

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

In the Matter of)	
)	
Petition for Rulemaking Regarding the Transition of Part 22 Cellular Services to Geographic Market-Area Licensing)	RM No. 11510
)	
)	

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys, and in response to the Public Notice in the above captioned proceeding,¹ hereby comments on the Petition for Rulemaking (“Petition”) filed by CTIA-The Wireless Association (“CTIA”) requesting that the Federal Communications Commission (“FCC” or “Commission”) initiate a rulemaking to transition cellular licensing from a system based on site licenses to geographic market-area licensing. RTG opposes CTIA’s proposal that the FCC eliminate Phase II unserved area licensing entirely, but agrees with CTIA that the cellular licensing scheme needs to be modified to account for evolving digital technologies. RTG is open to considering converting cellular licensing to a hybrid geographic-based approach under which markets that are “covered” may be converted to geographic licenses, but markets with 50 square miles or more of unserved area are still subject to unserved area licensing.

I. Statement of Interest

RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined

¹ *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing*, Public Notice, DA 09-5, RM No. 11510 (rel. Jan 5, 2009).

together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. RTG's members hold cellular licenses, some of which were issued as unserved area licenses pursuant to the Phase II licensing process.

II. The CTIA Petition

In the Petition, CTIA argues that defining a cellular carrier's service area based on site information that models analog propagation is no longer meaningful for evolving digital technologies. CTIA proposes that the FCC re-issue all cellular licenses to "incumbents" on a Cellular Market Area ("CMA") basis in place of their existing Cellular Geographic Service Area ("CGSA") licenses subject to two carve outs. First, CTIA proposes that cellular licensees in a CMA providing service under unserved area licenses would consult with the CMA license holder to determine each licensee's service area boundaries following the transition to digital service. Second, incumbent cellular licensees providing service beyond the boundaries of their CMAs would consult with the CMA licensee of the affected market to establish service area boundaries, and the incumbent's license would be modified to reflect these boundaries. In instances where the parties cannot reach an agreement, CTIA proposes that the matter be referred to the FCC for adjudication. CTIA also requests that the FCC freeze the filing of any new Phase II unserved area applications.

The current cellular licensing rules determine a licensee's CGSA based on the predicted analog coverage contours of the licensee's sites. RTG recognizes that this approach may no longer reflect a licensee's true coverage area, particularly for CDMA and other evolving digital technologies. RTG, however, disagrees that the solution should be to eliminate the Phase II

licensing process entirely. As discussed below, the Commission should retain the Phase II licensing process for unserved areas of 50 square miles or more. RTG, however, is open to considering converting cellular licenses to geographic licenses, based on a licensee's existing CGSA and supplemental coverage showings.

III. Argument

A. The FCC Should Not Freeze or Eliminate Phase II Unserved Area Licensing

RTG opposes freezing or eliminating Phase II unserved area licensing and converting all "incumbent" cellular licenses to CMA licenses. Specifically, RTG opposes converting the "incumbent's" license to a CMA license where there is 50 square miles or more of unserved area within a CMA. Such a conversion will stifle competition and allow incumbent licensees to hold rural areas hostage. The large carriers will be able to hold licenses for areas that they do not serve and may never intend to serve.

This is exactly what has happened in other geographically licensed services, such as broadband Personal Communications Service ("PCS"). In PCS, large carriers were able to satisfy their construction obligations by providing service to the more densely populated areas in a market and leaving the rural areas unserved or underserved. These licensees then have little or no incentive to geographically partition their licenses to smaller carriers that would like to provide service to the more rural and underserved areas of a market.

There are still large areas of the country that remain unserved by one or more cellular carriers. Many of these areas currently are marginal areas, but this may change as demographics and technology change. Carriers continue to utilize the Phase II process to provide service to previously unserved or underserved areas,² and there is no need for the Commission to revise this

² CTIA reports that in the three years preceding the analog sunset, the Commission granted only three Phase II applications that were not filed by the incumbent cellular provider seeking to expand coverage

fundamental approach. Indeed, the public interest requires that the FCC continue to balance administrative convenience and policies that encourage the deployment of services to rural and underserved parts of the country. This is particularly important since wireless services likely will play an increasing role in providing broadband services to difficult to serve rural areas.

Moreover, the FCC recently has moved away from awarding licenses essentially in perpetuity, with no opportunity for a competing provider to use the spectrum. In licensing 700 MHz spectrum in the recent Auction No. 73, the Commission adopted aggressive construction obligations, and a “keep-what-you-use” licensing approach modeled on cellular unserved area licensing.³ Under this licensing scheme, at end of the initial license term, a licensee may keep the license for the area that it currently serves, but the unserved area will become available for reassignment, unless the licensee has met extremely stringent construction obligations.⁴

The Phase II process allows parties an opportunity to acquire a cellular license and provide service in otherwise unserved area. This serves the public interest and encourages the deployment of service to rural areas consistent with the mandate of Section 309(j) of the

into adjacent area. If this figure is accurate, the relative few grants may in part be attributable to the fact that the FCC resolves mutually exclusive Phase II applications through competitive bidding, and the Commission’s auction resources have been tied up in several major auctions (i.e. AWS-1 and 700 MHz). More importantly, CTIA’s methodology undercounts actual use of the Phase II process. CTIA reports only applications granted, not filed. Moreover, by limiting its search to the grant of “New” applications, CTIA fails to account for the use of the process by licensees that originally acquired their licenses through the Phase I or Phase II process and that expand these systems through Phase II modification applications.

³ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order in WT Docket 06-150, *et al.* FCC 07-132, 42 CR 210 (2007) (“700 MHz Second Report and Order”).

⁴ See 47 C.F.R. § 27.14(g)(2); 700 MHz Second Report and Order at ¶¶ 170-172 (“Under our “keep-what-you-use” rule, if a licensee fails to meet its end of term benchmark, its authorization to operate will terminate automatically without Commission action for those geographic areas of its license authorization in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission.”). The process for reassigning this spectrum closely follows the cellular Phase II process (i.e., initial 30-day window followed by rolling 30-day windows if no application filed in initial filing window). See *id.* at ¶¶ 171-172.

Communications Act, as amended (the “Act”). Accordingly, the FCC should continue to allow competing parties to file Phase II applications to seek licenses for unserved area.⁵

B. The Commission Should Commence a Rulemaking to Modify its Cellular Licensing Rules to Accommodate Digital Technologies

Although RTG opposes eliminating unserved area licensing entirely, RTG supports commencing a rulemaking to modify the cellular rules to reflect the transition to digital technologies. CTIA is correct that with the transition to digital services, predicted analog contours cannot be used going forward to determine a licensee’s service area boundary or the requested license area of a Phase II application. The Commission, therefore, should commence a rulemaking to address the limitations of its current cellular licensing system.

1. Hybrid Geographic-Based Licensing

RTG is open to considering converting cellular licensing to a hybrid geographic-based approach, subject to interference protections for small licensees. Under such an approach, however, CMA’s would not necessarily define each license boundary. Many markets are partitioned between numerous licensees, and no one of these “incumbents” should be deemed the CMA license holder. In addition, the CGSAs of many licensees extend into adjacent markets, and a number of markets are licensed both to an incumbent licensee and one or more Phase II licensees. Therefore, any conversion to geographic-based licenses must reflect these “non-CMA boundaries.”

In order to establish the license boundary for cellular geographic licenses, RTG proposes that the Commission use the carrier-certified CGSA, as of the date the carrier filed its analog Cellular Coverage Certification, as the starting place. If a carrier has not yet turned-down its

⁵ As discussed below, RTG does not request that the FCC maintain unserved area licensing for unserved areas of less than 50 square miles. *See* 47 C.F.R. § 22.951. If the Commission converts to a geographic licensing basis, area of less than 50 square miles should become part of the incumbent’s license area.

analog system, then its analog CGSA should be the starting place. For administrative ease, the Commission could require all cellular licensees to update their license by a date certain, similar to the five-year System Information Update (“SIU”) filing.

Where the incumbent licensee’s CGSA is coterminous with the CMA boundary, and there are no unserved area licensed systems in the market, then the Commission can convert the license to a CMA license. Similarly, if unserved area in a market is less than 50 square miles, then the Commission can convert the license to a CMA license. In this case, the incumbent is the carrier most likely to serve the area, and the incumbent and adjacent licensee, legally are the only entities that may seek an unserved area license. Where the incumbent’s CGSA is not coterminous with the CMA boundary and/or there is unserved area of 50 square miles or more, the Commission could establish a geographic license based on geographic coordinates similar to current licenses for “undefined areas” in other geographic based services.

RTG also is receptive to the FCC allowing licensees to demonstrate expanded coverage through filings similar to previously accepted alternative coverage showings and documentation supporting licensee’s construction certifications.⁶ Interested parties should have an opportunity to comment on or petition to deny these expanded coverage showings. Phase II applicants would be required to file the same type of documentation in their applications. Other parties would then have an opportunity to file competing applications. In addition, the public and all interested parties should have the opportunity to comment on the projected coverage.

⁶ For example, in order for a 700 MHz licensee to demonstrate what area it serves for application of keep-what-you-use licensing, the licensee must file coverage maps along with “supporting documentation certifying the type of service it is providing for each EA or CMA within its license service territory and the type of technology it is utilizing to provide this service for each EA or CMA in its service territory. The supporting documentation also must provide the assumptions used by the licensee to create the coverage maps, including the propagation model and the signal strength necessary to provide service with the licensee’s technology.” 700 MHz Second Report and Order ¶ 68.

In its Petition, CTIA proposes that “incumbent” licensees negotiate with the holders of unserved area licenses and with adjacent license holders to establish their respective license boundaries. RTG is concerned, however, that this approach will allow the large carriers to exercise disproportionate bargaining power. Small carriers often depend on their neighboring larger carrier for roaming revenue, and this largely one-sided relationship will allow the large carriers to exert disproportionate power in defining their license boundary under the CTIA approach. Industry coordination and cooperation are essential to and a fundamental part of the nationwide CMRS network, but absent some additional guidance from the Commission, this system may not benefit both parties. In whatever approach the Commission takes, it must ensure that large carriers do not expand their license areas by shrinking those of smaller carriers.

Even if the Commission converts cellular to geographic-based licenses, the current rules do not establish specific interference protection between adjacent licensees using digital technologies. In other geographic based services, the Commission has established field strength limitations at the license boundary.⁷ If a licensee wants to exceed these limitations, it must obtain the consent of the adjacent licensee. RTG believes that in converting cellular to geographic licenses, it will be necessary for the Commission to develop similar field strength limitations for cellular as well.

The FCC also must require that adjacent cellular licensees coordinate digital spectrum use and be required to “pull-back” if operations result in harmful interference or subscriber capture in a neighboring market.

2. Digital Propagation Contours

As an alternative to geographic based licensing, RTG also is open to the FCC’s continued use of site based cellular licensing and the establishment of predicted coverage models for the

⁷ See, e.g., 47 C.F.R. §§ 24.236, 27.55.

