



# PUBLIC NOTICE

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## 700 MHz CONSTRUCTION AND REPORTING REQUIREMENTS

In this Public Notice, the Wireless Telecommunications Bureau (Bureau): (1) announces that 700 MHz interim performance status reports are due by January 13, 2012; (2) specifies the procedure for public comment on 700 MHz construction notifications; and (3) reminds licensees of the enforcement actions for failure to meet interim 700 MHz construction benchmarks.

### 700 MHz Interim Performance Status Reports due by January 13, 2012

On March 28, 2011, the Bureau announced that pursuant to section 27.14(l) of the Commission's rules, 700 MHz licensees were required to file their interim performance status reports by June 13, 2011.<sup>1</sup> On June 3, 2011, however, the Office of General Counsel informed licensees that they were not required to file interim reports until the Commission announced the effective date of section 27.14(l).<sup>2</sup> On October 28, 2011, the Office of Management and Budget approved the collection of information required by section 27.14(l) and assigned it OMB Control Number 3060-1161. The Commission announced the effective date of section 27.14(l) by Federal Register publication on November 21, 2011.<sup>3</sup>

Accordingly, any 700 MHz licensee that has not already filed its interim performance status report is required to file its interim report no later than January 13, 2012. If a 700 MHz licensee previously filed its interim report, we hereby deem its report filed after the effective date of section 27.14(l), and no further action is required by the licensee. We note that because section 27.14(l) required that interim reports be filed by June 13, 2011, licensees are only required to provide performance information that would have been available had they filed by June 13, 2011. Licensees should refer to the Bureau's prior *700 MHz Performance Status Reports Public Notice* for further filing requirements.<sup>4</sup> Finally, we hereby waive on our own motion and to the extent necessary the June 13, 2011 filing deadline specified in section 27.14(l).<sup>5</sup>

<sup>1</sup> 700 MHz Performance Status Reports due by June 13, 2011, *Public Notice*, DA 11-563, 26 FCC Rcd 4919 (WTB rel. March 28, 2011) (*700 MHz Performance Status Reports Public Notice*).

<sup>2</sup> Letter dated June 3, 2011, from Austin C. Schlick, General Counsel, Federal Communications Commission, to Christopher Gutmann-McCabe, Vice President Regulatory Affairs, CTIA - The Wireless Association. The letter was also sent to each affected 700 MHz licensee.

<sup>3</sup> 76 Fed. Reg. 71909 (Nov. 21, 2011).

<sup>4</sup> See *supra* note 1.

<sup>5</sup> 47 C.F.R. § 0.131(a).

### **Procedure for Public Comment on 700 MHz Construction Notifications**

In the *700 MHz Second Report and Order*, the Commission stated that “the public will be given an opportunity to review and comment” on construction notifications filed by certain 700 MHz licensees.<sup>6</sup> Accordingly, in this Public Notice, the Bureau specifies the procedure for public comment on notifications filed by affected 700 MHz licensees.

**Affected Licenses.** The public may use the procedure specified in this Public Notice to comment on construction notifications filed by 700 MHz licensees holding the following authorizations:

1. Economic Area (EA) authorizations for Block A in the 698-704 MHz and 728-734 MHz bands;
2. Cellular Market Area (CMA) authorizations for Block B in the 704-710 MHz and 734-740 MHz bands;
3. EA authorizations for Block E in the 722-728 MHz band; or
4. Regional Economic Area Grouping (REAG) authorizations for Block C in the 746-757 MHz and 776-787 MHz bands.<sup>7</sup>

Section 27.14(k) of the Commission’s rules requires affected licensees to file their initial (4-year) construction notifications no later than June 28, 2013.<sup>8</sup> However, if a license was granted after June 13, 2009, the 4-year construction notification is due no later than four years and 15 days after the license grant.<sup>9</sup>

**Comment Period.** Consistent with the *700 MHz Second Report and Order*, the Bureau will examine each construction notification and any related comments prior to making a determination regarding the notification.<sup>10</sup> Specifically, the Bureau will place applicable 700 MHz construction notifications on its weekly Market-Based Applications Accepted for Filing Public Notice. Interested parties will then be permitted to file comments, which must be filed no later than 30 days after the public notice release date.

**Filing Procedure.** Parties must file comments electronically through the Bureau’s website at <http://wireless.fcc.gov/uls>. After opening the Bureau’s Universal Licensing System webpage (<http://wireless.fcc.gov/uls>), select “ULS Pleadings” (under “ULS Online Systems”) from the link options located on the left side of the page. Upon reaching the Non-docketed Pleadings page, select the

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<sup>6</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15352 ¶ 169 (2007) (*700 MHz Second Report and Order*) (“The public will be given an opportunity to review and comment on the construction notification, including the maps provided by the licensee and the technical assumptions used to create the maps.”).

<sup>7</sup> 47 C.F.R. §§ 27.14(g), (h), (k).

<sup>8</sup> 47 C.F.R. § 27.14(k).

<sup>9</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15352 ¶ 169.

<sup>10</sup> *Id.* (“After examining the notification and public comments, Commission staff will make a final determination as to what areas within EAs and CMAs are, and are not, deemed ‘served.’”).

“700 MHz Construction Notification Comment” option from the Pleading Type drop-down menu, and follow the subsequent instructions to submit a comment.

***Ex Parte Status.*** The Bureau seeks to facilitate communications regarding 700 MHz construction notifications between Commission staff and interested parties. We find that, consistent with section 1.1200(a) of the Commission’s rules,<sup>11</sup> the public interest will be served by designating staff review of 700 MHz construction notifications and any related public comments as “exempt” under section 1.1204 of the Commission’s rules.<sup>12</sup>

### **Failure to Meet Interim 700 MHz Construction Benchmarks**

In the *700 MHz Second Report and Order*,<sup>13</sup> the Commission adopted performance requirements that include geographic build-out benchmarks for Lower 700 MHz A, B, and E Block licenses (Blocks A and E are licensed on an EA basis, Block B is licensed on a CMA basis) and population build-out benchmarks for Upper 700 MHz C Block licenses (licensed on a REAG basis).<sup>14</sup> The Commission established both interim and end-of-license-term benchmarks and enforcement actions.<sup>15</sup>

As interim benchmarks, 700 MHz A, B, and E Block licensees are required to provide signal coverage and offer service over at least 35 percent of the geographic area of their licenses within four years of the end of the DTV transition (June 13, 2013) or within four years of initial license grant if the initial authorization in a market is granted after June 13, 2009, and Upper 700 MHz C Block licensees must provide signal coverage and offer service over at least 40 percent of the population in each EA of REAG license areas by the applicable deadline.<sup>16</sup>

If a 700 MHz Lower A, B, E, or Upper C Block licensee fails to meet its four-year interim benchmark, the term of its license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures.<sup>17</sup> We remind licensees that the two-year reduction in license term for failure to meet the interim benchmark is automatic for all licensees that fail to meet their interim benchmarks.

The Commission adopted stringent performance requirements, including reserving the right to impose a reduction in the size of the licensed area, to ensure that licensees “put this spectrum to use throughout the course of their license terms and serve the majority of users in their license areas.”<sup>18</sup> The Bureau intends to use this discretion only where the Bureau staff determines that licensees failing to meet their interim benchmarks have also failed to undertake meaningful efforts to put this spectrum to

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<sup>11</sup> 47 C.F.R. § 1.1200(a).

<sup>12</sup> See 47 C.F.R. § 1.1204 (exempt *ex parte* presentations and proceedings).

<sup>13</sup> *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

<sup>14</sup> See 47 C.F.R. §§ 27.14(g), (h).

<sup>15</sup> *Id.* For the end-of-term benchmarks and enforcement actions, see 47 C.F.R. §§ 27.14(g)(2), (h)(2).

<sup>16</sup> 47 C.F.R. §§ 27.14(g)(1), (h)(1).

<sup>17</sup> *Id.*

<sup>18</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15348 ¶ 154.

use, such as engaging in system planning, exploring sites and site leases, pursuing network engineering planning, or engaging in efforts to procure equipment. Accordingly, licensees undertaking no meaningful efforts to build out their networks may lose the authority to operate in part of the remaining unserved areas of the license, at the Commission's discretion.<sup>19</sup> Licensees are currently required to certify, as part of the four-year interim benchmark construction notification, whether or not they have met the applicable performance requirements.<sup>20</sup> As part of that certification, licensees failing to meet the applicable benchmark may include information detailing meaningful efforts undertaken to put spectrum to use.

**FOR FURTHER INFORMATION**, please contact Keith Harper, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2759, [Keith.Harper@fcc.gov](mailto:Keith.Harper@fcc.gov).

Action taken by the Chief, Mobility Division, Wireless Telecommunications Bureau pursuant to 47 C.F.R. § 0.131.<sup>21</sup>

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<sup>19</sup> 47 C.F.R. §§ 27.14(g)(1), (h)(1).

<sup>20</sup> 47 C.F.R. § 27.14(k).

<sup>21</sup> See also *700 MHz Second Report and Order*, 22 FCC Rcd at 15481 ¶ 557 (delegating authority to the Wireless Telecommunications Bureau to implement the policies and rules adopted in the *700 MHz Second Report and Order*).