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

In the Matter of	)	
	)	
Fostering Innovation and Investment in the Wireless Communications Market	)	GN Docket No. 09-157
	)	
	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA)[1] files these comments in response to the Federal Communications Commission's (Commission's or FCC's) August 27, 2009, Notice of Inquiry (NOI) into policies and processes that will promote wireless innovation.

Consolidation in the industry and auction policies favoring large carriers to the detriment of smaller carriers are leading to a disparity of service between heavily populated areas and rural areas. NTCA's members live and work in the rural communities they serve. They have the incentive, motivation and resources to offer wireless service to their subscribers and do so when afforded reasonable access to spectrum.[2] However, the Commission's recent approval of mergers, large carriers'

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 58 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite, broadband 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 members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] *See* NTCA 2008 Wireless Survey, Available online at www.ntca.org.

unfettered access to spectrum and spectrum auctions that favor large carriers have made it increasingly difficult for small, rural carriers to stay afloat.

I. ACCESS TO SPECTRUM

AT&T and Verizon dominate the wireless market. Several mergers with few conditions have led to unprecedented consolidation. These large providers control both the handset market and the roaming market, and although they were forced to divest spectrum as a condition to various merger approvals, they have merely swapped assets – perpetuating and strengthening their duopoly stranglehold.[3] These large providers have seemingly unlimited resources and a small carrier stands no chance of success of obtaining spectrum when pitted against either one at auction.

Large carriers answer to their investors. They understandingly concentrate their build-out efforts in the more populated, profitable urban centers. When a large carrier obtains but fails to utilize spectrum covering rural territory, the rural consumer loses. The Commission must balance the innovative spectrum needs of large carriers against the wireless needs of rural communities.

The Commission's method of auctioning spectrum encourages large carriers to apply for eligibility to bid on large swaths of territory that they may not be interested in obtaining or have no intention of serving. The auction process encourages providers to obtain as much spectrum as possible, holding it for some future possible use. The

[3] *See* "AT&T, Verizon Swap Assets in Deteriorating Market," *The Deal*, (May, 2009) www.thedeal.com/corporatedealmaker/2009/05/**att_verizon_swap_**assets.php; "AT&T and Verizon Wireless SwapWireless Assets," *Telecommunications Online* (May, 2009) http://www.telecommagazine.com/NewsGlobe/article.asp?HH_ID=AR_524.

Commission should reevaluate and update its policies in a manner that encourages wireless service, rather than spectrum acquisition.

A. Cellular Market Areas

A small provider will not win spectrum at an auction when pitted against a large carrier. It does not have the financial resources. If the Commission chooses to continue to auction spectrum according to geographic areas, available bands should be divided into licenses on the basis of Cellular Market Areas (CMAs). These small license territories offer the advantage that they permit carriers to bid on only the territory in which they are interested, and they tend to ensure that the spectrum is more affordable. Licensing the spectrum according to the smaller geographic areas will put the spectrum into the hands of smaller carriers and hasten the deployment of service to rural America.

Further, Section 309(j) of the Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996, both mandate that the Commission adopt rules and policies that promote the development and rapid deployment of new technologies to rural areas. The Commission is also directed to ensure that small businesses, specifically rural telephone companies, are given the opportunity to participate in the provision of spectrum-based services. The Commission will best fulfill its Congressional directives and provide opportunities for rural carriers by auctioning spectrum bands in small service territories. Licensing spectrum according to large service areas is a complete abandonment of the goals of 309(j), *i.e.*, the promotion of small business participation in the ownership of the spectrum.

B. Bidding Credits

Bidding credits are the only weapon left in a small business' arsenal that bolsters its chance of success at auction. However, the designated entity rules, which determine which providers qualify for bidding credits, have become overly cumbersome and unworkable, and fail to protect against abuse. Loopholes in the rules have resulted in the award of bidding credits to "small businesses" that are nearly wholly financed by large incumbent in-region or national wireless service providers. At the same time, legitimate small businesses have difficulty qualifying for the credit. The rules are antithetical to the goal of ensuring that small businesses have the ability to compete with large carriers at auction.

In 2006, the Commission extended the unjust enrichment period for repayment of bidding credits from five years to ten years, and eliminated the gradual reduction of the unjust enrichment penalty in those instances in which the licensee has not yet met its build out requirement.[4] Not only do the rules do little to curb abuse, they actually create obstacles for small businesses that could and should benefit from the credit.

The Commission should take another look at the designated entity provisions and petitions seeking reconsideration of its 2006 order and restore some balance, integrity and usefulness to the designated entity program.

II. SECONDARY MARKETS

The Commission seeks to identify the specific nature and extent to which its secondary markets rules are working. NTCA does not know exactly how many potential wireless providers have sought access to spectrum either through partitioning,

[4] *See* Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 05-211, FCC 06-52 (*rel.* April 25, 2006)

disaggregation, or spectrum leasing. We do know that the process can be lengthy, burdensome, and often, unsuccessful. Rural carriers tell us that large carriers are unwilling to work with them and frequently neglect to respond to their inquiries. One large carrier in particular has informed some NTCA members that their rural service territory serves too few people to be of interest for an agreement. Members describe spectrum leasing opportunities as "virtually nonexistent."

While secondary markets may be useful tools for rural carriers interested in serving a portion of larger carriers' service territories, to date the opportunity has been made available to only a handful of carriers. More opportunities may materialize after large carriers determine how they will use particular spectrum, what portion of the spectrum will never yield a sufficient return on investment and is therefore expendable, and at what price they would be willing to part with it. In some areas, and particularly for the most valuable spectrum, this process may take decades. Meanwhile, rural carriers interested in serving rural consumers will receive, or not receive, spectrum at the whim of a large carrier. Commission policies that encourage large carriers with large geographic area licenses to part with unused spectrum would increase spectrum opportunities for smaller providers and ensure service to rural communities.

III. CONCLUSION

NTCA applauds this Commission for taking a fresh look at wireless policies in the context of innovation and broadband deployment. The Commission must consider small and rural carriers if it is to succeed in reaching its goal of nearly ubiquitous wireless broadband deployment. Small, rural carriers have the incentive, motivation and resources to deploy wireless service in rural areas. The Commission must reevaluate its auction polices with an eye toward ensuring that small and rural carriers have the ability to acquire the necessary spectrum. Auctions must be structured in a way that offer small businesses a realistic chance of obtaining primary access to spectrum, the bidding credit requirements must be reformulated to lessen the burden on legitimate applicants while ensuring that winning bidders cannot be financed by large incumbents, and large providers with unused spectrum covering rural territory must be incented to part it. These suggestions will help ensure that rural consumers are not left behind their urban counterparts in the quest for wireless broadband service.

Respectfully submitted,

NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

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

September 30, 2009

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-157 and 09-51, FCC 09-66, was served on this 30th day of September 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Julius.Genachowski@fcc.gov

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

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

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

Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Meredith.Baker@fcc.gov

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

Peter Trachtenberg
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
peter.trachtenberg@fcc.gov

Jamison Prime
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
jamison.prime@fcc.gov

/s/ Adrienne L. Rolls
Adrienne L. Rolls