

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of)	
)	GN Docket No. 09-47
Comment Sought On Spectrum for Broadband)	
NBP Public Notice # 6)	GN Docket No. 09-51
)	
)	GN Docket No. 09-137
_____)	

COMMENTS OF METROPCS COMMUNICATIONS, INC.

Carl W. Northrop
Michael Lazarus
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
12th Floor
Washington, DC 20005
Tel. (202) 551-1700

Mark A. Stachiw
Executive Vice President, General
Counsel and Secretary
MetroPCS Communications, Inc.
2250 Lakeside Boulevard
Richardson, TX 75082
Tel. (214) 570-5800

Its Attorneys

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SUMMARY

MetroPCS commends the Commission for issuing this *Notice* in an effort to address the looming spectrum crisis that faces the country's wireless industry. MetroPCS repeatedly has called upon the Commission to identify, allocate and license for commercial use additional paired spectrum. Additional spectrum is needed in the near term to meet immediate unsatisfied demands and in the long term to enable carriers to keep pace with an ever-expanding consumer appetite for wireless services. The unavoidable conclusion is that current spectrum allocations are woefully inadequate to support the increase in the demand for wireless services, particularly as the wireless industry evolves in an increasingly data-centric world. The coming deployment of next-generation technologies, such as LTE, while groundbreaking for consumers, will only serve to fuel demand for advanced wireless services and exacerbate the serious spectrum shortage.

When working to alleviate the looming spectrum crisis, the Commission should endeavor to make available additional spectrum that is proximate to existing commercial broadband allocations. Ideally, the spectrum dedicated to mobile uses should be below 3.5 GHz, as spectrum in this range is uniquely suited to the service requirements of commercial wireless broadband use. Lastly, in order to foster efficient spectrum use, the Commission should examine its network construction and coverage requirements, adopt consistent standards with respect to how carriers fulfill build-out requirements and revisit the effectiveness, and possible unintended consequences, of secondary market and spectrum leasing rules.

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its Comments in response to the *Public Notice* (the “*Notice*”) issued by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceedings.²

I. INTRODUCTION

MetroPCS commends the Commission for recognizing that there is a “looming spectrum crisis” in this country³ and issuing the *Notice* seeking additional focused comments on spectrum for broadband. This *Notice* is an important part of the Commission’s formulation of its National

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed affiliates and subsidiaries.

² *Comment Sought On Spectrum for Broadband; NBP Public Notice # 6*, GN Docket Nos. 09-47, 09-51 and 09-137, DA 09-2100, rel. Sept. 23, 2009.

³ Prepared Remarks of Chairman Julius Genachowski at the International CTIA Wireless I.T. & Entertainment Convention, “America’s Mobile Broadband Future,” October 7, 2009 at p. 4 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf.) (“the biggest threat to the future of mobile in America is the looming spectrum crisis.”)

Broadband Plan because wireless services will be a crucial component of that plan, and spectrum availability will be an essential ingredient for the plan to succeed. In the comments that MetroPCS recently filed in response to the *Wireless Innovation NOI*,⁴ MetroPCS identified spectrum as one of the “essential inputs” that is necessary for wireless broadband to fulfill its purpose as a critical part of the National Broadband Plan and to drive future innovation. MetroPCS urged the Commission to “identify, allocate and license significant amounts of additional paired broadband spectrum” in the near term and to allocate even more spectrum in the longer term.⁵ MetroPCS offered a series of recommendations as to how the Commission should proceed to meet this critical goal to allocate additional spectrum, including (1) finalizing the licensing rules for the AWS-2 allocation of the H Block (1915-1920 MHz paired with 1995-2000 MHz) and the J Block (2020-2025 MHz paired with 2175-2180 MHz) and auctioning those paired channels in the near term; (2) pairing spectrum from the government-occupied 1755-1850 MHz band with the AWS-3 Block (2155-2175 MHz) in order to create additional paired broadband channels and auctioning such spectrum immediately; (3) removing the private/public partnership rules from the 700 MHz D Block (758-763 MHz paired with 788-793 MHz) and allowing the spectrum to be used purely for commercial use as originally contemplated by Congress, and proceeding with the auction of such spectrum; (4) conducting a spectrum inventory to identify and refarm underutilized spectrum managed by the FCC; and, (5) cooperating with NTIA to reallocate government spectrum to commercial broadband use. Mindful that the Commission is not asking interested parties to simply repeat earlier-stated

⁴ *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for our Future, Notice of Inquiry*, GN Docket Nos. 09-157 and 09-51, FCC 09-66, rel. Aug. 27, 2009.

⁵ MetroPCS Comments in GN Docket Nos. 09-157 and 09-51, filed Sept. 30, 2009 at 3. (“*MetroPCS Innovation Comments*”).

positions related to spectrum initiatives, MetroPCS has tailored its response to the *Notice* to provide only information in addition to that which was previously provided, and will focus its comments on the specific inquiries contained in the *Notice*.

In the sections which follow, MetroPCS sets forth certain principle questions posed by the Commission in the *Notice*, followed by its responses. In responding, MetroPCS answers many of the sub-questions that are posed by the Commission on which it has views and relevant information.

II. What Is The Ability Of Current Spectrum Allocations To Support Next-Generation Build-Outs And The Anticipated Surge In Demand And Throughput Requirements?

Current spectrum allocations, including allocations that are in process,⁶ are woefully inadequate to fully support the next-generation broadband mobile wireless networks and the anticipated surge in demand and throughput requirements. The *Notice* properly recognizes that comments in response to the *National Broadband Plan NOI*⁷ evidence an “exponential growth in data traffic on mobile broadband networks that makes it imperative the Commission allocate additional spectrum for mobile broadband use.”⁸ The Commission’s own analyses clearly show that the wireless industry will evolve to a more data-centric world in the near term.⁹ AT&T

⁶ MetroPCS includes in the “in-process” category the AWS-2 H Block, the AWS-2 J Block, the AWS-3 Block and the 700 MHz D Block.

⁷ *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Notice of Inquiry*, 24 FCC Rcd 4342 (2009).

⁸ *Notice* at 2 citing CTIA Jun. 8, 2009 Comments in GN Docket No. 09-51 at 24-26 and T-Mobile Jun. 8, 2009 Comments in GN Docket No. 09-51 at 14.

⁹ *Implementation of Section 6002 (b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Federal Communications Commission, *Thirteenth Report*, WT Docket No. 08-27 at ¶ 211, rel. Jan. 16, 2009.

reports that it has seen a 5,000-fold increase in wireless data usage over the last three years.¹⁰ Other recent trends indicate that data traffic will increase exponentially in the near term. For example, studies show there are approximately 13 million wireless data card users in the United States as of the second quarter of 2008, but that the vast majority of these cards were purchased within the year immediately prior to the survey.¹¹

The ability of current spectrum allocations to support the clearly demonstrated surge in demand is further inhibited by the current concentration of significant spectrum resources in the hands of a few carriers. Three carriers (Verizon Wireless, AT&T Wireless and Sprint/Clearwire) generally hold 100+ MHz of spectrum in each major metropolitan area in which they operate, while the remaining competitors must live with between 10 and 50 MHz of spectrum. For example, on average, MetroPCS has approximately 20 MHz in the metropolitan area in which it operates. However, in several metropolitan areas such as Tampa and Philadelphia, MetroPCS only holds 10 MHz of spectrum. MetroPCS estimates that a carrier needs at least the amount of spectrum held by the largest three spectrum holders to be able to have adequate capacity to offer a robust menu of broadband services to all of the potential customers in the metropolitan areas.¹² Obviously, existing spectrum resources are insufficient to meet this need.

¹⁰ “Carriers’ Needs for More Spectrum Laid Out During Broadband Workshop,” *Communications Daily*, Sept. 18, 2009.

¹¹ *Mobile Data Cards: Not Just for Business Travelers Anymore*, Nielsen mobile, News Release, Aug. 19, 2009, available at http://en-us.nielsen.com/etc/content/nielsen_dotcom/en_us/home/news/news_releases/2008/August/mobile_data_cards.mbc.12955.relatedlinks.95224.mediapath.pdf.

¹² Of course, the largest three carriers may also need additional spectrum as well.

As the Commission is aware, MetroPCS has announced plans to deploy next-generation LTE wireless broadband networks in the near-term.¹³ The MetroPCS transition to LTE will offer significant improvements in performance over currently deployed technology, increased capacity and greater throughput. MetroPCS intends to implement this technology regardless of whether additional spectrum resources are made available. However, this decision, which is borne of competitive necessity, brings with it losses in efficiency and additional costs. Deploying LTE technology within existing AWS and PCS bands, a portion of which will continue to be dedicated to CDMA voice services, increases the risk of adjacent channel interference. And, the fact that MetroPCS will have considerably less capacity than other carriers will limit the number of customers it can serve and the range of services it can provide.¹⁴ MetroPCS also will incur transition costs associated with replacing the existing CDMA network in part with LTE technology. This transition also will slow to some extent the deployment schedule. If, instead, MetroPCS could make the LTE transition using a new block of significant spectrum, operational efficiencies would increase and the implementation period would be shortened. Based upon discussions with its vendors, ideally, MetroPCS would like to increase its current spectrum holdings considerably in order to fully implement and enjoy the benefits of LTE services.

The pace and extent of deployment of different services and technologies will accelerate if more spectrum is available in the near term, which would increase competition. In assessing the tangible benefits of 10 versus 20 or 50 or 100 MHz of additional spectrum, the Commission

¹³ *Unlimited Wireless Carrier MetroPCS Announces Vendors for 2010 4G LTE Launch*, Press Release, Sept. 15, 2009, available at <http://investor.metropcs.com/phoenix.zhtml?c=1777458&p=irol-newsarticle&id=1331809&highlight=>.

¹⁴ MetroPCS will have no choice but to deploy LTE in 1.4 MHz, 3 MHz or 5 MHz channel widths. The relative efficiency of LTE is considerably greater if it can be deployed in larger (5 MHz) channel widths, rather than in smaller (1.4 MHz) bandwidths.

must take into consideration the realities of the auction process. Auctions which only include a very small amount of spectrum (*e.g.*, 20 MHz or less) would not create opportunities for a sufficient number of existing or potential competitors. Given the experience in the 700 MHz auction, where the vast majority of the available spectrum was acquired by the two largest incumbent carriers, the Commission cannot expect to have a meaningful impact on broadband deployment if it holds auctions with a small number of blocks of spectrum available by auction in the face of overwhelming demand – particularly if there is open eligibility. CTIA, with input from its many members, has called on the Commission to allocate “at least 800 MHz of additional spectrum for licensed commercial wireless use within the next six years.”¹⁵ MetroPCS agrees that this is the proper order of magnitude if the Commission hopes to promote and maintain robust retail competition rather than presiding over the formation of a regulated duopoly.¹⁶

The *Notice* asks whether unlicensed devices have adequate access to spectrum that can be used to provide wireless broadband services or as a compliment to services provided over licensed spectrum.¹⁷ While MetroPCS supports the efforts of the Commission to accommodate unlicensed uses, MetroPCS has concluded based on long experience that shared spectrum, unlicensed spectrum and spectrum available only for secondary use will not be of great interest to carriers such as MetroPCS for the purpose of rolling out advanced wireless broadband services. Such spectrum will not serve as the basis for broadband networks able to serve millions of customers. As the Commission knows, spectrum acquisition costs are only a small

¹⁵ Comments of CTIA – The Wireless Association filed September 29, 2009 in GN Docket No. 09-51.

¹⁶ 800 MHz of spectrum would allow six competitors to have 100-200 MHz of spectrum each when current holdings are taken into account.

¹⁷ *Notice* at 5.

part of the total cost associated with designing, implementing and operating a sophisticated telecommunications network. Carriers naturally are reluctant to incur the substantial investments in network infrastructure, customer acquisition costs and establish the necessary customer service infrastructure in circumstances when they do not have assured use (*e.g.*, exclusive use) of a quantifiable spectrum resource. A licensee using non-exclusive spectrum has no way of knowing or accurately predicting the level and extent of use by other co-licensees and, thus, is unable to predict with accuracy the capacity it ultimately will enjoy on a constructed network or the revenues it will earn. Uncertainty of this nature deters investment because of the unquantifiable risk. Based on these considerations, MetroPCS is forced to conclude that identifying additional spectrum for unlicensed devices cannot be the Commission's top priority.¹⁸

III. What Spectrum Bands Are Best Positioned To Support Mobile Wireless Broadband?

The question as to what spectrum bands are best suited to promote wireless broadband services is easily answered. Every effort should be made to find spectrum that is proximate in the spectrum band to existing commercial broadband allocations and below 3.5 GHz in order to foster broadband service. Adjacent or nearby bands are more easily added to existing networks and handsets, thus resulting in economies of scale, operating efficiencies and accelerated deployment. If we look back in time, the Commission conducted a broadband PCS auction

¹⁸ Much of the *Notice* is focused upon the extent to which spectrum is needed to support fixed wireless services. *See, e.g., Notice* at 5. MetroPCS notes that many wireless carriers, and the wireless association, CTIA, strongly advocates the use of the white spaces spectrum for licensed fixed wireless uses. *See Comments of CTIA-The Wireless Association in ET Docket No. 04-186, filed Jan. 31, 2007.* MetroPCS fears that the Commission will find itself in several years in a position where the extent of beneficial uses of the shared, unlicensed, white spaces spectrum will be disappointing, while there remains a shortage of licensable wireless fixed service spectrum.

(Auction 58), a lower 700 MHz band auction (Auction 60), the AWS-1 auction (Auction 66) and the 700 MHz band auction (Auction 73) all within a relatively confined time period (2005 to 2008). Not surprisingly, the bulk of broadband technological development and system deployment is occurring in these recently allocated bands. Consequently, if the Commission is interested in fostering increased broadband deployment sooner rather than later, it should focus its primary attention on finding additional spectrum proximate to these recent allocations in order to maximize the prospect for the rapid deployment of 4G services.

It is for this precise reason that MetroPCS strenuously has advocated that the Commission make its top spectrum priorities the completion of (a) the AWS-2 allocation proceeding; (b) the AWS-3 allocation proceeding; and (c) the 700 MHz D Block allocation proceeding. All of these involve spectrum that is easily integrated with and into existing system deployments by both manufacturers and carriers. MetroPCS has described these allocations as the “low hanging fruit” that the Commission should pick early on in order to address spectrum shortages.

With respect to the AWS-3 proceeding, MetroPCS recommends that the Commission make a concerted effort to identify a block of spectrum to pair with the existing 20 MHz AWS-3 allocation in order to create additional paired channels for auction. Two carriers, AT&T and T-Mobile, recently asked the Commission to take a fresh look at spectrum in the 1755-1850 MHz band for this purpose.¹⁹ These requests deserve priority attention. In 2001, the Commission initiated a proceeding (ET Docket No. 00-258) to identify and allocate spectrum to support new

¹⁹ Comments of AT&T, Inc. at 70 in GN Docket Nos. 09-157 and 09-51, filed Sept. 30, 2009; Comments of T-Mobile USA, Inc. at 22 in WT Docket No. 09-66, filed Sept. 30, 2009.

advanced wireless services.²⁰ In the *AWS NPRM*, the Commission identified the 1755 to 1850 MHz band as worthy of serious consideration for the provision of AWS. This band segment was considered as part of an initial NTIA study looking into the possibility of reallocating spectrum from Government to commercial uses.²¹ Ultimately, NTIA and the FCC concluded that the 1755-1850 MHz band was not the preferred spectrum for AWS due to the existing Federal Government operations in the band.²² However, at the time, the Commission acknowledged that “[a] leap forward in technology may permit extensive sharing in all bands below 3 GHz in the future” and thus its decision not to use the 1755-1850 MHz band was based on the conclusion that it was not suitable “at this time.”²³

Several considerations justify revisiting the previous decision not to focus upon this particular band. First, the Commission has recognized that there is a critical spectrum shortage, and that this shortage will have an adverse effect upon broadband deployment unless

²⁰ *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, *Notice of Proposed Rulemaking and Order*, 16 FCC Rcd 596 (2001) (the “*AWS NPRM*”).

²¹ See U.S. Department of Commerce, National Telecommunications and Information Administration, “Plan to Select Spectrum for Third Generation (3G) Wireless Systems in the United States,” released Oct. 20, 2000 rev. Jan. 22, 2001, *available at* http://www.ntia.doc.gov/ntiahome/threeg/3g_plan14.htm; see also, U.S. Department of Commerce, National Telecommunications and Information Administration, “The Potential for Accommodating Third Generation Mobile Systems in the 1710-1850 MHz Band: Federal Operations, Relocation Costs, and Operational Impacts,” *Final Report*, released March 30, 2001; see also, U.S. Department of Commerce, National Telecommunications and Information Administration, “An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 and 2110-2170 MHz bands,” *Report*, rel. Jul. 22, 2002, *available at* <http://www.fcc.gov/3G/3Gva072202.pdf>.

²² *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Second Report and Order*, ET Docket No. 00-258 rel. November 15, 2002 at ¶ 48.

²³ *AWS Second Report and Order* at ¶ 49.

addressed.²⁴ Second, there have been advances in technology that increase the prospects for interference-free operation in circumstances that before were not considered feasible.²⁵ Third, the existing 20 MHz AWS-3 allocation has continued to generate controversy, particularly because it appears to be a “designer allocation” specially tailored to the business plan of a single proponent²⁶ in the face of recurring evidence that allocations of this nature are ill-advised.²⁷ Fourth, almost a decade has elapsed since the initial review, and in the meantime existing spectrum uses, demands and technology have changed. The pre-existing systems may no longer be in operation or may be in need of replacement, which may allow for their reallocation.

A review of NTIA’s final report regarding the potential use of 1710-1850 MHz for advanced mobile systems supports the view that the Commission and NTIA should revisit this issue. The NTIA *Final Report* found that federal satellite control is an essential governmental function that is authorized to occur in the 1761-1842 MHz portion of the band and could not be

²⁴ Prepared Remarks of Chairman Julius Genachowski, “America’s Mobile Broadband Future,” Oct. 7, 2009, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf.

²⁵ For example, in the Commission’s white spaces proceeding, studies conducted by the Office of Engineering and Technology successfully deployed smart radios that used an automatic “detect and avoid” or “spectrum sensing” strategy to ensure that the devices operated only on vacant frequencies. *Evaluation of the Performance of Prototype TV-Band White Space Devices*, FCC/OET 08-TR-1005, Office of Engineering and Technology, rel. Oct. 15, 2008.

²⁶ Late last year, the Commission came dangerously close to adopting an AWS-3 allocation plan which exactly matched the business plan of proponent M2Z. Negative comments in the AWS-3 proceeding regarding the viability of the M2Z approach, and the risks associated with accommodating the interests of a single industry participant, were eerily reminiscent of comments made with regard to the Frontline public safety proposal which generated the unsuccessful 700 MHz D Block allocation. Tailoring auction plans to particular applicants is reminiscent of the failed “command and control” spectrum allocation policies of the past.

²⁷ With NextWave, valuable C Block PCS spectrum was licensed to a bidder that was unable to meet the funding and building requirements, leaving the spectrum to lay fallow for an extended period of time due to the bankruptcy of the licensee. The background of the NextWave saga is set forth in *Applications for Consent to the Assignment of Licenses by Nextwave Personal Communications Inc., Debtor-in-Possession*, 19 FCC Rcd 2570 (2004).

completely relocated until all satellites using this band have expired, which could be as late as 2030. An analysis by the Department of Defense (“DoD”) indicated that co-channel sharing between satellite control uplinks and transmitting AWS *base stations* could result in excessive interference to the uplink signal and is not feasible. However, the DoD analysis showed that co-channel sharing with transmitting *mobile* stations in a fully built-out scenario results in less interference to the uplink signals. The NTIA *Final Report* contains the following:

The potential for sharing the satellite control uplinks with IMT-2000 mobile units seems to be technically feasible and the potential interference is within the range of prudent risk management. Interference to IMT-2000 systems from satellite control station transmissions could be mitigated by either IMT-2000 systems operating outside of the interference distances calculated for each satellite control station, or some real-time means for the IMT-2000 system to avoid assigning channels on frequencies that satellite control stations are using.²⁸

In light of this finding, the Commission should give serious attention to whether the existing AWS-3 spectrum should be paired with a portion of the 1755-1850 band which would be devoted to mobile operations.

With respect to other spectrum bands that might be repurposed to support mobile wireless broadband, MetroPCS refers the Commission to the comments it filed in response to the *Innovation NOI*. Specifically, MetroPCS suggested the Commission take a hard look at the Mobile Satellite Service (“MSS”) at 2 GHz.²⁹ This spectrum has been dedicated to MSS use for more than a decade and yet, to this day, MetroPCS knows of no substantial, commercially-viable mobile satellite services being provided to consumers on a regular basis. Instead, MSS licensees appear to be devoting most of their time and attention to developing an ancillary terrestrial

²⁸ NTIA *Final Report* at xvi.

²⁹ *MetroPCS Innovation Comments* at 14.

component (“ATC”) service. The Commission should not support efforts of licensees to garner spectrum for one use and convert it to an alternate use. Rather, the presently authorized MSS operations should be moved to higher portions of the band, and the 2 GHz MSS allocation should be reallocated and auctioned off for advanced wireless service use in the commercial sector. Notably, the MSS allocation in the 2 GHz band is proximate to the existing AWS-1 band that is being rapidly and successfully commercially deployed by a variety of wireless carriers including MetroPCS, T-Mobile Communications and Leap Wireless, among others.³⁰

Lastly, MetroPCS encourages the Commission to focus its search for additional broadband mobile wireless spectrum to the range below 3.5 GHz. Spectrum below 3.5 GHz is especially well suited to *mobile* applications because the receiving area of a cell site is sufficient to allow hand-off between cells at highway speeds. Further the coverage/cost/capacity trade offs that come into play when systems are being designed and evolved make spectrum below 3.5 GHz better suited to mobile systems than spectrum higher in the band. As the Commission knows, lower frequency spectrum (such as 700 MHz) is especially highly valued because it allows improved coverage and penetration from a single cell site. Further, less power is needed for lower frequencies, which makes it particularly well suited for mobile applications where battery life is an important variable. In contrast, fixed wireless can and should be located at higher spectrum because external antennas and alternating current from the power grid allow this spectrum to be used efficiently.

IV. What Are The Key Issues In Moving Spectrum Allocations Towards Their Highest And Best Use In The Public Interest?

There are a series of steps the Commission can and should take to address the low average percentage of use of some spectrum in the commercial bands. First and foremost, the

³⁰ See Comments of MetroPCS in GN Docket No. 09-157 filed September 30, 2009 at p. 14.

Commission needs to rationalize the construction and build-out requirements for broadband spectrum. At present, carriers are subject to a variety of largely incompatible construction obligations. For example, licensees of lower band 700 MHz spectrum must meet stringent geography-based coverage requirements³¹ while, in stark contrast, AWS licensees have 15 year term licenses with no interim build-out requirements and a merely “substantial service” requirement at the end of the license term.³² MetroPCS submits that going forward the Commission must strike an appropriate balance between excessive geography-based construction requirements that force carriers to build systems to meet government mandates rather than consumer demand, and open-ended requirements that permit carriers to warehouse spectrum for extended periods of time with no discernable progress towards actual commercial implementation. The key is for licensees to meet reasonable interim benchmarks that are sufficient to demonstrate that they are making meaningful progress towards the construction of the entire licensed area and the provision of beneficial commercial services to paying customers.

Second, the Commission needs to adopt consistent standards regarding the manner in which build-out requirements are met. For example, cellular operators are unable to complete construction and then discontinue service without being subject to regulatory requirements.³³ In contrast, PCS service providers can build to meet construction requirements, notify the

³¹ The Commission has adopted geographic construction requirements for CMA and EA licenses sold in Auction 73, requiring that licensees cover 35 percent of the license territory within four years and 70 percent of the license territory within 10 years. *See* License Period and Construction Requirements, Auction 73 Fact Sheet, *available at* http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=73.

³² *See* License Period and Construction Requirements, Auction 66 Fact Sheet, *available at* http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=66.

³³ 47 C.F.R. § 22.953(c).

Commission of construction, and then discontinue service without being subject to scrutiny.³⁴

This permits PCS license holders to meet construction requirements on only a temporary basis and subsequently to deconstruct the system. Obviously, this does not lead to efficient frequency use.

Third, the Commission must revisit the extent to which its secondary market and spectrum leasing rules are being used to permit carriers to meet construction requirements without providing meaningful services to the public. Some incumbents are taking an “I’ll scratch your back if you scratch mine” approach to system construction by entering into reciprocal agreements to add the other carrier’s frequency to their existing infrastructure in order to meet construction requirements. However, to the knowledge of MetroPCS, no major new competitors or meaningful innovative wireless services have come to market as a direct result of the secondary markets policy. The Commission’s rules on the secondary market for spectrum are well-intentioned, but they have not managed to incent the large carriers to divest voluntarily meaningful amounts of either spectrum or geography to small, rural or mid-tier carriers. The only secondary market that appears to be active is the acquisition by the large carriers of smaller carriers. The solution to this problem is to allocate spectrum in smaller geographic areas and in smaller bandwidths, which will better enable smaller carriers to succeed in acquiring the spectrum in the initial instance at auction, rather than being dependent upon the major incumbents to divest spectrum in the secondary market.

³⁴ *Sunset of the Radiotelephone Service Analog Service Requirement and Related Matters*, Memorandum Opinion and Order at 4, RM No. 11355, FCC 07-103, rel. Jun. 15, 2007 (noting that “the Commission has never imposed the technology-specific AMPS/analog service requirement on any other commercial mobile radio service (CMRS) provider, including PCS and SMR providers”).

Ultimately, the Commission should consider adopting a measure for the nature and extent of current spectrum utilization in a particular geographic area before allowing a carrier to acquire additional spectrum in the area. This is not an unprecedented approach. In the early days of wireless services before spectrum above the 800 MHz range was considered technically viable, the Commission required a carrier with existing spectrum that was seeking additional channels to provide a traffic loading study before being eligible.³⁵ At the very least, the Commission should consider whether there is a utilization measure that could become an element of its spectrum management practices.

V. CONCLUSION

The foregoing premises having been duly considered, MetroPCS Communications, Inc. respectfully requests the Commission to take actions to with respect to spectrum policy consistent with these comments.

Respectfully submitted,



Mark A. Stachiw
Executive Vice President, General
Counsel and Secretary
MetroPCS Communications, Inc.
2250 Lakeside Boulevard
Richardson, TX 75082
Tel. (214) 570-5800
Fax (866) 685-9618

Carl W. Northrop
Michael Lazarus
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005
Tel. (202) 551-1725

Counsel to MetroPCS Communications, Inc.

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³⁵ See, e.g., *Lou Goldstein d/b/a West Florida Communications*, 5 FCC Rcd 5724, ¶ 4 (Com. Car. Bur. 1990); *Page America of New York*, 8 FCC Rcd 4167, ¶ 6 (1993).