

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
700 MHz MOBILE EQUIPMENT) RM -11592
CAPABILITY)
)
Petition for Rulemaking Regarding the)
Need for 700 MHz Mobile Equipment to)
be Capable of Operating on All Paired)
Commercial 700 MHz Frequency Blocks)

To: The Commission

COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston Mordkofsky Dickens Duffy & Prendergast, LLP (“Blooston”), on behalf of its rural telephone clients listed in Attachment A (the “Blooston Rural Carriers”), respectfully submits their comments in the above-captioned proceeding regarding the need for 700 MHz mobile equipment to be capable of operating on all paired commercial 700 MHz frequency blocks. The Blooston Rural Carriers support the 700 MHz Block A Good Faith Purchasers Alliance (the “700 MHz Alliance”) and urge the Commission to initiate a rulemaking to address the issues raised by the 700 MHz Alliance in its September 29, 2009, Petition for Rulemaking (the “Alliance Petition” or “Petition”).

In brief, the Blooston Rural Carriers believe that small and regional 700 MHz licensees should have access to the same wireless equipment and opportunities to provide service (including roaming services and public safety broadband service) as AT&T Wireless, Inc. (“AT&T”) and Verizon Wireless (“VZW”). The restrictive equipment banding arrangements and procurement practices described by the 700 MHz Alliance will have a direct and serious impact on those small and regional carriers – including Designated Entities (“DEs”) – that are Lower 700 MHz A-Block licensees. There will

also be an adverse impact on Lower 700 MHz B- and C-Block licensees, who will be foreclosed from entering into beneficial roaming and intercarrier arrangements with A-Block licensees due to equipment incompatibility. In the absence of prompt FCC action to remedy this situation, many small and regional carriers will be faced with a lack of suitable equipment options, as well as an inability to secure meaningful 700 MHz roaming service for their own customers or the ability to serve 700 MHz roaming customers of AT&T and VZW. This will seriously impact the ability for DEs to compete with “Big Two” in the provision of 700 MHz broadband wireless services, and it will jeopardize the ability of DEs to meet the ambitious construction obligations that the FCC adopted for the 700 MHz licenses that were the subject of bidding in Auction No. 73. Moreover, unless the Commission takes steps to ensure that 700 MHz devices are capable of operating on all paired 700 MHz frequency blocks, as well as the public safety broadband spectrum, public safety entities will be deprived of the ability to enter into flexible spectrum-sharing partnerships with commercial operators of any 700 MHz channel block, and will not fully realize the benefits that come with the economies of scale of compatible equipment.

Like handset exclusivity arrangements, which prevent small and regional wireless carriers from being able to obtain many of the most sought-after wireless devices, the restrictive banding arrangements and procurement practices that have emerged in the 700 MHz band promise only to widen the competitive disparity that exists between small and regional carriers (including many DEs) and the “Big Two.” The Blooston Rural Carriers agree with the 700 MHz Alliance that the Commission should initiate a rulemaking to investigate these practices, and the extent to which they will harm competition from

smaller carriers. The Commission should not hesitate to exercise its authority under the Act to prohibit these arrangements when they are found to be contrary to the public interest.¹ In support hereof, the following is shown:

I. Restrictive 700 MHz Banding Arrangements and Procurement Practices Harm DEs that are A-Block Licensees as well as DEs that Seek Roaming and Intercarrier Arrangements with A-Block Licensees

If allowed to proceed unchecked, the restrictive 700 MHz equipment banding arrangements and handset procurement practices described in the Alliance Petition will result in direct and substantial harm to A-Block carriers and their customers. AT&T and VZW have both announced plans to deploy 700 MHz Long Term Evolution (“LTE”) networks, and both are allegedly seeking mobile devices that operate over the 700 MHz spectrum blocks associated with some or all of their own 700 MHz licenses but that do not include the Lower 700 MHz A-Block. As a result, equipment manufacturers are likely to concentrate their efforts on developing 700 MHz equipment for AT&T and VZW, and smaller A-Block licensees and their customers will be harmed. These businesses will be left without access to the same range of equipment options as the Big Two, and what equipment does become available to them will only be available later in time and at considerably higher prices.

Many small and regional carriers participated in Auction No. 73 and some (including DEs) were able to obtain Lower 700 MHz A-Block licenses. Other small businesses and rural telephone companies may seek to provide 700 MHz wireless services by entering into affiliation arrangements with or acquiring partitioned and/or

¹ The Petition (at pp. 7-9) correctly sets forth the Commission’s authority under the Communications Act of 1934 to police restrictive equipment design and procurement practices.

disaggregated spectrum from A-Block regional licensees. Opportunities for these companies – who would otherwise be in a position to compete with AT&T and VZW in the 700 MHz band – will be lost if artificial barriers based on carrier-specified equipment banding specifications are allowed to persist. Small and regional carriers should be able to obtain the same variety and types of wireless devices, and to benefit from the same economies of scale that make equipment costs comparatively lower for the Big Two. Moreover, without the widespread availability of equipment that is capable of operating on all paired 700 MHz frequency blocks, small and regional carriers will be left without access to equipment in the near term that will allow them to provide meaningful 700 MHz roaming service for their own customers, or the ability to serve 700 MHz roaming customers of AT&T and VZW. Since small and regional wireless carriers often focus their efforts on rural and mid-tier markets, the availability of 700 MHz service in these areas is likely to be delayed as well.

Small businesses and rural telephone companies that are Lower 700 MHz B- and C-Block CMA licensees also have a significant interest in seeing that 700 MHz mobile equipment is capable of operating on all 700 MHz paired channel blocks. Since AT&T holds a substantial number of Lower 700 MHz B- and C-Block licenses, one might presume that a reasonable selection of equipment for these bands would be readily available. However, independent B- and C-Block carriers might become isolated islands of coverage, because there is no guarantee that AT&T will provide reasonable LTE roaming terms for rural and independent service providers. If the past is any indication, big companies like AT&T frequently take the position that small businesses and rural telephone companies have nothing to bring to the table when negotiating all types of

business arrangements. With mergers only adding to the size and reach of these companies, they are left with no incentive (short of regulatory mandates) to deal fairly with small service providers. Desirable roaming and/or affiliation arrangements may be available from A-Block regional carriers, but Lower 700 MHz B- and C-Block licensees may find themselves foreclosed from these opportunities due to technical limitations in the equipment that is available to them.

It stands to reason that the quality of rural networks, and availability of wireless services in the most remote areas, will be jeopardized if rural wireless carriers are unable to compete effectively with the largest 700 MHz carriers. Revenues from a fixed base of local subscribers – in addition to revenues from roaming customers – are vital to the financial stability of any wireless carrier. For many rural carriers, it would be impossible to survive, much less to thrive and expand service into new and unserved (or underserved) territories, if there is significant customer churn. Therefore, as these dominant carriers acquire competitors and extend their service into smaller markets and the connecting interstate highways, rural carriers are more likely to be harmed by the anticompetitive effects of restrictive 700 MHz banding arrangements and procurement practices.

If smaller rural carriers are forced out of business by the loss of customers in the few populated portions of their service areas (a growing possibility in today's fragile economy), many of the most remote areas will lose access to any type of wireless service. The larger carriers generally have not built out coverage to many small communities and truly rural stretches that are removed from the highway. The resulting net loss of service

to rural America would be contrary to public interest and the policies embodied in the Communications Act.

The Blooston Rural Carriers agree with the 700 MHz Alliance that these equipment design and procurement practices contravene the public interest and are inconsistent with the Commission's obligations under the Act to make wire and radio communication service available to all the people of the United States, without discrimination, and to ensure "a fair, efficient and equitable distribution of radio service" to all states.²

II. Restrictive 700 MHz Banding Arrangements and Procurement Practices will Jeopardize the Ability of Small and Rural Carriers to meet their 700 MHz Construction Requirements

In order to promote the rapid buildout of service to rural and underserved areas, the FCC adopted stringent performance requirements for CMA and EA licensees that were available for bidding in 700 MHz Auction No. 73.³ However, the restrictive 700 MHz banding arrangements and procurement practices of the Big Two appear likely to frustrate the Commission's goals for rural 700 MHz service, and small and rural carriers will be faced with severe penalties if they are unable to meet these requirements. In particular, if smaller licensees cannot provide their customers with working customer devices in a timely fashion, these licensees will not garner a revenue stream from the first stages of their buildout that will be needed to finance subsequent stages.

² See 47 USC §309.

³ 700 MHz Second Report and Order, 22 FCC Rcd 15289, 15349 (para. 157).

In its *700 MHz Second Report and Order*, the FCC concluded that CMA and EA licensees should be required to provide signal coverage and offer service to at least 35 percent of the geographic area of their license within four years of the end of the DTV transition (*i.e.*, by February 17, 2013), and at least 70 percent of the geographic area of their license at the end of the license term (*i.e.*, by February 17, 2019). The consequences for failing to meet these buildout and service obligations are quite severe. Licensees that fail to meet the interim requirement within their license areas will have their license terms reduced by two years, from ten to eight years, thus requiring these licensees to meet the end-of-term benchmark at an accelerated schedule. For those CMAs or EAs in which the end-of-term performance requirements have not been met, the unused portion of the license will terminate automatically without Commission action and will become available for reassignment by the Commission subject to the “keep-what-you-use” rules.⁴

III. Restrictive 700 MHz Banding Arrangements and Procurement Practices will Limit the Ability of Public Safety Entities to Enter Flexible Spectrum-Sharing Partnerships with Commercial Operators of Any 700 MHz Channel Block

In 2007, the FCC adopted rules to promote the construction, deployment and operation of a nationwide and seamless wireless 700 MHz public safety broadband network by creating a mandatory partnership between the public safety community and the private licensee of a 700 MHz commercial spectrum allocation known as the “D-Block.” However, the D-Block spectrum failed to attract a required minimum bid in Auction No. 73 and plans for a 700 MHz nationwide public safety broadband wireless network have been put on hold while the Commission and public safety evaluate other proposals.

⁴ *Id.*

On March 16, 2010, the FCC adopted its National Broadband Plan which includes ambitious plans for ensuring public safety access to wireless broadband service. Unlike the previous approach that focused solely on the D-Block, the revised Plan provides the public safety community with competitive choices among commercial partners, including the flexibility to enter into spectrum-sharing partnerships with commercial licensees on all 700 MHz spectrum blocks. The Plan also noted a growing consensus among the public safety community and commercial 700 MHz carriers for the Long Term Evolution (LTE) family of standards, and it suggested that the Commission consider designating this standard. However, unless the Commission takes steps to ensure that 700 MHz devices are capable of operating on all paired 700 MHz frequency blocks, as well as the public safety broadband spectrum, public safety entities will be deprived of the ability to enter into flexible spectrum-sharing partnerships with A-Block licensees, who may be the only 700 MHz licensees operating in certain rural and underserved regions. Similarly, a lack of suitable equipment could prevent A-Block licensees and their roaming partners from responding to RFPs and opportunities to construct 700 MHz public safety networks through infrastructure sharing arrangements.

The National Broadband Plan recognizes the significant role that equipment banding arrangements are playing in the development of competitive 700 MHz services, and recommends that the FCC “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).” The Blooston Rural Carriers concur with this recommendation, and urge the FCC to act quickly, so that all 700 MHz licensees are able to compete for the privilege of serving the public safety community.

Attachment A

The Blooston Rural Carriers

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|---|-----------------|
| Buggs Island Telephone Cooperative | Bracey, VA |
| Consolidated Telcom | Dickinson, ND |
| Custer Telephone Cooperative | Challis, ID |
| KTC AWS LLC | Kennebec, SD |
| Public Service Telephone Company | Reynolds, GA |
| Red River Rural Telephone Association, Inc. | Abercrombie, ND |
| Reservation Telephone Cooperative | Parshall ND |
| Sky Com 700 MHz, LLC | Rothsay, MN |
| South Central Utah Telephone Association | Escalante, UT |

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