

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

In the Matter of)

The 700 MHz Block A Good Faith)
Purchasers Alliance)

Petition for Rulemaking on)
700 MHz Band Mobile Equipment)
Design and Procurement Practices)

RM No. 11592

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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SUMMARY

MetroPCS supports the Petition for Rulemaking (“Petition”) filed by the 700 MHz Block A Good Faith Purchasers Alliance (“Alliance”) regarding 700 MHz band mobile equipment design and procurement practices. Restrictive equipment arrangements pose serious problems to competition in the wireless market. As a result of the market power of the two largest licensees of 700 MHz spectrum, AT&T and Verizon, equipment manufacturers are being forced to produce equipment that is capable of operating only on their frequencies. AT&T and Verizon will thus be able to offer the newest technology to their customers, while small, rural, and mid-tier carriers will not be able to provide competing 700 MHz services until significantly later, if at all.

700 MHz equipment capable of operating on only one of the two dominant 700 MHz licensee frequencies will create higher prices for the public generally by limiting competition. If different equipment is manufactured for AT&T and Verizon than for others, small, rural, and mid-tier providers will lose the benefits of economies of scale and their customers, especially lower-income customers, will suffer directly. The digital divide that the Commission’s National Broadband Plan is seeking to close will widen between those in urban areas versus rural areas and between those with higher versus lower incomes. And, if that were not enough, the Commission has a mandate under the Communications Act to prevent discriminatory policies and behavior, as certainly exists here, among communications providers. Additionally, even public safety users will find it to be more difficult and costly to purchase the equipment necessary for them to roam on all portions of the commercial 700 MHz band, as contemplated by the National Broadband Plan.

The current 700 MHz equipment situation also will prevent the buildout of networks in rural areas. If the devices offered by the largest carriers are unable to operate on other 700 MHz

networks, the small, rural, and mid-tier carriers will suffer a significant loss of revenue due to the lack of roaming revenue. Without that roaming revenue, small, rural, and mid-tier carriers will be unable to expand coverage to unserved and underserved areas, which often are ignored by the largest carriers, and thereby create truly nationwide networks. Competition also will be harmed as small, rural and mid-tier carriers will be unable to compete for 700 MHz business because their customers are unable to roam nationally on the networks of AT&T or Verizon due to technical incompatibility.

MetroPCS respectfully submits that the Commission must act now to prevent these potentially devastating effects. This problem is an unintentional, though certainly not unforeseeable, result of the auction procedures used in Auction No. 73 and of the Commission's build-out rules. Small, rural and mid-tier carriers, some of which were new entrants, were promised opportunities in the initial phases of the 700 MHz proceedings, but now find themselves – after having spent hundreds of millions at auction on spectrum – potentially unable to fulfill their business models due to the dominance of AT&T and Verizon and these restrictive equipment arrangements. The Commission should rectify this situation by initiating the rulemaking requested by the Alliance regarding 700 MHz band mobile equipment design and procurement practices and adopting specific policies prohibiting restrictive equipment configurations. Further, the Commission should extend the build-out requirements for Block A 700 MHz licensees until the Commission has had an opportunity to act on the Petition. Otherwise, the two largest carriers could be able to force the Block A carriers to make a Hobbesian choice –either sell to AT&T or Verizon at a bargain basement price or risk losing their investment and license because they cannot meet the 700 MHz build-out requirements, which are the most stringent ever. The Commission also must act before it auctions the D Block because failing to do so would chill participation in the D Block auction.

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments in support of the Petition for Rulemaking (“Petition”) filed by the 700 MHz Block A Good Faith Purchasers Alliance (“Alliance”) regarding 700 MHz band mobile equipment design and procurement practices.² The following is respectfully shown:

I. Preliminary Statement

MetroPCS is a leading and growing provider of broadband commercial mobile radio service (“CMRS”) in the United States. In the 700 MHz band auction (FCC Auction No. 73),

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

² The 700 MHz Block A Good Faith Purchasers Alliance Petition for Rulemaking on 700 MHz Band Mobile Equipment Design and Procurement Practices, RM No. 11592, filed Sept. 29, 2009; “Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices,” RM No. 11592, DA 10-278 (rel. March 1, 2010) (the “700 MHz Notice”).

MetroPCS paid over \$300 million to acquire the Frequency Block A license for the Boston-Worcester MA-NH-RI-VT Economic Area (License/Package WY BEA003-A).³ Thus, MetroPCS has a legitimate and substantial interest in assuring that the 700 MHz equipment market develops in an open and competitively neutral fashion both as to infrastructure and end-user devices. However, since MetroPCS has only one 700 MHz license, it alone cannot drive manufacturers to develop 700 MHz equipment that is optimized for use on the A Block and other blocks.

MetroPCS generally prefers that the Federal Communications Commission (“FCC” or “Commission”) allow market forces to guide the wireless industry toward fair dealing and the consumers’ best interests. However, in some circumstances the market becomes so imbalanced that unfair and unreasonable conduct by a very few market participants can completely undermine the beneficial competition that has served American consumers well during the evolution of wireless technology. This proceeding presents just such a situation. The increasing wireless market shares of AT&T and Verizon Wireless (“Verizon”),⁴ coupled with their dominance in Auction No. 73 in acquiring the 700 MHz band licenses,⁵ creates a risk that these carriers will be able to dictate 700 MHz equipment standards and drive the development of the equipment in a manner that advantages themselves and their own customers, but disadvantages

³ See *Public Notice*, DA 08-595, released March 20, 2008 (Announcing Winning Bidders for Auction 73).

⁴ See “Grading the top 10 U.S. carriers in the fourth quarter of 2009,” *Fierce Wireless*, Feb. 26, 2010, available at <http://www.fiercewireless.com/pages/grading-top-10-u-s-carriers-fourth-quarter-2009> (showing the number of subscribers for the largest wireless carriers, noting Verizon Wireless with 91.249 million, AT&T with 85.120 million, Sprint Nextel with 47.900 million, T-Mobile USA with 33.790 million, and MetroPCS with 6.640 million).

⁵ See *Public Notice*, DA 08-595 *supra*, at Attachment B (showing AT&T and Verizon with approximately \$16 billion in total winning bid amounts out of approximately \$19 billion in total net winning bids from all auction participants).

the customers of every other small, rural, mid-tier and nationwide carrier. Unfortunately, this problem has been exacerbated by the blind bidding procedures utilized in Auction 73, which denied bidders the ability to know who was bidding on particular spectrum in adjoining markets. As MetroPCS has pointed out on numerous occasions, bidder information is critical to an understanding of how much spectrum is worth and the uses to which it can be put.⁶ This information is particularly crucial when a successful applicant faces construction requirements that mandate near immediate build-out of licenses. The combination of the market power of AT&T and Verizon with the blind bidding process resulted in new entrants and non-nationwide participants being herded into Lower A Block spectrum, and now there is a risk that they will be stranded there. New entrants and other Block A bidders are further disadvantaged because they must build-out their spectrum to meet the most stringent construction standards ever. Basically, the current direction the 700 MHz equipment market is taking presents Block A carriers with a Hobbesian choice – either sell out now to one of the larger carriers or start building infrastructure even though there is no mobile equipment and hope an equipment solution develops (and run the risk of having to give the spectrum back or lose the entire investment). This does not foster competition.

The Alliance Petition raises a warning that must be heeded. The Commission appears to be facing the prospect that the customer equipment in development will not be capable of

⁶ See MetroPCS Comments in *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Former Nextel Communications, Inc. Upper 700 MHz Guard Band License and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Further Notice of Proposed Rule Making, FCC 07-72 at p.46-49 (rel. April 27, 2007) ("FNPRM"), 72 Fed. Reg. 24238 (May 2, 2007).*

accessing all portions of the 700 MHz band. If this is allowed to occur, the result will be that the investments of many small, rural and mid-sized 700 MHz licensees will be stranded, the need of 700 MHz customers to roam will be unsatisfied and the dominant market power of the two largest wireless carriers will become further enhanced in potentially anti-competitive ways. Further, public safety will be imperiled because public safety users will not be able to roam on a priority basis on all 700 MHz systems as contemplated by the National Broadband Plan.⁷ These dire consequences must be avoided.

MetroPCS previously expressed its concern that AT&T and Verizon have become so large that an equipment manufacturer can make a market by catering only to their needs.⁸ This growth has given rise to exclusive handset arrangements that chill competition by denying small, rural and mid-sized carriers access to some of the newest and most innovative handsets (*e.g.*, the iPhone). The 700 MHz equipment situation presents a similar concern.⁹ As MetroPCS warned prior to the commencement of the 700 MHz auction, the license configurations and bidding rules in Auction 73 – including the blind bidding process – were unduly skewed in favor of the large

⁷ CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 12 (2010), *available at* <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“THE NATIONAL BROADBAND PLAN”)

⁸ *See Fostering Innovation and Investment in the Wireless Communications Market*, GN Docket No. 09-157, Comments of MetroPCS Communications, Inc. filed September 30, 2009 at Section II.B.9 (“MetroPCS Wireless Innovation Comments”).

⁹ In fact, MetroPCS predicted this precise problem in its comments in the handset exclusivity proceeding. MetroPCS expressed concern that “a similar problem may occur with regard to the next generation handsets, as there is a considerable disparity between the nature and extent of the spectrum holdings of the smaller carriers...*The larger carriers, who are able to dictate the terms and types of phones they want to purchase, may decide to steer handset manufacturers to support only the particular frequencies, air interfaces and spectrum bandwidths held by the largest carriers.*” Comments of MetroPCS Communications, Inc. in *Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Carriers and Handset Manufacturers* at 11, RM No. 11497, filed February 2, 2009 (emphasis added).

nationwide incumbents.¹⁰ Thus, it was not surprising when Verizon and AT&T walked away with the lion's share of the licenses and were able to herd the new entrants and small, regional and mid-tier carriers into a single block. If, having allowed this to occur, the Commission now permits AT&T and Verizon, in cooperation with equipment manufacturers, to foster the development of equipment that is not compatible across the entire 700 MHz band, these two carriers will be more deeply entrenched and meaningful competition will not develop in the 700 MHz band. As is the case with exclusive handset arrangements, competition by and from small, rural and mid-tier carriers will be forestalled, to the detriment of the public.

Moreover, the incentive-driven approach to a national interoperable public safety system envisioned in the National Broadband Plan will not be realized because public safety will not have access to economical equipment which is compatible across all 700 MHz spectrum and markets and public safety will be foreclosed from receiving the priority roaming access it will need. The Commission should intervene to protect the rights of consumers and promote fairness, competition and its National Broadband Plan objectives. Precedent establishes that the Commission has ample authority to get and now is the time to do so.

II. A Rulemaking Is Necessary to Explore The Need For 700 MHz Mobile Equipment To Be Capable Of Operating On All Paired Commercial 700 MHz Frequency Blocks

MetroPCS supports the petition of the Alliance “to initiate a rulemaking to assure that consumers will have access to all paired 700 MHz spectrum that the Commission licenses, to act so that the entire 700 MHz band will develop in a competitive fashion, and to adopt rules that prohibit restrictive equipment arrangements that are contrary to the public interest.”¹¹ MetroPCS urges the Commission to adopt specific policies prohibiting restrictive equipment configurations

¹⁰ See discussion *id.* at Section I.B.1.

¹¹ Petition at 1.

(i.e., configurations that do not allow infrastructure and handsets to operate in all of the 700 MHz bands).

Restrictive equipment configurations raise a series of potential harms. First, small, rural, and mid-tier carriers, along with public safety, could be denied access to suitable equipment on a timely basis if manufacturers are permitted to devote all of their time and attention to developing product for the largest carriers that will not work on other portions of the band. This will create a serious “headstart” problem not unlike the one the Commission faced when it granted the uncontested applications of wireline cellular carriers in the top 30 markets long before the contested applications of the non-wireline applicants were capable of being resolved. Any such headstart would allow the two largest carriers to further cement their dominant market position by enabling them to offer unique services and products that other carriers using 700 MHz will not be able to offer.¹²

Second, if equipment is not going to be compatible across the entire 700 MHz band, carriers, customers, including public safety users, will be forced to pay higher prices for handsets due to a lack of volume production and the resulting loss of beneficial economies of scale, if they are able to get them at all.¹³ This will not only disadvantage smaller carriers, but also will seriously disadvantage lower-income consumers, widen the connectivity gap between economic groups, and harm public safety.

Third, the absence of compatibility across the 700 MHz band will prevent many 700 MHz licensees from offering needed roaming services to their customers, deprive them from

¹² Given the favorable propagation characteristics of the 700 MHz band, carriers holding spectrum in other bands may be unable to compete on price since their costs may be higher.

¹³ One of the reasons the iPhone has been successful as an exclusive product is that no carrier using an air-interface other than GSM/HSPDA can offer the phone. A similar situation could occur in 700 MHz as some devices will not be interoperable, absent Commission involvement.

earning needed roaming revenue, and prevent public safety from roaming on all 700 MHz spectrum – not just the D Block. The Commission in its National Broadband Plan identified data roaming as an important element to ensure a ubiquitous and competitive mobile wireless broadband industry.¹⁴ Without the availability of compatible devices, a requirement that carriers provide data roaming will be a hollow one. The ultimate result will be to keep non-nationwide competitors from attracting the customers and earning the revenue that they will need to survive and to buildout the systems that are necessary to foster broadband dissemination and adoption to rural households. Further, public safety will be denied economical, near term nationwide access to the 700 MHz networks of all of the carriers necessary to fill in gaps in the nationwide public safety network. Our first responders need more than limited roaming only in the D Block.

These concerns are discussed in greater detail in separate sections below.

III. Restrictive Equipment Arrangements Will Create A Serious Competitive Disparity

An important aspect of the Commission’s policies when cellular service was first being launched was to “foster healthy marketplace competition from the outset.”¹⁵ To this end, the Commission adopted a “headstart” doctrine that allowed non-wireline cellular competitors to file petitions to defer the initiation of wireline cellular service to overcome the inherent to competitive disadvantage of delayed entry.¹⁶ Then, the Commission changed from a comparative hearing process to a lottery selection process in the cellular service for the express purpose of enabling both wireline and non-wireline carriers to initiate service and compete for

¹⁴ THE NATIONAL BROADBAND PLAN at 35-36, 49.

¹⁵ *Amendments of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings*, 98 FCC 2d 175, 184 (1984) (“*Lottery Notice*”).

¹⁶ *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 FCC 2d 469, 491 at n.57 (1981).

customers at about the same time, thereby avoiding possible barriers to entry for later entrants which might be inimical to effective competition.¹⁷

The 700 MHz band, like the 800 MHz cellular band, is “prime” spectrum due to its superior propagation and penetration characteristics.¹⁸ As it did when cellular service was being initiated, the Commission must try to enable multiple competitors to get started on a level playing field as 700 MHz services develop. That will not happen if the equipment manufacturers are allowed to focus their early efforts on developing equipment that is uniquely suited to the needs of the two largest carriers.¹⁹ Happily, the Commission has ample authority to avoid this result. In the early days of cellular, notwithstanding the fact that there were two distinct cellular frequency blocks (Block A and Block B) with different eligibility criteria (wireline and non-wireline) the Commission issued an order requiring that, “[w]ith respect to mobile stations, all units must be capable of operating at least over the entire 70 MHz of spectrum (*i.e.*, 666 channels).”²⁰ Emphasizing the need for nationwide connectivity, the Commission explained that such universal capability was “necessary in order to insure full coverage in all markets and compatibility on a nationwide basis.”²¹

¹⁷ See *Lottery Notice*, *supra*, at 184 and n.28.

¹⁸ See Law and Disorder, *FCC Readies “For Sale” Sign on Beachfront 700 MHz Property* at <http://arstechnica.com/tech-policy/news/2007/04/fcc-readies-for-sale-sign-on-beachfront-700mhz-property.ars> (describing the 700 MHz spectrum as “the best bits of spectrum ever to hit the auctioneer’s podium”).

¹⁹ The potential anticompetitive effects of restrictive technical compatibility specifications are amply demonstrated by the iPhone which is only compatible with GSM/HSPDA. So, even after a customer has fulfilled the contract with AT&T, he or she cannot take the phone and go to Verizon, Sprint, MetroPCS or any other CDMA carrier.

²⁰ *In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission’s Rules Relative to Cellular Communications Systems*, 86 F.C.C.2d 469, 539, May 4, 1981 released; Adopted April 9, 1981.

²¹ *Id.*

This precedent establishes beyond question that the Commission has the legal authority to establish technical standards designed to foster compatibility between discrete blocks of allocated spectrum.²² Absent similar action here, the Commission will be giving the largest carriers an insurmountable advantage. Manufacturers naturally will be inclined to serve their largest customers first, producing only those handsets that exclusively utilize the C block (to satisfy Verizon) and the lower B block (to satisfy AT&T). And, the customer bases of these carriers have grown sufficiently large that the manufactures may be content to go no further in developing equipment. In effect, these carriers will enjoy *de facto* exclusivity in this important portion of the spectrum. Small, rural, and mid-tier carriers' orders will be filled only much later, if at all, and they will be unable to take advantage of economies of scale, as they will be ordering devices with different technical specifications than those of the AT&T and Verizon at a point in time when the market already has been skimmed by the first entrants.

The situation that is developing with 700 MHz equipment raises competitive concerns similar to those raised by exclusive handset arrangements. Exclusive handset agreements work against the best interests of consumers by forcing them to buy from a particular wireless provider in order to get the newest equipment and, often, requiring them to pay higher price due to the lack of competition for those particular devices. These exclusive arrangements pose a particular risk of stifling competition when purchasers of the equipment are forced to sign long-term contracts to receive the equipment at reasonable prices, which often is the case.

Unfortunately, the same dominant market power that enables large carriers to command exclusive handset deals also enables them to force manufacturers to focus their first 700 MHz

²² The Commission does have authority to mandate compatibility under its type acceptance rules. The Commission can mandate that equipment which emits such frequency meet certain requirements – one of which can be compatibility. *See* 47 C.F.R. Part 15 (Radio Frequency Devices).

device development on the largest carrier's frequencies. The 700 MHz market will become competitively dysfunctional if the early equipment functions only on the C or lower B blocks. If consumers are unable to purchase 700 MHz equipment from small, rural, and mid-tier carriers when service in the 700 MHz band becomes available, they will immediately turn to the largest carriers due to the capacity and propagation benefits that 700 MHz will provide. Even if mobile equipment in other portions of the 700 MHz band becomes available over time, the development for those portions will always be a generation or two behind. Not having access to the newest and most advanced handsets will pose a continuing problem. Studies show that the characteristics of a particular handset play a major role in consumers' wireless carrier decision. Almost a quarter of wireless shoppers say that the handset was the sole reason for selecting a particular carrier.²³ The success that AT&T has enjoyed with the iPhone perfectly illustrates this point.²⁴ If 700 MHz carriers other than AT&T and Verizon are deprived of the newest state-of-the-art mobile devices, the headstart advantage of AT&T and Verizon will never be overcome.

Moreover, since 700 MHz exhibits superior propagation characteristics, Verizon and AT&T may be able to offer products and services with a significant cost advantage. Other carriers who bought 700 MHz spectrum to benefit from enhanced propagation will prove to be disappointed if suitable equipment is not available in the near term, and these carriers will be forced to offer advanced broadband using other spectrum, which may entail higher costs. The cost disadvantage will be exacerbated by the higher debt load carried to support the acquisition of 700 MHz spectrum that is not useable. This scenario will allow Verizon and AT&T to further cement their dominant market position and extend it into 4G broadband data.

²³ "Proof that Handset Brands Help Sell Wireless Plans," RCRnews.com, Oct. 28, 2008.

²⁴ See iPhones Talk, *AT&T's Success Driven by the iPhone Based on Earnings Reports*, January 29, 2009, found at <http://www.iphonestalk.com/atts-success-driven-by-the-iphone-based-on-earnings-reports/>.

The Commission should not be swayed by Verizon's claim that it will not act anticompetitively since it also holds A Block spectrum.²⁵ The truth is that Verizon can afford to warehouse its Block A spectrum, just as it is warehousing other spectrum. For example, Verizon acquired 20 MHz of Advanced Wireless Spectrum ("AWS") in Auction 66, and unlike other carriers still has not made any use of it. The A Block spectrum held by Verizon is not necessary for its initial launch of its nationwide 4G LTE network and, accordingly, Verizon can afford to allow it to lie fallow due to the absence of useful equipment, thereby denying other A block carriers access to the equipment they need to roll-out 4G services.

IV. Restrictive Equipment Arrangements Will Disrupt the Roaming Market

MetroPCS also agrees with the Alliance that restrictive 700 MHz equipment configurations would have a devastating effect on the roaming market that is essential to foster competition.²⁶ The negative effect would be threefold. First, carriers may not be able to receive 4G data roaming unless they can secure devices which utilize both their spectrum and that of Verizon and AT&T. Second, 700 MHz customers will be denied the ability to receive reliable service when they roam outside of their home market areas or other areas served by their home carrier. Third, small, rural and mid-tier carriers who are offering service on portions of the 700 MHz band other than the C Block or the Lower B block will experience "a loss of roaming service revenue that has severe competition implications and will impact greatly their ability to construct systems in rural areas."²⁷

When the Commission adopted the *2007 Roaming Order*, it properly recognized that "[c]onsumers increasingly expect that their mobile phones will function where they work, where

²⁵ See Reply Comments of Verizon Wireless in Docket No. 09-66 at 85-89 (filed Oct. 22, 2009).

²⁶ See Petition at 4.

²⁷ *Id.*

they play, and where they travel.”²⁸ Then-Chairman Martin specified that the *Order* would “help ensure that all consumers including those living in rural areas receive this benefit.”²⁹

Commissioner Copps reiterated this point when he said that “[t]his means Americans will be able to travel with greater confidence that they can place and receive calls while on the road.”³⁰ More recently, a key goal in the Commission’s National Broadband Plan was to expedite action on data roaming “to achieve wide, seamless and competitive coverage, encourage mobile broadband providers to construct and build networks and promote entry and competition.”³¹

These worthy goals will be completely undermined if 700 MHz equipment develops in a fashion that makes intercarrier roaming technically infeasible. New 700 MHz networks will be the ones operating initially at the higher speeds envisioned by the National Broadband Plan. If customers of non-nationwide 700 MHz licensees will not have the ability to roam on Verizon and AT&T’s networks, data roaming for 4G services will be substantially inhibited. Many roaming customers will be left with only 3G services. This will allow the national carriers to tout their 4G services and further limit effective competition from new entrants as well as small, rural and mid-tier carriers. Consumers would be harmed.

The harm to non-nationwide 700 MHz licensees also would be material. Block A bidders like MetroPCS acquired 700 MHz licenses – thereby agreeing to stringent build-out requirements – in the good faith belief that the 700 MHz band would conform to the traditional model of full

²⁸ Chairman Kevin Martin, Statement, August 16, 2010, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143.

²⁹ *Id.* (emphasis added).

³⁰ Commissioner Michael Copps, Statement, August 16, 2010, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143.

³¹ THE NATIONAL BROADBAND PLAN at 12.

interoperability. However, as pointed out by the Alliance, “[w]ithout Commission action that assures inclusion of Block A spectrum in mobile equipment there will be no affordable mobile equipment useful for that spectrum and no business case for Block A licensees to invest in facilities to serve the rural areas.”³² Customers will not be attracted to non-nationwide carriers who are unable to promise that end users will be able to roam on the networks of other carriers when they travel. And small, rural and mid-tier carriers will be deprived of roaming revenue from customers of AT&T and Verizon if there is no cross-block compatibility. Without Commission action, the beneficial competition that the Commission hoped to spur by licensing the Lower 700 MHz Band will be completely frustrated.

Notably, the industry stands on the threshold of having a unitary air interface standard (LTE) for the first time since the Commission mandated a single standard for analog cellular. The significant competitive benefits of the cross-compatibility promised by LTE will be largely undermined if 700 MHz LTE equipment is allowed to develop in a manner that effectively creates a walled garden. The benefits to consumers of a unitary standard will not be achieved and competition will be harmed. This harm extends beyond data services. The industry also is on the verge of adopting a unitary voice-over-IP (“VoIP”) standard for LTE that may revolutionize how voice services are provided. To the extent that VoIP is deployed on 700 MHz spectrum, and other carriers and customers are unable to get access due to compatible restrictions, the Commission’s current requirement for voice roaming would be completely undermined.

Furthermore, the Commission has made universal roaming in the 700 MHz spectrum a centerpiece of its National Broadband Plan for public safety. The Commission is proposing to

³² Petition at 5.

require all 700 MHz licenses to permit public safety to roam onto all 700 MHz spectrum on a priority basis during national emergencies. If the equipment manufacturers are focused solely on developing band-specific equipment for Verizon and AT&T's spectrum holdings, public safety will not receive interoperable handsets which can roam on all 700 MHz spectrum for some time – if ever – and the costs for the equipment will be substantially higher for public safety. This is the exact opposite direction the Commission is and should be headed with its interoperable national public safety system.

V. Restrictive Equipment Configurations Will Discriminate against Lower-Income and Rural Area Consumers

MetroPCS agrees with the Alliance that “[t]he restrictive equipment arrangements discussed above and being engineered by the two largest wireless carriers . . . are unjustly discriminatory and anticompetitive.”³³ Allowing the 700 MHz equipment market to continue to develop in the manner it is now headed will result in decreased buildout in rural areas, as well as higher prices for devices for all consumers, in direct contravention of the National Broadband Plan.

Rural Americans tend to adopt broadband at lower rates than those in urban areas. Last year, only about 54 percent of rural households had broadband access, compared to about 66 percent of urban households, and rural households used dial-up at a rate almost 11 percent higher than that of urban households.³⁴ Residents in these rural areas cite lack of availability as a much more important reason for non-adoption than do residents of urban areas. If the Commission

³³ Petition at 8.

³⁴ *Digital Nation: 21st Century America's Progress Toward Universal Broadband Internet Access* 10, U.S. Department of Commerce, National Telecommunications and Information Administration, February 2010, available at http://www.ntia.doc.gov/reports/2010/NTIA_internet_use_report_Feb2010.pdf.

truly intends to pursue a national broadband plan, it must ensure that rural Americans are not left behind through the consequences of anti-competitive business models fostered by limited equipment choices. As Chairman Genachowski observed in his endorsement of the National Broadband Plan, “[i]f we don’t act, we put at risk the promise of America as a land of opportunity, stranding on the wrong side of the digital divide a host of important American communities: rural Americans, low-income Americans, ... too many of whom will be left fighting the challenges of a 21st century world with 20th century weapons.”³⁵

Section 254(b)(3) of the Communications Act mandates that

[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services...that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.³⁶

And, Section 706 of the 1996 Telecommunications Act directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”³⁷ Accordingly, the Commission must act to ensure that the 700 MHz band does not develop in a fashion that exacerbates the digital divide between urban and rural users and between higher-income and lower-income users. As Commissioner Copps aptly declared when the National Broadband Plan was unveiled, “[b]roadband can be the great enabler that restores America's economic well-being and opens doors of opportunity for all Americans to pass through, no matter who they are, where they live, or the particular circumstances of their

³⁵ Chairman Julius Genachowski, Prepared Remarks at 3, March 2010 Open Agenda Meeting, “A National Broadband Plan for Our Future,” March 16, 2010, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296911A1.pdf.

³⁶ 47 U.S.C. § 254(b)(3).

³⁷ 47 U.S.C. § 706(a).

individual lives.”³⁸

With these laudable goals in mind, the Commission must act to prevent the 700 MHz band from being developed in an unfair and discriminatory manner. Section 201(b) prohibits unjust or unreasonable practices, and Section 202(a) prohibits “unreasonable discrimination...by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”³⁹ MetroPCS agrees with the Alliance that the restrictive equipment configurations that are evolving in the marketplace arrangements amount to unreasonable discrimination under these provisions.⁴⁰ Only if the Commission requires all 700 MHz equipment to be compatible across the entire 700 MHz band, will non-metropolitan area subscribers be likely to have access to faster connections, and more advanced and reasonably priced handsets, sooner.⁴¹

VI. Equipment Compatibility For the Entire 700 MHz Band Will Benefit Public Safety

One of the primary goals of the National Broadband Plan is to promote public safety. To this end, the Commission wisely has abandoned the previously unsuccessful approach of forcing the 700 MHz D-Block licensee into a restrictive “public-private” partnership. Rather, the Commission has realized the wisdom of the approach advocated by the Coalition for 4G in

³⁸ Statement of Acting Chairman Michael Copps, A National Broadband Plan for Our Future, GN Docket No. 09-51, April 8, 2009, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-31A2.pdf.

³⁹ 47 U.S.C. § 202(b).

⁴⁰ *See* Petition at 8.

⁴¹ Even if requiring making equipment to be compatible across all 700 MHz spectrum makes handsets marginally more expensive at the outset for some licensees (namely AT&T and Verizon) any additional costs they will bear will help reduce the overall cost consumers as a whole will pay. Lower A Block customers should not have to bear the cost alone – which is what would happen if they alone were denied the economies of scale.

America, of which MetroPCS is a member, whereby the Commission creates incentives for commercial licensees throughout the 700 MHz band (and other bands) to cooperate and coordinate to provide roaming access and priority access to public safety users.⁴² As stated in the National Broadband Plan:

Public safety access to roaming and priority access on commercial networks. To improve the capacity of public safety networks during emergencies, the FCC should begin a rulemaking to require commercial mobile radio service providers to give public safety users the ability to roam on commercial networks in 700 MHz and potentially other bands. The public safety community should have this ability both in areas where public safety broadband wireless networks are unavailable and where there is currently an operating public safety network but more capacity is required to respond effectively to an emergency....

The FCC should explore other ways to encourage the deployment of public safety devices that transmit across the entire broadband portion of the 700 MHz band (i.e., Band 12, Band 13, Band 14 and Band 17).⁴³

If these important objectives are to be met, it is critical for 700 MHz equipment to develop in a manner that renders it compatible across the entire 700 MHz band.⁴⁴ Otherwise, the Commission will have relegated public safety to the same second-class service status that will be suffered by subscribers to non-C Block and non-B Block 700 MHz services in the absence of a compatibility requirement.

⁴² See Notice of *Ex Parte* of MetroPCS Communications, Inc., Sprint Nextel Corporation, T-Mobile USA, Inc., Clearwire Corporation, Rural Telecommunications Group, Inc., and Access Spectrum, LLC (Coalition for 4G in America) in WT Docket No. 06-150, PS Docket No. 06-229, and GN Docket No. 09-51, filed Jan. 6, 2010 (“The FCC should promote public-private partnerships not through command and control regulation on a particular block of spectrum, but rather by establishing incentives for commercial operators to enter into public-private partnerships to meet public safety broadband needs.”).

⁴³ THE NATIONAL BROADBAND PLAN at 316.

⁴⁴ IP Wireless, a leading provider of public safety system deployments in the 700 MHz band, has praised the FCC for recommending opening up the entire 700 MHz band for public safety use on a cooperative basis with commercial service providers. See IP Wireless Praises FCC Recommendations for National Public Safety Broadband Plan at <http://www.ipwireless.com/news/pressreleases/press03102010>.

VII. The Commission's Auction 73 Procedures Created a Problem That the Commission Needs to Fix

MetroPCS, along with others, specifically warned the Commission that the proposed blind bidding rules in Auction 73 unfairly limited the ability of non-nationwide bidders to know whether the spectrum they were acquiring would be shared with large carriers (which would create roaming opportunities and guarantee equipment manufacturer support).⁴⁵ The Commission disregarded these comments, and the chickens now are coming home to roost. Since AT&T and Verizon each alone have sufficient volume and scale to be able to drive equipment manufacturers to develop products, they did not need to know who else is bidding on the spectrum in order to have sufficient information to make completely rational economic choices. Small bidders and new entrants rely on large carriers to drive volumes which allows them to be able to compete. When the Commission used blind bidding in Auction 73, it allowed the large, dominant carriers to essentially herd the new entrants and small, rural and mid-tier carriers into the A Block. This fact is borne out by the significant difference in prices for A Block versus the B Block.

Further, the Commission rules that require lower band 700 MHz licensees meet the most stringent build-out requirements ever serves to exacerbate the situation. 700 MHz Block A licensees need both end user devices and infrastructure equipment to build a business. Absent clear evidence that both will be available on a timely basis at a reasonable cost, carriers will not be confident that they can meet the Commission's build-out requirements. This leaves the carrier with a Hobbesian choice: either build-out the networks (assuming they can get infrastructure equipment) at substantial cost and hope an end-user device solution develops (and thereby run the risk of having to give the spectrum back or lose the entire investment if it does

⁴⁵ See *supra* note 6.

not), or sell their license for pennies on the dollar to one of the dominant carriers. This is an inadvertent consequence of the Commission's stringent build-out requirements. Since the clock currently is ticking on this time bomb, the Commission should extend the build-out dates for all Block A licenses until the Commission can resolve this Petition. Further, if the Commission truly wants its construction requirements to be met, it needs to ensure that compatible equipment is made available by ensuring that manufacturers build end user devices and infrastructure equipment compatible across the entire 700 MHz spectrum.

Now that the Commission's rules have permitted this to happen, the Commission must act to reverse the market power it inadvertently gave to Verizon and AT&T. The best way to counteract the negative effects of this market power is for the Commission to require all equipment, especially handsets,⁴⁶ to be compatible across all 700 MHz spectrum.

VIII. Opponents of the Prohibition on Restrictive 700 MHz Equipment Configurations Have Not Made Their Case

In light of the foregoing considerations, opponents of a requirement that 700 MHz equipment be technically capable of accessing the entire 700 MHz band must meet a heavy burden to overcome the evident public interest benefits of technical compatibility across the entire 700 MHz band. They have failed to do so.

In filings made before the Petition was listed by the Commission for comment, a few commenters cited concerns that granting the relief requested by the Alliance would have adverse consequences by increasing the initial cost of 700 MHz devices, increasing the size of handsets

⁴⁶ The Commission may properly distinguish between infrastructure equipment and handsets. There is no economic reason for the equipment not to be compatible across all 700 MHz spectrum.

and delaying the roll out date.⁴⁷ The true significance of these comments is that they do not contend that producing units that are compatible across the entire 700 MHz band is technically unachievable. And, no effort was made to quantify either the cost, size or timetable implications of the Coalitions proposal. MetroPCS will review with interest the comments of the opponents in response to the *700 MHz Notice* to see if they are able to make their case. If so, the Commission will be faced with an important policy question: are the alleged short term consequences of the compatibility requirement sufficient to outweigh the obvious long term benefits of allowing the 700 MHz band to develop in a more open and competitive fashion? At this point, the answer of MetroPCS is “No.”

IX. The Commission Must Resolve the Compatibility Issue in Advance of the D Block Auction

The Commission will face the same issues with respect to the D Block that it confronts here with regard to the Lower A Block unless it addresses the 700 MHz equipment compatibility issue before the D Block auction. The D Block presents another chance for small, rural and mid-tier carriers, as well as new entrants, to gain access to valuable 700 MHz spectrum. To seize this opportunity, the Commission must make clear in advance that equipment available for C Block and the rest 700 MHz band will be compatible with the D Block. Otherwise, the Commission runs the risk that bidders will not show up for the D Block auction, or that participants will heavily discount the spectrum. Either result could enable the largest carriers with market power to buy the spectrum at significantly reduced costs in which case new competition from the D

⁴⁷ Comments of Motorola, Inc. in RM No. 11592, filed Feb. 8, 2010; Notice of *Ex Parte* of QUALCOMM Inc. in WT Docket No. 09-66 and GN Docket No. 09-157, filed Jan. 25, 2010; *see* Comments of Verizon Wireless 85-91 in WT Docket no. 09-66, filed Oct. 22, 2009 (describing perceived technical obstacles to the design of equipment in the 700 MHz band).

Block would be forestalled to the public's detriment.⁴⁸

X. Conclusion

For the foregoing reasons, the Commission should initiate a rulemaking to assure that consumers will have access to all paired 700 MHz spectrum that the Commission licenses, to act so that the entire 700 MHz band will develop in a competitive fashion, and to adopt rules that prohibit restrictive equipment arrangements that are contrary to the public interest and encourages the Commission to consider specific policies against restrictive equipment arrangements. Further, the Commission should stay all construction requirements for Block A licensees until the Commission resolves the important issues raised by the Petition.

⁴⁸ The Commission should not entertain any claim that special restrictive equipment design standards are appropriate for the D Block because it is immediately adjacent to public safety spectrum. There are many instances in which blocks of CMRS spectrum are adjacent to non-CMRS spectrum and equipment has been successfully developed for the entire CMRS band (e.g., cellular, PCS and AWS). Indeed, in this case, because the Commission is counting on cross-compatibility between the 700 MHz public safety spectrum and the 700 MHz commercial spectrum, walling off the 700 MHz D Block would be particularly inappropriate.

Respectfully submitted,

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March 31, 2010

LEGAL_US_E # 87270201.7