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Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket 06-150)
Petition for Reconsideration and/or Clarification of the Blooston Rural Carriers
RM-11592 (700 MHz Equipment Interoperability)
Ex Parte Notice**

Dear Ms. Dortch:

The rural telephone clients and 700 MHz band licensees represented by the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (the "Blooston Rural Carriers"), respectfully urge the Commission to resolve the issues raised in the Petition for Partial Reconsideration and/or Clarification of the 700 MHz Second Report and Order,¹ which was filed by this law firm on behalf of its affected clients in WT Docket 06-150 on September 24, 2007.

In particular, and of greatest concern at this time, the Blooston Rural Carriers have urged the Commission to modify its revised buildout rule as to Lower 700 MHz Band A-Block (Economic Area) or B-Block (Cellular Market Area) licenses. With respect to CMAs and EAs that cover large, sparsely populated regions, the FCC's decision to impose strict geographic buildout obligations is simply unworkable. The rule should be revised to provide a population-

¹ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, WT Docket No. 06-150 and related proceedings, 22 FCC Rcd 15289, 72 FR 48814 (2007) ("700 MHz Second Report and

based coverage option, comparable to the benchmark allowed for the Upper 700 MHz Band C-Block, which licenses are held exclusively by Verizon Wireless. As a nationwide incumbent carrier, Verizon has the significant advantage of being able to access public capital markets and to leverage its existing infrastructure, employees, retail stores, and long-established relationships with network and handset vendors to facilitate its 700 MHz buildout.

In sharp contrast, many small and rural carriers have limited access to capital, and many will need to build their advanced wireless networks from the ground up, with far fewer employees and no chance of securing access to the most coveted wireless devices, due to the prevalence of handset exclusivity agreements and other ongoing challenges presented by the lack of 700 MHz equipment interoperability. With unprecedented economic upheaval starting just about the time the Auction 73 licenses were awarded,² and slim prospects for a meaningful recovery anytime soon,³ it is unreasonable for the Commission to think that carriers other than Verizon and AT&T will be able to meet strict geographic buildout requirements.

In his statement accompanying the *700 MHz Second Report and Order*, Commissioner Robert McDowell acknowledged the importance of *not setting the bar too high* with respect to commercial 700 MHz performance requirements, since this could cause licensees to deploy less robust technologies.⁴ The Commissioner also recognized that “[d]epriving the nascent 700 MHz market place of smaller new entrants will result in less innovation and competition, not more” and that “[c]onsumers could be short-changed as a result.”⁵ The Blooston Rural Carriers respectfully submit that due to significantly changed circumstances, including the unforeseen lack of 700 MHz equipment interoperability and a profound economic downturn that has a disproportionate impact on small businesses and businesses in rural communities, maintaining a

Order”).

² Hinton, P. (January 4, 2009) The Start of the Global Financial Crisis (2008): Timeline of Events in September 2008 Causing the Global Recession | Suite101.com <http://patrick-hinton.suite101.com/the-start-of-the-global-financial-crisis-2008-a88065#ixzz1ZGAFsHyg>. Retrieved September 28, 2011.

³ Whoriskey, P. (August 19, 2011). Recovery could be one of longest, most difficult in U.S. history, economists say. *Washington Post*. http://www.washingtonpost.com/business/economy/recovery-will-be-one-of-the-longest-most-difficult-in-history-economists-say/2011/08/17/gIQA6D6rPJ_story.html Retrieved September 28, 2011.

⁴ See Statement of Commissioner Robert M. McDowell, *700 MHz Second Report and Order*, 22 FCC Rcd 15289, 72 FR 48814 (2007).

⁵ *Id.*

strict geographic buildout requirement for Auction No. 73 CMA and EA licensees is setting the bar too high. For the benefit of consumers, the Commission should take steps to ensure that smaller new entrants have the ability to compete and innovate by adopting an alternative, population-based buildout standard for these entities.

To the extent that the Commission retains strict geographic buildout rules for Auction No. 73 CMA and EA licenses, the Blooston Rural Carriers have urged the Commission to eliminate its vaguely worded “sanctions” that may be applicable if a Lower 700 MHz Band A-Block (Economic Area) or B-Block (Cellular Market Area) license fails to meet strict geographic performance requirements calling for service sufficient to cover 35 percent of the geographic area of their licenses by June 13, 2013, and 70 percent of this area by the end of the initial license term. It has been more than three years since the FCC granted most of the Lower 700 MHz Band A- and B-Block licenses following Auction No. 73,⁶ and the interim buildout deadline is fast approaching.

In adopting its revised geographic buildout rules for new Lower 700 MHz EA and CMA licensees, the Commission stated as follows:

Failure to meet the interim requirement will result in a two-year reduction in license term, as well as possible enforcement action, including forfeitures. We also reserve the right for those that fail to meet their interim benchmarks to impose a proportional reduction in the size of the licensed area.⁷

This vague reference to a possibility of additional sanctions is carried through to Rule Sections 27.14(g)(1), which specifies the consequences should a Lower 700 MHz EA or CMA license holder fail to meet its geographic buildout and performance requirements. However, no guidance was ever given as to the circumstances that will trigger sanctions, or their possible degree of severity. The specter of unspecified sanctions makes it difficult for small businesses and rural telephone companies to attract capital and to plan for buildout contingencies, and sanctions will only further hamper the ability for these upstarts to compete in a wireless

⁶ See Public Notice Report No. AUC-73, *Wireless Telecommunications Bureau Grants 700 MHz Band Licenses*, DA 08-1522 (*rel.* June 26, 2008).

⁷ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, WT Docket No. 06-150 and related proceedings, 22 FCC Rcd 15289, 72 FR 48814 (2007) (“700 MHz *Second Report and Order*”) at Para. 153.

marketplace that is overwhelmingly concentrated and dominated by two nationwide behemoths. Partial reclamation of unserved areas at the end of the license term (which may be shortened by two years) is enough of a penalty for small and rural licensees to bear. Further sanctions would be unreasonably punitive.

Other issues addressed raised by the Blooston Rural Carriers include clarification of what will constitute coverage or service “at a level that is below the end-of-term benchmark.” The method of calculating 700 MHz coverage is not adequately defined in the Commission’s Rules and the service requirements are even more nebulous. The Commission’s rules need to provide for an interference free “buffer zone” to protect a licensee’s existing operations when unbuilt areas are reclaimed at the end of a license term; and the rules need to clarify that Tribal lands will not be considered in calculating geographic coverage if a Tribal government is not willing to allow such coverage.

The Blooston Rural Carriers raised the above issues more than four years ago; and as shown above, these concerns have only been exacerbated by subsequent events. It is respectfully submitted that the Commission should address the issues raised in our Petition for Reconsideration as quickly as possible.

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS

A handwritten signature in black ink, appearing to read 'D. Cary Mitchell', written in a cursive style.

D. Cary Mitchell
John A Prendergast
Harold Mordkofsky
Their Counsel