

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
700 MHz Mobile Equipment Capability)	
)	
Petition for Rulemaking Regarding the Need)	RM No. 11592
for 700 MHz Mobile Equipment To Be Capable)	
of Operating on All Paired Commercial)	
700 MHz Frequency Blocks)	
)	

REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”),¹ by counsel, hereby submits these Reply Comments in response to the initial round of comments filed in response to the Petition for Rulemaking (“Petition”) filed by the 700 MHz Block A Good Faith Purchasers Alliance (“Alliance”).² In its Petition, the Alliance asks the Commission to initiate a rulemaking proceeding “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.”³ The Alliance also asks that the Commission impose an immediate freeze on the authorization of mobile equipment that is not capable of operation on all paired commercial 700 MHz frequencies.⁴ The Petition is premised on concerns by Alliance members that small, rural and regional wireless car-

¹ RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the Nation and licensed to serve more than 80 percent of the country. Most of RCA’s members serve fewer than 500,000 customers.

² 700 MHz Block A Good Faith Purchasers Alliance Petition for Rulemaking, RM-11592 (filed Sept. 29, 2009) (“Petition”); *see also* *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, Public Notice, RM No. 11592, DA 10-278 (Feb. 18, 2010).

³ *See* Petition, at 1.

⁴ *Id.* at 1-2.

riers that have invested in Lower “A” Block spectrum will not be able to utilize this spectrum because of the threatened unavailability of suitable mobile devices that will operate both in the Lower “A” Block and in other paired commercial blocks in the 700 MHz band.⁵ The initial round of comments filed indicates an industry split – divided by the “Davids” versus the “Goliaths” – on the merits of the Petition and the relief being requested.

On one side of the debate are Verizon Wireless and AT&T – the nation’s two largest carriers – with approximately 180 million wireless customers in total and the collective beneficiaries of 9 out of every 10 new wireless subscribers in the U.S.,⁶ who essentially claim that they have done nothing wrong to unduly influence the 3GPP LTE standard-setting process (which developed the current band classes for the 700 MHz band), and that their concerns about enabling devices to operate on the 700 MHz “A” Block, as well as the Lower “B” and “C” Block and Upper “C” Block, are primarily rooted in concerns about technological limitations, interference from neighboring spectrum users and the increased costs of designing products to work on all 700 MHz commercial paired spectrum bands.

However, in this proceeding and in other recent FCC proceedings (e.g., elimination of the in-market roaming exception, prohibiting handset exclusivity arrangements, expansion of automatic roaming obligations to data services), the actions of Verizon Wireless and AT&T strongly indicate a “take no prisoners” approach to retaining their market dominance in the U.S. wireless industry.

The actions of AT&T and Verizon Wireless that are challenged in the Petition involve their decisions to take advantage of the band class configurations established by the 3GPP stan-

⁵ *Id.* at 3.

⁶ *See* Letter from Cellular South, Inc., to Marlene H. Dortch, RM-11592 (dated Mar. 9, 2010).

dards organization by instructing equipment manufacturers to develop and produce mobile devices that will work exclusively in the bands held virtually exclusively by AT&T (Band Class 17 – the Lower “B” and “C” Blocks) and Verizon Wireless (Band Class 13 – the Upper “C” Block), but that will not work in any other 700 MHz frequency blocks.

These two companies knew that there would be additional competition-hindering benefits resulting from the actions they took – the ability to avoid FCC current and future roaming obligations and the ability to significantly delay the ability of their competitors to acquire equipment capable of operating on 700 MHz “A” Block spectrum. As RCA pointed out in its Comments, these competitors – most of whom are small, rural and regional carriers – have little opportunity to obtain mobile devices that will work in the Lower “A” Block because they do not have a customer base of sufficient size to enable them to place bulk orders with the equipment manufacturers – despite claims made to the contrary. This lack of “critical mass” results in these small, rural and regional carriers being relegated to the back of the line, while the equipment manufacturers proceed with the development and production of mobile devices for use in the Lower “B” and “C” Blocks and in the Upper “C” Block.⁷

The claims made by Verizon Wireless and AT&T have, in part, been supported by Motorola who, as discussed in more detail below, actually had initially expressed concern to the 3GPP standards body about the public policy implications of the creation of Band Class 17. The claims made by Verizon Wireless and AT&T have also been supported by Qualcomm, who appears, based on its comments, to be most concerned about the impact that grant (or partial grant) of the Petition will have on near-term company profits and on its FLO TV subsidiary that has operated on the Lower 700 MHz D Block (formerly Channel 55) since March 2007. Hardly an

⁷ See RCA Comments at 19-20.

impartial participant in the proceeding, Qualcomm reveals in its comments that Verizon Wireless and AT&T have sold, and are selling, FLO-enabled cell phones to their subscribers.⁸ An additional comment supportive of the positions taken by Verizon Wireless, AT&T, Motorola and Qualcomm was submitted by the Consumer Electronics Association.⁹

On the other side of the debate is the rest of the wireless industry, including small and large regional carriers and several of their trade associations – including RCA, current and interested 700 MHz Lower “A” Block spectrum holders, and the public safety interests.¹⁰ These entities have made it clear that the actions of the nation’s two largest wireless carriers – actions buttressed by two of the world’s largest wireless equipment manufacturers -- should be incredibly troubling to the Commission.

Without regulatory intervention, consistent with the actions sought by the Alliance, the actions taken by Verizon Wireless and AT&T will have the following effects: (1) unfairly perpetuate the stranglehold these two dominant national carriers have in the marketplace today; (2) permanently inhibit the ability of Verizon Wireless and AT&T customers to roam on the networks of 700 MHz Lower “A” Block spectrum licensees; (3) permanently restrict the ability of Lower 700 MHz “A” Block licensee customers to roam on the 700 MHz networks of Verizon Wireless and AT&T; (4) significantly delay the availability of equipment capable of operating on

⁸ Qualcomm Comments at 2. The mobile phone FLO TV service offering is exclusive to Verizon Wireless and AT&T. See <http://www.flotv.com/get-flo-tv/where-to-buy>.

⁹ See Consumer Electronics Association (“CEA”) Comments, RM-11592 (filed March 31, 2010).

¹⁰ The Public Safety Spectrum Trust Corporation (“PSST”) and the National Fraternal Order of Police (“FOP”) encourage the Commission to consider the development and deployment of 700 MHz devices that can access multiple 700 MHz band classes, including Band Class 14, and view enhanced roaming capabilities for 700 MHz equipment as a means of promoting the life-saving efforts of public safety agencies, reducing capacity constraints on public safety broadband operations by providing additional spectrum resources for public safety operations. PSST and FOP both express the view that the use of multi-band mobile devices may lower agencies’ costs by expanding the pool of potential 700 MHz commercial partners for public safety and create greater economies of scale for devices compatible with public safety spectrum. The two parties note that the Commission should explore the technical and economic feasibility of enhanced roaming and take measures to prevent any delay in the introduction of LTE equipment to public safety. See FOP Comments at 2; PSST Comments at 1-2.

the 700 MHz Lower “A” Block “spectrum, likely limiting the availability of 4G services to much of rural America for years; and (5) erode the competitiveness of small rural and regional wireless carriers that – unlike AT&T and Verizon Wireless – are committed to bringing advanced mobile broadband services to consumers in rural and unserved areas.¹¹

I. ARGUMENTS REGARDING THE POTENTIAL FOR INTERFERENCE APPEAR TO BE RESOLVABLE; COST CONCERNS AND DEPLOYMENT DELAYS ARE NOT SUBSTANTIATED

Despite RCA’s belief that the actions taken by Verizon Wireless and AT&T are strictly aimed at impeding competitors, many of the arguments made by parties opposed to the Alliance’s Petition are veiled as concerns about the *potential* for interference.¹² Yet, commenters opposed to the Petition admit that these concerns can be mitigated through a variety of means.¹³ Even Chapter 16.1 of the National Broadband Plan would seem to suggest that the Commission has at least some doubt about the interference concerns being raised by parties opposed to the Alliance’s Petition.¹⁴ As a result, consistent with the request made by the Alliance, the Commis-

¹¹ RCA also believes strongly that the actions of these companies have significantly reduced the value of 700 MHz “A” Block spectrum and will likely reduce the value of spectrum at future FCC auctions.

¹² See AT&T Comments at 2, 5; Motorola Comments at 2, 6; CEA Comments at 2-3; Qualcomm Comments at 2 (“...[A] grant of the Petition would increase the potential for interference within the Lower and Upper 700 MHz bands.”). Qualcomm also interprets the relief requested in the Petition as “a requirement that all 700 MHz mobile equipment be capable of operating on the paired commercial spectrum blocks within the entire Lower and Upper 700 MHz bands, *apparently no matter what air interface is utilized by each licensee of each 700 MHz spectrum block.*” *Id.* (emphasis added). However, RCA understands the Alliance’s Petition to mean that any equipment designed to work on a paired commercial frequency block should be required to work on *all* other paired commercial blocks in the 700 MHz band. See Petition at i (noting that “consumers [should] have reasonable access to all paired commercial 700 MHz frequency blocks that the Commission licenses”). Therefore, Qualcomm’s concerns about how grant of the Petition would “outlaw” Qualcomm’s FLO and personal television devices, as well as its arguments about the Commission’s policy of “technology neutrality,” appear to have been effectively rendered moot.

¹³ See Verizon Wireless Comments at 6-7; Qualcomm Comments at 2 (“Interference within these bands can be mitigated through the use of narrower filters in the duplexers used in 700 MHz devices.”); Motorola Comments at 7-8.

¹⁴ The Commission states in Chapter 16.1 of the National Broadband Plan that:

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

sion should initiate a rulemaking proceeding to assure that consumers will have access to all 700 MHz spectrum that the Commission licenses, permit the entire 700 MHz band to develop in a competitive fashion, and prohibit restrictive arrangements that are contrary to the public interest.¹⁵

In addition, all parties opposed to the relief requested voice concerns about the increased cost of requiring 700 MHz equipment to operate on all commercial 700 MHz paired frequency bands and/or that grant of the relief requested would delay deployment of 700 MHz mobile broadband devices.¹⁶ These arguments ring hollow. No commenter opposed to the Petition in the initial round of comments provides any information about what those costs actually would be to enable 700 MHz equipment to operate on all the frequency bands, nor does any commenter provide any kind of estimate as to the alleged delays in getting 4G equipment to market should equipment have to be made to operate on all 700 MHz paired commercial frequencies. The Commission should treat these claims with significant skepticism because of the failure of these parties to provide evidence that they are correct.

II. THE MOTIVES BEHIND THE CREATION OF BAND CLASSES 13 AND 17 WERE QUESTIONED BY CERTAIN 3GPP MEMBERS FROM THE OUTSET

Despite claims that the creation of Band Classes 13 and 17¹⁷ were developed openly and in response to legitimate interference concerns,¹⁸ multiple parties – including Motorola and

networks are unavailable and where there is currently an operating public safety network but more capacity is required to respond effectively to an emergency.

Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010), at Ch. 16.1.

¹⁵ Petition at 12.

¹⁶ See Verizon Wireless Comments at 7; AT&T Comments at 2-3, 8; Motorola Comments at 2; CEA Comments at 2.

¹⁷ Band Class 13 was designed for the Upper “C” Block licenses held by Verizon Wireless. Band Class 17 was designed for the Lower “B” Block and Lower “C” Block 700 MHz licenses held by AT&T.

Ericsson – publicly questioned the creation of self-serving band classes during the course of 3GPP member discussions.¹⁹ Ericsson representatives noted that 3GPP member concerns about interference with reception in the “A” Block did not justify the creation of Band Class 17, particularly in light of the risk of market fragmentation that creation of Band Class 17 would cause. Ericsson noted that “there would be two duplexers covering part of the [L]ower 700 MHz which goes against economies of scales [*sic*] and may lead to market fragmentation” and that “unless there is a severe problem with TX IM and difficult MediaFLO into LTE UE interference scenarios [that] can be identified Band [17] should not be introduced considering the risk of market fragmentation.”²⁰ Given that the public policy implications are virtually identical with respect to Verizon Wireless’ self-serving Band Class 13 (*i.e.*, the separate band class results in market fragmentation and the loss of economies of scale), the Commission can reasonably make the assumption that the reservations expressed regarding Band Class 17 apply with equal force to Band Class 13.

In addition, in a discussion document presented by Motorola to the 3GPP standards group in April 2008, Motorola noted that by creating Band Class 17, “roaming between band 12, 13, 14 and 15 could be impacted depending on the number of E-UTRA support bands a UE could support.”²¹ It appears that Motorola was assuming there would be roaming between the bands, if the handsets could be designed to support the bands.²² Motorola did not appear to anticipate that

¹⁸ See, e.g., Verizon Wireless Comments at 7.

¹⁹ See *On the introduction of Band Class 15*, prepared by Ericsson and submitted to TSG-RAN Working Group 4 (Radio) meeting #47bis in Munich, Germany, June 16-20, 2008 (Band Class 15 later became Band Class 17).

²⁰ *Id.* at 1, 5.

²¹ See “TS36.101: Lower 700 MHz Band 15,” Motorola Discussion Document, Agenda Item 6.1.2, presented to 3GPP TSG RAN WG4 (Radio) Meeting #47, R4-081108, Apr. 5-9, 2008.

²² Motorola also states in the document that, if a Band 15 is established, “the number of operating bands a UE terminal would need to support would increase and some practical limitations may be necessary to reduce implementation

AT&T would order handsets for exclusive use in Band Class 17, but assumed instead that AT&T would seek the development and production of handsets that would have roaming capabilities within the 700 MHz band. Of course, subsequent events have demonstrated that this assumption was in error.

Motorola attempts to legitimize the actions of the 3GPP standards organization by stating that the organization is an open and collaborative process and that Alliance members could have voiced their complaints in the standards-setting process. Given the response of the 3GPP to the concerns expressed by Ericsson – the world’s largest telecommunications equipment vendor with a market share of 35% – it is probably reasonable to conclude that the 3GPP group would not have given much consideration to any concerns expressed by an Alliance member. In reality, it appears that Verizon Wireless and AT&T are prepared to use the standards-setting process to achieve outcomes that avoid compliance with certain FCC policies and that neither carrier, with their dominant position in the marketplace, could have achieved otherwise.

By creating these self-serving band classes and then placing orders with manufacturers to build equipment with technical functionality on only their band classes, Verizon Wireless and AT&T have effectively stunted any near-term development of equipment for 700 MHz Lower “A” Block licensees, thereby impeding competition and the deployment of advanced services in rural America – a public policy consideration that obviously does not hold much water with the nation’s two largest carriers or two of their largest vendors. In addition, the actions that have taken place will likely lower spectrum valuations to the detriment of all wireless consumers, the Commission and the U.S. Treasury.

complexity.” This statement also seems to assume that the UE terminals would have roaming capability, which might lead to “some practical limitations” *See id.*, Section 3.4.

III. THE FCC SHOULD TAKE ISSUE WITH ARGUMENTS ADVANCED BY MOTOROLA THAT INTERNATIONAL ROAMING SHOULD BE CONSIDERED A HIGHER PRIORITY THAN DOMESTIC ROAMING

Motorola claims that the use of additional duplex filters, a necessity if the Commission is going to require 700 MHz equipment to operate on all commercial 700 MHz paired frequency bands, will affect the ability of manufacturers to produce mobile devices that enable international roaming.²³ Specifically, Motorola states:²⁴

...700 MHz devices may be required to support the 850 MHz Cellular, 1.9 GHz PCS and the AWS band classes. To enable international roaming, other 3GPP band classes will need to be supported (*e.g.*, the European GSM and UMTS bands or a TDD band for roaming into China).

In taking this position, one could reasonably conclude that Motorola appears to be placing international roaming above domestic roaming interests. While RCA does not dispute that there may be a limitation on the number of bands which can be supported by any one device, RCA believes that the interests of domestic roaming traffic should be placed above international roaming traffic.

IV. CONCLUSION

The Alliance's Petition has provided ample justification for the initiation of a rulemaking proceeding to enable the Commission to take action to prevent marketplace developments from eclipsing the Commission's efforts to pursue spectrum policies for the 700 MHz band that accelerate the deployment of high-speed broadband services in unserved and underserved rural areas, and that afford small rural and regional carriers with realistic opportunities to bring broadband to these areas.

²³ Motorola Comments at 6-7.

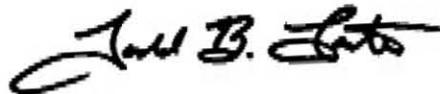
²⁴ *Id.*

Opponents of the Petition, while cloaking their motives behind a veil of claims about the transparency of the standard-setting process and concerns about the technical limitations that have constrained the development of equipment, have made it evident that their primary business objective – hindering competition by delaying equipment availability to competitors and forcing competitors and their customers to pay more for equipment – and not Commission policies favoring mobile broadband deployment in rural areas should dictate the manner and pace of equipment production for the 700 MHz band.

RCA respectfully urges the Commission to grant the Petition and initiate a rulemaking to address the issues presented by the Alliance.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

A handwritten signature in black ink, appearing to read "Todd B. Lantor". The signature is fluid and cursive, with a large initial "T" and "L".

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