

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

In the Matter of)	
)	
Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51)	RM-11626
)	
Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks)	RM-11592
)	

REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”) hereby submits these Reply Comments in response to the Media Bureau’s request for comment on RCA’s Petition for Rulemaking and Request for Licensing Freezes, which was jointly filed on March 15, 2011 with CTIA – The Wireless Association.¹ As noted in its Petition² and earlier Comments³, RCA requests that the Federal Communications Commission (“FCC” or “Commission”) ease the path to mobile broadband on the 700 MHz band, maximize utilization of broadband spectrum and address interference issues in

¹ *In re* Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51, *Petition for Rulemaking and Request for Licensing Freezes by CTIA – The Wireless Association® and Rural Cellular Association*, RM-11626 (Mar. 15, 2011) [hereinafter *CTIA and RCA Petition*].

² *Id.* at 1.

³ *In re* Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51, *Comments of Rural Cellular Association*, RM-11626, RM-11592 (April 27, 2011) [hereinafter *Comments of RCA*]. RCA also took this opportunity to note that minimizing the number of Channel 51 licensees at the time of auction would ensure the greatest return for the U.S. Treasury, and also encouraged the Commission to “further maximize the utility of the 700 MHz ecosystem for 4G wireless deployment by taking the additional steps of addressing the need for device interoperability across the 700 MHz band, and harmonization of power levels in the Lower D and E Blocks.” *Id.* at 2.

the Lower 700 MHz A Block by 1) revising its rules to prohibit future licensing of TV broadcast stations on Channel 51; 2) implementing freezes, effective immediately, on the acceptance, processing and grant of applications for new or modified broadcast facilities seeking to operate on Channel 51; and 3) accelerating clearance of Channel 51 where incumbent broadcasters reach voluntary agreements to relocate to an alternate channel. These requests recognize the impending change that may occur in the character, use and services of spectrum below 700 MHz as a result of the Commission's pursuit of incentive auction authority. In the event of an eventual change in the use of Channel 51, these requests would also increase the value of future spectrum, which may be added to a mobile broadband assignment. Freezing new Channel 51 licenses encourages both private sector solutions to Channel 51 interference issues and more data roaming arrangements for 4G technologies across the 700 MHz band. With these measured, minimally disruptive steps, major strides toward the goal of ubiquitous broadband for all Americans could be achieved, and RCA calls upon the Commission to move quickly to implement them.

I. CONGRESSIONAL AND COMMISSION INTENT FOR THE 700 MHZ BAND'S ROLE IN MOBILE BROADBAND IS AT STAKE

Congress directed the Commission to draft a National Broadband Plan that would facilitate advancements in a wide range of arenas, from public safety to energy independence, education and job and economic growth.⁴ That Plan specifically recognizes the importance of the 700 MHz band and its foundational role as a "launch pad" for the 4G networks that would enable such advancements.⁵ But even as Lower A Block licensees prepare aggressive buildout plans for those next-generation platforms, the looming uncertainty surrounding the spectrum ecosystem of

⁴ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

⁵ Federal Communications Commission, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, at 78 (2010) ("*National Broadband Plan*").

the Lower A Block impedes their ability to act on those plans. RCA and numerous other commenters have already spoken to those adjacent channel interference concerns at length.⁶ As summarized in those filings, interference from Channel 51 operators—along with the constraints of having to accommodate the interference those same operators emit—leads to an untenable situation for wireless carriers that require a stable spectrum environment in order to efficiently plan and deploy their mobile broadband networks.

The National Association of Broadcasters and the Association for Maximum Service Television (“NAB/MSTV”) argue that “the Commission fully anticipated, considered and correctly resolved all of the claims and concerns therein prior to the auction of the 700 MHz A-Block,”⁷ and obligated Lower A licensees to “design systems that would accommodate potential interference from Channel 51 TV stations.”⁸ In essence, they insist that Lower A licensees knew what they were getting themselves into and therefore have no basis to seek interference protection.

The reality is more complicated, however. Lower A licensees knew of the *current* Channel 51 licensees at the time of auction, and could be reasonably expected to work around them. Indeed, Petitioners do not ask for measures that would forcibly displace such parties. But the issue of *future* Channel 51 operators presenting an on-going, unpredictable, and ultimately costly unknown element, has proven significant enough to curtail broadband deployment on a large

⁶ See *CTIA/RCA Petition*, at 4–7; *In re Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51*, *Comments of Vulcan Wireless LLC and The Rural Telecommunications Group, Inc.*, RM-11626, at 3–6 (April 27, 2011); *In re Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51*, *Comments of Cincinnati Bell Wireless, LLC*, RM-11626, at 2–4 (April 27, 2011).

⁷ *In re Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51*, *Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc.*, RM-11626, at 3 (April 27, 2011) [hereinafter *Comments of NAB/MSTV*].

⁸ *Comments of NAB/MSTV*, at 9.

scale. Relatedly, interoperability across Band 12 was also assumed by Lower A licensees. As noted in RCA's filings on that issue,⁹ that is obviously not the case at this moment, and the market disadvantages associated with that fact further hamper Lower A licensees' ability to build out. As Chairman Genachowski recently acknowledged, "certainty and predictability are critical to encouraging private investment and innovation."¹⁰ RCA filed the petition at issue because such certainty does not exist with respect to the Lower A Block.

To the extent that the Commission "resolved" outstanding issues surrounding the management of interference at Channel 51 over the years, those resolutions now appear to stand at odds with other Commission directives—namely, the Commission's vision for a functioning, widely deployed mobile broadband network across the 700 MHz band. That vision is at risk because of the disruptive set of regulations shielding Channel 51 operators. Thus, the Commission faces a crucial question: Will it act with an eye to maintaining the status quo, or to innovation and progress? The 700 MHz spectrum has been allocated, the licensees are primed to invest and the Commission's intent has been made clear—if Lower A Block licensees are to make good on their plans, they need the aforementioned certainty to proceed. Maintaining the current stalemate threatens the Commission's preference for a robust 700 MHz service capable of supporting interoperability across the band for consumers and public safety and increases the risk of defaults by licensees and even a potentially costly re-auction. With an automatic data roaming order already adopted,¹¹ the Commission has turned a major corner toward unlocking the band's prom-

⁹ See *Comments of RCA*, at 4–5; *In re* Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, *Ex Parte of Rural Cellular Association*, RM-11592 (Aug. 10, 2010) (including report by Peter Cramton on 700 MHz interoperability effect on competition).

¹⁰ Statement of Chairman Julius Genachowski, FCC, Hearing on "Ensuring Competition on the Internet: Network Neutrality and Antitrust Law," before the Subcommittee on Intellectual Property, Competition, and the Internet, Committee on the Judiciary, United States House of Representatives, by Testimony, May 5, 2011.

¹¹ *In re* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, *Second Report and Order*, WT Docket No. 05-265 (April 7, 2011).

ise. Resolving the Channel 51 interference issues and requiring interoperability across the band are the logical next steps. These requested changes also prepare the industry and the Commission to deal with spectrum allocation adjustments that will eventually come with the much needed Congressional authority to conduct incentive auctions.

II. A LICENSING FREEZE IS AN APPROPRIATE AND MEASURED MEANS OF STABILIZING THE 700 MHZ BAND PRIOR TO POTENTIAL RULEMAKING AND AUCTION

Broadcasters attempt to portray Petitioners' request for a Channel 51 licensing freeze as an extreme measure, labeling it an "aggressive position."¹² This too, is an overstatement. Rather, this is a narrowly tailored request that minimizes the damage to those with the most at stake—again, no existing Channel 51 holders would be disenfranchised. Further, the Commission has regularly employed the practice of halting acceptance of new applications while reviewing the best use for a given spectrum band.¹³

As noted by CTIA in its Comments, freezes of this nature are hardly extraordinary—they are procedural in nature and appropriate when they "create conditions that allow rulemakings to be held in an 'effective, efficient and meaningful manner.'"¹⁴ That test is satisfied under the circumstances here. A licensing freeze would promote clarity and stability with regard to the state of the spectrum environment of Lower A Block and maximize the chances that the rulemaking will result in a well-conceived rule. The potential impending clearance of additional spectrum,

¹² *Comments of NAB/MSTV*, at 9–10.

¹³ See *In re Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51*, *Comments of King Street Wireless, L.P.*, RM-11626, at 3 (April 27, 2011); *In re Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51*, *Comments of CTIA – The Wireless Association®, L.P.*, RM-11626, at 3–4 (April 27, 2011) [hereinafter *Comments of CTIA*].

¹⁴ See *Comments of CTIA*, at 2.

including Channel 51, clearly introduces a new direction in policy that cannot be reconciled with broadcasters' bald appeals to the sanctity of existing regulatory parameters.¹⁵ In the event that incentive auctions occur, it would be most efficient to minimize the number of Channel 51 operators, and certainly to avoid the risk of "squatters" who might seek licenses for the sole purpose of shaking down wireless carriers for that spectrum. That previous freezes may have dealt with allocated spectrum is inconsequential; the requested freeze of as-yet unallocated spectrum here operates in a comparably "effective, efficient and meaningful manner."¹⁶

NAB/MSTV also seek to deflect the legitimate interference concerns of Lower A Block licensees by asserting that the real impediment is the admitted inability of those licensees to procure Lower A operable devices.¹⁷ The interference issue is not secondary, as NAB/MSTV seem to imply, nor does the legitimacy of one concern negate that of the other. Lack of devices is yet another problem, one that must be addressed, but that does not change the fact that Channel 51 interference blocks the path to a stable, unified 700 MHz band that is amenable to public safety interoperability. Some commenters suggest that the solution to the interference problem here is simply one of technology and cost,¹⁸ but this argument fails to consider the broader implications of leaving the market to its own devices. RCA has vigorously urged the Commission to address interoperability and handset exclusivity and has noted the ruinous ramifications for competition that would result from ignoring those issues.¹⁹ Failure to address Channel 51 concerns now, and thus prevent the smaller carriers of Lower A Block from building up their next-generation net-

¹⁵ See *In re* Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51, *Opposition of Media General, Inc. to Petition for Rulemaking and Request for Licensing Freezes*, RM-11626, at 3–6 (April 27, 2011) [hereinafter *Opposition of Media General*].

¹⁶ See *supra* note 14.

¹⁷ *Comments of NAB/MSTV*, at 10–11.

¹⁸ *Opposition of Media General*, at 9–11.

¹⁹ See *supra* note 10.

works quickly, would greatly increase the risk of further market consolidation—a development that would benefit no one but the two largest carriers.

NAB/MSTV are shortsighted when they state that “there are no significant services to supposedly protect by unnecessarily restricting free over-the-air television service on Channel 51.”²⁰ While no Lower A carrier is currently operational, the rather glib statement above ignores the fact that it would be unreasonable to expect Lower A wireless carriers to build out services without assurances of a stable spectrum platform. Any new licenses awarded in Channel 51 constitute a significant change in the spectrum environment and a new source of instability. The protection afforded by targeted, pragmatic, situation-specific freezes such as the ones requested is a prerequisite to the hoped-for deployment of mobile broadband services in the Lower A band.

Some commenters appear to question outright the veracity of carriers’ interference concerns.²¹ But it would make no sense for carriers—and in particular, smaller carriers—to delay buildout based on phantom interference concerns. Every incremental delay in deployment costs these carriers money and puts them at greater risk of competitive disadvantage and even financial insolvency, not to mention the increased pressure to meet mandated performance benchmarks. Moreover, third parties such as Samsung have validated RCA’s Channel 51 interference concerns during a joint webinar hosted by RCA and Rural Telecommunications Group.²² Indeed,

²⁰ *Comments of NAB/MSTV*, at 10–11.

²¹ *See In re Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51, Comments of Rancho Palos Verdes Broadcasters, Inc., L.P.*, RM-11626, at 4 (April 27, 2011) [hereinafter *Comments of RPVB*].

²² 700 MHz Issues and Construction Status Reports, An RCA and RTG Webinar, March 29, 2011, pp 18-29 (including field measurements documenting interference levels), materials available at http://gallery.mailchimp.com/fbbfb788a3dee3243d1271c57/files/2011_03_29_RCA_RTG_700_MHz_Webinar_Presentation_FCC_and_Samsung.pdf?utm_source=RTG+Member+List&utm_campaign=2c8ffda663-RTG+RegLeg+Update%3B+Call+to+Action%3B+Ex+Partes&utm_medium=email.

even non-Lower A Block holder AT&T goes to great lengths to explain how Motorola expressed concerns about Channel 51 interference in the Lower A Block.²³

III. THE PETITION IS AN APPROPRIATE COMPROMISE FOR ALL STAKEHOLDER PARTIES

In addition to downplaying legitimate interference concerns, some broadcasters accuse Petitioners of disregarding the benefits associated with using Channel 51 for over-the-air broadcasting.²⁴ Some go so far as to characterize the Petition as a call for hostile ouster.²⁵ As explained above, however, the Petition makes clear that it does *not* seek to revoke the licenses of incumbent broadcasters. Channel 51 broadcasters thus have the choice of maintaining current operations or negotiating deals to relocate via private sector agreements.

RCA is sympathetic to broadcasters' appeal to the critical public interest benefit of over-the-air television operations. But RCA also emphasizes the public interest value—in terms of both commercial broadband and public safety—of a fully utilized 700 MHz band. That value has been recognized both by Congress and the Commission. And as Cellular South notes, “with the DTV transition complete, there is abundant spectrum available for over the air television use outside of Channel 51.”²⁶ Broadcasters should thus be able to continue to provide their valuable free programming to the community. That being the case, RCA again emphasizes its hope that expe-

²³ *In re* 700 MHz Band Mobile Equipment Design and Procurement Practices, *Comments of AT&T, Inc.*, RM-11592, at 5–6, (Mar. 31, 2010).

²⁴ *See Comments of RPVB*, at 5.

²⁵ *See In re* Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51, *Opposition of Block Communications, Inc. and Independence Television Company to Petition for Rulemaking*, RM-11626, at 2 (April 27, 2011).

²⁶ *In re* Request for Licensing Freezes and Petition for Rulemaking to Amend the Commission's DTV Table of Allocations to Prohibit the Future Licensing of Channel 51 Broadcast Stations and to Promote Voluntary Agreements to Relocate Broadcast Stations From Channel 51, *Comments of Cellular South, Inc. in Support*, RM-11626, at 2 (April 27, 2011).

ditionous, voluntary relocation can pave the way to mutual, private sector negotiated agreements between wireless carriers and broadcasters.

Finally, certain commenters claim that Petitioners “urge the Commission to essentially transform Channel 51 into a guard band.”²⁷ This is a mischaracterization. Petitioners merely ask that the channel be stabilized for the time being, particularly given the likelihood of a future broadcast spectrum auctions. In the event that such auctions do take place, the eventual use of Channel 51 post-auction may properly be addressed. In any case, it is inaccurate to cast Petitioners’ requests as a demand for a “clean-sweep” of the channel without consideration for incumbent users.

IV. CONCLUSION

In light of the foregoing arguments and for all the reasons set forth in RCA’s comments in the Petition, RCA respectfully urges the Commission to foreclose future licensing of Channel 51 TV broadcasters, freeze further processing of any outstanding applications for new or modified Channel 51 broadcast facilities, clear Channel 51 incumbents by way of voluntary agreements, mandate interoperability across the 700 MHz band, and harmonize power levels in the Lower D and E Blocks.

Respectfully submitted,

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²⁷ *Comments of NAB/MSTV*, at 7.

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