

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

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band)	WT Docket No. 07-195
)	
Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands)	WT Docket No. 04-356

**COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
WESTERN TELECOMMUNICATIONS ALLIANCE**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ and the Western Telecommunications Alliance (WTA)² hereby submit these comments in response to the Federal Communications Commission’s Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceedings.³ The FNPRM seeks comment on a proposal to auction

¹ OPASTCO is a national trade association representing over 600 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 5.5 million customers. Almost all of OPASTCO’s members are rural telephone companies as defined in 47 U.S.C. §153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include broadband Internet services, video services, mobile wireless services, long distance resale, and competitive local exchange service.

² WTA is a trade association that represents approximately 250 rural telecommunications carriers operating in the 24 states west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

³ *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, WT Docket No. 07-195, *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 04-356, Further Notice of Proposed Rulemaking, FCC 08-158 (rel. Jun. 20, 2008) (FNPRM).

Advanced Wireless Services (AWS) spectrum in the 2155-2180 MHz band (AWS-3 band) as a single nationwide license.⁴ The licensee of this spectrum block would be required to provide a free broadband service using up to 25 percent of its network capacity.

While OPASTCO and WTA are supportive of efforts to promote the ubiquitous availability of broadband services, auctioning this valuable block of AWS-3 spectrum as a single, nationwide license does not provide small companies and new entrants, like rural ILECs, with a sufficient opportunity to gain access to it. The Commission should instead auction spectrum in the AWS-3 band on the basis of Cellular Market Areas (CMAs), so that all carriers, regardless of size, have the ability to realistically compete for it at auction. The Commission should also consider that disaggregation, partitioning, and leasing of wireless spectrum has not proven to be successful in enabling rural carriers to gain access to spectrum. In addition, OPASTCO and WTA are concerned that requiring the AWS-3 band licensee to provide free broadband service would place rural ILECs' broadband service offerings at a competitive disadvantage and discourage further investment in rural broadband networks, to the detriment of rural consumers. Finally, because several parties have raised concerns regarding the potential for operations in the AWS-3 band to interfere with operations in the AWS-1⁵ band, the Commission should delay adoption of an Order in this proceeding until sufficient testing has occurred.

⁴ FNPRM, ¶ 3.

⁵ 1710-1755 and 2110-2155 MHz bands.

II. THE COMMISSION SHOULD AUCTION SPECTRUM IN THE AWS-3 BAND ON THE BASIS OF CELLULAR MARKET AREAS UNENCUMBERED BY A REQUIREMENT TO OFFER FREE BROADBAND SERVICE

OPASTCO and WTA are supportive of the Commission's goal of promoting the deployment and ubiquitous availability of broadband services across the nation. However, the Commission's proposal to auction spectrum in the AWS-3 band as a single, nationwide license does not provide small entities, including rural ILECs, with a sufficient opportunity to gain access to this valuable spectrum that will be used to deliver the next generation of wireless services. The Commission's proposal runs contrary to section 309(j) of the Communications Act, which requires it to adopt policies that disseminate spectrum licenses among a wide variety of applicants, including small businesses and rural telephone companies.⁶ The Commission can fulfill this Congressional mandate by auctioning spectrum in the AWS-3 band on the basis of CMAs, so that rural carriers have the ability to realistically compete for it at auction.

There is substantial demand among rural ILECs for spectrum that can be used to provide broadband services. However, on a megahertz-POP basis, rural carriers were not very successful in obtaining licenses in either the 700 MHz (Auction 73) or AWS-1 (Auction 66) auctions.⁷ The AWS-3 band is some of the last spectrum yet to be auctioned with strong propagation characteristics for providing broadband. Thus, it is crucial that the Commission afford rural ILECs – those carriers with a demonstrated ability and commitment to delivering broadband services throughout high-cost rural

⁶ 47 U.S.C. § 309(j)(3)(B).

⁷ *See*, Comments of the Rural Telecommunications Group (RTG), WT Docket No. 06-150, PS Docket No. 06-229 (fil. Jun. 20, 2006), p. 4 (“In Auction 73, rural telephone companies (or companies affiliated with rural telephone companies), in the aggregate, acquired only 1.19% of the available licenses calculated on a megahertz-POP basis.”).

territories – the opportunity to acquire this spectrum. This will enable rural ILECs to supplement their existing voice and broadband service offerings and deliver to rural consumers the wireless-based services of the future. However, if the AWS-3 band is auctioned as a single, nationwide license, this opportunity is lost and it is likely that some rural consumers will not gain access to these services that otherwise would. In addition, it is important to note that while the FNPRM includes a provision to allow the AWS-3 band licensee to disaggregate, partition, and lease the spectrum,⁸ in the past, these secondary-market methods have generally not been successful in enabling rural carriers to gain access to spectrum.

OPASTCO and WTA are also concerned that requiring the AWS-3 band licensee to provide free broadband service using up to 25 percent of their network capacity would place rural ILECs' broadband service offerings at a competitive disadvantage and discourage further investment in rural broadband infrastructure. Under this proposal, many consumers that presently subscribe to rural ILECs' broadband services would likely migrate to the free wireless service. The decline in subscribership would, in turn, harm the ability of rural carriers to recover the costs of the investments already made in their broadband networks and, more importantly, prevent them from continuing to invest in the facilities that will deliver to rural consumers the next generation of advanced services. Continual investment is crucial, because the broadband connections that are available to consumers today will soon be viewed as antiquated and insufficient. Absent ongoing investment by rural ILECs, rural consumers will be left behind, unable to access the increasingly bandwidth intensive Internet applications and services enjoyed by their urban counterparts.

⁸ FNPRM, ¶ 3.

Finally, as several parties in this proceeding have noted, substantial concerns exist regarding the potential for operations in the AWS-3 band to interfere with the operations of licensees in the AWS-1 band.⁹ The abridged comment cycle adopted for this proceeding has resulted in insufficient time for conducting and reviewing the testing necessary to determine the extent of any potential interference with operations in the AWS-1 band. Thus, the Commission should follow the advice of these parties, as well as two members of Congress who have expressed concern about the FCC's proposal,¹⁰ and delay adoption of an Order in this proceeding until such testing has occurred.

III. CONCLUSION

The Commission should auction spectrum in the AWS-3 band on the basis of CMAs, without a free broadband requirement, and allow rural carriers the opportunity to access this spectrum that can deliver the next generation of advanced wireless services to rural consumers.

⁹ Letter from Thomas J. Sugrue, T-Mobile USA, Inc., to Marlene H. Dortch, FCC, WT Docket No. 07-195 (fil. Jun. 5, 2008); Letter from Christopher Guttman-McCabe, CTIA-The Wireless Association, to Marlene H. Dortch, FCC, WT Docket No. 07-195, WT Docket No. 04-356 (fil. Jun. 18, 2008); Letter from Jeanine Poltronieri, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 07-195, WT Docket No. 04-356 (fil. Jun. 5, 2008).

¹⁰ Letter from Congressman Joe Barton and Congressman Cliff Stearns, to Chairman Kevin Martin (Jun. 30, 2008).

Respectfully submitted,

**THE ORGANIZATION FOR THE
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July 25, 2008

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance was sent on this, the 25th day of July, 2008 via electronic mail, to those listed on the attached sheet.

By: /s/ Brian J. Ford
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SERVICE LIST
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