
Selected FCC Docket Summaries, 2007

In re Service Rules for the 698-746, 747-762, and 777-792 MHz Bands, Second Report and Order, FCC 07-132 (July 31, 2007)

As part of the necessary steps for the digital television (“DTV”) transition on February 17, 2009, the FCC established guidelines and rules to regulate the governing and auctioning of the spectrum currently operated by TV channels 52-69 (“700MHz Spectrum”). These guidelines are found in the Second Report and Order (“Report”) adopted on July 31, 2007. The Report institutes the rules governing the upcoming auctioned spectrum on January 28, 2008, along with the rules governing the 700MHz Spectrum.

When television stations undergo the digital transition from analog to digital broadcasts, the resulting unused spectrum goes to the winners of the January 28, 2008 auction. With 176 licenses over Economic Areas (“EA”) in the A Block, 734 licenses over Cellular Market Areas in the B Block, 176 licenses over EAs in the E Block, 12 licenses over Regional Economic Area Groupings in the C Block, and one nationwide license as part of the 700MHz Public-Private Partnership in the D Block becoming available, the interest from public and private organizations becomes great. As such, the Report addresses the issues pertaining to the DTV transition including: (1) adjusting the auction to an anonymous bidder system; (2) allowing package bidding in the C Block; (3) creating block specific aggregate prices; and (4) offering “quick” auctions in the event that price minimums are not met.

The FCC looked at the comments received from the First Report and Order (“First Report”) from April 2007 and decided that anonymous bidding in the 700MHz auction will promote competition by withholding the public release of the outcome of the auction until completion. Without information about competitors’ bids, combined with the FCC’s reaffirmation of anti-competitive restrictions, the use of anonymous bidding provides the greatest possible revenue to taxpayers.

To encourage private corporation participation on a “nation-wide scale,” the FCC decided to use package bidding in the C Block. Package bidding creates groups of spectrum for sale as opposed to selling them as smaller increments. This eliminates the disadvantage incurred by companies interested in large-scale purchases by securing their nationwide interests from blind voting. Note that the FCC continues to impose restrictions on these package bids.

In an attempt to establish a minimum return on the auction, the Report creates block specific minimum aggregate prices (Block A - \$1.807380 billion; Block B - \$1.374426 billion; Block C - \$4.637854 billion; Block D -

\$1.330000 billion; and Block E - \$903.690 million). The FCC plans to use these minimums to ensure that the public receives a minimum level of income for the sale of the spectrum.

Finally, in the event that the above block minimums are not met, the Report establishes rules for a prompt subsequent auction of the A, B, C, and E Blocks, but does not apply this to the D Block. In the event that one of the eligible blocks fails to reach the set minimum price during the initial auction, qualified buyers from the first auction will be eligible to participate in a “quick” auction.

These changes, along with several others including adjustments to guard bands, spectrum allocation for local devices, more stringent license restrictions, and adjustments to the D Block, were available for comments until September 7, 2007. Barring the release of a new report, the Report represents the final rules for the 700MHz Spectrum Auction and how the division of spectrum will occur.

Summarized by Carl M. Szabo

In re Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, FCC 07-138, MB Docket No. 87-268 (Aug. 1, 2007)

Congress has established the firm deadline of February 17, 2009 as the end of analog transmissions by television broadcasters and the beginning of the exclusive use of digital television (“DTV”). In anticipation of this deadline, the Federal Communications Commission (“FCC” or “Commission”) has been conducting the DTV transition for these broadcasters. In its *Seventh Report and Order*, the FCC adopts the most current update of the DTV Table, which finalizes specific channels and facilities for all eligible broadcasters.

Broadcast licensees requested their ultimate DTV channel assignment from the FCC, and in reviewing the request, the Commission evaluated the request to identify any interference conflicts with other station service coverage. If an interference conflict was found, the Commission denied the request for the desired channel and assigned the “best available” channel for the broadcaster. The “best channel” criteria, approved and adopted in a previous Report and Order, directs the Commission to determine a channel that provides adequate service to the area without causing new interference with another channel. If there is more than one channel that meets the criteria, the lowest channel is granted to the broadcaster. If there is no channel that meets the criteria, then a channel is to be selected that provides the least amount of new interference to stations that have already been selected.

The FCC utilized this report to address over 200 comments received in response to the most recent DTV Table, with most of the comments requesting specific changes to the Table. The report summarizes each request and the Commission's decision regarding the particular request. If the Commission could accommodate these changes in accordance with the established standards protecting against interference, the changes were made in an effort to expedite an approved DTV Table. If the request was inconsistent with the established standards or was premature, the request was denied, with the instruction that premature requests be filed following the adoption of this order. The report outlined the denial of the challenge to the inference standard used by the Commission, but granted the requests for minor adjustments and changes to certification when the station has demonstrated that the change is in conformity with the previously established interference criteria. The FCC approved operation of eight stations that did not conform to the interference criteria because they met the burden of showing substantial need for justification of a waiver.

The *Seventh Report and Order* was meant to finalize the DTV channel selection process and almost all eligible stations were assigned channels in this report. Some permit requests, however, were received too late to be considered for the publication, and several comments and modifications were also received past the comment deadline; therefore, the FCC issued the *Eighth Further Notice of Proposed Rule Making*. The Commission reiterated that this Further Notice only relates to the stations listed therein, and comments will only be accepted in regards to the issues of those broadcasters. Any additional requests for modification regarding the DTV Table will not be accepted through this Further Notice. The FCC also utilized this Further Notice to address late requests to modify the DTV Table if the Commission found the modification to be minor or found the proposal required the opportunity for comment.

Summarized by Tara Steinnerd

In re Wireless Operations in the 3650-3700 MHz Band, Rules for Wireless Broadband Services in the 3650-3700 MHz Wireless Band, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3GHz Band, Memorandum Opinion and Order, FCC 07-99, ET Docket No. 04-151 (May 22, 2007)

On June 7, 2007, the Federal Communications Commission ("FCC" or "Commission") issued a Memorandum Opinion and Order ("Order") that addressed petitions for reconsideration filed in response to the Commission's 2005 Report and Order ("2005 Order") related to the 3650-3700 MHz band ("3650 MHz band") proceeding. The FCC rejected the petitions and affirmed the 2005 Order, which provided for nationwide, non-exclusive licensing of

broadband wireless services in the band through utilization of contention-based protocols. It also refused to reassess its requirement that equipment working in the 3650 MHz band incorporate contention-based protocols; however, the Commission did clarify and modify the meaning and rules of those protocols. Lastly, the Commission denied requests for reanalysis of technical rules for fixed and mobile transmission power limits, out-of-band emissions, and organization of global operators with satellite licensees.

In rejecting petitions for reconsideration of the 2005 Order, the Commission explained that creating the spectrum environment would encourage multiple entrants. It stated that the current requirements for the spectrum environment would motivate the expansion of broadband service to rural and underserved areas, and would encourage rapid deployment in the 3650 MHz band. This would, in turn, serve the public interest. The Commission clarified that development of the band is conducive to smaller markets and areas with less population where non-exclusive operation is more easily accommodated. Also, the need to protect users from interference requires global users in the 3650 MHz band to operate at lower power levels than those of exclusively licensed services, which strikes a balance between competing interests in the band. Finally, the Commission indicated that many service providers want to invest in using the spectrum for development of services in underserved and rural communities on a non-exclusively licensed basis.

The Commission defined contention-based protocols as technologies that allow numerous licensees to share spectrum by guaranteeing that they all obtain reasonable opportunities to operate in the band. These protocols, for example, are how Wi-Fi and other license-free technologies minimize interference among users. The FCC went on to modify its rules and limit operation of the protocols to the lower 25 MHz portion of the band. The Commission stated that explanation and modification of the contention-based protocols would encourage operation of a variety of broadband technologies. It would also reduce the likelihood of co-channel interference among users and provide more protection in the band under the current licensing scheme. Ultimately, it would encourage development of more compatible contention technologies; and as a result, serve the public interest by retaining a requirement that fixed, base, and mobile equipment, operating in the band, incorporate contention-based protocols.

The Commission also denied requests for reconsideration of rules that related to fixed and mobile transmission power limits, out-of-band emissions, and coordination of terrestrial operators with satellite licensees. It explained that in adopting the power limits for the 3650 MHz band, it ensured its efficient use by adopting power limits that would allow multiple 3650 MHz band licensees to operate near one another without unacceptable interference. Fur-

thermore, the Commission stated that the out-of band emission limits would speed deployment and thus facilitate the design and construction of economic devices for use in the band. Lastly, it refused to address requests for reconsideration of coordination of the 3650 MHz fixed station operations within exclusion zones established, stating that parties should be able to choose for themselves the rules governing such negotiations.

As stated by FCC Commissioner Jonathan S. Adelstein, the 3650 MHz licensing decision is a way to take advantage of the success of the Wi-Fi movement, serve the public interest, and find a balance between a licensing model for traditional, area-wide mobile systems and a model for unlicensed, consumer-based services. It facilitates delivery of broadband to both urban and rural communities.

Summarized by Sarah Jameson

In re 2006 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Further Notice of Proposed Rule Making, FCC 07-136, MB Docket No. 06-121 (Aug. 1, 2007)

In its Second Further Notice of Proposed Rule Making (“Notice”), the Federal Communications Commission (“Commission” or “FCC”) reviewed the Motion for Withdrawal of the Further Notice of Proposed Rulemaking and for the Issuance of a Revised Further Notice (“Motion for Withdrawal”), filed on August 23, 2006 by the Diversity and Competition Supporters (collectively, “MMTC”). The proposals submitted by MMTC addressed the Commission’s Further Notice proceeding, which invited comment on media ownership rules and pending petitions for reconsideration of the *Commission’s* 2002 Biennial Review Order. The Commission determined that issuance of the Notice would be beneficial because it has a large impact on its comprehensive ownership review. After reviewing the proposals, the Commission concluded that it is unnecessary to adopt the ownership diversity approach suggested by MMTC, and that the Notice, combined with the initial Further Notice, provides sufficient notice to the public on issues relating to media ownership review; diversity or otherwise.

MMTC’s comments related to the issue of facilitation of minority and female ownership of broadcast outlets. MMTC stated that the Further Notice was faulty and ultimately requested that the Commission restart the ownership proceeding. It presented three arguments addressing why the Commission’s Further Notice is flawed. First, it asserted that the Further Notice fails to identify and describe MMTC’s minority ownership proposals remanded by the court in *Prometheus Radio Project. v. FCC*. Second, MMTC believed that the Further

Notice did not refer to or seek comment on a definition of a socially and economically disadvantaged business (“SDB”). It stated that without a SDB definition, the Commission cannot properly pursue minority ownership initiatives. Finally, MMTC claimed that the Further Notice did not identify section 257 of the Telecommunications Act of 1996 as an essential legal basis for minority ownership relief.

The Commission concluded the report by denying MMTC’s request to restart the ownership proceeding. It did, however, seek comment on a variety of MMTC’s concerns, as well as issues relevant to the Commission’s media ownership review. Those included MMTC’s proposal that the Commission define SDBs in order to properly analyze policy initiatives in support of media ownership diversity, the Commission’s statutory authority to address issues like minority and female media ownership, and the limitations of such in light of recent court decisions. Finally, it solicited comment on statutory provisions that would assist the Commission to addressing ownership diversity, specifically that among minority groups and women.

Summarized by Sarah Jameson