

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Partitioning, Disaggregation, and Leasing of) WT Docket No. 19-38
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 Federal Communications Commission’s (“Commission”) Second 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 Commission to increase the diversity of spectrum access and the provision of service to rural areas.

In the *Report and Order* that accompanied the FNPRM, the Commission modified existing partitioning, disaggregation, and leasing rules to provide incentives for licensees to partition or disaggregate spectrum to unaffiliated small carriers or Tribal Nations in any location, whether urban, suburban or rural, and to any unaffiliated entity that commits to operating in, or providing service to, rural areas.³ The FNPRM seeks comment on expanding these incentives to

¹ NTCA–The Rural Broadband Association (NTCA) is a national association representing approximately 850 rural community-based providers that operate networks offering broadband and voice services in 44 states.

² *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Report and Order and Second Further Notice of Proposed Rulemaking (rel. July 18, 2022) (“FNPRM”).

³ *Id.* at ¶ 21.

small non-common carriers.⁴ In particular, the FNPRM seeks comment on a “use or offer to share” safe harbor metric for renewal and construction whereby a licensee would show that: (1) the licensee is using the licensed spectrum to meet a private internal need within the licensed area; and (2) the licensee has an ongoing public offering to sell or lease any unused geographic area under reasonable terms and conditions.⁵

NTCA previously encouraged the Commission to adopt “use it or lose it” rules for licensees of large geographic areas to prevent licensees from warehousing spectrum and to make spectrum available to smaller licensees willing to serve the less populated geographic areas.⁶ Commenters who responded to the FNPRM likewise support modifying the Commission’s rules to incentivize making spectrum available in rural and remote areas while also accounting for challenges faced by providers offering service in these areas.⁷ Enterprise Wireless Association (“EWA”), for instance, encouraged the Commission to allow licensees to satisfy their license renewal requirement via a public offering to sell or lease any unused spectrum.⁸ As EWA noted, offering unused spectrum for sale or lease through a public offering would likely result in the spectrum being put to use faster than if the spectrum was returned to the Commission and reissued through a Commission spectrum auction.

⁴ *Id.* at ¶ 108.

⁵ *Id.* at ¶ 121.

⁶ *See* Reply Comments of NTCA – The Rural Broadband Ass’n, WT Dkt 19-38 (July 1, 2019) at p. 5.

⁷ *See* Comments of CTIA, WT Dkt 19-38 (Oct. 20, 2022) at pp. 6-7 (“CTIA Comments”); Comments of the Rural Wireless Ass’n, WT Dkt 19-38 (Oct. 30, 2022) at p. 3 (“RWA Comments”).

⁸ *See* Comments of Enterprise Wireless Ass’n, WT Dkt No. 19-38 (Oct. 20, 2022) at p. 7.

RWA also supported the use of a public database to identify spectrum being offered for sale or lease along with the applicable terms and conditions under which the spectrum is being offered; however, RWA encouraged the Commission to adopt important safeguards that would better ensure the Commission's goal of making wireless service readily available to remote, rural and Tribal areas is achieved. Specifically, RWA recommended the Commission create a public database identifying the spectrum being made available and the applicable terms and conditions under which the spectrum is offered.⁹

NTCA agrees with commenters that a public database could be a useful tool for promoting spectrum availability in remote and rural areas due to the database being accessible by all and simplifying the process by which parties interested in serving rural communities and anchor institutions could seek out available spectrum. Nevertheless, to best ensure the spectrum does not linger in a public offering indefinitely, and thus unused, NTCA supports RWA's recommendation that any spectrum remaining unused after the second license renewal term be returned to the Commission for subsequent relicensing.¹⁰

The FNPRM also requested comment on whether modifying existing rules to provide all Wireless Radio Services ("WRS") with flexible use licensees as an alternative to population-based requirements would further incentivize an open market for spectrum in remote and rural areas, or for small providers, by offering a demand-based construction requirement in lieu of a population-based requirement.¹¹ NTCA has long advocated for alternatives to population-based

⁹ RWA Comments at p. 3.

¹⁰ See RWA Comments at p. 4.

¹¹ FNPRM at ¶¶ 113-115.

construction benchmarks because population-based benchmarks allow providers to satisfy construction requirements by providing service only to the most populated portions of a service territory.¹² Population-based construction requirements may also limit licensees' ability to meet private communications needs.

NTCA supports a renewal safe harbor for licensees seeking to meet their private communications needs using demand-based initial construction; however, NTCA agrees with RWA that proposed zones should be defined with minimum signal level requirements and time limitations to prevent additional spectrum warehousing.¹³ Similarly, NTCA does not support providing additional flexibility and expanding the renewal safe harbor to all WRS licensees.¹⁴ The goal of this proceeding is to increase spectrum usage in rural areas and combat spectrum warehousing. Thus, while NTCA agrees that the Commission should “account for the unique challenges of providing service in rural and remote areas and provide increased incentives for investment,”¹⁵ and NTCA fully supports rules that provide alternatives to population-based construction benchmarks, the Commission must be cautious and not inadvertently offer a loophole that in fact encourages providers to continue retaining spectrum that is not being utilized.

¹² See, e.g., Comments of NTCA – The Rural Broadband Ass’n, WT Dkt No. 19-38 (June 3, 2019) at pp. 2-4.

¹³ RWA Comments at pp. 2-3. “The core usage zone should be defined as an area covered by a minimum signal level sufficient to provide 5G 3GPP, Release 17 or higher, with a minimum speed of 35 megabits per second (Mbps) down and 5 Mbps up (or equivalent). The expansion zone should be defined as two miles with a minimum signal level sufficient to provide 5G 3GPP, release 17 or higher with a minimum speed of 35 Mbps down and 5 Mbps up (or equivalent) to be built out within three years of the licensee certifying completion of the core zone (which must occur prior to the buildout deadline). The protection zone should be defined as three miles beyond the expansion zone if and only if there is expansion beyond the core zone in a timely period. If no timely expansion occurs, the protection zone should be reduced to one mile beyond the core zone.”

¹⁴ See CTIA Comments at p. 2.

¹⁵ *Id.*

CTIA, for example, advocates for an alternative performance requirement based on a licensee serving at least three critical locations (*e.g.*, health care facilities, schools, and government buildings) anywhere in the license area.¹⁶ While the approach is innovative, this would permit spectrum holders to retain valuable spectrum while rural homes and businesses remain unserved. The Commission should instead use every opportunity to encourage license holders to use or part with spectrum, not create safe harbors that could put large swaths of territory in wireless purgatory to the detriment of rural homes and businesses.

As described above, NTCA supports utilizing a database and renewal safe harbor as methods of allowing those interested in and willing to provide wireless service to rural and remote areas to identify unused spectrum offered for sale by licensees; however, the spectrum licensees still must have an incentive to sell or lease unused portions of their spectrum, especially to small, rural providers. Additionally, safeguards such as those proposed by RWA must be put in place to ensure the Commission's objective of placing unused spectrum in the hands of those capable of providing wireless communications services to remote and rural areas is accomplished.

Respectfully submitted,



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¹⁶ *Id.* at p. 5.