

March 21, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: 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-11510

Dear Ms. Dortch:

On March 19, 2014, Linda Vandeloop and Jeanine Poltronieri of AT&T, Brian Josef of CTIA – The Wireless Association® (“CTIA”), Carri Bennet of the Rural Wireless Association (“RWA”), Bill Tortoriello (via telephone) of US Cellular, Peter Connolly of Holland & Knight LLP representing US Cellular, and Leora Hochstein and Michael Samssock (via telephone) of Verizon, met with Roger Noel, Division Chief, Mobility Division, Brian Regan, Lloyd Coward, Nina Shafran, Denise Walter, Jeremy Reynolds, Keith Harper, Luis Zambrano Ramos, Moslem Sawez, Gabriel Ubieta, Thomas Derenge, and Scot Stone, all of the Wireless Telecommunications Bureau (“WTB”).

During the meeting, the parties discussed the joint proposal of CTIA, NTCA, and RWA to expeditiously convert the licensing model for the Cellular Radiotelephone Service (“Cellular”) from a site-based model to a geographic-based approach. This proposal (the “Joint Proposal”) was outlined in an April 17, 2013 *ex parte* submission and further clarified in a November 13, 2013 *ex parte* submission.¹ We have had constructive discussions with FCC staff in developing our proposal and now urge the Commission to promptly issue an Order adopting and codifying the Joint Proposal. The parties believe that the Joint Proposal will simplify Cellular licensing while balancing incumbent and new entrant rights.

The Commission previously has stressed the key benefits of a simplified cellular licensing regime. In the *NPRM*, the Commission correctly noted that “site-based licensing may unduly limit licensees’ ability in many markets to adapt to technological and marketplace changes, which burdens licensees and consumes FCC staff resources, as application filings are required for even minor technical system changes.”² Conversely, the FCC observed that market-based licensing would “eliminate burdensome and time-consuming regulatory processes” and “provide licensees with more flexibility to build out and provide service in areas that are

¹ Letter from Brian Josef, CTIA to Marlene H. Dortch, FCC, WT Docket No. 12-40 (April 17, 2013) (“April 2013 Ex Parte”); Letter from Brian Josef, CTIA *et al* to Marlene H. Dortch, FCC, WT Docket No. 12-40 (Nov. 15, 2013) (“Joint Associations November 2013 Ex Parte”).

² *NPRM* at ¶ 19.

currently unlicensed in the Cellular Service.”³ The Commission also highlighted the fact that a conversion to market area licensing also would “bring the Cellular Service into greater harmony with the more flexible licensing schemes used successfully by other similar mobile services, such as PCS, the 700 MHz Service, and AWS.”⁴

As previously noted in the record, instead of conducting an overlay auction the Commission should issue an Order directing the expeditious conversion of current site-based coverage areas to geographic market areas based on each licensee’s currently-authorized CGSA. The optimal approach would convert a CGSA to a geographic license, and if the licensee wished to extend its licensed area into an unserved area, the expansion would be required to serve at least 50 square miles. Any unserved area less than 50 square miles bordered by only one incumbent would become part of the incumbent’s geographic license. Any unserved area less than 50 square miles bordered by more than one incumbent could only be allocated to geographic licenses with written agreement by all bordering incumbents in the same CMA. Absent agreement, those areas could only be served on a secondary basis. Unserved areas would continue to be claimed under the existing Phase II procedures. Dual licensing by commonly controlled licensees would also remain permissible, consistent with existing rules. Additionally, a Cellular licensee would be required to file a reduction in service area if, post-conversion, that licensee’s actual coverage area drops below 50 percent of the coverage area it had at the time of conversion for more than 12 months.

The public interest benefits of the Joint Proposal are clear, and the Commission should promptly issue an Order rejecting the overlay auction approach and adopting cellular licensing rules consistent with the Joint Proposal. The core elements of the Joint Proposal were submitted by CTIA to the Commission in September 2010, and the Commission sought specific comment on this proposal in the *NPRM*.⁵ There has been longstanding advocacy for an expeditious conversion of site-based coverage to geographic market areas based on currently-authorized CGSAs.⁶ The proposal put forth by the Commission for comment in the *NPRM* also is consistent with the Joint Proposal’s treatment of unserved areas less than 50 square miles

³ *Id.*

⁴ *Id.*

⁵ *Amendment of Parts 1 and 22 of the Commission’s Rules With Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, 27 FCC Rcd 1745, ¶ 3 (2012) (“*NPRM*”) (specifically seeking comment on “the alternative proposals discussed in this *NPRM*, including those of [CTIA], [NTCA], [RWA], and others on the record” and citing to CTIA’s 2008 and 2010 proposals).

⁶ *Compare* Joint Associations November 2013 Ex Parte at 1 (“Instead of conducting an overlay auction, the Commission should issue an Order directing the expeditious conversion of current site-based coverage areas to geographic market areas based on each licensee’s currently-authorized CGSA.”), *with* “A Plan for Transitioning the Cellular Radiotelephone Service to a Market-Based Licensing System at 5, *attached to* Letter from David J. Redl, CTIA to Marlene H. Dortch, FCC, RM-11510 (Sept. 22, 2010) (“CTIA Revised Plan”) (“Each active cellular license shall be deemed to be a market-based license, with the geographic boundaries of each license being determined by the licensee’s currently-authorized CGSA, including areas within the CGSA that may be located in other CMAs.”), *and NPRM* at ¶ 12 (“CTIA’s Revised Plan entails the establishment of fixed license boundaries for all incumbents in all CMA Blocks based on existing CGSAs, to be documented by certain specified submissions.”) and CTIA Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing, RM-11510 (2008) and Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Transition Part 22 Cellular Services to Geographic Market-Area Licensing, Public Notice, RM-11510, 24 FCC Rcd 27 (2009).

bordered by one⁷ or more⁸ incumbents. The Joint Proposal and CTIA's earlier submissions put forth for comment also propose to preserve many elements of the Commission's existing cellular licensing rules as part of the modified licensing framework.⁹ Thus, the key elements of the Joint Proposal have been before the Commission for more than three years, and were put out for public comment more than two years ago. The parties respectfully urge the Commission to resolve this proceeding as recommended in the recent FCC Report on Process Reform,¹⁰ and it has ample authority to do so.

The parties share the Commission's view that a conversion to market area licensing would provide regulatory parity for Cellular licensees and reduce burdens on both licensees and Commission staff. The parties therefore respectfully request that the Commission promptly issue an Order adopting the Joint Proposal and enable this key reform of Cellular licensing.

⁷ Compare Joint Associations November 2013 Ex Parte at 1 ("Any unserved area less than 50 square miles bordered by only one incumbent would become part of the incumbent's geographic license."); with CTIA Revised Plan at 8-9 (proposing that once a market is "fully served" (defined in part as containing no contiguous unserved areas 50 square miles in size or larger remaining within the CMA/Block), residual unserved areas would be allocated without auction to an incumbent, adjacent licensee). See also 47 C.F.R. § 22.951 (stipulating that only an adjacent licensee may file an application to operate a new cellular system covering less than 50 contiguous square miles).

⁸ Compare Joint Associations November 2013 Ex Parte at 1 ("Any unserved area less than 50 square miles bordered by more than one incumbent could only be allocated to geographic licenses with written agreement by all bordering incumbents in the same CMA."); with CTIA Revised Plan at 9 (proposing that in "fully served" markets with multiple licensees, residual unserved areas shall be distributed to incumbent licensees on a proportional basis and with the agreement of the incumbents.").

⁹ Joint Associations November 2013 Ex Parte at 1 ("Unserved areas would continue to be claimed under the existing phase II procedures. Dual licensing by commonly controlled licensees would remain permissible."); CTIA Revised Plan at 8 (proposing that CMAs/Blocks that are not "fully served" should remain subject to the Commission's existing unserved area licensing procedures.").

¹⁰ Report on FCC Process Reform, Staff Working Group Report led by Diane Cornell, Special Counsel to Chairman Tom Wheeler, rel. Feb. 14, 2014, Recommendation 5.35 at 75, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0214/DA-14-199A2.pdf (recommending that "[t]he FCC should build upon the progress made to date to bring this proceeding to closure.").

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

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