

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

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

REPLY COMMENTS OF AT&T INC.

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby submits this reply to comments on the above-captioned Petition for Rulemaking (“*Petition*”) filed by CTIA—The Wireless Association® (“CTIA”).¹ Most commenters in this proceeding—including AT&T—agree that existing Part 22 cellular licensing should be transitioned from burdensome and anachronistic site-by-site filings to geographic market area licensing.² AT&T also supports certain refinements to CTIA’s proposals suggested by commenters, including the Rural Telecommunications Group (“RTG”), which propose that CMA licenses be granted in all markets where the incumbent’s license is coterminous with the CMA boundary or where no contiguous areas over 50 square miles exist in the CMA. Indeed, in the face of overwhelming record support for a cellular licensing transition, the Commission should expeditiously implement the proposals to eliminate disparate regulation of cellular carriers and streamline the provision of wireless service to the American public.

¹ See *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing*, Public Notice, RM No. 11510, DA 09-5 (rel. Jan. 5, 2009) (“*Notice*”); Petition for Rulemaking of CTIA—The Wireless Association® (filed Oct. 8, 2008) (“*Petition*”).

² Unless otherwise noted, all comments referenced herein were filed on February 23, 2009 in RM No. 11510.

I. The Record Broadly Supports Changes to the Commission’s Cellular Licensing Process to Eliminate Outdated and Burdensome Regulations that Impede Service to the Public.

Commenters overwhelmingly recognize the strong public policy benefits inherent in transitioning from outdated and burdensome site-based cellular licensing rules to a geographic-based approach.³ Specifically, the record supports CTIA’s original conclusion that changes in technology have eclipsed the current cellular licensing model, which relies on data based on contours for analog services that are no longer generally provided. Moreover, commenters document the burdens imposed by a site-based licensing scheme that is unique to cellular service and how these burdens artificially throttle the deployment of next-generation wireless broadband services over cellular spectrum. The few commenters seeking to preserve the *status quo* premise their arguments on claims—factually refuted in the record—that the current site-based regime promotes new wireless services in underserved areas. Concerns about service in unserved areas can be met by modifications to CTIA’s proposal.

A. The Part 22 Cellular Licensing Rules Are Outdated Due to the Transition to Digital Service.

Commenters broadly concur with CTIA that the transition from analog to digital services has rendered obsolete the existing Part 22 cellular licensing rules. Indeed, site-specific cellular

³ Comments of the United States Cellular Corporation at 1 (“US Cellular Comments”) (“USCC agrees with CTIA that the FCC should initiate a rulemaking proceeding which would amend the FCC’s cellular rules to license cellular systems by market, rather than by individual cell sites.”); Comments of the National Telecommunications Cooperative Association at 3 (“NTCA Comments”) (“NTCA supports the idea of geographic based licensing for cellular systems with adequate protections for small licensees.”); Comments of MetroPCS Communications, Inc. at i (“MetroPCS Comments”) (“MetroPCS does not disagree with the general proposition that cellular services should be converted to a market area licensing regime that reduces the burden of site-by-site licensing.”); Comments of the Rural Telecommunications Group at 5 (“RTG Comments”) (“RTG is open to considering converting cellular licensing to a hybrid geographic-based approach, subject to interference protections for small licensees.”); Comments of AT&T Inc. at 1 (“AT&T Comments”) (“AT&T strongly agrees with CTIA that changing the cellular licensing rules would achieve several important public interest benefits.”); Comments of Verizon Wireless at 1 (“Verizon Comments”) (“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.”); *see also* Comments of Broadpoint, Inc. at 6 (“Broadpoint Comments”).

data currently collected under those rules is based on 32 dBu contours that bear no relationship to the digital services provided today. For example, RTG recognizes that the current cellular licensing approach “may no longer reflect a licensee’s true coverage area, particularly for CDMA and other evolving digital technologies.”⁴ Similarly, MetroPCS agrees with CTIA that the existing site-by-site licensing regime is “an anachronism in the current overall broadband licensing system[.]”⁵ and NTCA explains that “the site-by-site licensing approach to cellular service may be cumbersome and outdated.”⁶ These comments, and others,⁷ echo the Commission’s own observations that “rules governing the cellular service have changed little since [the FCC] first initiated the service in the early 1980s,” even though “[t]he wireless environment . . . has changed significantly in the interim.”⁸ Consistent with past precedent, the Commission should transition from site-by-site licensing rules “that have become outdated due to technological change.”⁹

⁴ RTG Comments at 3.

⁵ MetroPCS Comments at 2.

⁶ NTCA Comments at 5.

⁷ See also AT&T Comments at 2-3; US Cellular Comments at 2 (The “maps which define cellular service areas, often filed decades ago, are now inaccurate.”); Verizon Comments at 2-4 (“Cellular licensing today remains a system based upon transmitter sites that form a licensee’s CGSA – a composite service area established by outdated analog coverage and propagation models.”).

⁸ See *Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, Report and Order, 17 FCC Rcd 18401, ¶¶ 1, 3 (2002).

⁹ *Id.*, ¶ 1.

B. Site-based Filings Are Burdensome to the Commission and Cellular Licensees.

Commenters also recognize that site-by-site filings required by the Part 22 cellular licensing rules are a drain on administrative resources for both the Commission and cellular licensees.¹⁰ In particular, many commenters agree that the administrative burdens imposed by these site-specific filings are disproportionate in relation to the licensing requirements for other wireless services,¹¹ despite the fact that consumers regard all wireless services as fungible. For example, PCS service, which was originally comprised of three times the number of license blocks and twice the spectrum as cellular service—and currently has almost twice as many licensees—shows only 857 location records for PCS sites in the Universal Licensing System (“ULS”) database.¹² In contrast, the ULS database includes 21,014 location records for cellular sites, 49 times the number for PCS sites on a per-license basis. Verizon Wireless notes a similar disparity:

¹⁰ MetroPCS Comments at 10 (“MetroPCS agrees that eliminating these reporting requirements after the transition to market-based licenses would provide beneficial administrative relief to the Commission and to the Incumbents.”); AT&T Comments at 4-5 (“The collection and maintenance of site-specific cellular data is also time-consuming and burdensome both for wireless licensees and the Commission.”); Verizon Comments at 3-4 (“Put simply, the Commission’s site-based cellular model has 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.”).

¹¹ *See, e.g.*, US Cellular at 2 (“[A]s CTIA rightly points out, the cellular service is now an anomaly among wireless services, all of the rest of which are now licensed by market.”); Broadpoint Comments at 6 (“Broadpoint supports CTIA’s efforts to streamline the Commission’s rules governing the Cellular Radiotelephone Service, so that those rules are similar to those governing competing services.”); MetroPCS Comments at 11 (“MetroPCS recognizes and appreciates CTIA’s efforts to encourage the Commission to create a more parallel regulatory environment for Part 22 cellular services.”); AT&T Comments at 6 (“Shifting cellular licensing to a geographic market area-based license system will also further the Commission’s goal of technology-neutral regulations, and in doing so, create regulatory parity among competitive wireless services.”); Verizon Comments at 4 (“CTIA’s proposal will go a long way toward achieving . . . regulatory parity on the CMRS playing field.”).

¹² Calculations based on the FCC ULS Database Releases as of February 24, 2009 for Market-Based and Cellular services. The broadband PCS service originally included 120 MHz divided into six license blocks, as compared to the 50 MHz of cellular spectrum divided into two blocks. The Commission’s ULS database shows 3,670 active PCS licenses and 1,845 active cellular licenses.

[S]ince 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. This disparity saddles cellular licensees with countless hours of “make-work,” unnecessary expense, and regulatory delay.¹³

In fact, the disparity is somewhat understated. If minor modifications are included, the number of modification applications granted increases to 22,404 for cellular service, as compared with only 1,151 for PCS service.¹⁴ In sum, cellular licensees—and the Commission’s processing staff—are burdened with almost 40 times as many modification applications per licensee and almost 50 times as many site records per licensee compared to their PCS counterparts. Eliminating unnecessary site-based cellular filings would produce significant public interest benefits by reducing administrative time and expense for the FCC and licensees.

C. Transitioning to Market Area-Based Cellular Licensing Will Accelerate Broadband Deployment.

The record also demonstrates that relieving cellular licensees of unnecessary and time-consuming site regulation will foster the faster and more efficient provision of next-generation digital technologies and services.¹⁵ For example, a cellular licensee seeking to expand coverage within its CMA, but beyond its current CGSA, must file an application for a major modification, which is subject to a 30-day public notice period and may take months to process due to the extensive site data required. By comparison, a PCS licensee can make the same change—barring significant environmental actions—without any filing at all. Allowing cellular licensees the

¹³ Verizon Comments at 3.

¹⁴ Calculations based on the FCC ULS Database Releases as of March 1, 2009 for Market-Based and Cellular services.

¹⁵ AT&T Comments at 1-2 (“[T]he revised cellular licensing rules will streamline the extension of digital wireless services to the public.”); Verizon Comments at 3 (The site-based licensing regime “inhibits the ability of service providers to quickly upgrade networks and better serve their customers.”).

flexibility given to operators of PCS and other wireless services to manage their network assets as needed will reduce delays in upgrading network elements, and, thus, accelerate broadband deployment.

D. Retention of Site-Based Cellular Licensing Is Unsupported by the Record.

Notwithstanding the record support for ending the unnecessary and burdensome site regulation on cellular licensees, a few commenters still advocate maintaining the *status quo*. The commenters argue, contrary to record evidence, that the current site-based licensing regime is needed to promote new wireless services in underserved areas.¹⁶ CTIA documented that the number of new applications—cellular applications by entities that are not expanding an existing service area—has been negligible. While cellular licensees have filed modification applications to incrementally extend into unserved areas adjacent to their existing service contours, the ULS database records do not support the claim that new entrants are creating new systems in pockets of unserved areas.¹⁷ As Verizon Wireless explains, “[p]ut simply, the Commission’s site-based cellular model . . . requir[es] 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.”¹⁸ Rather than keep the outdated site-based licensing system in place with unjustified hope that it will further the goal of providing service in unserved areas, the public interest would be better served by incorporating mechanisms to address unserved areas into the transition to the more efficient system of geographic licensing.

¹⁶ See Comments of Commnet Wireless LLC at i-iii; Comments of GCI Communications Corp. at 13-14; Comments of the Rural Independent Competitive Alliance at 4.

¹⁷ As CTIA already explained, in the three years prior to the analog sunset, the Commission granted only three new Phase II applications where the applicant was not a pre-existing adjacent carrier expanding an existing CGSA. *Petition* at 10.

¹⁸ Verizon Comments at 3-4.

II. The Commission Should Move Forward Expeditiously With Issuing Proposed Rules That Establish A New Cellular Licensing Framework.

The record developed in support of CTIA's petition warrants prompt adoption of rules to transition cellular licensing to a geographic-based system. The inescapable conclusion of the record is that site-by-site licensing is outmoded and imposes a financial and temporal burden on both licensees and the Commission. Thus, there is no principled public policy basis for continuing to impose such requirements on cellular licensees, and therefore expedited action to eliminate the regulations is warranted and in the public interest.

In fact, the only outstanding issues raised in the comments relate to the specifics of the regulatory scheme that would replace site-by-site licensing, and even substantial consensus exists on this issue. AT&T supports CTIA's proposal for transitioning to geographic-area licensing, but agrees with the modification suggested by RTG that CMA licenses be granted in all markets where the incumbent's license is coterminous with the CMA boundary or where only 50 square miles or less of unserved area exists.¹⁹ Given that no entry opportunity within the CMA exists in those circumstances, there is no basis for not according the existing licensee immediate flexibility to transition to a market area license. In fact, AT&T would suggest a minor refinement of RTG's proposal consistent with that philosophy, and propose that the Commission grant a CMA license if there is no 50 square mile contiguous piece of unserved area within the market.²⁰ In other words, if a CMA has several small contiguous areas, none of which would support an unserved area application, a CMA license should still be awarded even if the sum total of the area may be greater than 50 square miles. Indeed, the Commission—through its rules

¹⁹ RTG Comments at 6.

²⁰ AT&T also proposes that the Commission adopt CTIA's proposal that if an incumbent cellular licensee provides digital service beyond the boundaries of its newly-issued CMA license, its CMA license should be modified to reflect this existing coverage. *See Petition* at 15.

and orders—repeatedly has concluded that “50 square miles is generally the minimum coverage necessary to ensure a viable stand-alone system.”²¹

AT&T would also support a one-time service area map update in which existing licensees demonstrate coverage to inform the Commission’s issuance of geographic licenses, as long as that filing does not exacerbate the burdens that already exist for cellular licensees. Recognizing that such an update is intended solely to ensure that any new cellular licensing regime reflects actual coverage, the filing should be limited to the outer contour of the licensee’s aggregate reliable service area and should be similar to the coverage maps filed in other market area services. To the extent that the incumbent licensee determines during its one-time update that a contiguous unserved area over 50 square miles exists within its CMA, AT&T agrees with RTG and other parties that the Commission should exclude the unserved area from the incumbent’s CMA license and license that area through an auction or some other process.²²

Ultimately, AT&T believes that the larger goal of eliminating unnecessary and burdensome regulations on cellular licensees overshadows the minor implementation issues likely to arise in creating a replacement market area licensing scheme. In fact, any number of schemes for transitioning to market area-based licensing could work, provided they do not create

²¹ *Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, Third Report and Order and Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 7183, ¶ 32 (1992); *see also* 47 C.F.R. § 22.951 (“Applications for authority to operate a new cellular system in an unserved area, other than those filed by the licensee of an existing system that abuts the unserved area, must propose a contiguous cellular geographical service area (CGSA) of at least 130 square kilometers (50 square miles).”).

²² AT&T agrees with Broadpoint’s proposal that the Commission treat the Gulf of Mexico service area differently than the rest of the country. However, the unique issues associated with the Gulf of Mexico service area should not drive national policy or deter the Commission from adopting a streamlined, uniform licensing approach for cellular service in the remainder of the country.

new burdens on licensees. AT&T therefore urges the Commission to act expeditiously to begin the transition and thereby end the outdated and burdensome cellular licensing requirements.

IV. CONCLUSION

The record in this proceeding recognizes the strong public policy benefits inherent in transitioning away from the anachronistic and burdensome site-based cellular licensing rules to a geographic-based approach. By removing unnecessary administrative burdens, revised cellular licensing rules will streamline the extension of digital wireless services to the public. AT&T therefore urges the FCC to expeditiously issue proposed rules that establish a new cellular licensing framework consistent with RTG's proposal.

Respectfully submitted,

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March 9, 2009

CERTIFICATE OF SERVICE

I, Steven Merlis, do hereby certify that on this 9th day of March 2009, I caused copies of the foregoing "Reply Comments of AT&T, Inc." to be delivered to the following via First Class U.S. mail and/or email.

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