

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80)	WT Docket No. 10-112
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)	

To: The Commission

REPLY COMMENTS OF THE BLOOSTON LICENSEES

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its wireless licensee clients (the “Blooston Licensees” or “Blooston”), respectfully submits, pursuant to Section 1.415 of the Commission’s Rules, the foregoing reply comments on the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding concerning the proposed establishment of additional construction and/or service requirements for wireless licensees at each ensuing license renewal.

A review of the record in this proceeding reflects that there is substantial opposition to the imposition of additional, post-renewal build out obligations on rural carriers, and on licensees that use narrowband spectrum for paging, dispatch and private internal communications. The record also reflects universal opposition to the outright cancellation of a license that is being used to provide service to the public but falls short

of any additional buildout obligations adopted by the Commission. It is also apparent that the Commission currently has sufficient tools to encourage meaningful rural build out without an outright license cancellation. There is also substantial support in the record that if the Commission proceeds with its proposal, it must be on a prospective basis only.

I. Additional Buildout Requirements May Not Be Economically Feasible for Smaller, Rural Licenses

The Blooston Licensees have urged the Commission not to make its proposal applicable to rural licenses (Blooston Comments at 1, 5). While the Blooston Licensees believe that the Commission must encourage rural coverage, the points made by commenters such as NTCA – The Rural Broadband Association (“NTCA”), CTIA and Verizon Wireless support the case for tempering any additional, post-renewal construction obligations. (See, e.g., Comments of NTCA at 3; Comments of CTIA at 12; Comments of Verizon Wireless at 11; Comments of American Messaging at 3; Comments of Critical Messaging Association at 1 and 3; Comments of Sensus USA and Sensus Spectrum LLC at 1). NTCA agrees with Blooston’s showing that the Commission must be very careful, inasmuch as rural carriers operate on extremely thin margins. (Comments of NTCA at 4). NTCA also points out that rural carriers face uncertainty about the coverage they can afford to provide, as the Commission finalizes its Mobility Fund II rules. *Id.* Likewise, the Commission must take steps to ensure that already formulated business plans based upon current rules are not upended merely for

the sake of changing the buildout rules at this late date. (Comments of NTCA at 3). To this point, Commissioner Rosenworcel correctly observed that:

[f]inancing, constructing, and operating these facilities in remote areas are not easy. Tough terrain, trying weather, and limited populations make deployment harder [in rural, sparsely populated areas] than in more populated locales.¹

The record in this and other proceedings document that the costs associated with rural buildouts are much higher per POP than buildouts in suburban or urbanized areas – whether it be due to limited population base, difficult terrain, unforgiving weather conditions or a combination of the above. Simply put, while there is no dispute that there is a need to meet the unmet demand for broadband services in rural America, requiring small, rural carriers to buildout their systems to all or nearly all of the geography in their license area is not financially sustainable – especially since the Commission has recognized that “in some areas of the country with low population densities, it is simply uneconomic for several carriers to build out” multiple wireless systems.² It is noteworthy that there are entire counties with fewer than 200 persons, or with population densities of less than 0.17 persons per square mile – almost all of which are larger in geographic area than each of the counties which comprise the Washington, DC metropolitan area.³

¹ Statement of Commissioner Jessica Rosenworcel, Bringing the Connected Future to All Americans, at 5 (Dec. 30, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-342844A1.pdf.

² *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rule Making, 25 FCC Rcd 4181, 4192 ¶ 23 (2010).

³ As an example, Prince William County, Virginia is 348 square miles with a population of 455,210, resulting in a population density of 1,308.07 persons per square mile. Loving County, Texas is 669 square miles with a population of only 113 persons, resulting in a population density of 0.168 persons per square mile.

Requiring rural licensees to construct coverage in virtually uninhabited rural areas for the sake of obtaining a license renewal would be contrary to the Commission's long-standing policy of balancing its objective of putting spectrum to productive use while not forcing an uneconomic buildout. (Comments of CTIA at 13-14). To this end, the Commission has adapted its 600 MHz service rules in order to "ensure that the 600 MHz band spectrum is put to use expeditiously while providing 600 MHz licensees with the flexibility to deploy services according to their business plans."⁴ Likewise, the Commission took a similar tact with the AWS-4 spectrum. (Comments of CTIA at 13). Thus, the public interest mandates that the approach for rural buildout balances the service needs of rural America against the realities of providing that service in a sustainable manner.

II. The Commission has Other Alternatives to Encourage Rural Buildout Without Creating an Unduly Burdensome Regulatory Regime

There is universal opposition to the penalty of a total cancellation of a license if additional, post-renewal obligations are not met. Such sanction could actually terminate a valuable service to rural communities. The question then becomes what measures short of total cancellation are appropriate to create adequate incentives to cover rural citizens? The Commission has various regulatory tools to encourage sufficient rural build out.

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6877 ¶764 (2014).

a. Rural Licenses Should be Subject to Incentives in order to Achieve Rural Buildouts

As both Blooston and NTCA note, rural carriers generally hold smaller licenses (e.g., BTAs, CMAs) that by definition include rural communities. These carriers have an incentive to serve rural communities within their license areas, since those communities include their rural telephone customers and, in the case of cooperatives, their owners. In contrast, larger licenses (e.g., MTAs and REAGs) feature urban and suburban areas that will be readily served by the large carriers winning them, while substantial rural areas go unserved. Therefore, the Blooston Licensees reiterate their support for a requirement that the larger carriers must serve rural areas commensurate to the general buildout obligation at each build out bench mark.

Blooston further supports an approach whereby rural licensees would not be subject to mandatory additional buildout obligations, but instead would be subject to the “use or offer” approach discussed in paragraph 115 of the FNPRM (whereby the licensee would be required to negotiate in good faith with any third party seeking to acquire or lease spectrum in unserved areas). For purposes of this rule, a “rural licensee” would be a carrier qualifying as a “rural telephone company” under the Communications Act, or its affiliate.

For other licensees, Blooston would support a “keep what you serve” approach, with the caveats previously proposed by Blooston: (1)When reclaiming any unserved

area, the Commission must provide the incumbent with a sufficient protection buffer in order to ensure that there is no harmful interference from any other co-channel licensee (i.e., the incumbent licensee should not have to curtail the service it is providing at its boundaries under the traditional power reduction requirement, and any winner of the auction for reclaimed spectrum should have to fully protect the incumbent's existing operations); and (2) the Commission should refrain from reclaiming areas that are sufficiently surrounded by the incumbent's existing service that they do not offer a realistic service opportunity for a new licensee, but could be disruptive of the existing service if put into operation by a competitor.

Finally, the Blooston Licensees do not believe it is appropriate in any circumstance to impose a 100% coverage obligation on any licensee, even for non-rural licenses.⁵ Such requirement does not address the need to reduce power along license boundaries to protect co-channel licensees in neighboring markets, or the fact that in some locations coverage is simply not practical – but a take back could confound the broader coverage plan of the licensee.

b. The Commission has Other Regulatory Alternatives and Incentives to Achieve its Goal

The Commission has at hand different options in order to incentivize bringing service to rural America where it is feasible to do so. At the outset, the FCC's

⁵ See RWA Comments at p. 4.

construction performance rules for the 700 MHz, AWS-3 and 600 MHz buildouts will encourage construction, including in rural America, in 2019 (700 MHz), 2021 and 2027 (AWS-3) and 2023 and 2029 (600 MHz). (Comments of Verizon Wireless at 11). This is because the Commission has already developed incentives to encourage buildouts in rural areas and on tribal lands through the rural service provider bid credit⁶ and tribal lands bidding credit.⁷

Currently, the Commission has an ongoing proceeding which will result in the Mobility Fund II auction, which likewise is designed to close the digital divide. In advancing this proceeding, the Commission has indicated that there are 575,000 square miles that either lack access to 4G LTE service or only have it due to universal service support, since private investment was not feasible.⁸ The Mobility Fund Auction will provide financial support in order to bring service to many areas that do not have 4G LTE service or are otherwise underserved.⁹ Unlike the Mobility Fund I process, where funding was provided as a one-time payment, the Commission expects to raise \$4.53 billion for the deployment of 4G LTE so that it can provide ten years of support that is disbursed in monthly installments to bring service to targeted areas, including: eligible areas of any census block not fully covered by unsubsidized 4G LTE coverage with a

⁶ In order to be eligible for the Rural Service Bidding Credit, the rural carrier must provide commercial communications service to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas.

⁷ The Tribal Lands Bidding Credit is available to winning bidders that deploy facilities and provide service to federally-recognized tribal areas that have a wireline subscription or penetration rate equal to or below 85%.

⁸ *Connect America Fund and Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017)

⁹ *Connect America Fund and Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6283 (2017).

minimum speed of 5 Mbps and eligible areas identified on FCC Form 477. It seems that the additional buildout obligation proposal is being made in a vacuum, without knowing how successful the Mobility Fund II auction, the construction performance rules for 700 MHz, AWS-4 and 600 MHz and the Commission's Rural Service Provider Bidding Credits and Tribal Land Bidding Credits will be at bringing service to rural America. The Blooston Licensees submit that the Commission should let these programs mature before imposing mandatory additional construction obligations.

If the Commission persists with its proposal in the face of overwhelming opposition, the Blooston Licensees support the notion that any such further buildout requirement should be incentivized. Providing an extended license term from the standard license term would provide licensees who meet the additional construction requirements with more certainty that they would have the opportunity to recover their return on the investment required to deploy the additional service to rural areas. (Comments of CTIA at 16; Comments of Verizon Wireless at 7; Comments of American Messaging at 6; Comments of Sensus USA and Sensus Spectrum LLC at 3). Likewise, the Commission could also consider a weighted approach for construction requirements by giving licensees greater weight for construction in rural and/or underserved areas than suburban or urbanized areas for first-term construction obligations (Comments of NTCA at 4; Comments of American Messaging at 6).

III. The Commission Should Clarify that Paging and Other Narrowband Geographic Area Licenses are Not Included in Additional Construction Obligations

While it appears clear that the Commission's goal is the deployment of broadband services to rural America, there is concern, nonetheless, that the Commission could seek to extend this requirement to paging/messaging auction licenses, including licenses in the Narrowband Personal Communications Service (Comments of American Messaging at 3; Enterprise Wireless Alliance at 2, 5). The Commission should therefore confirm that paging and other narrowband geographic area licenses are not included in the expanded buildout obligations proposed in this proceeding – whether used for commercial or private, internal communications. (Comments of American Messaging at 3; Comments of Enterprise Wireless Alliance at 5). Each of these license types is significantly different from broadband licenses such as Cellular, Broadband Personal Communications Service, 700 MHz, 600 MHz and AWS. In each of those cases, the licensed bandwidth is significantly greater than the maximum 1 MHz allocated for Narrowband PCS and 25 kHz allocated for the Part 22 paging channels; and broadband spectrum is capable of frequency reuse within a geographic market.

Today, a significant number of paging/messaging channels are used to provide services to targeted users – public safety, hospitals and certain enterprises. (Comments of American Messaging at 3). Paging/messaging channels are no longer targeted to the mass market, due to the advent of broadband and advanced wireless services which have obsoleted the demand for paging and IMTS services by the general public. *Id.* Because

the Commission's goal is expanding wireless broadband services to rural America, imposing this requirement on paging/messaging spectrum would not serve the public interest. Accordingly, the Commission should decline to extend these services to the Part 22/90 Paging Channels and the Part 24 Narrowband Personal Communications Service channels.

IV. Conclusion

Based upon the forgoing, the Commission should not impose further construction requirements on rural licenses. However, if it proceeds with its proposal nonetheless, then it should (a) clarify that these requirements are not applicable to paging/messaging licenses, (b) make any such requirements prospective and (c) incentivize the requirement in order to provide certainty for licensees.

Respectfully submitted,

BLOOSTON LICENSEES

By: /s/
John A. Prendergast
Richard D. Rubino
Their Attorneys

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, N.W., Suite 300
Washington, DC 20037
Tel. (202) 659-0830

Dated: October 16, 2017