Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Wireless Telecommunications Bureau Seeks Comment on Request for Waiver and Extension of Time to Construct 700 MHz A- and B-Block Licenses	))))	WT Docket No. 12-332
	)	

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its Lower 700 MHz band clients (the "Blooston Rural Carriers"), hereby submits these comments on the requests for extension of time and waiver of the June 13, 2013, interim construction deadline filed by ten Lower 700 MHz A-Block (EA) and B-Block (CMA) licensees.[1]

The Blooston Rural Carriers are a group of independent rural telephone companies and cooperatives and rural telco affiliate companies that are striving to deploy Lower 700 MHz band networks and participate in a highly competitive market for advanced wireless services. Each is a long-time provider of wireline telecommunications services in its rural territory, and all face significant challenges as a result of the Commission's universal service and intercarrier compensation reforms. However, because each has developed strong community ties over years of providing service in the public interest, each is in an ideal position to develop and expand Lower 700 MHz Band wireless services to consumers who live into rural and underserved areas. The Blooston

[1] *See*, "Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver and Extension of Time to Construct 700 MHz A- and B-Block Licensees," *Public Notice* , DA 12-1827 (*rel.* Nov. 13, 2012). The Bureau seeks comment on extension/waiver requests that have been filed by Cox TMI Wireless, L.L.C. (Cox), Continuum 700 LLC (Continuum), Cincinnati Bell Wireless, LLC (CBW), Cavalier Wireless, LLC (Cavalier), Cellular South Licenses, LLC (Cellular South), MetroPCS 700 MHz, LLC (MetroPCS), Toba Inlet PCS, LLC (Toba Inlet), McBride Spectrum Partners, LLC (McBride), Nex-Tech Wireless, LCC (Nex-Tech), and Triad 700, LLC (Triad) (collectively, the "Petitioners").

Rural Carriers include holders of Lower 700 MHz A-, B- and C-Block licenses and partitioned licenses. Some have significant experience in the provision of mobile wireless services, while others are struggling with the challenges of a "greenfield" build. All have undertaken and are continuing to undertake meaningful efforts to utilize their spectrum, and all appreciate the opportunity to file comments in this proceeding.

Discussion

As discussed herein, the Blooston Rural Carriers unanimously support the Bureau's grant of a blanket two year extension of time for each of the requesting Lower 700 MHz band licensees (Petitioners) to meet the Interim Construction Benchmark with respect to their A-Block economic area (EA) and B-Block cellular market area (CMA) licenses. A lack of 700 MHz band equipment interoperability is a cause that is beyond the control of all but the largest nationwide service providers, and it forms the foundation of every one of the Petitioners' requests for extension of time. This lack of equipment interoperability has resulted in an absence of a mature ecosystem for 3GPP Band Class 12 mobile equipment and no meaningful Band Class 12 roaming arrangements, which are especially important to small businesses and new service providers that are Lower 700 MHz A- and B-Block licensees. As a result, small and independent service providers that wish to remain independent and focus their attention on local or regional markets find themselves at the mercy of the nationwide carriers, which already enjoy overwhelming economies of scale and leverage over smaller competitors.

Small and regional wireless service providers and startups are ideally positioned to extend advanced wireless services to rural and underserved markets, as encouraged by the Commission's policies and rules, but their ability to fulfill this promise has been

severely impacted by the lack of 700 MHz band interoperability and its fallouts. Because the Commission is in the process of addressing these issues in the 700 MHz band interoperability docket (WT Docket No. 12-69), it should have whatever time is necessary to issue a well-reasoned *Report and Order*, and all 700 MHz band licensees should have at least two years after these 700 MHz band interoperability policies and rules are effective to meet their interim construction obligations. The Bureau should grant the Petitioners' requests expeditiously, so that they are not forced to implement stop-gap measures prior to the June 2013 interim construction deadline in order to prevent the shortening of their initial license term and the possibility of enforcement action, including monetary forfeitures. The public interest would not be served by forcing licensees to deploy inferior systems which may be only marginally competitive and that make little economic sense in any event.

If, on the basis of this proceeding, the Bureau is inclined to grant the requested relief to the Petitioners, the Blooston Rural Carriers urge the Bureau to grant blanket relief from the Interim Construction Benchmark to <u>all</u> Lower 700 MHz A- and B-Block licensees. All are clearly faced with similar circumstances, and it would be a poor use of limited FCC and licensee resources to require licensees to file substantially identical waiver/extension requests when they might otherwise use these resources for the improvement and expansion of service to subscribers. A rigid application of the interim buildout rule to the rest of the Lower 700 MHz band industry would be inequitable and contrary to the public interest. Moreover, the BRC's believe that the unanticipated and ongoing threat of interference from high power operations on the adjacent E-Block channel bolsters the case for an extension, and that 700 MHz licensees who can

demonstrate that their buildout has been hampered significantly by Channel 51 interference issues should be entitled to receive a further extension of the Interim Construction Benchmark until at least one year after the incumbent broadcast operations have ceased or been relocated.

In support hereof, the following is shown:

I. Lack of 700 MHz Band Interoperability is an Unforeseen Circumstance that Impacts All But the Largest Lower 700 MHz Band Licensees

The records in this proceeding (WT Docket No. 12-332), the 700 MHz band interoperability proceeding (WT Docket No. 12-69) and proceedings dating back to the 700 MHz Block A Good Faith Purchaser Alliance *Petition for Rulemaking* (RM-11592)[2] each make clear that the lack of interoperability in the 700 MHz band constitutes a unique and unusual circumstance that was unforeseen prior to Auction No. 73, when Lower 700 MHz A- and B-Block licenses were issued. Commenting parties, including the Blooston Rural Carriers, have consistently noted the critical public interest need for band interoperability among small and independent service providers.[3] In particular, such interoperability is necessary before there can be economies of scale and a robust ecosystem of Band Class 12 mobile network equipment and consumer devices at an affordable price for small carriers and new entrants, and before there can be an effective market for roaming and other inter-carrier relationships so that these devices can operate

[2] *See* 700 MHz Block A Good Faith Purchaser Alliance Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, filed Sept. 29, 2009 (*Alliance Petition*); Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices, RM-11592, *Public Notice*, 25 FCC Rcd 1464 (2010) (*700 MHz Interoperability PN*).

[3] *See, e.g.*, Comments of the Blooston Rural Carriers (RM-11592) (*filed* March 31, 2010); Reply Comments of the Blooston Rural Carriers (RM-11592) (*filed* April 30, 2010); Comments of the Blooston Rural Carriers (WT Docket No. 12-69) (*filed* June 1, 2012); Reply Comments of the Blooston Rural Carriers (WT Docket No. 12-69) (*filed* July 16, 2012).

with full 4G functionality wherever consumers may travel.

The record before the Commission and Wireless Bureau shows that the lack of 700 MHz band interoperability and associated lack of robust ecosystem for Band 12 CPE and roaming have undermined the ability of small carriers and new market entrants to develop a reasonable business case for the provision of mobile 700 MHz band services. A-Block licensees may be impacted most directly, but the failure of a market for "full band" Lower 700 MHz roaming to emerge among regional and independent licensees means that A-, B- and C-Block carriers (the latter of which are not subject to interim construction requirements) have no choice but to look to Verizon and AT&T for nationwide 3G/4G roaming. These larger carriers are in a position to benefit from increased inbound traffic on their networks from rural customers – and significant roaming revenues – but they have little or no incentive to help Band Class 12 development. They can market the latest 3G/4G devices to their customers and these devices will be capable of operating in 4G mode on their home network. However, these devices will not operate in 4G mode on a Band Class 12 network, so small and independent carriers that wish to offer Band Class 12 services must remain "islands" of coverage and they cannot benefit from a robust ecosystem of products that have been tested in the marketplace. Many customers will not find it reasonable to sign up for even the best quality 4G services from a local service provider when they are subject to such limitations.

The Petitioners, and all others that have invested in Lower 700 MHz A- and/or B-Block licenses, obtained their spectrum rights with a reasonable expectation that interoperable equipment would be widely available and priced to reflect significant

economies of scale, especially with Verizon Wireless and AT&T investing billions of dollars to develop and market 4G services in the 700 MHz band. The Balkanization of the band that arose only after Auction No. 73 was entirely unforeseen, and emphasis on "custom" band classes by the largest carriers (Band Class 17 for the Lower B- and C-Block, and Band Class 13 for the Upper C-Block) drove manufacturing support away from A-Block research and development.

Other post-auction developments that could not have been foreseen and that have negatively impacted small licensees' efforts to deploy Lower 700 MHz A- and B-Block facilities include unprecedented economic upheaval that started just about the time the Auction 73 licenses were awarded,[4] the National Broadband Plan and its unexpected impact on Channel 51 clearing,[5] an unanticipated threat of interference from high power operations on the Lower 700 MHz E-Block channel,[6] and difficulty in obtaining equipment and competing price quotes from multiple vendors due to security concerns raised by a Congressional committee.[7] These unforeseen developments are significant, and have hampered network deployment efforts by the Petitioners. Together with the lack of timely and affordable equipment and mobile devices for 3GPP Band Class 12,

---

[4] 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 November 27, 2012.

[5] A thorough summary of Channel 51 clearing and interference issues has been provided at pps.7-13 of the Request for Extension filed Oct. 15, 2012 by Cavalier Wireless, LLC (*Cavalier Extension Request*).

[6] *See, e.g., Cavalier Extension Request* at pp. 13-15 and Exhibit E (Engineering Statement Regarding Lower 700 MHz E-Block to A-Block Interference, prepared by V-COMM. LLC); McBride Spectrum Partners, LLC Request for Limited Extension of Initial Construction Benchmarks, (filed Oct. 26, 2012) (*McBride Request*); Toba Inlet PCS, LLC Request for Limited Extension of Initial Construction Benchmarks, (filed Oct. 19, 2012) (*Toba Inlet Request*).

[7] Several Petitioners cited to complications created by a recent U.S. House of Representatives intelligence committee investigative report which recommended that U.S. companies avoid purchasing equipment from two particular vendors from China. *See, e.g., Cavalier Extension Request* at p 5, Continuum 700 LLC Request for Limited Extension of Initial Construction Benchmarks (filed Oct. 15, 2012)(*Continuum Request*) at p. 5.

these issues have also played a significant role in delaying or impeding the development of Lower 700 MHz band services as a whole.

II. Smaller 700 MHz Licensees are Making Meaningful Efforts to Utilize their Spectrum

Despite the lack of interoperable Lower 700 MHz band equipment in the marketplace, and no feasible "full-band" roaming arrangements for independent and start up service providers, the Blooston Rural Carriers believe that each of the Petitioners have demonstrated "meaningful efforts" to utilize their spectrum. All have engaged in some type of business and network planning, including investigation of equipment availability and/or meeting with vendors, preparation of engineering studies and preliminary site acquisition, and some have gone above and beyond by participating in meetings with industry standards bodies, hiring RF engineering firms to prepare interference studies and preliminary testing of Band Class 12 equipment. Based on their interim buildout reports filed in January of 2012, the Blooston Rural Carriers and other small 700 MHz Band licenses have likewise engaged in meaningful efforts to implement a viable service. However, the Bureau must recognize that the Lower 700 MHz licensees are a diverse lot, and "meaningful efforts" will necessarily vary from company to company, depending on its relative size, sophistication, availability of personnel, and level of investment.

That the problem of Lower 700 MHz band interoperability was not resolved independently by a diverse group of licensees should come as no surprise to the Bureau. The vast majority of small carriers and startup businesses lack the resources and sophistication to participate in the standards process. The Bureau cannot expect that all licensees are in a position to assume a leadership role in an industry that is dominated by publicly traded companies and two overwhelming market leaders, and it must evaluate

each licensee's "meaningful efforts" with that fact in mind. Indeed, were it not for the pioneering efforts by Cavalier Wireless and other members of the 700 MHz Block A Good Faith Purchaser Alliance, it is unlikely that awareness of 700 MHz interoperability issues would be this great, or that the Commission and wireless industry would be this far along toward finding a solution. However, the Bureau should recognize a broad range of "meaningful efforts" – including participation in FCC comments, attendance at industry meetings and the like – were necessary to get the industry where it is today.

III. A Two-Year Extension That is Based on Final Rules in the 700 MHz Equipment Interoperability Proceeding is Appropriate

As noted above, it is vital for small and independent service providers to have access to a wide selection of interoperable 700 MHz Band network equipment and consumer devices if these entities are going to have any hope of providing viable services, much less competing with nationwide carriers like Verizon Wireless and AT&T. The Commission has previously recognized that new entrants to the wireless telecommunications market, as well as small and regional carriers, need to have sufficient time to deploy new 700 MHz technologies and services, since many do not already have extensive pre-existing infrastructure in place.[8] Therefore, any extended interim buildout deadline for the Petitioners and blanket relief granted to other Lower 700 MHz A- and B-Block licensees must not only be based on the commercial availability of interoperable 700 MHz Band equipment, but it must provide smaller carriers and new entrants with sufficient time to complete their network construction.

---

[8] *700 MHz Second Report and Order* at ¶ 153.

IV. Conclusion

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.[9] 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."[10] 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 the current Interim Construction Benchmark deadline of June 13, 2013 for Auction No. 73 CMA and EA licensees is setting the bar too high.

Respectfully submitted,
BLOOSTON RURAL CARRIERS

By: _____

D. Cary Mitchell
John A. Prendergast
Hal Mordkofsky

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037

Phone: (202) 659-0830
Facsimile: (202) 828-5568

Filed: December 13, 2012

---

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

[10] *Id.*

Attachment A

The Blooston Rural Carriers

3 Rivers Telephone Cooperative, Inc.....Fairfield, MT
BEK Communications Cooperative.....Steele, ND
Buggs Island Telephone Cooperative, Inc. .....Bracey, VA
Consolidated Telcom .....Dickinson, ND
Custer Telephone Cooperative, Inc.....Challis, ID
Dakota Central Telecommunications.....Carrington, ND
Halstad Telephone Company.....Halstad, MN
Kennebec Telephone Company .....Kennebec, SD
KTC AWS Limited Liability Company.....Kennebec, SD
Ligtel Communications, Inc.....Ligonier, IN
Manti Telephone Company.....Manti, UT
Polar Communications Mutual Aid Corporation.....Park River, ND
Ponderosa Telephone Co., Inc. .....O'Neals, CA
PVT Networks, Inc. .....Artesia, NM
Red River Rural Telephone .....Abercrombie, ND
Silver Star Telephone Company, Inc. .....Freedom, WY
Sky Com 700 MHz, LLC.....Abercrombie, ND
Star Telephone Company, Inc.....Baton Rouge, LA
The Chillicothe Telephone Company .....Chillicothe, OH
Triangle Communications System, Inc.....Havre, MT
West River Telecommunications Cooperative .....Hazen, ND
WUE, Inc. .....Pioche, NV