

**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)	

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”) replies to the comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking¹ 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 that will apply after WRS licensees renew their licenses.

RWA appreciates the Commission’s efforts to close the digital divide between urban and 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

¹ *Amendment of Parts 1, 22, 24, 27, 74, 80, 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*, [Second Report and Order an Further Notice of Proposed Rulemaking](#), WT Docket No. 10-112 (rel. Aug. 3, 2017).

where there are fewer subscribers and deployment costs are greater.² RWA’s initial comments³ focused on the Commission’s proposals to adopt additional construction obligations post-renewal to ensure that spectrum does not lie fallow in rural areas. In particular, for commercial wireless service providers, RWA supports a post-renewal construction obligation framework for the relicensing of unused spectrum. In implementing this framework, RWA urges the Commission to utilize a “keep-what-you-serve” approach to relicensing, and supports a two-step relicensing scheme for unserved areas.

I. THE COMMISSION SHOULD ADOPT A POST-RENEWAL CONSTRUCTION OBLIGATION FRAMEWORK FOR THE RELICENSING OF UNUSED SPECTRUM.

RWA fully supports a five-year post-renewal construction requirement that would require licensees to 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.⁴ After the renewal date, there should also be

² See *Amendment of Parts 1, 22, 24, 27, 74, 80, 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*, [Comments of NTCA – The Rural Broadband Association](#), WT Docket No. 10-112, at p. 2 (Oct. 2, 2017) (“NTCA Comments”) (stating that “[a]lthough the Commission’s spectrum licensing rules typically contain construction requirements, providers have been able to meet benchmarks without serving the most rural areas of a service territory”).

³ *Amendment of Parts 1, 22, 24, 27, 74, 80, 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*, [Comments of the Rural Wireless Association, Inc.](#), WT Docket No. 10-112 (Oct. 2, 2017) (“RWA Comments”).

⁴ *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) (“700 MHz Relicensing Notice”).

an expectation that the licensee will lose any unserved area not served at the end of the next license term.

Such obligations 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. RWA agrees with NTCA that “the Commission should look to policies that put spectrum into the hands of providers who are committed to investing in rural communities,”⁵ and believes that a post-renewal construction obligation framework would promote spectrum access.

Contentions by CTIA and Verizon that “launching the new Mobility Fund and addressing barriers to infrastructure deployment” will close the digital divide and expand the availability of wireless broadband in rural areas fail to recognize that neither of these two Commission efforts address spectrum access issues faced by rural carriers.⁶ While a successful Mobility Fund Phase II auction and successful removal of barriers to infrastructure deployment are certainly important, providers and their customers cannot benefit from Commission action on these items without the spectrum necessary to provide service. In order to successfully close the digital divide, the Commission *must* address spectrum warehousing.

Wireless license areas often include cities or are so large that the rural participant

⁵ *NTCA Comments* at p. 3.

⁶ *Amendment of Parts 1, 22, 24, 27, 74, 80, 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*, Comments of Verizon, WT Docket No. 10-112, at p. 1 (Oct. 2, 2017) (“*Verizon Comments*”); see also *Amendment of Parts 1, 22, 24, 27, 74, 80, 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*, [Comments of CTIA](#), WT Docket No. 10-112, at p. 2 (Oct. 2, 2017) (“*CTIA Comments*”).

cannot afford to acquire the rural portions of the license area that they desire to serve.⁷ NTCA agrees, noting that:

Licensing spectrum according to large geographic areas has contributed significantly to the rural-urban wireless divide. The larger the geographic license, the more likely it is that significant rural territory will be lumped together with highly-desirable (expensive) urban territory. The larger the geographic license territory, the more likely it is that only large, well-financed providers can afford to obtain it and then to recover their investment, they must concentrate their build out where the returns on investment are greatest – the more populated areas. Their business plan may not even include rural service. For this reason, significant swaths of spectrum may lay fallow.

A post-renewal construction obligation framework would allow unused spectrum to be put to use by entities that may not be able to access spectrum through the traditional auction process and allow such entities to provide service to unserved consumers in rural areas. Such an outcome mirrors Congressional directives to: (1) avoid an excessive concentration of licenses and disseminate them among a wide variety of applicants, including small businesses and rural telephone companies;⁸ and (2) ensure that small businesses and rural telephone companies are given the opportunity to participate in the provision of spectrum-based services.⁹

Also, a post-renewal construction obligation framework would encourage a more active secondary spectrum market. CTIA expresses unsupported concerns that changing buildout requirements could have a chilling effect on the secondary spectrum market.¹⁰ But what CTIA fails to mention is that today's secondary market for fallow spectrum in rural areas is already far from perfect. While entities *are* able to partition and disaggregate spectrum to parse out smaller geographic areas, the transactional costs for nationwide carriers to do so often outpace spectrum value. Spectrum leasing and management have also been options for utilizing fallow spectrum in

⁷ *RWA Comments* at p. 2.

⁸ 47 U.S.C. § 309(j)(3)(B).

⁹ 47 U.S.C. § 309(j)(4)(D).

¹⁰ *CTIA Comments* at p. 15.

rural areas, but these arrangements place rural wireless carriers at the mercy of a spectrum licensee that usually has no incentive to deal, especially when the licensee has been able to meet build out requirements by serving only major population centers and transportation corridors. New regulatory construction requirements imposed as part of the license renewal process will help to ensure 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 good use, *before* any “use it or lose it” requirements kick in.

II. THE COMMISSION SHOULD ADOPT 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, any unserved areas should be available for others to serve. As NTCA notes, a “keep-what-you-serve” approach “forces providers to serve an area or have it turned back to the Commission for licensing to someone who is interested in serving the select unserved geographic area. This pushes providers to build out an entire geographic service territory and encourages collaboration between providers who may be interested in serving different geographic areas within a single spectrum asset.”¹¹ It is RWA’s view that a “keep-what-you-serve” paradigm strikes the perfect balance between a total loss penalty and the likely ineffectual “use or offer” approach.

CTIA notes that the “[p]enalties that strip the licensee of part of its licensed service area would be punitive while doing nothing to make service available in forfeited areas; in fact those pockets of areas would most likely remain unserved.” First, RWA disagrees with the contention

¹¹ *NTCA Comments* at p. 5.

that a “keep-what-you-serve” approach to WRS relicensing is “punitive.”¹² If “[w]ireless providers purchase spectrum and invest capital based on the returns they expect to earn from that investment” and “also take into account what services they need to offer to compete most effectively,”¹³ then such providers will serve the areas necessary to maximize profit by the end of the five-year post renewal showing. Unserved areas within a particular geographic license area are not expected to yield adequate profits, and thus remain unserved. A “keep-what-you-serve” approach does not “strip” a licensee of a revenue generating asset – the areas to be divested *are not generating revenue*. The licensee has already maximized the revenue generating potential of the license and, by making unserved areas available for others to serve, the Commission is meeting its statutory obligation to “prevent stockpiling or warehousing of spectrum by licensees or permittees.”¹⁴

RWA also disagrees with the contentions that a “keep-what-you-serve” regime would “do[] nothing to make service available in forfeited areas” and that “those pockets of areas would most likely remain unserved.”¹⁵ Areas subject to a “keep-what-you-serve” forfeiture are, by their very definition, unserved under the license at issue. And because the licensee holds the exclusive right to provide service under that license, *the only way for that area to be served is to make it available for others to serve*. “Keep-what-you-serve” may not make service available in *all* forfeited areas, but it at least offers the *possibility* of service where none exists.

The “keep-what-you-serve” 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

¹² *CTIA Comments* at p. 18.

¹³ *Verizon Comments* at p. 12.

¹⁴ See 47 U.S.C. § 309(j)(4)(B)-(C).

¹⁵ *CTIA Comments* at p. 18.

clear path toward better wireless broadband service in rural areas. Other possible approaches fail to do so. A “use or offer” regime in which a licensee is required 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. NTCA agrees, stating that “it is the small providers’ experience with ‘good faith’ negotiation requirements...that the large entity has the power to dictate the terms of the ‘negotiation’ and there is often very little, if any, compromise. When the parties to a negotiation are unevenly matched, good faith negotiations are rarely negotiations at all and tend to not end favorably for the party in the weaker bargaining position.”¹⁶

RWA agrees with several commenters that a “total loss penalty” approach in which a licensee is required to surrender parts of the license where it has already deployed service would be unfair to those licensees that invested significant resources in the areas they currently serve.¹⁷ Such action would similarly harm the licensees’ customers, which would be contrary to the public interest.¹⁸ As the Blooston Licensees note, “[t]he public interest would be served by allowing the licensee to keep what it is serving, rather than enforcing a license cancellation that would result in a waste of resources, disrupt what may be a valuable service to the public, and potentially strand the reclaimed spectrum for several years before it can be re-auctioned.”¹⁹

¹⁶ *NTCA Comments* at p. 5.

¹⁷ *See CTIA Comments* at p. 18; *see also Verizon Comments*, Aren Megerdichian, Ph.D., *Economic Arguments in the Wireless Radio Services Proceeding*, at p. 11.

¹⁸ *See Amendment of Parts 1, 22, 24, 27, 74, 80, 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*, [Comments of Sensus USA Inc. and Sensus Spectrum LLC](#), WT Docket No. 10-112, at p. 6 (Oct. 2, 2017).

¹⁹ *See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum*

III. THE COMMISSION SHOULD ADOPT 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

Disaggregation Rules and Policies for Certain Wireless Radio Services, [Comments of the Blooston Licensees](#), WT Docket No. 10-112, at p. 7 (Oct. 2, 2017).

license modification during the construction period.²⁰ 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.

IV. 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.

Respectfully submitted,

RURAL WIRELESS ASSOCIATION, INC.

By: */s/ Caressa D. Bennet*

Caressa D. Bennet, General Counsel
Erin P. Fitzgerald, Regulatory Counsel
5185 MacArthur Blvd., NW, Suite 729
Washington, DC 20016
(202) 551-0010
legal@ruralwireless.org

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²⁰ 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 Process for Relicensing 700 MHz Spectrum in Unserved Areas*, [Comments of the Rural Wireless Association, Inc.](#), WT Docket No. 06-150 (Sept. 27, 2017). *See also generally 700 MHz Relicensing Notice*.