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

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

REPLY COMMENTS OF AT&T

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AT&T Services, Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively "AT&T"), provides these reply comments on the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking ("*Notice*")[1] in this docket.

I. INTRODUCTION AND SUMMARY.

In response to the *Notice*, commenters of all types, small market/rural providers, a national provider, a regional provider, a wireless industry association, and a rural telecommunications association, despite their diverse interests, coalesced around a central theme—the Commission should modify the cellular service rules in a manner that is demonstrated to minimize administrative burdens on wireless providers, facilitate the expansion of service into unserved areas, and accelerate the deployment of advanced wireless services. There is a general consensus that the Commission can fulfill these objectives by transitioning the cellular service from outdated site-by-site rules to geographic-area license rules that are in parity with the rules applied to other mobile services, cease all efforts to implement the unnecessary, unwise, and unlawful overlay license framework proposed

[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, Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27, WT Docket No. 12-40, RM No. 11510 (2012) ("*Notice*").

in the *Notice*, and retain the Phase II unserved area rules that have facilitated the expansion of coverage in the cellular service.

Commenters generally agree that the Commission should transition the cellular service from a site-based license framework to a geographic-area license framework. Commenters recognize that the current site-based cellular rules provide no valuable information to the Commission and the day-to-day site-based filings impose an unnecessary burden on cellular licensees that is unjustified relative to their limited utility. Such a transition would generate substantial benefits with no adverse consequences by reducing the regulatory burdens on cellular licensees and providing cellular licensees with added flexibility to respond to technological and marketplace demands, without needlessly consuming Commission resources. Gathering necessary information and preparing site-by-site filings for technical changes unduly burdens cellular licensees and delays the roll out of advanced broadband service. Unless the Commission takes action, these delays will continue and the roll-out of broadband services will suffer. AT&T encourages the Commission to follow-through on its proposal to transition the cellular service to geographic-area licensing and to make that transition for all cellular market areas ("CMAs") forthwith.

Overwhelmingly, commenters in this docket oppose the overlay license framework proposed in the *Notice*. Commenters explain that the creation of overlay licenses for CMAs that have been served for nearly 30 years is overly complicated, serves no useful purpose, would discourage rural build-out, would increase costs for small market and rural cellular licensees, and would create burdensome conflicts between overlay licensees and incumbent cellular licensees. The overlay license framework is designed to solve a problem that does not exist—the lack of build-out in the cellular services. In fact, the Commission accurately touts the widespread construction and service to the public that has been achieved in the cellular service, with the vast majority of CMAs already

substantially served with 95% or greater coverage or with no unserved areas greater than 50 square miles. Moreover, in many other CMAs, the unserved area is not practical to serve because it is too small, is irregular in shape, or is located in difficult to serve areas. An overlay auction is simply unnecessary.

Commenters explain that the overly complicated overlay auction proposed in the *Notice* would create disputes between incumbent cellular licensees and overlay licensees over the extent of interference protection and the extent of the overlay licensee's right to cover areas within the incumbent cellular licensee's CGSA, creating substantial burdens for incumbent licensees to resolve, if the disputes can be resolved at all. Commenters express substantial concerns that overlay licensees (or speculators) with no intention to provide cellular service could "game" the system by obstructing an incumbent cellular licensee's ability to effectively provide service or extracting concessions from incumbent cellular licensees. These prospects are enhanced by proposed rules that prevent service area boundary ("SAB") extensions from additional transmitters, effectively freezing incumbent cellular networks.

Commenters likewise assail the overlay auction proposal as unlawful. Commenters explain that Section 309(j)(1) of the Communications Act, which authorizes the Commission to auction "initial" licenses, is not appropriate for cellular markets that are already "substantially" served. Duplicative overlay licenses would grant no authority to serve to most overlay licensees, as the CMAs are already fully served or any remaining unserved areas are too small, irregular, or otherwise difficult to serve. Given the likelihood of this result and that the overlay auction proposal would undermine the aspirations of the *Notice* to minimize administrative burdens and incent expansion into unserved areas, the overlay auction proposal is also arbitrary and capricious. The proposal undermines the interests of existing cellular licensees who have properly built out their systems in accordance with the Commission's requirements, with no associated public interest benefits.

Commenters also agree with AT&T that the overlay auction proposal fabricates mutual exclusivity where none exists, in violation of the Commission's obligation under Section 309(j)(6)(E) of the Communications Act to use engineering solutions, negotiation, and other means to avoid mutual exclusivity in application and licensing proceedings. Commenters likewise generally agree that the overlay auction proposal seems designed to generate revenue for the Federal Treasury in violation of Section 309(j)(7)(A) of the Communications Act. Given these and other deficiencies inherent in imposing an overlay license framework on a mature wireless service, AT&T urges the Commission to recognize the adverse public interest that would be caused by an overlay license framework for the cellular service and to abandon that proposal.

Commenters also agree that the Phase II unserved area rules should remain in place following the transition to geographic-area licenses. As the Commission acknowledges, the Phase II unserved area rules have proven successful over time and allowed cellular licensees to deploy widespread cellular systems. The record demonstrates that those rules would continue to preserve direct access to unserved area, meeting the Commission's goal of providing licensees with flexibility to build-out and provide service in unserved areas. Retaining the Phase II unserved area rules would allow incumbent cellular licensees or experienced unserved area licensees, the most likely to expand into unserved areas, to deploy their systems as technology and marketplace demands dictate, and will preserve the ability of licensees serving small and rural markets to continue providing service to those communities at reasonable cost. Nothing requires the replacement of the Phase II unserved area rules merely because the CMAs are transitioned to geographic-area licenses and, as referenced above, the majority of commenters believe that such replacement is inadvisable. AT&T urges the Commission to take a simpler, more sensible, approach to cellular licensing and leave the Phase II unserved area rules in place.

II. TRANSITIONING TO GEOGRAPHIC-AREA LICENSES WILL REMOVE UNPRODUCTIVE PROCESSES AND BRING THE CELLULAR LICENSEES INTO REGULATORY PARITY WITH OTHER WIRELESS SERVICES.[2]

In its comments, AT&T agreed with the Commission that a transition of cellular service to a geographic-area model would eliminate unproductive site-based filings, reducing the administrative burdens of cellular licensees and Commission staff and increasing the flexibility of cellular licensees to adapt to technological and marketplace changes. AT&T further explained that the evolving nature of cellular networks, from 2nd Generation digital, to 3rd Generation, to 4th Generation HSPA+, and soon to 4th Generation LTE, requires frequent changes to power, antennas, and other network attributes to address customer needs and improve network performance, each of which may necessitate a site-specific filing for sites comprising the border of the CGSA, even if these changes do not alter the cellular licensee's CGSA.

USCC and CTIA also advocate for the transition of cellular service to geographic-area licenses and away from requiring detailed data on a site-by-site basis because the data has no value to the Commission.[3] USCC argues that a CGSA is "determined by site specific signal propagation information . . . 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."[4] CTIA likewise

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[2] As referenced in the *Notice*, an AT&T affiliate holds the interim operating authorization to provide service in Chambers, Texas CMA 672A. AT&T supports the Commission's proposal to auction that license in accordance with the Communications Act after the transition of the license to a geographic-area license based upon the existing cellular geographic service area ("CGSA"). See *Notice* at 16.

[3] Comments of United States Cellular Corporation, WT Docket 12-40, RM 11510, at 1 (filed May 15, 2012) ("US Cellular Comments"); Comments of CTIA—The Wireless Association, WT Docket 12-40, RM 11510, at 1 (filed May 15, 2012) ("CTIA Comments").

[4] US Cellular Comments at 2.

concludes that "the current Cellular licensing regime requires unnecessary application filings that provide no needed information to the public or Commission."[5]

Commenters likewise agree with AT&T that the transition to geographic-area licensing would bring cellular licensees closer to regulatory parity with licensees of other wireless services, such as 700 MHz, PCS, and AWS-1. US Cellular adds that "the cellular service is now an anomaly among comparable wireless services, all of the rest of which are now licensed by market," and that "modern digital wireless technologies, with their different propagation 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."[6] This lack of regulatory parity puts cellular licensees at a competitive disadvantage. Prior to deploying service to unserved areas or otherwise modifying their systems to respond to marketplace demands, cellular licensees must consider the need for site-based filings and delay deployments until Commission approval is obtained. Conversely, licensees of other wireless services can put their spectrum to use more quickly to respond to demands as they arise. CTIA succinctly states that "licensees in these [other] services make far fewer filings with the Commission than Cellular licensees in the course of building out and expanding their service areas – a framework that has facilitated deployment of advanced services to customers without any adverse effect on other licensees."[7]

These factors lead to the conclusion reached by commenters that "the outdated Cellular licensing regime should be removed and replaced with a system consistent with other substantially

[5] CTIA Comments at 2.

[6] US Cellular Comments at 2-3.

[7] CTIA Comments at 3.

similar wireless broadband services."[8] There is little to no adverse consequence that would flow from such a transition. To be sure, some cellular licensees that serve small market or rural CMAs have expressed opposition to the idea of transitioning the cellular license rules to a geographic area license regime. However, a close analysis of the comments of those licensees reveals that their opposition is focused on the proposal in the NPRM—the transition to geographic area licensing *with the overlay auction*—not on the transition to geographic area licensing, and that their objections are to the consequences that would arise from that overlay auction. The National Telephone Cooperative Association ("NTCA"), an association whose members are rural telecommunications providers, succinctly explains the position that can be gleaned from the other small market/rural licensees: "NTCA generally supports the Commission's efforts to revise the licensing model for Cellular Service from a site-based model to a geographic-based approach, but expresses concern about the proposal to auction the Overlay Licenses."[9]

III. COMMENTERS OVERWHELMINGLY DISFAVOR AN OVERLAY AUCTION.

Overwhelmingly, commenters in this docket oppose an overlay license framework for the cellular service. Commenters are nearly unanimous in their disdain for the concept of creating and auctioning overlay licenses because the proposal would undermine the vested license rights of cellular licensees, do nothing to expand coverage, lead to needless interference and coordination disputes between incumbent cellular licensees and overlay licensees, increase the costs to expand service to rural areas, and introduce unnecessary complexity into the cellular licensing scheme. Commenters urge the Commission to not proceed down the path to an overlay auction, as introducing

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[8] *Id.*

[9] Comments of National Telephone Cooperative Association, WT 12-40, RM 11510, at 2 (filed May 15, 2012) ("NCTA Comments").

this level of uncertainty and risk to the wireless industry would be unwise and unlawful and create a substantial amount of unnecessary upheaval.

There is a better way forward. Commenters agree with AT&T that the Commission should retain the Phase II unserved area rules that have served the cellular service well for nearly 30 years. It is not necessary to combine the transition to geographic-area licensing for the cellular service with the creation of an overlay licensing scheme. Following the transition to geographic-area licensing, the Commission can preserve access to unserved area by retaining the Phase II unserved area rules. Retention of these rules would allow cellular licensees to most effectively expand service into unserved areas with minimal administrative burden and without the costs and complexities of an overlay licensing scheme that is fraught with uncertainty and risk. AT&T urges the Commission to move forward in this manner.

A. Commenters Nearly Unanimously Consider the Overlay Auction Model to be Unnecessary and Unwise.

Cellular licensees of all types, a national provider, a regional provider, and small market/rural providers, plus the industry groups that represent them, are unified in their opposition to a proposition sought by no member of the wireless industry—the creation and auction of overlay licenses for cellular service.[10] Rural Telecommunications Group, Inc. ("RTG") declares that it is "concerned about the auctioning of the Overlay Licenses and believes that the auction goes beyond the scope of the Petition for Rulemaking filed by CTIA."[11] RTG understands that the transition to geographic area-licensing may occur independent of an overlay auction: "CTIA did not request the FCC to hold

[10] *But see* Comments of RCA—The Competitive Carriers Association, WT Docket 12-40, RM 11510 (May 15, 2012).

[11] Comments of The Rural Telecommunications Group, Inc., WT Docket 12-40, RM 11510, at 3 (filed May 15, 2012) ("RTG Comments").

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 . . . ."[12] NCTA, another organization representing small market/rural wireless providers, writes that "it is not in the public interest to automatically enact an auction for every Overlay License" and that "the Commission should not waste resources in conducting unnecessary spectrum auctions."[13] US Cellular adds: "The concept of 'overlay licenses,' as proposed in the NPRM, proposes to solve a nonexistent problem, namely, inadequate market coverage by cellular systems. Moreover, it fails to 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."[14]

For its part, AT&T in its initial comments emphasized that the overlay auction proposal is overly complicated and is not needed to further expand service into unserved areas, as the Phase II unserved area application process has resulted in the steady expansion of coverage. An overlay license would grant merely illusory rights to serve and would not lead to the expansion of cellular service into unserved area. Copper Valley reinforces that theme, as it considers it readily apparent that a cellular licensing regime with overlay licenses "will do nothing to enhance (and, indeed, will actively frustrate) attempts to extend cellular service to areas that are presently unserved . . . because areas in need of service are best served either by incumbent carriers extending service to new areas,

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[12] *Id.* at 3.

[13] NCTA Comments at 3-4.

[14] US Cellular Comments at 8-9.

or by new entrants, selecting targeted communities as it becomes financially viable to do so."[15] Yet, if the Commission proceeds with an overlay auction and, as is foreseeable, the overlay licensee is not willing or able to serve the unserved areas, service expansion will cease and the extension of advanced wireless service to the unserved areas will be further delayed.

Commenters, particularly incumbent cellular licensees serving small and rural markets, also explain that the overlay license proposal would increase their costs, reducing the resources at their disposal to expand and improve service in response to market demand. Copper Valley explains that "the cost of securing an Overlay License would likely be prohibitively high" and the "new regime likely would be counterproductive because of the diversion of financial resources from the construction of facilities."[16] General Communication, Inc. ("GCI") expresses concern that the overlay licensing scheme would "increase carrier costs and reduce critical flexibility"[17] and "raise GCI's costs still higher, by forcing the company to choose between three expensive options whenever it seeks to serve a new community: (1) bid to acquire an overlay cellular license covering all of rural Alaska despite not needing rights in most of this huge area; (2) acquire licenses in other frequency bands through auctions or in the secondary market; or (3) lease spectrum from competitors that have no incentive to support GCI's expansion."[18] Though Copper Valley and GCI serve Alaska, the points

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[15] Comments of Copper Valley Wireless, Inc., WT Docket 12-40, RM 11510, at 6-7 (filed May 15, 2012) ("Copper Valley Comments"). Copper Valley's comments address the proposal to combine geographic-area licensing with overlay licenses. As explained above and in AT&T's initial comments, these concepts need not be combined. *See* Comments of AT&T Services, Inc., WT Docket 12-40, RM 11510, at 5 (filed May 15, 2012) ("AT&T Comments").

[16] Copper Valley Comments at 2-4.

[17] Comments of General Communication, Inc., WT Docket 12-40, RM 11510, at 2 (filed May 15, 2012) ("GCI Comments").

[18] *Id*. at 7. Although GCI expresses its concern in the context of a discussion of "geographic area licensing," a closer review suggests that GCI's real dispute stems from a possible overlay auction.

they make are well taken and apply equally to all CMAs with unserved area—diverting finite resources from the provision of advanced wireless services to an unnecessary and counterproductive overlay auction is not in the public interest.

Nsight Spectrum and Thumb Cellular comment that the overlay proposal "seems overly complicated for what appears to be nominal additional market licensing potential in the Substantially Licensed markets, seems to ignore 20+ years of market information, will likely lead to increased licensing issues as conflicts arise between Overlay Licensees and Incumbent Licensees regarding whether interference protection is being provided, and seems completely unneeded at least for markets which are Substantially Licensed."[19] AT&T is likewise concerned about the conflicts that would arise from imposing additional coordination obligations on incumbent cellular licensees. Adding a second licensee in each CMA in this heavily utilized mobile wireless band will introduce technical difficulties into the operation of incumbent licensee's systems deployment, creating substantial burdens for incumbent licensees and requiring the dedication of significant resources to resolve, if they can be resolved at all. Nsight Spectrum reminds us that "[r]equiring an Incumbent Licensee to engage in site-by-site coordination with an Overlay Licensee in all areas of the Incumbent Licensee's CGSA would not meet the Commission's goal of eliminating the burdens imposed by the current site-by-site licensing scheme."[20]

Moreover, the presence of overlapping licensees will inevitably lead to disputes between overlay licensees and incumbent cellular licensees over the extent of interference protection and the

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[19] Comments of Nsight Spectrum, LLC, WT Docket 12-40, RM 11510, at 1-2 (filed May 15, 2012) ("Nsight Comments"); Comments of Thumb Cellular, LLC, WT Docket 12-40, RM 11510, at 1-2 (filed May 10, 2012) ("Thumb Cellular Comments").

[20] Nsight Comments at note 6.

extent of the overlay licensee's right to cover areas that it may believe that the incumbent cellular licensee no longer sufficiently serves. The absence of language in the proposed rules clearly protecting, or defining the scope of, the incumbent cellular licensee's rights and the proposed prohibition on SAB extensions from additional transmitters further increases the potential for such disputes. The lack of clarity in the proposed rules, as Nsight Spectrum observes, could even lead overlay licensees to conclude that their overlay license authorizes the provision of cellular service within the CGSA of the incumbent cellular licensee, provided that the overlay licensee protects the incumbent licensee from interference.[21]

Copper Valley is concerned that the overlay auction proposal might require it to deal with overlay licensees to secure rights to adequately serve an area and possibly be subject to "'greenmail-type' demands or other financial concessions which could render the project economically infeasible."[22] NCTA expresses a similar concern, that an overlay licensee could acquire a license "merely for the purpose of preventing the incumbent from building it or for speculative purposes."[23] CTIA likewise explains that an overlay regime may create "an incentive to 'game the system,' whereby an overlay licensee (with no intent to actually build out and serve the CGSA) could make frivolous claims, challenging the Cellular licensee's coverage solely to extract a financial settlement."[24] RTG urges the Commission to "ensure that areas are not held hostage by an Overlay Licensee and services to the public can be expanded as warranted."[25]

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[21] *Id.* at 3-4.

[22] Copper Valley Comments at 7.

[23] NTCA Comments at 3.

[24] CTIA Comments at 9.

[25] RTG Comments at 3.

In many ways, the overlay license framework proposed in the *Notice* would generate a pall over the rights of the incumbent cellular licensee. Undermining the rights of incumbent cellular licensees in this manner simply cannot be justified based upon the efforts they have undertaken to build out their networks and serve the public over nearly 30 years.

B. Commenters Assail the Overlay Auction as Unlawful.

Undermining incumbent cellular licensee rights in this manner is also unlawful. AT&T explained in its initial comments that the Commission's auction authority did not extend to awarding licenses for CMAs that were previously licensed and still being served.[26] US Cellular arrives at the same conclusion: "While the FCC 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. . . . 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."[27]

In its initial comments, AT&T observed that such an attempt to award duplicate licenses in services that are fully deployed suggests that the "overlay" license scheme is designed predominantly to generate revenue, which would violate Section 309(j)(7)(A) of the Communications Act. RTG makes the same observation about the apparent intent of the overlay proposal: "It appears to RTG as if the proposed auction conversion process is a method for the FCC to raise money for spectrum that

[26] AT&T Comments at 13.

[27] US Cellular Comments at 8.

is only of real value to the incumbent licensees."[28] US Cellular also opined that using a cellular overlay auction to raise money for the Federal Treasury would run afoul of the Commission's auction authority: "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. However, we submit that necessitating this type of "defensive" bidding would not be a valid use of the federal government's auction authority."[29]

In its comments, AT&T further emphasized that the overlay auction proposal is designed to encourage mutually exclusive applications in violation of Communications Act Section 309(j)(6)(e). CTIA shares AT&T's concerns: "The Commission's proposal contradicts the basic tenets of the Communications Act. Section 309(j)(6)(E) of the Act reiterates the Commission's obligation in the public interest to use engineering solutions, negotiation, and other means to avoid mutual exclusivity in application and licensing proceedings. Indeed, the Commission has properly acknowledged that it must take steps to avoid mutual exclusivity where it is in the public interest to do so. Here, the Commission has instead proposed to fabricate mutual exclusivity where there currently is none – with no associated public interest benefits – and to undermine the interests of existing Cellular licensees who have properly built out their systems in accordance with the Commission's requirements."[30] Nsight Spectrum and Thumb Cellular likewise recognize the Commission's divergence from Section 309(j)(6)(E): "The Auction Statute requires the Commission to establish auctions when there are mutually exclusive applications for new systems; auctions are not required for system modification

[28] RTG Comments at 4.

[29] US Cellular Comments at 8.

[30] CTIA Comments at 8.

applications and there is nothing in the statute which requires the Commission to create new markets in established industries for the purpose of trying to create mutually exclusive applications."[31]

CTIA also opposes the overlay auction proposal as arbitrary and capricious, as it would essentially "subject incumbent [c]ellular licensees to competitive bidding processes to obtain 'rights' that these licensees have already obtained" and require those licensees to chose between "paying for the privilege of maintaining the status quo" and finding its "existing rights substantially infringed by the presence of a third party overlay licensee."[32] AT&T agrees. The overlay auction proposal arbitrarily undermines the rights of incumbent cellular licensees that have made enormous investments in the CMAs and have provided valuable service for nearly 30 years. It seeks to solve a problem that does not exist, with seemingly no catalyst, and undermines the avowed goals of the *Notice*, to relieve cellular licensees and the Commission of unnecessary administrative burdens and to encourage expansion into unserved areas.[33] Given these substantial legal impediments to the adoption of the overlay auction proposal, the Commission should abandon that proposal and rely on the steady expansion of cellular service as technology and the marketplace dictate.

IV. COMMENTERS FAVOR RETENTION OF THE PHASE II UNSERVED AREA RULES.

Rather than acquiesce to an overlay license framework that is unnecessary, adds administrative burdens, and discourages the expansion of advanced wireless services, commenters are nearly unanimous in urging the Commission to retain the current Phase II unserved area rules. There is a general consensus among the commenters and the Commission that the Phase II unserved area

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[31] Nsight Comments at note 8; Thumb Cellular Comments at note 8.

[32] CTIA Comments at 9.

[33] *Notice* at 11 ("This NPRM proposes to eliminate burdensome and time-consuming regulatory processes and to provide licensees with more flexibility to build out and provide service in areas that are currently unlicensed in the Cellular Service.")

rules have been successful.[34] As the record in this docket demonstrates, retention of the Phase II unserved area rules, coupled with the transition to geographic-area licenses, would also serve the Commission's stated goals of incenting build-out and service in unserved areas.[35] Although site-specific filings would remain for applicants who seek to serve unserved area, the administrative burden would not be significant, as filings would be completely voluntary and relatively few compared to the volumes of filings made under the current rules. In the absence of a compelling justification for eliminating the Phase II unserved area rules, which has not yet been demonstrated, the Commission should continue to allow expansion into unserved area for cellular service under this process.

CTIA explains that following the transition to geographic area licenses, incumbent cellular licensees would have "full flexibility to make changes that do not extend the existing coverage footprint" and that "[a] party wishing to obtain a license for an unserved area or extend its existing geographic market area could do so through the Commission's Phase II application process. To the extent there is mutual exclusivity for an unserved area, the Commission currently has competitive bidding procedures in place to address that situation and would not need to adopt new regulations."[36] US Cellular likewise recommends that following the transition to geographic area licenses "[t]he 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

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[34] *See, e.g.*, GCI Comments at 3 ("[T]he current site-based licensing system has proven successful, bringing widespread service to the public, especially in rural America."); *Notice* at ¶20 ("The current site-based licensing model has proven successful over time, as the Cellular Service has achieved widespread construction and service to the public.").

[35] *See Notice* at 11.

[36] CTIA Comments at 5.

rules."[37] GCI argues that "the FCC should not eliminate the unserved area license program, which remains a powerful tool for bringing wireless service to rural America . . . . Any suggestion that unserved area licenses are obsolete for rural expansion efforts is simply incorrect."[38] Copper Valley likewise argues that the unserved area rules should remain in place because "[t]he benefits of the current unserved area, site-based regime are well known and easily demonstrated."[39]

In their comments, GCI and Copper Valley explain that challenges associated with building-out unserved areas, such as difficult to reach geographic areas, demographics, and difficulty with backhaul, make the current Phase II unserved area rules the best method to promote build-out in rural areas.[40] Although GCI and Copper Valley focus on Alaska, where they provide cellular service, those same challenges face many unserved areas of greater than 50 square miles and explain why those areas remain unserved. They also demonstrate how service will be expanded to unserved areas over time as the marketplace demands. RTG argues that allowing the Phase II unserved area rules to remain in place for a longer period of time, "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."[41]

Given the broad consensus that the Phase II unserved area rules have proven to be successful at facilitating the expansion of cellular service and that those rules would continue to facilitate such

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[37] US Cellular Comments at 9.

[38] GCI Comments at 2.

[39] Copper Valley Comments at 3.

[40] GCI Comments at 3-7; Copper Valley Comments at 3-7.

[41] RTG Comments at 3.

expansion into unserved areas as technology and marketplace demands dictate, without the substantial deficiencies of an overlay license system, the Commission should take the smaller step of transitioning cellular licenses to geographic-area licenses and retaining the Phase II unserved area application process for expansions of CGSA.

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