

**Before the
Federal Communications Commission
Washington, DC 20554**

In The Matter of)	
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)	
Amendment of Part 1 and 22 of the Commission's Rules With Regard to The Cellular Service, Including Changes In Licensing of Unserved Area)	WT Docket No. 12-40
)	
)	RM No. 11510
Amendment of the Commission's Rules With Regard to Relocation of Part 24 to Part 27)	
)	
Interim Restrictions and Procedures for Cellular Service Applications)	
)	

**Comments of
United States Cellular Corporation**

United States Cellular Corporation ("USCC") hereby files its comments concerning the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ USCC agrees with the FCC that its rules should be amended to license cellular systems by market, rather than by individual cell sites, at least under the circumstances to be explained below. However, USCC strongly opposes the "overlay auction" mechanism proposed in the NPRM to accomplish this purpose, believing it to be unnecessary, unworkable and contrary to the public interest. Instead, the FCC should adopt a simpler and fairer transition mechanism, which would build on the past thirty years of cellular licensing, rather than needlessly repudiating that history. In USCC's view, the FCC should grant a geographic license to cellular licensees in Cellular Market Areas ("CMAs") in which there is no licensee on the same frequency block except the incumbent. If

¹ See, In the Matter of Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications, Notice of Proposed Rulemaking and Order, WT Docket No. 12 - 40, RM No. 11510 ("NPRM")

the FCC believes that this might award too much "unserved area" to the incumbent licensee, it can grant a single license where the incumbent serves 90 percent or more of the CMA and there is no other licensee in the market utilizing the same frequency block. And it could convert the remaining "single licensee" markets to geographic licensing after the passage of several years, whether or not 90 percent of the CMA was served.

However, where there is now more than one licensee on the same frequency block in a given CMA, the FCC should require the licensees to delineate their borders, but otherwise leave the present system in place. By adopting this approach, the FCC would avoid the large problems which would be created by its proposed "overlay" solution.

I. The FCC Should Adopt A Market Based Licensing System But Must Deal Fairly With The Issues of Unserved Area Licenses and CGSA Extensions

USCC has been involved in the cellular licensing process from its inception, and now holds one hundred and forty-four (144) licenses in the Cellular Radio Telephone Service. It has also participated in this proceeding at earlier stages, in response to CTIA's 2009 Petition for Rulemaking.² In this proceeding, USCC has consistently supported the following approach to resolving the issues before the FCC.

USCC agrees with the Commission that the existing cellular licensing system must be revised. Under the present rules, a cellular system's Cellular Geographic Service Area ("CGSA") is determined by site specific signal propagation information (the "32 dBu contour"), based on analog signals which no longer exist. Thus the maps which define CGSAs, often filed decades ago, are now inaccurate in the depiction of actual service. Also, the cellular service is now an anomaly among comparable wireless services, all of the rest of which are now licensed by market. And clearly, modern digital wireless technologies, with their different propagation

² See, Public Notice, "Wireless Telecommunications Bureau, CTIA Petition For Rulemaking To Transition Part 22 Cellular Services To Geographic Area Licensing", DA 09-5, released January 5, 2009(RM-11510).

characteristics, lend themselves to delineating market areas by recourse to geographic boundaries, rather than by attempting to define boundaries between systems by mapping their digital signals. However, the FCC does not write on a "blank slate" in dealing with these issues.

Pursuant to rules which have been in effect since the early nineties, cellular licensees are allowed five years from the date of their original authorizations to expand their systems free of competing applications, provided the expansions take place within the relevant market.³ The signals of cellular systems may also extend into "unserved area" into a neighboring market, provided the extension is *de minimis* in nature as determined by the FCC.⁴

Five years after initial licensing, cellular systems must file a "buildout showing" demonstrating the extent of the service area boundary ("SAB") within their markets.⁵ The area covered becomes their CGSA, their licensed service area, within which they are entitled to interference protection.

Cellular licenses may also however claim territory as "CGSA" in neighboring markets by filing a buildout showing demonstrating their signal contour extensions into that particular market. Such showings are filed five years after the initial licensing of the cellular system using the same frequency block in the neighboring market. This is an important aspect of the current rules, which the NPRM does not discuss.

The "extension area" in the neighboring market becomes "CGSA" of the extending system, provided that the licensee in the "extended into" market does not also cover the area and claim it as CGSA within its five year buildout period.⁶ There can also be "service area

³ See 22.947(a) of the FCC's Rules.

⁴ See Section 22.912(a) of the FCC's Rules.

⁵ See Section 22.947 of the FCC's Rules.

⁶ See Section 22.912(c)(2) and 22.947(c) of the FCC's Rules.

boundary" ("SAB") extensions into neighboring carriers' CGSAs. However, such extensions are consensual in nature, and must be removed on the request of the "extended into" system.⁷

Areas not covered by any system's 32 dBu contour in a market five years after initial licensing are deemed "unserved" and are open to licensing by any party, subject to an auction procedure if competing applications are filed.⁸ The licenses issued to such applicants are called unserved area licenses. However, unserved area applications filed by parties other than the licensee for a given market are comparatively rare. For example, in 2009, in response to the CTIA petition, USCC noted that it had filed 54 unserved area applications in the previous nine years and had never had an unserved area application filed by any other party in one of its markets. Three more years have now elapsed, and USCC has filed five more unserved area applications, with no competing applications being filed. This process may seem complex, and the NPRM assumes that its costs and burdens are considerable.⁹ However, in USCC's experience, it has not proven to be particularly difficult to expand its cellular systems as customer demand has necessitated such expansion.

However, at present, there are obviously a certain number of unserved area licenses held by non-incumbent licensees in certain CMAs, and many more SAB extensions which have been claimed as CGSA in neighboring markets. With respect to the latter filings, the FCC has never evaluated such claims or delineated authoritative boundaries between CGSAs. In the main, neighboring licensees have dealt informally with signal strength issues, while being cognizant of CGSA claims.

⁷ See Section 22.912.(d)(1)(i) of the FCC's Rules.

⁸ See Section 22.949 of the FCC's Rules. Unserved areas of less than 50 square miles in size may only be served by neighboring licensees. Section 22.951 of the FCC's Rules.

⁹ NPRM, ¶25.

However, if the rules are changed and licensed service areas become contiguous with CMAs, CGSA extension and unserved area license issues will become legally important. The FCC or the neighboring licensees will have to draw revised boundaries for abutting systems, including CGSA extensions, and will have to set the boundaries for licensed unserved area systems, as their CGSAs will obviously not be contiguous with the CMA boundaries.

However, the NPRM pays little or no attention to those problems, and provides no method whatever of fixing the CGSA boundary in a digital context.¹⁰ Presumably, this reflects the belief the "overlay license" approach it proposes will solve the problem of setting boundaries. But it does not, unless a licensee's CGSA is contained within CMA and the "overlay" licensee and the incumbent licensees are the same in a given market. In those circumstances, there would be no need to draw a CGSA boundary within a CMA. However, if the overlay licensee and market licensee are different, or if the CMA licensee's claimed CGSA extends beyond the CMA's geographic boundary into a neighboring market, there will be a need to draw a boundary line.

USCC's recent experience in negotiating CGSA boundaries with neighboring licensees, at the prompting of the Wireless Bureau, has led it to believe that neighboring licensees can arrive at reasonable outcomes in negotiating market boundaries, based on the old 32 dBu contour lines. Neighboring licensees must however determine for each market the extent of territory claimed within the five year buildout period by the incumbent licensee and must resolve whether any area not claimed by the incumbent licensee was claimed by a neighboring licensee through a buildout

¹⁰ The NPRM merely states that "Non-Overlay" licensees' "CGSA boundaries would be permanently fixed" with no rights to expand. NPRM, ¶31. The FCC would delegate to the Wireless Bureau the resolution of any "discrepancies and anomalies." NPRM, ¶ 32. However, the setting of boundaries would not be a mere discrepancy or anomaly. It is the heart of the matter.

showing or through a major modification application granted before a possible unserved area application was filed by the incumbent.

This research can be complex and time consuming but it is not impossible to arrive at a reasonable result, provided the licensees have access to all their past filings. The FCC's "digitized" data base is helpful, but it is only as good as the information on file with the FCC, which is sometimes imperfect with respect to records which may now be approaching thirty years old.

In any case, once the records are assembled, it can be objectively determined which licensees are entitled to claim areas as CGSA and boundaries can be drawn. This has to be done even if area based licenses are later to be converted to geographic licenses, either if there is more than one licensee on a particular frequency block in a given CMA or if a CMA licensee is entitled to claim CGSA in a neighboring market as part of its own CGSA.

This legacy of overlapping CGSA claims is why USCC believes that geographic licenses should only be awarded in CMAs in which there are no CGSA extensions from neighboring markets (usually a result of complete coverage by the incumbent licensee) or in which there may be unserved area but no unserved area licensees after many decades of cellular licensing.¹¹ The consequences of geographic licensing are to make the CMA conterminous with CGSA and require the consent of the licensee to any extensions, partitions, disaggregations, or leases of spectrum in the market. That makes sense, but only if one licensee is involved per market. However, if there are either CGSA extensions in the CMA from neighboring markets or if there are one or more unserved area licensees in the CMA, let alone if a CMA has been partitioned

¹¹ As noted above, the FCC could also delay the issuance of geographic licenses in markets in which there was more than a certain percentage of unserved area. However, we would note our belief that this is unnecessary. MSAs have been licensed since 1983 and RSAs since 1989. Surely enough time has already been allowed to give non-incumbent licensees a chance to file unserved area applications.

already, resulting in two or more licensees on the same frequency block, geographic licensing simply will not work, because calculating the respective "CGSA" rights of the different licensees, now including the "overlay" licensee, would be very difficult, if not impossible.¹²

II. "Overlay Licenses" Also Ignore The Vested Rights of Licensees

Any proposal to make the transition to geographic licenses for the cellular service must first settle the issue of how to determine the new boundaries of existing CGSAs and must deal adequately with the differences between markets in which there is only one licensee on a given frequency block, and markets in which there is more than one licensee on a frequency block. As noted above, the NPRM does not deal adequately with either issue.

Instead, most of the NPRM is taken up with a proposal to impose a new "Overlay Auction" regime on CMAs, in two "steps," based on the present degree of market area coverage.¹³ "Stage I" markets, i.e., those 95% "licensed" or in which there is no unlicensed "parcel" of more than 50 square miles, will be subject to immediate "overlay auctions".¹⁴ "Stage II" markets, that is, those markets which are less than 95% "licensed," would remain in their present status for seven years, and then be auctioned. The "overlay" licensee would be entitled to serve any service areas presently unserved in a market and would also have a kind of "reversionary" right to serve unserved areas within the CMA if somehow the incumbent licensee lost its license in whole or in part.¹⁵

The NPRM also focuses on action design issues in relation to the overlay auctions, as well as on "performance requirements" and other obligations for overlay licensees. It also has a

¹² The NPRM does not make clear whether a partitioned market would be treated as one market or several for "overlay" purposes.

¹³ NPRM, ¶¶ 27-39.

¹⁴ Id. ¶ 27.

¹⁵ Id. ¶ 30.

long discussion of possible bidding credits or other auction preferences.¹⁶ However, the FCC's consideration of those matters, which would be entirely appropriate in the context of auctions for newly allocated spectrum, ignores the inconvenient fact that cellular markets are already licensed and were built out in the eighties and nineties, pursuant to then existing FCC regulations. While the Commission may well wish that it had possessed auction authority in the eighties, it cannot now ignore the fact that cellular networks are fully constructed and that therefore there is nothing left of any value to auction.¹⁷

It is likely that incumbent licensees would bid in overlay auctions in order to protect themselves and their licenses from the possible inconvenience and problems created by "overlay" licensees.¹⁸ However, we submit that necessitating this type of "defensive" bidding would not be a valid use of the federal government's auction authority. Under Section 309(i)(1) of the Communications Act, the FCC has authority to license spectrum through competitive bidding whenever it accepts mutually exclusive applications for "initial licenses or permits" (emphasis added). However, the overlay licenses would not be, in any but the most nominal sense, "initial" licenses. To put it simply, an auction for new licenses is not appropriate when markets are already being served.

III. The Concept of Overlay Licenses Must Be Rejected and USCC's Solution Should Be Adopted.

The concept of "overlay licenses," as proposed in the NPRM, proposes to solve a non-existent problem, namely, inadequate market coverage by cellular systems. Moreover, it fails to

¹⁶ Id., ¶¶ 40-52.

¹⁷ The NPRM does very briefly take note of this basic problem, when it states that "the remaining unserved area as of the auction date may be very small, fragmented, and/or not immediately serviceable." NPRM, ¶32. However, it then proceeds to ignore it.

¹⁸ We would also note that creating an "overlay" license which may not held by the incumbent licensee, might cast doubt on incumbent cellular licenses' ability to assert that they hold valid authority from the FCC for a given CMA in various filings with government agencies.

deal adequately with the actual problem that many cellular markets already have more than one license on the same frequency block and others have more than two. Adding an "overlay" licensee to this mix simply will not work and will prove to be a source of endless and needless trouble.

Sole licensees in a CMA should be granted a geographic license. But where there are two or more licensees present in the market operating on the same frequency block, awarding an "overlay" bidder a license based on geographic rather than CGSA lines would serve no useful purpose. In such circumstances, the CMA licensees should define their boundaries where claimed CGSAs overlap, subject to ultimate FCC resolution if the parties cannot agree. And where an unserved area licensee provides service in a market, the existing unserved area filing system should be left in place to permit system expansion and market coverage by either the incumbent or unserved area licensee, or by a new entrant under the existing rules, which have worked perfectly well in the past.

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CONCLUSION

For the foregoing reasons, the FCC should reject the "overlay licensing" proposal contained in the NPRM and adopt USCC's proposals, which build on the success of the existing cellular licensing system, which has produced a high level of market coverage and service to the public.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By: Grant Spellmeyer *pc*
Grant B. Spellmeyer
Executive Director-Federal Affairs and
Public Policy
United States Cellular Corporation
555-13th Street, NW, #304
Washington, DC 20004
Phone: 202-290-0233
Email: grant.spellmeyer@uscellular.com

By: Peter M. Connolly
Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006-6801
Phone: 202-955-3000
Fax: 202-955-5564
Email: peter.connolly@hklaw.com

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