

**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 VERIZON WIRELESS

John T. Scott, III
Vice President & Deputy General Counsel

William D. Wallace
Senior Counsel

Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 589-3760

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SUMMARY

The comments demonstrate that the interoperability rule for 700 MHz devices proposed by the Petitioners would have significant adverse effects on the roll-out of 4G LTE mobile broadband services and on consumers of such services. Adoption of the rule would cause substantial delay in the availability of equipment; increase the size, cost and complexity of consumer devices; increase the potential for interference into 700 MHz devices; decrease the flexibility for equipment manufacturers and service providers with respect to the types of equipment they would be able to offer consumers; and impede beneficial roaming capabilities on non-700 MHz international and domestic networks.

The supporters of the Petition have not provided *any* evidence or data that demonstrate that the proposed rule is in the public interest, or would provide any beneficial effects for consumers that outweigh these adverse ones. For that reason alone, the Petition should be denied.

Given the failure of the supporters of the Petition to provide any evidence or data, the purported rationales for the proposed rule do not hold up to scrutiny. Contrary to the Petition, no U.S. wireless provider has sufficient market power to restrict other carriers from working with one or more of the nearly three dozen equipment manufacturers available in the U.S. market to develop equipment that will operate on the Lower A-Block. Therefore, the 700 MHz network build-out plans of Verizon Wireless cannot impede the buildout of other 700 MHz licensees.

The interoperability rule proposed in the Petition is not necessary to make roaming available to 700 MHz licensees for commercial services. Moreover, dictating such requirements could increase the cost and complexity of public safety 700 MHz devices, and take away the flexibility that public safety networks may need to develop device specifications and roaming

arrangements consistent with their own requirements. With respect to the Upper 700 MHz C-Block, the Commission has made clear that the use of other spectrum bands is irrelevant to devices developed for the C-Block “open platform” and that technical standards such as those developed for LTE by 3GPP are preferred and presumed reasonable.

In addition, supporters of the Petition have cited no legal authority for a device mandate in the Communications Act, and, in fact, the courts have concluded that the Commission does not have authority to impose such a requirement on equipment because it would not be related to transmission features.

At bottom, the Petition proposes a rule that seeks to require 700 MHz equipment to be built in conformance with the business model of certain carriers, rather than allowing each carrier to decide what business model to pursue based on its own spectrum holdings. The latter principle is the essence of the Commission’s flexible spectrum use policy, which it specifically adopted for 700 MHz licensees prior to Auction 73.

Having apparently failed to conduct adequate due diligence into 700 MHz equipment – as the Commission explicitly directed potential Auction 73 bidders to do – the Petitioners and their supporters now seek to overturn the rules under which that auction was conducted to further their own economic interests. Moreover, they claim that the Commission’s failure to act on the Petition will lead to their inability to complete the build-out requirements, under which they knowingly bid on and accepted 700 MHz licenses. But, these claims can and should be ignored, because the Commission dictated that its successful flexible use policy, not the restrictions proposed by the Petition, would apply to 700 MHz licenses, and Auction 73 bidders must be held responsible for conducting their own due diligence.

The record, in sum, shows that the Petitioners and their supporters have failed to make the case that the proposed rule is necessary, beneficial to consumers, or lawful. The Petition should be denied.

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REPLY COMMENTS OF VERIZON WIRELESS

Many initial comments filed in response to the Alliance’s Petition for Rulemaking explain why granting the Petition would delay the deployment of 4G wireless broadband devices and harm consumers of broadband services, counter to the goals of the National Broadband Plan. They also show there is no legal basis for the Commission to consider the Petition. In contrast, supporters of the Alliance offer no facts as to why the Commission should – and no cogent legal theory of how it could – dictate that 700 MHz devices contain all paired 700 MHz bands. They offer unsupported and incorrect conclusory assertions that do not explain why the Commission should reverse years of settled policy leaving the design of wireless devices to the free market. They attack the Commission’s 700 MHz rules, ignoring the fact that the Commission warned all bidders to assess the availability of equipment. And, they fail to offer a valid legal or policy justification for dictating the design of devices or even for conducting the requested rulemaking. In short, the existing record compels denial of the Petition.

I. THE PROPOSED RULE WOULD DELAY DEPLOYMENT OF 4G BROADBAND SYSTEMS TO THE DETRIMENT OF CONSUMERS.

The comments demonstrate the following effects of the rule proposed by the Alliance requiring that all 700 MHz devices operate over all paired commercial 700 MHz spectrum bands:

- The rollout of 4G LTE mobile broadband services, which should be starting in 2010, would be delayed *at least* 18-24 months;¹
- 700 MHz devices would require increased size, power consumption, complexity and cost for both consumer devices and devices to be deployed by public safety;²
- The potential for harmful interference into 700 MHz devices would be exacerbated;³
- Device developers and 700 MHz licensees would not be able to design or offer consumers devices created for specific uses, such as book readers (Kindles), air cards (USB dongles), mobile television products (MediaFLO), or Machine-to-Machine devices such as smart grid home energy meters;⁴ and,
- Consumers would not have available 4G devices that offer the ability for roaming outside and into the United States, and may be not even be able to roam onto 3G networks in the United States.⁵

In other words, were the rules the Petition seeks adopted, instead of consumers having access to innovative, faster, more robust mobile broadband services *within the next year*, consumers would be forced to wait *two or three years* longer – and then have to buy bulkier, more expensive, less efficient devices, which would be filled with radio

¹ See AT&T Comments, at 10-12; CEA Comments, at 2; Motorola Comments, at 3; Qualcomm Comments, at 5; Verizon Wireless Comments, at 12-13.; *see also* Cellular South Comments, at 5 (noting there is an 18-24 month production cycle for consumer equipment).

² See AT&T Comments, at 8-9; CEA Comments, at 2-3; Motorola Comments, at 7; Qualcomm Comments, at 5; Verizon Wireless Comments, at 4-9.

³ See AT&T Comments, at 5-7; Motorola Comments, at 4-6, 8-9; Qualcomm Comments, at 6; Verizon Wireless Comments, at 8.

⁴ See Motorola Comments, at 7; Verizon Wireless Comments, at 14-15; AT&T Comments, at 12; Qualcomm Comments, at 7 (proposed rule would outlaw 700 MHz single band devices).

⁵ See AT&T Comments, at 9; Motorola Comments, at 6-7; Verizon Wireless Comments, at 10-11.

equipment and functions that are never used.⁶ This would be particularly disconcerting for purchasers of MediaFLO devices, which only use one set of frequencies but now would have to be filled by equipment for five other bands.⁷ But all customers would be harmed by having to purchase more expensive and needlessly complex devices.

This scenario is the exact opposite of the innovative and efficient technical solutions and consumer devices that the Commission's successful flexible use policy for wireless licensees is designed to foster and has in fact fostered over the past 20 years. The Commission has consistently found that this policy benefits consumers and the public interest, and promotes efficient use of spectrum.⁸ In short, the numerous equipment manufacturers and providers that oppose the Petition provide ample grounds to reject the Alliance's request as meritless and not in the public interest

II. THE ALLIANCE'S SUPPORTERS FAIL TO PROVIDE ANY FACTUAL, POLICY OR LEGAL JUSTIFICATION FOR THE COMMISSION TO DICTATE TECHNICAL STANDARDS FOR WIRELESS DEVICES.

The Alliance and its supporters have not provided any evidence that could justify reversing the Commission's longstanding policy to leave the design of wireless devices to the market – a policy that has unquestionably promoted innovation and benefited consumers. Instead, the rule proposed by the Alliance would result in the inefficient use of spectrum in addition to the harms to consumers identified above.

Just as the Alliance failed to provide any facts supporting its proposal in the Petition, the supporters of the Alliance also rely on a litany of misrepresentations and

⁶ NTCH and David Miller (Comments at 4) make the even more absurd suggestion that the interoperability rule should apply across *all* licensed spectrum bands. Assuming this suggestion were even technically feasible, or legal, such a mandate for wireless equipment would create chaos in the wireless industry and for wireless consumers.

⁷ Qualcomm Comments, at 7; *see* Motorola Comments, at 7-8.

⁸ *See* AT&T Comments, at 7-8; Motorola Comments, at 8-9; Verizon Wireless Comments, at 14-15.

distortions. Some of the most glaring examples of these claims and distortions and the correct information are outlined below:

- Claim: *Verizon Wireless and AT&T are using their market power to restrict equipment design and the manufacture and availability of 700 MHz devices for A-Block licensees.*⁹

First, these claims present no economic analysis whatsoever as to the definition of the relevant market or the position of Verizon Wireless or AT&T in that market, both critical inputs for any legitimate analysis of potential market power. For this reason alone, these claims lack any substance or credibility.

Second, proponents of new device regulation offer no evidence that either Verizon Wireless or any other U.S. wireless provider has the ability to restrict equipment manufacturers from working with *any* other wireless provider or from designing and marketing wireless devices. With nearly three dozen wireless device manufacturers in the United States to choose from, and over a hundred wireless providers, it would be difficult to put together facts that could support such a claim, and the Alliance's supporters do not even try.¹⁰ To the contrary, Verizon Wireless has presented extensive data demonstrating a robust, hyper-competitive U.S. equipment market in both the Commission's "CMRS Competition Report" docket¹¹ and the docket concerning RCA's petition for rulemaking on handset exclusivity,¹² and it incorporates by reference here those filings. Other parties have supplemented the evidentiary record before the

⁹ See Blooston Rural Comments, at 3; Cellular South Comments, at 4-6 & n.6; MetroPCS Comments, at 9-10; NTCA Comments, at 2-3; NTCH/Miller Comments, at 2; Triad Comments, at 2-3; U.S. Cellular Comments, at 3-6; RCA Comments, at 7-8; RTG Comments, at 3-4.

¹⁰ See Letter from Christopher Guttman-McCabe, CTIA—The Wireless Association™, to Marlene H. Dortch, FCC, Attachment, at 11, RM-11361, GN Dkt. 09-51, WC Dkt. 07-52 (filed May 12, 2009) ("CTIA May 12, 2009 Letter").

¹¹ See Reply Comments of Verizon Wireless, WT Dkt. 09-66, at 9-21, 46-49, 64-71 (filed Oct. 22, 2009); see also CTIA May 12, 2009 Letter & Attachment.

¹² See Comments of Verizon Wireless Requesting Dismissal or Denial of Petition, RM-11497, at 11-20 (filed Feb. 2, 2009).

Commission in those proceedings to demonstrate that each month, numerous innovative devices are brought to market by multiple manufacturers, all to the benefit of consumers.¹³

Third, as Verizon Wireless has previously pointed out, it has no interest in restricting or delaying the design and development of radios and wireless devices that work on the Lower 700 MHz A-Block, or 3GPP Band Class 12 (Lower A, B and C Blocks). Verizon Wireless holds 25 A-Block licenses, representing a sunk investment of over \$2.5 billion.¹⁴ These facts cannot be represented rationally in the way that the Alliance and its supporters want them to be, and so they ignore them.

- Claim: *Verizon Wireless and AT&T are impeding the competitive rollout of 4G mobile broadband networks.*¹⁵

Again, the supporters of the Alliance offer no evidence to support this frivolous claim. Verizon Wireless and AT&T obviously have an obligation under their own 700 MHz licenses to meet the Commission's build-out requirements. In furtherance of its license obligations, Verizon Wireless has made a business decision to roll out a 4G LTE mobile broadband network on its licensed Upper 700 MHz C-Block over the next four years. However, it is disingenuous for advocates of the Alliance's proposal to attempt to transmute Verizon Wireless' decision on how to provide service initially on its 700 MHz spectrum into the baseless allegation that the company is impeding their own buildout.

Verizon Wireless is doing no such thing. If these parties decide not to comply with their

¹³ See, e.g., Letter from Christopher Guttman-McCabe, CTIA, to Marlene Dortch, FCC, WT Dkt. 09-66, GN Dkt. 09-157, GN Dkt. 09-51 (filed Feb. 12, 2010), Attachment: "Wireless Industry Competition Update," at 4 ("[T]here is no doubt that the intense level of competition among device manufacturers has produced a diverse array of devices and features. . . . [T]he breadth and depth of the more than 630 devices manufactured for the U.S. wireless market eclipses that in other countries.").

¹⁴ Verizon Wireless Comments, at 11.

¹⁵ See Blooston Rural Comments, at 3-4; Cellular South Comments, at 2-3; Cox Comments, at 2-3; MetroPCS Comments, at 9-10; U.S. Cellular Comments, at 6-7; PVT Comments, at 4; Triad Comments, at 4-5, 8-9; RCA Comments, at 10-11; RTG Comments, at 3-4.

own independent build-out obligations that they assumed upon acquiring their 700 MHz licenses, that is a problem of their own making. The Commission should not allow this proceeding to be turned into a *de facto* reconsideration and/or waiver of the build-out requirements for 700 MHz licenses.

- Claim: *Unless the Commission adopts an interoperability rule for 700 MHz devices, consumers of 700 MHz devices will not have the benefits of roaming.*¹⁶

This claim is yet another distortion of the facts and the law on several levels.

First, there is no “right” associated with mobile roaming for a carrier to insist that another carrier must deploy technology that will accommodate the customers of the first carrier, for example, to accommodate for roaming purposes a specific set of frequencies or technologies. A-Block licensees’ assertion that such a “right” exists and therefore requires an interoperability rule so that their customers are not precluded from roaming onto any other 700 MHz licensed network is an argument built out of thin air.

Second, no wireless carrier has a “right” to revenues from roaming onto its network by another licensee’s customers. For the Alliance and its supporters to justify 700 MHz interoperability based on their concern about loss of roaming revenues ignores the true basis for roaming in accommodating consumers. It does expose these parties’ real motive – to continue to profit from charging for roaming. While that may be a business concern for these parties, it certainly is not a public interest concern for the Commission. In any event, if the interoperability rule were in place, any roaming revenues are likely to be widely dispersed because every 700 MHz carrier in every market would be a potential roaming partner.

¹⁶ See Blooston Rural Comments, at 4-5; Cellular South Comments, at 4-6; Cox Comments, at 2-3; MetroPCS Comments, at 6-7, 11-14; NTCA Comments, at 3-4; NTCH/Miller Comments, at 2-3; PVT Comments, at 4-5; Triad Comments, at 5-7; U.S. Cellular Comments, at 8-9; RCA Comments, at 9; RTG Comments, at 5-6.

Finally, the obligation of one wireless provider to offer roaming to the customers of another provider is subject to specific rules and statutes that remain in effect. The Commission also has under consideration adoption of additional roaming rules.¹⁷ Where a right to request a roaming agreement exists, such arrangements are subject to good faith negotiation between the parties, with the Commission as a backstop if negotiations fail. These rules also remain in place. Where there is no such right, market conditions prevail – which, of course, have not even developed for 700 MHz networks, but other spectrum bands are fully built out and would be available. The complaints about disappearance of roaming for consumers simply ignore the existing facts and laws governing such agreements, and are yet another red herring thrown up by the Alliance and its supporters.

- *Claim: The Commission's plans for a public safety network at 700 MHz require all consumer and public safety devices to include all 700 MHz paired commercial spectrum.*¹⁸

To the contrary, the Commission's plan for a public safety network that leverages public-private partnerships underscores the critical importance of ensuring that LTE devices operating at 700 MHz are not burdened with requirements that would unnecessarily increase the cost and complexity of such devices and significantly delay the introduction of 4G products and services that will benefit first responders as well as consumers. Moreover, adopting the Alliance supporters' proposal would eliminate the flexibility that various public safety groups may desire to adopt their own device

¹⁷ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Dkt. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, FCC 10-59 (Apr. 21, 2010).

¹⁸ See Blooston Rural Comments, at 7-8; Cellular South Comments, at 6-7; Cox Comments, at 5; MetroPCS Comments, at 16-17; NTCH/Miller Comments, at 3; PVT Comments, at 7-9; U.S. Cellular Comments, at 13-15; RCA Comments, at 21-22; RTG Comments, at 4-5. See *generally Connecting America: The National Broadband Plan*, Chap. 16.1, "Promoting Public Safety Wireless Broadband Communications" (Mar. 2010).

technical specifications and enter into roaming agreements that best meet their public safety obligations.¹⁹

- Claim: *Failure to adopt an interoperability requirement for all paired 700 MHz commercial spectrum would diminish incentives for development of devices on the C-Block spectrum.*²⁰

U.S. Cellular makes the ridiculous and factually unsupported claim that developers will be discouraged from developing devices for the C-Block network, under the Commission's "open platform" rules, if devices do not contain all paired 700 MHz bands. To the contrary, the Commission made it very clear in the C-Block order that the use of other spectrum bands is irrelevant for the C-block requirements. The C-block licensees cannot deny certification to a device capable of operating on C-block spectrum because it may incorporate other band capabilities,²¹ and the C-Block rules themselves expressly have no extended effect to other bands.²² Therefore, developers are free to do as they want with respect to any of the 700 MHz bands, or other licensed or unlicensed bands, and include them, or not, in a device as they see fit.

Moreover, Verizon Wireless is working with many other parties to develop entirely new uses for wireless devices using C-Block spectrum, such as machine-to-machine communications to manage energy use by appliances. The Alliance's supporters would force developers of "smart" refrigerators for "green" homes to include five or more spectrum chips in such appliances, when inserting the one selected by the customer

¹⁹ The specifications for the public safety network set forth in the comments of the Public Safety Spectrum Trust and the Fraternal Order of Police can be achieved without adopting the rule proposed by the Alliance. While the PSST and FOP support interoperable 700 MHz devices for use by public safety networks, they recognize that such devices must also be "technically feasible and economically viable." PSST Comments, at 8; FOP Comments, at 8.

²⁰ U.S. Cellular Comments, at 10-13.

²¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd 15289, 15370-71 (¶ 222) (2007).

²² See 47 C.F.R. § 27.16(a).

would do. As Verizon Wireless pointed out in its comments,²³ the restriction proposed by the Alliance would be an impediment, not a benefit, to developers who want to use the C-Block open platform.

- *Claim: The failure of complaining A-Block licensees to participate in the 3GPP standards setting process is irrelevant to the merits of their arguments.*²⁴

The 3GPP standards-setting process adopting the 700 MHz band classes was an open process based solely on the technical merit of the proposals under consideration.²⁵

While RCA claims that the process is irrelevant, in actuality, the Commission has already deemed the process to be relevant.

In adopting the open platform rules for the 700 MHz C-Block, the Commission wanted to encourage the use of open, non-proprietary technical standards. Accordingly, 47 C.F.R. Section 27.16(c)(2) states: “To the extent a licensee relies on standards established by an independent standards-setting body which is open to participation by representatives of service providers, equipment manufacturers, application developers, consumer organizations, and other interested parties, the standards will carry a presumption of reasonableness.”

As Verizon Wireless explained in its opening comments,²⁶ 3GPP is such an organization. Accordingly, the Commission has already decided that standards such as 3GPP developed for LTE are relevant – indeed preferred – and presumed reasonable.

- *Claim: The Communications Act authorizes the Commission to adopt the rule requested by the Alliance.*²⁷

²³ Verizon Wireless Comments, at 15-16.

²⁴ RCA Comments, at 12.

²⁵ See AT&T Comments, at 3-7; Motorola Comments, at 3-4; Verizon Wireless Comments, at 2-4.

²⁶ Verizon Wireless Comments, at 2-3.

²⁷ See MetroPCS Comments, at 14-16; NTCH/Miller Comments, at 4; PVT Comments, at 6; Triad Comments, at 9-12.

As Verizon Wireless explained in its opening comments, none of the provisions of the Communications Act cited by the Alliance as grounds for its requested rule provide the necessary legal support for its proposal.²⁸ No Alliance supporter provided any additional valid legal support for the proposal. Indeed, since the initial comments were filed, the D.C. Circuit has emphasized that the Commission needs express regulatory authority from Congress on which to take regulatory actions, and if it is not relying on express authority, then it must demonstrate that the proposed regulation is “reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”²⁹ None of the statutes cited by the Alliance provides such authority with respect to the proposed rule. The D.C. Circuit also made clear that statements of Congressional policy, on which the Alliance and its supporters attempt to rely,³⁰ such as Sections 1 and 706 of the Act, are not grants of Congressional authority for any specific regulatory action.³¹

Several commenters relied on the Commission’s rule requiring interoperability between Cellular A-Block and B-Block in the early 1980s.³² But, there is a very real difference between the cellular dual-band rule applied by the Commission to cellular radio devices and the one proposed by the Alliance. For early cellular devices, it was technically feasible and practical to include both Cellular A-Block and B-Block frequencies in the same duplexer. In this case, it is not technically feasible to include all

²⁸ See Verizon Wireless Comments, at 16-19.

²⁹ *Comcast Corp. v. FCC*, Case No. 08-1291, slip op. at 7 (decided April 6, 2010) (quoting *American Lib. Ass’n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

³⁰ See Petition, at 7-9; Triad Comments, at 11 (invoking Section 706); MetroPCS Comments, at 15 (same).

³¹ *Comcast Corp. v. FCC*, slip op. at 17 (Section 1 “nothing more than” a Congressional statement of policy); *id.* at 30-31 (Section 706 “grants no regulatory authority”). Similarly, Section 254(b)(3), cited by Triad (Comments, at 11) and MetroPCS (Comments, at 15), contains no Congressional mandate for regulatory action that could be applied in this context.

³² Cox Comments, at 5; Cellular South Comments, at 9-10; MetroPCS Comments, at 7-9; RTG Comments, at 5-6; Triad Comments, at 9-10.

paired commercial 700 MHz bands in the same duplexer.³³ Therefore, rather than regulating the “transmission” characteristics of the 700 MHz devices, the Commission would have to regulate the *choice and array* of radios to be placed in the devices, a significant difference.

As the courts have made clear, the Commission can only regulate the “transmission” properties of radio devices while transmitting.³⁴ And, while it can adopt rules for the transmission properties of the various radios needed for the 700 MHz paired commercial spectrum bands, the Alliance and its supporters have cited no authority allowing the Commission to regulate the non-transmission properties of the device, which is what it would have to do to dictate the *array* of radios to be included in a single device. Indeed, it would be expressly contrary to the Communications Act for the Commission to mandate that 700 MHz licensees must include in their devices separate radio transmitters for spectrum bands on which they are not licensed.³⁵ In other words, neither the Alliance or any other party has demonstrated that the Commission has the authority to regulate what radios must be sitting unused in a 700 MHz device while the device may be transmitting on Lower A-Block, B-Block or C-Block or Upper C-Block or D-Block, or any other 700 MHz frequency.³⁶

- *Claim: The Commission needs to impose an all-frequency mandate to assist A-Block licensees.*

³³ See Verizon Wireless Comments, at 4-7.

³⁴ *American Lib. Ass'n v. FCC*, 406 F.3d 689, 702-05 (D.C. Cir. 2005).

³⁵ See 47 U.S.C. § 301 (“No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”).

³⁶ See *American Lib. Ass'n v. FCC*, 406 F.3d at 703 (the language used for definitions of radio and wire communication in the Act “plainly does not indicate that Congress intended for the Commission to have general jurisdiction over devices that can be used for receipt of wire or radio communication when those devices are not engaged in the process of radio or wire transmission”).

Ultimately, the unjustified claims of the supporters of the Petition come down to an argument that Verizon Wireless and AT&T should not be allowed to determine their own business plans for deployment of 700 MHz mobile broadband networks, but rather should be required to follow the business plan of the Alliance members and other A-Block licensees.³⁷ The Alliance's supporters have made clear that their business plan for implementation of A-Block networks relies on device technology made available after it has been developed for Verizon Wireless or AT&T and on collecting roaming revenues. The best way to implement this business plan is to ensure that Verizon Wireless and AT&T use interoperable devices, and not to allow Verizon Wireless and AT&T to implement a 700 MHz broadband network that might not mesh with these plans.

But, the Commission does not endorse or dictate business plans for particular wireless providers. To the contrary, its flexible use policy, affirmed in the 700 MHz order,³⁸ notes: "As a matter of practice, licensees continually devise and update the types of advanced devices they deploy, and improve the management of the dynamic spectrum use between and among their subscribers, consistent with the applicable service rules and their respective business models."³⁹

The Commission's flexible use policy has allowed the wireless industry to flourish and respond in a variety of ways to consumer demand, and the Commission has developed a record demonstrating those facts in its docket on innovation in the wireless

³⁷ See Cellular South Comments, at 4; RCA Comments, at 14-17; RTG Comments, at 3-4.

³⁸ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd at 15378-79 (¶ 242) (goal of adopting flexible use policy for 700 MHz spectrum is "to remove regulatory impediments in order to enable more efficient use of licensed spectrum"); see *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022, 1023 (¶ 1), 1051-52 (¶¶ 70-71) (2002) (adopting flexible use policy for 700 MHz spectrum).

³⁹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd at 15378-79.

industry.⁴⁰ Indeed, the Commission’s policy – as applied specifically to the 700 MHz wireless spectrum – allowing licenses to decide how best to meet consumer demand with whatever spectrum they have been licensed to use – is one of the bedrock principles supporting the current competitive, innovative state of the wireless industry.

The Alliance and its supporters have made no factual, policy or legal case for shifting course. The Commission should find this lack of facts troubling. Chairman Genachowski stated upon his arrival at the Commission that the agency’s policy decisions “will be fact-based and data-driven.”⁴¹ However, the Alliance and its supporters rely on undocumented and illogical claims. Worse, they hope to delay the availability of devices to consumers – not for public interest reasons, but unabashedly for their own pecuniary gain.⁴² Consistent with its commitment to policy decisions based on facts and data, and the long-standing requirements of the Administrative Procedure Act, as detailed in Verizon Wireless opening comments,⁴³ the Commission must ignore these undocumented allegations and reject the Petition.

⁴⁰ See, e.g., Comments of Verizon Wireless, GN Dkt. 09-157, GN Dkt. 09-51 (filed Sept. 30, 2009).

⁴¹ Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission, at 4 (June 30, 2009).

⁴² See Blooston Rural Comments, at 5 (revenues from local subscribers and “revenues from roaming customers” are “vital to the financial stability of any wireless carrier”); PVT Comments, at 5 (same); MetroPCS Comments, at 11-13 (“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”); Triad Comments, at 6 (“smaller carriers will be deprived of roaming revenue from customers of AT&T and Verizon if there is no cross-block compatibility”).

⁴³ Verizon Wireless Comments, at 21-28.

III. ATTACKS BY THE ALLIANCE’S SUPPORTERES ON THE 700 MHz AUCTION AND SERVICE RULES SHOULD BE REJECTED.

The Alliance’s supporters spend the balance of their comments criticizing the legitimacy of Auction 73 and the rules governing 700 MHz licenses. Their criticisms seek to call into question the validity of the Commission’s pre-auction guidelines and instructions under which auctions are conducted. Some of them make clear that they intend to claim that the build-out rules for Auction 73 licenses were flawed and should be set aside if their demands are not met. The Commission should ignore these meritless arguments.

In claiming that they face obstacles to offering service on their 700 MHz spectrum, the Alliance’s supporters ignore the fact that the Commission made very clear prior to the start of Auction 73 that bidders and licensees would be held accountable for their own due diligence and subsequent bidding strategies, as well as compliance with the build-out and other service rules that the Commission had adopted. As Verizon Wireless explained in its opening comments, the Commission’s auction notice for the 700 MHz band stated: “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,”⁴⁴ and that the time period between the auction procedures announcement and the start of the auction itself “will provide interested parties with additional time . . . to develop business plans, assess market conditions, *and evaluate the availability of equipment for new 700 MHz Band services.*”⁴⁵

⁴⁴ Public Notice, *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, 22 FCC Rcd 18141, 18156 (¶ 40) (2007).

⁴⁵ *Id.* at 18158 (¶ 53) (emphasis added).

Despite this clear caveat, several auction winners attempt to turn the burden of evaluating market conditions back on the Commission. For example:

- Cellular South states: “The integrity of the Commission’s spectrum auction process will be undermined if prospective bidders in upcoming auctions do not have confidence that customer equipment will be available to operate on auctioned spectrum.”⁴⁶
- MetroPCS states: “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 interoperability.”⁴⁷
- On behalf of its members, RCA states: “Although the valuation of Lower A Block spectrum is affected by various factors, a principal factor that set the value of the spectrum was the *assumption* that affordable mobile devices would be available for use in the Lower A Block.”⁴⁸

Despite the Commission’s *two* orders outlining the applicability of the flexible use policy to 700 MHz spectrum⁴⁹ and its *explicit caveats* on performing due diligence in the Auction 73 bidding guidelines and instructions, winning A-Block bidders now admit that they relied on assumptions rather than due diligence – without citing any basis in fact or law for such assumptions. Their obvious implication is that the Commission’s actions deprive them of the ability to develop equipment for their 700 MHz licenses, and therefore, that somehow, despite the Commission’s explicit warnings, the auction procedures were flawed.

In addition to claiming the auction itself was flawed, Alliance supporters assert that the build-out requirements are too aggressive and need to be reconsidered: For example:

⁴⁶ Cellular South Comments, at 9.

⁴⁷ MetroPCS Comments, at 12-13.

⁴⁸ RCA Comments, at 9 (emphasis added).

⁴⁹ See *supra* note 38.

- MetroPCS states: “[I]f 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.”⁵⁰
- PVT states that failure to adopt the rule proposed by Alliance “will jeopardize the ability of DEs to meet the ambitious construction obligations that the FCC adopted for 700 MHz licenses that were the subject of bidding in Auction 73.”⁵¹
- On behalf of nine rural clients, the Blooston law firm states: “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 . . . in 700 MHz Auction 73. 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.”⁵²

The Commission should have no tolerance for these arguments. The Auction 73 licenses were awarded under the Commission’s flexible use policy, giving each winning bidder the opportunity to develop its own business plan for use of the spectrum. In that regard, the Commission provided adequate and clear warnings to bidders about the need to consider the availability of equipment to implement the requirements, including build-out, for 700 MHz licenses. Grant of the Petition would not only undermine the Commission’s auction policies and procedures, but it would also grant credence to claims of Commission error in adopting the build-out rules for 700 MHz licenses.⁵³ The Commission should not allow its successful policies for allowing the market to develop new devices, its reliance on technology-based industry standards, and its auction procedures, to be undermined by the Alliance’s and its supporters’ failure to follow through on auction instructions.

⁵⁰ MetroPCS Comments, at 19.

⁵¹ PVT Comments, at 2; *see* Blooston Rural Comments, at 2 (same).

⁵² Blooston Rural Comments, at 6 (footnote omitted).

⁵³ *See* Verizon Wireless Comments, at 21-27.

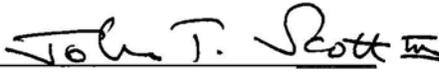
If the Alliance's supporters want to have the 700 MHz build-out obligations modified and can make a public interest showing for that action, there is an obvious path for them to do so – petition the Commission to modify those build-out rules. But the Alliance's Petition is, of course, not the vehicle to pursue that action. In short, their criticisms of the 700 MHz auction process and service rules supply no basis for the Commission to reverse years of wise policy in allowing the free market to drive the plethora of innovative devices that are directly benefiting consumers.

IV. CONCLUSION

For the reasons set forth in Verizon Wireless' opening comments and this reply, the Commission should deny the Petition.

Respectfully submitted,

VERIZON WIRELESS

By: 
John T. Scott, III
Vice President & Deputy General Counsel

William D. Wallace
Senior Counsel

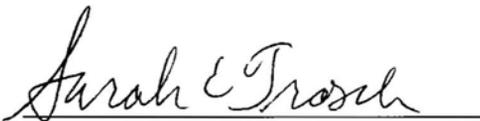
Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202)589-3760

April 30, 2010

Certificate of Service

I hereby certify that on this 30th day of April copies of the foregoing "Reply Comments of Verizon Wireless" in RM-11592 were sent by US Mail to the following party:

David L. Nace
Lukas, Nace, Gutierrez & Sachs, LLP
1650 Tysons Blvd., Suite 1500
McLean, VA 22102
Counsel for 700 MHz Block A Good Faith Purchasers Alliance

A handwritten signature in cursive script that reads "Sarah E. Trosch". The signature is written in black ink and is positioned above a solid horizontal line.

Sarah E. Trosch