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Marlene H.Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition for Rule making Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, RM-11592

**Interoperability in The 700 MHz. Spectrum Band.
It is Closing Time and the Night Watch-Man is Jingling his Keys.**

The Federal Communications Commission (FCC) must take immediate action to stop the introduction of non-interoperable devices and immediately **Freeze** the equipment authorization of non-interoperable equipment across the 700 MHz.frequency band.¹ The negative consequences of non-interoperable devices in the 700 MHz spectrum band is substantial and attributable to anti-competitive behavior that clearly

¹ SEC. 256. [47 U.S.C. 256] COORDINATION FOR INTERCONNECTIVITY.

(a) PURPOSE. It is the purpose of this section-- (1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through (A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and (2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

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undermines the language and the intent of the Telecommunications Act of 1996.² It may already be too late to prevent the irrevocable harm solely as a result of non-interoperability and the inability of small business to launch service in the 700 MHz A block frequencies because of the non-availability of devices. More importantly the AT&T Band class was not proposed until one month after the 700MHz auction ended in March of 2008. A small business bidder in the 700MHz. auction has to assume that devices would be interoperable like prior bands Cellular, PCS, and AWS and that this practice would continue for the 700MHz spectrum. Much has been said that the band plans were developed by a “consensus” through the 3GPP.³ The process was only open to you if you had an engineer staff dedicated to meeting all over the world. As a practical matter only the largest carriers were present throughout the standard setting process in Europe, Asia, and the Americas. A small business bidding on an A block license at the time of the auction had no way of knowing that AT&T and Verizon would be allowed to adopt restrictive equipment practices using carrier specific bands. The wireless industry is overwhelmingly concentrated and dominated by just a few nationwide behemoths and any additional delays on interoperability will have severe consequences for the smaller carriers and consumers alike. This behavior by AT&T and Verizon reaches the outer boundaries of responsible business ethics. AT&T and Verizon has exercised their power and size post auction to influence and manipulate the compatibility of the 700 MHz. bands and to control the development and production of mobile devices to operate only in the 700 MHz. frequency bands they own. This attempt to suppress the competition with non- interoperability and lost of valuable time makes it nearly impossible for small business to compete on a level playing field. The Commission has a long track record of prohibiting other restrictive arrangements that become obstacles to competitive access in the telecommunications market. The Commission has the authority to address discriminatory and anti-competitive practices under the Telecommunications Act, and it should do so as soon as possible. Interoperability is clearly a market entry barrier for small businesses and is in the public

² 1 The 700 Mhz Block A Good Faith Purchasers Alliance (the "Alliance")The Alliance is a joint venture consisting of Cellular South Licenses, Inc.; Cavalier Wireless, LLC; Continuum 700, LLC; and King Street Wireless, L.P., each of which was the high bidder for and/or currently the licensee of Lower 700 MHz Band Block A spectrum.

³ The 3rd Generation Partnership Project (3GPP) unites [Six] telecommunications standards bodies, known as “Organizational Partners” and provides their members with a stable environment to produce the highly successful Reports and Specifications that define 3GPP technologies.

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interest.⁴ The Commission has long recognized the benefits of having robust competition in the wireless marketplace including lower prices and choice among providers. Interoperability is a prerequisite to true competition in the wireless marketplace. The need for regulatory intervention stems from the extreme market power that AT&T and Verizon are exerting with respect to the low frequency spectrum and their growing dominance in mobile broadband. AT&T and Verizon intend to leverage this market power through restrictive device practices on carrier specific band plans designed after the 700 MHz auction. The Commission has an obligation as regulators of the industry to enforce policies that protect small business from the harmful side effects of such unfairness as non-interoperability in the 700MHz. band which undermines the very principals and objectives of the Commission to promote small business and competitiveness in the mobile industry and must take every opportunity to correct these harms.

Respectfully submitted,

Vincent D. McBRIDE

⁴ SEC. 257. [47 U.S.C. 257] MARKET ENTRY BARRIERS PROCEEDING. (a) ELIMINATION OF BARRIERS. Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.