

**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

REPLY 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 reply 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.

In brief, a majority of the commenters support the petition for rulemaking submitted by the 700 MHz Block A Good Faith Purchasers Alliance (the “Alliance Petition”) and urge the Commission to proceed with a further inquiry into the issues raised by the Alliance. The Alliance Petition and supporting comments present ample evidence that restrictive practices like equipment sub-banding arrangements will distort competition in the market for 700 MHz mobile broadband services and harm consumers. Moreover, the record shows that the public safety community and larger public interest will benefit from the availability of devices that can access multiple 700 MHz band classes. Restrictive banding arrangements like those sought by AT&T Wireless (“AT&T”) and Verizon Wireless (“Verizon”) – and which are eagerly supported by equipment manufacturers such as Qualcomm, Inc. (“Qualcomm”) and Motorola, Inc.

(“Motorola”) – will cause market fragmentation and substantial stranded investment. The practice will shift equipment design and development costs onto rural and regional 700 MHz licensees and their customers (and the public safety community), delaying rural network buildout and availability of service, rather than allowing these costs to be spread equitably across the entire 700 MHz community. This will significantly delay (if not derail) 700 MHz mobile broadband deployment by rural and regional carriers and limit their ability to partner with public safety for the buildout of rural and regional public safety broadband networks, as contemplated in the National Broadband Plan.

The arguments made by opponents to the Alliance Petition are based on self-interested rationalizations and fall short. None has claimed that the technical hurdles are insurmountable, so the issue boils down to a matter of timing and cost. In this regard, the FCC must not allow the global business interests of wireless titans to trump the public interest, but instead must determine what is best for consumers and public safety in the United States in the long term. The Commission needs to take action to right this imbalance, and it can do so by initiating a rulemaking in response to the Alliance Petition. In support hereof, the following is shown:

I. Restrictive Equipment Design and Procurement Practices Will Distort Competition and Harm Consumers

Upon review of the comments in this proceeding, it should be clear to the Commission that the restrictive 700 MHz equipment design and procurement practices described by the Alliance, if allowed to proceed unchecked, will distort competition in the market for 700 MHz mobile broadband services and harm consumers.

The FCC has long recognized the benefits of having robust competition in the wireless marketplace - including low prices, new technologies, improved service quality, and choice among providers. It has also recognized that rural and regional carriers play a vital role in ensuring that the benefits of competition inure to citizens of sparsely populated areas and underserved communities. However, these benefits will be lost, and competition for mobile broadband services in the 700 MHz band will be sharply curtailed, if the nation's leading wireless carriers are allowed unfettered discretion to develop and market devices that have limited capability outside of their exclusive (*i.e.*, the Upper 700 MHz C-Block in the case of Verizon) or limited (*i.e.*, the Lower 700 MHz B- and C-Blocks in the case of AT&T) 700 MHz sub-bands. The record shows that the carriers who dominated the bidding in Auction No. 73, and who have been able to acquire a dominant stake in previously-sold 700 MHz bands (through post-auction transactions), play significant (if not dominant) roles in international standards bodies such as 3GPP. Their colossal size (and marketing might) give them the unique ability to drive the market for equipment design and development. AT&T and Verizon are able to use their stranglehold on the handset market to secure exclusive distribution deals today. With overt exclusivity agreements drawing FCC and Congressional scrutiny and a *de facto* industry/public safety consensus that LTE will be the mobile air interface for 700 MHz paired channels, it should come as no surprise that these companies have come up with new ways to obtain device exclusivity and extend their dominance.

Numerous commenters have noted that restrictive 700 MHz mobile equipment banding arrangements will disrupt the market for roaming services.¹ MetroPCS observes

¹ See, e.g., Comments of Cox Wireless ("Cox Wireless Comments") at pp. 2-3, 5; Comments of

that 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.’”² Cox Wireless emphasizes the importance of roaming to a new, facilities-based entrant’s ability to effectively compete, and observes that the *National Broadband Plan* has recommended that the Commission “move forward promptly” in the open proceeding on data roaming.³

In this regard, the Blooston Rural Carriers applaud the Commission for its recent elimination of the home roaming exclusion and its clarification that a request for automatic roaming will be reasonable in the first instance if the requesting carrier’s network is technologically compatible.⁴ However, the Commission must not allow AT&T and Verizon to sidestep their roaming service obligation in the 700 MHz band through equipment sub-banding arrangements that are designed to create equipment

MetroPCS Communications, Inc. (“MetroPCS Comments”) at pp. 11-14; Comments of Triad 700 LLC (“Triad 700 Comments”) at pp. 5-7; Comments of the Rural Telecommunications Group (“RTG Comments”) at pp. 2, 5; Comments of United States Cellular Corporation (“USCC Comments”) at pp. 8-9, 14, 17; Comments of Rural Cellular Association (“RCA Comments”) at pp. 9-11; Comments of PVT Networks, Inc. (“PVT Comments”) at pp. 3-5, 8; Comments of Cellular South, Inc. (“Cellular South Comments”) at pp. 3-5; Comments of National Telecommunications Cooperative Association (“NTCA Comments”) at pp. 3-4.

² MetroPCS Comments at p. 11.

³ Cox Wireless Comments at p. 3.

⁴ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, FCC 10-59 (rel. April 21, 2010) at para. 10.

compatibility issues. The Blooston Rural Carriers agree with Triad 700 LLC that the Commission “should not allow the largest carriers to add technical incompatibility to their list of reasons for declining to provide roaming services.”⁵

Similarly, restrictive 700 MHz mobile equipment banding arrangements will harm customers of rural and regional carriers who will not have access to a comparable selection of advanced wireless devices. They will be forced to pay more for equipment that is not built to “mass market” specifications, which, for all intents and purposes, will be set by AT&T and Verizon. USCC observes that “[i]n the absence of vendor support by the two largest spectrum holders in the 700 MHz band, the mainstream vendor community has been reluctant to initiate the expensive process of developing chipsets, filters, amplifiers and other device components supporting Band Class 12 and 14 operations.”⁶ Therefore, there is ample evidence in the record that the potential for harm to competition and consumers is hardly speculative and it is already occurring. In light of Verizon’s dominant stake in the Lower 700 MHz A-Block, where it holds 25 licenses representing 9 of the 10 largest BEA markets and over 51% of the US population, the Blooston Rural Carriers believe that equipment manufacturers will be content to sit on the sidelines until such time as Verizon is ready to utilize this spectrum. With an expected 18-24 month design and production cycle for consumer devices,⁷ Verizon may be content to keep its Lower 700 MHz A-Block spectrum in reserve for two years or more, allowing the company to extend its “head start” over smaller 700 MHz competitors to 3-5 years. Even then, it may decide to use this spectrum for fixed services, or for

⁵ Triad 700 Comments at p. 6.

⁶ USCC Comments at p. 7.

⁷ Cellular South Comments at p. 5.

WiMAX or other Time Division Duplex operations that are technically compatible at a network level but that are not compatible at a device level. Either way, the result will be the same: Verizon will have exclusivity for LTE services in the bands of its choosing, and its rural/regional competitors will be left scrambling for suitable network equipment and devices to meet an expedited buildout schedule. Because of the tremendous interest by commercial and public safety entities to deploy LTE networks as soon as possible, the Blooston Rural Carriers believe that significant technical resources will be brought to bear and there should not be too much delay in bringing “full spectrum” 700 MHz LTE chipsets to market in response to an FCC mandate.

II. Public Safety will be Harmed if it Lacks Access to All 700 MHz Band Classes and if Buildout of Rural 700 MHz Networks is Delayed

Many commenters in this proceeding, including the PSST and National Fraternal Order of Police, have recognized the public interest benefits of having an ecosystem of devices that can access multiple 700 MHz band classes and widespread roaming opportunities. In terms of enhanced roaming service, this can promote public safety agencies’ life-saving efforts by allowing agencies to operate across jurisdictional boundaries during an emergency. Nationwide roaming can also reduce capacity constraints on public safety broadband operations by providing additional spectrum resources for public safety operations.⁸ At the same time, it could lower agencies’ costs by expanding the pool of potential 700 MHz commercial partners for public safety⁹ and it would create greater economies of scale for devices compatible with public safety

⁸ Comments of National Fraternal Order of Police (“FOP Comments”) at p. 3; Comments of the Public Safety Spectrum Trust (“PSST Comments”) at pp. 5-6.

⁹ FOP Comments at pp. 8-9; PSST Comments at p. 8; MetroPCS Comments at p. 5 (“public safety will be foreclosed from receiving the priority roaming access it will need.”); USCC Comments at pp. 13-

spectrum.¹⁰ However, these significant benefits to the public safety community (and the public at large) are unlikely to be realized if the Commission allows restrictive 700 MHz mobile equipment banding arrangements to develop.

Rural and regional carriers are poised to play a significant role in the construction and operation of 700 MHz broadband wireless networks – especially in secondary and tertiary markets. In this regard, commenters have correctly noted that the 700 MHz band, like the 800 MHz cellular band, is “prime” spectrum due to its superior propagation and penetration characteristics¹¹ and that the propagation characteristics of 700 MHz spectrum make it particularly well suited for delivering wireless broadband using LTE,¹² and providing service in a rural setting.¹³ Requiring all commercial service providers in the 700 MHz band to develop “full spectrum” devices would level the playing field and “enhance possible public safety partnership opportunities for all 700 MHz providers, not just AT&T and Verizon.”¹⁴

III. Opponents’ Arguments to Preserve the Status Quo are Not Persuasive

Opponents to the Alliance Petition argue that the Petition should be denied because it rests on erroneous factual and technical claims,¹⁵ that the 700 MHz band

15; RTG Comments at pp. 4-5.

¹⁰ FOP Comments at p. 2; Cellular South Comments at p. 7; RTG Comments at pp. 4-5;

¹¹ MetroPCS Comments at p. 8.

¹² RTG Comments at p. 6.

¹³ NTCA Comments at p. 2.

¹⁴ USCC Comments at p. 15; Cellular South Comments at p. 7 (“If only a small selection of devices are developed with these capabilities there will be cost inefficiencies and it can be expected that not all public safety personnel (in particular volunteers) will be equipped as needed to respond with needed flexibility in emergency situations.”).

¹⁵ See, e.g., Comments of Verizon Wireless (“Verizon Comments”) at pp.2-12.

classes were established in an open process¹⁶ and are based on sound engineering principles;¹⁷ that it is technically difficult to combine Lower and Upper 700 MHz bands in the same device;¹⁸ and that the potential use of WiMAX and other air interfaces in the 700 MHz band makes the Alliance's request even more problematic.¹⁹

While nobody can fault Verizon and AT&T for wanting to pursue their global business interests, the FCC should not let the pecuniary interests of these corporate giants dictate what is best for consumers and for public safety users in the United States. The Petitioners and commenters including the Blooston Rural Carriers have demonstrated that the interests of consumers and public safety would be promoted by a requirement that 700 MHz mobile equipment be capable of operating on all paired 700 MHz blocks.

AT&T and Verizon also argue that the Alliance petition should be denied because the rule changes it seeks would conflict with key FCC policy goals²⁰ and the National Broadband Plan.²¹ In this regard, Verizon argues that grant of the Alliance petition would impede the rapid deployment of 4G broadband services, and it frames the issue in terms of stifling technological differentiation. To be sure, the Commission has refrained from dictating the air interfaces that wireless providers must use or the capabilities that their devices must contain, but at the same time, the FCC has imposed E911 capability requirements on all CMRS carriers. Far from being irrelevant, commenters have shown

¹⁶ Verizon Comments at pp. 2-4.

¹⁷ Comments of AT&T, Inc. ("AT&T Comments") at pp. 5-7.

¹⁸ Verizon Comments at pp. 7-9; AT&T Comments at pp. 8-9.

¹⁹ Verizon Comments at pp. 9-10.

²⁰ Verizon Comments at pp. 12-15.

²¹ AT&T Comments at pp. 10-12.

that public safety interests are especially important when the deployment of mobile broadband services in the 700 MHz Band is at issue.

Verizon argues that the Commission’s “open platform” goals for the upper 700 MHz C-Block would be frustrated by grant of the Alliance petition. However, comments of USCC explain how a robust and competitive market for “open platform” devices on the Upper 700 MHz C-Block is even more likely to develop if the Commission mandates the development of “Full Spectrum” devices in the 700 MHz band.²²

Verizon’s argument that the Commission lacks a valid legal basis for adopting the regulations sought by the Alliance relies on an overly cramped view of the Communications Act, and its attempts to distinguish the FCC’s 1981 ruling that required both A and B Cellular bands to be included in all handsets (a ruling that the Blooston Rural Carriers believe is directly relevant to the Lower 700 MHz A-Block) fall short. Promoting consistent standards for LTE devices in the 700 MHz band is unquestionably in the public interest because this will encourage robust competition and synergies between and among providers of commercial 700 MHz services, as well as expand the availability and utility of mobile broadband networks for public safety use.

Initiation of a rulemaking to examine 700 MHz equipment capability and interoperability issues would be consistent with the APA ban on “arbitrary and capricious” decisionmaking. Conducting a notice and comment proceeding to examine these issues would be viewed as a logical and rational choice by the Commission when

²² USCC Comments at pp. 10-13.

Attachment A

The Blooston Rural Carriers

Buggs Island Telephone Cooperative	Bracey, VA
Consolidated Telcom	Dickinson, ND
Custer Telephone Cooperative	Challis, ID
KTC AWS LLC	Kennebec, SD
Manti Telephone Company	Manti, UT
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
Star Telephone Company, Inc.	Baton Rouge, LA

Service List

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street SW, Room 8-B201
Washington, DC 20554
E-Mail: julius.genachowski@fcc.gov

Michael J. Copps, Commissioner
Federal Communications Commission
445 12th Street SW, Room 8-B115
Washington, DC 20554
E-Mail: michael.copps@fcc.gov

Robert M. McDowell, Commissioner
Federal Communications Commission
445 12th Street SW, Room 8-C302
Washington, DC 20554
E-Mail: robert.mcdowell@fcc.gov

Mignon Clyburn, Commissioner
Federal Communications Commission
445 12th Street SW, Room 8-A302
Washington, DC 20554
E-Mail: mignon.clyburn@fcc.gov

Meredith Attwell Baker, Commissioner
Federal Communications Commission
445 12th Street SW, Room 8-A204
Washington, DC 20554
E-Mail: Meredith.Baker@fcc.gov

Won Kim
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
E-Mail: won.kim@fcc.gov

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554.

Bruce Gottlieb
Legal Advisor to Chairman Genachowski
445 12th Street SW, Room 8-B201
Washington, DC 20554
E-Mail: bruce.gottlieb@fcc.gov

Rick Chessen
Legal Advisor to Commissioner Copps
445 12th Street SW, Room 8-B115
Washington, DC 20554
E-Mail: rick.chessen@fcc.gov

Angela Giancarlo
Legal Advisor to Commissioner McDowell
445 12th Street SW, Room 8-C302
Washington, DC 20554
E-Mail: angela.giancarlo@fcc.gov

Renee Roland Crittendon
Legal Advisor to Commissioner Clyburn
445 12th Street SW, Room 8-A302
Washington, DC 20554
E-Mail: renee.crittendon@fcc.gov

Erin McGrath
Legal Advisor to Commissioner Baker
445 12th Street SW, Room 8-A204
Washington, DC 20554
E-Mail: erin.mcgrath@fcc.gov

David L. Nace, Esquire
Thomas Gutierrez, Esquire
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
*Counsel for 700 MHz Block A Good Faith
Purchasers Alliance*

Best Copy and Printing, Inc. (BCPI)
Portals II
445 12th Street, S.W., Room CY-B402,
Washington, D.C. 20554
Email: fcc@bcpiweb.com