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December 9, 2008

57739-000020

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band (WT Docket No. 07-195) (AWS-3); Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands (WT Docket No. 04-356) (AWS-2)

Dear Ms. Dortch:

On December 8, 2008, Mark A. Stachiw of MetroPCS Communications, Inc. ("MetroPCS"), along with Carl W. Northrop and Michael Lazarus of Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), participated in separate meetings with (1) Bruce Gottlieb, Legal Advisor to Commissioner Copps; (2) Renee Crittendon, Legal Advisor to Commissioner Adelstein; (3) Commissioner Tate; and (4) Julius Knapp, Bob Weller, Ira Keltz, Patrick Forster, and Alan Stillwell of the Office of Engineering and Technology regarding the above-referenced proceedings. The oral presentations in these meetings were consistent with the pleadings and *ex partes* filed on behalf of MetroPCS in the above-referenced proceedings, as further supplemented below.

In addition to positions previously taken, MetroPCS advocated what it calls a "Cafeteria Plan" for the Commission's allocation of the AWS-3 and AWS-2 bands. Specifically, the Commission should adopt an allocation plan that allows it to simultaneously take bids for alternative configurations of the AWS-3 and AWS-2 licenses. Such an approach -- which is similar to the Commission's proposal for re-auctioning the 700 MHz D Block spectrum,<sup>1</sup> and the successful Air Ground auction<sup>2</sup> -- would allow the auction process to

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<sup>1</sup> See *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*, Third Further Notice of Proposed Rule Making, FCC 08-230 (rel. Sept. 25, 2008) (the auction proposal includes three alternatives: (1) a nationwide license with technology platform to be determined by winning bidder; (2) a set of regional licenses for use with the LTE technology platform; and (3) a set of regional licenses for use with the WiMax technology platform).

<sup>2</sup> "Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006," Public Notice, DA-06-299 (rel. Feb. 21, 2006) (the three alternative band plan configurations auctioned were: (1) comprised of three overlapping, shared, cross-polarized 3 MHz

determine what spectrum configuration is most valued for these spectrum blocks. This approach also would allow for widespread participation in an auction for this critically-needed spectrum, without limiting the allocation to a particular design or business model.

For example, M2Z has advocated both a 20 and 25 MHz AWS-3 allocation that allows for TDD usage. MetroPCS has advocated a 20 MHz AWS-3 allocation which will maintain the currently paired 10 MHz J Block (5 MHz paired with 5 MHz) in a BTA configuration. T-Mobile has advocated an asymmetrically paired AWS-3 allocation. The Commission could allow interested parties to bid simultaneously on all of the AWS-2 and AWS-3 spectrum configured in these, and perhaps other manners, with the winners determined by the license configuration that draws the highest bids on an aggregate basis.<sup>3</sup>

This Cafeteria Plan approach is much more efficient than an inflexible allocation plan that is tailored to the business plan of one or a small group of industry participants. Restrictive allocations that contain service rules that proscribe the particular services that can and must be provided serve to limit interest and participation in an auction and do not allow marketplace forces to determine the highest and best use of the spectrum. In contrast, the Cafeteria Plan would allow the market - - through the auction process - - to establish the highest and best use for the spectrum rather than having the Commission use outdated command-and-control regulatory policies to try to pick winners and losers.

MetroPCS also submits that the Commission should seek further comment on this proposed “Cafeteria Plan” auction approach.<sup>4</sup> Seeking further comment will enable the Commission to properly identify all of the alternative license configurations that are of interest to potential bidders. A further *NPRM* also will provide an opportunity for the Commission to give notice of and solicit input on MetroPCS’ proposal to move the 5 MHz base transmit portion of the AWS-2 J Block from 2175-2180 MHz to 2155-2160 MHz and shift the AWS-3 Block from 2155-2175 MHz to 2160-2180 MHz,<sup>5</sup> a proposed

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licenses; (2) comprised of an exclusive 3 MHz license and an exclusive 1 MHz license; and (3) comprised of an exclusive 1 MHz license and an exclusive 3 MHz licenses, with the blocks at opposite ends of the band from option two).

<sup>3</sup> If the Commission wanted to further social policy goals, such as via a “free” Internet proposal, it could do so through the use of bidding credits. In doing so, the Commission could create bidding incentives for broadband Internet service providers on the AWS-3 spectrum to provide “free” broadband service and content filtering.

<sup>4</sup> For example, the Commission could seek comment on an auction that includes the following three alternatives: (1) the Commission’s 25 MHz *FNPRM* proposal, using the 2155-2180 MHz band and pairing the orphaned 5 MHz of the J Block with the H Block; (2) a 20 MHz variation of the Commission’s *FNPRM* proposal, with an auction of the 2155-2175 MHz band along with an auction of the paired J Block using BTAs as the geographic area; and (3) the T-Mobile “Broadband Maximization” Proposal. The Commission could also vary the OOB limits to maximize alternatives for the spectrum.

<sup>5</sup> See MetroPCS *Ex Parte* Notice in WT Docket Nos. 07-195 and 04-356, filed June 5, 2008.

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change that holds promise of limiting interference concerns when a 20 MHz AWS-3 allocation is used.

Notably, because of the current dismal economic climate, the Commission should not be holding any auctions for spectrum in the immediate future. This means that the Commission can afford to take the small amount of additional time necessary to properly formulate and seek comment on the optimal allocation plan. The Commission should take this golden opportunity to promote significant participation and competitive bidding for the AWS-3 and AWS-3 bands, and consider adopting this "Cafeteria Plan" approach for any auction of these bands.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,

/s/ Carl W. Northrop

Carl W. Northrop  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Chairman Martin  
Commissioner McDowell  
Commissioner Adelstein  
Commissioner Copps  
Commissioner Tate  
Angela Giancarlo  
Bruce Gottlieb  
Renee Crittendon  
Charles Mathias  
Julius Knapp  
Patrick Forster  
Ira Keltz  
Bob Weller  
Alan Stillwell