

factors that the Commission will consider when determining if a licensee has met the standard vary among services. Substantial service generally means service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.

1. Substantial Service Construction Benchmarks

a. Background

26. As we have explained, the Commission has taken a market-oriented approach to spectrum policy that, where possible, has allowed economic forces to determine build-out of wireless facilities and the provision of wireless services. The Commission has shifted towards providing licensees increased flexibility to tailor use of their spectrum to unique business plans and needs. This increased flexibility is evident in our adoption of the "substantial service" benchmark for many of our services. In more recently adopted rules for wireless services, the Commission established the substantial service standard as the only construction requirement. In addition, for licensees subject only to the substantial service requirement, the Commission often has included "safe harbors," *i.e.*, examples of how a licensee would meet the substantial service standard.

b. Discussion

27. As a general matter, we believe that our current performance requirements, in combination with economic incentives and the licensing of multiple competitors, have served to promote significant build out. Nevertheless, we believe that current geographic area licensees without a "substantial service" option or a rural-specific construction requirement may be unduly constrained and may lack sufficiently flexibility to provide service to rural areas or to offer niche services. Moreover, given the unique characteristics and considerations inherent in constructing within rural areas, we believe that a construction standard that is based upon coverage of a requisite percentage of an area's population may be an inappropriate measure of levels of rural construction. Accordingly, while we intend to keep our current construction requirements, as they are set forth in our service-specific rule sections, we propose to adopt a "substantial service" alternative for all wireless services that are licensed on a geographic area basis and that are subject to construction requirements. This proposal therefore would affect the

following licensees: 30 MHz broadband PCS licensees; 800 MHz SMR licensees (blocks A, B, and C only); certain 220 MHz licensees; LMS licensees; MDS/ITFS licensees; and 700 MHz public safety licensees. If we adopt our proposed modification of our build-out rules, these licensees would have the flexibility to comply with existing service-specific benchmarks or to satisfy the substantial service benchmark, at their option.

28. We are concerned that current population-or geographic area-specific benchmarks may impinge upon licensees' abilities to serve niche or less populated areas, and may unintentionally discourage construction in rural areas. Particularly in the case of a population-based construction requirement, a licensee has both an economic and practical incentive to achieve compliance with the requirement by providing service only to the urban areas of its licensed area. In addition, because each licensee must satisfy the same population-based benchmark, we are concerned that, as multiple licensees enter a market, they likely will construct systems in the same populous areas, thereby duplicating coverage. Consequently, within any given market, urban areas are likely to have multiple wireless competitors providing service, whereas rural areas may have fewer options.

29. We believe that providing all geographic area wireless licensees with a substantial service option will address concerns that construction requirements based on population or geographic coverage may discourage the build-out of rural areas. As we have explained in past proceedings, the substantial service option provides licensees with greater flexibility and therefore may result in the more efficient use of spectrum and the provision of service to rural, remote, and insular areas. Furthermore, in light of the fact that we have been moving towards a more flexible approach to coverage requirements, offering all geographic area wireless licensees a substantial service option will increase regulatory parity. We also note that, by providing terrestrial wireless licensees with greater flexibility in satisfying their construction requirements and by alleviating the pressure of satisfying minimum population-based benchmarks, licenses that are comprised largely of rural areas might be more likely to appeal to a wider range of potential bidders at auction.

30. We intend to retain our current construction benchmarks and propose adopting the substantial service benchmark as an additional means of satisfying our construction

requirements. Our proposal effectively would harmonize construction benchmarks across all wireless services licensed on a geographic-basis (and that are subject to construction requirements) so that all geographic area licensees have the increased flexibility of a substantial service option. Licensees may elect to satisfy either the construction benchmark options already available to them today or the substantial service benchmark, according to their preference. In the past, in evaluating substantial service showings, we have considered factors such as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets. In the context of providing substantial service to rural areas, we are particularly interested in the following factors: (1) Coverage of counties or geographic areas where population density is less than or equal to 100 persons per square mile; (2) significant geographic coverage; (3) coverage of unique or isolated communities or business parks; and (4) expanding the provision of E911 services into areas that have limited or no access to such services. We intend to limit this proposal to wireless services that are currently licensed on a geographic area basis. In the event we adopt geographic areas for new wireless services at a future date, we will examine the appropriateness of adopting a substantial service or alternative construction requirement for the new service at that time.

31. We seek comment on our proposal to adopt a "substantial service" benchmark for all wireless services that are licensed by geographic area and are subject to build-out requirements, but currently do not have a substantial service option. We also seek comment on whether any services should be excluded from our proposal. In the event that commenters believe that a substantial service standard is inappropriate for certain services, we ask commenters to suggest alternative benchmarks that might promote the deployment of service within rural areas. We ask commenters whether the adoption of a substantial service requirement is likely to increase deployment of wireless services in rural areas. Finally, because this proposed modification of our rules will apply generally to all geographic area licensees, and not just those licensees serving rural areas, we ask how the adoption of a substantial service