

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition for Rulemaking Regarding the Transition of)
Part 22 Cellular Services to Geographic Market-Area) RM No. 11510
Licensing)
)
Petition for Rulemaking of CTIA – The Wireless)
Association®)
_____)

COMMENTS OF VERIZON WIRELESS

Verizon Wireless, pursuant to Section 1.405(a) of the Commission’s rules, 47 C.F.R. § 1.405(a), hereby submits these comments in support of the petition filed by CTIA – The Wireless Association® seeking a rulemaking to transition the Part 22 Cellular Radiotelephone Service from a site-based to a market-based licensing model.¹ Put simply, the current cellular licensing model has outlived its purpose, yet it continues to impose significant costs on Commission staff and cellular licensees. A transition to a market-based licensing model will produce significant public interest benefits by eliminating delays in the deployment of broadband and other services to wireless consumers. Verizon Wireless therefore supports CTIA’s call to transition the cellular licensing model to a market-based regime akin to all other Commercial Mobile Radio Service (“CMRS”) licensing.

¹ See Wireless Telecommunications Bureau, Public Notice DA 09-5 (Jan. 5, 2008); *Petition for Rulemaking of CTIA – the Wireless Association®*, RM No. 11510 (Oct. 8, 2008) (“CTIA Petition”).

I. THE SITE-BASED CELLULAR LICENSING MODEL HAS OUTLIVED ITS PURPOSE

Cellular licensing today remains a system based upon transmitter sites that form a licensee's Cellular Geographic Service Area ("CGSA") – a composite service area established by outdated analog coverage and propagation models. Every time a cellular licensee makes any technical modifications to its system, including the addition of new technologies (*e.g.*, digital voice, broadband, *etc.*), it must consider whether the change will have any impact on its license area. Changes that expand a licensee's CGSA require public notice and comment and prior Commission approval; changes that decrease CGSA, which requires notice to the Commission, threaten to dilute the licensee's most valuable asset – its licensed area in which it is entitled to interference protection. In both instances, licensees are required to prepare technically-complex filings that Commission staff must then review and approve, often for the very limited purpose of determining license rights to very small slivers of geographic area. In contrast, all other CMRS spectrum – 800 MHz ESMR, PCS, AWS, 700 MHz – is licensed on an area-wide basis and no site-based filings are required for technical modifications.

The cellular licensing model, adopted nearly thirty years ago, was a license standard designed for its time. Cellular was the first, mass-marketed, mobile voice service, and the Commission wanted to foster rapid deployment and competition as quickly as possible.² Cellular licensees were initially granted the exclusive right to provide service within their defined market areas for a period of five years; at the end of this five-year period, the licensee's service area (its CGSA) became its license area, and areas not served within its market were deemed "unserved" and available for licensing to other parties. Cellular carriers anxious to secure license rights to as

² *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, Notice of Inquiry and Notice of Proposed Rulemaking, 78 FCC 2d 984, 991 (1980).

much territory as possible aggressively deployed new, wide-area communications systems to expand their footprint and their CGSA, leaving as little unserved area in their market as possible.

As CTIA observed, the unserved areas that remain today raise unique challenges such as “low population density, the presence of federal park land excluded from development, or natural boundaries such as swamps and large bodies of water [that] make service infeasible.”³ In the three years preceding the onset of the analog shutdown notice period (November 20, 2004 – November 20, 2007), for example, only three “new” unserved area applications were granted.⁴ Yet the cellular licensing regime continues to use an incredibly burdensome, site-based licensing system, protecting unserved area opportunities that have all but disappeared. This burden is extraordinary. For example, since 1995 (the year in which the first auctioned, broadband PCS licenses were issued), Commission records list 15,483 cellular major modification applications as granted, but only 1,148 broadband PCS applications.⁵ This disparity saddles cellular licensees with countless hours of “make-work,” unnecessary expense, and regulatory delay that inhibits the ability of service providers to quickly upgrade networks and better serve their customers – all without realizing any countervailing benefit.

In 1994, the Commission concluded that licensing based on market areas is “simpler to administer,” and “provides licensees and the public with greater certainty.”⁶ It thus abandoned site-based licensing in favor of market-based licensing for new CMRS services. It should do so now for the cellular service as well. Put simply, the Commission’s site-based cellular model has

³ CTIA Petition at 10.

⁴ *Id.*

⁵ In total, Commission license records list 49,193 cellular and 1,148 broadband major modification applications as granted.

⁶ *Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services*, Third Report and Order, 9 FCC Rcd 7988, 8044 (1994).

outlived its purpose, requiring licensees to maintain voluminous license data in order to preserve unserved area licensing opportunities that interested parties have had more than a decade or more to pursue, but have chosen not to. Hence, the burdens of this system far outweigh its costs, and there is no compelling public policy reason to perpetuate it.

II. THE COMMISSION SHOULD INITIATE A RULEMAKING TO TRANSITION CELLULAR LICENSING TO A MARKET-BASED MODEL

CTIA's proposal will go a long way toward achieving a more rational licensing model and regulatory parity on the CMRS playing field. Verizon Wireless submits that the following additional steps will help facilitate the smooth transition to a market-based cellular licensing model.

A. The Commission Should Adopt a Cellular Field Strength Limit for Interference Protection Purposes

Any market-based license model requires rules to ensure co-channel interference protection from operations in neighboring areas. In the cellular service, the Commission uses the CGSA boundary (again, based on outdated analog technology) to delineate areas in which co-channel licensees may not cause interference.⁷ In market-based CMRS services, by contrast, the Commission uses market boundary field strength limits as a bright line above which co-channel interference is likely to occur at the market border.⁸ As the Commission previously observed, a boundary field strength limit approach affords licensees maximize flexibility to both design their

⁷ 47 C.F.R. §§ 22.99, 22.911. CGSA is used both to define a licensee's reliable service area as well as the area within which it is entitled to frequency protection from co-channel licensees in adjacent areas.

⁸ See e.g., *Amendment of the Commission's Rules to Establish New Personal Communications Services*, Second Report and Order, 8 FCC Rcd 7700, 7774 (1993) (“[w]e believe that a median signal level of 47 dBuV/m will enable [PCS] licensees to provide service to the edge of their respective areas while limiting co-channel interference in adjacent areas to predictable levels which can be taken into account for planning purposes.”) (citation omitted) (“*PCS Second Report and Order*”).

systems and minimize the potential for interference.⁹ The Commission's newer approach is demonstrably superior, as evidenced by its widespread use in other CMRS services.

The Commission market boundary signal strength limits are correlated to operational frequency. For example, the Commission's rules impose a 47 dBuV/m market boundary median field strength limit (predicted or measured) on broadband PCS and AWS licensees, and a 40 dBuV/m limit on 700 MHz and 800 MHz ESMR licensees.¹⁰ Verizon Wireless thus submits that a 40 dBuV/m median field strength limit (predicted or measured) at the market boundary would be appropriate for 850 MHz cellular licensees.

B. The Commission Should Adopt Flexible Transition Procedures

Verizon Wireless also submits that the Commission propose flexible procedures for the transition process itself. In many instances, making the transition will be as simple as issuing a new, market-defined license (*e.g.*, where the licensee's CGSA is the only one in the market, and the CGSA boundaries are wholly within the market). In other instances, however, transitioning will require negotiation and agreement between neighboring licensees. As such, Verizon Wireless recommends that the Commission adopt the following procedures in order to facilitate the transition process.

Application Freeze. At the time the Commission issues the Notice of Proposed Rulemaking, it should immediately institute a freeze on all major cellular applications, including new station applications and modification applications proposing CGSA expansions (major modifications that do not propose changes to existing CGSAs should still be allowed). Instituting an application freeze would be consistent with the approach used by the Commission

⁹ *PCS Second Report and Order*, 8 FCC Rcd at 7774.

¹⁰ 47 C.F.R. §§ 24.236, 27.55(a)(1), 27.55(a)(2), 90.689(b). Parties may reach agreement to exceed these limits where necessary, much in the way cellular licensees often enter into Service Area Boundary agreements with neighboring licensees.

in other services transitioned from site-based to market-based licensing systems.¹¹ Until completion of the transitioning process described below, license areas should be determined by the most recent major application filed with the Commission delineating a licensee's CGSA.

Rolling Transition Periods. In order to avoid over-whelming Commission and licensee resources, the Commission should propose to transition the cellular service to market-area licensing on a staggered basis (*e.g.*, groups of markets at a time), affording licensees sufficient time (*e.g.*, 90 – 120 days per group) to review license records and to reach consensus with neighboring licensees where necessary. Cellular licensees subject to a transition period should be required to submit a transition notification to the Commission certifying: (1) whether there are any other co-channel cellular licensees with CGSAs within their market area and, if so, the licensee should list the call sign, market number, and name of each such licensee; and (2) whether its CGSA extends into the market area of a neighboring market and, if so, the licensee should list the call sign, market number, and name of each such licensee. The Commission should require licensees to serve copies of this notification on all neighboring, co-channel licensees (including any co-channel, unserved area licensee within the market).

Non-Standard License Boundaries. All cellular licensees with non-standard license boundaries that do not follow Commission-defined MSA or RSA market boundaries (*e.g.*, unserved area licenses, previously-partitioned market areas, licenses with CGSAs that cross into neighboring markets, *etc.*) should be required to submit, along with their transition notification: (1) a set (or sets) of geographic coordinates that define the non-standard area, (2) a complete copy of the most recent major application delineating such non-standard area, and (3) an overlay

¹¹ See, *e.g.*, *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Notice of Proposed Rulemaking, 11 FCC Rcd 3108, 3136-37 (1996). Continuing to accept applications during the transition period would impair the objective of establishing fixed license boundaries.

map depicting both the CGSA and the non-standard area as depicted using geographic coordinates. Again, copies of any such materials should be served, along with the transition notification, on all neighboring, co-channel licensees (including any co-channel, unserved area licensees within the market).

Public Notice Procedures. Transition notifications should be placed on the Wireless Telecommunications Bureau's weekly public notice. If a notification is unopposed and otherwise complies with applicable filing requirements, the Commission should issue a new, market-based license that includes any non-standard license boundaries defined by the licensee; remaining unserved areas in the market (if any) should revert to the first licensed, active call sign on the channel block involved. While a neighboring, co-channel licensee should be allowed to oppose a transition notification, the Commission should require parties to resolve any differences informally. Moreover, the Commission should require substantiation in any oppositions claiming that a notification inaccurately depicts a licensee's non-standard area(s). For example, an objecting, co-channel, neighboring licensee claiming that a notification infringes on its CGSA should be required to demonstrate this by providing its own CGSA coordinates and overlap maps. In these circumstances, the Commission should make clear that *de minimis* discrepancies (e.g., land area or population variations of 5% or less) are insufficient grounds to reject a licensee's transition notification.

III. CONCLUSION

The Commission's cellular licensing rules are outdated and administratively burdensome, and they limit the ability of cellular carriers to implement technology upgrades to best serve customers. Having served its intended purpose, the Commission's site-based licensing model should be replaced by the same market-based approach used in other CMRS services. Verizon Wireless therefore supports CTIA's Petition for Rulemaking, and urges the Commission to initiate a rulemaking proceeding to update its rules to allow market-based licensing in the cellular service.

Respectfully submitted,

VERIZON WIRELESS

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CERTIFICATE OF SERVICE

I, Sarah Trosch, hereby certify that on February 23, 2009, a true and correct copy of the foregoing "Comments of Verizon Wireless" was served by first-class U.S. mail, postage prepaid, on the party listed below:

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A handwritten signature in cursive script that reads "Sarah Trosch". The signature is written in black ink and is positioned below the recipient information.