

**Before the
Federal Communications Commission
Washington, D.C. 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
)	
2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services)	WT Docket No. 01-14
)	
Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation)	WT Docket No. 03-202
)	

**COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION™**

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CTIA – THE WIRELESS ASSOCIATION™**

CTIA – The Wireless Association™ (“CTIA”)¹ hereby submits comments in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”) in the above-captioned proceeding in which the Commission seeks comment on measures intended to promote the further deployment of wireless services in rural areas.² Specifically, the Commission requests comment on the potential use of “keep what you use” re-licensing

¹ CTIA – The Wireless Association™ is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² The Commission adopted the *Further Notice* concurrently with the *Report and Order* in WT Docket Nos. 02-381, 01-14, and 03-202. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket Nos. 02-381, 01-14, and 03-202, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078 (2004)(“*Report and Order*” and “*Further Notice*,” respectively).

mechanisms, renewal term substantial service requirements, and involuntary spectrum easements to encourage the provision of wireless services to rural areas.³ CTIA believes the Commission should continue to promote market-oriented policies that have served rural consumers well by facilitating build-out and deployment of wireless services in rural areas, and should refrain from forcing licensees down the road of premature, uneconomic, and unsustainable deployment.

I. INTRODUCTION AND SUMMARY

CTIA strongly endorses the Commission's efforts to expand and improve wireless services in all areas throughout the United States, including rural markets. As the Commission acknowledges, the evidence suggests that its current policies "are working to provide wireless services in rural areas."⁴ The Commission's *Ninth CMRS Competition Report*, released in September 2004, confirms that carriers continue to build out their networks and expand their service footprints, providing more service to more people in more areas.⁵

The wireless success story is attributable in large part to the Commission's market-oriented policies that have encouraged carriers to take risks and expand services. CTIA supports continuation of Commission efforts to create market-based incentives for further development of wireless services in rural areas. For example, the Commission recently increased base station power limits for carriers operating in rural areas.⁶ This will provide carriers additional flexibility to more efficiently expand and improve

³ See *Further Notice* at ¶ 132.

⁴ *Report and Order* at ¶ 3.

⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 04-111, Ninth Report, 19 FCC Rcd 20597 (2004) ("*Ninth CMRS Competition Report*").

⁶ See *Report and Order* at ¶ 86.

coverage in rural areas. In addition, a wireless carrier's economic incentives to serve sparsely populated or high-cost areas can be increased with access to appropriately targeted universal service funding.⁷

CTIA opposes, however, adoption of each of the non-market-oriented, command-and-control regulatory proposals in the *Further Notice*. It is unclear what problems these proposals are intended to remedy in view of the fact that the Commission found that its policies "have resulted in the widespread provision of wireless services, including in rural areas," and "largely have been successful in promoting facilities-based competition in the rural marketplace, especially with respect to CMRS."⁸

All for-profit businesses must make decisions involving economic trade-offs, and the Commission has stated that it expects licensees to build out where it is economic to do so.⁹ However, adoption of the Commission's "keep what you use" proposal would force licensees into a Hobson's choice of either "making uneconomic investments or forfeiting their licenses in rural areas (even though entry may be justified in the future)."¹⁰ Requiring licensees to make such a choice would create the opposite of the desired effect.

The "keep what you use" proposal suggests that a shortage of spectrum is the key obstacle to further deployment, but there is far more spectrum available in rural areas than in urban areas. Further, adoption of the "keep what you use" proposal will send the

⁷ CTIA has submitted a proposal to reform the high-cost universal service mechanisms in a way that maximizes a fund recipient's incentives for economic efficiency. See Comments of CTIA – The Wireless Association™, CC Docket No. 96-45, at 17-27 (filed Oct. 14, 2004).

⁸ *Report and Order* at ¶ 6 (footnote omitted).

⁹ *Id.* at ¶ 77.

¹⁰ *Further Notice* at ¶ 153, quoting Reply Comments of Sprint, WT Docket Nos. 02-381, 01-14, and 03-202 (filed Jan. 26, 2004) ("Sprint Reply Comments").

financial community the ill-advised message that wireless licensees may not be able to protect the integrity of their licensed areas unless they pursue uneconomic construction of facilities in sparsely populated areas. In addition, post-renewal performance requirements are not warranted given there is nothing in the record to suggest that wireless carriers will cease innovating, making improvements to existing offerings and expanding the geographic footprint of their coverage areas simply because their initial performance requirements have been satisfied. Adoption of involuntary spectrum easements, moreover, would adversely affect licensees' ability to raise capital because such easements would infringe on licensees' ability to make full use of their spectrum. For these reasons, adoption of the *Further Notice* proposals would be counterproductive to the Commission's goal of promoting wireless service in rural areas because *access to capital* is a greater constraint to further wireless deployment in rural areas than is *access to spectrum*.

II. THE COMMISSION SHOULD CONTINUE ITS MARKET-ORIENTED POLICIES THAT SPUR CONTINUED BUILD-OUT AND WIDESPREAD DEPLOYMENT OF COMPETITIVE WIRELESS SERVICES IN RURAL AREAS

To date, the Commission has followed "a market-oriented approach to spectrum policy that, where possible, has allowed economic forces to determine build-out of wireless facilities and the provision of wireless services."¹¹ The Commission's light-handed, market-oriented regulation of the CMRS industry has been a huge success. It has spurred enormous investment in wireless facilities, which in turn has resulted in the build-out of advanced voice and data networks throughout the United States, the

¹¹ *Facilitating the Provision of Spectrum-Based Services to Rural Areas*, WT Docket Nos. 02-381, 01-14, 03-202, Notice of Proposed Rulemaking, 18 FCC Rcd 20802, 20819 (2002) ("Rural Spectrum NPRM").

introduction of a variety of new service options and features, declining rates, and increased consumer demand.

In the *Ninth CMRS Competition Report*, the Commission concluded that “the CMRS industry continued to experience increased service, intense price competition, innovation, and a wider variety of service offerings.”¹² The Commission also found that “[w]hile it appears on average, a smaller number of operators are serving rural areas than urban areas . . . data and statements presented by commenters . . . support the conclusion that effective CMRS competition does exist in rural areas.”¹³ Indeed, rural customers receive access to the same service options at the same rates as consumers in larger markets.¹⁴

The *Ninth CMRS Competition Report* further indicated that at year end 2003, 96.8 percent of the total U.S. population lived in counties with access to three or more different CMRS operators. Just four years ago the *Fifth CMRS Competition Report* reported that 87.8 percent of the U.S. population was living in counties with access to three or more providers.¹⁵ This steady increase in coverage levels demonstrates that, under the Commission’s light-handed, market-oriented policies, CMRS carriers continue to build out new facilities and to deliver new services to Americans living in rural areas.

This successful trend of increased deployment and new service options for rural areas will continue if the Commission retains and expands upon its policies to provide market incentives to carriers. In particular, in the last few years designation of wireless

¹² *Ninth CMRS Competition Report*, 19 FCC Rcd at 20608.

¹³ *Id.* at 20643.

¹⁴ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 02-379, Eighth Report, 18 FCC Rcd 14783, 14791-92 (2003) (“*Eighth CMRS Competition Report*”).

¹⁵ See *Ninth CMRS Competition Report*, 19 FCC Rcd at 20700 Appendix A, Table 10.

carriers as eligible telecommunications carriers (“ETC”) has brought new and innovative telecommunication services to a number of rural areas, including some areas that previously had no telecommunications services at all.¹⁶ CTIA urges the Commission to work with States that exercise jurisdiction over the ETC-designation process to reduce the length of time for approval of ETC status so residents of rural areas can have increased access to telecommunications services.¹⁷ Similarly, the Commission should ensure that wireless carriers continue to have non-discriminatory access to universal service fund (“USF”) support, which will benefit consumers in rural areas by ensuring that they have the same high-quality competitive alternatives that are available to consumers in urban areas. Policies such as these, which provide economic *incentives* to carriers, will advance the spread of wireless services into rural areas faster and much more effectively than command-and-control regulations that would compel carriers to make uneconomic investments through threats of spectrum take-backs.

III. THE COMMISSION SHOULD REJECT THE “KEEP WHAT YOU USE” PROPOSAL

In the *Further Notice*, the Commission seeks comment on whether to impose a “keep what you use” licensing approach on all licensed terrestrial wireless services that are within the scope of the proceeding, including those that have been subject to auction, as well as to future spectrum allocations.¹⁸ Under this proposal, a geographic licensee that does not sufficiently “use” spectrum in a given geographic area would be stripped of its authority to serve that territory, even if the licensee had otherwise satisfied the Commission’s previously-established performance requirements necessary to retain its

¹⁶ See Comments of CTIA, WT Docket No. 02-381, at 3-5 (filed Feb. 3, 2003).

¹⁷ *Id.* at 5.

¹⁸ See *Further Notice* at ¶ 154.

license. The Commission acknowledges that it has not determined what would be considered sufficient “use” of the spectrum to avoid potential forfeiture of it.¹⁹

A. The Record Does Not Reflect Any Evidence Of A Widespread Lack of Access To Spectrum In Rural Areas, And The Commission Should Allow The Spectrum Market To Respond To Rural Marketplace Needs

One of the underlying premises of the “keep what you use” proposal is that service to rural areas is being denied or unreasonably delayed because entities that supposedly are willing and able to deploy service lack access to spectrum.²⁰ CTIA submits that this is a false premise. The record nowhere indicates that a shortage of available spectrum is a significant obstacle to the deployment of wireless services in rural areas. The Commission itself previously acknowledged that “access to spectrum does not appear to be a substantial barrier to entry in RSAs.”²¹ Under the circumstances, the proposal by some rural LECs to adopt a “keep what you use” approach similar to the initial cellular rules is unwarranted.²²

1. Today’s Marketplace Boasts A Multitude Of Spectrum Licenses And Secondary Market Mechanisms To Provide Access To Spectrum In Rural Areas

As discussed in the *Ninth CMRS Competition Report*, consumers in both rural and urban areas currently have a variety of competitive alternatives. This is because a multitude of licensees hold spectrum in rural areas, either to build out themselves or to make available to other entities desiring to provide service. Over 75 percent of the U.S.

¹⁹ *Id.* at ¶ 156.

²⁰ *Id.* at ¶ 133.

²¹ *2000 Biennial Review – Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22691 (2001).

²² *See Report and Order* at ¶ 78; *Further Notice* at ¶ 152.

population lives in areas served by six or more wireless carriers, and almost 97 percent of the U.S. population lives in areas served by three or more carriers.²³

The Commission also has adopted market-oriented policies designed to ensure that spectrum ultimately will be put to its highest use. For example, the Commission's partitioning and disaggregation policies have proven to be an effective means of ensuring spectrum is made available to multiple carriers, including those interested in serving rural areas. The *Further Notice* acknowledges that the record suggests that the partitioning and disaggregation policies are working as intended; and it cites the experience of AT&T Wireless, which was involved in the sale of more than 100 separate market areas or portions of market areas, the vast majority of which were rural.²⁴

Review of the Commission's databases confirms this observation. Specifically, although the FCC initially created 102 A and B block PCS licenses (*i.e.*, 51 A block licenses, and 51 B block licenses), the ULS database shows 472 currently active A and B block PCS licenses (321 A block and 151 B block licenses) as of January 12, 2005, up from 420 active A and B block PCS licenses (291 active A block PCS licenses and 129 active B block licenses) as of August 4, 2004.²⁵ Likewise, active BTA-based D, E and F block PCS licenses - which would number 1,479 if they reflected the FCC's initial establishment of three such licenses in 493 BTAs - instead number 1,655 according to the FCC's ULS database (including 564 D block licenses, 576 E block licenses, and 515 F

²³ See *Ninth CMRS Competition Report*, 19 FCC Rcd at 20700 Appendix A, Table 10.

²⁴ See *Further Notice* at ¶ 147.

²⁵ The PCS data was derived from January 12, 2005 and August 5, 2004 ULS database searches.

block licenses shown as active on January 12, 2005.)²⁶ Thus, 370 additional active A and B block PCS licenses have been created as a result of geographic partitioning and spectrum disaggregation, and 176 additional D, E and F block BTA-based licenses exist, above and beyond those originally established by the FCC. Additionally, although the Commission originally created 734 cellular markets and a total of 1,468 A and B block cellular licenses, the ULS database shows that there are now 1,717 active cellular licenses.²⁷ Thus, 249 additional active cellular licenses have been created as a result of geographic partitioning, even though cellular carriers hold licenses only for the areas they serve. These 795 additional licenses are far in excess of the number of licenses originally created by the FCC in the cellular and A, B, D, E, and F broadband PCS blocks. Thus the ability to disaggregate or partition spectrum has allowed broader entry and participation in the rural wireless marketplace.

The Commission's new secondary markets spectrum leasing rules provide another market-oriented mechanism to put spectrum in the hands of those who wish to use it.²⁸ Although the Commission acknowledges that the spectrum leasing rules have not been in place long enough for their full impact to be seen,²⁹ preliminary data suggest that spectrum leasing has great potential to promote more efficient use of spectrum and allow more entities to gain access to spectrum. For example, since the secondary markets

²⁶ Based on ULS database searches conducted on January 12, 2005. This omits the C block licenses, which were the subject of multiple disaggregations over the course of the past eight years, at the behest of both the FCC and potential license holders.

²⁷ The cellular data was derived from a January 12, 2005 ULS database search, which found 788 active A block cellular licenses and 929 active B block cellular licenses as of that date.

²⁸ See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003) ("*Secondary Markets Report and Order*").

²⁹ See *Further Notice* at ¶ 40.

rules went into effect in early 2004, 15 broadband PCS spectrum manager lease notifications have been accepted by the Commission, and 13 broadband PCS, 7 cellular, and 39 ESMR-related de facto transfer lease applications have been granted as well.³⁰ Indeed, spectrum leasing very well may be a more attractive mechanism for spectrum holders than partitioning and disaggregation because licensees do not need to permanently divest or relinquish control of their licensed spectrum. By adopting "keep what you use," on the other hand, the Commission may deny licensees a reasonable opportunity to engage in market-oriented secondary market business arrangements.

2. Upcoming Spectrum Auctions Will Provide Even More Opportunities For Those Who Want To Access Spectrum In Rural Areas

In addition to the myriad opportunities entities have for acquiring existing commercial spectrum through voluntary secondary market transactions, additional licensed spectrum will soon become available as part of upcoming Commission spectrum auctions. For example:

- Auction 58 for broadband PCS licenses will commence January 26, 2005.
- The Commission has announced its intention to auction five Advanced Wireless Service ("AWS") licenses in the 1.7/2.1 GHz band as early as June 2006. It should be noted that one of the licenses will be auctioned based on MSA/RSAs.
- Additionally, the Commission has pending a proceeding to adopt service rules, and ultimately to auction, the so-called H and J Blocks in the 1.9/2.1 GHz AWS band.

³⁰ See, e.g., *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, Action De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications*, Public Notice Report No. 1810 (rel. Apr. 21, 2004); see also *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, Action De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications*, Public Notice Report No. 1846 (rel. Jun. 2, 2004); *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, Action De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications*, Public Notice Report No. 1945 (rel. Sep. 22, 2004) all available at <http://wireless.fcc.gov/cgi-bin/weeklypn.pl?TA>.

- Additional flexible-use spectrum will ultimately be auctioned in the 700 MHz band.

Of course, licensed spectrum is not the only path to providing wireless services in rural areas. The Commission has highlighted the growth and development of Wireless Internet Service Providers (“WISPs”) using unlicensed spectrum to deploy broadband service in rural areas. Unlicensed spectrum affords yet another opportunity to deploy spectrum-based services in rural areas.

3. Other FCC Rule Changes Encourage Service To More Rural Areas By Reducing Infrastructure Costs

The Commission’s action in the *Report and Order* to double the authorized power for cellular, PCS, and AWS base stations located in rural areas will further promote the development of wireless services for rural areas by reducing infrastructure costs.³¹ Specifically, increasing power limits will enable wireless carriers to expand and improve rural coverage with fewer base stations – ultimately translating to lower costs and better services for consumers. CTIA has submitted a proposal to further modify the base station power limits in Parts 24 and 27 of the Commission’s rules by restating current limits with ones based on power spectral density, which will be particularly helpful to wireless carriers as they increase deployment of wideband technologies in rural areas.³² CTIA urges the Commission to continue reliance on market-oriented policies and rules creating new opportunities, rather than on the adoption of an unnecessary and disruptive “keep what you use” proposal.

4. The Cellular “Keep What You Use” Rule Was Adopted For A Very Different, Static Spectrum Marketplace

³¹ See *Report and Order* at ¶ 86.

³² See Letter from Paul W. Garnett, Director, Regulatory Policy, CTIA—The Wireless Association™, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 03-264 (filed Oct. 20, 2004).

Despite the variety of mechanisms discussed above by which carriers today can obtain access to spectrum in rural areas, some parties argue that adoption of the cellular “keep what you use” policy would provide additional benefits.³³ These arguments fail to recognize that the current spectrum environment is almost completely different from the early 1980s when the FCC adopted “keep what you use” for cellular carriers based on cellular geographic service areas (“CGSAs”).³⁴ At the time, mobile wireless consumers had limited competitive alternatives. The commercial mobile voice service market was comprised of only two cellular carriers, and there were no partitioning and disaggregation or secondary markets leasing options available. In the largest markets, one of the licenses was granted without hearing to the incumbent local exchange carrier. The second license was awarded after a comparative hearing, a lottery, or a settlement among competing applicants. Initial cellular licensees were given five years to provide service throughout their markets. Areas in the market that were left unserved by the end of this period were made available for licensing to others. Unserved areas that were equal to or greater than 50 square miles in size were available for licensing to any interested party, whereas areas less than 50 square miles were available for licensing only to the incumbent licensees abutting the unserved area.

The CGSA rules were subject to valid criticism. At best, the enforcement of the “keep what you use” CGSA rules resulted in the creation of a “patchwork of small, irregularly sized, and minimally valuable pockets of unserved areas remaining in most markets.”³⁵ Actual service to the public in these areas consistently was delayed

³³ See *Further Notice* at ¶ 152.

³⁴ *Id.* at ¶ 139.

³⁵ See Comments of Cingular Wireless LLC, WT Docket No. 01-108, at 24 (filed July 2, 2001).

significantly if mutually exclusive applications for the unserved area were filed, because of the delays associated with the Commission undertaking a rulemaking to establish a lottery or an auction or for the competing parties to enter into a settlement. In the interim, no carrier, including the incumbent, could build facilities. Indeed, “keep what you use” often *delayed* service to rural areas because it hindered a cellular licensee's ability to modify its existing systems to provide improved service. In the context of today's more complex spectrum environment, it is highly likely that legal proceedings would inevitably flow from any Commission decision to take back spectrum that is not yet used at a particular point in time and would significantly delay – not speed – service to rural areas.

B. The “Keep What You Use” Proposal Is Inconsistent With The Commission’s Highly Successful Market-Oriented Spectrum Policies

As discussed previously, the Commission’s flexible, market-oriented spectrum policies for CMRS have been a huge success in terms of population coverage, effective competition, multiple pricing and payment options, declining rates, and innovative service offerings. Adoption of the “keep what you use” proposal would constitute a step backward toward command-and-control regulation that likely will result in uneconomic and unsustainable service and imprudent expenditure of scarce capital.

The “keep what you use” proposal is even inconsistent with the decision in the *Report and Order* portion of this proceeding to extend the “substantial service” construction benchmark to all wireless services that are licensed on a geographic basis. According to the Commission, the purpose of the substantial service benchmark is to increase licensees’ flexibility to offer a variety of services, including service that may not

require ubiquitous geographic coverage.³⁶ The Commission found that permitting “licensees to satisfy their construction requirements by providing substantial service will increase their flexibility to develop rural-focused business and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements.”³⁷ The Commission concluded that “licensees can provide a meaningful and socially beneficial service without providing ubiquitous service and that providing licensees with sufficient flexibility to respond to market conditions will promote the public interest.”³⁸

In contrast to the flexibility of the substantial service standard just adopted in the *Report and Order*, “keep what you use” would require licensees to provide ubiquitous geographic coverage in order to maintain the geographic integrity of their licenses. This is inconsistent with the Commission’s prior statement that its policies are intended to recognize “market realities,” including the fact that the economics of providing service in rural areas can be significantly different than in urban areas.³⁹ To avoid being penalized under a “keep what you use” regime, licensees may be compelled to make uneconomic investments or engage in premature construction to “save” a licensed area that currently is not economically viable but may be in the future. A “keep what you use” regime may, for example, require a licensee to deploy infrastructure based on existing less efficient narrowband technologies when new more efficient wideband technologies are on the horizon. Such investments also may be at the expense of economically prudent and

³⁶ *Report and Order* at ¶ 73.

³⁷ *Id.* at ¶ 76 (footnote omitted).

³⁸ *Id.* at ¶ 78.

³⁹ *Id.* at ¶ 39 n. 111, quoting *Rural NPRM*, 18 FCC Rcd at 20807.

timely investment in other portions of a licensee's service area. Customers of the carriers, rural and otherwise, will be harmed by a government mandate that would force uneconomic investment.

Additionally, as several carriers previously pointed out, "keep what you use" will make investment capital harder to access.⁴⁰ Investors in wireless carriers may withdraw their support if they are uncertain whether licensees will be able to retain the full value of the spectrum they acquired at auction or in private transactions. Moreover, Wall Street in general may become skittish about investing in the wireless industry if it believes that the Commission will change build-out and license renewal requirements in such radical or unpredictable ways. Indeed, licensees that obtain spectrum through auction -- and the investors that provide the financing -- have legitimate expectations that their rights to spectrum will not be taken away if their initial build-out and service requirement standards have been satisfied. Although the Commission dismissed in a single paragraph (*Report and Order* at ¶ 84) Sprint's arguments that modifying license renewal rules for auctioned licenses would constitute a taking under the Fifth Amendment and/or a major breach of the license contract, CTIA submits that the Commission will be forced to take up these issues in greater depth if the proposal is adopted. The precedent relied upon by the Commission as supporting its authority to modify licenses by rulemaking of general applicability do not address a fact pattern similar to the instant issue, namely the radical modification of licenses that were acquired at auction based on specific terms and conditions, including the Commission's pledge of a "high renewal expectancy" designed

⁴⁰ See *Further Notice* at ¶ 153 and n. 463.

to establish a "stable environment that is conducive to investment."⁴¹ The Commission would become liable for restitution or damages if it were to apply "keep what you use" to existing licenses.⁴²

IV. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL PERFORMANCE REQUIREMENTS IN SUBSEQUENT LICENSE TERMS

The Commission seeks comment on whether it should impose substantial service performance requirements after initial license terms as a means to encourage access to spectrum and the provision of service in rural areas.⁴³ CTIA opposes this proposal.

Post-renewal performance requirements will not promote the expansion of wireless services in rural areas. Wireless carriers already have invested hundreds of billions of dollars in building their networks and in improving service. They have moved from analog to digital and now to 3G; and they already are planning for fourth generation service. Nothing in the record or the experience of the industry even suggests that wireless carriers will cease innovating, making improvements to existing offerings and expanding the geographic footprint of their coverage areas simply because their initial performance requirements have been satisfied.

V. THE COMMISSION SHOULD NOT CREATE INVOLUNTARY EASEMENTS FOR LICENSED SPECTRUM

The Commission seeks further comment on alternative policies to facilitate making unused spectrum available in the event the Commission's market-based policies

⁴¹ *Sprint Reply Comments* at 18-19, quoting *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314; RM-7140, RM-7175, RM-7618, Second Report and Order, 8 FCC Rcd 7700, 7753 (1993).

⁴² *See id.* at 17-21.

⁴³ *See Further Notice* at ¶ 157.

fail to do so.⁴⁴ In particular, the Commission seeks comment on the potential use of involuntary spectrum easements.⁴⁵

The Commission's spectrum easement proposal raises significant and unanswered policy, technical, and legal issues and should not be adopted. CMRS carriers obtained their licenses and have made unprecedented investment with an expectation of exclusive use. Because spectrum easements would infringe on licensees' full use of their spectrum, they also would adversely affect licensees' ability to raise capital and thus create a new impediment to further the deployment of wireless services to rural areas. Moreover, spectrum easements would completely undermine the "private commons" initiative the Commission recently adopted in the *Secondary Markets* proceeding, as there would be no need to operate with consent of the licensee if easements were allowed. Such easements ultimately undermine exclusive use licenses and licensee flexibility.

As CTIA discussed in its comments in the *Interference Temperature* proceeding, market pressures and consumer demand have motivated CMRS carriers to take full advantage of their available spectrum by designing their systems to operate down to the noise floor.⁴⁶ Allowing involuntary spectrum easements in licensed CMRS spectrum will raise the noise-plus-interference floor, which in turn will limit CMRS carriers' channel capacity and reduce their coverage. In sum, the costs of spectrum easements far outweigh any theoretical benefits, and the proposal should be rejected.

⁴⁴ *Id.* at ¶ 159.

⁴⁵ *Id.* The Commission defines "easements" for purposes of this proceeding as "government-defined access rights to licensed spectrum that would not require the easement user to obtain the prior consent of the licensee so long as the user complied with the easement conditions, e.g., non-interference with the licensee's use of the spectrum." *Report and Order* at ¶ 40 n. 113.

⁴⁶ See Comments of the Cellular Telecommunications & Internet Association, ET Docket No. 03-237, at 6 (filed Apr. 5, 2004).

VI. CONCLUSION

For the foregoing reasons, CTIA urges the Commission to reject each of the pending proposals for rulemaking. The Commission instead should continue promoting market-oriented policies that provide licensees with flexibility and incentives to deploy high-quality, affordable services in rural areas.

Respectfully submitted,

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