

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

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| In the Matter of |) | |
| |) | |
| Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services |) | WT Docket No. 10-112 |

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in response to the Further Notice of Proposed Rulemaking in the above referenced docket.²

NTCA appreciates the Commission’s efforts to ensure that wireless communications networks are widely deployed so that every American, including those in rural locations, can benefit from a variety of communications offerings made available by Commission wireless licenses.³

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.

²Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, WT Docket No. 10-112, FCC 17-105 (Rel. Aug. 3, 2017) (“FNPRM”).

³ FNPRM, ¶ 98.

As the Commission recognizes, there exists a divide between the availability of wireless services in urban areas and those available in less populated, rural areas. In rural locations, deployment costs are often higher and there are fewer subscribers from which to recover an investment. Although the Commission's spectrum licensing rules typically contain construction requirements, providers have been able to meet benchmarks without serving the most rural areas of a service territory. This dynamic is particularly evident when spectrum is licensed according to large geographic territories and when build out requirements are based on population, rather than geographic measurements.

Licensing spectrum according to large geographic areas has contributed significantly to the rural-urban wireless divide. The larger the geographic license, the more likely it is that significant rural territory will be lumped together with highly-desirable (expensive) urban territory. The larger the geographic license territory, the more likely it is that only large, well-financed providers can afford to obtain it and then to recover their investment, they must concentrate their build out where the returns on investment are greatest – the more populated areas. Their business plan may not even include rural service. For this reason, significant swaths of spectrum may lay fallow. Conversely, when spectrum is licensed according to small geographic areas, spectrum covering rural areas is more affordable and providers with a specific interest in serving rural communities obtain it. Build out requirements tied to small geographic areas directly results in rural coverage, while also ensuring urban coverage by those who acquire urban area licenses.

In this proceeding, the Commission recognizes the Congressional directive requiring it to promote rural wireless service.⁴ But the Commission fails to acknowledge the companion

⁴ FNPRM, ¶ 98, citing 47 U.S.C. § 309(j)(3)(A) and 47 U.S.C. § 309(j)(4)(B).

Congressional directives to: (1) avoid an excessive concentration of licenses and disseminate them among a wide variety of applicants, including small businesses and rural telephone companies;⁵ and (2) ensure that small businesses and rural telephone companies are given the opportunity to participate in the provision of spectrum-based services.⁶ It is no accident that directives involving ensuring wireless service to rural residents and directives involving opportunities for rural telephone companies all appear in Section 309(j). Congress recognized that rural telephone companies and small businesses have the incentive, desire and ability to provide wireless service to their rural communities. The Commission should consider actions in this proceeding in light of the full context of Section 309(j) and not just select sections. The large carriers with the bulk of spectrum today have demonstrated a continued unwillingness to serve rural areas. Rather than adopt stricter policies that try to force large providers to serve rural consumers, the Commission should look to policies that put spectrum into the hands of providers who are committed to investing in rural communities.

To address the urban-rural disparity and encourage investment in wireless networks and promote the rapid deployment of mobile services to rural Americans, the Commission seeks comment on new obligations that it believes may facilitate spectrum build out. NTCA is generally supportive of measures that prevent spectrum warehousing and that encourage providers to part with spectrum they are not putting to good use. However, the Commission must be cautious to not upend the business plans of small providers who developed a build out strategy based on the Commission's rules in effect at the time the applicants decided to enter an auction. Rural wireless providers are already operating on thin margins and facing uncertainty as

⁵ 47 U.S.C. § 309(j)(3)(B).

⁶ 47 U.S.C. § 309(j)(4)(D).

the Commission finalizes rules for Mobility Fund II.⁷ Additional coverage requirements may not be financially feasible for small providers as resources are exhausted as they struggle to keep up with the upgrades and service offerings of the large carriers and especially if there exist no additional potential subscribers from which to recover investment. To the extent the Commission moves forward, it must recognize the effect geographic license territories have on spectrum build out. Small providers with already small geographic license territories are serving rural communities, simply because their licenses only cover rural communities. The Commission should focus its efforts on ensuring that large providers with wide swaths of unused spectrum are appropriately focusing efforts on meeting public interest obligations and serving rural as well as urban and suburban licensed territory.

To that end, going forward, NTCA recommends tying rural build out requirements to each construction benchmark. For example, if a construct benchmark for a large geographic area requires build out to a certain percentage of the geographic area's population, there should be a corresponding and proportional rural specific construction benchmark. This will force large providers with large spectrum resources to build out rural areas, find a partner to do so through leasing, partitioning, or other arrangements, or risk losing at least a portion of the spectrum resource.

The Commission also seeks comment on possible penalties for failing to build out rural areas during a renewal license period with an additional construction requirement.⁸ Among the possible options to be considered are the following approaches: (1) "keep what you serve," under which the licensee's authorization would terminate automatically for those geographic

⁷ See, *Connect America Fund*, WC Docket No 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Order on Reconsideration, Second Report and Order (August 4, 2017).

⁸FNPRM, ¶¶114-116

portions of its license area in which the licensee is not providing service after an additional construction deadline; (2) “use or offer,” in which a licensee would retain its entire license area if it failed to meet an additional construction obligation, but it would be required to negotiate in good faith with any party seeking to acquire or lease spectrum in the unserved area of the license; or (3) total loss of the license or reduction in license area, including loss of areas that the licensee serves, as a penalty for failure to satisfy an additional construction obligation in a renewal term.

NTCA supports additional renewal construction benchmarks on a prospective basis for large providers with large license territories. NTCA is previously on record supporting a “keep what you serve” approach to spectrum licensing when spectrum is licensed according to large geographic areas. This approach forces providers to serve an area or have it turned back to the Commission for licensing to someone who is interested in serving the select unserved geographic area. This approach pushes providers to build out an entire geographic service territory and encourages collaboration between providers who may be interested in serving different geographic areas within a single spectrum asset. NTCA is also cautiously supportive of a “use or offer” approach to licensing. This approach may incent large providers to seriously work with rural carriers interested in serving rural territory. However, it is the small providers’ experience with “good faith” negotiation requirements in a variety of scenarios that the large entity has the power to dictate the terms of the “negotiation” and there is often very little, if any, compromise. When the parties to a negotiation are unevenly matched, good faith negotiations are rarely negotiations at all and tend to not end favorably for the party in the weaker bargaining position. Therefore, if the Commission determines that it will condition license renewals on a build out requirement with a use or offer approach for unserved areas, the Commission must specifically

determine the parameters of good faith offers and negotiations and create a simple and inexpensive process for carriers to lodge complaints against large providers who fail to so act.

CONCLUSION

NTCA supports the Commission's goals of encouraging investment in wireless networks, facilitating access to scarce spectrum resources, and promoting the rapid deployment of mobile service to rural America. The rural-urban wireless divide is exacerbated when spectrum is licensed and auctioned according to large geographic areas. Only large providers can afford large geographic area licenses and to recoup their investment, they must concentrate build-out on the more profitable urban areas. Rural consumers are harmed when providers with the ability and interest in serving them are unable to affordably obtain spectrum covering rural territory. The Commission should consider policies that ensure that rural providers have the incentive to participate in the provision of wireless service and that encourage large providers to utilize or part with large swaths of currently unused or underutilized rural spectrum.

Respectfully submitted,



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