

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of the Commission's Rules with Regard to the 3650- 3700 MHz Government Transfer Band |) | ET Docket No. 98-237 RM-9411 |
| |) | |
| The 4.9 GHz Band Transferred From Federal Government Use |) | WT Docket No 00-32 |
| |) | |

**REPLY COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA)¹ hereby submits these reply comments in response to the Commission's Second Notice of Proposed Rule Making (NPRM) in the above captioned proceeding.² NTCA's members provide local exchange and wireless services to rural America. As such, NTCA's members are particularly interested in the outcome of this proceeding. The spectrum at issue may be particularly useful in rural areas and may allow rural carriers to fill in gaps in their service territory through fixed applications. NTCA therefore urges the Commission to adopt rules and policies governing this auction

¹ NTCA is a national association of more than 500 rural incumbent local exchange carriers (ILECs). These ILECs provide telecommunications services to end users and interexchange carriers throughout rural and small-town America. NTCA members are typically small carriers that serve no more than 50,000 access lines. All of NTCA's members are included in the definition of a "rural telephone company," as defined by the Telecommunications Act of 1996 and many hold wireless licenses.

²In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, The 4.9 GHZ Band Transferred from Federal Government Use, *First Report and Order and*

that will provide ample opportunity for small and rural carriers to obtain spectrum and use it to provide service. Specifically, NTCA suggests that small geographic areas be used in the licensing scheme and that the Commission not break up the spectrum into smaller blocks.

I. THE 3650 – 3700 MHz BAND SHOULD BE LICENSED USING SMALL GEOGRAPHIC AREAS

NTCA agrees with the FCC that a geographic area licensing approach should be used to assign licenses in the 3650-3700 MHz band. Geographic-area licensing affords licensees flexibility to respond to market demand. In determining the particular size of the areas in which to license the band, the Commission must look to the spectrum's potential applications and Congressional directives. NTCA urges the Commission to license this valuable spectrum according to small geographic areas, such as Basic Trading Areas (BTAs), or Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs).³ NTCA does not believe that the possible pairing of the 3650-3700 MHz band with the 4.9 GHz band should influence the Commission's analysis of this point in any way.

In the Order accompanying the Second NPRM, the Commission allocated the 3650–3700 MHz band for terrestrial fixed service operations on a primary basis.⁴ In doing so, the Commission recognized that the allocation of the band on a primary basis for fixed service will facilitate the operation of a broad range of new advanced

Second Notice of Proposed Rule Making, ET Docket No. 98-237, RM-9411, WT Docket No. 00-32, FCC 00-363 (rel. Oct 24, 2000).

³ See also, In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, Comments of the National Telephone Cooperative Association, ET Docket No. 98-237, FCC 98-337 (filed February 16, 1999).

⁴ Order and Second NPRM, ¶ 13.

services and that the 50 MHz of spectrum will provide enough bandwidth to allow for high speed digital data and video services. The Commission specifically noted that the allocation will serve the public interest by providing services to residential and business consumers, particularly in rural areas. Additionally, the spectrum has the potential to provide for a direct PSTN access for rural and underserved areas of the United States. An alternative and possibly lower cost wireless connection to the PSTN is particularly useful in high-cost (*i.e.*, rural) wireline service areas.

A. Licensing the Spectrum using Small Service Territories will Speed the Deployment of Services to Rural Areas

NTCA's members are rural telephone companies, situated in the rural communities they serve. About half of NTCA's members are cooperatives and thus owned by the subscribers. NTCA's members therefore have a strong incentive to provide high-quality, modern services and are not driven solely by profit margins. They have the incentive to obtain spectrum and build systems to serve the rural communities.

By contrast, large carriers are often driven by the share holders. They seek to make as large a profit as possible. Urban areas, by their very nature, are more profitable than rural areas. Rural areas have fewer potential customers and tend to have difficult terrain, which drives up construction costs. It costs more to build plant in rural areas and the returns are smaller.

Licensing the 3650-3700 MHz band according to large service territories such as Economic Areas (EAs) would drive the price of the licenses out of the reach of most small and rural carriers. EAs combine both rural and urban areas into a single

geographic service territory. A carrier seeking to serve only a rural area must also bid on the neighboring urban territory and will therefore likely compete with a larger carrier seeking to serve the urban territory. The small, rural carrier stands little chance of success. NTCA members often seek to provide wireless applications in their own rural service territories. However, rural carriers lack the market power and resources of large carriers and are unable to compete with them at auction. The large carrier thus obtains a wireless license covering both urban and rural areas and concentrates its build out efforts on the profitable urban population centers. Licensing the spectrum at issue according to large service territories would frustrate the Commission's stated goal of providing service to unserved and underserved communities.

Licensing according to small geographic service territories, such as MSAs and RSAs will allow the small and rural carriers to obtain license for the territory they actually seek to serve. The public interest is served since the rural carriers will use the spectrum to build out systems and provide much needed services to the rural consumers.

B. The Commission will Best Fulfill Congressional Mandates to Disseminate Wireless Licenses to a Wide Variety of Licensees Including Rural Telephone Companies by Licensing the Spectrum in Small Geographic Areas

Section 309(j) of the Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996 mandate that the Commission adopt rules and policies that promote the development and rapid deployment of new technologies to rural areas. The Commission is also directed to ensure that small businesses, specifically rural telephone companies, are given the opportunity to participate in the

provision of spectrum based services. The Commission will best fulfill its Congressional directives and provide opportunities for rural carriers by auctioning the 3650-3700 spectrum in small service territories. Licensing this spectrum according to large service areas would represent a complete abandonment of the goals of 309(j), *i.e.*, the promotion of small business participation in the ownership of the spectrum.

In its Second NPRM, the Commission tentatively concludes that it should allow all 3650-3700 MHz licensees the flexibility to partition their services areas without any restriction, and to disaggregate their spectrum. While NTCA agrees with this tentative conclusion, NTCA submits that the Commission's reasoning is flawed. The Commission states that partitioning and disaggregation can result in its fulfillment of its obligations of Section 309(j)(4)(C). While in theory partitioning and disaggregation may result in economic opportunity for a wide variety of applicants, including small business, rural telephone companies, minority-owned, and women-owned applicants, history has not proven this to be true. Spectrum is very valuable and large companies are reluctant to part with any of it. Rural carriers have been unsuccessful in their quest for spectrum through partitioning and disaggregation agreements. The ONLY way the Commission will succeed in providing opportunities for small businesses, rural telephone companies, and women- and minority-owned businesses is to license the spectrum according to small geographic areas so that carriers other than the largest can afford to bid on it at auction.

II. THE COMMISSION SHOULD NOT DIVIDE UP THE 50 MHZ BLOCK LICENSES INTO SMALL BLOCK LICENSES

The Commission is seeking additional comment on the size spectrum block or blocks that should be used to license the 3650-3700 MHz band. The Commission proposes to pair 25 MHz spectrum blocks in the 3650-3700 MHz band with 25 MHz blocks in the 4.9 GHz band to create licenses of 50 MHz. NTCA urges the Commission not to break up the 3650-3700 MHz band into smaller blocks.

The Commission has already recognized the potential value of the 3650-3700 MHz band. The Commission stated, “[it] is situated low enough in the radiofrequency spectrum so as to permit favorable transmission characteristics which will allow the establishment of service links that can cover significant distances.”⁵ The Commission went further and stated, “50 megahertz will provide enough bandwidth to allow for high speed digital data and video services.”⁶ If the Commission decides to break up the spectrum and offer it in any increment less than 50 MHz, it substantially lessens the value and potential application of this spectrum. 25 MHz of bandwidth is not likely to be enough for the high speed applications the Commission seeks. NTCA believes that the full 50 MHz is necessary to achieve the spectrum’s full potential.

III. NTCA SUPPORTS SPECIAL ELIGIBILITY RESTRICTIONS FOR RURAL LICENSES

NTCA generally agrees with the Commission’s proposal that there be no additional restrictions on eligibility for a license in the 3650-3700 MHz band,

⁵ Order and Second NPRM, ¶13.

consistent with the existing Part 27 rules. However, NTCA supports the proposal of Transcomm, Inc. Transcomm suggests that the Commission restrict eligibility for RSA licenses to incumbent cellular, wireline, ISPs, rural or tribal enterprises. These incumbents could take advantage of their existing infrastructure to further the Commission's goal and more rapidly deploy systems in rural areas.

⁶ *Id.*

IV CONCLUSION

The Commission is getting ready to auction spectrum that will have valuable applications in rural markets. NTCA urges the Commission to meet its obligations under the Communications Act and provide real, meaningful opportunities to small and rural carriers. The 3650-3700 MHz and 4.9 GHz bands should be licensed according to small service areas, such as RSAs and MSAs. The Commission should also preserve the potential applications of this spectrum by making it available according to the entire 50 MHz allocated in each band rather than in smaller blocks.

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CERTIFICATE OF SERVICE

I, Rita Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 00-32, FCC 00-363 was served on this 17th day of January 2001 by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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