

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition for Rulemaking Regarding the) RM-11510
Transition of Part 22 Cellular Services to)
Geographic Market-Area Licensing)

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ hereby comments on the Petition for Rulemaking (Petition) filed by CTIA-The Wireless Association (CTIA) requesting that the Federal Communications Commission (Commission) initiate a rulemaking to transition cellular licensing from a system of site licenses to one based on geographic market-area licensing. NTCA opposes CTIA's proposal to eliminate Phase II unserved area licensing, but supports opening a rulemaking to consider modifications to the current cellular licensing scheme.

I. INTRODUCTION

NTCA is a trade association that represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and many of its members also provide wireless services to their

¹ NTCA is a national industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers (LECs) 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 Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

communities. NTCA's members hold cellular licenses, some of which were issued as unserved area licenses pursuant to the Phase II licensing process.

CTIA argues in its petition that the Commission's cellular licensing rules are out of date. It seeks to update the rules to reflect current cellular technology and transition to a CMA-based licensing regime. CTIA proposes that the Commission re-issue cellular licenses on a Cellular Market Area (CMA) basis, subject to negotiated carve outs and freeze the filing of new Phase II unserved area applications.

NTCA does not support abolishing the current Phase II application process. Unserved area applications continue to play an important role in ensuring cellular service in rural communities and other areas that remain unserved by licensees. However, NTCA does recognize that in many circumstances the Cellular Geographic Service Areas (CGSAs) on record do not accurately reflect actual cellular coverage. NTCA supports the Commission taking a fresh look at the rules to create a more accurate and consistent licensing structure.

II. THE FCC SHOULD NOT CONSIDER CHANGING THE PHASE II UNSERVED AREA APPLICATION RULES

NTCA opposes freezing or eliminating Phase II unserved area licensing and converting all incumbent cellular licenses to CMA licenses. There remain areas in this country where cellular service is not available. Carriers have had years to build out their license territory, they should not now receive the exclusive rights to territory they do not serve and may not intend to serve.

CTIA understates the amount of territory that remains unserved and the number of applications submitted in recent years to serve that territory. NTCA's members assure us

that there remain large rural areas without adequate cellular service. NTCA's members continue to file Phase II applications to offer wireless service to their far-out subscribers and are pressured by their communities to ensure that hikers, hunters and others enjoying the most rural territory have the ability to complete a wireless call in an emergency. CTIA opines that particular challenges, including low population density, make service infeasible. It is because large carriers deem service infeasible that rural carriers exist. Rural territory should not be held hostage to a large carrier's cost-benefit build-out analysis.

NTCA has long held out the cellular build-out rules as an example of successful licensing policy. The Commission recently agreed, adopting a "keep what you use" licensing approach, coupled with aggressive construction obligations based on the cellular model, in its most recent 700 MHz auction.

The Phase II process is successful, ensuring that areas may be built out – even when an original licensee makes a business decision not to build out. The process serves the public interest and encourages the deployment of service to rural areas consistent with the mandate of section 309(j) of the Act. The FCC should not proceed with a rulemaking proceeding that considers freezing or eliminating the acceptance of Phase II applications.

III. THE FCC SHOULD CONSIDER GEOGRAPHIC BASED LICENSING

NTCA supports the idea of geographic based licensing for cellular systems with adequate protections for small licensees. However, the geographic areas identified for licensing should not necessarily be CMAs. Many cellular license territories have been partitioned between numerous carriers and service territories often extend into

neighboring CMAs. Any geographic-based licensing should be based on current, actual service territory.

NTCA proposes that each carrier be required to certify with supporting documentation its current actual service territory. If the incumbent licensee's service territory covers the entire CMA, the Commission can and should convert the license to a CMA license.² If the incumbent's actual service area is not conterminous with the CMA boundary or if there is unserved area of 50 square miles or more, the Commission should establish a geographic license based on the territory actually served by the licensee.

When an incumbent certifies its actual service territory, it may demonstrate expanded coverage, similar to what CTIA proposes, but interested parties should have opportunity to comment on or request the Commission to deny any coverage showings. If an interested party can conclusively show that an incumbent is not actually serving territory that it claims within its coverage area, the disputed territory would be deemed unserved and parties would have an opportunity to file competing applications. Phase II applications would be required to file the same documentation.

IV. CONCLUSION

There remain areas in this country where cellular service is unavailable or undependable. The Commission should continue its policy of encouraging ubiquitous coverage by providing competitors with an opportunity to apply for, and provide service to otherwise unserved areas. The Commission should not consider rules that would freeze or eliminate the cellular unserved area licensing process.

² This CMA conversion would also take place if the unserved area in a market is less than 50 square miles.

However, NTCA recognizes that the site-by-site licensing approach to cellular service may be cumbersome and outdated. NTCA supports the Commission's opening of a rulemaking process to update the cellular licensing regime to a market-area approach, consistent with the above recommendations.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ Daniel Mitchell
Daniel Mitchell

By: /s/ Jill Canfield
Jill Canfield

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
703-351-2000

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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 RM-11510, DA 09-5, was served on this 23rd day of February 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Jonathan.Adelstein@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

Michael F. Altschul
Christopher Guttman-McCabe
Paul W. Garnett
CTIA - THE WIRELESS ASSOCIATION
1400 16th Street, NW Suite 600
Washington, D.C. 20036

Joyce Jones
Mobility Division, Wireless
Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 6407
Washington, D.C. 20554
joyce.jones@fcc.gov

/s/ Adrienne L. Rolls
Adrienne L. Rolls