

**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

**JOINT REPLY COMMENTS OF CELLULAR SOUTH, INC.
AND RURAL CELLULAR ASSOCIATION**

David L. Nace
Todd R. Slamowitz
Todd B. Lantor
**Lukas, Nace, Gutierrez & Sachs,
Chartered**
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
Phone: (703) 584-8678
Fax: (703) 584-8696

*Counsel to Cellular South, Inc. and
Rural Cellular Association*

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Cellular South, Inc. (“Cellular South”)¹ and the Rural Cellular Association (“RCA”),² by and through counsel, hereby submit these Joint Reply Comments in response to the Third Further Notice of Proposed Rulemaking adopted by the Commission in the above-captioned proceedings.³ Cellular South and RCA take this opportunity to elaborate on the need for the Commission to provide a fair opportunity for the licensing of the 700 MHz D Block spectrum on a regional basis and to ensure that any obligations that require roaming by public safety users are extended to commercial services. In addition, Cellular South and RCA recommend that the Commission establish

¹ Cellular South is one of the largest privately-held wireless companies in the nation and serves Mississippi along with portions of Alabama, Tennessee, Florida, and Arkansas.

² RCA is an association representing the interests of more than 80 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as one million customers, and all but two of RCA’s members serve fewer than 500,000 customers.

³ *In the Matter of 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*, WT Docket No. 06-150, PS Docket No. 06-229, Third Further Notice of Proposed Rulemaking, (rel. September 25, 2008) (“*Third FNPRM*”).

eligibility criteria for participation in the D Block re-auction based on a carrier's current spectrum holdings, and permit partitioning, disaggregation and spectrum leasing arrangements in the 700 MHz D Block spectrum.

I. THE COMMISSION MUST ENSURE THAT IT PROVIDES PARTIES WITH A FAIR OPPORTUNITY TO BID FOR REGIONAL LICENSES AND SHOULD MODIFY THE PROPOSED AUCTION FORMAT

In its initial comments, Cellular South explained that regional licenses would increase the bidder pool thereby promoting competition, increasing participation by smaller carriers, and allowing auction participants to acquire spectrum in areas where they have a real desire to operate.⁴ Many commenters support a regional licensing approach as well, contending generally that regional licensees would be more responsive to local public safety users because they would be more familiar with the local public safety entities' needs and requirements than a nationwide carrier.⁵

However, despite the regional licensing option, the Commission's proposed auction rules remain skewed in favor of a single, nationwide license winner. Essentially, as currently proposed, a high bidder on the nationwide license that meets or exceeds the minimum opening bid will be the auction winner as long as regional licenses remain available once bidding activity has ended – even if the aggregate amount of the regional bids exceeds the high bid on the nationwide license. Cellular South and RCA recognize that the Commission has established certain procedural triggers that would result in the

⁴ Cellular South Comments at 3-4. RCA initially supported a nationwide licensing approach, for the 700 MHz D Block spectrum. See RCA Comments at 2-3 (dated June 20, 2008). However, at that time, the Commission's auction proposals regarding the D Block spectrum were vastly different than the proposals set forth in the *Third FNPRM*. Specifically, RCA's support of a nationwide licensing scheme hinged on a commercial roaming obligation being placed on the nationwide licensee which was effectively rejected by the Commission in the *Third FNPRM*.

⁵ See e.g., United States Cellular Corporation Comments at 2-4; Leap Wireless International, Inc. Comments at 3-4; Bright House Networks Comments at 10-13; Northrop Grumman Information Technology, Inc. Comments at 3; City of Philadelphia Comments at 4.

continuation of bidding on the regional licenses, but such procedural triggers are inadequate to ensure fair competition between the regional and nationwide bidders.⁶

To correct the deficiencies with the auction format being proposed, Cellular South and RCA agree with United States Cellular Corporation that the Commission should remove the requirement that the minimum opening bids for the regional licenses be lowered only when the aggregate minimum opening bids for the regional licenses exceed the nationwide bid.⁷ This would avoid a possible auction scenario whereby the auction would end even if there is one regional license still available, but the aggregate regional bids are only minimally lower than the nationwide bid.⁸ In this scenario, automatically lowering the minimum opening bids (rather than only doing so upon exceeding the nationwide bid) and continuing to auction the regional licenses would result in the regional licenses having a higher aggregate bid than the nationwide license – an outcome the Commission should support.

In the alternative, the Cellular South and RCA suggest that the Commission consider a format in which the trigger for decreasing minimum opening bids for the remaining regional licenses would be a percentage of the nationwide bid based on the amount of the nationwide population still available. For example, the minimum opening bids would be lowered if the aggregate regional licenses bid is 85% of the nationwide bid and at least twenty-five (25%) of the nationwide population remained available or if the aggregate regional licenses bid is 75% of the nationwide bid and at least fifty percent

⁶ Cellular South has also suggested that the Commission consider a format in which Public Safety Regions would be auctioned in the first stage of the auction and a nationwide license would be offered in a second stage if there is insufficient interest in the regional licenses. This would serve the dual purpose of allowing targeted bidding by the greatest possible number of participants in the first stage, while still protecting against a scenario in which activity for the regional licenses does not meet the minimum threshold. *See* Comments of Cellular South at 4.

⁷ United States Cellular Corporation Comments at 20.

⁸ *Id.*; Leap Wireless International, Inc. Comments at 4-5.

(50%) of the nationwide population remained available. Such a proposal would, at the very least, ensure that regional bidders have as fair and equal opportunity to obtain D Block spectrum as the nationwide bidders and enhance the Commission's goal of getting licenses into the hands of those who are in the best position to deliver service to the public.

Cellular South and RCA also support United States Cellular Corporation's recommendation to modify the trigger for decreasing minimum opening bids in the absence of a nationwide bid.⁹ The Commission currently proposes to reduce the minimum opening bids on the regional licenses if at least fifty percent (50%) of the nationwide population is covered and no bidding activity remains on the licenses. Since the Commission is nonetheless going to award licenses as long as half the nationwide population is covered, the Cellular South and RCA agree that lowering the trigger percentage to forty percent (40%) would achieve the Commission's objective.

Finally, if none of the D Block spectrum is sold as a result of not meeting the minimum opening bid for the nationwide license or the fifty percent (50%) nationwide population coverage requirement, then Cellular South and RCA propose that any subsequent auction of the D Block spectrum be for commercial purposes on a Cellular Market Area ("CMA") basis.

II. THE COMMISSION MUST REQUIRE AN AUTOMATIC ROAMING OBLIGATION TO COMMERCIAL USERS OF THE D BLOCK

In the *Third FNPRM*, the Commission indicated that regional D Block license winners would be obligated to enter into arrangements to ensure interoperability between regional networks, including, at a minimum, that each D Block licensee will permit

⁹ United States Cellular Corporation Comments at 20.

roaming on its network to public safety users of all other 700 MHz public safety broadband networks.¹⁰ However, in a one sentence footnote, the Commission refused to extend the roaming obligation to commercial services.¹¹ In its initial comments, Cellular South urged the Commission to reconsider this proposal, indicating that access to a nationwide network for roaming would be an incentive for smaller and regional commercial carriers to participate in the D Block auction.¹² RCA and Bright House Networks also believe that such a requirement would encourage commercial participation beyond the largest national carriers in the 700 MHz Public/Private Partnership.¹³

In addition to voice roaming, Cellular South and RCA agree that an automatic roaming requirement is critical with respect to data services.¹⁴ Consumers choose a wireless device and expect it to work – whether at home or outside their carrier’s home market area. With automatic roaming for both voice and data services, consumers would experience a seamless broadband network throughout the 700 MHz broadband networks. The Commission should use this opportunity to mandate both voice and data roaming with respect to the 700 MHz D Block commercial spectrum or, at the very least, seek additional comment on this issue.

¹⁰ *Third FNPRM* at ¶ 111.

¹¹ *Id.* at FN 232.

¹² Cellular South Comments at 4-5.

¹³ Bright House Networks Comments at 5.

¹⁴ As noted by Bright House Networks, the D Block spectrum is ideal for multiple services, including data services, which is not covered by the Commission’s roaming rules, but will be a significant component of D Block traffic. *Id.*

III. THE COMMISSION MUST LIMIT PARTICIPANTS' ELIGIBILITY IN ORDER TO PROMOTE COMPETITION AND DISCOURAGE FURTHER CONCENTRATION OF SPECTRUM

In the *Second FNPRM*, the Commission asked for comment on whether the public interest would be served by limiting participation in the D Block auction, specifically by limiting those parties who “have significant access to 700 MHz Band spectrum.”¹⁵

Cellular South responded affirmatively, stating its belief that “the public interest would not be served by allowing the concentration of this resource in the hands of just a few parties.”¹⁶ RCA responded by stating that “[s]ince the nation’s wireless marketplace is currently bordering on oligopsony, Commission action that increases the likelihood of the emergence of a new nationwide competitive entrant (*e.g.*, auction rules that prevent AT&T’s and Verizon Wireless’ participation in the 700 MHz re-auction) is clearly in the public interest.”¹⁷

In the *Third FNPRM*, the Commission tentatively concluded that it should not adopt eligibility restrictions for the D Block re-auction.¹⁸ Cellular South and RCA again urge the Commission to reconsider this tentative conclusion and recognize the competitive harm that results when spectrum – particularly low-band spectrum – is concentrated in the hands of the country’s largest carriers. Cellular South and RCA agree

¹⁵ *In the Matter of 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*, WT Docket No. 06-150, PS Docket No. 06-229, Second Further Notice of Proposed Rulemaking (rel. May 14, 2008) (“*Second FNPRM*”) at ¶ 157.

¹⁶ See Comments of Cellular South, WT Docket No. 06-150, PS Docket No. 06-226 (filed June 20, 2008) at 3.

¹⁷ See Comments of RCA, WT Docket No. 06-150, PS Docket No. 06-226 (filed June 20, 2008) at 3-5.

¹⁸ *Third FNPRM* at ¶ 267.

that the Commission should exclude any entity holding more than 80 MHz of spectrum below 2.3 GHz in any given region.¹⁹

IV. THE COMMISSION MUST PERMIT PARTITIONING, DISAGGREGATION AND SPECTRUM LEASING ARRANGEMENTS IN THE 700 MHz D BLOCK SPECTRUM

In the *Third FNPRM*, the Commission concludes that it would not serve the public interest to change the current rule governing D Block partitioning and disaggregation, which prohibits any partitioning and disaggregation of a D Block license.²⁰ In making the determination to prohibit partitioning and disaggregation in the D Block, the Commission previously concluded that the unrestricted license transfer or disaggregation and partitioning of the D Block license would be detrimental to the successful deployment and continued operation of nationwide broadband system.²¹ The Commission determined that the success of the Public/Private Partnership largely depends on the partnership structure and the negotiated terms of the NSA and that adding new parties into the partnership structure and splitting various obligations among the new partners after the NSA is executed could further complicate the rights and responsibilities of each party, possibly impairing the nationwide aspect of the broadband network.²² Hence, the Commission concluded that if the D Block licensee is allowed partitioning

¹⁹ The proposed 80 MHz spectrum aggregation limit would include any future spectrum holdings that are currently the subject of a transfer of control or assignment application being considered or already approved by the FCC, as well as any spectrum held by an affiliate or subsidiary of which 10% or more control is held by the potential bidder.

²⁰ *Third FNPRM* at ¶ 73.

²¹ See *In the Matter of 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*, WT Docket No. 06-150, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289, 15475 (2007).

²² *Id.*

and disaggregation, the administrative burden on both D Block licensee and the public safety licensee would outweigh the benefit of flexibility to the licensee.²³

However, the decision to prohibit D Block partitioning and disaggregation was rendered in August 2007. At that time, the Commission was only considering a single, nationwide license. Cellular South and RCA believe that the Commission's rationale for excluding partitioning and disaggregation is no longer applicable as the Commission has now proposed a regional licensing scheme. Should regional licensing prevail in the auction, 58 regional licenses could be made available. By definition, there will be "multiple licensees" in the D Block – reason enough for the Commission to permit partitioning and disaggregation. Further, regional licenses are still large enough to exclude the smallest wireless carriers from participation in the auction. For the smallest wireless carriers, the partitioning/disaggregation option may be enticing enough to command their interest. Cellular South and RCA believe that permitting partitioning and disaggregation would be consistent with the approach the Commission has taken with respect to all other CMRS services and meets the Commission's overarching spectrum efficiency policy objectives. As the Commission stated when it first established its partitioning and disaggregation rules:

We believe that such flexibility will (1) facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; (2) increase competition by allowing market entry by new entrants; and (3) expedite the provision of service to areas that otherwise may not receive ... service in the near term."²⁴

²³ *Id.*

²⁴ *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 21831 ¶ 1 (1996) ("CMRS Partitioning and Disaggregation Order").

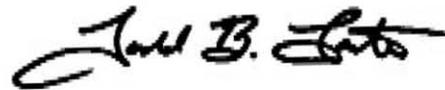
In the *CMRS Partitioning and Disaggregation Order*, the Commission also noted that the Commission's rules provide for spectrum leasing. In this proceeding, the Commission has not indicated whether spectrum leasing arrangements (either spectrum manager or *de facto* leasing) are prohibited in the D Block. For all practical purposes, spectrum leasing achieves the same objective as partitioning and disaggregation in that it essentially allows spectrum to be partitioned into smaller licensed areas or frequencies to be split, ultimately resulting in additional operators, and should also be permitted.

V. CONCLUSION

Based on the foregoing, Cellular South and RCA request that the Commission modify the auction rules to more fairly support a regional licensing approach, ensure that any roaming obligations applicable to auction winners extend to commercial services, establish eligibility criteria for participation in the D Block re-auction based on a carrier's current spectrum holdings, and permit partitioning, disaggregation and spectrum leasing arrangements in the 700 MHz D Block spectrum.

Respectfully Submitted,

**CELLULAR SOUTH, INC.
RURAL CELLULAR ASSOCIATION**



David L. Nace
Todd R. Slamowitz
Todd B. Lantor
**Lukas, Nace, Gutierrez & Sachs,
Chartered**
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
Phone: (703) 584-8678
Fax: (703) 584-8696

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