

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Improving Communications Services for) WT Docket No. 11-40
Native Nations by Promoting Greater)
Utilization of Spectrum over Tribal Lands)

**COMMENTS
of the
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”) hereby submits its comments in the above captioned matter.¹ NTCA supports the spectrum-related proposals in the notice. A licensing priority, the development of rules for re-licensing unused spectrum, and encouraging use of secondary market mechanisms to facilitate deployment of services to unserved or underserved areas are likely to hasten the deployment of wireless voice and broadband services to Tribal areas. Even as concerns with respect to efficient use of spectrum may be persistent and pervasive problems in Tribal areas, such concerns extend, however, beyond these borders and into other remote and hard-to-serve rural area. Consistent with long-standing arguments it has made on this issue, NTCA urges the Federal Communications Commission (the “Commission”) to go further and consider the application of its proposals to ensure the deployment of wireless services in all rural unserved and underserved areas.

¹ In the Matter of Improving Communications Services for Native Nations by Promoting Grater Utilization of Spectrum over Tribal Lands, WT Docket No 11-40, FCC 11-29 (Rel. March 3, 2011).

NTCA is a national trade association representing more than 580 small and rural telecommunications providers. All of NTCA's members are "rural telephone companies" as that term is defined in the Communications Act of 1934, as amended,² NTCA's members are dedicated to providing a wide-range of high quality telecommunications service to their rural communities (some of which are located in Tribal lands), and about half provide wireless service. NTCA members are headquartered in the locality where they provide service and have strong ties to the community. The rural provider's prospects for success are therefore tied to the broader community's prosperity and future. Rural providers are motivated not only by the bottom line, but also by a civic duty to ensure the viability of their community as this country moves toward a broadband future.

Rural areas, which in many instances encompass Tribal lands, suffer from many of the same deployment issues as federally recognized Tribal lands. Like Tribal entities, rural providers have "long argued they would provide coverage to unserved and underserved . . . lands if they could get access to the spectrum, but that they have encountered a number of difficulties in initiating and completing such negotiations."³ Whether the technology is wired or wireless, certain economic disadvantages persist in rural America. It is more expensive to provide service in rural areas (Tribal or otherwise) than urban areas. Fewer subscribers and lower subscriber density translate into higher per customer costs. Also, certain regions of the nation suffer from unforgiving terrain. These are service obstacles that have often proven insurmountable for the large carriers. Rural telephone companies, including tribally owned companies, exist because the large carriers were unwilling or unable to serve their communities.

² 47 U.S.C. § 153(37).

³ Notice, ¶45.

Similar to the Tribal lands, there are many instances where large wireless providers have failed to build facilities in rural areas and spectrum remains unused. Driven solely by profit, large carriers and smaller carriers without ties to communities understandably concentrate their build-out efforts on the more profitable urban areas. They must recoup their investment and answer to their stockholders. Rural telephone companies, and Tribal owned entities, in contrast, must answer to the communities in which they live and operate exclusively.

Currently, if a large carrier's business plan does not include serving a rural or Tribal community within a licensed service area there is no incentive for it to permit someone else to provide that service. There are costs associated with negotiating with another carrier to make spectrum available in secondary markets and the financial gain may not be worth the trouble for the large carrier. It often makes more financial sense for the large carrier to hold the spectrum at no cost. Many rural and Tribal consumers will thus only be served when unused spectrum is freed from the grips of the large carriers.

NTCA has long advocated a "keep what you use" approach to spectrum licensing.⁴ Similar to the Commission's proposal in the Notice, licensees are given an initial build out period to construct facilities and begin providing service within their licensed geographic service area. At the end of the initial build out period, the licensee is permitted to keep those portions of its licensed area in which it has constructed, while the unconstructed portions of the market

⁴ See, e.g., *Comments of NTCA, Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, WT Docket No. 03-202, FCC 03-222 (filed December 29, 2003).

become available for licensing to other parties. NTCA supports the creation of a formal negotiation process under which Tribes could work with large incumbent wireless licensees to bargain in good faith for access to spectrum, but suggests that the proposal be expanded to encompass all unserved or underserved lands.⁵ However, to protect licensees from unsubstantiated claims, there must be a robust, meaningful process. Specifically, there should be a presumption in favor of the licensee, with the burden on the challenger to prove that an area is unserved or underserved.

Any new rules adopted to encourage or force the partitioning of unused spectrum should apply only to spectrum licensed according to large geographic territories. There is good reason to differentiate between large geographic territories and small. Under a large geographic area-licensing scheme, licensees may receive the spectrum rights to areas they want to serve and pockets of territory they have no intention of serving. It is relatively easy to identify an unserved MSA/RSA within a larger licensed territory as an area for which the proposal formal negotiation process could be triggered. When spectrum is licensed according to small geographic areas, licensee bid only on the areas they intend to serve. Further, the build out requirements are such that it is unlikely that contiguous land and unserved population will match in a way that lends itself to the Commission's proposed process if the spectrum is already licensed according to a small geographic area.

There are several advantages to expanding the Commission's proposed regulatory approach beyond the Tribal areas. First and foremost, it frees up spectrum for other potential users. There would also be an additional incentive for large carriers to build out to rural areas

during the initial build out period. It also encourages large licensees to initiate negotiations and partition off unserved areas to sell to other carriers. In all scenarios, the consumers benefit.

Expanding the proposed spectrum access proposals to all rural unserved and underserved communities is consistent with the law and the Commission's own policies. Section 309(j) of the Communications Act of 1934, as amended, instructs the Commission to promote the deployment of new technologies, products and services for the benefit of the public, including, specifically, those residing in rural areas.⁶ The Commission is also charged with avoiding excessive concentration of licenses and disseminating licenses among a wide variety of applicants, including small businesses and rural telephone companies.⁷ President Obama, as part of the Wireless Innovation and Infrastructure Initiative, calls for additional spectrum to be made available for wireless broadband deployment and a nationwide goal to provide at least 98% of Americans with access to 4G high-speed wireless.⁸ Expanding the proposed spectrum access opportunities to include all rural areas clearly helps satisfy these statutory directives and Administration objectives by putting otherwise unused spectrum into the hands of small and rural carriers who will use it to serve rural communities.

Spectrum is a desirable and valuable asset. It should not lie fallow if there is a carrier with the desire and incentive to use it. Any qualified provider should have the ability to initiate the proposed good faith negotiation process to secure access to spectrum. NTCA therefore

⁶ 47 U.S.C. § 309(j)(3)(A).

⁷ 47 U.S.C. § 309(j)(3)(B).

⁸ *President Obama Details Plan to Win the Future Through Expanded Wireless Access*, Press Release (February 10, 2011) <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>

applauds the Commission's efforts to make spectrum more available in Tribal areas, but it also encourages the Commission to view this as a more pervasive concern that should be addressed by the adoption of rules throughout rural areas that will be applicable to all large holders of spectrum licenses.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WT Docket No. 11-40, FCC 11-29, was served on this 19th day of May 2011 by electronic mail to the following persons:

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