

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications (Midco) supports the Commission taking action to allow for more robust partitioning, disaggregation, and licensing and leasing of spectrum, especially in rural areas.¹ Midco submitted brief initial comments to highlight a particular area of concern—limiting future partition and disaggregation rules to “carriers.”² We similarly limit our reply comments, especially because one of our trade associations, the Wireless Internet Service Providers Association (WISPA), has provided an in-depth analysis on the proposed rules;³ an analysis that we adopt herein.

DISCUSSION

The MOBILE NOW Act requires the Commission to consider whether new partitioning or disaggregation of spectrum could “increase availability of *advanced telecommunications services in rural areas* and spectrum access by small carriers.”⁴ The term “carrier” implies that a company needs eligible telecommunications carrier (ETC) status or a Certificate of Authority to

¹ *Partitioning, Disaggregation and Leasing of Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 19-38, FCC 19-22, ¶ 1(NPRM).

² NPRM ¶ 11.

³ See generally Comments of the Wireless Internet Service Providers Association (WISPA).

⁴ NPRM ¶ 1 (emphasis added).

benefit from the new spectrum licensing and leasing rules.⁵ As explained in our initial comments, ETC status can be complicated, even for a CLEC like Midco.⁶ We, therefore, requested that the Commission expand the classes of companies that will be eligible to participate in any new rules beyond those entities that are “common carriers.”

Overwhelmingly, other commentators agreed that the Commission should encourage more companies to participate in the new rules.⁷ Federated Wireless, for example, argued that it is “imperative that the Commission use all of the tools at its disposal to better facilitate secondary markets transactions to ensure spectrum access is promptly enabled for all users who need it, such as rural and small carriers, particularly as the roll-out of 5G service rapidly approaches.”⁸

Google similarly argued: “Consistent with the Congressional direction in the MOBILE NOW Act, the Commission should continue its efforts to stimulate secondary markets due to their potentially critical role in maintaining efficient spectrum and wireless markets. Leveraging secondary markets to put underutilized or unused spectrum resources to work for the American

⁵ Midco Initial Comments at 3-4 (“Midco is concerned about the term ‘carrier,’ specifically in the ‘unaffiliated carrier to serve a rural area’ in Section 616 of the MOBILE NOW Act. ‘Carrier’ implies that only companies that are covered common carriers pursuant to the Communications Act of 1934 would be able to benefit from the partition and disaggregation rules.”)

⁶ *Id.* at 4-5.

⁷ See e.g., NRECA Comments at 7 (“The Commission should also apply any rule revisions to the use of spectrum to provide advanced telecommunications on a non-common carrier basis and for use of spectrum for private, internal purposes.”); CTIA Comments at 2 & 4 (broadly arguing that the Commission should “[r]emove any barriers to secondary market transactions” and citing numerous examples of leases to non-carriers); and Google Comments at 3 (“shuffling spectrum resources between carriers does not alone maximize the availability and beneficial use of spectrum. In particular, the secondary market has been less than effective in making underutilized spectrum available for new innovations and use cases”).

⁸ Comments of Federated Wireless, Inc. at 2.

people should remain a paramount goal.”⁹ Other commentators went further and argued for even more robust rules to encourage participation in the new licensing and leasing rules.¹⁰

An essential element to encourage more companies to benefit from any new licensing and leasing rules is to more broadly define “carrier.” The Commission could, for example,¹¹ extend eligibility to service providers that are incumbent or competitive local exchange companies, cable television system operators, or terrestrial fixed wireless providers (including wireless ISPs, or WISPs).

As WISPA argued, the Commission has the authority to expand the definition of “carrier” and allow entities other than common carriers to participate from the rules:

Section 616 of the MOBILE NOW Act provides that a “covered small carrier” permitted to obtain spectrum through secondary market transactions is “a carrier ... as defined in section 3 of the Communications Act of 1934” that meets certain size parameters (i.e., not more than 1,500 employees) and provides services using its own facilities. In carrying out its public interest mandate, however, the Commission need not limit the scope of its inquiry and its fashioning of new secondary market incentives to “common carriers” alone. Indeed, it would be entirely consistent with the stated Congressional objectives underlying Section 616 to apply the rules more broadly as a means of better fostering “the availability of advanced telecommunications services” in “rural areas.” Strictly limiting the benefits and build-out incentives to established

⁹ Google Comments at 7.

¹⁰ See, e.g., Comments of New America’s Open Technology Institute and Public Knowledge, at 2 & 9 (“historically, large carriers acquire licenses for large areas, build out in the urban core where the population is more dense, and warehouse spectrum in rural areas that could be used for broadband deployment. The largest carriers have a history of warehousing spectrum and leaving it fallow rather than making it available for use to catalyze broadband deployment or other services. For licensees, there are no obvious incentives to share or partition their spectrum absent specific rules such as use-or-share. . . . OTI and PK urge the Commission to adopt use-it-or-share-it rules for all exclusively-licensed IMT bands to promote more intensive use of the spectrum, as well as stronger incentives and mechanisms to encourage secondary market transactions.” (internal citations omitted)); Dynamic Spectrum Alliance Comments at 7-12 (arguing for a use-it or share-it framework and an automated database).

¹¹ The example provided herein is only one suggestion of how the Commission could expand eligibility for the new rules.

“carriers” would exclude many broadband providers that are not deemed at this time to be “common carriers,” and would provide fewer options for larger carriers wishing to disaggregate, partition, or lease spectrum to rural providers. . . .

The Communications Act of 1934, as amended (the “Act”) provides the Commission ample authority to adopt broader benefits extending to any service provider capable of bringing the benefits of “advanced telecommunications” to unserved and underserved rural consumers. The Commission can rely on the same array of statutory authorities that it used to adopt the initial secondary markets regulations in 2003 to expand the intended benefits outlined in the MOBILE NOW Act. In particular, Section 7(a) of the Act establishes that “it shall be the policy of the United States to encourage the provision of new technologies and services to the public.” The Telecommunications Act of 1996 further highlights the desire to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” And the 1997 Balanced Budget Act affords the Commission explicit authority to allocate electromagnetic spectrum to promote the most efficient use of the spectrum, which would include such measures as permitting the creation of smaller geographic areas and spectrum assignments through secondary market transactions to facilitate improved service to the public. The Commission also can rely on the recodification of Section 257 of the Act in RAY BAUM’s Act, which is intended to support investment by small companies and entrepreneurs generally, a category that would include rural broadband providers.¹²

By more broadly defining “carrier,” the Commission can allow providers to take advantage of the proposed spectrum leasing and licensing rule changes, and increase the availability of advanced telecommunications services for all Americans.

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Respectfully submitted,

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¹² WISPA Comments at 4-5.