

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

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

**COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”) files these comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) adopted by the Federal Communications Commission (“FCC” or “Commission”) seeking comment on “specific questions related to the partitioning or disaggregation of spectrum licenses and spectrum leasing as a potential means to increase availability of advanced telecommunications services in rural areas and spectrum access by small carriers.”<sup>1</sup> RWA believes that many of the new rules proposed by the Commission are unnecessary, will lead to unintended consequences that actually hurt small carriers and rural communities, and do nothing but mask inherent flaws in how commercial spectrum is auctioned by the Commission for the intended ultimate benefit of American consumers.

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<sup>1</sup> *In the Matter of Partitioning, Disaggregation, and Leasing of Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 19-38, FCC 19-22 (released March 15, 2019) (“*NPRM*”) at ¶ 1.

## **I. BACKGROUND**

The Commission's *NPRM* is the *direct* result of the MOBILE NOW Act,<sup>2</sup> a recent law which compels the Commission to initiate a rulemaking proceeding to “assess whether to establish a program, or modify existing programs, under which a licensee that receives a license for the exclusive use of spectrum...may partition or disaggregate the license by sale or long-term lease.”<sup>3</sup> Congress did not mandate new Commission rules that allow for reduced performance requirements for partitioned or disaggregated licenses, but merely asked the Commission to “assess” the situation.<sup>4</sup> Congress also stipulated that the purpose of partitioning or disaggregation under any new or modified Commission program is:

- (A) [ ]to -
  - (i) provide services consistent with the license; and
  - (ii) make unused spectrum available to –
    - (I) an unaffiliated covered small carrier; or
    - (II) an unaffiliated carrier to serve a rural area; and
- (B) if the Commission finds that such a program would promote –
  - (i) the availability of advanced telecommunications services in rural areas; or
  - (ii) spectrum availability for covered small carriers.

### **I. REGARDLESS OF THE MOBILE NOW ACT'S FOCUS ON PARTITIONING AND DISAGREGGATION, THE COMMISSION SHOULD ADDRESS SYSTEMIC PROBLEMS IN ITS RULES REGARDING LICENSE SERVICE RULES AND AUCTION PROCEDURES.**

To the extent that Congress saw a need to improve this country's laws governing FCC license ownership and leasing to increase coverage in rural markets and put fallow spectrum in the hands of small carriers, Section 616 of the MOBILE NOW Act failed to address the real issue. When it comes to maximizing the utility and potential of fallow spectrum, the real

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<sup>2</sup> MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 *et seq.* (2018).

<sup>3</sup> § 616(b)(1).

<sup>4</sup> § 616(b)(1).

problem today in the wireless industry (and the problem that the MOBILE NOW Act should have addressed) relates to the Commission's existing service rules and auction procedures. The Commission's rules today have inherent flaws - - flaws that Congress is attempting to fix years after the spectrum is auctioned and made available to American consumers. First, the Commission's rules on spectrum aggregation effectively permit the country's largest carriers to hoard wireless licenses (whether at auction, or in subsequent secondary market transactions) and be subject to what amounts to only a soft spectrum cap. In addition, the Commission's service rules, especially for recently-auctioned mid-band and high-band spectrum, create license sizes that are too large for the types of spectrum they cover<sup>5</sup>, and the interim and end-of-term performance (*i.e.*, "build-out") requirements associated with those large-sized licenses are too vague to ensure timely construction and too long to ensure that auctioned areas receive service in a timely manner.

If Congress truly wanted to reduce vast amounts of fallow commercial wireless spectrum and encourage the build-out of even basic wireless coverage in rural markets, it should have mandated that the Commission: (1) re-institute a spectrum cap and not just maintain a soft spectrum screen; (2) auction commercial wireless licenses using geographic license sizes that correspond naturally to the frequency of the spectrum band (*i.e.*, the higher the frequency, the smaller the license size); and (3) adopt build-out/performance requirements that are realistic and

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<sup>5</sup> Higher frequency radio waves propagate shorter distances. Accordingly, if the geographic license area for a high-frequency spectrum band is very large, this means it would require the licensee to deploy a greater number of radio-access network sites to cover the license area than it would require for a low-frequency license band, which requires much fewer radio-access network sites. The largest size license area regardless of the spectrum frequency band being auctioned should be Cellular Market Areas (CMAs). CMAs have worked perfectly to divide up urban and rural areas since CMAs are made up of both Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). CMAs have been used by the Commission in numerous low-band and mid-band licensing regimes since the 1980s, including in the following bands: 850 MHz/Cellular, AWS-1, AWS-3, and 700 MHz.

do not incent licensees to sit on spectrum for years, and then use leases, partitioning, and disaggregation as a back-door to receiving a waiver to avoid surrendering fallow spectrum. To the extent the Commission already retains delegated authority to improve these spectrum licensing and auction processes, it should do so. There is a problem with commercial spectrum withering away on the sidelines after FCC auctions,<sup>6</sup> but the solution is not reduced performance requirements, including build-out extensions that can last a year or longer under a new licensee or lessee. Rather, the solution is to limit the amount of spectrum that goes into the “warehouses” of the country’s largest carriers and spectrum speculators, while simultaneously making it easier for small, rural carriers to successfully bid on spectrum at auction without the need to wait years to lease or purchase this very same spectrum at a premium with money that goes into the pockets not of the American taxpayer, but of individuals and corporations who simply chose to sit on it for decades.

## **II. REDUCED PERFORMANCE REQUIREMENTS FOR PARTITIONED OR DISAGGREGATED LICENSES WILL NOT FACILITATE DEPLOYMENT OF ADVANCED WIRELESS SERVICES IN RURAL MARKETS.**

Extending built-out deadlines, whether interim or end-of-term, for licensees will not benefit consumers of wireless services in rural markets. Nor will it increase access to spectrum by small carriers. Instead, such a proposed policy will only encourage the country’s largest carriers to warehouse spectrum for years after acquisition. When a licensee takes advantage of any type of reduced performance requirements (whether for spectrum partitioning, disaggregation, or leasing), it means that the licensee is having difficulty fulfilling the build-out/performance requirements, in violation of the Commission’s well-publicized rules. Relaxing the current rules to accommodate spectrum speculators, spectrum “warehousers”, and large

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<sup>6</sup> See *e.g.*, *In the Matter of Bresnan Communications, LLC Request for Waiver*, Public Notice, WT Docket No. 16-319, DA 16-1152 (released October 6, 2016).

carriers whose eyes are bigger than their stomachs sends the wrong message. Likewise, pairing reduced performance requirements with increased oversight and increased penalties for non-performance does not ensure adequate build-out to rural areas.

### **III. SPECTRUM REAGGREGATION SHOULD NOT BE PERMITTED**

Allowing the reaggregation of spectrum creates the potential for abuse by large carriers. Allowing reaggregation encourages licensees to use partitioning to avoid their buildout obligations by partitioning non-desirable or hard-to-serve spectrum and then re-aggregating that very same spectrum at a later date. In short, allowing reaggregation will simply encourage spectrum warehousing. Such a scenario is very likely now that the Commission has elected to use significantly larger Partial Economic Areas (PEAs) for the spectrum millimeter wave (mmW) spectrum in the 37, 39, and 47 GHz Bands instead of CMAs or even counties.<sup>7</sup> Due to the difficulty of meeting performance requirements for these larger areas, licensees will be incented to partition and/or disaggregate rather than attempt to meet them. If the Commission is entertaining the prospect of spectrum license “reaggregation,” then it must install safeguards that prevent the gaming of the system. Moreover, any type of reaggregation rule must comply with the Congressional mandate to promote the availability of spectrum in rural areas.

### **IV. CONCLUSION**

Congress’ intent in the MOBILE NOW Act is explicit: “[t]he Commission may offer a licensee incentives or reduced performance requirements under this section *only* if the Commission finds that doing so would likely result in increased availability of advanced

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<sup>7</sup> 47 CFR § 30.104. Some PEAs in rural America can be thousands of square miles in size. The build-out or performance requirements for all Upper Microwave Flexible Use Service (UMFUS) licenses in these three high-frequency bands is either 40 percent of the population within the service area of the licensee, or 25 percent of the geographic area of the license.

telecommunications services in a rural area.”<sup>8</sup> (emphasis added) There is no evidence in support of such a finding. There is no anecdotal evidence suggesting that a new framework with reduced performance requirements will work as envisioned by Congress. Reduced performance requirements are not only unnecessary, they will lead to more spectrum warehousing. Instead, more attention should be given to implementing a spectrum cap, right-sizing the original licenses prior to auction, and lowering the barriers to rural carriers participating in those auctions so they do not have to wait years and years to get spectrum scraps.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

By: */s/ Caressa D. Bennet*

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<sup>8</sup> § 616(b)(4).