

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

In the Matter of)
)
Expanding the Economic and Innovation) Docket No 12-268
Opportunities of Spectrum Through)
Incentive Auctions)

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”) hereby submits these comments in response to the Federal Communications Commission’s (“Commission’s”) Notice of Proposed Rulemaking in the above referenced proceeding (“Notice”) and the accompanying initial regulatory flexibility analysis.¹ In its Notice, the Commission seeks comment on the incentive auction of broadcast television spectrum. While the auction will have three major pieces: (1) a “reverse auction” in which broadcast television submit bids to voluntarily relinquish spectrum usage rights in exchange for payments; (2) a reorganization or “repacking” of the broadcast television bands in order to free up a portion of the ultra high frequency band for other uses; and (3) a “forward auction” of initial licenses for flexible use of the newly available spectrum, these comments focus specifically on that last piece – the forward auction, in which NTCA members are expected to participate.

I. INTRODUCTION AND SUMMARY

NTCA is a national association of approximately 580 local exchange carriers in 44 states that provide service primarily in rural areas. Approximately half of NTCA’s member companies offer some type of wireless service. All NTCA members are small carriers that are “rural

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Docket No. 12-268, FCC 12-118 (rel. October 2, 2012).

telephone companies” as defined in the Communications Act of 1934, as amended (“Act”).

While some offer local exchange service to as few as 44 lines and a small handful to 50,000 or more, nearly 50% of NTCA members serve between 1,000 and 5,000 lines. Population density in most member service areas is in the 1 to 5 customers per square mile range. NTCA’s members are interested in the broadcast spectrum, believing that it could be an excellent opportunity for rural companies and their subscribers to obtain competitive wireless service.

The 600 MHz spectrum is particularly well-suited for rural applications. Its propagation characteristics enable providers to cover vast distances with minimal tower construction. Given an opportunity and sufficient spectrum, a majority of rural carriers expect to use the band to provide rural consumers with a wireless broadband product – filling a need that has been largely ignored by the largest wireless providers. Interoperability and meaningful opportunity for small carriers to obtain the spectrum is essential for its full utilization in rural areas. NTCA urges the Commission to auction spectrum covering rural territory according to small license areas, and to adopt rules and policies that prevent license holders from allowing spectrum covering rural territories to lie fallow.

II. INTEROPERABILITY IS ESSENTIAL FOR THE SUCCESSFUL DEPLOYMENT OF MOBILE WIRELESS SERVICES IN RURAL AREAS

NTCA’s members appreciate the Commission’s emphasis on ensuring as a technical matter that wireless providers will be able to offer mobile devices that can operate across the country.² It would help minimize device cost and interoperability concerns, and allow for greater economies of scale. As the Commission recognizes, supporting multiple band plans increases the cost, size and complexity of devices. NTCA therefore supports structure to keep

² Notice, ¶ 124.

the downlink spectrum band consistent nationwide and any other measures that would ensure interoperability in the license band.

As the Commission is well aware, construction and deployment plans for rural carriers with 700 MHz spectrum bands have been significantly curtailed and in some instances, postponed indefinitely due to the challenges created by the lack of interoperability across the spectrum bands. Equipment and devices are difficult to obtain and the inability to roam means that a viable mobile voice or data product is unlikely.

The Commission is wise to consider the interoperability issue upfront and ensure that the repackaged broadcast spectrum is put to its highest and best use. It would be disappointing indeed if the same failures to address interoperability in advance that have confounded more productive use of 700 MHz system were to repeat themselves in this context.

III. SMALL LICENSED SERVICE TERRITORIES ARE APPROPRIATE

In its Notice, the Commission seeks comment on a proposal to license the 600 MHz band on the basis of an Economic Area (“EA”).³ The Commission believes that licensing according to EAs strikes an appropriate balance between the difficult task of reclaiming an equal amount of spectrum nationwide which would be necessary to offer a nationwide license, and the implementation difficulties that may arise if smaller license territories are offered.

NTCA submits that EA geographic areas are too large for the prompt and efficient utilization of the spectrum resource in rural areas. The public is best served if smaller license territories are offered in rural areas. As the Commission has recognized,

³ Notice ¶ 148.

RSAs and MSAs represent areas over which many customers may desire to receive the majority of their wireless or broadcast-type services and thus can be the focus of smaller carriers that do not wish to bid or provide service to larger regions.⁴

The spectrum at issue in this proceeding is particularly well suited for rural applications.

Carriers who have the desire and motivation to serve rural territories must have the opportunity to obtain the spectrum for its full potential to be realized. The current plan to license the

spectrum according to EAs all but ensures that no truly small carriers will succeed at auction.

Only large carriers have the resources necessary to obtain spectrum covering such vast swaths of territory. It would be a mistake, ultimately harming rural consumers and the objectives of competition, to deny rural carriers the opportunity to offer service.

NTCA's members are situated in the communities they serve and have the will and intent to provide wireless broadband to rural consumers. It is appropriate and in the public's interest for the Commission to license significant portions of the 600 MHz spectrum according to small license territories. Small carriers with localized business plans cannot compete with large carriers at auction. A large carrier is typically interested in serving the city and the rural carrier interested in serving the rural population. A large license territory forces the two carriers to bid against each other, even though they may not actually be interested in serving the same consumers. A bidding credit for the small carrier, while useful, does not make up for the disparity in resources. The rural carrier stands little chance of obtaining a large geographic area spectrum license. Smaller license territories are essential.

A plan to license blocks on the basis of smaller MSAs and RSAs would also permit the Commission to take a significant a step toward satisfying the mandates of Section 309(j) of the

⁴ Reallocation and Service Rules for the 698-746 Spectrum MHz Band (Television Channels 52-59), GN Docket No. 01-74, *Report and Order*, FCC 01-364, 17 FCC Rcd 1022, ¶ 96 (2002).

Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996 which compel the Commission to adopt rules and policies to promote the development and rapid deployment of new technologies to rural areas. The Commission is also directed to ensure that small businesses, specifically rural telephone companies, are given the opportunity to participate in the provision of spectrum-based services. The Commission will best fulfill its Congressional directives and provide opportunities for rural carriers by auctioning spectrum bands according to MSAs and RSAs, instead of EAs.

Licensing spectrum according to large territories all but precludes small carriers from obtaining spectrum, but the converse is not true. Large carriers have the resources necessary to aggregate the spectrum they need or want, no matter how small the license territories. While it may be “easier” for carriers seeking a large geographic spectrum asset to obtain it if it is auctioned as a single area, that convenience should in no way influence the Commission’s decision given the potential for harm to rural carriers and consumers and the Commission’s legal mandates surrounding small businesses, including rural telephone companies and the provision of spectrum-based services to rural areas.

IV. IF LARGE GEOGRAPHIC AREAS ARE LICENSED, THE COMMISSION MUST ADOPT POLICIES TO PREVENT THE WAREHOUSING OF SPECTRUM

If, despite the compelling case for small license territories, the Commission licenses the spectrum according to EAs or larger blocks, it must adopt measures to ensure that spectrum does not lie fallow in rural areas. Providers that specifically obtain EA or larger blocks should be held to strict build-out requirements with a “use it or lose it” provision. This will incent license

holders to build out the geographic areas or partition or disaggregate it to avoid losing it.⁵ In the event the license holder does not meet build out requirements, the Commission should re-claim unused spectrum at the conclusion of the build-out period so that it may be reassigned to another provider who is willing and able to provide service.

By contrast, NTCA does not support “use it or share it.” This proposal would permit third parties to make use of unused spectrum on a localized basis until a licensee deploys service in those areas.⁶ While the proposal might permit more immediate use of the spectrum, its utility is limited. Deploying a wireless service is an expensive endeavor and it is difficult to imagine a scenario in which a provider would fully utilize the spectrum if, at any moment, the license holder could reclaim it for its own use. The public is better served if there is a clear delineation of spectrum usage rights.

⁵ NTCA notes that secondary spectrum opportunities cannot serve as a substitute for primary spectrum opportunities. While secondary markers are a useful tool for rural carriers interested in serving a portion of a larger carrier’s service territory, it is a limited opportunity. Negotiation for secondary opportunities does not begin until after the license holder determines how it will use the spectrum, what spectrum it is will in to part with and for what price. The desired outcome, if it occurs at all, takes years and the threat of losing spectrum to achieve, There is an immediate need for spectrum in rural areas and licensing according to small geographic territories is, by far, the better approach for ensuring service to rural consumers.

⁶ Notice ¶ 405.

V. CONCLUSION

The 600 MHz spectrum is well-suited for rural applications. Given an opportunity and sufficient spectrum, a majority of rural carriers expect to use the band to provide rural consumers with a wireless broadband product. Interoperability and meaningful opportunity for small carriers to obtain the spectrum is essential for its full utilization. NTCA urges the Commission to auction spectrum covering rural territory according to small license areas, and to adopt rules and policies that prevent license holders from allowing spectrum covering rural territories to lie fallow.

Respectfully submitted,



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