

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

In the Matter of)	
)	
Transforming the 2.5 GHz Band)	WT Docket No. 18-120
)	

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

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in response to the Federal Communications Commission’s (the “Commission’s”) request for comment on steps to encourage and facilitate more efficient use of the 2.5 frequencies.²

The 2.5 GHz band constitutes the single largest band of contiguous spectrum below 3 gigahertz and is prime spectrum for next generation mobile services. While the spectrum is currently allocated for Educational Broadband Service (EBS), the telecommunications landscape has changed significantly since the last EBS application was accepted in 1995. Today, much of the EBS spectrum is used for commercial content and as the Commission notes, significant portions of the band currently lie fallow across much of the United States, primarily in rural

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 and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² *Amendment of Parts 1,21,73,74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66 (Terminated) *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, FCC 18-59, Notice of Proposed Rulemaking (Rel May 10, 2018). “Notice”

areas.³ The Commission should take the opportunity afforded by this proceeding to modernize its rules and free up spectrum for wireless broadband service in rural areas.

The nation's rural telephone companies have a long history of providing their rural consumers with state of the art telecommunications services. They serve sparsely populated areas with unforgiving terrain. They offer vital communications links to consumers living in areas that other providers decline to serve. Unlike most start-ups or large or regional providers, rural telephone companies are situated in the communities they serve and their business decisions are influenced heavily by community need. Rural telephone companies have a background in, and dedication to, rural communities that have been recognized by Congress and policy makers since the time when plain old telephone service made its debut across the country.⁴ NTCA therefore urges the Commission to structure a licensing regime for 2.5 MHz available spectrum that offers small and rural providers a realistic opportunity to obtain the spectrum and offer voice and broadband services to rural communities.

II. NTCA SUPPORTS PROPOSALS TO RATIONALIZE EXISTING 2.5 GHz HOLDINGS AND OFFER CURRENT LICENSE HOLDERS FLEXIBILITY

NTCA supports the Commission's proposals for making unused spectrum available for flexible use and promoting use of the currently unassigned 2.5 GHz frequencies. Rationalizing the geographic service areas ("GSAs") of existing licenses to a defined geographic service area is a necessary first step for defining the parameters of spectrum that will be made available for

³ Notice, ¶ 1.

⁴ The Rural Electrification Administration was authorized in 1947 to provide low-cost loans to rural telephone companies and cooperatives. In establishing the telephone loan programs, Congress declared a policy of "assuring the availability of adequate telephone service to the widest practical number of users." 7 U.S.C. § 921. The House committee report for the legislation supported "area coverage," which entails "planning, financing, and constructing a rural telephone system so that service will be available to all the subscribers within the company's area who want it, whether the installation of their particular telephone will be profitable or not." H.R. Rep. No. 246, 81st Cong. 1st Sess. 8 (1949).

auction. NTCA therefore supports proposals to modify EBS licenses to GSAs based on counties. County sized licenses would yield available licenses that are based on consistent boundaries, thereby facilitating regularity in the shape and size of unassigned spectrum and new flexible-use geographic licenses in this band.

County size licenses are also appropriate given the propagation characteristics of this spectrum band, which has higher capacity than the low band spectrum, but greater penetration and distance than some of the other mid-range spectrum bands being considered for licensing. Thus, given the specific propagation characteristics of this spectrum, NTCA does not support converting current licenses to the smaller census tracts licenses that often are more appropriate in higher bands where propagation is not as substantial.

NTCA also supports additional flexibility for the licenses. Consistent with changes in spectrum use and need, the Commission has gradually lessened restrictions on the spectrum to promote its efficient use. The trend should continue. In 1983, the Commission allowed 2.5 licensees to lease excess capacity to provide educators with a means of acquiring resources to operate facilities for education.⁵ In 2004, it amended rules to allow the bands to be used for broadband services.⁶ Today, the transmission of commercial content over EBS spectrum is indistinguishable from the transmission of educational and instructional content. Consistent with the Commission's current approach of offering flexibility to licensees to determine the best use

⁵ *Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, Gen Docket No. 80-112 and CC Docket No. 80-116, Report and Order, 94 FCC 2d 1203, 1204 (1983).

⁶ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500 – 2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14168, 14169-70, paras. 4-6 (2004).

of spectrum, EBS licensees should have the flexibility to assign or transfer control of their licenses to entities that are not EBS-eligible.

III. THE COMMISSION SHOULD NOT CREATE PRIORITY 2.5 GHz LICENSES FOR CURRENT LICENSEES OR NEW EDUCATIONAL USERS

NTCA does not support establishing filing windows that would prioritize licensing of unassigned EBS spectrum for current licensees or new educational users.⁷ Instead, the Commission should auction unassigned 2.5 GHz spectrum to any qualified bidder, consistent with the Commission's plans for flexible use of the spectrum. To create priority licenses while simultaneously releasing the spectrum from restrictive use, creates a fallacy that the spectrum will be used to serve primarily educational purposes and sets the stage for potential windfalls for parties who obtain the spectrum or lease it from educational licensees for commercial use.

The Commission's proposals to establish priority licenses and require licensees to reserve no more than 20 percent of the capacity for educational uses with a "holding period" as short as three years⁸ offer no protection that only those with a *bona fide* interest in offering service would seek to obtain the spectrum. The proposals instead encourage wireless providers to finance multiple local education institutions to gain priority access to 80 percent of the spectrum available in geographic areas of their choosing, with the option to purchase or lease the entire spectrum asset at the end of the holding period. This result could undercut the auction process, ensuring that only the most well-financed players with teams of people to negotiate spectrum deals in individual markets obtain access to the currently unused 2.5 GHz spectrum. The

⁷ NTCA does not oppose a priority license for Tribal Nations to serve Tribal Lands, but the rules governing the issuance and use of such spectrum licenses should accurately reflect the Commission's goal of encouraging service to Tribal communities according to flexible use rules and not be tangentially tied to the historic educational use of the 2.5 GHz spectrum.

⁸ Notice, ¶ 47.

Commission should not create a licensing scheme in which educational institutions are likely to be used as fronts or vessels by wireless providers seeking commercial licenses.

If the Commission determines that educational priority licenses are appropriate, it should put in place protections to ensure that the spectrum is used for educational purposes, distinguishable from commercial use. The spectrum is currently set aside for the transmission of instructional material for the formal education of students by accredited public and private schools, colleges and universities⁹ and there are restrictions on who may be hold a license.¹⁰ Consistent with the original goals for the spectrum, any current licensees or new educational entities seeking spectrum should be required to maintain a physical local presence to serve the educational needs of their local communities. To ensure that educational entities will not be used by wireless providers to skirt an auction and obtain early access to valuable spectrum, thereby foreclosing opportunities of other potential users, new priority licensees should not be permitted to lease more than ten percent of their capacity to commercial entities and should be required to hold licenses for a minimum of 7 years. If priority licenses are created, these restrictions would be necessary to ensure that only educational institutions that intend to use the spectrum for its intended purpose obtain it during a priority period. Conversely, all spectrum that is going to be made available for flexible use should be licensed similarly and no party should be permitted to avoid the auction process by entering a clandestine deal with a local institution.

IV. NTCA SUPPORTS MAKING 2.5 WHITE SPACES SPECTRUM AVAILABLE FOR COMMERCIAL USE VIA COMPETITIVE BIDDING

NTCA recommends that all unassigned EBS spectrum be made available for commercial use via competitive bidding. NTCA proposes that the geographic size of the new 2.5 GHz

⁹ 47 CFR §27.1203 (b)(c).

¹⁰ 47 CFR § 27.1201(a).

licensees be counties and that limits be established so that no one entity be permitted to acquire all the auctioned spectrum in a given area.

Much of the spectrum being made available covers rural area and its propagation characteristics make it relatively appealing for rural service. Rural providers have a need and a desire for the spectrum for both mobile and fixed wireless broadband applications but are generally unsuccessful when spectrum is licensed according to rules that favor the nation's largest providers.

County-sized licenses would accommodate a variety of business models. Bidders with geographic build out plans could target spectrum according to their needs without concerns of losing spectrum in a strategic census tract. Rural providers would have the ability to obtain spectrum in just the rural areas they intend to serve and nothing would preclude a larger provider from aggregating county licenses for a larger business plan. Counties “nest” into larger geographic service areas and operators would have the ability to secure licenses that correspond to their current footprints. As the Commission determined in the Spectrum Frontiers proceeding, “a county-based license affords a licensee the flexibility to develop localized services, allows for targeted deployments based on market forces and customer demand, and facilitates access by both smaller and larger carriers.”¹¹ Larger than county-size geographic license territories drive small businesses out of spectrum auctions, whereas nothing beyond inconvenience prevents larger providers from participating in the auction and aggregating to suit their needs.

Similarly, to ensure a robust auction and opportunity for multiple interested parties, the Commission should limit the amount of spectrum any one licensee may obtain in any county. National and regional providers are well-financed and have the means and ability to obtain

¹¹ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et. al.* GN Docket No. 14-177, *et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, ¶ 35 (“Spectrum Frontiers Proceeding”).

spectrum at auction, potentially beyond their needs or build out plans, to foreclose opportunities for competitors. A limit on the amount of spectrum any one entity can obtain will help ensure that multiple providers, including small and rural providers, have a better opportunity to access spectrum, which will facilitate the extension and improvement of service in rural areas, to the benefit of consumers.

V. SECTION 309(j) REQUIRES AN AUCTION DESIGN THAT ENSURES SMALL BUSINESS AND RURAL CARRIER PARTICIPATION IN THE AUCTION AND PROVISION OF SERVICE

When the Telecommunications Act of 1996 was adopted, Congress specifically recognized the unique position of rural telephone companies and their provision of wireless service to rural consumers. Section 309(j) of the Communications Act of 1934, as amended (the “Act”), requires that the Commission, in designing competitive bidding systems, “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses [and] *rural telephone companies*...”¹² In prescribing the regulations governing those competitive bidding systems, the Commission must “ensure that small businesses [and] *rural telephone companies*...are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures...”¹³

The Commission is not considering designated entity or other preferences in this auction. Therefore, the Commission must fulfil its responsibilities under 309(j) by licensing the spectrum according to geographic areas that are small enough to afford small and rural

¹²47 U.S.C. § 309 (j)(3)(B) (emphasis added)

¹³ 47 U.S.C. § 309(j)(4)(D) (emphasis added)

companies a realistic opportunity to participate in the auction with a spectrum cap that ensures that no one well-financed provider can obtain all of spectrum, foreclosing opportunities for rural competitors.

VI. CONCLUSION

Small, rural telecommunications providers are interested 2.5 GHz CBRS spectrum band and its potential for the provision new and enhanced wireless broadband service in rural areas. NTCA urges the Commission designs spectrum use and auction rules that ensure that rural providers, who will put spectrum to its highest and best use in rural areas, have a realistic opportunity to add 2.5 spectrum to their broadband portfolios.

Respectfully submitted,



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