

ORIGINAL

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

In the Matter of )  
)  
Promoting Efficient Use of Spectrum Through )  
Elimination of Barriers to the Development of )  
Secondary Markets )  
)  
)  
)

WT Docket No. 00-230

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS OF**  
**BLOOSTON, MORDKOFKY, DICKENS, DUFFY AND PRENDERGAST**

The Washington, D.C. law firm of Blooston, Mordkofsky, Dickens, Duffy and Prendergast submits these reply comments in the above-captioned proceeding, on behalf of the following rural telecommunications carriers: Golden West Telecommunications Cooperative, Inc., Wall, South Dakota ("Golden West"); Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless, Kerrville, Texas ("Five Star")<sup>1</sup>; Lincoln County Telephone System, Inc., Pioche, Nevada ("Lincoln County"); Peñasco Valley Telephone Cooperative, Artesia, New Mexico ("PVT"); Souris River Telecommunications Cooperative, Inc., Minot, North Dakota ("SRT"), Sully Buttes Telephone Cooperative, Highmore, South Dakota ("Sully Buttes"); Townes Telecommunications, Inc., Lewisville, Arkansas ("Townes") and Valley Telecommunications Cooperative Association, Herreid, South Dakota ("Valley") (hereinafter, the "Blooston Rural Carriers").

Upon review of the initial comments filed in this proceeding, the Blooston Rural Carriers were pleased to see unanimous support for the Commission's proposal to remove barriers to leasing of spectrum usage rights. The commenters universally agreed that the *Intermountain*

<sup>1</sup> Five Star is affiliated with the Kerrville Telephone Company ("KTC"). KTC participated in the initial comments of the Blooston Rural Carriers on behalf of Five Star.

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*Microwave* policy is outdated and no longer provides an appropriate framework for evaluating *de facto* control of FCC licenses in an increasingly competitive wireless marketplace. Those commenters who addressed the potential impact of the Commission's secondary market proposals on rural and underserved areas all agreed that removing regulatory barriers to spectrum leasing is an important first step, but it will not ensure that licensees of MTA and larger service areas have adequate incentive to enter into geographic partitioning and other long-term secondary market arrangements with rural telephone companies. The Blooston Rural Carriers and a majority of commenters agree that the new leasing rules should be designed for maximum flexibility so that parties may freely apportion the various rights and responsibilities associated with the leased spectrum. The new rules should eliminate disincentives for small businesses and rural carriers to enter into lease arrangements. In this regard, a majority of commenters have urged the Commission not to enforce its eligibility restrictions, not to attribute leased spectrum to the lessee for purposes of the CMRS spectrum cap, and not to impose unjust enrichment requirements when entrepreneurs and small business licensees seek to lease their spectrum to non-entrepreneurs.

Each of the Blooston Rural Carriers is excited by the prospects of a robust secondary market for wireless spectrum rights. As numerous commenters have mentioned, the trend toward licensing wireless services over large geographic service areas has made it difficult for rural telephone cooperatives and other small businesses to participate successfully in the FCC's auctions.<sup>2</sup> Moreover, the Commission's partitioning and disaggregation policies have failed to result in significant opportunities for carriers that seek to provide advanced telecommunications services in areas that are underserved.<sup>3</sup> Removal of unnecessary regulatory barriers and the adoption of sensible spectrum leasing rules should help address these problems by allowing

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<sup>2</sup> See, e.g., Comments of the National Telecommunications Cooperative Association ("NTCA Comments") at 2; Comments of UTStarcom, Inc. ("UTS Comments") at 2-3.

<sup>3</sup> See, e.g., Comments of the American Mobile Telecommunications Association ("AMTA Comments") at 2.

secondary spectrum markets to emerge. However, in order for these mechanisms to have any meaningful impact in rural markets, many commenters have urged the Commission to go further.<sup>4</sup> Along with a number of incentives proposed by the Blooston Rural Carriers, such as reduced license payment obligations and enhanced buildout credits for licensees that partition their licenses to or that enter into long-term lease arrangements with rural telephone companies that seek to provide service to rural or underserved territories,<sup>5</sup> the Commission has been asked to consider the extension of construction deadlines for partitioned rural licenses,<sup>6</sup> the institution of a fill-in policy and/or the imposition of stricter operational requirements for wireless services that are licensed according to MTA and larger service areas.<sup>7</sup> While these latter proposals are certainly worth further examination, and the Blooston Rural Carriers would tend to support any proposal that enhances their ability to gain access to unused spectrum, the Blooston Rural Carriers prefer a regulatory scheme that creates regulatory incentives, as opposed to disincentives, and that is applicable to all categories of licensees, not just a particular class.

The Blooston Rural Carriers agree with Long Lines, Ltd. (“Long Lines”) that prompt action by the Commission is in the public interest. The first priority in this proceeding should be for the Commission to update its interpretation of *de facto* control policy set forth in the 1963 *Intermountain Microwave* decision so that parties may safely proceed with straightforward spectrum lease transactions that do not implicate other policies or rules.<sup>8</sup> Many months have

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<sup>4</sup> See, e.g., Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (“Blooston Comments”); Comments of the Land Mobile Communications Council (“LMCC Comments”); NTCA Comments; Comments of the Organization for the Promotion and Advancement of Small Telephone Companies (“OPASTCO Comments”); Comments of the Rural Telecommunications Group (“RTG Comments”); Comments of the Rural Cellular Association and Request for Further Notice of Proposed Rule Making (“Rural Cellular Comments”); UTS Comments.

<sup>5</sup> Blooston Comments at 7-10.

<sup>6</sup> LMCC Comments at 5.

<sup>7</sup> RTG Comments at 8; RCA Comments at 2.

<sup>8</sup> Comments of Long Lines, Ltd. (“Long Lines Comments”) at 1.

passed since Golden West, Sully Buttes and Long Lines first presented the Commission with their innovative lease and joint operating proposal,<sup>9</sup> and numerous participants in this proceeding also filed comments in response to the earlier proposal.<sup>10</sup> Along with clarifying the Commission's *de facto* control standard, the initial order in this docket should also clarify that holders of exclusive service area licenses may enter into arrangements to lease all or a portion of their licensed spectrum to any third party spectrum user that would otherwise be an eligible licensee of that spectrum. To facilitate FCC oversight, the Blooston Rural Carriers support reasonable reporting requirements for licensees that enter into spectrum lease arrangements, such as those proposed by NTCA.<sup>11</sup> Non-proprietary information about spectrum lease arrangements could be made available to the public, through a mechanism such as ULS, so that entities that seek to enter into spectrum leasing arrangements can access information about licensees that may be willing to enter into secondary market transactions in their area. Facilitating the exchange of such market information would serve the public interest by sending a signal to licensees that there is an opportunity cost associated with allowing their licensed spectrum to lie fallow.

The Blooston Rural Carriers agree with NTCA and others that believe that a license holder should be left free to negotiate the rights and responsibilities associated with leased spectrum. So long as the FCC and the public (through ULS) can readily identify third party spectrum users, the FCC will be able to conduct any necessary enforcement activity directly against the lessee, with notice of any action to the licensee, so that it may have a reasonable opportunity to cure any violation through enforcement of its contract rights. The FCC should not impose a burden of

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<sup>9</sup> See *Public Notice* "Wireless Telecommunications Bureau Seeks Comment on Request for Clarification of De Facto Control Policy and Proposed Spectrum Lease Agreement." DA 00-1953, (*rel.* August 24, 2000).

<sup>10</sup> Aside from Golden West, Sully Buttes and Long Lines, participants in both proceedings include AMTA, NTCA, Nextel Communications, Inc., RTG, Securicor Wireless Holdings, Inc. and Verizon Wireless.

<sup>11</sup> NTCA Comments at 5.

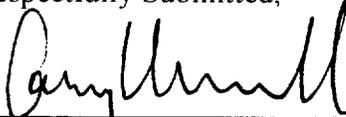
constant participation or oversight by the licensee in the lessee's operations.<sup>12</sup> The Blooston Rural Carriers also agree with Teligent that the Commission should modify the second prong of its proposed control standard to require licensees only to certify that each lessee (or sublessee) has certified that it meets all applicable eligibility requirements.

Finally, with respect to application of the Commission's unjust enrichment provisions, the Blooston Rural Carriers strongly agree with the Office of Advocacy of the U.S. Small Business Association, that so long as the licensee maintains an appropriate continuing interest in its licensed spectrum, as evidenced by the execution of a lease that meets with FCC guidelines, the Commission should not apply its unjust enrichment rules to such arrangements.<sup>13</sup>

### Conclusion

It is respectfully submitted that the Commission adopt the foregoing suggestions as part of its secondary markets initiative.

Respectfully Submitted,



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Dated: March 12, 2001

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<sup>12</sup> Comments of Teligent, Inc. ("Teligent Comments") at 8.

<sup>13</sup> Comments of United States Small Business Administration, Office of Advocacy ("SBA Comments") at

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I, Althea B. Pierce, do hereby certify that on this day, March 12, 2001, that I served a copy of the Reply Comments by first class United States mail, postage prepaid, to each of the parties listed below:

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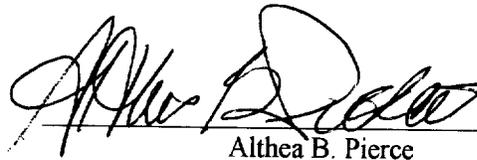
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