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

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

**REPLY COMMENTS OF VERIZON WIRELESS**

Verizon Wireless agrees with the many parties that support an immediate transition of existing Cellular Geographic Service Areas ("CGSAs") to market-based licenses, with the geographic boundaries of each license defined by the CGSA as calculated under existing Commission rules. Under this approach, there would be no automatic expansion of any licensee's CGSA; instead, the FCC's existing Phase II unserved area licensing rules would continue. Once the licensing process is transitioned to geographic-based licenses, cellular licensees and the Commission will benefit from many fewer required modification filings and from more certainty as to their license boundaries. In addition, Verizon Wireless agrees with nearly all parties that, given that the areas that would be included in any "overlay" auction are generally very small and atomized areas that have gone unserved for at least twenty years due to sparse population, difficult terrain or other reasons, establishing a complex new auction process for those areas is unlikely to achieve public interest benefits that provide any advantages over the current licensing system.

## I. THE SITE-BASED CELLULAR LICENSING MODEL SHOULD BE REPLACED WITH A GEOGRAPHIC LICENSING SYSTEM.

The commenters in this proceeding[1] agree that site-based licensing is intrinsically more burdensome and expensive to administer than a market-based system.[2] Site-based systems impose comparatively greater application filing requirements on licensees, and require a greater level of oversight and administration by Commission staff. As CTIA noted, cellular licensees are regulated more extensively than licensees in other spectrum bands. Specifically, other services (including PCS, AWS-1, and 700 MHz licensees) have geographic-based licensees and are free to build and modify facilities within their respective markets without a requirement to obtain prior Commission approval or to file post-modification notifications. The result is that cellular licensees file many more applications and notifications than other CMRS licensees. CTIA also observes that since 2008, cellular licensees have filed nearly 3,000 modification applications with the FCC while broadband PCS licensees have filed just approximately 200 applications.[3] AT&T correctly notes that the collection and maintenance of site-specific data is burdensome on cellular licensees and can delay deployment of advanced broadband services because digital networks are evolving as licensees "replace antennas and other equipment, adjust power, and adjust the direction and tilt of antenna."[4]

Because each of these changes require modification filings if they impact a site at the edge of the CGSA, cellular licensees spend significant resources preparing the related applications, and the Commission spends commensurate resources to review and act on these

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[1] *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, Notice of Proposed Rulemaking and Order, FCC 12-20 (Feb. 15, 2012) ("*NPRM*").

[2] Comments of CTIA – The Wireless Association ("CTIA") at 3.

[3] *Id.*

[4] Comments of AT&T Services, Inc. ("AT&T") at 3.

applications. The geographic licensing model, where licenses are coterminous with well-known political boundaries (county or parish lines), also provides far more certainty to other wireless providers and to the public as to the limits of a particular licensee's service area. In short, the cellular site-by-site licensing regime imposes more costs and complexity, yet provides less certainty to wireless providers and to the public, than the geographic area system used for PCS, AWS and many other spectrum bands. The Commission is correct in proposing to replace the cellular regime with the successful geographic licensing system.

## II. THE COMMISSION CAN TRANSITION TO MARKET-BASED LICENSING WHILE PRESERVING UNSERVED AREA LICENSING OPPORTUNITIES.

Verizon Wireless supports those comments that request a transition to a market-based licensing system for all CGSAs immediately, while preserving an unserved area licensing process for areas greater than 50 square miles (*i.e.*, those areas that are currently subject to the Phase II, unserved area licensing rules). Under this approach, the current coverage provided by cellular licensees (their respective CGSAs) will be defined as the licensed area, similar to the geographic licensed area used for PCS, AWS and other spectrum bands. Licensees would be able to make modifications to their network without the currently required burdensome filings.

Once set, these boundaries would be fixed, and would no longer fluctuate depending on the results of on-going CGSA calculations performed every time a technical change in a border cell site is undertaken. Rather, much in the way the Commission regulates other market-based wireless services, a cellular licensee would be able to deploy and modify facilities anywhere within its fixed license area, subject to a market boundary signal strength limit needed to protect licensees in adjacent markets from co-channel interference. This system would greatly decrease the regulatory burden on cellular licensees by eliminating the requirement that modification filings that do not affect the CGSA boundary be filed with the FCC.

Verizon Wireless also supports the Commission's proposal that the field strength at the borders of the markets where the predicted or measured median field strength at any location on the border of the service area should not exceed 40 dBuV/m, unless the parties agree to a higher field strength.[5] This proposal, which parallels existing field strength contour rules for other wireless services to manage adjacent co-channel systems, would eliminate the complex Carey formula set forth in Section 22.911 to calculate cellular CGSAs, which has long been recognized as not supplying the most accurate measurement of cellular coverage. The boundary field strength methodology has been successfully used for other services, including for PCS since 1996, and, like the transition to geographic-area licenses, will provide more certainty to wireless providers and to the Commission as to cellular coverage.

Transitioning to geographic-based licenses would not inhibit the ability of entities that wish to launch service in unserved areas of greater than 50 miles, as they can under the current cellular rules. Entities would remain free to file an application for these areas pursuant to the unserved area application process.

The Commission should, however, reject USCC's request that transition to geographic licenses only be awarded in CMAs where there are no CGSA extensions from neighboring markets.[6] Extensions from neighboring markets are permissible under the FCC's rules, and there is no reason that those areas should be treated differently in any transition. Indeed, USCC admits that CGSA areas can be "objectively determined," albeit with some effort on behalf of all impacted licenses. This work already occurs under the current rules and there is no basis to conclude it could not continue.

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[5] *NPRM,* ¶ 54.

[6] Comments of United States Cellular Corporation ("USCC") at 6.

The Commission should also reject NTCA's and RTG's request[7] that the FCC collect an additional application fee for a licensee to have its existing CGSA area converted into a geographic area license. There is no statutory basis under Section 8 of the Act, which sets the amounts for specific types of applications, for requiring the proposed additional fee.

## III. AN OVERLAY AUCTION WOULD NOT PROVIDE ANY PUBLIC INTEREST BENEFIT GIVEN THE UNIQUE NATURE OF THE GEOGRAPHIC AREAS AT ISSUE.

Nearly all parties to this proceeding oppose the "overlay auction" plan that was outlined in the *NPRM*.[8] As noted by CTIA, for example, the overlay auction would create uncertainties for cellular licensees without providing the public with any clear benefit.[9] It would auction Cellular Market Area ("CMA") based overlay licenses for all markets that are "Substantially Licensed" – which the Commission has proposed to define as (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, with an auction of the remaining markets at a much later time.[10] Under the proposal, incumbent cellular licensees that have constructed nearly all of their CMAs would be required to either bid in an auction for the area they already serve and for any remaining unserved area or be required to coordinate with the overlay licensee, which would have both the right to the unserved area and a "reversionary" right to any area that the incumbent cellular licensee might later abandon.

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[7] Comments of The National Telecommunications Cooperative Association ("NTCA") at 3; Comments of The Rural Telecommunications Group, Inc. ("RTG") at 4.

[8] Comments of RCA – The Competitive Carriers Association ("RCA"); Thumb Cellular, LLC ("Thumb"); Comments of CTIA; Comments of AT&T; Comments of USCC; Comments of Nsight Spectrum, LLC ("Nsight"). Even NTCA, which supported an overlay auction for those markets that are "substantially served," requests a delay of 14 years before the remaining markets are subject to an overlay auction.

[9] CTIA Comments at 7-8.

[10] *NPRM,* ¶¶ 27-30.

Verizon Wireless agrees with RTG that "holding an auction under these circumstances is misguided and could cause [incumbent carriers] difficulty if speculators not already serving the CMA Blocks being auctioned were to bid and be successful."[11] Many other parties oppose the overlay auction proposal as well. CTIA argued that an overlay auction could undermine the rights of incumbent licensees.[12] And AT&T raises the concern that by moving toward an across-the-board auction of all of these areas, the Commission would not be complying with Section 309(j)(6)(E) of the Communications Act, which requires the FCC to use engineering solutions, negotiation, and other means to avoid mutual exclusivity in application and licensing proceedings, and resort to auctions only after those other options have been considered.[13]

In addition to these concerns, it is not apparent how or why the overlay auction proposal would materially improve upon the well-settled process for licensing areas that do not currently have cellular service. Today, any party that is interested in serving such an area is free to file an application and will be granted a license if no other party files a mutually exclusive application. If a competing application is filed, but only then, will the Commission conduct an auction. The present system thus ensures that unserved areas are quickly licensed where only one party applies, but also ensures that where there are competing applicants, the license is awarded to the party which values the spectrum the most, fully consistent with the Commission's longstanding auction policies.

In contrast, under the overlay auction proposal, the Commission would conduct an auction for all such areas at one time, likely inducing parties to file competing applications even for areas that are not of primary interest, particularly if the Commission were to use a

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[11] RTG Comments at 3-4.

[12] CTIA Comments at 8.

[13] AT&T Comments at 14.

combinatorial bidding system that could create incentives to bid on multiple unserved areas simultaneously. Today, auctions are held only where there is sufficient demand to build out an area. But under the overlay auction proposal, areas across the nation would all be auctioned together, resulting in some areas being auctioned prematurely. Particularly given the very small, atomized geographic areas that would be included in the overlay auction, this new system would not provide any incremental public interest benefit over the current system.

If, however, the FCC were to proceed with an auction, it should revise the process that was outlined in the *NPRM* in three ways. First, the FCC should restrict any auction to CMAs with 50 square miles or more of contiguous unserved area. Under existing rules, only areas of this size are available for unserved area licensing. Such a threshold would recognize the difficulty of creating a viable wireless system within an area of less than 50 square miles, and help limit auction participation to entities that intend to deploy a network in the market.

Second, service area boundary ("SAB") overlaps, which enable adjacent co-channel licensees to cooperatively agree on the most efficient way to provide service along market borders, should not be prohibited as the *NPRM* proposes; instead, they should continue to be permitted by agreement.[14] There is no reason to depart from the existing rules with respect to allowing negotiated SAB extensions. Rather, as discussed above, the proposed field strength limit should be adopted. As AT&T explains, if a licensee can meet the field strength at the border of its service area or obtains consent from the adjacent licensee to exceed that level, then the SAB overlay arising from the field strength would be acceptable, existing SAB extensions

[14] *See NPRM* at 68 (proposed rule 22.165).

could continue pursuant to the agreed to terms, and field strength limits would apply equally to incumbents and overlay auction winners.[15]

Third, Verizon Wireless supports Nsight's request that the FCC clarify that the intent of the overlay auction is not to permit an Overlay Licensee to deploy or co-locate anywhere within the incumbent licensee's CGSA provided that there is no interference.[16] Verizon Wireless believes this is implicit in the FCC's proposal, but should be made explicit; as such behavior could adversely affect service to customers by causing interference to the incumbent licensee.

Respectfully submitted,

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[15] AT&T Comments at 21.

[16] Nsight Comments at 4.