

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

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762, and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
	)	
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services	)	WT Docket No. 03-264
	)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 37 of the Commission’s Rules	)	WT Docket No. 06-169
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86
	)	
Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule	)	WT Docket No. 07-166
	)	

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

**Adopted: February 28, 2013**

**Released: March 1, 2013**

By the Commission:

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## I. INTRODUCTION

1. In this Memorandum Opinion and Order (“MO&O”), we address petitions that were filed seeking reconsideration of certain decisions made by the Commission in the *700 MHz Second Report and Order* relating to the 698-806 MHz Band (herein, the “700 MHz Band”).<sup>1</sup> This MO&O denies or dismisses petitioners’ requests to modify the earlier decisions on the performance requirements applicable to licensees in this band, the auction and competitive bidding rules, the open platform rules, the narrowband relocation procedures, and the decisions not to impose wholesale requirements, eligibility restrictions, and spectrum aggregation limits. This MO&O also dismisses as moot petitions for reconsideration regarding the establishment of the Public/Private Partnership between the Upper 700 MHz D Block (“D Block”) licensee and the Public Safety Broadband Licensee in the 763-768 MHz and 793-798 MHz bands.

## II. BACKGROUND

2. In the *700 MHz Second Report and Order*, the Commission revised the band plan for both the commercial and public safety spectrum in the 700 MHz Band. With regard to the unassigned commercial spectrum in the band, the Commission established assignment and licensing rules. In addition, the Commission established a Public/Private Partnership between the D Block licensee and the Public Safety Broadband Licensee

<sup>1</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (“*700 MHz Second Report and Order*”).

in order to facilitate the development of a nationwide public safety broadband network. Ten petitions for reconsideration were filed seeking review of a variety of specific decisions made by the Commission in that order.<sup>2</sup> We describe and address these issues in more detail below.

### III. DISCUSSION

#### A. Performance Requirements

3. Below we discuss the issues raised by petitioners with respect to the performance requirements that the Commission established in the *700 MHz Second Report and Order*. After careful consideration of the arguments raised in the petitions for reconsideration, we deny the requests to modify the existing performance requirements.

#### 1. Geographic-Based Coverage Requirements for CMA and EA Licenses

4. Background. In the *700 MHz Second Report and Order*, the Commission required Cellular Market Area (“CMA”) licensees in the Lower 700 MHz B Block and Economic Area (“EA”) licensees in the Lower 700 MHz A and E Blocks to provide service sufficient to cover 35 percent of the geographic area of their licenses within four years, and 70 percent of this area within ten years (the license term).<sup>3</sup> It further provided that, when applying geographic benchmarks, licensees were not required to include government lands as part of the relevant service area.<sup>4</sup>

5. Blooston, MetroPCS, and RTG filed petitions for reconsideration challenging various aspects of the geographic-based performance requirements. Blooston requests that in addition to being able to meet the existing geographic-based benchmarks, CMA licensees should be given the option of meeting population-based benchmarks.<sup>5</sup> In addition, several of the petitioners argue for additional exclusions beyond government lands when determining compliance with the benchmarks. MetroPCS argues for excluding bodies of water, historic

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<sup>2</sup> The parties petitioning for reconsideration of the *700 MHz Second Report and Order* are: AT&T Inc. (“AT&T”), Blooston Rural Carriers (“Blooston”), Commonwealth of Virginia (“Virginia”), Cyren Call Communications, Corp. (“Cyren Call”), Frontline Wireless, LLC (“Frontline”), MetroPCS Communications, Inc. (“MetroPCS”), NTCH, Inc. (“NTCH”), Pierce County Public Transportation Benefit Area Corporation (“Pierce Transit”), Ad Hoc Public Interest Spectrum Coalition (“PISC”), and Rural Telecommunications Group, Inc. (“RTG”). See AT&T Inc. Petition for Reconsideration and Clarification, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“AT&T Petition”); Blooston Rural Carriers Petition for Partial Reconsideration and/or Clarification, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“Blooston Petition”); Commonwealth of Virginia Petition for Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“Virginia Petition”); Cyren Call Communications Corporation Petition for Partial Reconsideration and for Clarification, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“Cyren Call Petition”); Frontline Wireless, LLC Petition for Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“Frontline Petition”); MetroPCS Communications, Inc. Petition for Clarification and Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 20, 2007) (“MetroPCS Petition”); NTCH, Inc. Petition for Partial Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 21, 2007) (“NTCH Petition”); Pierce Transit Petition for Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“Pierce Transit Petition”); *Ad Hoc* Public Interest Spectrum Coalition Petition for Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“PISC Petition”); Rural Telecommunications Group, Inc. Petition for Reconsideration, WT Docket No. 06-150 *et al.* (filed Sept. 24, 2007) (“RTG Petition”).

<sup>3</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15349 ¶ 157.

<sup>4</sup> See *id.* at 15350 ¶ 160.

<sup>5</sup> See Blooston Petition at iii; Blooston Reply at 3-5. See also CTIA Comments and Opposition at 2-6 (arguing for extension of population coverage option for both CMA and EA licensees); MetroPCS Reply at 2 (same); AT&T Opposition and Comments at 6-7 (same); U.S. Cellular Comments at 6-7; U.S. Cellular Reply at 2-6. *But see* RTG Opposition and Comments at 2-4; RTG Limited Reply and Comments at 2-3.

districts, areas completely surrounded by the licensee's system, and zip codes with population density less than 5 persons per square mile,<sup>6</sup> while RTG only supports excluding large bodies of water like the Great Lakes or the Great Salt Lake.<sup>7</sup> Blooston requests that a licensee not be held accountable for coverage to Tribal lands if the licensee has made a good faith but unsuccessful effort to secure Tribal government agreement to allow such coverage.<sup>8</sup>

6. Discussion. We deny the petitioners' requests to alter the geographic-based coverage requirements. First, we are unpersuaded by Blooston's arguments that a geographic-based performance requirement on CMA licensees (*i.e.* licensees in Lower 700 MHz B Block) is arbitrary and unworkable and should be supplemented with the option of meeting a population-based benchmark.<sup>9</sup> The Commission provided reasonable justifications for its decision to adopt a geographic-based build-out requirement for CMA and EA licenses, and we find nothing in the record to persuade us to change this decision.<sup>10</sup> Blooston argues that for some licenses, meeting the geographic-based benchmarks will be impractical, and offers analysis of nine CMAs out of the 734 in Lower 700 MHz B Block.<sup>11</sup> For specific cases of hardship, however, providers can seek waiver relief. Blooston offers no evidence demonstrating that a geographic-based benchmark is inherently impractical in the usual case.

7. Indeed, the results of the auction of Lower 700 MHz B Block licenses provide further support for the reasonableness of the Commission's geographic-based performance requirement. In the *700 MHz Second Report and Order*, the Commission decided that, if those geographic-based requirements caused a "reduction in the monetary value of the licenses" to such an extent that bidding in the auction resulted in the Lower 700 MHz B Block failing to meet its applicable aggregate reserve price, the licenses for that block would be re-auctioned subject to population-based performance requirements.<sup>12</sup> Thus, the Commission relied in part on the auction results as a final check on whether its geographic-based performance requirements were in the public interest.<sup>13</sup> When the licenses were auctioned in Auction 73, the Commission received provisionally winning bids on 728 out of 734 Lower 700 MHz B Block licenses and the aggregate amount of the provisionally winning bids far exceeded the applicable aggregate reserve price.<sup>14</sup> Accordingly, we reaffirm the geographic-based coverage

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<sup>6</sup> See MetroPCS Petition at 3, 11-13; Letter from Michael Lazarus, Counsel for MetroPCS Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 *et al.* (filed Nov. 8, 2007). See also Blooston Comments at 2-3; CTIA Comments and Opposition at 6-9; U.S. Cellular Comments at 4. *But see* RCA Limited Opposition and Comment at 3-4.

<sup>7</sup> See RTG Opposition and Comments at 5-6.

<sup>8</sup> See Blooston Petition at 19-20. See also CTIA Comments and Opposition at 8.

<sup>9</sup> See Blooston Petition at 3-11.

<sup>10</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-51 ¶¶ 154-61, 15354-55 ¶ 176, 15402 ¶ 309. The Commission particularly noted that "[b]ecause we adopt smaller geographic license areas such as CMAs to facilitate the provision of service . . . in rural areas, we also adopt performance requirements that are designed to ensure that such service is offered to consumers in these areas." *Id.*, 22 FCC Rcd at 15349 ¶ 158. The Commission further found that "the uniqueness of the 700 MHz spectrum justifies the use of geographic benchmarks . . ." *Id.* Blooston argues that the Commission arbitrarily discriminated against CMA licenses by providing population-based requirements on both EA and REAG licensees. Blooston Petition at 9. In fact, the Commission imposed identical geographic-based requirements on EA and CMA licenses, and it reasonably justified its decision to adopt a different approach for the much larger REAG licenses. See *700 MHz Second Report and Order*, 22 FCC Rcd at 15351 ¶¶ 163, 164.

<sup>11</sup> See Blooston Petition at 3-4 & Attach. B.

<sup>12</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15402 ¶¶ 309-10.

<sup>13</sup> See *id.*

<sup>14</sup> See Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572, 4573 (WTB 2008).

requirement for Lower 700 MHz B Block licensees and we deny Blooston's request to add an optional population-based benchmark to Lower 700 MHz B Block.<sup>15</sup>

8. We also reject arguments that we should broaden the exclusions from our geographic coverage requirements.<sup>16</sup> Our geographic coverage requirements already exclude government lands,<sup>17</sup> and any further categorical exclusions could undermine the Commission's goals in adopting these requirements, which include taking advantage of the excellent propagation characteristics of 700 MHz spectrum to promote wireless coverage in remote and rural areas.<sup>18</sup> Even with regard to bodies of water, there is a public interest benefit to wireless coverage to vessels near shore, and some level of coverage may be possible from infrastructure on land or, where relevant, through platforms or other facilities constructed out from the shore.<sup>19</sup> Further, the Commission already specifically considered and rejected exclusions for Tribal lands, finding that it did not want to discourage deployment to these areas.<sup>20</sup> While Blooston would limit exclusion of Tribal lands to cases where a licensee had made a good faith but unsuccessful attempt to obtain Tribal government consent, we see no evidence that such consent will often be unreasonably withheld, and we are concerned that an exclusion for Tribal lands may result in reduced efforts to obtain such consent and deploy in these areas.

9. In sum, we conclude that the requested categorical exclusions are not appropriate, but, as mentioned in the *700 MHz Second Report and Order* itself, licensees may seek waivers of our rules if they believe the circumstances in a particular area warrant relief under our waiver standard.<sup>21</sup> If licensees seek to obtain such waivers, we urge that they make these requests as soon as possible. These requests must be well founded and not based solely on grounds of low population density. The Commission staff will consider these types of requests on a case-by-case basis.

## 2. Benchmarks for REAG Licenses

10. Background. In the *700 MHz Second Report and Order*, the Commission imposed a population-based performance requirement on Regional Economic Area Groupings ("REAG") licensees, who occupy the

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<sup>15</sup> For similar reasons, we reject the requests of various commenters for a population-based buildout option for EA licensees. See CTIA Comments and Opposition at 2-6; MetroPCS Reply at 2; AT&T Opposition and Comments at 6-7. We note that there are currently pending a number of requests from Lower 700 MHz A and B Block licensees for an extension of time to meet and waiver of the interim performance requirement on other grounds, including a lack of 700 MHz interoperability and certain interference issues. See Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver and Extension of Time to Construct 700 MHz A and B Block Licenses, WT Docket 12-332, *Public Notice*, DA 12-1827 (WTB rel. Nov. 13, 2012). Nothing in our discussion here should be construed to prejudge these pending requests.

<sup>16</sup> See MetroPCS Petition at 3, 11-13; Letter from Michael Lazarus, Counsel for MetroPCS Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 *et al.* (filed Nov. 8, 2007). See also RTG Opposition and Comments at 5-6; See also Blooston Comments at 2-3; CTIA Comments and Opposition at 6-9; U.S. Cellular Comments at 4.

<sup>17</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15350 ¶ 160.

<sup>18</sup> See *id.* at 15348-49 ¶¶ 154-55, 15354-55 ¶ 176.

<sup>19</sup> In some cases, there may also be demand from economic activity that may benefit from access to advanced communications services over the relevant body of water. For example, for both EAs and CMAs, the Commission separately licenses the Gulf of Mexico as a service area, reflecting the Commission's recognition of the public interest in promoting the deployment of service there to help meet the growing communications needs of petroleum and natural gas providers in the area. See 47 C.F.R. § 27.6(c).

<sup>20</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15350 n.386.

<sup>21</sup> See 47 C.F.R. § 1.925; see also *700 MHz Second Report and Order*, 22 FCC Rcd at 15348 ¶ 153.

Upper 700 MHz C Block. Specifically, the Commission required them to provide service sufficient to cover 40 percent of the population in each EA of their license areas within four years and 75 percent of the population in each EA of their license areas within ten years.<sup>22</sup> In its petition for reconsideration, RTG argues that a geographic-based coverage requirement will better ensure that REAG licensees deploy in rural areas.<sup>23</sup>

11. Discussion. We conclude that we will retain the requirement that REAG licensees must meet the population-based benchmarks. RTG argues that the REAG approach is inconsistent with the approach the Commission took with regard to EA and CMA licenses, but there is no requirement that the performance requirements be the same for all commercial wireless services, nor even for those of a certain type.<sup>24</sup> The Commission explained its determination that population-based benchmarks were better suited for the much larger REAG licenses in some detail, and there is nothing new in the record to persuade us to change this decision.<sup>25</sup> This decision involved tradeoffs particular to the expectation that these licenses would lead to regional or even nationwide network deployment. Contrary to RTG's assertion, the Commission was mindful not only of the need to develop regional and nationwide networks, but also of the need to promote wireless services in less populated portions of our nation, including rural areas.<sup>26</sup> To address this concern, it provided that REAG licensees must meet the population-based build-out requirements on an EA basis.<sup>27</sup> RTG questions the Commission's expectation that the REAG licenses were more likely to be used to provide regional or nationwide service than the much smaller EA and CMA licenses but offers nothing to undermine the Commission's well-supported predictive judgment.<sup>28</sup> Therefore, we deny RTG's request that we require REAG licensees to meet a geographic-based coverage requirement.

### 3. Keep-What-You-Use Provisions

12. Background. In the *700 MHz Second Report and Order*, the Commission established both interim and end-of-term enforcement measures that would apply automatically in the event that licensees failed to meet the applicable benchmarks. For licensees that fail to meet the applicable interim benchmark, the Commission decided that the normal ten year license term would be reduced by two years, and the end-of-term benchmark must then be met within eight years.<sup>29</sup> The Commission determined that, at the end of the license term, licensees that fail to meet the end-of-term benchmark would be subject to a keep-what-you-use rule, which would make unused spectrum available to other potential users.<sup>30</sup> For those CMAs or EAs in which the end-of-term performance requirements have not been met, the unused portion of the license will terminate automatically without Commission action and will become available for reassignment by the Commission.<sup>31</sup> Similarly, if a REAG licensee fails to provide signal coverage and offer service to at least 75 percent of the population in any

<sup>22</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15351 ¶¶ 162, 163.

<sup>23</sup> See RTG Petition at 4-10; RTG Opposition and Comments at 4; RTG Limited Reply and Comments at 2-3. See also Blooston Comments at 3; RCA Limited Opposition and Comment at 4. But see U.S. Cellular Comments at 6-7; CTIA Comments and Opposition at 2-6; AT&T Opposition and Comments at 9-10; MetroPCS Reply at 3.

<sup>24</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15354-55 ¶ 176.

<sup>25</sup> See *id.* at 15351-52 ¶ 164.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See *id.* at 15324 ¶¶ 81, 82.

<sup>29</sup> See *id.* at 15348 ¶ 153.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.* at 15349 ¶ 157.

EA comprising the REAG license area by the end of the license term, the unused portion of each such EA in that licensee's authorization area will terminate automatically without Commission action and will become available for reassignment by the Commission.<sup>32</sup>

13. The Commission further established a process governing the reassignment of licenses made available pursuant to the keep-what-you-use rules. As part of this process, the Commission provided that the licenses will be subject to an initial 30-day application period during which the original licensee may not file an application.<sup>33</sup> Following this period, the original licensee is permitted to file an application for any remaining unserved area where licenses have not been issued and there are no pending applications.<sup>34</sup>

14. Several petitioners seek reconsideration of the keep-what-you-use rules. Blooston requests that the Commission provide a "more precise definition of how the take-back process will work, and what propagation model will be used."<sup>35</sup> MetroPCS requests that the Commission modify the current rule to adopt a "triggered" approach, under which the original licensee would only lose unserved areas if a third party files a "credible" application, demonstrating "a *bona fide* desire, and the wherewithal, to build-out the spectrum in the unserved market," and submits a "meaningful upfront payment" that is "sufficiently large to deter speculators."<sup>36</sup> MetroPCS also requests that the incumbent should be allowed to participate in any auction of the unserved spectrum.<sup>37</sup> Finally, Blooston and MetroPCS request that an original licensee of 700 MHz commercial spectrum subject to loss of unused license area under the keep-what-you-use rule be allowed to retain an expansion area in addition to the area it serves at the end of its license term.<sup>38</sup>

15. Discussion. We deny the requests to alter the keep-what-you-use rules that the Commission adopted in the *700 MHz Second Report and Order*. First, we disagree with Blooston's assertion that we need to provide a more detailed explanation of how the process will work and what propagation model will be used.<sup>39</sup> We find that the *700 MHz Second Report and Order* already sets forth the process implementing the keep-what-you-use provisions in significant detail, starting with the filing of construction notifications up through the reassignment process, and that further detail regarding the "take-back" process is unnecessary at this time.<sup>40</sup> Further, a specific propagation model would be contrary to the flexibility that the Commission adopted. In establishing the construction notification through which licensees will demonstrate compliance with performance requirements, the Commission recognized that "demonstrations of coverage may vary across licensees," who "will likely use a variety of technologies to provide a range of services with this spectrum."<sup>41</sup> It specifically rejected a request for a "bright-line" test for what constitutes sufficient signal strength, provided instead that licensees must provide the assumptions they use to create coverage maps, "including the propagation model and

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<sup>32</sup> See *id.* at 15351 ¶ 163.

<sup>33</sup> See *id.* at 15353 ¶ 171.

<sup>34</sup> See *id.* at 15353 ¶ 172.

<sup>35</sup> Blooston Petition at 19.

<sup>36</sup> MetroPCS Petition at 14-16.

<sup>37</sup> *Id.* at 15.

<sup>38</sup> See Blooston Petition at 19; MetroPCS Petition at 13-14; see also CTIA Comments and Opposition at 11, 13; U.S. Cellular Comments at 4-5; AT&T Opposition and Comments at 8-9; Blooston Comments at 4.

<sup>39</sup> Blooston Petition at 19.

<sup>40</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15352-54 ¶¶ 166-175.

<sup>41</sup> *Id.* at 15352 ¶ 166.

signal strength necessary to provide service,” and also delegated to the Wireless Telecommunications Bureau (“Wireless Bureau”) the authority to establish further specifications for filings and to determine coverage areas.<sup>42</sup> We see no reason to reverse this decision, and therefore reject Blooston’s request.

16. We also deny proposals that we revise the keep-what-you-use rules to provide for a “triggered” approach, under which a licensee would not lose unused spectrum until a party seeking the spectrum first files an application for the area meeting certain requirements for sufficiency.<sup>43</sup> The Commission already has application procedures to ensure that license approvals are in the public interest.<sup>44</sup> Requiring applicants seeking authorization over unused spectrum to demonstrate their *bona fides* in new ways above and beyond such established and familiar license application processes may in fact discourage *bona fide* interest in such spectrum, undermining our goal of putting this spectrum to use. Further, because these proposed revisions to the rules decrease the original licensee’s risk of consequences for failing to build-out, they may lessen the incentive for the licensee to expand service into parts of its license areas by the end of its license term. We also do not find persuasive MetroPCS’s argument that a triggered approach “reduces the prospect that forfeited unserved license areas will lie fallow in the Commission’s hands.”<sup>45</sup> The rules already address this possibility: if no application is filed by third parties in 30 days, the original licensee is free to apply for it.<sup>46</sup>

17. We also reject MetroPCS’s arguments that in the event the original licensee loses its license or parts thereof through application of the keep-what-you-use rules, it should be allowed to participate in any reauction of the recaptured license areas.<sup>47</sup> Under our build-out rules, the original licensee has ample opportunity to meet its build-out requirements. Further, barring the original licensee from participating during the initial reauction of its unserved license areas is a reasonable penalty for the licensee’s failure to meet its build-out requirements. This measure helps ensure that the original licensee will make all reasonable efforts to meet its performance benchmarks and that we license spectrum to those parties that are most likely to use it.<sup>48</sup>

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<sup>42</sup> *Id.* at 15352 ¶ 166 (“We recognize that coverage determinations may need to be made on a case-by-case basis so as to account for the potentially wide variety of services and technologies that may be offered in the band.”) & n.394, 15353 ¶ 168.

<sup>43</sup> See MetroPCS Petition at 14-19 (to trigger incumbent’s loss of spectrum, applicant must demonstrate a “*bona fide* desire” to build out and make a “meaningful” payment); see also CTIA Comments and Opposition at 11-13; U.S. Cellular Comments at 5-6 (arguing Commission should replace keep-what-you-use rule with triggered approach similar to cellular unserved area rule); MetroPCS Reply at 7-8. We note that the Commission sought comment on a “triggered keep-what-you-use” approach similar to MetroPCS’s proposal prior to adopting the existing rule. See Service Rules for the 698-749, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems and Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, CC Docket No. 94-102, WT Docket No. 01-309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345, 9376 ¶ 67 (2006) (“700 MHz NPRM”).

<sup>44</sup> Under our existing rules, before any application will be granted, the applicant must already demonstrate, *inter alia*, that it is “legally, technically, financially, and otherwise qualified” and that a “grant of the application would serve the public interest, convenience, and necessity.” 47 C.F.R. § 1.945(c).

<sup>45</sup> See MetroPCS Petition at 16. See also CTIA Comments and Opposition at 11.

<sup>46</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15353 ¶ 172.

<sup>47</sup> See MetroPCS Petition at 17. See also U.S. Cellular Comments at 5.

<sup>48</sup> MetroPCS argues that the Commission’s rule enhances the risk that the original licensee will be subject to “green mail from speculators.” MetroPCS Petition at 15. We think the risk of speculators acquiring unused spectrum for green mail purposes is small, however, given that the Commission also required new licensees of spectrum made available under the keep-what-you-use rule to offer service to the entire license area within one year, and provided that if they fail to meet this requirement, they lose the license automatically and are ineligible to file an application to provide service in the same area over the same frequencies at any future date. See *700 MHz Second Report and Order*, 22 FCC Rcd at 15354 ¶ 173.



18. Finally, we are not persuaded that licensees that fail to meet the end-of-term benchmark should nevertheless retain a portion of the unserved area of their licenses as an “expansion area.”<sup>49</sup> Parties argue that an expansion area is justified for a number of reasons including the potential need to address changes in customer demand, subsequent development of areas, population growth, and replacement of base stations, or as a buffer to avoid interference.<sup>50</sup> We find, however, that permitting licensees to keep a part of their unused license areas as petitioners propose would undermine our keep-what-you-use policy goals of motivating licensees to meet their benchmarks and promoting access to spectrum that is not adequately built out and deployment of service to communities that might otherwise not receive it.<sup>51</sup> Further, the rules adopted in the *700 MHz Second Report and Order* provide ample opportunity for licensees to construct facilities and provide service in their licensed areas. We therefore reject the requests for an expansion area under the keep-what-you-use rules.

#### 4. Potential Enforcement Provisions for Failure to Build Out

19. Background. In addition to establishing measures that apply automatically in the event of a licensee’s failure to meet its interim or end-of-term buildout benchmarks, discussed above, the Commission also stated that certain other enforcement provisions might potentially apply in such an event. Specifically, the Commission provided that licensees that fail to meet their interim benchmarks might lose a portion of the remaining unserved areas of the license and such licensees may also be subject to enforcement action, including forfeitures.<sup>52</sup> It further provided that licensees that fail to meet end-of-term coverage requirements could be subject to license termination (or for a REAG licensee, termination within each EA in which the licensee has failed to meet its benchmark) or enforcement action, including forfeitures.<sup>53</sup>

20. Blooston, MetroPCS, and RTG seek reconsideration of these potential mid-term and end-of-term construction benchmarks enforcement provisions.<sup>54</sup> MetroPCS and RTG contend that the Commission did not provide guidance regarding under what circumstances these potential enforcement actions might be taken and they propose various standards.<sup>55</sup> Blooston argues that we should repeal these enforcement provisions altogether, and that the Commission did not provide the notice required by the Administrative Procedure Act (“APA”) before adopting forfeitures as a potential enforcement measure.<sup>56</sup>

21. Discussion. We are not persuaded that we should adopt the modifications to the potential enforcement provisions proposed by petitioners. Although petitioners argue that their proposals would resolve ambiguity in the Commission’s rules, we find that their proposals would substantially limit the Commission’s

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<sup>49</sup> See Blooston Petition at 19; MetroPCS Petition at 13-14 (proposing an expansion area of “+15%”); CTIA Comments and Opposition at 11, 13; U.S. Cellular Comments at 4-5; AT&T Opposition and Comments at 8-9; Blooston Comments at 4.

<sup>50</sup> See Blooston Petition at 19; AT&T Opposition and Comments at 8-9; CTIA Comments and Opposition at 11, 13; U.S. Cellular Comments at 5.

<sup>51</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-49 ¶¶ 154-56; see also RCA Limited Opposition and Comment at 3 (“An expansion area after performance deadlines pass is wholly inconsistent with the goal of allowing other interested parties to serve an area left unserved by the prior licensee.”).

<sup>52</sup> See 47 C.F.R. §§ 27.14(g)(1), (h)(1); *700 MHz Second Report and Order*, 22 FCC Rcd at 15348 ¶ 153.

<sup>53</sup> See 47 C.F.R. §§ 27.14(g)(2), (h)(2); *700 MHz Second Report and Order*, 22 FCC Rcd at 15348 ¶ 153.

<sup>54</sup> See Blooston Petition at 11-18; MetroPCS Petition at 2-3, 8-10; RTG Petition at 10.

<sup>55</sup> See MetroPCS Petition at 9-10 (proposing additional interim enforcement measures apply only if no “meaningful steps” are taken and end-of-term measures only in cases of failure to provide “substantial service”); RTG Petition at 10 (licensee should not be subject to additional enforcement action unless “it utterly fails to construct a system”).

<sup>56</sup> Blooston Petition at 11, 16-18. See also MetroPCS Petition at 8-9; CTIA Comments and Opposition at 10.

enforcement options. For example, MetroPCS argues that that the option of license termination at end-of-term should apply only in cases of failure to provide substantial service.<sup>57</sup> It is already the case under the license renewal requirement, however, that a licensee's failure to demonstrate that it is providing substantial service results, by operation of the rules, in loss of the license.<sup>58</sup> Thus, MetroPCS's interpretation would effectively eliminate license termination as a separate mechanism for enforcing the performance requirements prior to the end of a license term.<sup>59</sup> RTG's proposal – that a licensee should be subject to additional enforcement only if it utterly fails to construct a system – goes even further; it not only eliminates license termination as an enforcement mechanism prior to the end of a license term, but it also reduces this mechanism to a mere subset of its existing form as a license renewal requirement. Therefore, we are not persuaded that any of the petitioners' proposed clarifications are consistent with the Commission's adoption of these enforcement measures.

22. We also disagree with arguments that the Commission provided no justification in support of the additional enforcement mechanisms and should eliminate them entirely.<sup>60</sup> In adopting its requirements, the Commission underscored that it “expect[ed] that licensees will take these construction requirements seriously and proceed toward providing service with utmost diligence,”<sup>61</sup> and concluded that “these set of stringent benchmarks . . . with effective consequences for noncompliance . . . are the most effective way to promote rapid service to the public, especially in rural areas.”<sup>62</sup> The additional enforcement mechanisms thus reflect the importance of effective enforcement to achieving the Commission's goals for the 700 MHz Band and its determination that the additional mechanisms would help to ensure that enforcement would be effective.<sup>63</sup> Blooston objects that the

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<sup>57</sup> See MetroPCS Petition at 9.

<sup>58</sup> See 47 C.F.R. § 27.14(a).

<sup>59</sup> In rejecting this proposal to partially conflate the “substantial service” and performance requirements, we also note that the Commission has previously emphasized that the “substantial service” requirement at renewal “is distinct from the performance requirements.” Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Red 8064, 8093 ¶ 75 (2007) (“700 MHz Report and Order” or “700 MHz FNPRM”).

<sup>60</sup> See Blooston Petition at 13; CTIA Comments and Opposition at 10-11. We also reject Blooston's argument that forfeitures are inappropriate because, in failing to meet performance benchmarks, a licensee does not actually violate a rule but merely exercises an option under the rules to lose a given area. See Blooston Petition at 18. The *700 MHz Second Report and Order* is clear that the benchmarks are requirements, and section 27.14 imposes these buildout requirements without qualification. See, e.g., 47 C.F.R. § 27.14(g) (providing that EA and CMA licenses “shall provide signal coverage and offer service over at least 35 percent of the geographic area of each of their license authorizations no later than June 13, 2013”) (emphasis added).

<sup>61</sup> *Id.* at 15348 ¶ 153.

<sup>62</sup> *Id.* at 15348 ¶ 155 (emphasis added).

<sup>63</sup> See *id.* at 15348 ¶ 154 (finding that by providing “the potential for enforcement action for failure to meet the construction requirements, we require licensees to provide service to consumers in a timely manner”); see also *id.* at 15354-55 ¶ 176 (concluding that a rigorous performance requirement regime is appropriate for the 700 MHz Band “given the excellent propagation characteristics of this spectrum, the benefits of service being offered before the end of the license term, and the public interest that would be served by ensuring additional service in the more rural and remote areas of this country”).

application of fines in particular is a departure from prior Commission practice with regard to enforcement of buildout requirements.<sup>64</sup> However, the enforcement regime was also novel in other respects, including its adoption of the keep-what-you-use rules. Therefore, the suggestion that the Commission should eliminate one element in order to conform to prior practice is unpersuasive. We also reject the assertion that the Commission acted without notice. The Commission twice sought comment broadly on how to revise the performance requirements, and we find that adoption of measures to enforce such requirements are well within the scope of the issues raised.<sup>65</sup>

23. Finally, we note that the Wireless Bureau has already clarified the conditions under which licensees may be subject to reduction in license area at the interim stage.<sup>66</sup> We do not rule out the Wireless Bureau providing further clarification, if necessary, regarding how the potential end-of-term enforcement measures will be applied after assessing progress toward and compliance with the interim benchmarks and any necessary enforcement in connection with those benchmarks.

## 5. Interim Construction Reports

24. **Background.** In the *700 MHz Second Report and Order*, the Commission required the filing of two interim construction reports at specified dates following the end of the DTV Transition.<sup>67</sup> In its petition for reconsideration, Blooston requests that the Commission eliminate the interim construction reports for all small and rural licensees.<sup>68</sup>

25. **Discussion.** We are not persuaded that this modification is warranted. First, we do not agree that these reports impose unnecessary burdens on small licensees. The interim construction reporting requirements strengthen our ability to monitor build-out progress during the license term. Under the circumstances, where the Commission has stressed the importance of a timely build-out of the 700 MHz spectrum and has adopted performance requirements to meet this end, we consider the information that is to be supplied in these reports to be reasonable and in the public interest. Further, the required information is readily available to licensees and can easily be reported to the Commission. We merely require licensees to provide us with a description of the steps they have taken toward meeting their construction obligations in a timely manner, including the technology or technologies and service(s) they are providing and the areas in which those services are available.<sup>69</sup> Accordingly, we deny Blooston's request.

## B. Auction-Related Issues

26. Frontline, MetroPCS, and PISC ask the Commission to reconsider certain determinations adopted in the *700 MHz Second Report and Order* regarding auction rules and procedures. For the reasons discussed below, we dismiss as moot Frontline's petition to reconsider the Commission's application to the Upper 700 MHz Band C and D Blocks of a now-vacated rule under which applicants having certain impermissible material

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<sup>64</sup> See Blooston Petition at 14.

<sup>65</sup> See *700 MHz NPRM*, 21 FCC Rcd at 9373 ¶ 61; *700 MHz FNPRM*, 22 FCC Rcd at 8142 ¶ 212. See also *id.* at 8142 ¶ 214 (“We also seek comment on the potential consequences for licensees that fail to meet the interim requirements”). We also note that the Commission is not obligated to provide APA notice to impose a forfeiture pursuant to section 503 of the Act. See 47 U.S.C. § 503(b)(1) (any person who violates the Act, the Commission's rules, or the terms of a license “shall be liable to the United States for a forfeiture penalty”).

<sup>66</sup> See *700 MHz Construction and Reporting Requirements, Public Notice*, 26 FCC Rcd 16442 (WTB 2011).

<sup>67</sup> See 47 U.S.C. § 27.14(l).

<sup>68</sup> See Blooston Petition at 20-21. See also RCA Limited Opposition and Comment at 5.

<sup>69</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15352 ¶ 165.

relationships were ineligible to receive bidding credits; we dismiss Frontline's petition to reconsider the amount of the reserve prices because Frontline subsequently withdrew this request; we dismiss as moot MetroPCS's petition to reconsider issues related to the re-auction; we deny PISC's request that the Commission clarify whether two or more bidders working together to block another bidder from winning any licenses would violate the rules prohibiting certain communications; and we deny PISC's request that we vacate portions of the *700 MHz Second Report and Order* discussing the Commission's rationale for adopting anonymous bidding procedures.

### 1. Designated Entity Eligibility for a Small Business Providing Wholesale Service

27. Background. In the *700 MHz Second Report and Order*, the Commission explained that provision of only wholesale service would create a conflict with the eligibility requirements for entities seeking a designated entity bidding credit. Specifically, at that time, section 1.2110(b)(3)(iv) of the Commission's rules restricted an applicant's eligibility for designated entity benefits if it had an "impermissible material relationship," which was defined as an arrangement with one or more entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any one of the applicant's or licensee's license.<sup>70</sup>

28. In its petition for reconsideration, Frontline argues that application of the impermissible material relationship rule to the C and D Blocks would be prejudicial to small businesses, especially those adopting a wholesale business model.<sup>71</sup> Frontline asks the Commission to reinterpret the designated entity rules to allow small businesses with a wholesale model to maintain their eligibility for a bidding credit in the C and D Blocks.<sup>72</sup> U.S. Cellular argues that the Commission properly applied the impermissible material relationship rule in the *700 MHz Second Report and Order* and opposes Frontline's proposal.<sup>73</sup> PISC supports making a small business bidding credit available to a licensee that agrees to wholesale 100 percent of its spectrum if the Commission imposes specific conditions to prevent warehousing while ensuring non-discrimination, transparency, and spectrum efficiency.<sup>74</sup>

29. On November 15, 2007, on its own motion, the Commission waived application of the impermissible material relationship rule for purposes of determining designated entity eligibility solely with respect to arrangements for lease or resale (including wholesale) of the spectrum capacity of the D Block license. The Commission found that the unique regulations governing the D Block license, which required the establishment of the 700 MHz Band Public/Private Partnership subject to a Commission-approved Network Sharing Agreement—together with the application of the Commission's other designated entity eligibility requirements—eliminated for the D Block license the risks that led the Commission to adopt the impermissible material relationship rule.<sup>75</sup> This waiver applied to the D Block in Auction 73, which began on January 24 and closed on March 18, 2008.

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<sup>70</sup> *Id.* at 15472 ¶ 532 (citing 47 C.F.R. § 1.2110(b)(3)(iv)(A)).

<sup>71</sup> Frontline Petition at 3.

<sup>72</sup> *Id.* at 3-7.

<sup>73</sup> U.S. Cellular Comments at 10.

<sup>74</sup> Letter from PISC to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 06-150, 05-211, at 1-5 (filed Oct. 18, 2007).

<sup>75</sup> Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules For the Upper 700 MHz Band D Block License, *Order*, 22 FCC Rcd 20354, 20354 ¶ 1 (2007).

30. Frontline did not qualify to participate in Auction 73.<sup>76</sup> Frontline selected only the D Block license on its short-form application, but was unable to raise the \$128.21 million necessary to make the required upfront payment for the D Block.<sup>77</sup> The Wireless Bureau denied Frontline's request for a waiver to allow it to add the A and B Blocks, which included licenses that required lower upfront payments, to its short-form application after the deadline.<sup>78</sup>

31. In *Council Tree Communications, Inc. v. FCC*, the U.S. Court of Appeals for the Third Circuit held that the Commission's impermissible material relationship rule in section 1.2110(b)(3)(iv)(A) had been adopted without the notice and opportunity for comment required by the Administrative Procedure Act.<sup>79</sup> The court vacated the rule, but also concluded that it would be "imprudent and unfair to order rescission of the auction results" for Auction 73.<sup>80</sup> We subsequently conformed our rules to the court's mandate by deleting subsection 1.2110(b)(3)(iv)(A).<sup>81</sup>

32. Discussion. The Commission's November 15, 2007 waiver of the impermissible material relationship rule rendered moot Frontline's petition for reconsideration with respect to the D Block license, and we therefore dismiss that portion of the petition as moot.<sup>82</sup> We also dismiss as moot Frontline's petition to the extent it addresses designated entity status for wholesale services in the C Block, because the Third Circuit vacated the impermissible material relationship rule that is the subject of Frontline's petition. In accordance with the court's mandate we have deleted the relevant provision from our Part 1 competitive bidding rules.

## 2. Amount of Reserve Prices

33. Background. In order to promote the statutory objectives in 47 U.S.C. § 309(j)(3), including the efficient and intensive use of the electromagnetic spectrum as well as the recovery for the public of a portion of the value of the public spectrum resource, in the *700 MHz Second Report and Order* the Commission directed the Wireless Bureau to adopt and publicly disclose block-specific aggregate reserve prices pursuant to its existing delegated authority and its regular pre-auction process.<sup>83</sup> The Commission concluded that the aggregate reserve prices should reflect current assessments of the potential market value of licenses for the 700 MHz Band and directed that this assessment be based on various factors, including the characteristics of the band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services.<sup>84</sup> The Commission further

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<sup>76</sup> See Letter from Fred B. Campbell, Jr., Chief, WTB, FCC to Jonathan Blake *et al.*, Regarding Request for Waiver; Redacted Version Released Jan. 23, 2008, as DA 08-100, 23 FCC Rcd 4756, 4758 (WTB 2008).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 4756.

<sup>79</sup> *Council Tree Communications, Inc. v. FCC*, 619 F.3d 235, 254-55 (3d Cir. 2010), *cert. denied* 131 S. Ct. 1784 (2011).

<sup>80</sup> *Id.*, 619 F.3d at 258.

<sup>81</sup> Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules For the Upper 700 MHz Band D Block License, *Order*, 27 FCC Rcd 908 (2012). The order also made other revisions to our Part 1 competitive bidding rules to conform them to the court's mandate.

<sup>82</sup> Frontline's arguments with respect to the D Block are also moot because the D Block will not be re-auctioned since Congress recently directed the Commission to reallocate the D Block spectrum for use by public safety entities. 47 U.S.C. § 1411(a); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 § 6101 (2012) ("Spectrum Act").

<sup>83</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15399-15401 ¶¶ 300-304.

<sup>84</sup> *Id.* at 15400-01 ¶¶ 304-305 & n.700.

indicated that if the reserve price for a particular block was not met in the initial auction, a subsequent auction of alternative licenses in that block would be subject to the same applicable reserve price as the initial auction of licenses.<sup>85</sup> The Commission concluded “that in the event that auction results for conditioned Upper 700 MHz C Block licenses do not satisfy the aggregate reserve price for the C Block, we will offer as soon as possible licenses for the C Block without the open platform conditions.”<sup>86</sup> With respect to the D Block, given the unique service rules for the Public/Private Partnership in that block, the Commission concluded that if the aggregate reserve was not met, that the Commission would leave open the possibility of re-offering the license on the same terms in a subsequent auction, as well as the possibility of re-evaluating all or some of the applicable license conditions.<sup>87</sup> Based on the Commission’s direction in the *700 MHz Second Report and Order*, and after additional public notice and comment, the Wireless Bureau set the following aggregate reserve prices for Auction 73: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion.<sup>88</sup>

34. In its petition for reconsideration, Frontline argues that the reserve prices for the C and D Block licenses proposed, and ultimately adopted, by the Wireless Bureau based on the Commission’s guidance in the *700 MHz Second Report and Order* are arbitrarily high and, coupled with re-auction mechanisms, undermine the open access provisions for the C Block and the public safety provisions for the D Block.<sup>89</sup> MetroPCS filed in opposition to Frontline’s petition for reconsideration on this issue.<sup>90</sup>

35. Subsequent to the Commission’s order waiving the impermissible material relationship rule with respect to leasing or resale of the spectrum capacity of the D Block license, Frontline filed an amendment to its petition for reconsideration withdrawing its argument that the reserve prices were set arbitrarily high and stating that it “no longer advocates altering the reserve prices for the 700 MHz auction.”<sup>91</sup>

36. Discussion. In light of Frontline’s withdrawal of its arguments with respect to the Auction 73 reserve prices, we dismiss this portion of Frontline’s petition for reconsideration.

### 3. Re-Auction Procedures

37. Background. MetroPCS asks the Commission to reconsider two issues related to the re-auction of 700 MHz licenses contemplated by the *700 MHz Second Report and Order*. First, MetroPCS requests reconsideration of the Commission’s determination that, for any 700 MHz re-auction, the auction of alternative licenses would be subject to the same applicable reserve prices as the initial auction of licenses.<sup>92</sup> Second, MetroPCS requests reconsideration of the Commission’s determination that both the initial and any required

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<sup>85</sup> *Id.* at 15402 ¶ 308.

<sup>86</sup> *Id.* at 15402 ¶ 311. As described in more detail below, the open platform condition requires licensees of spectrum in the C Block to allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice, subject to certain conditions. *See id.* at 15361 ¶ 195.

<sup>87</sup> *Id.* at 15404 ¶ 314.

<sup>88</sup> Auction of 700 MHz Band Licenses Scheduled for January 24, 2008: Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, AU Docket No. 07-157, *Public Notice*, 22 FCC Rcd 18141, 18158 ¶ 193 (2007).

<sup>89</sup> Frontline Petition at 11-20. Frontline also argues that the requirement to re-auction the C Block licenses without the open platform conditions if the reserve price is not met violates the Administrative Procedure Act. *Id.* at 19-20.

<sup>90</sup> MetroPCS Opposition at 2-3, 7, 9, 10-12.

<sup>91</sup> Frontline Amendment to Petition for Reconsideration at 1.

<sup>92</sup> MetroPCS Petition at 19-20.

follow-on auction would be treated as a single auction for purposes of the application of section 1.2105(c), the rule prohibiting certain communications.<sup>93</sup> The prohibition generally applies to auction applicants during the time period between the deadline for filing short-form applications and the deadline for winning bidders to make their down payments.<sup>94</sup> Treating the initial auction and subsequent auction of alternative licenses as a single auction would have kept the prohibition in place for all applicants to participate in the first auction until the down payment deadline for the second auction, regardless of whether they were applicants to participate in the second auction.<sup>95</sup> CTIA, U.S. Cellular, Blooston, and RTG support MetroPCS's proposal that the Commission allow applicants that do not wish to participate in the second auction, to "opt out" of the second auction to avoid continued application of the rules prohibiting certain communications.<sup>96</sup>

38. The winning bids in Auction 73 for the Lower 700 MHz A, B, and E Block licenses and the Upper 700 MHz C Block licenses exceeded the aggregate reserve prices for those blocks; however, the provisionally winning bid for the Upper 700 MHz D Block did not meet the applicable reserve price.<sup>97</sup> On March 20, 2008, two days after the close of Auction 73, the Commission issued an order electing not to re-offer the D Block license immediately in Auction 76 in order to allow additional time to consider options for this spectrum.<sup>98</sup> More recently, Congress directed the Commission to reallocate the D Block spectrum for use by public safety entities.<sup>99</sup> As a result, the D Block spectrum will not be assigned by auction for commercial use.

39. **Discussion.** Because the Commission decided not to re-auction the D Block license immediately, and Congress has since directed the Commission to reallocate the D Block for public safety use, the re-auction of the D Block has not occurred and will not occur. As a result, the reserve price for any re-auction of the D Block is now irrelevant. In addition, the issue is also moot as to the other blocks because the bids in those blocks exceeded the applicable reserve prices, thereby obviating the need for any follow-on auctions. Accordingly, the section 1.2105(c) prohibition on certain communications, as applied to the Auction 73 applicants for licenses in those blocks, ended at the down payment deadline for that auction. We therefore dismiss as moot MetroPCS's petition for reconsideration of these issues related to the re-auction.

#### 4. Prohibition of Certain Communications

40. **Background.** In its petition for reconsideration, PISC requests that the Commission declare that two or more bidders working together to block another bidder from winning any licenses would violate section 1.2105(c) of the Commission's rules,<sup>100</sup> which prohibits certain communications.<sup>101</sup> PISC argues that in the *700 MHz Second Report and Order*, the Commission failed to address PISC's request to clarify "whether a conspiracy

<sup>93</sup> *Id.* at 20-23; *see* 47 C.F.R. § 1.2105(c).

<sup>94</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>95</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15405 ¶ 316.

<sup>96</sup> CTIA Comments and Opposition at 23; U.S. Cellular Comments at 10-11; Blooston Reply at 7-8; RTG Limited Reply and Comments at 3-5.

<sup>97</sup> *See* Auction of 700 MHz Band Licenses Closes: Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 ¶ 2 (2008).

<sup>98</sup> Auction of the D Block License in the 758-763 and 788-793 MHz Bands, AU Docket No. 07-157, *Order*, 23 FCC Rcd 5421, 5421 ¶ 1 (2008).

<sup>99</sup> 47 U.S.C. § 1411(a); Spectrum Act, § 6101.

<sup>100</sup> PISC Petition at 15-16.

<sup>101</sup> *See* 47 C.F.R. § 1.2105(c); Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, 25 FCC Rcd 521, 522 ¶ 5 (2010).

to block a bidder from winning any licenses, rather than a conspiracy to distribute licenses or set the price for licenses,” violates section 1.2105(c).<sup>102</sup> PISC argues that “a conspiracy among bidders to block potential rivals—even if they plan to bid aggressively against one another—thwarts the goals of Congress in distributing licenses via auction.”<sup>103</sup>

41. **Discussion.** We deny PISC’s request for a declaratory ruling on the application of section 1.2105(c) to certain types of activity by bidders who work together. The Commission has discretion whether to issue a declaratory ruling, and rather than address PISC’s request in this proceeding, we think it best to address such issues as they arise.<sup>104</sup> The declaratory ruling PISC seeks would likely be of very limited benefit given the hypothetical general circumstances it describes. We also note that regardless of compliance with section 1.2105(c), auction applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace, and conduct that is permissible under the Commission’s Rules may be prohibited by the antitrust laws.<sup>105</sup>

## 5. Anonymous Bidding

42. **Background.** In the *700 MHz Second Report and Order*, the Commission concluded that the public interest would be served by the use of anonymous bidding procedures in Auction 73.<sup>106</sup> The Commission found that the record indicated that implementing anonymous bidding procedures would reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors.<sup>107</sup> The Commission noted that its decision did not rely upon studies conducted by Gregory Rose and submitted by PISC, even though those studies were offered as evidence that anonymous bidding would be beneficial.<sup>108</sup> As described in detail in footnotes 644 and 645 of the *700 MHz Second Report and Order*, the Commission did not find the Rose studies persuasive for a variety of reasons.<sup>109</sup>

43. PISC does not challenge the Commission’s decision to employ anonymous bidding in Auction 73, but argues that the Commission’s conclusions regarding the merits of the Rose studies were inaccurate and arbitrary, and that footnotes 644, 645, and 655 (which relies upon footnotes 644 and 645) should be vacated.<sup>110</sup> PISC adds that given the Commission’s decision to adopt anonymous bidding, it was unnecessary and unusual for it to address the merits of the Rose studies in footnotes.<sup>111</sup>

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<sup>102</sup> PISC Petition at 15.

<sup>103</sup> *Id.* at 16.

<sup>104</sup> See 5 U.S.C. § 554(e) (“The agency . . . in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.”); 47 C.F.R. § 1.2(a); *Yale Broadcasting Co. et al. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973) (holding that the Commission did not abuse its discretion by declining to grant a declaratory ruling).

<sup>105</sup> See Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21558, 21560-61 ¶ 4 & n.17 (1999) (citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994)).

<sup>106</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15393 ¶ 280.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 15393 ¶ 280 & n.655.

<sup>109</sup> *Id.* at 15391-92 ¶ 277 & nn.644-45.

<sup>110</sup> PISC Petition at 14. See also PISC Comments at 13.

<sup>111</sup> PISC Petition at 8.



44. Discussion. We deny PISC's request to vacate the footnotes describing potential flaws in the Rose studies. PISC's petition for reconsideration presents additional information regarding the Rose studies that provides useful context but does not change the validity of the footnotes with respect to the studies as filed. Footnotes 644, 645, and 655 in the *700 MHz Second Report and Order* explain that the Commission's adoption of anonymous bidding, although advocated by the Rose studies, did not depend upon those studies.

### C. Spectrum Eligibility

45. Background. In the *700 MHz Second Report and Order*, the Commission declined to impose eligibility restrictions for licenses in the 700 MHz Band finding that the record did not demonstrate that open eligibility was likely to result in substantial competitive harm in the provision of broadband services.<sup>112</sup> Additionally, the Commission found that the revised band plan for the 700 MHz Band and the associated build-out rules would help discourage foreclosure of competitive opportunities and participation in the market, and that there were potential competitive benefits to not imposing eligibility requirements.<sup>113</sup> Finally, the Commission noted that restricting eligibility for licenses without adequate justification could harm the public interest.<sup>114</sup>

46. Frontline, PISC, and RTG filed petitions requesting that the Commission reconsider its decision not to impose spectrum aggregation limits. Frontline requests that the Commission implement a spectrum screen that would trigger increased review of certain long-form auction applications for anticompetitive effects, similar to the screen applied to merger and acquisition transactions.<sup>115</sup> PISC proposes that the Commission adopt a rule prohibiting the winner of the Upper 700 MHz D Block license from holding Upper 700 MHz C Block licenses and vice versa.<sup>116</sup> RTG proposes an interim, geographically based spectrum cap applicable specifically to the 700 MHz auction.<sup>117</sup>

47. Discussion. In the *700 MHz Second Report and Order*, the Commission considered and declined to adopt license eligibility restrictions, including rules that would have excluded ILECs, incumbent cable operators, and large wireless carriers from holding licenses in the 700 MHz Band.<sup>118</sup> The Commission provided numerous reasonable justifications for its decision,<sup>119</sup> and we find that Frontline, PISC, and RTG offer no new evidence warranting our reconsideration of the Commission's decision on spectrum aggregation limits at the initial licensing stages of the 700 MHz Band. Further, we note that the appropriate policies regarding spectrum holdings going forward are the subject of a separate and pending rulemaking proceeding, and any further consideration of such issues is therefore more appropriately considered in that context.<sup>120</sup> Therefore, we deny Frontline's request for heightened review of certain long-form applications, and we deny PISC's and RTG's requests that the Commission impose a spectrum cap. Finally, we conclude that Congress's direction that the Commission reallocate the D Block spectrum to public safety use has rendered moot requests by Frontline and

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<sup>112</sup> *700 MHz Second Report and Order*, 22 FCC Red at 15361 ¶ 256.

<sup>113</sup> *Id.* at 15361 ¶¶ 257-258.

<sup>114</sup> *Id.* at 15361 ¶ 259.

<sup>115</sup> Frontline Opposition at ii, 3; Frontline Reply at 3-4.

<sup>116</sup> PISC Petition at 3-5.

<sup>117</sup> RTG Opposition and Comments at 8.

<sup>118</sup> *700 MHz Second Report and Order*, 22 FCC Red at 15383-85 ¶¶ 256-259.

<sup>119</sup> *Id.*

<sup>120</sup> See Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, FCC 12-119 (rel. Sept. 28, 2012).

PISC that the Commission not permit the C Block auction winners to hold a D Block license or D Block auction winners to hold C Block licenses.<sup>121</sup>

#### **D. Lower 700 MHz A Block Wholesale Requirement**

48. Background. In its petition for reconsideration, NTCH argues that the Commission should reform the current Universal Service Funding (“USF”) system by requiring Lower 700 MHz A Block licensees to provide service on a discounted wholesale basis to “designated Eligible Telecommunications Companies.”<sup>122</sup> CTIA and U.S. Cellular oppose NTCH’s proposal arguing, among other assertions, that the proposal is outside the scope of what can be granted on reconsideration of the *700 MHz Second Report and Order*.<sup>123</sup>

49. Discussion. NTCH presents a new proposal to impose a discounted wholesale obligation on Lower 700 MHz A Block licensees and argues that the Commission should adopt it as a means of reforming the current USF system, but does not challenge the Commission’s refusal, in the *700 MHz Second Report and Order*, to adopt wholesale requirements for the Upper 700 MHz C or D Block licensees.<sup>124</sup> We agree with CTIA and U.S. Cellular that the USF issues raised in NTCH’s proposal are outside the scope of this proceeding and therefore deny NTCH’s petition. We note that, as with other 700 MHz licensees, A Block licensees have the flexibility to provide wholesale services if they choose to based on their determination of market need.

#### **E. First Amendment Analysis of Open Platform Rule**

50. Background. In the *700 MHz Second Report and Order*, the Commission required licensees in the C Block “to allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice, subject to certain conditions[.]”<sup>125</sup> The Commission rejected Verizon Wireless’ arguments that the open platform rule applicable to the Upper 700 MHz C Block violates the First Amendment,<sup>126</sup> finding that even if the open platform rule did implicate the First Amendment, it withstands the applicable “intermediate scrutiny” test.<sup>127</sup>

51. In late 2007, Verizon Wireless and CTIA each filed and then withdrew lawsuits in the D.C. Circuit Court challenging the open platform requirements on the grounds that they violated the First Amendment.<sup>128</sup> Prior to Verizon Wireless’s withdrawal of its petition for review from the D.C. Circuit Court,

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<sup>121</sup> 47 U.S.C. § 1411(a); Spectrum Act, § 6101. *See also* Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, PS Docket No. 12-94, *Report and Order*, 27 FCC Rcd 10953 (PSHSB 2012).

<sup>122</sup> NTCH Petition at 3.

<sup>123</sup> CTIA Comments and Opposition at 22; U.S. Cellular Comments at 8.

<sup>124</sup> *See 700 MHz Second Report and Order*, 22 FCC Rcd at 15364-65 ¶¶ 205-06, 15476-77 ¶¶ 545-46.

<sup>125</sup> *Id.* at 15361 ¶ 195.

<sup>126</sup> Verizon Wireless filed an *ex parte* letter alleging that the Commission cannot impose these access requirements without violating various sections of the Communications Act and affecting the First Amendment rights of existing providers. Letter from John T. Scott, III, Verizon Wireless to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150, at 2, 12-15 (filed July 24, 2007).

<sup>127</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15369-70 ¶¶ 217-220 & n.495, *citing Turning Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 189 (1997).

<sup>128</sup> *See* Petition for Review, *Cellco Prtnshp d/b/a Verizon Wireless v. FCC*, *Cellco Prtnshp d/b/a Verizon Wireless v. FCC*, Docket # 07-1359 (D.C. Cir. Sept. 10, 2007); Motion of Cellco Prtnshp d/b/a Verizon Wireless for Voluntary Dismissal of its Petition for Review and Protective Notice of Appeal, *Cellco Prtnshp d/b/a Verizon Wireless v. FCC*, Docket # 07-1359, 07-1382 (D.C. Cir. Oct. 22, 2007); Petition for Review, *CTIA Wireless Assn v. FCC, et al*, Docket # 07-1386 (D.C. Cir. Sept. 28, (continued....))

PISC filed its petition for reconsideration with the Commission requesting, in pertinent part, that the Commission clarify that “the proper framework for Verizon’s First Amendment claim remains the ‘rational basis’ flowing from the ‘scarcity rationale’ adopted by the Supreme Court in *NBC v. U.S.*”<sup>129</sup> PISC faults the Commission for “inexplicably fail[ing] to cite the more than 70 years of consistent Supreme Court precedent finding that no First Amendment right exists in the grant of a license [and instead] elects to analyze Verizon’s First Amendment claim (assuming one exists) under intermediate scrutiny.”<sup>130</sup>

52. **Discussion.** In light of the withdrawal of the Verizon Wireless and CTIA First Amendment challenges to the open platform rule, PISC’s request for clarification of the proper legal framework for addressing Verizon Wireless’s withdrawn challenge is moot, and we accordingly dismiss PISC’s petition for reconsideration as such, to the extent the petition requested such clarification.

#### **F. Open Platform Requirements for the C Block if the Reserve Price is Not Met**

53. **Background.** In the *700 MHz Second Report and Order*, the Commission concluded that “in the event that auction results for conditioned Upper 700 MHz C Block licenses do not satisfy the aggregate reserve price for the C Block, we will offer as soon as possible licenses for the C Block without the open platform conditions.”<sup>131</sup> In its petition for reconsideration, Frontline argues that stripping the C Block of the open platform conditions in the event of a re-auction would be contrary to the public interest and would create perverse incentives for bidders.<sup>132</sup>

54. **Discussion.** The C Block auction was successful and has been completed, rendering any discussion of an unsuccessful auction and the terms of a re-auction of the C Block moot. Therefore, we dismiss Frontline’s petition for reconsideration to the extent that it seeks us to reconsider the conditions of a re-auction of the C Block.

#### **G. 700 MHz Public/Private Partnership**

55. **Background.** In the *700 MHz Second Report and Order*, the Commission concluded that a Public/Private Partnership between the licensee of the Upper 700 MHz D Block, which at that time was allocated for commercial services, and the future licensee of the 700 MHz public safety broadband spectrum (the “Public Safety Broadband License” or “PSBL”) would serve the public interest by enabling the construction of a nationwide, interoperable broadband network available to state and local public safety users.<sup>133</sup> Accordingly, the Commission conditioned the D Block license on its commercial licensee entering into an agreement with the PSBL to construct and operate a nationwide shared wireless broadband network across both the D Block spectrum and the public safety broadband spectrum that would be used to provide mobile broadband services to both commercial subscribers and public safety entities.<sup>134</sup>

(Continued from previous page) \_\_\_\_\_

2007); Motion by Petitioner CTIA Wireless Assn to Dismiss Case Voluntarily and to Withdraw a Motion to Stay Case, *CTIA Wireless Assn v. FCC, et al*, Docket # 07-1386 (D.C. Cir. Oct. 4, 2007).

<sup>129</sup> PISC Petition at 5-6, citing *NBC v. U.S.*, 319 U.S. at 226-27.

<sup>130</sup> PISC Petition at 5.

<sup>131</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15402 ¶ 311.

<sup>132</sup> Frontline Petition at 17-19.

<sup>133</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15431 ¶ 395.

<sup>134</sup> See *id.* at 15428 ¶¶ 386-87, 15431 ¶ 395.

56. Several of the pending petitions in this proceeding seek reconsideration or clarification of various aspects of the regulatory requirements adopted by the Commission to effectuate and govern the Public/Private Partnership between the D Block licensee and the PSBL.<sup>135</sup> While these petitions were still pending, the Commission held the auction of 700 MHz Band licenses, including the D Block license.<sup>136</sup> Bids for the D Block license did not meet its applicable reserve price and there was therefore no winning bid for that license.<sup>137</sup> As a result, the Commission issued several further notices of proposed rulemaking, seeking comment on possible changes to the commercial service rules applicable to the D Block license.<sup>138</sup> Subsequent to these further notices, the Spectrum Act was passed, setting forth a new statutorily required plan for development of a nationwide interoperable public safety broadband network in the 700 MHz band.<sup>139</sup> In particular, the Spectrum Act directs the Commission to reallocate the D Block for public safety services, and to license the public safety broadband spectrum and the spectrally adjacent D Block spectrum to the First Responder Network Authority (FirstNet), an independent authority within NTIA tasked with overseeing the development of a nationwide, interoperable public safety broadband network.<sup>140</sup> On September 7, 2012, the Public Safety and Homeland Security Bureau released a *Report and Order* reallocating the D Block,<sup>141</sup> and on November 15, 2012, it issued FirstNet its license.<sup>142</sup>

57. Discussion. We find that the directives in the Spectrum Act regarding the D Block render moot the requests for reconsideration or clarification of our D Block commercial service rules, and we therefore dismiss these requests.

## H. Narrowband Relocation

58. Background. In the *700 MHz Second Report and Order*, the Commission consolidated existing narrowband allocations in the 700 MHz Public Safety band to the upper half of that band (769-775/799-805 MHz).<sup>143</sup> To effectuate this consolidation of the narrowband channels, the Commission required relocation of existing 700 MHz public safety narrowband operations from the 764-767 MHz and 794-797 MHz bands, as well as from the 775-776 MHz and 805-806 MHz bands that were affected by a 1 megahertz downward shift of the 700 MHz public safety spectrum.<sup>144</sup> The Commission further required the D Block licensee to pay the costs of

<sup>135</sup> See AT&T Petition at 4-5; Cyren Call Petition at 10-11; Frontline Petition at 2-3, 20-21.

<sup>136</sup> See [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=73](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73).

<sup>137</sup> See *id.*; see also Auction of 700 MHz Band Licenses Closes: Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

<sup>138</sup> See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, 23 FCC Rcd 8047 (2008); Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 1094 (2008).

<sup>139</sup> Spectrum Act, Title VI.

<sup>140</sup> See 47 U.S.C. §§ 1411(a), 1421(a), 1422(a), 1424(a); Spectrum Act §§ 6101(a), 6201(a), 6202(a), 6204(a).

<sup>141</sup> See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, PS Docket 12-94; PS Docket 06-229; WT Docket 06-150, *Report and Order*, 27 FCC Rcd 11075 (PSHSB 2012).

<sup>142</sup> See Universal Licensing System, License Call Sign WQQE234 (Nov. 15, 2012).

<sup>143</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15406 ¶ 322.

<sup>144</sup> *Id.* at 15412 ¶ 341.

such relocation, subject to a cap of \$10 million.<sup>145</sup> The Commission found that relocation of narrowband equipment and clearing of the old narrowband channels needed to be completed no later than the DTV transition date, *i.e.*, by February 17, 2009.<sup>146</sup> Virginia and Pierce Transit filed petitions seeking reconsideration of certain aspects of the decisions on narrowband relocation, including the adequacy of the \$10 million cap.<sup>147</sup>

59. Discussion. As discussed above, the *700 MHz Second Report and Order* assumed that the D Block would be licensed to a commercial provider that would be responsible, up to a cap, for the costs of the narrowband relocation. Now that the D Block has been reallocated for public safety services pursuant to the Spectrum Act, the approach that the Commission established for effectuating the consolidation of the narrowband channels cannot be implemented, and the Commission must revisit the entire narrowband relocation process (including elements such as those relating to reimbursement and the timing of relocation), which the Commission will accomplish by initiating a new rulemaking proceeding where we can address more comprehensively what rules need to be adopted, deleted, or modified to implement the Spectrum Act. Accordingly, we dismiss the petitions for reconsideration by Virginia and Pierce Transit as moot.

#### IV. ORDERING CLAUSE

60. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(e), 303(f), 303(g) and 405, that the petitions for reconsideration of Blooston Rural Carriers, NTCH, Inc., and Rural Telecommunications Group, Inc. ARE DENIED; the petitions for reconsideration of AT&T, Inc., Commonwealth of Virginia, Cyren Call Communications Corporation, and Pierce County Public Transportation Benefit Area Corporation ARE DISMISSED; and petitions for reconsideration of Frontline Wireless, LLC, MetroPCS Communications, Inc., and Ad Hoc Public Interest Spectrum Coalition ARE DENIED IN PART and DISMISSED IN PART as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 15406 ¶ 322.

<sup>147</sup> *See* Virginia Petition; Pierce Transit Petition.

**APPENDIX A****List of Petitioners and Commenters**Petitions for Reconsideration

AT&T Inc. (“AT&T”)  
Blooston Rural Carriers (“Blooston”)  
Commonwealth of Virginia (“Virginia”)  
Cyren Call Communications Corporation (“Cyren Call”)  
Frontline Wireless, LLC (“Frontline”)  
MetroPCS Communications, Inc. (“MetroPCS”)  
NTCH, Inc. (“NTCH”)  
Pierce County Public Transportation Benefit Area Corporation (“Pierce Transit”)  
Ad Hoc Public Interest Spectrum Coalition (“PISC”)  
Rural Telecommunications Group, Inc. (“RTG”)

Comments

AT&T Inc. (“AT&T”)  
Blooston Rural Carriers (“Blooston”)  
Commonwealth of Virginia (“Virginia”)  
CTIA-The Wireless Association (“CTIA”)  
Frontline Wireless, LLC (“Frontline”)  
MetroPCS Communications, Inc. (“MetroPCS”)  
Motorola, Inc. (“Motorola”)  
National Association of Telecommunications Officers and Advisors (“NATOA”)  
National Telecommunications Cooperative Association (“NTCA”)  
Pierce County Public Transportation Benefit Area Corporation (“Pierce Transit”)  
Rural Cellular Association (“RCA”)  
Rural Telecommunications Group, Inc. (“RTG”)  
United States Cellular Corporation (“U.S. Cellular”)