

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Partitioning, Disaggregation, and) WT Docket No. 19-38
Leasing of Spectrum)

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in response to the request by the Federal Communications Commission (the “Commission”) for comment on potential changes to the Commission’s partitioning, disaggregation, and leasing rules to increase spectrum access by small and rural carriers, as required by the MOBILE NOW Act (“Act”).² Specifically, the Commission seeks comment on (1) whether reducing performance requirements for spectrum obtained pursuant to the Act would facilitate deployment of advanced telecommunications services in rural areas; (2) whether the Commission should extend

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Notice of Proposed Rulemaking (rel. March 15, 2019) (“Notice”); MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 *et seq.* (2018).

construction deadlines for carriers who purchase or lease spectrum pursuant to the Act; and (3) what incentives are needed to motivate licensees to lease or sell spectrum.³

Fostering more effective use of spectrum in less densely populated rural areas that are all too often neglected when investment plans are developed by operators serving more urban markets as well is important. Unlike large providers, smaller carriers have demonstrated their commitment to providing reliable telecommunications services in rural areas and are eager to expand the reach of their services to more areas. NTCA therefore appreciates the Commission's efforts to develop rules that will create additional opportunities for small, rural carriers to gain access to spectrum on a secondary basis – although these rules should not be viewed as a substitute for continuing to develop meaningful rules that will allow small, rural carriers to gain access to spectrum on a primary basis. NTCA further encourages the Commission to develop rules that prohibit large carriers from warehousing spectrum or from simply selling unused spectrum that covers rural areas to other large carriers when seeking Commission approval to acquire additional licenses.

II. TO FACILITATE THE COMMISSION'S GOAL OF ENSURING ALL AMERICANS HAVE ACCESS TO TELECOMMUNICATIONS SERVICES, NTCA RECOMMENDS ESTABLISHING CONSTRUCTION BENCHMARKS FOR ALL LICENSEES

To promote more effective use of spectrum in rural areas, NTCA recommends the Commission adopt construction benchmarks with penalties for missing them for licenses covering geographic areas that are the size of partial economic areas ("PEAs") or larger and a "use it or lose it" requirement for licenses issued ten or more years ago that do not include construction benchmarks. For both types of licenses, the construction benchmarks or "use it or

³ Notice at ¶ 12.

lose it” requirement could be met by partitioning or disaggregating portions of the licensed spectrum to small, rural carriers.

Establishing construction benchmarks – that include “use it or lose it” as a penalty for noncompliance – is not new to the Commission. The Commission adopted very specific construction benchmarks for 700 MHz licensees, which contain both interim and final construction requirements. In adopting these requirements, the Commission stressed the goal of ensuring “scarcely spectrum resources are put to use and deployed in a manner that services all communities ... regardless of where they live.”⁴ NTCA recommends adopting construction benchmarks for large geographic area licensees that mirror those applicable to 700 MHz licensees, including an accelerated license term for any licensee that fails to meet the interim construction benchmark and an automatic return to the Commission of any areas within the license that do not meet the final construction benchmark. Any penalties could be avoided if a licensee enters a partitioning agreement with a small wireless provider, or providers, for a portion or portions of the service territory that would enable the original licensee to meet the benchmark for the remaining geographic area. The partitionee would then obtain additional time to meet any construction deadlines. At the end of the license term, any geographic areas that were not constructed and therefore reverted back to the Commission would be relicensed by the Commission to carriers dedicated to building them out and providing service to the communities they cover.⁵

⁴ *Id.*

⁵ See, e.g., *Wireless Telecommunications Bureau Announces Process for Relicensing 700 MHz Spectrum in Unserved Areas*, WT Docket No. 06-150, Public Notice, DA 19-77 (rel. Feb. 12, 2019).

Similar “use it or lose it” rules for existing licensees would commence at the start of the next license term for any licenses that were issued ten or more years ago and that do not already include construction benchmarks. These rules would provide for any areas that remain unconstructed after a reasonable period during the next license term to be automatically returned to the Commission for relicensing. Both construction benchmarks and “use it or lose it” rules would ensure that rural areas are not left without service due to licensees opting not to build out service in harder to reach areas.

The experience of identifying actual coverage in the context of Mobility Fund Phase II also underscores the importance of careful Commission review of compliance with construction benchmarks and determinations of actual coverage area.⁶ The goal of making the most efficient use of spectrum possible in rural areas – and in determining what might be appropriate for partitioning or disaggregation – can only be achieved if the Commission has properly identified actual use of that spectrum in the first instance.

III. THE COMMISSION SHOULD NOT ADOPT RULES THAT WOULD RESULT IN REDUCED SPEED OR QUALITY FOR PARTITIONED AND DISAGGREGATED LICENSES.

The Commission seeks comment in the Notice regarding the potential costs of modified performance requirements on the speed and quality of deployment for licenses partitioned or disaggregated pursuant to this rulemaking proceeding.⁷ While NTCA agrees with the Commission’s suggestion that carriers acquiring disaggregated or partitioned spectrum should receive additional time to meet construction benchmarks, in no way should the Commission

⁶ See *FCC Launches Investigation Into Potential Violations of Mobility Fund Phase II Mapping Rules*, News Release (rel. Dec. 7, 2018).

⁷ Notice at ¶ 24.

relax the rules governing service speed and quality. Residents and businesses across rural America need and deserve reliable advanced telecommunications service – not service that is “good enough” or “better than nothing.”⁸ Consequently, the Commission should ensure that any incentives established through the instant rulemaking proceeding do not in any way reduce the quality or dependability of service required for either the original licensee or the entity(ies) that acquire partitioned and disaggregated licenses.

IV. THE COMMISSION SHOULD NOT TREAT SECONDARY ACCESS TO SPECTRUM AS A SUBSTITUTE FOR PRIMARY ACCESS.

While NTCA supports rules that encourage large providers to partition or disaggregate unused portions of their spectrum to small, rural carriers, access to spectrum on a secondary basis should not be treated as a substitute for access to spectrum on a primary basis. The current “digital divide” clearly demonstrates that relying largely on secondary markets to fill the many gaps in rural telecommunications coverage will continue to leave many rural communities unserved.

As described in the Notice, the Commission has permitted licensees to partition and disaggregate their spectrum since 1996.⁹ The Commission has even streamlined the application approval process to make many of these transactions faster and simpler.¹⁰ However, as Commissioner O’Rielly noted, these rules have not led to unused spectrum in rural areas being

⁸ See, e.g., *2018 Broadband Deployment Report*, 33 FCC Rcd 1660, 1665 at ¶ 15 (2018) (identifying 25/3 Mbps as the Commission’s current speed benchmark for a service to be considered to have “advanced telecommunications capability”).

⁹ Notice at ¶ 2.

¹⁰ See 47 C.F.R. § 1.948(j)(2).

placed in the hands of small providers, leaving many rural areas unserved.¹¹ To the contrary, larger wireless providers routinely warehouse unused spectrum and use it as a bargaining tool when the Commission requires the provider to reduce their license holdings as a condition to acquiring another licensee. To obtain Commission approval of the desired transaction, rather than sell the unused portions of their spectrum to small providers, the provider instead sells the spectrum to another large wireless provider, once again losing the opportunity for rural communities to be served by the licenses.¹² As a result, large providers continue to acquire more spectrum while rural areas continue to remain unserved. Congress recognized this problem and directed the Commission to initiate the instant rulemaking to determine what additional incentives could be implemented to motivate large carriers to assign unused portions of their spectrum to small, rural carriers.

To ensure spectrum is placed in the hands of those who will use it, and rural communities will receive the services they need, the Commission must ensure small providers have a meaningful opportunity to participate in, and acquire spectrum through, future auctions. Section 309(j) of the Communications Act of 1934, as amended. (“the Act”) compels the Commission to adopt safeguards to protect the public interest in the use of the spectrum and to promote the purposes of the Act – which include making radio communication service available “to *all* the people of the United States.”¹³ Section 309(j) further articulates certain objectives, including:

¹¹ Statement of Commissioner Michael O’Rielly, *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38 (rel. March 15, 2019).

¹² See, e.g., AT&T Inc. and Verizon Wireless Seek FCC Consent to Assign and Transfer Control of Licenses, Spectrum Leasing Arrangements, and Related Authorizations – Amended and New Application, *Public Notice*, DA 08-2468 (rel. Nov. 7, 2008).

¹³ 47 U.S.C. § 151 (emphasis added).

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public *including those residing in rural areas*, without administrative or judicial delays; and

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people *by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies....*¹⁴

In Section 309(j)(4) of the Act, Congress further mandated that the Commission:

(B) include performance requirements such as appropriate deadlines and penalties for performance failures, *to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees*, and to promote investment in and rapid deployment of new technologies and services; [and]

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, *prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small business, rural telephone companies*, and businesses owned by members of minority groups and women, *and (iii) investment in and rapid deployment of new technologies and services.*¹⁵

Rules providing for small, rural carriers to gain access to spectrum on a primary basis are necessary as a practical matter as well because there is no guarantee large carriers will choose to partition or disaggregate unused portions of their spectrum to small, rural carriers even with incentives such as those proposed in the Notice.¹⁶ Consequently, the Commission must take

¹⁴ 47 U.S.C. §§ 309(j)(3)(A)(B) (emphasis added).

¹⁵ 47 U.S.C. §§ 309(j)(3)(B)(C) (emphasis added).

¹⁶ See Comments of NTCA – The Rural Broadband Ass’n, *Promoting Investment in the 3660-3700 MHz Band*, GN Docket No. 17-258 (filed Dec. 28, 2017), citing Richard Marsden, Dr. Chantale LaCasse, and Jonathan Pike, *Local and Regional Licensing for the US 600 MHz Band* (Jan. 2014) (“there are many examples of large operators acquiring spectrum from smaller

Section 309(j)'s directive into account not only when considering rules that would encourage large carriers to enter into agreements with small, rural carriers to partition or disaggregate existing spectrum, but also when establishing rules governing the makeup of auctions for new licenses.

NTCA's members have a long history of providing quality advanced telecommunications services to their communities¹⁷ and are eager to acquire additional spectrum in order to enhance their existing services or expand the areas that can be reached by these services. Developing rules that encourage large providers to partition or disaggregate their spectrum through agreements with small, rural carriers can help ensure rural communities receive the telecommunications services that are so necessary for residents and businesses to thrive. However, the Commission should also ensure that future spectrum offerings are auctioned in a manner that enables meaningful auction participation by small, rural carriers and the availability of essential telecommunications service to more homes and businesses throughout rural America. Both of these methods for ensuring small, rural carriers have access to spectrum are necessary to achieve the objectives established in Section 309(j).

V. CONCLUSION

NTCA supports the Commission's goal of ensuring small, rural carriers have access to spectrum and such spectrum is used to provide service in rural as well as urban areas throughout

players ... [but] little recent history of the larger carriers leasing, disaggregating or partitioning large sections of spectrum where they already have service.”).

¹⁷ See, e.g., NTCA's Smart Rural Community® Showcase Award Winners, available at <https://www.ntca.org/member-services/programs/smart-rural-community/src-showcase-awards/src-showcase-award-winners> (last visited May 17, 2019) (describing significant contributions NTCA members have made in their community by deploying broadband services).

the country. Establishing construction benchmarks for all licensees that do not allow for spectrum to be warehoused and ensuring auction rules allow for meaningful participation by small, rural carriers are both necessary to ensure spectrum licensees provide service in small, rural areas. Consequently, NTCA recommends the Commission adopt rules that establish construction benchmarks for all licensees, including incentives to partition and disaggregate portions of the licenses to small, rural carriers as well as auction rules that will allow for meaningful participation by small, rural carriers.

Respectfully submitted,



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June 3, 2019