

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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)	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 THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby submits its comments in response to the Commission’s Notice of Proposed Rulemaking and Order¹ concerning whether the FCC should consider using a geographically-based licensing model to bring the Cellular Service into harmony with more flexible licensing schemes used by other services such as the Personal Communications Service (“PCS”), the 700 MHz Service and Advanced Wireless Services (“AWS”).

I. INTRODUCTION

RTG is pleased that the FCC has approached the geographic-area “Overlay Licensing” in a manner that will not constrain licensees in rural Cellular Market Areas (CMAs) who still find it

¹ *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, and Interim Restrictions and Procedures for Cellular Service Applications*, Notice of Proposed Rulemaking and Order, WT Docket No. 12-40, RM 11510, FCC 12-20 (released February 15, 2012) (“*NPRM*”).

necessary to organically expand their networks using a site-by-site licensing approach. The site-by-site licensing approach is still needed for RTG's members in Alaska, Arizona, Idaho, Illinois, Iowa, Kansas, Louisiana, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming who continue to build out in remote and insular areas in CMAs that are less than 95 percent served. A one-size-fits-all approach would not bode well for rural areas that are still lacking in cellular services. By dividing the CMAs into Stage I and Stage II, the FCC will be able to accommodate carriers who are substantially built out while allowing those who are still trying to expand their networks to do so. RTG commends the FCC on its flexible approach and believes that the FCC's proposals, for the most part, balance the needs of carriers serving urban and rural areas. RTG is concerned about the auctioning of the Overlay Licenses and believes that the proposed auction goes beyond the scope of the Petition for Rulemaking filed by CTIA.

II. RTG SUPPORTS THE USE OF GEOGRAPHIC BASED OVERLAY LICENSES PROVIDED CERTAIN PRECAUTIONS ARE TAKEN TO ENSURE THAT RURAL CMA LICENSEES CAN CONTINUE TO BUILD OUT UNDER THE SITE-BY-SITE RULES CURRENTLY IN PLACE.

The FCC proposes to divide cellular licensees into one of two categories, namely Stage I licensees and Stage II licensees. Those licensees that hold licenses for a CMA Block that is "Substantially Licensed" are in Stage I and those that are not "Substantially Licensed" are in Stage II. A CMA Block is "Substantially Licensed" if either of the following benchmarks is met: (1) at least 95% of the total land area is licensed; or (2) there is no unlicensed parcel within the Block at least 50 contiguous square miles in size. In this Stage, Overlay Licenses would be offered at auction and site-based licensing would cease. The FCC proposes that the site-based regime would continue in all other cellular service markets for seven years when Stage II is

triggered.² RTG supports the Stage I Substantially Licensed approach and agrees with the FCC's definition of Substantially Licensed. However, with respect to Stage II, RTG would like the FCC to show more flexibility. Instead of forcing the remaining CMAs to transition to a geographic build out approach in seven years, RTG proposes that in seven years, CMAs that are Substantially Licensed at that time be converted to the geographic based licensing approach and that Overlay Licenses be issued. For licensees in CMA Blocks where (1) the unserved area is 5% or more at the end of the seven year period; or (2) there is a geographic area in the Block that is more than 50 contiguous square miles in size at the end of the seven year period, the FCC should establish another 7 year period so that those CMA Blocks would still be licensed using the site-by-site approach using the current Phase II cellular rules.³ By allowing the site-by-site licensing approach to continue in these instances, the FCC will ensure that areas are not held hostage by an Overlay Licensee and services to the public can be expanded as warranted. This approach will continue to recognize the hardships of serving remote and insular areas of the country, particularly in Alaska and the western states. The public interest is better served by this flexible approach so that coverage can be provided by those truly interested in serving these rural areas. To allow an Overlay License in this situation would potentially prevent further build out by others interested in serving such an area if the overlay licensee refuses to do so.

III. THE FCC SHOULD NOT HOLD AN AUCTION FOR THE OVERLAY LICENSES.

CTIA did not request the FCC to hold a spectrum auction as part of its request to convert site-by-site licensing to geographic-based licensing. RTG believes that holding an auction under these circumstances, is misguided and could cause its members difficulty if speculators or those

² *NPRM* at ¶ 2.

³ 47 C.F.R. at § 22.949(b).

not already serving the CMA Blocks being auctioned were to bid and be successful. The areas available for a winning bidder to provide service within each of the Substantially Licensed Blocks are fairly small. It appears to RTG as if the proposed auction conversion process is a method for the FCC to raise money for spectrum that is only of real value to the incumbent licensees. Rather than hold an auction, RTG suggests that the incumbent licensees simply pay a fee to convert the license to an Overlay License that covers the CMA. Presumably, if the FCC were to hold an Overlay License auction, it would have to establish a minimum bid for each CMA Block. This minimum bid could serve as the fee for conversion rather than holding an auction that may or may not draw interest. Under the FCC's auction rules, in order for the FCC to conduct an auction there must be two mutually-exclusive applicants seeking to bid on the same licenses. If there is not mutual exclusivity, then an auction cannot be held for the licenses.⁴ Rather than take this risk of having no mutual exclusivity, the FCC should establish a fee based on the agency's cost to convert the licenses and have the incumbents pay that amount. By doing so, the FCC will cover its internal costs to convert the licenses without incurring the additional administrative costs of conducting an auction. Similarly, incumbent licensees will not have to expend the resources associated with participating in an auction. Moving forward with an auction will ultimately cost taxpayers who fund the FCC with no real assurance of an upside in auction revenues.

IV. IF AN OVERLAY LICENSE AUCTION IS HELD, THE FCC MUST ESTABLISH RULES TO ENSURE THAT INCUMBENTS CAN CONTINUE TO MODIFY THEIR NETWORKS.

Should the FCC decide to move forward with an Overlay License auction against RTG's recommendation, it should take steps to ensure incumbents can still make modifications to their

⁴ 47 C.F.R. at § 1.2101.

network. Similarly, the FCC should prohibit entities that are not in the Blocks from participating in the auction. Under the FCC's approach, the Overlay Licensee will have the ability to control future modifications the incumbents may need to make to their networks, if those modifications will result in coverage extending into the unserved area licensed to the Overlay licensee. If the Overlay Licensee is the incumbent, then RTG does not see an issue. However, if the Overlay Licensee and the incumbent are two different entities, then the incumbent will need to seek and obtain approval from the Overlay licensee in order to make a modification that causes the extension. As a practical matter, it will be very difficult for an Overlay Licensee who is not the incumbent to serve unserved area in a Substantially Licensed CMA Block without causing the incumbent interference.

RTG is concerned that speculators or the deep-pocketed Twin Bells (aka AT&T and Verizon) could outbid smaller rural incumbents and then force them into unconscionable conditions should they need to modify their networks. With many of RTG's cellular licensee members seeking to upgrade networks to 3G and 4G services, these modifications could be many and could result in an unsuccessful incumbent from being able to cost-effectively make changes thereby preventing the build out of broadband services in rural areas. Such an outcome would directly conflict with the goals of the *National Broadband Plan*⁵ as well as the Obama Administration's goal of delivering 4G service to 98% of the United States by 2016.⁶

⁵ *In the Matter of A National Broadband Plan For Our Future*, National Broadband Plan, GN Docket No. 09-51 (released March 16, 2010) ("*National Broadband Plan*").

⁶ "President Obama Details Plan to Win the Future Through Expanded Wireless Access: Initiative Expands Wireless Coverage to 98% of Americans, Reduces Deficit by Nearly \$10 Billion, Invests in Nationwide Public Safety Network," Press Release, The White House Office of the Press Secretary (released February 11, 2011), <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access> (last viewed May 9, 2012).

To thwart speculation and anticompetitive conduct, the FCC should develop rules that prevent the Overlay Licensee from extracting money or placing unconscionable conditions on an incumbent by the Overlay Licensee. The FCC should also apply its Section 1, Subpart E complaint rules to govern such behavior.⁷ Additionally, the FCC should limit bidding on Overlay Licenses to the incumbents in each CMA Block. Incumbents have a vested interest in the market and a history of working together on extensions into one another's Cellular Geographic Service Areas (CGSAs). The current CGSA extension process could then remain in place to handle necessary modifications among incumbents.

Should the FCC move forward with an auction, RTG supports the FCC's proposed use of bidding credits for entrepreneurs, small businesses and very small businesses. However, RTG suggests that the FCC define an entrepreneur as an entity with average gross revenues for the preceding three years not exceeding \$60 million rather than \$40 million, a small business as an entity with average gross revenues for the preceding three years not exceeding \$25 million rather than \$15 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding \$10 million rather than \$3 million. RTG's proposed increases better reflect the nature of cellular businesses and the amount of revenue needed to operate them. Because cellular services are an established ongoing concern and the operators that will be involved in any potential auction will need to be established to support the cellular business model, these amounts should be increased to reflect that. As for the requisite amount of the bidding credits, RTG supports the use of 15 percent for entrepreneurs, 25 percent for small businesses and 35 percent for very small businesses as suggested in the *NPRM*.⁸

⁷ 47 C.F.R. at § 1.701 *et. seq.*

⁸ *NPRM* at ¶ 51.

V. RTG SUPPORTS THE FCC'S PROPOSED AMENDMENTS TO MANY OF ITS RULES, BUT DOES NOT SUPPORT RELOCATION OF THE PART 22 RULES TO PART 27 AT THIS TIME.

RTG supports the FCC's proposal to delete Section 22.901(b) related to the need to file the AMPS Sunset Certifications. RTG agrees that this rule is no longer necessary since almost all cellular licensees have converted to digital technology.

RTG also supports the FCC's desire to correct the clerical error in Rule Section 1.958(d) regarding the distance computation formula.

RTG does not support relocation of Part 22 of its Rules to Part 27 at this point in time. Many cellular licensees will still be operating under the FCC's site-by-site licensing rules that are embodied in Part 22 after the Stage I transition. RTG believes it is in the public interest to keep the Part 22 rules in their current location rather than prematurely combining them into Part 27. The Part 22 Rules should remain in Part 22 until such time that the Stage II transition is complete or, if there is a Stage III as advocated by RTG above (which would allow for an additional seven years after Stage II is complete for those CMA Block that are still not Substantially Licensed by Stage II), then the Part 22 Rules should remain located in Part 22. By keeping the Part 22 Rules in the same location for site-by-site licensing and geographic-based licensing, the context and evolution of the Part 22 Rules remain in place for future practitioners (both government and private sector), the public at large as well as cellular licensees who change staff over time. Moving the Part 22 Rules to Part 27 eviscerates the historical context and will create confusion in the future. Accordingly, RTG believes it is in the public interest to keep Part 22 in its current location.

With respect to the Part 24 PCS Rules, RTG does not comment at this time, but advises the FCC that a separate proceeding must be undertaken to consider moving Part 24 PCS Rules to

Part 27. Attempting to do such in this proceeding would violate the Administrative Procedure Act since it is beyond the scope of this NPRM. RTG strongly urges the Commission to resist tinkering with relocating its rules since to do so would detract FCC staff from other more critical issues that need addressing at this time.

VI. CONCLUSION

RTG appreciates the FCC's willingness to be flexible in its approach to modify site-by-site licensing to geographic-based licensing. To ensure that cellular service continues to expand in Alaska, the Western states and other rural CMAs, site-by-site licensing should continue until the CMA Blocks reach 95% or contain no areas with fewer than 50 contiguous miles of unserved area. After seven years, the FCC should determine if any new CMA Blocks fall into this category and move those CMA Blocks to geographic-based licensing. RTG is opposed to auctioning the CMA Blocks, but if an auction is deemed necessary, the FCC should limit participants to incumbents currently serving the Stage I CMA Blocks.

Accordingly, for the public interest reasons set forth above, the FCC should adopt its proposed rules as modified herein by RTG.

Respectfully submitted,

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