

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Partitioning, Disaggregation, and) WT Docket No. 19-38
Leasing of Spectrum)

To: The Commission

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”) is pleased to file Comments in response to the Second Further Notice in this proceeding.¹ This item proposes to address what EWA considers a critical aspect of the FCC’s licensing rules that has discouraged private entities with internal communications requirements from acquiring geographic licenses from the FCC or purchasing or leasing spectrum from geographic licensees in the secondary market. Historically, the FCC has imposed build-out obligations on geographic licenses that require coverage of defined percentages of population or geography, metrics intended to ensure commercial wireless licensees providing service to the public make appropriately intensive use of their spectrum. EWA’s Comments in the earlier stage of this proceeding urged the FCC to recognize the need for different coverage standards for private internal licensees, rules that would enable them to deploy more advanced technologies, including broadband technology, in support of their internal operating needs.²

The Commission has responded in this Second Further Notice by proposing alternative coverage and renewal requirements that recognize population-centric metrics do not

¹ *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Report and Order and Second Further Notice of Proposed Rulemaking, 87 Fed. Reg. 57447 (rel. Jul. 18, 2022) (Second Further Notice).

² EWA Comments at 4 (filed Feb. 28, 2022).

necessarily align with the coverage area needed by a private enterprise entity. On behalf of its many enterprise members, EWA appreciates the Commission's acknowledgement that spectrum can be placed into productive operation and used to advance the public interest other than through the provision of wireless service to consumers and provides the following comments on the alternatives proposed in the Second Further Notice.

The Commission's construction and renewal requirements are intended to ensure that the Commission meets its statutory obligation to "generally encourage the larger and more effective use of radio in the public interest."³ EWA is a strong supporter of FCC rules that require licensees to place the spectrum they acquire, however they acquire it, into use in a reasonable timeframe and that prevent spectrum from being warehoused for competitive or other purposes contrary to the public interest. For decades, its members have been issued primarily site-based licenses for both mobile and fixed use with defined construction deadlines and discontinuance of operation rules. This system worked well for narrowband operations but as the FCC and the wireless industry increasingly have migrated toward wideband and broadband technology, the spectrum assigned for these advanced capabilities has been made available almost exclusively pursuant to geographic, rather than site-based, authorizations, and assigned through the FCC's competitive bidding process. Since this spectrum has been intended primarily for use in commercial networks providing service to consumers, the build-out requirements are defined by coverage of specified percentages of the population within the license area or, in some instances, coverage of specified percentages of the geographic area.

EWA's Comments in the earlier phase of this proceeding explained that the geographic coverage needed by potential users such as factories, ports, refineries, airlines, and utilities are generally unrelated to the consumer population that typically is concentrated most heavily in

³ 47 U.S.C. § 303(g).

urban communities or suburban clusters. These entities are discouraged from participating in spectrum auctions, both because, unlike their auction competitors, they do not generate revenue directly from the spectrum they acquire and because of a concern that they will not be able to satisfy the FCC's performance criteria and will lose the spectrum they purchase. The recent use of smaller geographic areas, including counties, to define geographic authorizations in some bands is helpful, but still has imperfect correlation with their coverage needs that are determined, not by where people are but where businesses need wireless facilities to conduct their primary operations efficiently and economically.

Acquiring spectrum in the secondary market, even with partitioning and disaggregation opportunities, does not eliminate these issues. For many of the same reasons addressed in the initial phase of this proceeding, it is not always possible to purchase only the geographic coverage needed to meet internal requirements. Licensees are not always willing to tailor the partitioning of their geographic authorizations to private user coverage needs but require the acquisition of a geographic area that makes economic sense for the seller. This presents significant challenges not only for meeting initial build-out criteria but for license renewal as described in the Second Further Notice:

We note that commenters described the need for alternative requirements in cases where a licensee is putting spectrum to use for private, internal radio communications associated with its business functions. We acknowledge that, in these instances, the geographic area of the license might be more expansive than the desired area of operation, and that a population-based construction metric might not align with the intended area of operation, increasing the difficulty in meeting population coverage requirements. In addition, such licensees would need to meet not only construction requirements in the initial license term, but also the renewal requirements. In cases where licenses are obtained in the secondary market, renewal safe harbors may not be available to this type of licensee, potentially resulting in a chilling of potential transactions based on the uncertainty as to whether renewal obligations can be met.⁴

⁴ Second Further Notice at ¶ 113 (footnotes omitted).

EWA believes both the “demand-based initial construction”⁵ and “use or offer to share”⁶ alternative coverage requirements proposed in the Second Further Notice are positive approaches for addressing this issue, although it recommends clarification or further refinement of the demand-based alternative. As discussed herein, both should be adopted to provide private entities with flexibility in meeting build-out and renewal requirements and thereby facilitate their access to geographic spectrum, including broadband spectrum. They would provide potential licensees with a level of certainty about being able to meet FCC requirements and thereby retain the spectrum in which they invest.

A. Demand-based Approach

The demand-based approach would allow an entity proposing to use spectrum for private internal communications to define the area within a geographic authorization in which it needs coverage and protection from interference. The licensee would specify a core usage zone within which it intends to use the spectrum actively, an expansion zone if there is an expectation that it will need additional coverage in the future, and a protection zone consistent with the protection criteria for the service in question. As proposed, the three zones must cover the entire license area.

This approach clearly is preferable to the current predetermined criteria, as it allows the private entity to define its coverage obligation by building out from the area in which it intends to operate. It could work well for smaller geographic licenses such as those based on counties, at least for certain private entities in certain counties, or instances when the private user is able to acquire secondary market spectrum partitioned such that it is reasonably correlated with coverage needs. EWA questions, however, whether this option will have a meaningful impact when larger geographic areas are involved, whether acquired at auction or in a secondary

⁵ *Id.* at ¶¶ 114-117.

⁶ *Id.* at ¶¶ 120-122.

market transaction. The FCC recognized this issue in questioning, “Would a three-zone approach that contemplates coverage of all geography in a license area provide stakeholders with the requisite flexibility when applied to potentially larger license sizes available in certain auctions?”⁷

The core usage zone of some private entities such as refineries or airports may be a small percentage of the license area. Since the Second Further Notice suggests that the expansion zone should be “nominal,”⁸ and the protection zone is defined by the rules defining protection criteria, these three zones, collectively, may not cover the entire license area in all instances. Therefore, EWA recommends that the FCC include in the demand-based rules for private entities the option of partitioning the license area and retaining only the geography within the three zones. The rest of the area would be leased or sold to an unrelated third party that would be subject to its own demand-defined coverage requirements or returned to the FCC for relicensing. Those options would provide the necessary assurance to private entities that the license would not be in jeopardy if their operational requirements and their protection rights and obligations as defined by FCC rule encompassed less than the entire license area.

EWA further recommends that the rules not define the appropriate size for a core usage zone or a minimum signal level for demonstrating coverage. It appears that the premise for the possible adoption of such prescriptive rules is a concern that private entities might otherwise warehouse spectrum or use it inefficiently.⁹ In EWA’s opinion, those concerns are misplaced.

Private entities purchase spectrum from the FCC at auction or from other licensees in the secondary market only when necessitated by operational requirements. Unlike commercial service providers, they do not generate revenue from spectrum directly but use it so that their

⁷ *Id.* at ¶ 117.

⁸ *Id.* at ¶ 116.

⁹ *Id.* at ¶ 115.

primary activities function more efficiently. These are not speculative applicants. They have no incentive to warehouse spectrum for competitive or other reasons, including the possibility that the value of spectrum might increase over time. It is demonstrably in their interest to buy only the amount of spectrum and geographic area needed to meet those needs. The core usage zone will be defined in each case by a particular business requirement, and those requirements could vary very significantly depending on the entity. A refinery might have a usage area calculated in a few kilometers while a utility might deploy its spectrum over hundreds of square miles. There is no way to establish a sensible baseline for those zones.

As for minimum signal levels, again there is no rational, economic justification for a private entity to pay for spectrum and then deploy it in such a way that it does not provide a useable signal level for its operating requirements. Moreover, defining that signal level will change as technology advances. What is appropriate at 4G likely will change as facilities are upgraded to 5G, 6G and beyond. Given the investment in spectrum, equipment, and the other assets needed for a modern wireless system, the FCC can be confident that private entities will put the spectrum to productive, efficient use.

EWA is confident that the economic forces in their primary activities will dictate that private entities' investment in spectrum will ensure that it is put to productive use. Nonetheless, it also encourages the FCC to establish a time by which core usage zone deployment is certified, thereby validating the continued right to use of the spectrum. The documentation should be sufficient to satisfy the FCC, but not so onerous that it becomes an unreasonable burden on the licensee to prepare or the FCC staff to review. For private entities that acquire spectrum in an auction or in the secondary market before the final build-out deadline has been met, certification of utilization in the core usage area and in an expansion zone, if any, could have the same deadline as the final deadline for commercial licensees.

Licensees of spectrum purchased in the secondary market where all build-out deadlines already have been satisfied should certify usage within those one or two zones at renewal.

B. Use or Offer-to-Share Approach

The Second Further Notice also proposes a private user construction/renewal alternative with two conditions: the licensee would be required to show that (1) it is using the spectrum to meet a private internal requirement within the licensed area; and (2) it has an “ongoing public offering to sell or lease any unused geographic area under reasonable terms and conditions.”¹⁰ EWA believes this option might be particularly attractive to entities with more limited core usage areas that can secure the spectrum needed only by purchasing a larger geographic area than required and urges the FCC to adopt this alternative as well as the demand-based approach.

The Second Further Notice again questions whether this option might lead to spectrum warehousing. It asks whether unused areas should be returned to the FCC for relicensing rather than made available through the open market and whether the FCC should determine whether the terms and conditions for sale are reasonable.¹¹ EWA submits that these concerns also are misplaced.

For all the reasons detailed above, private entities paying for spectrum, whether buying it from the FCC or in the secondary market, have no motivation to purchase more bandwidth or geography than they need. To the extent their license areas exceed their operating requirements, it is because they were unable to buy geographic packages of the optimal size. Having paid for the larger area, it is equitable to allow them to recoup that cost by selling or leasing the geography they do not need. Indeed, a public offering of the spectrum is at least as, and probably more, likely to get the spectrum in the hands of someone who will place it into

¹⁰ *Id.* at ¶ 121.

¹¹ *Id.* at ¶ 122.

productive use than returning it to the FCC. The FCC, understandably, focuses its auction capabilities on the larger, more uniform blocks of spectrum desired by commercial operators. The individual pieces of geography likely to be recovered from private entities may not be re-auctioned by the FCC in the near-term or perhaps at all. By contrast, a private sale or lease can happen at any time.

For example, EWA has long maintained a listing service whereby licensees, members and non-members, are free to identify spectrum they are willing to sell. It attracts the attention of the very types of entities most likely searching for spectrum to meet a particularized need in a particular area. Other organizations may do the same and there always are brokers interested in putting spectrum buyers and sellers together. If the goal is to assign or lease spectrum rights as quickly as possible, EWA submits that private sales are superior to waiting for the FCC to re-auction this type of recovered spectrum.

EWA also suggests that the FCC need not assess the reasonableness of terms and conditions of such sales in advance but can leave that to the marketplace. As long as the rules permit a legitimate prospective purchaser to challenge the reasonableness of a particular offering and seek FCC review, efforts to avoid that obligation will be brought to the FCC's attention. The FCC's resources need only be used in what EWA anticipates will be those very rare instances, rather than in trying to determine in advance what parties negotiating at arm's length might consider reasonable.

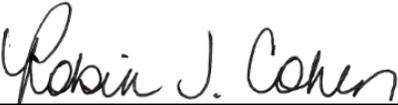
C. Conclusion

The Second Further Notice is an important and welcome step in developing construction and renewal criteria that will allow private entities reasonable certainty that they will be able to retain geographic spectrum they purchase without facilitating the warehousing

of spectrum. EWA urges the FCC to adopt both alternative requirements proposed in this proceeding with the refinements suggested herein.

Respectfully submitted,

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