

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

In the Matter of)
)
Extending Wireless Telecommunications) WT Docket No. 99-266
Services To Tribal Lands) FCC 99-205
)

**COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

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SUMMARY

NTCA supports the Commission's efforts to promote service to tribal and underserved land. However, it is a fallacy to assume that low subscriber penetration rates equal a lack of access to service. Rural telcos have made basic telephone service available to most, if not all, of the tribal lands they serve. It is necessary to acknowledge that the lack of access to service is just one factor leading to low penetration rates, not the only factor.

As the Commission endeavors to promote service to tribal lands, it should adhere to Section 254 of the Telecommunications Act which, specifically requires that comparable services at comparable rates be available in all areas of the Nation. Therefore, the Commission should not create incentives that foster inferior or third-world services on tribal areas or to unserved areas. Rather, any special rules or additional flexibility that the Commission adopts to promote service to tribal lands must ensure that the service provided to those areas is of comparable quality to that of the service provided in rural areas.

NTCA members typically provide wireless service as a supplement to wireline service, not as a replacement. The Commission should strive to promote and adopt technologically neutral solutions in this proceeding. In its efforts to modify wireless licensing rules to encourage carriers to service underserved areas, the Commission should not lose sight of the end goal. The objective is to promote service in areas that lack access to basic telecommunications service, not to create an artificially competitive market.

With respect to modifications of the antenna height and power restrictions, this is appropriate relief only in areas where potential subscribers lack access to the supported services.

Safeguards must be implemented to protect carriers that have already made significant

investments in infrastructure under the current rules.

The Commission's proposal to adopt liberalized buildout requirements could prove detrimental in many respects. Relaxed buildout requirements will result in a refusal to service less profitable rural areas that are not subject to this Commission initiative. There is the likelihood that carriers will deploy what is minimally required to meet their construction benchmark.

The Commission's proposal to award bidding credit to licensees who commit to deploying service to tribal lands and other unserved areas is a good measure to promote service to the most rural areas. However, to protect against abuse of this credit, the Commission should limit the bidding credit to those carriers that commit to providing service to truly unserved areas.

As to the Commission's specific request for comments regarding the degree to which its current BETRS rules limit the ability of licensees to provide basic telephone service, NTCA proposes that BETRS deployment has been hampered by a difficult regulatory history. The Commission should endeavor to make BETRS a more attractive and viable alternative to serve rural consumers.

In conclusion, as the Commission proceeds with its endeavors to promote service on tribal and unserved lands it should consider the string of pertinent factors. The Commission should adopt proposals that will promote service to tribal and unserved lands, but should ensure that the service is of the same quality as that of urban areas. Any modification the Commission makes to existing regulations should be carefully weighed for the positive and negative effects.

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Extending Wireless Telecommunications) WT Docket No. 99-266
Services To Tribal Lands) FCC 99-227
)

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association (NTCA) submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ For the reasons set forth below, NTCA supports the Commission's goal in this proceeding as well as many of its proposals, but questions some of the Commission's assumptions.

1. INTRODUCTION

¹ Extending Wireless Telecommunication Services to Tribal Lands, *Notice of Proposed Rulemaking*, WT Docket No. 99-266, FCC 99-205 (rel. August 18, 1999) (NPRM), November 9, 1999.
National Telephone Cooperative Association, WT Docket No. 99-266, FCC 99-205

NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas throughout the United States. Many provide service to tribal lands. All NTCA members are small carriers that are rural telephone companies as defined in the Telecommunications Act of 1996. NTCA annually surveys its members regarding technology, services, and lines of business.² Approximately 95% of NTCA's member companies provide Internet Access; more than half of them offer cellular, personal communications service (PCS), or both; half provide long-distance service; more than 40% offer cable TV; and nearly 30% provide direct broadcast satellite (DBS) service. Nearly 30 NTCA member companies are involved in more than 80 local multipoint distribution service (LMDS) licenses. NTCA members are unique in that they serve the communities in which they are headquartered.

II. THE COMMISSION SHOULD NOT ASSUME THAT A LOW TELECOMMUNICATIONS SUBSCRIBER RATE IS RELATED TO A LACK OF ACCESS TO SERVICE IN ALL INSTANCES

² See NTCA Web site <[http:// www.ntca.org](http://www.ntca.org)>.

The Commission begins this proceeding by stating that the lack of access on tribal areas to basic telecommunications services is well-documented.³ While it is true that reservations suffer some of the lowest telephone subscriber penetration rates in the nation, it is important not to confuse penetration rates with access. Low subscriber rates are not always directly correlated to a lack of access to telecommunications service.⁴ Rural telcos have made basic telephone

³ NPRM, & 5.

⁴ For example, only 22% of Navajo households have telephone service, but the researchers who cite this figure acknowledge that a Navajo utility expert assures us that many more households have access to phone lines than is suggested by this figure.≡ Linda Ann Riley, Bahran Nasserharif and John Mullin, *Assessment of Technology Infrastructure in Native Communities*, New Mexico State University, College of Engineering, Las Cruces, New Mexico (July 1999) at 30. The report was prepared for the U.S. Commerce Department's Economic Development Administration.

service available to most, if not all, of the tribal lands they serve.⁵ Penetration rates remain below the national average, but not as low as the overall figures the Commission suggests.⁶ Lack of access to service is just one factor leading to low penetration rates.⁷

III. THE COMMISSION SHOULD CONSIDER THE PRESENT AND FUTURE TELECOMMUNICATIONS NEEDS OF TRIBAL LANDS AS IT PROMOTES SERVICE

⁵ Preliminary results from an NTCA survey of rural telephone companies serving tribal lands indicate that NTCA members that serve reservations provide access to telephone and Internet service to an average of 95% of households in the portion of the reservation in their service territory.

⁶ NTCA's survey of its members that serve tribal lands indicates that subscribership rates average near 80% for basic telephone service and 16% for Internet service provided by the companies.

⁷ For a detailed analysis, *see generally* NTCA Dial-Tone is Not Enough: Serving Tribal Lands (November 1999).

NTCA supports the Commission's goal of promotion of service in tribal areas. However, any initiatives adopted should not result in diminution of the quality or extent of service for tribal or unserved areas. Section 254 of the Telecommunications Act specifically requires that comparable services at comparable rates be available in all areas of the Nation.⁸ The Commission should not create incentives that foster inferior or third-world services on tribal areas or to unserved areas. Any special rules or additional flexibility that the Commission adopts to promote service to tribal land must ensure that these areas have access to advanced services of the type and quality available to urban customers. Access to advanced services is particularly important to very rural areas. Geographically isolated areas will rely on distance learning and telemedicine to remain viable. The advent of the federal ASchools and Libraries program enables educational institutions on tribal lands to obtain funding for interactive television and distance-learning service.⁹ High speed Internet access is cited as a priority for schools that are connected.¹⁰ The Commission should adopt rules that are consistent with its policies to promote the deployment of advanced service to unserved and under-served land.

IV. COMMISSION POLICIES SHOULD REFLECT THE FACT THAT WIRELESS SERVICE TYPICALLY SERVES AS A SUPPLEMENT TO WIRELINE SERVICE, RATHER THAN AS A REPLACEMENT

Wireless service serves as a complement to wireline service in areas with low penetration rates, but it is not the only solution to the problem. As noted *supra*, more than half of NTCA's member telcos offer wireless service, but they do so as an adjunct or complement to landline service, recognizing that wireless does not yet have the capability to deliver advanced services and that it is not always the most cost-effective way to serve subscribers' needs.¹¹ To best benefit the consumers living in areas with low subscribership, the Commission should strive to promote and

⁸ 254(b)(3).

⁹ Dial-Tone is Not Enough, 28-32.

¹⁰ *Id.*

¹¹ The vast majority of NTCA members that serve tribal lands and that responded to a survey stated that there is also competition from wireless providers serving the same part of the reservation.

adopt technologically neutral solutions in this proceeding and in its companion proceeding.¹²

NTCA agrees that wireless services should be available and that the rules should foster increased subscribership, but all carriers, whether wireline or wireless should compete on a level playing field.

¹² See Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 99-204 (rel. September 3, 1999).

The Commission seems to take at face value Western Wireless= data indicating that the forward-looking long-run cost of cellular service is less than the comparable cost for wireline technology for wire centers in Montana and North Dakota.¹³ The data has apparently not been tested or subject to the scrutiny of other parties. It is not known whether the data compares costs in areas with similar characteristics. The Commission is proposing rules that will affect numerous carriers throughout the country. It is important that the data used be accurate and subject to scrutiny.

¹³ NPRM, & 8, citing letter from David L. Sieradzki, Counsel for Western Wireless, Inc. to Magalie Roman Salas, Secretary, FCC, dated July 15, 1998.

A variety of circumstances determine how an area is best served. Low population density and rugged terrain presents difficulty to both wireline and wireless service providers.¹⁴ What is cost effective in one area is not necessarily what is cost effective in another area. NTCA members have found that the cost of constructing cell sites can be prohibitive and obtaining rights of way for towers is a costly and time-consuming process. Wireless providers, including Western Wireless, have difficulty with dead spots in coverage.¹⁵ The Commission must consider the limitations inherent in wireless services available on the reservations and in rural areas. The Commission must also consider the communication needs of people living on tribal lands and in unserved areas. NTCA found that people living on reservations are not interested in receiving only basic telephone service, they want and need high speed Internet access and distance-learning capability.¹⁶ Present-day wireless systems cannot effectively provide high speed Internet access, telemedicine, or video conferencing. NTCA members provide wireless service as a complement to their wireline service, rather than as a replacement, because that is how they best serve the needs of their subscribers.

V. NTCA SUPPORTS EFFORTS TO MODIFY WIRELESS LICENSING RULES TO ENCOURAGE CARRIERS TO SERVE UNSERVED AREAS, BUT SOME OF THE PROPOSALS WILL FRUSTRATE THE COMMISSION'S LONG TERM GOALS

The Commission submits various proposals that it believes will promote service to tribal and unserved areas. In considering and adopting these proposals, the Commission must evaluate

¹⁴ Dial-Tone is Not Enough, 14.

¹⁵ See Dial-Tone is Not Enough (indicating that the Crow reservation, served by Western Wireless, has numerous dead spots in coverage).

¹⁶ Dial-Tone is Not Enough, 39-40.

the overall impact each will have. The Commission should be leary of quick fixes and recongnize that some Asolutions≡ will adversely impact other carriers and consumers in communities surrounding the targeted territory. The Commission should continually recognize that its goal is to promote service in areas that lack access to basic telecommunications service, not to create an artificially competitive marketplace.

A. The Commission Should Carefully Define AUnservd Area≡ to Include Only Those Areas that Lack Access to Basic Telecommunications Services

The Commission proposes in footnote 4 to define an Aunserved area≡ as Aany area in which facilities would need to be deployed in order for its residents to receive each of the services designated for support by the universal service support mechanisms.≡ NTCA supports this definition. Under this definition, any area which has access to the designated services is not Aunserved.≡ This definition will help the Commission define its goal in this proceeding. The Commission should adopt proposals that will encourage deployment in rural and tribal areas that truly lack access to service, rather than introduce artificial competitive incentives in markets that cannot support competition.

2. Any Modifications to the Antenna Height and Power Restrictions Must Include Adequate Protections Against Harmful Interference

The Commission seeks comment on its proposal to modify the antenna height and power restrictions for wireless providers serving tribal and unserved areas. NTCA generally supports this proposal, provided that the Commission includes adequate protections against interference and sufficiently restricts those areas in which the relief may be obtained. While high powered antennas will not completely solve the problem of Adead spots≡ in areas with particularly rugged

terrain, allowing carriers to increase their antenna height and power will help to decrease the cost of providing service in very rural areas. Carriers serving very rural areas cannot economically construct a large number of towers. Revenues generated from a sparsely populated area will not support expensive construction. Fewer towers will lessen the expense and may make deployment viable where currently it is not.

However, the Commission must include adequate interference protections in its rules. Carriers should not be permitted to build mammoth towers to the detriment of subscribers served by neighboring carriers. The Commission should not tolerate any interference. Also, this regulatory relief should be available only in those areas that are Unserved as defined above. Modification of the height and power restrictions is appropriate relief only where potential subscribers lack access to the supported services. In this way, carriers that have made significant investment in infrastructure under the current rules are protected against new carriers coming into an area and competing unfairly.

C. The Commission Should not Adopt Liberalized Buildout Requirements

The Commission must be careful as it considers initiatives that trade a promise to serve tribal lands and other unserved areas for relaxed buildout requirements. Relaxed buildout requirements will cause less profitable rural areas that are not the subject of this Commission initiative to go without service.

Large carriers without ties to rural markets are enthusiastic to serve only those areas that will provide the largest profit margin and what is minimally required to satisfy the Commission's requirements to ensure license renewal. It is understandable that auction winners focus their early

buildout efforts on urban areas. Profit drives the industry. If the Commission liberalizes its buildout requirements on the condition that carriers serve tribal areas or unserved areas, the tribal areas and unserved areas will get served, as will the urban areas. However, it is likely that carriers will deploy what is minimally required to meet their construction benchmarks. There is no incentive to ubiquitously deploy service, especially to rural customers outside of unserved areas or tribal lands. This would frustrate the Congressional mandate that seeks to ensure that all people have access to comparable services at comparable prices.

Furthermore, liberalized buildout requirements will further remove carrier incentive to partition licenses.¹⁷ Carriers serving urban areas and the required unserved areas will be permitted to warehouse spectrum without fear of reprisal. The carriers will receive license renewal without any commitment to provide service to rural areas through buildout or partitioning. Buildout requirements are necessary to encourage ubiquitous deployment of wireless service.

The Commission's proposal to allow wireless licensees to expand their coverage into adjacent licensing areas that remain unserved after a pre-determined period of time has some merit. However, current licensees bid at auction for the exclusive right to serve their licensing areas. Any changes to the licensing scheme are likely to face tough opposition and raise constitutional challenges. If the Commission decides to pursue this option, it should be on a going-forward basis only. Licensees should know their obligations and the risks as they evaluate how much a geographic area license is worth and what they are willing to pay for it.

D. Bidding Credits for Carriers Promising to Serve Unserved Tribal and Other Unserved Areas Will Encourage Deployment, but the Commission must be Wary of Abuse

NTCA supports the Commission's proposal to award a bidding credit to licensees who

¹⁷ See BETRS discussion below.

commit to deploying service to tribal lands and other unserved areas. This bidding credit, if properly administered, could promote service to the most rural areas. It may also provide the opportunity necessary for small carriers specifically seeking to serve rural areas to participate in upcoming auctions. However, if not properly administered, every carrier participating in the auction will claim bidding credit eligibility. To protect against this scenario, the Commission should limit the bidding credit to those carriers that commit to providing service to truly Aunserved≅ areas. Bidding credit should be available only for those areas that currently lack access to the supported telecommunications services. It should not be available for those areas that have low subscribership rates or are merely lacking a specific type of telecommunications service. To find otherwise would enable every auction participant to identify a stretch of highway in a remote portion of the geographic license area which entitles it to a credit. The credit should also be available to all auction participants and not limited one specific class of service providers. All carriers should have the opportunity to participate on a level playing field.

VI. BETRS DEPLOYMENT HAS BEEN HAMPERED BY A DIFFICULT REGULATORY HISTORY

The Commission specifically requests comment on the degree to which its current BETRS rules limit the ability of licensees to provide basic telephone service and expresses concern that only a few new BETRS systems are currently being licensed by the Commission. One reason so few BETRS licenses are currently being awarded is because the Commission halted BETRS licensing as a result of the freeze in licensing of upper-band paging systems, with which BETRS licensees currently share spectrum. Another reason is that the Commission no longer accepts

BETRS applications for frequencies in the 800 MHz band.¹⁸ The Commission also ignored the arguments of associations representing rural carriers, including NTCA, that BETRS should, at the very least, be licensed by site on a co-primary basis with geographic area paging licenses. The Commission instead determined that carriers could participate in auctions for geographic area licenses or obtain site licenses on a secondary basis.¹⁹ As NTCA has argued consistently, small carriers seeking to serve rural areas cannot afford to compete with carriers that are bidding to serve an urban area. Unfortunately, the Commission licenses wireless spectrum according to geographic area boundaries that include both rural and urban areas. The experience of small carriers is that the large carriers serving the urban areas are reluctant to partition the surrounding rural area to another carrier. The Commission's nebulous "substantial service" construction requirement provides no incentive to partition. Carriers are able to hold onto their surrounding spectrum in the hopes that it will eventually be more valuable. This situation leaves rural carriers seeking the use of wireless spectrum to provide BETRS or other wireless services at a tremendous disadvantage. Furthermore, there is a reluctance to make an investment in BETRS on a site basis knowing that its use is secondary to a paging operation. The Commission should use this opportunity to make BETRS a more attractive and viable alternative to serve rural

¹⁸ See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1588, && 287-288 (1995).

¹⁹ See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-18, FCC 97-59 (rel. February 24, 1997); *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, WT Docket No. 96-18, FCC 99-98 (rel. May 24, 1999).

consumers.

VII. CONCLUSION

As the Commission proceeds with its endeavors to promote service on tribal and unserved lands it should consider the string of pertinent factors. The Commission should adopt proposals that will promote service to tribal and unserved lands, but should ensure that the service is of the same quality as that of urban areas. Any modifications the Commission makes to existing

regulations should be carefully weighed for both positive and negative effects. The end result should be increased quality telecommunications service to tribal and underserved land.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
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November 9, 1999

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 99-266, FCC 99-205 was served on this 9th day of November 1999 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

_____/s/ Gail C. Malloy_____

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