

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

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band)	WT Docket No. 07-195
)	
Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands)	WT Docket No. 04-356
)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

I. INTRODUCTION

The National Telecommunications Cooperative Association (NTCA)¹ hereby submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.² NTCA respectfully submits that the Federal Communications Commission (Commission) should abandon its proposal to license the AWS-3 spectrum according to a single nationwide license. Instead, the Commission should license the AWS-3 spectrum in a manner that provides meaningful spectrum opportunities for small and rural telecommunications companies. The AWS-3 spectrum should be licensed according to the small Cellular Market Areas (CMAs), subject to spectrum aggregation limits. NTCA also opposes the Commission’s proposal to dictate that the spectrum winner(s) offer a “free” Internet service.

¹ NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service ILECs and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Act.

² Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band, Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, Further Notice of Proposed Rulemaking, WT Docket No. 07-195, WT Docket No. 04-356, FCC 08-158 (rel. June 20, 2008) (FNPRM).

II. THE COMMISSION SHOULD LICENSE THE SPECTRUM IN A MANNER THAT PROVIDES MEANINGFUL OPPORTUNITY FOR SMALL AND RURAL COMPANIES

In its FNPRM, the Commission proposes to form a contiguous 25 MHz block of AWS-3 spectrum and license it as a single nationwide license. Licensing the spectrum in this manner precludes the possibility of small and rural companies from participating in the auction process. Rather than advance the interests of a select group of spectrum applicants seeking a nationwide license, the Commission should instead take a fresh look at how this spectrum can be best utilized to provide service to the rural population, consistent with statutory mandates.

A. Small Carriers Need Additional Spectrum with Which to Provide Broadband Wireless Service

Small and rural carriers are finding it more difficult to compete with large carriers for spectrum. Although Auction 73 was widely touted as a success, it was a success for the largest carriers. The nation's largest carriers heavily dominated the auction, accounting for \$16.3 billion of the total \$19.6 billion in provisional winning bids. While 55% of the winning bidders were "designated entities," the Commission's rules were abused in such a way as to permit a bidder with financial backing by one of the nation's largest carriers to obtain bidding credits and win spectrum at a discounted rates while truly small businesses were shut out. Only 37% of NTCA's members who participated in the 700 MHz auction were successful at obtaining spectrum.³ Every one of the large carriers was successful.

³ NTCA's initial comments in this proceeding pointed out that the Commission must consider licensing of the AWS-3 spectrum in light of the results of Auction 73. See Comments of NTCA, Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band, WT Docket No. 07-195 (filed Dec. 14, 2007).

Small carriers have a real need for more spectrum covering their rural territories. The spectrum auction at issue is the last foreseeable opportunity for small and rural companies to acquire spectrum with which to provide broadband services. If given the opportunity, NTCA's members will participate in the auction of the AWS-3 spectrum.

B. Licensing the Spectrum According to a Single Nationwide License is Inconsistent with Section 309(j) and the Public Interest

The Commission must take into consideration Section 309(j) when it determines spectrum policies.⁴ Section 309(j) directs the Commission to consider policies that provide spectrum opportunities for small businesses, including rural telephone companies. It has long been NTCA's position that only primary spectrum opportunities satisfy 309(j). Section 309(j)(3) instructs the Commission to design competitive bidding systems in a manner that will disseminate licenses among a wide variety of applicants, including small businesses and rural telephone companies. Section 309(j) requires the Commission to "ensure" that small business and rural telephone companies are given the opportunity to participate in the provision of spectrum-based services.⁵

It is widely recognized that small and rural companies cannot and would not compete for a nationwide license. Small companies lack the resources to pay for a nationwide license and generally only seek spectrum covering small discrete service territories. Partitioning and disaggregation regulation has provided little opportunity for small companies. Large licensees are unwilling to partition territory because it dilutes the value of their spectrum asset and the transition costs of a deal outweigh the value.

⁴ See 47 U.S.C. § 309(j).

⁵ 47 U.S.C. § 309(j)(4).

The Commission may be relying on its aggressive build out proposal to encourage the AWS-3 licensee to partition territory. However, the Commission's proposal provides only population-based benchmarks. A nationwide licensee could very easily meet the construction benchmarks without providing any service to the vast majority of the rural territory served by NTCA's members. Because it's less expensive to serve urban populations, it is safe to assume that a nationwide AWS-3 licensee would follow the path of its large wireless predecessors and concentrate its build out efforts in urban and suburban communities. The rural consumer would be left out.

C. The FCC Should License the D Block According to Cellular Market Areas

The Commission should license the AWS-3 spectrum block on the basis of Cellular Market Areas (CMAs). Licensing spectrum according to these small license territories promotes the deployment of services to rural and underserved areas consistent with Section 309(j).

Small license territories enable bidders to tailor their auction strategy and spectrum acquisitions to meet their individual needs. A large company may seek spectrum in urban areas where demand is greatest and capacity is strained, but may not want or need licenses for rural areas. For those large companies seeking larger geographic service territories, recent spectrum auctions demonstrate that when spectrum is auctioned according to small geographic areas, a company can aggregate spectrum in a manner that creates large regional, or near nationwide, license territories. Small and rural companies benefit from small license areas by being able to acquire licenses at affordable prices for only the geographic areas they seek to serve.

Consistent with Section 309(j), licensing the AWS-3 spectrum according to CMAs will ensure the widest and most efficient distribution of licenses and the most rapid deployment of new technologies, products, and services.

D. The Commission Should Set Limits on Spectrum Aggregation

The Commission should consider re-imposing spectrum caps. The spectrum cap was removed in 2001 when the Commission determined that it was no longer necessary. However, since 2001, there have been a number of mergers involving large wireless carriers. The largest wireless carriers keep getting larger and a spectrum cap may be necessary to ensure that the public is protected from a duopoly that provides substandard service to rural communities.

III. THE COMMISSION SHOULD NOT REQUIRE AWS-3 LICENSEES TO PROVIDE “FREE” SERVICE

NTCA’s members oppose the FCC’s proposal to require AWS-3 licenses to provide “free” broadband service. The “free” broadband concept is the descendent of one company’s business plan and is an unproven and risky wireless business model that will ultimately hamper rural broadband deployment.

A federally mandated “free” competitor will destabilize the broadband market and discourage investment. Free service obligations would likely suppress the value of the AWS-3 spectrum at auction. Nearly 100% of NTCA’s members offer Internet access to their rural communities. The FCC’s proposal introduces a potential nationwide competitor who obtained spectrum at a discount offering “free” service. The proposal causes NTCA’s members to question their ability to obtain financing or recoup their substantial broadband investment. While the AWS-3 spectrum may offer a product that is inferior to others, it is widely anticipated that some customers in rural areas would

choose a substandard free broadband service over a superior pay service. The Commission's proposal would make it difficult for small and rural companies to obtain financing, or to justify expending their own resources to deploy broadband service. The proposal will not advance, but would delay broadband deployment in rural areas.

It is entirely possible that a AWS-3 licensee, or some other spectrum licensee, will make a business decision to offer a "free" broadband service, as is their right. If the model fails, there is no risk to the general public. The licensee would adjust its strategy accordingly. The Commission's proposal offers great risk of failure and the potential for years of litigation and valuable spectrum lying fallow.

NTCA supports the Commission's desire to promote the universal deployment of broadband service, but a government-mandated "free" service will not achieve the goal. The marketplace, not the Commission, should determine how the AWS spectrum licensees offer service to the public.

IV. CONCLUSION

For the above stated reasons, the Federal Communications Commission should abandon its proposal to license the AWS-3 spectrum according to a single nationwide license. Instead, the spectrum should be licensed according to the small Cellular Market

Areas (CMAs), providing meaningful spectrum opportunities for small and rural telecommunications companies. NTCA also opposes the Commission's proposal to dictate the spectrum winner(s) offer a "free" Internet service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WT Docket No. 07-195 and WT 04-356, FCC 08-158, was served on this 25th day of July 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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