHz auction a success for its own commercial interests, the auction also revealed a significant demand for 700 MHz spectrum that remains unmet. Dr.

Coleman Bazelon[3] laid out a compelling case for this unmet demand in his April 15, 2008, testimony before the House Commerce Committee, Subcommittee on Telecommunications and the Internet.[4] Looking at the highest amount that unsuccessful bidders were willing to pay for A and B Block licenses, and then adjusting that amount down for those unsuccessful bidders who were able to secure replacement spectrum in another block, Dr. Bazelon estimates that the unmet demand in the A and B Blocks totals $9.3 billion.[5] As discussed below, in the event of a D Block auction without the 700 MHz Public/Private Partnership condition, the Commission should structure the auction to maximize opportunities for all companies, but in particular new entrants, to satisfy this unmet demand.

During Auction 73, Cox was the high bidder for a combination of Economic Area ("EA") and CMA licenses. The availability of smaller license areas, specifically CMAs, enabled Cox to secure spectrum in markets it might otherwise not have been able to access. In other words, as a new entrant, Cox, like many other interested bidders, simply is unable to bid on spectrum in markets larger than the geographic areas justified by its business plans. In the *FNPRM*, the Commission requested comment on whether it would "best serve the public interest to continue to license the D Block on a nationwide basis, or should [it] choose a smaller geographic service area, such as the CMA, EA, and REAG sizes used to license the other 700 MHz blocks?"[6]

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[3] Dr. Bazelon was a consultant to Cox during Auction 73, but his testimony before the Committee was not sponsored by the company.

[4] *See* Oversight of the Federal Communications Commission – The 700 MHz Auction: Hearing Before the Subcomm. on Telecommunications and the Internet of the H. Comm. on Energy and Commerce, 110th Cong. (2008) (statement of Dr. Coleman Bazelon at 18) ("Bazelon Testimony").

[5] *Id*. at 20.

[6] *FNPRM*, ¶194.

Based on its own experiences from Auctions 66 and 73, Cox strongly believes that the best way for the Commission to promote competition in the CMRS sector, and accordingly to promote the public interest, is to facilitate market entry for competing carriers by using the smallest license blocks possible, CMAs.

The Commission already has auctioned off over 28 megahertz of 700 MHz spectrum on a regional or nationwide basis. If the Commission elects to auction off the D Block without the 700 MHz Public/Private Partnership condition on a large regional or nationwide basis, the result would be that over 38 of the 84 megahertz of licensed 700 MHz spectrum, roughly 45 percent, essentially is made available to only the largest carriers. Large licenses simply are economically unavailable to most smaller wireless providers and new entrants. At a time of continued consolidation in the wireless marketplace, the Commission should be doing what it can to promote market entry, not tipping the scales in favor of the few largest providers.

CMAs serve an important dual purpose in that (1) they are small enough to essentially be available to all participants in an auction; and (2) they are attractive to both large and small carriers, as well as new entrants, as evidenced by the results of Auction 73. In that auction, the B Block CMA licenses were the highest valued at auction, averaging about $2.7 per MHz/pop, more than double the amounts for licenses auctioned on larger geographic areas.[7] In addition, AT&T was the high bidder for about 62 percent of the B Block licenses.[8] The next highest bidder of B Block spectrum was Verizon, which won over 16 percent of the B Block spectrum,

[7] Bazelon Testimony at 16.
[8] *Id*. at 12.

according to one source.[9] Thus, roughly 78 percent of the CMA spectrum was acquired by the two largest wireless companies, and at higher values than other blocks available in Auction 73. Clearly, the smaller size of the license blocks is not a gating obstacle to the spectrum acquisition efforts of the largest companies. But the reverse does not hold – large license blocks will keep smaller bidders out. The high MHz-pop value for the B Block also is based in part on the fact that the licenses were highly competitive. The size of the CMA licenses makes them available to all bidders; thus a greater number of bidders are willing to bid on these licenses, as opposed to the larger blocks that only draw the interest of a handful of bidders.

At the same time, the CMA spectrum represents a significant opportunity for new competitors, such as Cox. Companies that are just getting into the marketplace can best satisfy their spectrum needs, which tend to be more granular than the spectrum needs of the biggest carriers, by acquiring smaller blocks of spectrum. Cox was the high bidder for a number of Auction 73 A-Block licenses, which were auctioned off as EAs. However, the size of many other EA licenses makes it almost impossible for Cox to acquire spectrum on an EA basis for those markets given the company's targeted spectrum needs. For example, Cox has a cable system in Ocala, Florida. While Ocala has its own CMA, Ocala is just a small part of the much larger Orlando EA. The difference in population coverage is significant, with the Orlando EA covering 3.64 million pops, while the Ocala CMA covers just 258,000.[10] At Auction 73, Cox fortunately was able to win the Ocala CMA license, which will allow it to be a competitive

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[9] *BIA Perspectives*, http://blog.bia.com/ (Mar. 28, 2008) (Auction 73 Results – 700 MHz Spectrum).

[10] *See Auction of 700 MHz Band Licenses Closes,* 23 FCC Rcd 4572 (WTB 2008) (Public Notice).

wireless provider in this market to the benefit of both its customers and other residents in the area. Importantly, though, if a CMA license for Ocala had not been available in the auction, Cox would have been shut out of the market because it would have been unable to justify, from a financial perspective, buying a larger spectrum block when it only wanted and needed spectrum for Ocala.

The decision as to what type of license areas to use for a possible D Block auction without the 700 MHz Public/Private Partnership condition will determine whether the auction truly enables new entrants to enter new markets or whether they will potentially be shut out because the licenses at auction simply are too big to allow for their participation. And with the largest EAs covering many millions, it is difficult, if not impossible, from an economic standpoint for many companies to buy a whole EA license, when they prefer to serve a smaller part of the area. Simply put, new entrants are locked out of these markets unless CMA license sizes are available. However, the opposite is not true (as demonstrated clearly by the active participation by AT&T and Verizon in the B Block); larger players still have the option of aggregating CMAs to create larger blocks if they want.

Furthermore, Cox does not support the use of package bidding in a D Block auction with CMAs because package bidding can eliminate many of the public interest benefits created by using smaller license areas. Package bidding is one method to manage aggregation risk during an auction. But the likely impact of aggregation risk in a D Block re-auction is minimal given the results of Auction 73. With a large block of 700 MHz spectrum already auctioned, interested bidders, particularly new entrants, will view a D Block auction without the 700 MHz Public/Private Partnership condition as an opportunity to complement existing holdings, not create new ventures. In this type of situation, aggregation risk should not affect bidding strategies. Moreover, carriers have had great success aggregating spectrum in auctions even without package bidding. As touched on above, AT&T was able to secure a large block of CMA licenses without package bidding in Auction 73, and SpectrumCo had similar success with EA licenses in Auction 66. The Commission should not employ package bidding in any D Block re-auction because it is unnecessary and will cause a disproportionate impact on bidders interested in smaller licenses.

Finally, while Cox supports the partition and disaggregation rules, it is unrealistic for the Commission to rely on these options to correct the market distortion created by auctioning licenses larger than CMAs. The business risk of acquiring, as an example, the Orlando EA, to simply secure coverage of Ocala is significant. Not only would the company incur the extra expense of financing to acquire such a large block, it then must incur additional transaction costs as it seeks to divest those portions of the EA that it cannot use; that is assuming the company can even locate an appropriate buyer. This is not the type of burden the Commission should be imposing on its newest entrants at the very same time the largest carriers are becoming increasingly flush with spectrum. Thus, the public interest is much better served by using CMAs to create an equal opportunity for all bidders within the auction process than to tip the scales away from new entrants by using larger geographic licenses areas.

B. In The Event Of A D Block Auction Without A 700 MHz Public/Private Partnership Condition, Cox Urges The FCC (1) To Maintain Any Eligibility Restrictions That It Has Imposed In A Prior Auction In The Subsequent Auction; (2) To Base Build-Out Requirements On Population; (3) To Not Revisit The Paired 5-Megahertz Band Plan; (4) To Allow Partitioning And Disaggregation; And (5) To Decline To Adopt Anonymous Bidding.

D Block Eligibility Restrictions. Cox appreciates the Commission's interest in exploring various options for ensuring a successful negotiation of a Network Sharing Agreement ("NSA") in the event a D Block auction takes place with the 700 MHz Public/Private Partnership conditions: "If we provide that a failure of negotiations to produce an NSA will result in a subsequent auction of D Block license(s) without the 700 MHz Public/Private Partnership conditions, a winning bidder might have an incentive for those negotiations to fail so that it can bid on licenses without the [] conditions in the subsequent auction."[11] Cox believes, though, that an auction winner in that scenario will be highly motivated to complete the NSA to prevent a subsequent re-auction. It is difficult to imagine a situation in which an auction winner would attempt to undermine the negotiation process in order to trigger another D Block auction without conditions for reasons outlined below.

Though it may not be necessary, Cox understands the Commission's rationale for considering whether to put in place a prohibition on a D Block license winning bidder from participating in any subsequent auction. If the Commission does make such a decision, Cox believes that the restriction should apply to all parties related to the winning bidder, which would include: affiliates; all parties with ownership interests (including those with unexercised options

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[11] *Id.*, ¶147.

to acquire); and any other party that has an agreement with the bidder regarding the auction or its outcome.

More importantly, Cox believes strongly that any eligibility restrictions that the Commission may decide to impose prior to a D Block auction with the 700 MHz Public/Private Partnership should not be lifted for any subsequent re-auction. Cox disagrees with the suggestion that lifting auction eligibility restrictions might "alter the likelihood that the winning bidder in an initial auction could win the license again, and [] offset any potential incentive such a winning bidder might have for NSA negotiations to fail following the first auction."[12] If the Commission determines that an eligibility restriction for an initial D Block auction is necessary to promote competition in the CMRS marketplace, to prevent unnecessary consolidation, or for some other public interest benefit, it is unclear to Cox how the public interest will be served if such a restriction is later lifted. A subsequent D Block auction will be highly competitive, even if certain parties are excluded as a result of an eligibility restriction, because of the significant unmet demand from Auction 73.

Finally, a winning bidder for a D Block license with the 700 MHz Public/Private Partnership condition will have sufficient motivation to conclude a successful negotiation of the NSA and will not need the perceived threat of more competition in a subsequent auction as a further incentive to negotiate. It is difficult to imagine how the possible lifting of auction eligibility restrictions would change those motivations as a winning bidder who fails to complete the NSA would: (1) lose access to 20 MHz of spectrum; (2) possibly be foreclosed from bidding

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[12] *Id.*, ¶150.

in a subsequent auction; (3) suffer significant financial harm; and (4) experience a loss of goodwill because of its role in failed NSA negotiations, even if the bidder ultimately was not found to be at fault.

Performance Requirements. As discussed throughout these comments, a D Block auction without the 700 MHz Public/Private Partnership condition should be designed to maximize opportunities for new entrants, particularly in light of the current state of the CMRS marketplace. One way to promote new entry in the wireless industry is for the Commission to use population-based performance requirements for the D Block in that situation.[13]

New entrants must have sufficient flexibility during the build out process because they often have increased challenges in raising capital, and must deploy their funds in the most strategic manner possible. An overly aggressive geographic-based performance requirement could have the effect of preventing a new entrant from acquiring certain licenses because it is unable to secure the capital needed to commit to the deployment required to serve a large geographic area in short order. It should be clear that Cox fully intends to comply with the geographic requirements imposed on the licenses that it is acquiring through Auction 73. But building a network essentially from the ground up, while competing with existing industry leaders, is a challenge. And an FCC-imposed geographic-based performance requirement simply makes the challenge that much more difficult. The Commission has relied on population benchmarks for many years with great success. Given the choice, the Commission should apply population-based performance requirements in a D Block auction without the 700 MHz

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[13] *Id.*, ¶196.

Public/Private Partnership to allow new entrants to deploy their facilities in the manner that makes the most sense for their business plan, not just to comply with a geographic-based construction requirement.

Band Plan. Cox fully supports the Commission's decision not to revisit its earlier determination to award the D Block as a 10-megahertz spectrum block made up of paired 5-megahertz blocks in the event of a re-auction without the 700 MHz Public/Private Partnership condition.[14] Paired five-megahertz blocks are critical from a technical standpoint to allow licensees the flexibility to develop the most advanced networks possible. Cox also supports a 10-year license term as previously determined by the Commission.

Partitioning and Disaggregation. Cox notes the Commission's determination that it will not allow partitioning and disaggregation by the winning bidder in a D Block auction <u>with</u> a 700 MHz Public/Private Partnership condition.[15] However, in response to the question posed in the *FNPRM*, Cox believes strongly that the Commission should allow partitioning and disaggregation in the event of a D Block auction without the condition.[16] Winning bidders of D Block spectrum in that situation should have the same opportunities as winning bidders in Auction 73 and other CMRS licensees. Partitioning and disaggregation are useful tools to provide opportunities for new entrants to have access to spectrum.

Cox notes, though, that if the Commission truly wants to promote access to spectrum, it should use CMAs as the geographic service area for a D Block auction without the 700 MHz

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[14] *Id*., ¶198.
[15] *Id.* at n.117.
[16] *Id*., ¶203.

Public/Private Partnership condition, as set forth above. The spectrum secondary market is important but can be a frustrating experience for new entrants who require spectrum in more populous areas. Ultimately, while helpful, partitioning and disaggregation are a poor substitute for the public interest benefits of using smaller license blocks during the auction process.

Anonymous bidding. Cox acknowledges the Commission's legitimate interest in trying to limit any possible collusion during an auction. However, the use of anonymous bidding to address collusion in a highly competitive auction like we saw in Auction 73 – and will undoubtedly see again in any future D Block auction – is misplaced. Anonymous bidding in fact places a disproportionate impact on smaller, more localized, bidders. On the one hand, it is significantly easier for bidders to identify the markets of interest to new entrants based on their obvious geographic preferences and more limited spectrum footprint. New entrants also are often more resource constrained as compared to the larger wireless providers and thus are forced to target specific markets of need during the auction process. It is not difficult for the largest carriers to identify potential competitors on a market by market basis, even in an auction with anonymous bidding. On the other hand, smaller bidders are at a distinct disadvantage because they are unable to as easily discern the bidding strategies and objectives of the larger carriers.

The Commission has suggested that anonymous bidding would help the chances of new competitors emerging in Auction 73.[17] But as one of the few new entrants to successfully

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[17] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules;*

participate in Auction 73, Cox would like to present the exact opposite position: that the anonymous bidding in fact places a disproportionate impact on new entrants. Simply put, the auction results suggest that anonymous bidding provided very little assistance to new entrants in the auction. Indeed, anonymous bidding in fact reduced available information and may have artificially reduced auction proceeds, as parties were unaware of the bidding and eligibility positions of other bidders at later stages of the auction.[18]

Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, 22 FCC Rcd 15289, 15392, ¶280 (2007). ("We find that the record in this proceeding indicates that implementing anonymous bidding procedures will reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors.")

[18] Bazelon Testimony at 15 (noting that after Verizon was the high bidder on the C Block in round 30, it had a deficit in eligibility that meant it could not bid back on certain licenses for which it was the high bidder when it was bid off of those licenses). As Dr. Bazelon notes, in an open auction, all bidders would have known Verizon's condition, which would have allowed these bidders to bid against Verizon. Verizon ended the auction with a significant eligibility discount, which was not as efficient a result as would have occurred in an open auction. *Id.*

III. CONCLUSION

As demonstrated herein, the Commission has an opportunity to further promote competition by adopting auction and service rules that will encourage new entrants in the event of a D Block auction that does not include the 700 MHz Public/Private Partnership condition.

Respectfully submitted,

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