April 10, 2014

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268;**
***Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269**

Dear Ms. Dortch:

NTCA – The Rural Broadband Association ("NTCA") believes it is appropriate for the Federal Communications Commission ("Commission") to adopt reasonable spectrum aggregation limits, making a distinction between spectrum below 1 GHz and spectrum above 1 GHz. NTCA represents nearly 900 rural rate of return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers. Many of NTCA's members also provide fixed and/or mobile wireless service to the rural communities that are often overlooked by the largest providers.

As the Commission recognizes, "[a]ccess to spectrum is a precondition to the provision of mobile wireless services"[1] and the Commission "has a unique responsibility to ensure that spectrum is allocated in a manner that promotes actual and potential competition and that incentives are maintained for innovation and efficiency in the mobile services marketplace."[2] There has been significant consolidation in the marketplace in the decade since the Commission's last review of its spectrum holdings policies. In 2003, there were six nationwide mobile telephone operators and now, as a result of mergers and other Commission approved transactions, there are four nationwide providers. The two largest carriers, AT&T and Verizon, now control more than a combined 70% of the U.S. wireless market.

This market concentration and the resulting consolidation of spectrum has been harmful to rural providers and the consumers they serve. Although NTCA's members have done a commendable job providing wireless services in rural markets, they struggle to compete with limited spectrum

[1] *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, FCC 12-119 (rel. Sep. 28, 2012) ("NPRM").
[2] NPRM ¶ 4.

NTCA–The Rural Broadband Association
4121 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203
(703) 351-2000 (Tel) ● (703) 351-2001 (Fax)

and financial resources. Larger carriers with more resources can often edge out much smaller competitors in a quest for additional spectrum, reasonably priced equipment and favorable roaming agreements. As a result, smaller carriers too often feel the pressure to exit the market altogether and sell spectrum licenses to the very carriers who help to drive and perpetuate this ecosystem. In NTCA's latest wireless survey, an overwhelming 73% of respondents indicated that competition from nationwide providers was their greatest concern.[3] Nearly half also cited difficulties in obtaining spectrum at auction and 53% categorized their experience in negotiating data roaming and in-market roaming agreements with other carriers as moderately to extremely difficult.[4] The large, nationwide providers dominate the wireless market as the largest holders of spectrum, subscribers, equipment and roaming agreements.

The largest providers of wireless service have an obvious and understandable interest in obtaining all available spectrum. Not only does such consolidation increase their bottom line, it also forecloses others from gaining a foothold in the market, thereby relieving any competitive pressures. Although many NTCA members compete against large carriers for customers, the service provided by the large carriers in rural areas, where available, can often be substandard. Large carriers typically (and understandably) concentrate their build-out efforts and service offerings in profitable densely populated areas. In contrast, NTCA's members focus on rural areas and thus invest in their rural communities, offering high-quality, state of the art service. As a result of these market incentives, rural consumers are often forced to choose between receiving service from either a small carrier with quality local service or a large carrier with more device choices and a nationwide calling and data plan, but spotty service. In order to ensure that rural consumers have quality service options available from multiple providers and to help provide proper incentives and opportunities for meaningful competition in these markets, small rural providers must have the opportunity and incentive to obtain and retain spectrum.

Reasonable spectrum aggregation limits would help loosen the stranglehold that the largest providers have on the market, offering opportunities for competitive providers to obtain spectrum to enter the wireless arena or expand wireless offerings with the addition of new, innovative capabilities. Additional players in the mobile wireless market also introduce additional and stronger roaming partners to the benefit of consumers and the market as a whole.

Specifically, NTCA supports overall spectrum aggregation limits, with additional specific limits on spectrum below 1 GHz.[5] Limits on the total amount of spectrum any one carrier can hold in a given market would ensure that consumers have the opportunity to choose to receive service from more than one provider and it would help increase innovation and the variety of service offerings. Rural providers have a particular interest in additional aggregation limits on spectrum below 1GHz. Spectrum below 1 GHz allows for better coverage across large geographic areas and is inherently technically superior to spectrum above 1 GHz. Importantly for rural providers,

---

[3] NTCA 2013 Wireless Survey Report (January 2014) http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcawirelesssurvey.pdf

[4] *Id.*

[5] Reply Comments of NTCA, *Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (filed January 7, 2013).

low band spectrum signals travel a greater distance than high-band spectrum, allowing for the construction of much fewer towers. Tower construction is costly, particularly in rural areas, and small providers have very limited resources. Rural areas simply lack the population density to support the multiple towers necessary to offer a reasonable wireless product using high-band spectrum. The Commission should take reasonable steps to ensure that no company is provided the opportunity to obtain all that remains of this valuable spectrum in any given market.

The adoption of spectrum aggregation limits in the Incentive Auction would help ensure that the Commission satisfies the statutory mandates of Section 309(j) of the Communications Act. Section 309(j) mandates that the Commission include in its regulations safeguards to protect the public interest in the use of the spectrum and seek to promote the purposes of the Act (which include making radio communication service available "to *all* the people of the United States)[6] and certain objectives, including:

> (A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, *including those residing in rural areas*, without administrative or judicial delays; and
>
> (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people *by avoiding excessive concentration of licenses* and *by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies*, and businesses owned by members of minority groups and women.[7]

In Section 309(j)(4) of the Act, Congress further mandated that the Commission:

> (B) include performance requirements, such as appropriate deadlines and penalties for performance failures, *to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees*, and to promote investment in and rapid deployment of new technologies and services; [and]
>
> (C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, *prescribe area designations and bandwidth assignments that promote* (i) *an equitable distribution of licenses and services among geographic areas*, (ii) *economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies*, and businesses owned by members of minority groups and women, *and* (iii) *investment in and rapid deployment of new technologies and services*.[8]

---

[6] 47 U.S.C. § 151 (emphasis added).

[7] 47 U.S.C. §§ 309(j)(3)(A)-(B) (emphasis added). The Supreme Court, in its *Adarand* and subsequent *VMI* decisions, struck down preferential treatment of minorities and women. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227-30 (1995) ("*Adarand*") and *United States v. Virginia*, 518 U.S. 515, 531-34 (1996) ("*VMI*").

[8] 47 U.S.C. §§ 309(j)(4)(B)-(C) (emphasis added).

The Commission must consider these requirements when adopting regulations for the award offer service licenses through competitive bidding.[9] Reasonable spectrum aggregation limits would help ensure that here is not an excessive concentration of spectrum and prevent the warehousing of spectrum to the detriment of consumers who would otherwise use it in rural areas. They would also promote competition and the equitable distribution of licenses, while promoting opportunities for small businesses and rural carriers to respond to that consumer demand.

Small and rural wireless providers have the desire and ability to provide high quality fixed and mobile voice and data wireless service to rural communities. Reasonable spectrum aggregation limits will help provide the opportunity to do so.

.

Sincerely,

/s/ *Jill Canfield*
Jill Canfield
Director of Legal and Industry,
Assistant General Counsel

[9] Spectrum aggregation limits, while important, would not obviate the need for small geographic area licenses in rural markets and would not, by themselves, satisfy the Commission's obligations under 47 U.S.C. §309(j). Put another way, aggregation limits would matter little if license sizes are so large that they preclude smaller providers from obtaining spectrum at all. Small providers have no realistic opportunity to participate in a spectrum auction if licenses are auctioned according to large geographic areas. NTCA advocates "right-sized" geographic area licensing, combined with reasonable spectrum aggregation limits.