

**FHH Telecom Law**  
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**FCC Proposes to Re-Shuffle  
700 MHz Deck**

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On August 3, 2006, the FCC adopted a Notice of Proposed Rulemaking (NPRM) in WT Docket Nos.06-150 & 01-309, seeking comment on proposed changes to numerous aspects of the service rules governing licenses in the 700 MHz spectrum band. This particular NPRM addresses changes in the Upper and Lower 700 MHz bands and does not raise changes to the Guard Band portions of the 700 Mhz band. (An NPRM, released on September 8, 2006, seeks comment changes to Guard Band licensing rules in a separate docket, WT Docket No. 06-169.)

With respect to unauctioned spectrum alone, the FCC proposes several potential changes. First, it considers assigning additional licenses to smaller areas not defined by Economic Area Groupings, resulting in a range of possible service areas. Should such new areas be created, the FCC also raises the question of which spectrum block(s) would be suitable for reassignment to the newly-designated areas. Finally, it seeks comment on establishing more definite performance requirements that would revise the current “substantial service” standard, in order to facilitate access for all consumers.

With respect to both auctioned and unauctioned spectrum, the FCC discusses modification of the rules pertaining to licenses. In particular, the FCC seeks comment on adding criteria to the end-of-term requirements for license renewal and extending the license terms beyond the current January 1, 2015 expiration date. It also solicits comment on whether increasing the maximum licensed power limits in the unauctioned 700 MHz bands could be achieved while still preventing interference to Public Safety operations. Significantly, the Commission is considering a substantial reduction in the authorized power of stations in the Lower Band which have already been auctioned. This change would very significantly alter the terms of existing 700 MHz licenses.

In the last section of the NPRM, the FCC tentatively concludes that certain services using 700 MHz spectrum should be subject to 911 and E-911 requirements as well as hearing-aid compatibility requirements, based on the criteria in the *E911 Scope Order* adopted in 2003, and seeks comment on amending the rules in Part 20 to set out effective dates and measurement methods to implement this conclusion.

Why raise these issues now? The FCC attributes the timing of this NPRM primarily to the existence of a firm date for the DTV transition. As is well-known, the transition will allow the reclamation of a significant amount of spectrum in this band, which the FCC will sell via auction. Prior to congressional passage of the Digital Television and Public

Safety Act of 2005 (the DTV Act) at the beginning of this year, two separate proceedings covered the redistribution of the 700 MHz band, due to requirements stemming from separate statutory provisions affecting the Upper and Lower portions. The DTV Act eliminates separate auction periods and procedures, which will offer potential bidders more certainty as to the availability and value of spectrum space.

Comments are due September 20<sup>th</sup>, with replies October 20.