

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

<b>In the Matter of</b>	)	
	)	<b>WT Docket No. 12-40</b>
<b>Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in the Licensing of Unserved Area</b>	)	
	)	<b>RM No. 11510</b>
	)	
<b>Amendment of the Commission's Rules with Regard to Relocation of Part 24 and Part 27</b>	)	

**Reply Comments**

**Introduction**

United States Cellular Corporation ("USCC") hereby files its Reply Comments in the above-captioned proceeding. USCC first reiterates its criticism of the FCC's overlay auction proposal, citing additional arguments made by other commenters in opposition to this mistaken idea. Second, we argue once again that awarding a single geographic license in a given Cellular Market Area ("CMA") is appropriate when there is only one licensee on a given frequency block in the CMA. However, when there is more than one licensee in a given market operating on the same frequency block, all licensees should receive geographic licenses and the existing unserved area rules should be maintained.

USCC submits that this approach would be a simpler and fairer transition mechanism than the one proposed by the FCC.

## **I. The FCC should Not Adopt the NPRM's Overlay Auction Proposal**

As noted by USCC and other commenters, most of the NPRM<sup>1</sup> is taken up with a proposal to impose a new "Overlay Auction" regime on CMAs in two "steps," based on the degree of market area coverage.<sup>2</sup>

"Stage I" markets, i.e. those 95 percent "licensed," or in which there is no unlicensed "parcel" of more than 50 square miles, would be subject to immediate "overlay auctions."<sup>3</sup>

"Stage II" markets, that is, markets which are "less than 95 percent 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 form of "reversionary" right to serve the market if somehow the incumbent licensee lost its license in whole or in part.<sup>4</sup>

Overlay auctions were almost uniformly rejected by commenters considering the issue in this proceeding.<sup>5</sup> The comments demonstrate that overlay auctions are unnecessary, in that they would seek to license CMAs which are already licensed and have been substantially served for over twenty years.<sup>6</sup> Overlay licenses, if held by the non-incumbent licensee, would also prevent existing licensees from enlarging their service areas within CMAs, which is the only reliable and proven way of expanding cellular service.<sup>7</sup>

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<sup>1</sup> 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 Areas; Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Application, Notice of Proposed Rulemaking and Order, WT Docket No. 12-40, RM No. 11510 ("NPRM").

<sup>2</sup> NPRM, ¶¶ 27-39.

<sup>3</sup> Ibid, ¶27.

<sup>4</sup> Ibid, ¶30.

<sup>5</sup> See, e.g. Comments of AT&T pp. 6-15; Comments of Rural Telecommunications Group, Inc. ("RTG"), pp. 3-4; Comments of National Telecommunications Cooperative Association ("NTCA"), pp. 3-4; Comments of Thumb Cellular ", pp. 1-6; Comments of Nsight Spectrum, Inc., pp 1-6; Comments of CTIA, pp 7-10; Comments of USCC, pp. 7-10.

<sup>6</sup> AT&T Comments, pp. 7-8; NsightSpectrum Comments, p. 5.

<sup>7</sup> AT&T Comments, pp 8-11.

The overlay licensing scheme would also infringe on the rights of incumbent licensees and violate Section 309(i)(6)(E) of the Communications Act by promoting rather than seeking to avoid mutual exclusivity.<sup>8</sup> It would be an improper use of the FCC's auction authority, designed to raise money, rather than allocate initial licenses or provide additional service to the public.<sup>9</sup> It would create artificial "interference" disputes between the overlay and incumbent licensees,<sup>10</sup> as well as inevitably creating service area boundary disputes of great complexity when licenses were "overlaid" on not merely one, but many licensees, in a given market.<sup>11</sup> Moreover, the absence of any definition of interference or standard for resolving interference disputes in the NPRM could mean considerable actual interference being caused if overlay licensees did attempt to initiate service in areas they deemed "unserved" which are in fact being served.<sup>12</sup>

Auctions make sense when initial licenses are being allocated. They do not work when a complex licensing system is already in place in the markets proposed to be auctioned. We reiterate our request that the FCC drop this profoundly misguided proposal.

**II. If There Are No Overlay Auctions, Current Cellular Licenses Should Be Converted To Geographic Licenses and The Existing Unserved Area Licensing Process Should Be Preserved When Multiple Licenses Are Involved**

If the FCC chooses not to adopt overlay auctions, the question remains as to how existing site based licenses are to be converted to geographic licensees. USCC has previously urged the FCC to convert existing CGSAs to geographic licenses, and USCC agrees with CTIA and other commenters which have taken this position in their comments.<sup>13</sup> USCC also stresses the need to define geographic boundaries in situations in which cellular licensees' Service Area Boundaries

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<sup>8</sup> CTIA Comments, pp. 7-9.

<sup>9</sup> NTCA Comments, p. 3; RTG Comments, p. 3.

<sup>10</sup> CTIA Comments, p. 9; Nsight Comments, pp. 3-4.

<sup>11</sup> AT&T Comments, p. 13.

<sup>12</sup> Thumb Cellular Comments, pp 2-5.

<sup>13</sup> CTIA Comments, pp 5-7.

("SABs") overlap within CMAs owing to claims made at the end of five year "buildout" periods.<sup>14</sup> Consequently, USCC reiterates its proposal to grant single geographic licenses to incumbent licensees, but only in situations in which those licensees are the only licensees in their markets on a given frequency block, even if there is some unserved area in the market.

However, most commenters which agree with USCC in opposing overlay auctions and supporting the conversion of existing site based licenses to geographic licenses do not support the latter proposal, evidently favoring the continuation of the existing unserved area licensing process in perpetuity.<sup>15</sup>

We believe, as noted previously, that retaining the unserved area licensing process is unavoidable in CMAs in which there is more than one licensee on a given frequency block. However, we would suggest that in situations in which there is only one licensee on a given frequency block after decades of cellular licensing, preserving the existing Phase II unserved area licensing process forever gives up too many of the undoubted advantages of geographic licensing. In such markets, as has been demonstrated since the eighties, the incumbent licensee is the only plausible unserved area service provider. And in such cases, it is wasteful of both public and private resources to require such licensees to go through the Phase II process. In such cases, assigning one geographic license in the market and allowing the incumbent the same expansion rights as are possessed by PCS licensees, for example, would clearly serve the public interest.

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<sup>14</sup> USCC Comments, pp. 3-7.

<sup>15</sup> See, e.g., AT&T Comments, pp. 15-16.

**Conclusion**

For the foregoing reasons the FCC should reject overlay auctions and adopt a system of geographic licensing as described above.

Respectfully submitted,

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