

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

In the Matter of:	)	
	)	
Spectrum Policy Task Force	)	ET Docket No. 02-135
Seeks Public Comment on	)	DA 02-1311
Issues Related to Commission's	)	
Spectrum Policies	)	
	)	

**COMMENTS OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above-captioned matter. NTCA urges the Spectrum Policy Task Force to acknowledge and address rural carriers' access to spectrum and the availability of spectrum-based services in rural America when it makes its recommendations to the Commission. Existing Commission rules have not served the rural population well. The Task Force should further Congress's rural objectives and recommend that spectrum be licensed according to small geographic areas and that the rules governing partitioning and disaggregation and build-out be strengthened. The Task Force should also encourage the Commission to address the outstanding petition for reconsideration on the attribution rules and the notice of proposed rulemaking on secondary markets.

**I. INTRODUCTION**

NTCA is a national trade association representing more than 500 small and rural local exchange carriers. All of NTCA's members are "rural telephone companies" as

defined in the Telecommunications Act of 1996.<sup>1</sup> NTCA's members are dedicated to providing a wide-range of high quality telecommunications service to their rural communities and most provide wireless service.

NTCA has severe reservations about the intent of the Spectrum Policy Task Force (Task Force). Despite the Commission's statutory obligations to ensure that consumers in rural America have access to spectrum-based services and to provide certain entities, including small businesses and rural telephone companies, access to spectrum, there is little mention of anything rural in the Task Force's request for comments. The Task Force asks whether rules should be different in rural areas than in urban areas because of differences in demand, but neglects to question whether its current policies are achieving Congressional goals for rural America.

The Commission has indicated that it intends to initiate a proceeding to develop a more current and substantial record on the Commission's mandate to ensure that rural telecommunications companies are given the opportunity to participate in the provision of spectrum-based services. However, the Notice of Inquiry (rural NOI) has not yet been released and under the current schedule, the Task Force's recommendation will likely be released long before the Commission has had an opportunity to review the rural comments.

The Task Force's recommendation will affect rural spectrum policies, directly or indirectly, and may pre-judge many of the rural issues. Given the importance of the issues, and the rural mandates imposed by Congress, it seems advisable for the Task Force to postpone its recommendation so that it may consider comments filed in response to the rural NOI. At the very least, the Task Force should move rural issues up to near the top of

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<sup>1</sup> 47 U.S.C. § 153(37).

its priority list and consider how each of its recommendations will affect rural consumers and the small and rural carriers that serve them.

## **II. EXISTING RULES DO NOT SERVE RURAL AREAS WELL**

The main issue currently facing NTCA members is access to spectrum. Despite the mandates in Section 309(j) of the Act,<sup>2</sup> rural telco access to spectrum has been severely limited by competitive bidding, licensing and service rules that favor the acquisition and hoarding of spectrum by large entities having no interest in rapid deployment in rural areas. Unless carriers in rural areas are able to obtain spectrum, whether through auction or on the secondary market, they will not be able to provide advanced wireless services to their customers. This inability of small rural companies to obtain spectrum runs counter to the stated goals of Section 309(j), and the resultant denial of available options for advanced services to their customers is clearly contrary to the public interest.

There is considerable evidence that spectrum covering rural areas, but licensed to large carriers, is going unused. The Commission has noted, “radio spectrum may be used inefficiently by its current licensees or even lie fallow, especially in rural areas, limiting availability of valuable services to many.”<sup>3</sup> NTCA believes this is because of the Commission’s licensing and build out rules.

Rural carriers have found it extremely difficult to effectively compete in recent Commission spectrum auctions. In some auctions, for example, the vast size of the service territories makes it virtually impossible for small rural carriers to compete. As these large service territories contain both urban and rural areas, small rural carriers find themselves

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<sup>2</sup> Section 309(j)(4)(D) of the Communications Act of 1934, as amended, requires the Commission to prescribe regulations to ensure that small businesses and rural telephone companies are given an opportunity to participate in the provision of spectrum-based services.

competing for spectrum at auction with larger companies seeking to serve only the urban markets. Despite having little or no interest in the rural areas, these large companies have the financial resources to be able to bid in and win these auctions. Further, lenient build out requirements place no pressure upon these large companies to take steps toward providing service in less-populated rural areas.

Because rural telcos have a stake in their communities, the availability of current advanced technologies – and eventually 3G services – in rural areas is predicated on the availability of spectrum to those companies who are willing and able to serve these high cost areas.<sup>4</sup>

### **III. SMALL LICENSING AREAS SHOULD BE USED IN EVERY AUCTION**

The Commission should take vital steps toward guaranteeing the availability of advanced services to rural America. First, the Commission should license future spectrum according to small geographic service territories. It could achieve this by licensing at least one block of spectrum in every auction where more than one block of spectrum is available on a Cellular Market Area (CMA) basis, similar to what was done in the lower 700 MHz auction rules.

Smaller license areas would benefit the rural carriers in several ways. They would no longer be competing with larger entities for huge geographic areas that merely happen to encompass rural areas. It can be expected that the larger entities would instead focus their attention (and their financial resources) upon the more populous and lucrative areas. In addition, since these rural areas would be more expensive to serve and would offer lower

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<sup>3</sup> *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, WT Docket No. 00-230 (rel. November 27, 2000).

<sup>4</sup> See Lehman, Dale, "Who Will Serve Rural America?," The NTCA 21<sup>st</sup> Century White Paper Series, July 2000.

overall profit potential, spectrum licenses for these areas would cost less than those in urban areas, putting them within the financial grasp of rural carriers. It is not expected that carriers or other entities would pursue spectrum where it is uneconomic to do so. However, consumers are likely to benefit because there are economies available from pursuing a wireless strategy in conjunction with smaller areas and as a complement to other available technologies.

#### **IV. PARTITIONING AND DISAGGREGATION RULES SHOULD BE STRENGTHENED**

Second, when a carrier obtains a spectrum license for a geographic area that includes both rural and urban areas, the carrier should be required to partition or disaggregate unused spectrum well before the end of the license period. In the past, large carriers have shown reluctance to part with unused spectrum.<sup>5</sup> The large carrier may feel that the unused spectrum will be needed in the future, that the investment is worth keeping because the value will increase over time or that the benefits of a deal with small carriers is not worth pursuing. Regardless of the large carriers' motivations, the end result is that residents of those underdeveloped areas are denied access to wireless services, and thus the public interest is not served.

#### **V. STRICTER BUILD OUT REQUIREMENTS ARE NEEDED TO PROMOTE SERVICE IN RURAL AREAS**

Third, the Commission should impose strict build out requirements. These requirements would force carriers to take readily identifiable steps toward the provision of service throughout their service territory or risk losing their license at a specified mile post or at renewal time. It would serve to eliminate the large carriers' ability to allow spectrum in less profitable rural areas to lie fallow.

In order to best serve the purpose of bringing spectrum based services to rural areas, NTCA recommends that the Commission permit other carriers to provide service and obtain the license for any unserved territory following the successful model created in the original cellular build out rules.<sup>6</sup> Those holding spectrum would thus be required to “use it or lose it” - take positive steps toward building out their service territories or suffer the consequences of not having their license renewed, or having the spectrum in the unserved area reclaimed by the Commission or relicensed to another service provider.

Further, any build out requirements imposed require that a certain percentage of the geographic area be covered within a specified number of years, rather than a percentage of the population. Population requirements could potentially be satisfied through the provision of service to the region’s urban areas only, thus defeating the purpose of a build out requirement. If, however, the requirement were based on geography, there would be a greater chance that both urban and rural areas would be developed.

## **VI THE COMMISSION SHOULD REVISE ITS ATTRIBUTION RULES AS THEY APPLY TO COOPERATIVES**

The Commission should correct inequities in its current rules that place roadblocks in the way of rural telephone companies seeking spectrum opportunities. Bidding credits are one of the very few measures left that help to put small businesses on more equal footing with large carriers in the auction process. Unfortunately, the Commission’s attribution rules preclude some of the very carriers the rules were designed to help from using bidding credits.

In an order released in 2000, the Commission established a “controlling interest” standard for attributing to an applicant the gross revenues of its investors and affiliates in

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<sup>5</sup> “NTCA 2001 Wireless Survey Report,” September 2001, at 6.

determining whether the applicant qualifies as a small business.<sup>7</sup> The Commission explained that officers and directors of an entity, including a rural telephone company, are considered to have a controlling interest in the entity.<sup>8</sup> This rule forces rural telephone companies, including those that are organized as cooperatives, to attribute the gross revenues of the unrelated business activities of its officers and directors.

Unlike common stock companies, rural telephone cooperatives are non-profit, tax-exempt entities owned by their subscriber-members. Individual board members have no greater financial stake in the cooperative than any other member. Telephone cooperatives, by their very nature, are almost always small businesses and the outside interests of an individual officer or director in no way affects how the company is operated or managed. The outside business interests of the officers and directors of the cooperative are not financial resources available to the cooperative.

The Commission' current rules do nothing more than punish cooperatives that have boards with community leaders who have substantial revenues from their own business activities. The rules demonstrate a complete lack of understanding of the business and operations of a rural telephone cooperative and are inconsistent with the mandate of Section 309(j). A petition for reconsideration of the rules has been pending for two years.<sup>9</sup> The Commission should address that petition and clarify that the gross revenues of the outside business interests of a rural telephone cooperative's officers and directors are not attributable to the cooperative.

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<sup>6</sup> 47 C.F.R. § 22.949.

<sup>7</sup> *In the Matter of Amendment to Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking, WT Docket No. 97-82, FCC 00-274 (rel. Aug. 14, 2000).

<sup>8</sup> *Id.*, n. 203.

<sup>9</sup> The Rural Telecommunications Group petition for reconsideration, dated September 28, 2000.

## **VII. THE NPRM ON SECONDARY MARKETS SHOULD BE COMPLETED**

In February 2001, NTCA submitted comments in response to a FCC NPRM on secondary markets.<sup>10</sup> In its comments, NTCA stated that it believed that while Commission is not relieved of its duty to provide primary spectrum-licensing opportunities to rural carriers, relaxing the rules on secondary markets may help to promote the deployment of spectrum-based services to rural and underserved populations.<sup>11</sup>

Spectrum leasing may enable small carriers to lease spectrum from large carriers not using spectrum covering the rural territory. Alternatively, small carriers could pool their resources to obtain the spectrum covering their rural territories. The group of small carriers may lack the ability to build out and operate several individual systems, but could band together and create one managing company to operate the individual licenses as one system, leasing spectrum to that company.

The Commission has had more than a year to consider the comments filed in the proceeding. It should now recognize the advantages spectrum leasing could bring and adopt new, relaxed rules regarding secondary markets.

## **VIII. CONCLUSION**

The Commission has an obligation under the Communications Act to provide spectrum opportunities to rural telephone companies and other small businesses. The Commission also has an obligation to ensure that those living in rural America have access to spectrum-based services. The Task Force should pay careful attention to these mandates

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<sup>10</sup> *In the Matter of Promoting Efficient Use of Spectrum Through the Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, WT Docket No. 00-230, FCC 00-402 (rel November 27, 2000).

<sup>11</sup> See NTCA comments, filed February 9, 2001.

as it makes recommendations regarding the future spectrum policy of this country. Rural considerations must be in the foreground, not considered as an afterthought.

The Task Force could go a long way toward ensuring the wireless future of rural areas by favorably addressing the issues NTCA has been bringing to the Commission's attention for several years. Smaller license areas and rules that require large carriers to build out their license territories or let someone else do so, would hasten rural deployment. The Commission should address rules that stand in the way of rural carriers' quest for spectrum. Its rule that attributes the gross income of a director of a telephone cooperative to the cooperative, preventing the small carrier from qualifying for bidding credits serves no legitimate purpose. Similarly, the Commission should relax its rules restricting spectrum leasing.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory  
L. Marie Guillory  
(703) 351-2021

By: /s/ Jill Canfield  
Jill Canfield  
(703) 351-2020

Its Attorneys

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203  
703 351-2000

July 8, 2002

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association, ET Docket No. 02-135, DA 02-1311 was served on this 8th day of July 2002 by first-class, U.S. Mail, postage prepaid, to the following persons below:

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/s/ Rita H. Bolden

Rita H. Bolden

Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8B201  
Washington, D.C. 20554

Qualex International Portals II  
445 12th Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A204  
Washington D.C. 20554

Michelle Russo, Director  
Office of Media Relations  
Reference Operations Division  
Federal Communications Commissions  
445 12<sup>th</sup> Street, S.W., Room CY-A257  
Washington, D.C. 20554

Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C302  
Washington, D.C. 20554

Lauren M. Van Wazer, Special Counsel  
Office of Engineering and Technology  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 7-C257  
Washington, D.C. 20554

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A302  
Washington, D.C. 20554