

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

In the Matter of)

**Facilitating the Provision of Spectrum-
Based Services to Rural Areas and
Promoting Opportunities for Rural
Telephone Companies to Provide Spectrum
Based Services**)

WT Docket No. 02-381

*Notice of Inquiry (FCC 02-235), released
December 20, 2002.*)

To: The Commission

**REPLY COMMENTS OF
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

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SUMMARY

A majority of commenters who addressed the issue of geographic licensing area size agree with the comments of SDTA in calling for the use of MSA- and RSA-sized licenses. Nationwide carriers are the only entities that can afford to compete for larger service area licenses, and most of these companies have not demonstrated any need nor any desire to extend their service to rural communities that are located away from major highways and roaming corridors. Commenters also believe that small business bidding credits have been ineffective for rural telephone companies in previous FCC spectrum auctions. The Commission should remedy this by moving forward with its proposal to create rural telephone bidding credits.

On the wireless ETC issue, commenters who have stepped up to the obligation to provide reliable exchange service throughout rural study areas agree that current FCC policy is not appropriately directing limited USF resources and is threatening the ability of many rural telcos and community-owned cooperatives to survive. The FCC should do more to promote geographic license partitioning and spectrum disaggregation, and other secondary market measures; it should revise its roaming policies to ensure that consumers in rural areas have access to meaningful service; and it should recognize that rural carriers need relief from unfunded regulatory mandates. As to unlicensed operations, a vast majority of commenters agree that the FCC should permit higher transmitter power in rural areas. However, the FCC should not permit license-exempt operations in spectrum bands that have been licensed by auction or permit “underlay” operations since this could pose a significant risk of harmful interference to licensed operations in rural areas.

TABLE OF CONTENTS

SUMMARY	i
TABLE OF CONTENTS	ii
I. Use of MSA/RSA Licensing Will Promote the Availability of Wireless Service to Rural Consumers	1
II. Adoption of a Rural Telco Bid Credit Will Further Promote the Availability of Wireless Service to Rural Consumers	4
III. The Commission Must Reform the ETC Designation Process	6
IV. FCC Should Do More to Encourage Partitioning and Disaggregation And Development of Robust Secondary Market	7
V. The FCC Should Revise its Roaming Policies to Ensure That Consumers in Rural America Have Access to Meaningful Service	8
VI. The FCC Should Recognize that Rural Carriers Need Relief From Unfunded Mandates	9
VII. The Commission Should Promote License-Exempt Operations in Rural Areas	10
VIII CONCLUSION	11

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The South Dakota Telecommunications Association (SDTA), by its attorneys, hereby submits its reply comments in response to the Commission’s Notice of Inquiry (“NOI”) in the above-captioned proceeding.¹ As discussed below, a majority of commenters addressing the issue of geographic license area size believe that the interests of providing spectrum-based services to rural areas and providing opportunities for rural telephone companies will be promoted through the Commission’s use of smaller license areas for at least a portion of the spectrum to be made available in each future auction.

I. USE OF MSA/RSA LICENSING WILL PROMOTE THE AVAILABILITY OF WIRELESS SERVICE TO RURAL CONSUMERS

A majority of commenters who addressed the issue of geographic licensing area size believe that the Commission should use smaller service areas, if it is seeking to promote the provision of wireless services to rural areas and the interests of rural

¹ Notice of Inquiry, Facilitating the Provision of Spectrum-Based Services in Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, FCC 03-325 (*rel.* December 20, 2002).

telephone companies.² More particularly, these entities agree with the comments of SDTA in calling for the use of Metropolitan Statistical Area (“MSA”) and Rural Service Area (“RSA”)-sized licenses. Nationwide carriers are the only entities that can afford to compete for larger service area licenses, and most of these companies have not demonstrated any need nor any desire to extend their service to rural communities that are located away from major highways and roaming corridors. To preserve the availability of wireless service in these rural communities, SDTA supports NTCA’s proposal for a presumption that any time more than one block of spectrum is available in an auction, a portion of the spectrum will be auctioned according to small geographic areas.³ Rural Cellular Association and OPASTCO/RTG also agree that the use of MSA/RSA licensing is appropriate and urge the Commission to make more licensed spectrum to be available on an MSA/RSA basis.⁴

SDTA agrees with NTCA that “[r]ural areas will only achieve an acceptable level of service if small carriers are given the opportunity to compete at auction by bidding on small geographic territories.”⁵ SDTA also agrees with US Cellular that the adoption of MSA/RSA licensing will afford “realistic bidding opportunities to a variety of applicants” and “enhance competition and promote early deployment of advanced technologies in a manner consistent with the Commission’s statutory objectives under

² See, e.g., Comments of National Telecommunications Cooperative Association (“NTCA Comments”); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Telecommunications Group (“OPASTCO Comments”); Comments of United States Cellular Corporation (“USCC Comments”); Comments of UTStarcom (“UTStarcom Comments”); Comments of Corr Wireless Communications, L.L.C. (“Corr Wireless Comments”); Comments of Rural Cellular Association (“RCA Comments”).

³ NTCA Comments at pp. 9-10.

⁴ Comments of Rural Cellular Association (“RCA Comments”) at pp. 3-4; OPASTCO Comments at pp. 8-10.

⁵ NTCA Comments at p. 10.

Section 309(j) of the Act.”⁶ UTStarcom is correct to point out that the geographic service areas used in many FCC auctions to date have been far too large to be useful for rural companies.⁷ Corr Wireless very clearly articulates the dilemma that rural carriers face with large geographic license areas: “A company that does business only in southwestern Virginia, for example, has no need whatsoever for an eight-state mega-license but it may very well need more spectrum in the area where it is serving customers today.”⁸

Numerous commenters have cited to results of Lower 700 MHz Band auction as proof that MSA/RSA licensing will work.⁹ Indeed, the Commission’s own NOI noted that 89 percent of qualified bidders that identified themselves as rural telcos won licenses.¹⁰ NTCA has reported that sixty (60) of its member companies were among the winning bidders in Auction No. 44.¹¹

It should therefore be clear that the small size of initial geographic service areas plays a major role in ensuring that rural carriers have access to spectrum. The fact that MSA/RSA licensing effectively separates rural- from urban-focused markets will help ensure that advanced wireless networks are deployed rapidly in rural areas and that such services will be available to rural consumers as early as possible. In this regard, SDTA must disagree with certain commenters’ assertion that the size of rural license areas does

⁶ USCC Comments at pp. 7-8.

⁷ UTStarcom Comments at p. 2.

⁸ Corr Wireless Comments at p. 3.

⁹ Comments of TCA, Inc. – Telecom Consulting Associates (“TCA Comments”) at p. 6; Corr Wireless Comments at p. 3.

¹⁰ NOI at ¶ 6.

¹¹ See Comments of NTCA, WT Docket 02-379, (CMRS Competition Report NOI) at p. 8 (Note 11).

not matter.¹² The use of large license areas clearly results in the exclusion of rural carriers and small businesses; more importantly, it places spectrum covering rural areas into the hands of larger carriers that must focus on the urban centers to make their business case work. SDTA believes that the policy of offering different sized licenses in situations where at least two or three licenses are available in every market provides opportunity for all types of businesses, large and small, and therefore strikes an appropriate balance. Even large regional carriers such as Western Wireless Corporation also support this principle.¹³

II. ADOPTION OF A RURAL TELCO BID CREDIT WILL FURTHER PROMOTE THE AVAILABILITY OF WIRELESS SERVICE TO RURAL CONSUMERS

Numerous commenters agreed with SDTA's assertion that small business bid credits offered to rural telephone companies and cooperatives in previous auctions have not been effective in helping these entities to obtain the spectrum they need to serve rural areas.¹⁴ Others believe that bid credits have actually worked to undermine the interests of legitimate small businesses.¹⁵ SDTA agrees with TCA that the regulatory value of bid credits is diminished when the auction process is seemingly skewed against *bona fide* small businesses.¹⁶ For this reason, SDTA believes that an appropriate solution would be for the Commission to move forward its NOI proposal to create rural telephone bid credits.¹⁷

The auction process inherently favors entities with access to money from the

¹² Comments of the Cellular Telecommunications and Internet Association ("CTIA Comments") at p. 6; Comments of Dobson Cellular Corporation ("Dobson Comments") at p. 13.

¹³ Comments of Western Wireless Corporation ("Western Wireless Comments") at p. 32.

¹⁴ NTCA Comments at p. 8; OPASTCO Comments at pp. 10-11.

¹⁵ UTStarcom Comments at 2.

¹⁶ TCA Comments at p. 5.

public markets.¹⁸ However, rural telcos generally are not well positioned to benefit from access to the public markets. Given this reality, SDTA applauds the efforts of Rep. Bart Stupak and others in passage of the Farm Security and Rural Investment Act of 2002 (the “Farm Bill”), which will provide low interest loans and loan guarantees for companies that commit to deploy broadband to areas that currently do not have access to such service. However, broadband funding under the Farm Bill is available to a wide range of eligible entities, not just rural telcos. And while SDTA and its members remain excited about the possible benefits of the Farm Bill, the FCC should not view the program of broadband deployment loans to be administered by RUS under this legislation as a “cure all” for rural telco access to capital, for the reasons set forth in SDTA’s initial comments.¹⁹

SDTA therefore joins Congressman Stupak in urging the Commission to consider any changes to the FCC’s auction rules to diminish the economic difficulties faced by rural providers.²⁰ SDTA agrees that rural providers are at a disadvantage if they are forced to compete with larger providers who serve profitable urban markets.²¹

Certain commenters have asserted that any rural bid credits should not be limited to rural telephone carriers.²² However, only rural telcos have committed to serve what are entirely high-cost rural areas, with no urban centers to subsidize these extraordinary costs; and only rural telcos have committed to be the carrier of last resort. Therefore, a

¹⁷ NOI at ¶¶16-17.

¹⁸ RCA Comments at pp. 2-3; Comments of NTCH, Inc. (“NTCH Comments”).

¹⁹ Comments of South Dakota Telecommunications Association (“SDTA Comments”) at pp. 8-10.

²⁰ Comments of Rep. Bart Stupak (“Congressman Stupak Comments”) at 2.

²¹ *Id.*

²² Western Wireless Comments at pp. 30-31; Dobson Comments at pp. 13-16.

rural telephone bid credit is entirely appropriate.

III. THE COMMISSION MUST REFORM THE ETC DESIGNATION PROCESS

SDTA supports comments filed by the Nebraska Rural Independent Companies, which explain that the Commission's ETC rules have not promoted the deployment of wireless service, nor greater subscribership in those areas.²³ The Nebraska Comments point to the apparent abuse of wireless ETC status in North and South Dakota.²⁴ Current FCC policy is not appropriately directing limited USF resources and is threatening the ability of many rural telcos and community-owned cooperatives to survive, as SDTA noted in its initial comments.²⁵

Comments by Western Wireless assert that the Commission does *not* have a responsibility to promote opportunities for rural telephone companies, and that the interests of rural telephone companies and cooperatives are not in line with rural consumers.²⁶ This is simply not the case. Congress recognized that the rural telephone industry has a unique and demonstrated commitment to rural consumers, and it directed the Commission to promote both the availability of wireless service to rural consumers and the interests of rural telcos.

The rural telephone industry should be distinguished from wireless carriers and wireless ETCs because only rural telcos have committed to provide service in entirely high cost areas and to act as carrier of last resort. While Western Wireless asserts that the

²³ See Comments of Nebraska Rural Independent Companies ("Nebraska Comments").

²⁴ Nebraska Comments at p. 6.

²⁵ SDTA Comments at pp. 19-21.

²⁶ Western Wireless Comments at p. 8.

“carrier of last resort” concept is an anachronism,²⁷ neither Western Wireless nor other pure wireless carriers have stepped up to the obligation to provide reliable exchange service throughout rural study areas. Instead, commenters have correctly pointed out that Western Wireless and other wireless ETCs are content to use high cost support funds to “skim the cream.”²⁸ If wireless ETCs continue to have this impact on USF funding, the continued availability of universal service funds will be jeopardized.²⁹

IV. FCC SHOULD DO MORE TO ENCOURAGE PARTITIONING AND DISAGGREGATION AND DEVELOPMENT OF A ROBUST SECONDARY MARKET

SDTA joins both NTCA and CTIA in urging the Commission to do more to promote geographic license partitioning and spectrum disaggregation, and other secondary market measures.³⁰ There is widespread agreement that FCC rules allowing for partitioning and disaggregation of spectrum have not proven to be successful.³¹

Certain larger carriers may have had success in negotiating partitioning and disaggregation transactions (e.g., Western Wireless), but small businesses and rural telcos, entities that have a demonstrated willingness and ability to serve rural communities, have had problems obtaining unused spectrum from nationwide carriers. As TCA has noted, “[e]fforts made by rural carriers to obtain spectrum in the secondary market are largely met with disinterest and rejection.”³² Indeed, the Commission’s own

²⁷ Western Wireless Comments at pp. 28-29.

²⁸ Nebraska Comments at pp. 6-7; SDTA Comments at p. 21.

²⁹ For further information on these and other USF issues, SDTA respectfully directs the Commission’s attention to a recent OPASTCO White Paper, “Universal Service in Rural America: A Congressional Mandate at Risk” (January 2003). This paper is available on the OPASTCO web site as an Adobe PDF file at: <http://www.opastco.org/docs/USFWhitePaper.pdf>

³⁰ NTCA Comments at pp. 10-12; CTIA Comments at p. 6

³¹ See, e.g., NTCA Comments at pp. 10-11; OPASTCO Comments at pp. 11-12; UTStarcom Comments at p. 3; TCA Comments at p. 7.

³² TCA Comments at p. 7.

records show few partitioning arrangements for the benefit of rural telephone companies.³³ This is largely due to a lack of incentives for large carriers to devote their resources to such negotiations.

V. THE FCC SHOULD REVISE ITS ROAMING POLICIES TO ENSURE THAT CONSUMERS IN RURAL AMERICA HAVE ACCESS TO MEANINGFUL SERVICE

As commenters have pointed out, larger carriers have little or no interest in serving rural consumers and are content only to serve highways and a handful of adjacent population centers.³⁴ This “cream skimming” has resulted in moving roaming traffic off of rural wireless carriers’ networks and has allowed nationwide carriers to turn around and raise the roaming rates charged to rural carriers. The Commission should not underestimate the adverse effect of these practices on the financial viability of rural carriers, and on the availability of wide-area service in rural areas. Historically, revenues generated from the provision of roamer service (typically along highway corridors) have provided a significant and substantial portion of the resources used by rural carriers to construct facilities necessary to serve outlying rural areas. Without this source of funding, the expansion of such service is impaired. Indeed, the failure to maintain proper revenue streams for rural carriers impairs the continued availability of wireless service in these outlying areas (including availability to E911 service) because, if small rural carriers are forced to exit the market, these areas will not be served by the nationwide carriers who, to date, have shown absolutely no interest in serving them. Such a result would run contrary to the mandate contained in the Communications Act to provide nationwide service at reasonable cost.³⁵ Accordingly, SDTA believes the Commission

³³ NOI at ¶ 8.

³⁴ See, e.g., OPASTCO Comments at pp. 13-15; NTCA Comments at p. 4; Corr Wireless Comments at p. 2; RCA Comments at p. 4.

³⁵ 47 U.S.C. § 151.

should adopt roamer policies that provide adequate revenue streams to rural carriers for the provision of roamer service. The Commission should also ensure that automatic roaming continues to be available to all carriers on reasonable and non-discriminatory terms.³⁶

SDTA also recognizes that the ability to transmit and to receive e-mail and to access high-speed data services when outside of their home calling area is a matter of growing importance to rural subscribers. Because rural carriers will be dependent upon roaming relationships to enable their customers to receive data as well as voice services outside their local coverage area, SDTA shares USCC's concern that nationwide carriers could refuse to enter into "data roaming" agreements with rural carriers and this might have the effect of driving customers (and revenues) away from rural carriers.³⁷

VI. THE FCC SHOULD RECOGNIZE THAT RURAL CARRIERS NEED RELIEF FROM UNFUNDED MANDATES

It is clear from the record in this proceeding that the costs of providing service in rural areas are significantly higher than in densely populated urban and suburban areas.³⁸ "With limited capital budgets and higher marginal costs, rural carriers must carefully control their expenditures. As carriers grow in size, they can take advantage of economies of scale."³⁹

SDTA agrees that rural carriers have a hard time trying to compete with nationwide carriers because of unfunded mandates, such as E911 and CALEA, and their

³⁶ See, e.g., Comments of Corr Wireless at pp. 11-12; RCA Comments at pp. 9-10.

³⁷ USCC Comments at pp. 16-18.

³⁸ Western Wireless Comments at pp. 13-17.

³⁹ Dobson Comments at p. 13.

inability to spread their fixed costs for network upgrades over a large customer base.⁴⁰

SDTA also agrees with OPASCO that rural wireless carriers should be encouraged to invest their resources in infrastructure and spectrum, rather than diverting scarce resources to compliance with these unfunded government mandates.⁴¹

VII. THE COMMISSION SHOULD PROMOTE LICENSE-EXEMPT OPERATIONS IN RURAL AREAS

SDTA agrees that the Commission should allow license-exempt operations to use higher transmitter power in rural areas. However, SDTA agrees with Dobson Communications Corporation that FCC should not permit license-exempt operations in spectrum bands that have been licensed by auction, or in spectrum bands where incumbent licensees have been granted exclusive use rights. Such “underlay” operations could pose a significant risk of harmful interference to licensed operations in rural areas and should not be permitted.⁴² To cite a recent example, during the NTCA conference in Phoenix, attended by SDTA and its members, representatives of Flarion Technologies attempted to demonstrate Lower Band 700 MHz equipment to rural telcos that were successful in Auction 44. However, the demonstration (pursuant to STA) was severely disrupted by interference from an unknown source. The demonstration had to be cut short, and Flarion staff had no way of finding out who was conducting this unlicensed operation. SDTA is concerned that license holders will have this same experience with rogue operations by “underlay” licensees.

⁴⁰ Dobson Comments at p. 13; NTCH Comments; Corr Wireless Comments at p. 2.

⁴¹ OPASTCO Comments at p. 14

⁴² Dobson Comments at p. 11.

Along the same lines, SDTA agrees with CTIA that a “commons” model for cellular spectrum in rural areas will lead to severe interference problems that will impede service by licensed carriers, and that the “band manager” concept is not workable in the rural context.⁴³

VIII. CONCLUSION

SDTA respectfully requests that the Commission take the above concerns into consideration in fashioning any rule proposal on the basis of the NOI in this proceeding.

Respectfully Submitted,

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⁴³ CTIA Comments at pp. 10-11.

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