



December 18, 2008

**Submitted via e-mail**

The Honorable Kevin Martin  
Chairman,  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

**Re: Service Rules for Advanced Wireless Services (WT Docket 07-195)**

Dear Chairman Martin:

The American Legislative Exchange Council (ALEC) writes to express its concerns with spectrum use restrictions proposed in the Commission's *Further Notice of Proposed Rulemaking* for Advanced Wireless Services in the 2155-2175 MHz band. In particular, ALEC believes that the *Further Notice's* restrictions on how auctioned spectrum can be used improperly favors government-mandated price and product preferences over market-based price and product preferences. Respectfully, ALEC urges the Commission to auction such spectrum licenses in a manner that maximizes flexible use and responsiveness to the marketplace.

Recent history suggests that the proposed auction is a new phase in one particular company's attempt to secure free spectrum use. In 2006, M2Z Networks, Inc. applied to the Commission to request an exclusive, free 15-year spectrum license. The Commission rejected the application in 2007. (22 FCC Rcd. 16563, 16570.) ALEC's longstanding *Resolution Concerning Management of the Public Spectrum* (1990) strongly opposes any free allocation of spectrum by the Commission. Accordingly, ALEC supports the Commission's 2007 decision to reject such a free license giveaway. But the *Further Notice* suggests the Commission now auction spectrum under constraints that mirror the business plan of that same company. The public auction process should not be used to favor one private bidder.

ALEC's *Resolution* holds that consumer choice is best assured by "encouraging the most efficient use and fullest deployment of spectrum-based, or wireless, telecommunications services to the greatest number of people at the least possible costs." Efficient deployment should be achieved through "market-based mechanisms, such as competitive bidding or auctions for spectrum assignment." Moreover, ALEC's *Resolution* maintains that the Commission should "[r]educe regulation and rules to encourage flexible use of all assigned frequencies," and ensure "regulatory and tax parity among all new and existing radio-based competitors who offer like, or similar, telecommunications services."

Consistent with its *Resolution*, ALEC is concerned by the *Further Notice's* proposed requirement that the 2155-2175 MHz spectrum auction winner allocate 25% of that spectrum to free wireless broadband service improperly favors one particular company's business model.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL  
**ALEC**

ALEC believes that spectrum efficiency and flexibility is better achieved by leaving spectrum use open to the widest possible range of competing business models. The less restrictive approach allows competing spectrum auction winners the flexibility needed to best meet consumer demands.

To be sure, there is great attractiveness to ad-based models or other business models for delivering broadband services to consumers for free. Technological breakthroughs in targeted advertising, search capabilities, virtual interactivity and so on suggest that such models have the potential to enhance consumer welfare and choice. But the efficacy and viability of such models should ultimately be decided by consumers, not regulators. Government should not presume to know consumer preferences better than consumers themselves. Moreover, even “free” wireless broadband services aren’t entirely free. Such services have costs—whether they are paid for by providers, advertisers or others. The public should not bear those costs through inflexible, inefficient allocation of the public spectrum.

ALEC would also like to take this opportunity to reiterate the views of Secretary of Commerce Carlos Gutierrez, whose letter to the Commission earlier this month insisted that “spectrum should be allocated by markets rather than governments.”

Finally, questions remain concerning the Commission’s jurisdiction for requiring wireless broadband service—a Title I “information service.” ALEC shares the views held by other commentators that the Title II-type common carrier regulations embodied by the *Further Notice*’s spectrum use requirements cannot be justified under existing law.

To reiterate, ALEC believes the public spectrum should be allocated in an efficient and flexible manner. It opposes free giveaways of spectrum as well as overly-rigid restrictions on spectrum use. ALEC supports competitive price auctions of spectrum that do not single out particular business models for special preferences. Although the Commission’s previously scheduled vote on this matter has been cancelled, we understand the proposal is still in circulation. ALEC hopes the Commission will keep these considerations in mind during the remainder of 2008 and in 2009 as it contemplates the proposals set out in the *Further Notice*.

Sincerely,



Seth Cooper  
Director  
Telecommunications & Information Technology Task Force

cc: The Honorable Michael J. Copps  
The Honorable Jonathan S. Adelstein  
The Honorable Deborah Taylor Tate  
The Honorable Robert M. McDowell

