

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

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

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

NTCA – The Rural Broadband Association (“NTCA”)¹ hereby submits these Reply Comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the above captioned proceeding.² NTCA’s members have a vested interest in increasing the availability of advanced telecommunications services in rural areas and are supportive of efforts by the Federal Communications Commission (“Commission”) to increase the diversity of spectrum access and the provision of service to rural areas in furtherance of the goals set forth by Congress in the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (“MOBILE NOW Act”).³

NTCA agrees that the Commission should implement an Enhanced Competitive Incentive Program (“ECIP”) to promote greater competition in and expanded access to advanced telecommunications services in rural areas and spectrum access by smaller carriers and Tribal

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 also provide fixed and mobile wireless, video, satellite, and other competitive services in rural America.

² *In the Matter of Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket NO. 19-38, Further Notice of Proposed Rulemaking, (rel. Nov. 19, 2021). (“FNPRM”)

³ Consolidated Appropriations Act, Pub. L. No. 115-141, Division P (RAY BAUM’S Act of 2018), Title VI (MOBILE NOW Act), § 601 et seq. (2018).

Nations. The Commission proposes two types of transactions that would be eligible for certain benefits: (1) providing spectrum to small carriers or Tribal Nations, or (2) committing to serve a certain minimum amount of rural area. Under the proposal, an entity qualifying for both prongs must choose one or the other, but not both. NTCA agrees that a transaction under either prong provides sufficient incentive to participate in ECIP and a qualifying entity should not be permitted to take advantage of both prongs.

Defining Carriers

The Commission proposes to adopt the statutory definitions of “covered small carrier” and “carrier” in the MOBILE NOW Act for use in the ECIP.⁴ Specifically, the Commission proposes to define “covered small carrier” as a carrier that “(A) has not more than 1,500 employees (as determined under section 121.106 of title 13, Code of Federal Regulations, or any successor thereto); and (B) offers services using the facilities of the carrier.” It proposed to define “carrier” as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy.” NTCA supports these definitions as consistent with statutory scope and intent.

Thresholds

The Commission seeks comment on the appropriate transaction minimum thresholds. NTCA generally supports the proposal that a qualifying transaction under the rural transaction prong must include a minimum amount of “Qualifying Geography.”⁵ A required minimum square mileage is preferable to a percentage of a market, which may force a potential assignee to obtain more territory than needed or desired. However, the rule should apply broadly and not

⁴ FNPRM at ¶ 17.

⁵ FNPRM at ¶ 27.

only to transactions for “license areas consisting of a Partial Economic Area or smaller.”⁶ The licensing of spectrum according to areas that are larger than Partial Economic Areas (“PEA”) operates as a *de facto* bar for small carriers seeking spectrum at auction. To limit ECIP partitioning transactions to PEA or smaller license territories would continue to exclude small carriers from serving rural territory in larger licensed markets.

The Commission recognizes that a single transaction may involve multiple licenses to obtain a specific rural area and proposes to apply the ECIP benefits to each license that contains some portion of the geographic territory. NTCA supports this position but does not believe that eligibility should be limited to areas that have a census-defined population.⁷ Wireless service is needed to support roads that cross rural territory, park land, agricultural applications, and Internet of Things devices. ECIP benefits should serve the goal of a fully connected population.

Defining “Tribal Lands”

The Commission seeks comment on the appropriate definition of “Tribal Lands” for purposes of the ECIP. NTCA supports consistency and the utilization of the definition of the Rural 5G Fund, Lifeline Program, Affordable Connectivity Program, and other high-cost programs. That is that “‘Tribal Lands’ include any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions. . . as well as Hawaiian Home Lands . . . and any land designated as such by the Commission.”⁸

⁶ FNPRM at Appendix A.

⁷ FNPRM at ¶ 27.

⁸ 47 C.F.R. ¶54.5. *See also*, 47 C.F.R. ¶27.1204 (b)(2).

Construction and Operation Obligations

NTCA supports tying ECIP benefits to construction and operation obligations. This will facilitate greater coverage and connectivity in rural areas. The proposed five-year license extension will incentivize secondary market transactions for licensees who require additional time to meet their buildout requirements.

However, the Commission should incentivize not just those who are in danger of not meeting construction deadlines to part with unused spectrum but should also encourage carriers who have met their construction benchmarks to enter into partitioning and disaggregation agreements. The structure of construction benchmarks, especially those that are population based, means that a provider can meet its regulatory obligations, while still holding swaths of unused spectrum. To that end, NTCA continues to advocate for “use it or lose it” requirement for licenses.⁹ At the end of the specified period, any license area that remains unserved would be returned to the FCC for relicensing. Construction benchmarks combined with “use it or lose it” rules would help ensure that rural areas are not left without service because licensees opt to not build out service in harder to reach portions of their licensed areas.

The Commission asks for comments on alternatives to population-based construction requirements.¹⁰ NTCA has long supported geographic based construction requirements, combined with “use it or lose it” provisions.¹¹ Population based construction requirements in almost all instances result in urban-focused service and lack of availability in rural areas.

⁹ See, NTCA 2019 Comments.

¹⁰ FNPRM ¶51.

¹¹ See, e.g., *NTCA Comments*, Amendment of Parts 1, 21, 73,74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162, *et. al.*, WT Docket No. 03-66, *et. al.*, at 6-7 (filed September 8, 2003).

Automatic Termination

NTCA opposes the proposal to terminate automatically any licenses assigned as part of an ECIP transaction where the assignee of the license fails to meet the program requirements or to deny the assignor the ability to participate in future ECIP transactions. Such measures would deter carriers from entering into ECIP transactions. Instead, if an assignee fails to meet build out requirements, the portion of the area that remains unserved should revert to the Commission under “use it or lose it” rules, as described *infra*.

CONCLUSION

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.

Respectfully submitted,



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