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Ex Parte

December 18, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: ***Petition for Rulemaking on 700 MHz Mobile Equipment Capability***
WT Docket No. 09-66, GN Docket No. 09-157

Dear Ms. Dortch:

Verizon Wireless hereby supplements its comments opposing the "Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks," filed on September 29, 2009, by the 700 MHz Block A Good Faith Purchasers Alliance.[1]

The actions the Alliance demands would impede deployment of broadband mobile devices for 4G services and impair delivery of the benefits of 4G technology for consumers – in direct conflict with the Commission's objective of promoting advanced broadband services. Even the mere solicitation of comments on the Petition would raise questions in the industry about the Commission's intentions, and at a minimum it would inject uncertainty

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[1] The first company identified as a member of the Alliance, Cellular South, Inc., repeated the Petition's allegations in its comments in two pending Notices of Inquiry. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services,* WT Docket No. 09-66; Comments of Cellular South, Inc., at 8-15; *Fostering Innovation and Investment in the Wireless Communications Market,* GN Docket No. 09-157, Comments of Cellular South, Inc., at 12. Verizon Wireless opposed those comments in both dockets. Comments of Verizon Wireless in WT Docket No. 09-66 at 85-92; Comments of Verizon Wireless in GN Docket No. 09-157, at 43. Accordingly, this letter is being submitted as an *ex parte* presentation in those dockets.

that could itself impede the development of LTE devices. This could in turn delay the availability of devices needed to achieve the Commission's goal of promoting wireless broadband services. There would thus need to be a compelling showing for the Commission to take up the Petition.

The Petition falls far short of making such a showing. Its factual allegations are unsupported and false, and the legal authority it cites for Commission action is inapposite. The premise of the Petition is that Verizon Wireless seeks to prevent handsets from being manufactured to operate on the Lower 700 MHz A Block spectrum. No facts are provided to support this false assertion. Nothing prevents the Alliance's members from working with manufacturers to design devices to operate on the spectrum its members voluntarily acquired. Moreover, this claim is ridiculous on its face as Verizon Wireless holds A Block licenses for markets that cover over half the population of the country – a fact of public record that the Alliance omits.

Consequently, the Petition should be dismissed without placing it on public notice, a course the Commission has taken before to conserve its resources to avoid dealing with meritless petitions.

The Petition

The Petition claims (without any factual support) that Verizon Wireless and AT&T Inc. have somehow affected the 3rd Generation Partnership Project (3GPP) international standards setting organization and its recently-completed LTE standard to the detriment of purchasers of Lower Band 700 MHz A Block spectrum. According to the Petition, the result is that licensees of Lower 700 MHz A Block spectrum "are left without viable and widely useful equipment options" while Verizon Wireless and AT&T move forward with their plans to deploy LTE in other spectrum segments of the 700 MHz band. The Petition calls for an extraordinary and unprecedented remedy: "suspension of the [FCC's equipment] authorization of any equipment not capable of operating over all paired commercial 700 MHz band spectrum." It also requests a rulemaking to adopt rules that would require all devices for the 700 MHz band to be capable of operating on all 700 MHz frequencies. As explained below, the Petition's claims are meritless and it should be dismissed without further consideration.

3GPP and Its Procedures Have Not Been Used to Discriminate Against Alliance Members

3GPP is an international standards setting organization, which brings together six standards organizations from Asia, North America and Europe to publish mobile device and network standards.[2] 3GPP and its sister organization 3GPP2 were formed in the late 1990s to

[2] The six 3GPP partners are ARIB (The Association of Radio Industries and Business) based in Japan, ATIS (The Alliance for Telecommunications Industry Solutions) based in the United States, CCSA (China Communications Standards Association), ETSI (European Telecommunications Standards Institute), TTA (Telecommunications Technology Association) based in Korea, and TTA (The Telecommunications Technology Committee) based in Japan. *See* www.3gpp.org.

establish standards for the IMT-2000 family of technologies. 3GPP recently completed specifications for Release 8 of Long Term Evolution (LTE), which is an outgrowth of GSM technology. (3GPP2 primarily works on standards for cdma2000® technologies.)

Any member of the six 3GPP partners can become a 3GPP member. The North American partner, ATIS, has over 250 member companies. Full ATIS membership is available to service providers, manufacturers, distributors and developers of communications, entertainment and information technology products and services.[3] Other entities, such as trade organizations, academics, and consumer advocacy groups may become ATIS affiliate members and thereby 3GPP members. Based on a review of the publicly-available membership information for 3GPP and ATIS, none of the members of the Alliance is a member of either 3GPP or ATIS, although they were free to join.

Like other standards organizations, 3GPP uses an open participation process for standards setting, in which any member can submit a proposal or contribution, and any member can participate in the deliberations regarding that proposal. As in similar organizations, proposals are considered in a working group for the specific topic, and the recommendations of the working group are considered at a plenary. 3GPP contributions are evaluated on their technical merits based on the expertise of all participating companies.

The 3GPP specifications associated with the use of LTE include a set of band classes for operation of devices and base stations, based on spectrum bands allocated for mobile wireless operations in various countries and internationally, including 850 MHz Cellular, 1.9 GHz Personal Communications Service (PCS), 2.5 GHz Broadband Radio Service (BRS), and 700 MHz Wireless Communications Service (WCS). For operations at 700 MHz, there are four band classes identified in the current LTE standard: 12 (Lower A, B, and C Blocks), 13 (Upper C Block), 14 (Upper D Block and PS Broadband Block), and 17 (Lower B and C Blocks).[4] The proposals recommending the creation of these Band Classes were submitted to the LTE working groups in 2008. Throughout the consideration at the working group and plenary levels, participants could have objected or proposed modifications; in addition, objections can be raised through the various 3GPP partner organizations. Members of the Alliance could have participated, through ATIS or otherwise, in this process, but apparently elected not to do so. The proposals to create these band classes were non-controversial.

The fact that 3GPP has established various band classes for the LTE standard does not compel any service provider or any device manufacturer to use any particular class, or to limit devices to operation in only one class. Moreover, other arrangements of bands could be proposed for the LTE standard as another band class. Each provider deploying LTE must determine which of the classes or combinations of classes is best suited to meet its authorized spectrum requirements and its business plans.

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[3] *See* http://www.atis.org/membership/.

[4] Band classes 15 and 16 are "reserved" in the current 3GPP LTE standard for future spectrum allocations.

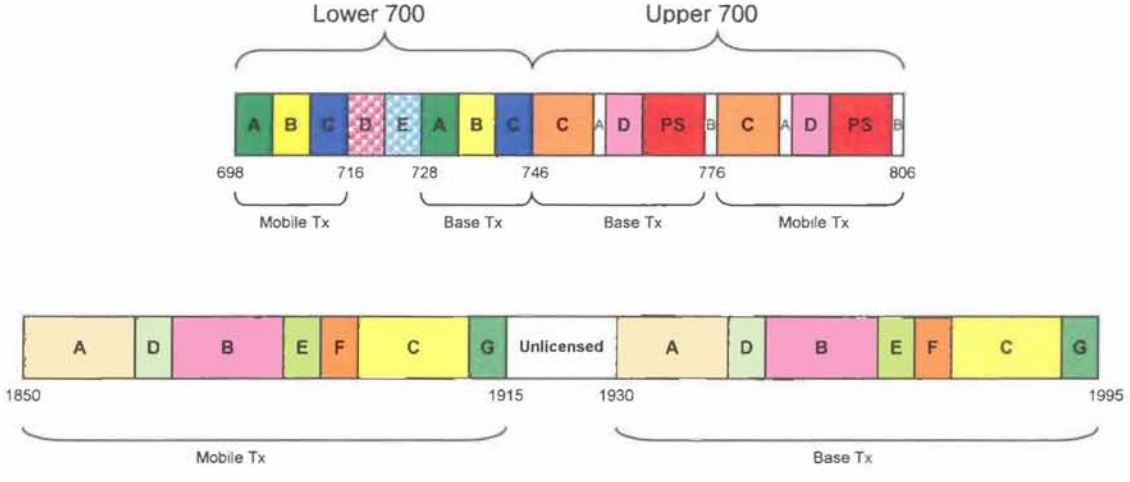
Lower and Upper 700 MHz Are Distinctly Separate Bands That Make Combining Them into a Single Device Technically Complex and Expensive

The band classes established for the 3GPP LTE standard and subsequent decisions made by Verizon Wireless regarding which bands to support in its devices are all logical extensions of the circumstances that affect the design of 700 MHz equipment. These include the unique characteristics of the 700 MHz band in the United States, the need to accommodate other operational bands (e.g., Cellular and PCS), the presence of high-power broadcast systems within and adjacent to the Lower 700 MHz band, and the technical limitations associated with designing mobile communications equipment.

The principal reason why 3GPP's 700 MHz LTE band classes are for either Lower 700 MHz *or* Upper 700 MHz spectrum bands is that these are, in fact, distinctly separate bands. The fact that the bands are adjacent and the licenses in each band are governed by the same rules and, in some cases, were sold at the same FCC auction, does not change this. The two bands are separate and distinct in much the same way that the Cellular and the PCS bands are separate and distinct. And, just like the Cellular and PCS bands, decisions about which bands to include in devices that are being built and sold are made independently.

The Lower and Upper 700 MHz bands include separate U.S. FCC licenses for paired spectrum that will accommodate frequency division duplex (FDD) operation, i.e., transmission (Tx) and reception (Rx) via separate frequency blocks. Unlike the PCS band, for example, both Lower and Upper 700 MHz bands cannot be considered as a single contiguous band of spectrum because the frequencies used for mobile transmission are not all contiguous. (See Figure 1.) The spectrum used by Lower 700 MHz licensees for mobile transmission (698-716 MHz) is separated by 60 MHz from the spectrum used for that purpose by Upper 700 MHz licensees (776-806 MHz).

Figure 1. Comparison of 700 MHz and PCS Bands



Given the configuration of the 700 MHz band,[5] it is not possible to support both the Lower and Upper 700 MHz spectrum blocks in the same duplexer in the mobile device. A duplexer is a device that allows two-way communications over a single channel. It is, effectively, the combination of two RF filters (one for transmit and one for receive) with a common antenna port. The duplexer must be designed for operation in the frequency band used by both the receiver and the transmitter, and must provide sufficient isolation between the transmit and receive bands to prevent the transmitter from desensitizing the receiver.

Theoretically, it is possible to design a duplexer that includes a single receive filter that covers the Lower A, B, and C blocks, as well as the Upper C block, since these blocks are all contiguous (728-757 MHz). However, it is not possible to design a duplexer that includes a single filter that passes both of the widely separated mobile transmit bands (698-716 MHz and 776-806 MHz), while still providing sufficient isolation from the mobile receive (base station Tx) band.[6] As a practical matter, therefore, it is not possible to support both the Lower and Upper 700 MHz bands in the same devices without using multiple duplexers. While it is possible to build a device with multiple duplexers, this would impose additional cost and complexity that must be weighed against other factors, including whether other bands outside 700 MHz can be included in the device.

Because of these technical realities, none of the 3GPP Band Classes for LTE combine the Upper 700 MHz and Lower 700 MHz bands. While the Alliance speculates that the development of the classes was the result of insidious conduct by Verizon Wireless and AT&T, the true reasons relate to the technical constraints on handset design resulting from the FCC's licensing plan for the 700 MHz spectrum.

Technical Issues Make Designing Devices Using Lower 700 MHz Difficult

In addition to the duplexer issue described above, the Lower 700 MHz band introduces challenges that complicate the design of commercial mobile devices. In particular, the band plan includes a narrow duplex gap (12 MHz), a relatively small duplex spacing (30 MHz), and the presence of strong interfering signals that could impede the deployment of two-way mobile services.[7] Each of these features alone present challenges in

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[5] The 3GPP standard specifies FDD operation with the Tx and Rx bands as shown in the illustration. While the FCC's rules allow for FDD operation with the Tx and Rx bands switched, no specifications were adopted by 3GPP for that – largely because of the interference issues it would raise. Of course, TDD operation is also allowed by the FCC's rules, but that configuration is also not supported in the existing standard.

[6] In contrast, the duplexer in a PCS mobile device has a single RF filter for transmitting and a single, and separate, RF filter for receiving because all of the mobile Tx spectrum is contiguous, and all of the Base Tx spectrum is contiguous. That cannot be accomplished with a "whole band" 700 MHz device because the mobile Tx bands are not contiguous. Two filters are needed for transmission. If one filter were used to cover the whole band, i.e., 698-806 MHz, the transmissions would interfere with reception at 728-776 MHz.

[7] The "duplex gap" is the amount of frequency separation between the transmit and receive bands. For the Lower 700 MHz A, B, and C blocks, the gap between the mobile transmit and base transmit bands is 12 MHz (716-718 MHz). The "duplex spacing" or "duplex distance" is the frequency separation between the beginning of the mobile transmit band and the beginning of the base transmit band. For the Lower 700 MHz band, this is 30 MHz.

designing cost effective broadband wireless devices. In combination, they represent significant challenges for manufacturing of 700 MHz devices.

Interference Into Lower 700 MHz. First, the Lower D and E blocks are unpaired licenses that are best suited to one-way broadcast-like services. Indeed, the Commission recognized this fact, and established rules that permit these blocks to be used for high-power (50 kW) broadcast services. Qualcomm is already operating its MediaFLO broadcast video service on the Lower D block, which was auctioned in 2002, and the Lower E block is expected to be used for similar services.

Operation of high-power broadcast services in the Lower E block creates a significant potential for interference into Lower A block receivers (at 728 MHz). To operate effectively, mobile devices operating in the Lower A block would need to have sufficient selectivity to reject the interfering E block signal. Unfortunately, since these bands are directly adjacent, there would be little or no attenuation provided by the duplex filter in the block adjacent to the desired pass band. Lower B and C block licensees face the same issue were they to use devices that employ duplexers covering the Lower A, B, and C blocks. Importantly, filters and duplexers have less out-of-band rejection when they are designed to pass a wider bandwidth. Consequently, a device designed to pass blocks A, B, and C would be less able to reject harmful interference from block E than one designed to only pass B and C. Improvements in filter technology, or the use of the band for fixed wireless systems may reduce this potential for interference.

Interference from Lower 700 MHz. The presence of broadcast TV services on channel 51 (692-698 MHz) also presents technical challenges for Lower A band licensees. In establishing its rules for 700 MHz, the Commission recognized the potential for mobile systems operating at 700 MHz to cause interference to a DTV receiver operating on channel 51. As a result, it established rules requiring that Lower A block licensees meet a minimum desired signal-to-undesired signal ratio (D/U) within the service contour of the TV broadcaster. While this might be possible for fixed wireless services, it is likely to be difficult for mobile devices to provide such protection without significantly limiting where these devices can be used. This is especially true if the Commission allows new TV stations to be deployed in channel 51.

In short, there are technical challenges in deploying Band Class 12 equipment at this time. However, these challenges are not insurmountable and nothing prevents members of the Alliance from themselves determining how to address these issues in designing Band 12 devices. Indeed, the Alliance members are free to work (either collectively or individually) with manufacturers to build devices that operate on the spectrum its members voluntarily acquired, and those devices could include other spectrum besides Band Class 12. But [t]hose decisions have to be made by those carriers to meet their own individual business plans. Verizon Wireless has nothing to do with those decisions.[8]

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[8] According to CTIA, there are at least 33 companies that manufacture devices for the U.S. market. *See, e.g.*, Letter from Christopher Guttman-McCabe, Vice President, CTIA, to Marlene H. Dortch, Secretary, FCC, RM-11361, at 2 and accompanying charts (filed May 12, 2009) (available at

Verizon Wireless' Plans to Deploy LTE Reflect the Technical Obstacles to Combining Upper and Lower Bands in the Same Devices

Verizon Wireless holds Upper C Block licenses for the entire continental U.S. and Hawaii. The company intends to use this spectrum to deploy an advanced 4G mobile broadband network over the same geographic footprint in which it operates its Third Generation (3G) EV-DO networks today. While it is planning an aggressive deployment of LTE, it will take several years to overlay the LTE network over the entire 3G footprint. During this process, however, it wants LTE customers to be able to roam onto its 3G network where LTE is not yet available. These 3G networks use spectrum in either the Cellular band or the PCS band. Consequently, the LTE devices we sell will need to include both the Cellular and PCS bands, in addition to the Upper 700 MHz C Block. Verizon Wireless is also interested in providing products and services that address the broader global market. Thus, LTE devices may also need to support bands that are widely used in other parts of the world but do not align with U.S. band plans.

Put simply, there is a practical limit as to how many bands can be supported in a single mobile device, and businesses must weigh a variety of factors in deciding which ones to support, including placement of antennas, device form factor and weight, cost, and utility to the consumer. Verizon Wireless' business needs require that it focus on devices that would operate on the three bands in which it will operate its EV-DO and LTE networks (850 MHz, 1.9 GHz, and 700 MHz), as well as several bands that are used in Europe and other parts of the world. Inclusion of these bands is necessary to facilitate interconnectivity between 3G and 4G networks and to promote greater scale economies for LTE equipment. Each of these bands requires a separate duplexer, and thus, each adds increased complexity and cost to wireless devices. Given that Verizon Wireless does not plan to deploy its Lower A Block spectrum in the near term, it makes no sense for it (or its 4G customers) to bear the burden of additional cost associated with including that band in its initial LTE devices, or for its customers to sacrifice the benefits they will gain from greater roaming capability and lower equipment costs in order to include a band that is not needed at this time.

The Alliance's undocumented assertion that Verizon Wireless does not want mobile device manufacturers to develop and market handsets capable of working on 700 MHz A Block spectrum is nonsensical. Verizon Wireless holds A Block licenses for markets that cover over half the U.S. population.. Verizon Wireless purchased 25 licenses in the 700 MHz A Block during Auction 73 at a cost of nearly $2.57 billion to cover major metropolitan markets such as New York, Los Angeles, Philadelphia, Washington, DC, and Miami, among others. These licenses cover 147,921,370 pops. (By contrast, the Alliance's members invested $420 million during Auction 73 for their A Block licenses, and their A Block licenses cover 71,805,348 pops, or less than half the population covered by Verizon

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http://fjallfoss.fcc.gov/ecfs/document/view?id=6520216417). The Alliance members provide no evidence about their efforts (or the apparent lack thereof) to obtain the devices they want, either individually or through a consortium from any of these potential suppliers.

Wireless' A Block footprint.) If the Alliance's assertion were correct, Verizon Wireless would be taking steps to block development of equipment that is essential to capitalize on the company's $2.57 billion investment. This makes no sense, and Cellular South offers no plausible suggestion for why such a state of affairs would be true.

The Alliance's Legal Claims Are Meritless

The Alliance claims that business decisions to limit equipment operating at 700 MHz to certain 3GPP band classes violate certain sections of the Communications Act. There is no legal basis for any of these claims. None of the statutory provisions that it cites are applicable. Section 201 and 202 of the Act govern the relation between a common carrier and its customers, not what radio chipsets are placed into CPE. Section 254(b)(3) is a policy section rather than grant of substantive authority, and includes no specification for regulating telecommunications equipment. Section 307(b) concerns the equitable distribution of radio licenses, not the distribution of chipsets in CPE. Finally, Section 1 of the Act only mandates that the FCC ensure communications services are available on a nondiscriminatory basis; it does not suggest that such service must be provided by exactly the same mobile equipment.[9]

Indeed, the FCC has fostered technological differentiation among mobile providers as one important facet of wireless competition and innovation, and has repeatedly declined to intervene into technology choices.[10] It would be inconsistent with decades of decisions on similar issues to find now that the Communications Act mandates technological uniformity.

Moreover, the Alliance's extraordinary and unprecedented request that the Commission impose an immediate "freeze" on equipment authorizations is itself not supported by any facts or law. Although the Commission's rules allow interested persons to

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[9] The Alliance's suggestion that the FCC's decisions prohibiting exclusive *service* contracts for multiple tenant buildings is equally flawed. There are no "exclusive" contracts here of any kind. Each mobile provider and equipment manufacturer is free to build devices that house any radio consistent with the 3GPP band classes for LTE, or to request that another band class be established.

[10] *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59),* Report and Order, 17 FCC Rcd 1022, 1023 (2002) ("The flexible allocation we adopt for the Lower 700 MHz Band will allow service providers to select the technology they wish to use to provide new services that the market may demand."); *see also Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHZ Bands,* Report and Order, 18 FCC Rcd 25162, 25163-64 (2003) ("Licensees in these bands will have the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum"); *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Third Memorandum Opinion and Order, 9 FCC Rcd 6908, 6919 (1994) (FCC declined to impose technical standards on nascent PCS because "imposition of a rigid technical framework at this time could stifle the introduction of important new technology"); *Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services,* Third Report and Order, 9 FCC Rcd 7988, 8069-70 (1994) (declining to adopt standards for wireless interoperability); *Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, Report and Order, 3 FCC Rcd 7033, 7040 (1988) (declining to intervene in standards setting process for next generation cellular systems: "Industry is in a better position to evaluate the technical advantages and disadvantages of the various advanced cellular technologies and develop approaches to compatibility.").

file properly framed petitions for rulemaking "for the issuance, amendment or repeal of a rule or regulation," the rules do not contemplate the issuance of injunctive-type relief,[11] let alone the issuance of injunctive relief on a nonexistent factual and legal record. In addition, to the extent the Alliance is asking the Commission to enter a stay of equipment authorizations while the agency considers its Petition, the Alliance has failed to carry its heavy burden of establishing that such relief is warranted in this case. Indeed, other than asserting in conclusory fashion that the Commission should enter a freeze, the Alliance has made no effort to carry its burden of showing that the FCC can grant this type of relief here. Furthermore, if (in seeking an equipment authorization freeze) the Alliance is seeking a substantive change in the FCC's equipment authorization rules, the Administrative Procedures Act (APA) would prohibit the Commission from granting this form of relief without first following APA notice and comment rulemaking requirements.[12]

The Alliance claims that the situation at 700 MHz today should be equated to 1981 when the FCC required that both A and B Cellular bands be included in all handsets. But, that situation was quite different than today. The Cellular bands did not trigger the kinds of technical issues explained above for several reasons. First, for the Cellular Band, all of the spectrum used for mobile Tx is contiguous and all of the spectrum used for base Tx (or mobile Rx) is contiguous, so there is no need for multiple duplexers. Moreover, all of the A Band and B Band cellular spectrum are not contiguous. For Mobile Tx, for example, there is 11 MHz for A Band, 10 MHz for B Band, 1.5 MHz for A Band, and 2.5 MHz for B Band. So, in order to effectively cover the entire A Band spectrum, the device has to cover most of the B Band as well. Thus, (unlike 700 MHz) there was no technical or economic penalty for covering the entire Cellular band, there was also every incentive to do so because of the way the band was configured.

Second, unlike 700 MHz, when cellular was first developed there was no concern about which other bands to include in devices. There were no other bands being used, unlike today, when there are multiple bands that could be selected for inclusion into a single device. The complexity of today's mobile service, with the operators holding licenses for a number of different bands and the need for multi-band devices, as described above, was not present in 1981. The FCC has in fact promoted this diversity in licensing and technologies, and going backwards to a regime relevant to 1981 would be a totally unjustified – and unjustifiable – shift in regulatory policy.

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[11] *See* 47 C.F.R. § 1.401(a). Moreover, to the extent that the Commission's rules speak directly to the question, they make clear that the Commission will not consider hybrid requests for relief of the kind set forth in the Petition. *See* 47 C.F.R. § 1.44(e) (providing that a request for a stay shall be filed as a separate pleading).

[12] *See* 5 U.S.C. §551(5) ("'rule making' means agency process for formulating, amending, or repealing a rule"); *see also SBC Inc. v. FCC*, 414 F.3d 486, 497-98 (D.C. Cir. 2005) ("Legislative rules are subject to the notice and comment requirements of the APA because they work substantive changes in prior regulations, or create new law, rights, or duties. . . . Furthermore, if an agency's present interpretation of a regulation is a fundamental modification of a previous interpretation, the modification can only be made in accordance with the notice and comment requirements of the APA." (citations and quotation marks omitted)).

Third, in 1981, cellular was an incipient service that the FCC wanted to promote through consistent standards. Such mandated consistency is not necessary for mobile broadband networks because there are now dozens of established mobile equipment manufacturers and other mobile-service related industries for planning and deploying a mobile network The Commission must also note that the members of the Alliance are all either operational wireless providers or entities whose investors include entities or persons with communications industry experience. All were sufficiently sophisticated participants in the wireless industry to bid on and win spectrum licenses in Auction 73.

Fourth, when the FCC awarded Cellular A and B block licenses, all licensees knew that their customer equipment would have to include both bands.[13] The FCC imposed no such condition on the 700 MHz licenses awarded in Auction 73.

Indeed, the rules the Commission adopted for the 700 MHz band, consistent with previous auctions of commercial mobile spectrum, allowed successful bidders flexibility to develop devices based on their spectrum holdings and business plans, as long as they complied with the emissions limits and other technical rules. The auction participants based their bids on guidelines that allowed the opposite of the Alliance's demand. For the FCC two years later to take up whether to impose severely-limiting restrictions on the equipment deployed using the spectrum purchased in Auction 73 would constitute a substantial and significant reversal of the Commission's rules for that auction and undercut bidders' reliance on those rules, and create additional serious legal concerns.[14]

The Petition Would Impede 4G Broadband Services

The Federal Government is focused on promoting the rapid deployment of 3G and 4G mobile broadband services to all Americans. Congress directed the Commission to "encourage the deployment on a reasonable and timely basis of advanced communications capability."[15] And, under the American Recovery and Reinvestment Act of 2009, Congress charged the Commission with developing a national broadband plan that "shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal."[16] In adopting the 700 MHz service rules, the

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[13] *See, e.g., In the Matter of An Inquiry Into the Use of the Bands 825–845 MHz and 870–890 MHz for Cellular Communications Systems*, 86 F.C.C.2d 469, 482 (1981) (setting forth the operational requirements for customer equipment).

[14] The Alliance also ignores the explicit language in the Commission's auction notice for the 700 MHz band that "Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of 700 Mhz band licenses." The Commission also noted that its start date for the auction "will provide interested parties with additional time after this announcement of competitive bidding procedures to develop business plans, assess market conditions, and evaluate the availability of equipment for new 700 Mhz Band services." Public Notice, Auction of 700 Mha Band Licenses Scheduled for January 24, 2008, DA 07-4171, 22 FCC Rcd 18141, at paras. 40, 43.

[15] Section 706(a) of the Telecommunications Act of 1996, 47 U.S.C. § 1302(a).

[16] *See* American Recovery and Reinvestment Act of 2009, § 6001(k)(2), Pub. L. No. 111-5, 123 Stat. 115 (2009).

Commission declared that the "[r]apid deployment and ubiquitous availability of broadband services across the country are among the Commission's most critical policy objectives."[17]

In contrast, the Alliance has asked the Commission to effectively halt progress on 4G mobile broadband networks, to serve the interests of four companies who did not even participate in the 3GPP standard process The action they demand – forcing equipment manufacturers to cobble together devices that will work in all 700 MHz spectrum bands would not only take the Commission into equipment design but impose a technically invalid mandate that would block the development of LTE devices – and thus the deployment of wireless broadband services.

Indeed, to entertain the Alliance's frivolous request for a "freeze" on equipment authorizations or to place its Petition on public notice would itself have deleterious effects on the Commission's wireless broadband objectives. It would at a minimum raise questions about the Commission's intentions, would cause confusion in the marketplace, and could delay development and manufacture of 4G devices. The result would run directly contrary to Congress' and the Commission's own goals regarding the deployment of innovative, advanced services—including 4G broadband offerings.

The Petition Should be Dismissed Without Consideration

The Commission possesses express authority to dismiss a petition for rulemaking before placing it on public notice whenever, in the Commission's judgment, a petition is "repetitive, frivolous, [and] . . . plainly do[es] not warrant consideration."[18] Because the Petition filed by the Alliance easily satisfies the foregoing criteria, and because placing the Petition on public notice would be a waste of valuable agency and private resources and could delay the deployment of wireless broadband services, the Petition should be dismissed.

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[17] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15362 (2007).

[18] *See* 47 C.F.R. § 1.401(e) (authorizing the Commission to dismiss petitions for rulemaking prior to the issuance of a public notice); *see also* Letter from John B. Muleta, FCC, to Michael W. Grady, Northrop Grumman Information Technology, DA 03-2940 (Sept. 24, 2003) (dismissing a petition under 47 C.F.R. § 1.401(e) without placing it on public notice).

For the reasons set forth above, the Commission should dismiss the Petition without placing it on public notice.

Respectfully submitted,

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