

October 4, 2007

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Written Ex Parte Presentation

WT Docket Nos. 06-150, 06-169 and 96-86; PS Docket No. 06-229;
AU Docket No. 07-157

Dear Ms. Dortch:

Since Frontline Wireless LLC (“Frontline”) first entered the 700 MHz debate earlier this year, it has bombarded the Federal Communications Commission with proposals and schemes that all have one thing in common: they are designed to suppress competition in the upcoming 700 MHz auction and increase the likelihood that Frontline will win licenses at the lowest possible cost. As the Wall Street Journal editorial board noted early on, Frontline’s suggestions are seen as an attempt to “scare off auction competition and increase the chances of Frontline grabbing the licenses for a song.”¹

The 700 MHz spectrum offers great promise for continuing the roll-out of new and innovative wireless broadband services for the benefit of America’s 244 million wireless consumers. CTIA—The Wireless Association® (“CTIA”) believes that all industry participants – including Frontline – should have an opportunity to acquire spectrum in a fair and open Commission auction. Frontline’s *modus operandi* in the 700 MHz proceedings, however, demonstrates a different agenda. Frontline has gone to great lengths to erect a false bogeyman – the existing wireless industry – and then to offer a cavalcade of self-serving proposals that it claims must be adopted in order to rescue wireless consumers. The Commission should see through Frontline’s effort to skew the upcoming 700 MHz auction in its favor.

Frontline’s strategy has been two-fold: (1) repeatedly claim – as if repetition will breed truth – that the current wireless industry is “highly concentrated” and non-competitive; and (2) assert that its solutions are necessary. Frontline’s attacks on today’s wireless environment demand response. As shown below, the wireless market is a vibrant, competitive environment. Moreover, when viewed collectively, Frontline’s proposals are nothing more than a coordinated campaign to deter auction competition – especially by existing providers – for Frontline’s benefit alone.

The Evidence Demonstrates that the Wireless Market Is Highly Competitive. The competitive environment in the wireless market has produced amazing consumer benefits, with consistent declines in pricing and an explosion of new and innovative services and devices. In the Commission’s own words, “competitive pressure continues to drive wireless carriers to introduce innovative pricing plans and service offerings, and to match the pricing

¹ *The Spectrum Game*, WALL ST. J., Apr. 17, 2007, at A18.

and service innovations introduced by rival carriers.”² The Commission has concluded that even with recent wireless mergers, “none of the remaining competitors has a dominant share of the market, and the market continues to behave and perform in a competitive manner.”³ Data published by Merrill Lynch, the OECD, and the British regulator, Ofcom, demonstrate that the U.S. wireless market is less concentrated than the wireless markets in dozens of countries in Europe, Asia, and Latin America.⁴

Frontline’s claims are further belied by these facts:

- Merrill Lynch has reported that the average revenue per minute in the United States has dropped dramatically from \$0.12 in 2002 to \$0.05 in the first quarter 2007.⁵
- The average revenue per minute of service in the United States is lower than in every Western European country – it is one-third (or less) of every Western European country, except Finland, where it is one-half the price.⁶
- U.S. subscribers’ average minutes of use each month has skyrocketed in the last five years, from 471 minutes in 2002 to 834 minutes in the first quarter of 2007.
- Consumers in the United States have the highest minutes of use per month in the world – in excess of 500 minutes per month more than the next closest European country; and similarly higher than in the other countries tracked by Merrill Lynch.⁷
- Commercial mobile operators in the U.S. continue to expand wireless coverage and capacity. The number of cell sites reported in commercial operation has increased from 139,338 in December 2002 to 195,613 in December 2006 – a 40 percent increase in just five years.⁸

Incredibly, Frontline’s counsel recently claimed—without any substantiation or analysis – that “[t]he wireless handset market in 2007 . . . (a) never was competitive, and (b)

² *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 06-17, *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 21 FCC Rcd 10947, 10950 ¶ 3 (2006) (“*Eleventh CMRS Competition Report*”).

³ *Id.* at 19050 ¶ 2. According to the Commission’s own data, 98 percent of all Americans live in counties where at least three wireless carriers compete for subscribers, and 94 percent of Americans live in counties with four or more wireless competitors. *Id.* at 10964 ¶ 41.

⁴ *See, e.g.*, Ofcom, “The International Communications Market, 2006,” November 2006, available online at <http://www.ofcom.org.uk/research/cm/icmr06/icmr.pdf>, at p.68 (the U.S. wireless market is less concentrated than Japan, France, Germany, Italy, Spain, Sweden, the U.K. and other European countries); and Glen Campbell, *et al.*, “Latin Fever: Global Wireless Matrix, 1Q07,” Merrill Lynch, June 15, 2007, at 2, Table 1 (showing the market share of the top two carriers in more than 50 countries, only one of which is less than the U.S. – by 2.3 percent; most are substantially more concentrated than the U.S.).

⁵ Glen Campbell, *et al.*, “Latin Fever: Global Wireless Matrix, 1Q07,” Merrill Lynch, June 15, 2007, at 57, Table 30.

⁶ *Id.* at 46, Table 25.

⁷ *Id.* at 50, Table 27.

⁸ *See CTIA’s Wireless Industry Indices: Semi-Annual Data Survey Results: A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Year-End 2006 Results* (released May 2007) at 193, Table 87.

never will be competitive, absent Commission action.”⁹ Again, this rhetoric is unsupported. As CTIA recently observed:

- American consumers have access to the largest selection of handsets in the world – over 700 different devices, according to our research. By contrast, the U.K. has approximately 180 different handsets.
- All of the national carriers offer handsets with integrated Wi-Fi capability, and at least ten Wi-Fi capable handsets are already on the market, with more in development.¹⁰
- The United States District Court for the Southern District of New York recently called competition in the wireless handset market “undisputed” in dismissing an antitrust action against wireless carrier handset practices.¹¹

Frontline’s Various 700 MHz Proposals Are Aimed at Suppressing Auction Competition. Though Frontline wraps its 700 MHz proposals in lofty rhetoric, the Commission should not be fooled – Frontline is all about Frontline. Its initial ideas (put forward in February and March of 2007) were aimed at making 700 MHz Band licenses less attractive to other bidders (so-called “poison pills”) or to garner bidding advantages for itself. These schemes were followed by new proposals structured to prevent today’s providers from using the 700 MHz spectrum with existing network infrastructure and business plans. More recently, Frontline has taken a more direct route by urging the Commission to disqualify existing providers with spectrum holdings. Notably, Frontline no longer is focused exclusively on the D Block, the public-private partnership spectrum, as its proposals now extend to the C Block as well, the spectrum associated with the Open Platform mandate.

Frontline’s Initial “Poison Pills”

- ***Mandate a Wholesale-Only Business Plan.*** Frontline wanted the FCC to impose a “wholesale utility” business plan on the D Block licensee under which the spectrum would be “allocated exclusively” for the provision of wholesale network services. (Feb. 26, 2007, 06-229, *et al.* at 29)
- ***Impose Open Access.*** Frontline proposed rules to enable “open devices,” “open services and content,” and “open offerings” on D Block spectrum. (Feb. 26, 2007, 06-229, *et al.* at 30).

⁹ See Letter from Frontline to the FCC, WT Docket No. 06-150 *et al.*, at 3 (filed Sept. 27, 2007).

¹⁰ See Jessica E. Vascellaro & Amol Sharma, *Cellphones Get Wi-Fi, Adding Network Options*, WALL ST. J., June 27, 2007, at B1.

¹¹ “Manufacturers sell handsets in bulk to carriers and sales agents of the carriers, but do not sell directly to consumers in the United States. It is undisputed, though, that the market for handsets is competitive, as manufacturers compete to offer the highest quality and lowest prices to the service providers who purchase handsets. It is also undisputed that [wireless carriers] use their offers of handsets at the lowest possible price to compete with each other for subscribers.” *Freeland v. AT&T Corp.*, 238 F.R.D. 130, 139 (S.D.N.Y. 2006) (citations omitted).

- **Require Nationwide Roaming on the Commercial Network.** Frontline asked the FCC to mandate roaming service on D Block spectrum. (Feb. 26, 2007, 06-229, *et al.* at 32-33).
- **Extend the Open Access and Roaming Mandates to All Spectrum Holdings of the Licensee.** Frontline urged the FCC not only to mandate specific open access and roaming requirements, but to extend these obligations to “all spectrum holdings” of the licensee. (Feb. 26, 2007, 06-229, *et al.* at 31).

Frontline Economists Call for Barring Existing Providers

- **Bar Large Wireless Providers and Cable Companies from the D Block, According to Economists Hired by Frontline.** “They should be banned from bidding for this kind of specially-designated license.” (Corey Boles, *Report Argues For Limits On Spectrum Auction Participants*, DOW JONES NEWSWIRES, May 23, 2007).

Subsequent Proposals to Limit Incentives to Bid at Auction

- **Require the Licensee to Offer an “Open Auction” Service on At Least 25% of its Network Capacity.** Frontline supported an open auction requirement, “along the lines of the commonly-used auctions operated by eBay or Google,” to allow parties to buy blocks of network service capacity at whatever times, in whatever amounts, and for whatever geographic areas serve their interests. (May 23, 2007, 06-150, *et al.* at 23)
- **Require D Block Dealings with Public Safety on a Non-Profit Basis.** Frontline suggests that the FCC impose a requirement that the D Block licensee establish a not-for-profit entity for its dealings with public safety agencies. (Sept. 20, 2007, 06-150, *et al.*)
- **Mandate a “New Build” in the D Block.** Frontline calls for a requirement that the D Block licensee be forced to build out a “wholly new” and costly 4G network entirely from scratch. That is, incumbent carriers would be precluded from using any part of their existing infrastructure to meet public safety needs. (Sept. 24, 2007, 06-150, *et al.* at 20)

Current Attempts to Bar Existing Providers from the Auction

- **Deny Incumbent Short-Form Applications.** Frontline asks the FCC to reject FCC Form 175 applications if the applicant could acquire licenses that would bring its total spectrum holdings above 70 MHz. (Aug. 31, 2007, 07-157, at 20)
- **Incorporate Competitive “Screens” into the FCC Form 175 Application.** Most recently, Frontline asks the FCC to adopt screens that would create a presumption of “excessive concentration” allowing license grants only in “extraordinary circumstances.” (Sept. 21, 2007, 07-157, at 2-9.)

The Commission Should Allow the Market to Determine 700 MHz Auction Winners. In its recent *700 MHz Second Report and Order*, the Commission relied on long-

standing auction policy in rejecting a proposal to restrict the auction eligibility of incumbent wireless carriers:

The use of competitive bidding to assign licenses, such as the commercial 700 MHz licenses, serves the public interest by assigning licenses to the parties that value the licenses the most. Such parties are presumed to be most likely to put the public spectrum resource to its most effective use. If, however, we exclude categories of potential licensees, we risk reducing the likelihood that the party valuing the license the most will win the license and put it to use for the benefit of the public. This unavoidable uncertainty in assessing prospective competitive harms is heightened here by the substantial spectrum capacity being made available and the uncertainty regarding how that spectrum capacity ultimately will be used.¹²

CTIA wholeheartedly agrees with the Commission that auctions work best – and the public interest is best served – when market forces are allowed to determine winners on a level playing field. Frontline’s regulatory strategy is a brazen effort to tilt the field in its favor and must be rejected.

Sincerely,

/s/ Christopher Guttman-McCabe

Christopher Guttman-McCabe

cc: Hon. Kevin Martin, Chairman
Hon. Michael Copps, Commissioner
Hon. Jonathan Adelstein, Commissioner
Hon. Deborah Taylor Tate, Commissioner
Hon. Robert McDowell, Commissioner
Aaron Goldberger
Bruce Gottlieb
Renee Crittendon
Wayne Leighton
Angela Giancarlo
Fred Campbell

¹² *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, WT Docket No. 06-150, *et al.*, *Second Report and Order*, FCC 07-132 ¶ 259 (rel. Aug. 10, 2007).