

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

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90,)	WT Docket No. 10-112
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, Second Report and)	
Order and Further Notice of Proposed)	
Rulemaking)	

COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking seeking comment on methods to facilitate continued investment by Wireless Radio Service (WRS) licensees during renewal terms to help close the digital divide between urban and rural areas. These methods include the adoption of new construction obligations after WRS licensees renew their licenses. RWA’s comments focus on the Commission’s proposals to adopt additional construction obligations post-renewal to ensure that spectrum does not lie fallow.

¹ RWA is a Washington, DC–based trade association that ensures wireless carriers with fewer than 100,000 subscribers have a strong voice in our nation’s capital. RWA’s members have joined together to speed the delivery of new, efficient, and innovative communications technologies to underserved rural communities across the United States of America. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone/broadband companies that are passionate about ensuring rural America is not left behind.

I. RWA SUPPORTS A POST-RENEWAL CONSTRUCTION OBLIGATION FRAMEWORK FOR THE RELICENSING OF UNUSED SPECTRUM

RWA appreciates the Commission's efforts to close the digital divide between urban and rural areas and fully supports a post-renewal regulatory framework that is designed to ensure that unused spectrum does not lie fallow in rural areas. Because the FCC's current rules do not require any additional construction after the initial license term, large and nationwide carriers often do not have to construct in rural areas where there are fewer subscribers and costs are greater. RWA's members have invested significant resources toward new and innovative wireless deployments in rural areas to serve rural consumers. Unlike large or nationwide wireless providers, rural-based wireless providers are located in the same communities that they serve and have a much greater awareness of and concern for the needs of rural consumers. For that reason, they take a different business approach than large and/or nationwide providers. Small and rural-based wireless carriers' business decisions are directly influenced by community need, and not solely by profit. Their mission is to offer vital communications links to consumers who live, work and travel in rural and remote areas that other providers often do not serve. Customer service is always a top priority for small and rural-based wireless providers because the customers include the provider's employees' own friends, family, and neighbors.

Rural carriers also face significant spectrum resource limitations. Since 1994, the FCC has auctioned spectrum. However, it is difficult for those that require access to spectrum in rural areas to gain access to that spectrum due to the packaging of the licenses and the cost to acquire spectrum. These licenses often include urban areas or are so large that the rural participant cannot afford to acquire the rural portions of the license area that they desire to serve.

The secondary market for fallow spectrum in rural areas has also been fraught with issues. While the FCC has established the ability to partition and disaggregate spectrum to parse

out smaller geographic areas, the transactional costs to do so often outweigh the value of the spectrum. Spectrum leasing and spectrum management have also been options for utilizing fallow spectrum in rural areas, but these arrangements place rural wireless carriers at the mercy of the spectrum licensee that usually has no incentive to lease the spectrum – especially when the licensee’s build out requirements have been met. Therefore, it is imperative that any new regulatory construction requirement imposed as part of the license renewal process ensures that existing licensees use the spectrum in rural areas or are incented to sell or lease it to others who are willing to put it to use.

The FCC states its intention to take a fresh look at construction obligations during license renewal terms, and seeks comment on a range of possible actions that may advance its goal of increasing the number of rural Americans with access to wireless communications services. RWA fully supports this goal and supports a five-year post-renewal construction requirement where licensees must demonstrate coverage to 90% percent of their license area to be able to keep the entire licensed area. If a licensee is not providing service to 90% of its geographic license area after the post-renewal five-year period, any unserved area should be made available for re-licensing to providers that want to serve it, similar to the framework outlined in the FCC’s recent 700 MHz unserved area re-licensing Public Notice.² Such an obligation at the post-renewal five-year mark would encourage investment in wireless networks and facilitate access to spectrum resources where no investment is made, thereby promoting the rapid deployment of wireless services to rural Americans. After the renewal date, there should also be an expectation that the licensee will lose any unserved area not served at the end of the next license term.

² *Wireless Telecommunications Bureau Seeks Comment on Process for Relicensing 700 MHz Spectrum in Unserved Areas, Public Notice*, WT Docket No. 06-150, DA 17-810, rel. Aug. 28, 2017 (“Notice”).

Invoking a keep-what-you-serve approach at the end of the renewal term will allow unserved area to be relicensed to anyone willing to apply to serve it.

RWA supports imposition of a five-year post-renewal construction obligation applied prospectively to all existing, new and future licensees of flexible geographic licenses. RWA proposes that the Commission apply the obligations starting with licenses that are up for renewal in 2019. Beginning in 2019, upon renewal, a licensee would have five-years to provide service to 90% of the entire geographical market. The licensee should be required to make a showing demonstrating reliable service coverage, and where a licensee fails to construct and serve 90% of its geographical service area, any unserved area would be available for relicensing. Likewise, at the end of the renewal term, any unserved area not served should be made available for relicensing to anyone willing to apply to serve it.

II. RWA SUPPORTS A KEEP-WHAT-YOU-SERVE APPROACH TO WRS RELICENSING

Following the five-year post renewal showing, if a licensee has not covered 90% of the geography of its license area or at the end of the renewed license term if a licensee has not covered 100% of the geography of its license area, RWA believes that any unserved areas should be available for others to serve. This “keep-what-you-serve” approach allows licensees to continue to provide service in the geographical areas constructed and operational, while ensuring that rural spectrum does not lie fallow. Under the “keep-what-you-serve” approach, if a licensee fails to meet its five-year post renewal construction deadline or its end of renewal term 100% coverage requirement, its authorization to operate will terminate automatically for those geographic areas where it is not providing service to 90% of the geography on the date of the post-renewal five-year deadline or to 100% at the end of the renewed license term, and those areas will become available for reassignment by the Commission. This approach provides an

incentive for existing licensees to continue to invest in the buildout of their market after renewal of a license, and also provides a clear path toward better wireless broadband service in rural areas. Other possible approaches fail to do so. For example, requiring licensees to engage in “good faith negotiations” with a third party that wishes to serve unserved area merely serves to mire the process in a regulatory limbo wherein rural carriers have no recourse (other than prohibitively expensive complaint proceedings) if negotiations do not meet the “good faith” threshold. Meanwhile, a total loss penalty would be unfair to those licensees that invested significant resources in the areas they currently serve. The “keep-what-you-serve” paradigm strikes the perfect balance.

III. RWA SUPPORTS A TWO-STEP RE-LICENSING APPROACH FOR UNSERVED AREA

With respect to any unserved area that is available after the five-year renewal period or end of the license term discussed above, the FCC should adopt a two-step relicensing process like that recently proposed for 700 MHz unserved area. Relicensing would begin with a 30-day Phase 1 filing window, during which the original licensee that failed to construct is barred from applying to relicense that area. The Commission should also bar any applicant that has any interest or ownership in, or any control of, the original licensee and any applicant in which the original licensee has any interest, ownership, or control. At the end of the 30-day Phase 1 filing window, the FCC would issue a public notice listing applications found acceptable for filing during Phase 1. Applications proposing areas overlapping with other applications would be deemed mutually exclusive and subject to auction. During Phase 2, interested applicants, including those barred during Phase 1, could file applications for available unserved areas that were not licensed during Phase 1 or for which there are no pending applications. Phase 2 applications deemed acceptable for filing would be placed on public notice for 30 days, during

which petitions to deny and mutually exclusive applications may be filed. By adopting relicensing rules similar to those proposed for the 700 MHz service, the FCC will help achieve its goal of harmonizing the rules for most wireless radio services.

As to the relicensing process, the FCC should grant a one year construction term for unserved area licensees and require them to construct 100 percent of their license area, subject to a 10 % *de minimis* rule exception to account for legitimate reasons that may prompt a need for a license modification during the construction period.³ Accordingly, a *de minimis* shortfall in meeting the 100% coverage requirement should be permitted without subjecting the licensee to automatic termination, provided that the licensee submits an application to reduce the size of the area it is required to cover.

III. CONCLUSION

RWA appreciates the Commission's efforts to adopt post-renewal construction obligations to ensure that spectrum does not lie fallow and rural Americans are served. RWA encourages the FCC to adopt a five-year post renewal construction obligation, consistent with other wireless services, such as 700 MHz, and where a licensee fails to serve its market, the FCC should re-license the spectrum to wireless providers that will serve it.

³ Recently, RWA filed comments in FCC's proceeding concerning the proposed process for relicensing 700 MHz spectrum in unserved areas and explained to the FCC the reasons it proposed a 10 percent *de minimis* standard. See The Rural Wireless Association, Inc., Comments (April 27, 2017). See Also *Wireless Telecommunications Bureau Seeks Comment on Process for Relicensing 700 MHz Spectrum in Unserved Areas, Public Notice*, WT Docket No. 06-150, DA 17-810, rel. Aug. 28, 2017 ("Notice").

Respectfully submitted,

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