

**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 Issues Related To** )  
**Commission’s Spectrum Policies** )

**To: The Commission**

**COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group (“RTG”), by its attorneys, hereby respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) June 6, 2002 *Public Notice* in the above-captioned proceeding.<sup>1</sup> The *Public Notice* seeks comments on all aspects of the Commission’s spectrum management policies. RTG, in this proceeding, will be focusing on the Commission’s spectrum policies as they affect rural markets. Specifically, RTG encourages the Commission to continue its recent policy of licensing spectrum-based services through the auction process using small, rather than large, geographic areas. In addition, the FCC should adopt stricter build-out policies that promote the provision of spectrum-based services to all individuals within a license area including those in the rural portions, rather than more vague service standards that overlook rural markets.

**I. Statement of Interest**

RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies

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<sup>1</sup> *In re Spectrum Policy Task Force Seeks Public Comment on Issues Related to Commission’s Spectrum Policies*, ET Docket No. 02-135, Public Notice, DA 02-1311, (June 6, 2002) (“*Public Notice*”).

to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Services ("PCS"), Multichannel Multipoint Distribution Service ("MMDS"), and Local Multipoint Distribution Service ("LMDS") to their subscribers. RTG's members are all affiliated with rural telephone companies or are small businesses serving secondary, tertiary, and rural markets, and RTG's members welcome the Spectrum Policy Task Force's ("Task Force") inquiry into spectrum management issues.

## **II. The Task Force Has a Statutory Duty to Promote Service to Rural America**

As Commissioners Kevin J. Martin and Michael J. Copps recognized in their joint statement regarding this proceeding, the FCC has an obligation to use its "rules to promote service to rural America." As the Task Force examines its spectrum policies, it must bear in mind the Commission's statutory obligation to ensure that new, spectrum-based technologies are deployed "in rural areas" and to use its regulations to "ensure that small businesses [and] rural telephone companies" have access to spectrum.<sup>2</sup> For too long, the delivery of new, spectrum-based services to rural America has been an afterthought. RTG encourages the Task Force to use this proceeding to help the Commission develop a predictable national spectrum policy that promotes the efficient use of spectrum in *all* areas of the country.

Almost a decade ago, the Commission ensured that cellular service would reach rural America by giving incumbent rural telephone companies the rights to cellular spectrum in their areas. The near ubiquity of cellular service in rural regions, as well as the number of small, rural cellular carriers is a testament to the success of the Commission's cellular rules and procedures. The Commission licensed the cellular spectrum in Metropolitan Statistical Areas ("MSAs") and

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<sup>2</sup> See 47 U.S.C. §§ 309(j)(3)(A) and (4)(D).

Rural Service Areas (“RSAs”). The use of MSAs and RSAs created a rural/metropolitan dichotomy that served the cellular market well. Carriers that were interested in serving rural customers could concentrate on these specific markets, whereas nationwide carriers could focus their attention on more-profitable urban and suburban areas. The Commission also developed strict cellular buildout rules that led to the delivery of cellular service to almost all regions of the country. RTG suggests that the Commission refer back to certain aspects of its successful cellular example, especially the use of MSAs/RSAs coupled with strict buildout requirements, when it develops its future spectrum rules.

Only recently has the Commission begun retooling its spectrum policies to once again take into account rural concerns, beginning with the Commission’s conclusions in its *Competitive Bidding Order* proceeding.<sup>3</sup> In that proceeding, the FCC stated that Section 309(j) of the Communications Act, as amended, requires the FCC to disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies, and to promote the development and rapid deployment of new technologies to the public, including those residing in rural areas.<sup>4</sup> The Commission concluded that the Section 309(j) mandate could best be met by service-specific small license areas.<sup>5</sup> RTG urges the Task Force to take heed of the Commission’s previous deliberations regarding the use of small geographic license areas as this proceeding progresses.

The FCC’s use of MSAs and RSAs in the upcoming auction of 700 MHz spectrum (Auction 44) provides the most recent example of why the Commission should continue to use

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<sup>3</sup> *In re Amendment of 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, (Aug. 14, 2000) (“Competitive Bidding Order”).*

<sup>4</sup> 47 U.S.C. § 309(j).

<sup>5</sup> *Competitive Bidding Order* at ¶ 53.

smaller geographic license areas whenever possible. In Auction 44, over two thirds of the applicants are rural telephone companies or are affiliated with a rural telephone company. There is a direct correlation between the use of RSAs and the high level of interest by rural carriers. Had the Commission chosen to use larger geographic license areas such as Economic Areas (“EAs”), most small rural carriers would not have been able to contemplate participating in the auction since they would not be able to afford such large license areas. In addition, companies that can afford large license areas, unlike rural carriers, generally do not have any interest, be it personal or financial, to serve rural areas. The use of large license areas leads to the inefficient use of spectrum when rural areas are ignored. If large carriers are interested in specific rural areas, they always have the option of bidding on such areas. RTG encourages the Task Force to recommend the continued use of RSAs and MSAs when it makes its recommendations to the Commission.

### **III. Rural Markets Are Different Than Metropolitan Markets**

In the *Public Notice*, the Task Force recognizes that rural markets are different than urban markets and that Commission rules should be adjusted accordingly.<sup>6</sup> In general, large “nationwide” carriers target more profitable urban areas while carriers with roots in rural areas specialize in serving less profitable rural areas. As experts in the provision of telecommunications in rural areas, RTG members urge the Task Force to be aware of the physical and economic differences between rural and urban regions.

The demographics and physical characteristics of rural and urban areas differ dramatically. Even utilizing wireless technologies, rural areas, with their vast spaces, low population densities, difficult terrain, and harsh weather, remain expensive and challenging

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<sup>6</sup> *Public Notice* at 3, question 3b.

locations to serve. Nationwide carriers concentrate on cities, suburban areas, and highways for mobile services. Nationwide carriers generally use spectrum to target businesses and Multi-Dwelling Units (“MDUs”) in dense urban areas for non-mobile spectrum services. These business cases do not apply to sparsely-populated rural areas. Rural carriers do not have the short profit deadlines that large carriers must meet on behalf of their shareholders. Rural carriers, less driven by shareholder profit responsibilities, can concentrate on the public interest of offering their customers new services and are able to use the telecommunications infrastructure they already have in place to utilize new spectrum in an economically efficient manner.

#### **IV. Smaller Geographic License Areas Will Encourage Efficient Spectrum Use**

As RTG discussed above, the use of MSAs and RSAs encourages rural carrier participation in spectrum auctions. The use of these smaller geographic license areas allows carriers to develop both regional and nationwide business plans. The use of large geographic license areas favors nationwide business plans over all other plans. The Commission should not be in the role of developing certain business plans while excluding others. With smaller geographic license areas, the market will determine business plans best suited for both urban and rural America.

As discussed above, the best way the FCC can ensure that rural carriers and small businesses have an opportunity to participate in the acquisition and deployment of new spectrum is by auctioning licenses on the basis of MSAs and RSAs. MSAs and RSAs, by definition, separate rural areas from urban areas. De-linking metropolitan areas from rural areas will allow the marketplace, through the auction process, to determine an accurate valuation for each area. Companies interested in providing localized service to rural areas will not have to compete

against “national” companies that value a license based solely on dense urban areas. Companies interested in providing service to more profitable populated markets may acquire MSAs without holding the surrounding rural areas hostage.

#### **V. Stricter Buildout Policies Are Needed to Encourage Rural Services**

In the *Public Notice*, the Task Force asks whether licensees should be given more “flexibility” to facilitate optimal spectrum use.<sup>7</sup> While RTG favors more spectrum flexibility in general since, under the FCC’s auction scheme, users pay for the rights to use the spectrum for a set period of time, RTG does not favor such flexibility when it concerns the Commission’s buildout requirements. The Commission’s use of strict rural buildout requirements in the cellular arena led to the current robust cellular service footprint that includes rural areas. A “use it or lose it” approach to spectrum use provides incentives for carriers to either buildout in rural areas or hand over the spectrum to entities ready, willing, and able to provide such service.

The Commission should refrain from relying upon its recent use of the vague and nearly unenforceable “substantial service” standard. A “substantial service” requirement will not speed the delivery of new, spectrum-based services to rural areas. The vagueness of the current standard will most likely inhibit the deployment of wireless service to rural areas. The meaningless substantial service requirement causes rural areas to continue to go unserved when license winners are able to meet the requirement by serving a small portion of an urban area.

The FCC should not set population coverage requirements. Instead, the Commission should specify a set period for construction to occur, such as half the original license term. After half of the term is over, any unserved area of significant size (*e.g.*, a minimum of fifty square miles) should be available for any applicant, including the licensee, to apply to serve. This will

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<sup>7</sup> *Public Notice* at 2, question 2.

assure that rural spectrum is not continually warehoused by those only interested in more populated areas. This mechanism is similar to the one followed by the cellular rules and procedures.

## **VI. Unlicensed Spectrum Will Deliver Services to Rural Areas**

In the *Public Notice*, the Task Force asks if more spectrum should be set aside for operating unlicensed devices.<sup>8</sup> RTG supports the allocation of spectrum for unlicensed use. Unlicensed spectrum is a great way for small and rural businesses to offer spectrum-based services to customers without the high upfront costs incurred through auctions. Unlicensed spectrum can make telecommunications services that might be economically infeasible in sparse rural markets available.

## **VII. Partitioning and Disaggregation Has Failed**

The FCC's reliance upon partitioning and disaggregation to foster the rapid delivery of wireless service to rural areas is misplaced. The Task Force must realize that rural America will not receive the benefits of new spectrum-based services if the Commission continues to rely upon failed policies to achieve rural spectrum penetration. The FCC's partitioning and disaggregation rules have failed for several reasons. The Commission's disaggregation and partitioning rules do not serve as an incentive for license holders to "carve out" portions of their license areas for rural carriers. RTG members have been repeatedly rebuffed in their attempts to entice license holders in various services to partition their license areas or disaggregate their spectrum.

According to many licensees, the administrative costs of entering into and managing the partitioning/disaggregation process outweigh the realized financial gains. Licensees are also

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<sup>8</sup> *Public Notice* at 3, question 5.

unwilling to partition portions of their licenses because they want to retain the entire geographic area when they go to sell the system as a whole in the future. Licensees perceive that unpartitioned licenses will have a higher resale value. The Commission should reconsider its misplaced reliance upon the failed record of its partitioning and disaggregation rules and allow small, rural carriers a chance at licenses through the primary auction process. By RTG's count, far less than 0.25 percent of all the licenses sold at auction have resulted in partitioning and disaggregation, or a combination of the two.

### **VIII. The FCC Should Examine Standardized Rules**

While RTG generally supports allowing the flexible use of spectrum, the FCC's flexible use policies are now *too* flexible. The only way that providing service in rural areas becomes economically viable is if there is a mass market for equipment. Rural carriers, with their relatively small customer bases, cannot command the attention of equipment manufacturers and must depend upon mass market equipment. The only way there is a mass market for equipment is if there is a certain level of standardization of equipment and services. For example, a cellular cell used to cost approximately \$1 million, now it is less than \$200 thousand. The FCC has auctioned spectrum for which there is no clear use, no equipment, and no standardization at all. This has led, in part, to numerous failed services and an almost total lack of deployment in those services (*e.g.*, WCS and LMDS). Overly flexible policies may also seriously deter investment in new services. For example, the FCC's decision to allow both broadcast and mobile service in the 700 MHz bands may create substantial interference and deployment issues, making investment less likely. Therefore, RTG suggests that the FCC examine its flexible use policy and its impact on the development of new services before possible uses for spectrum before creating chaos and simply releasing spectrum on the market.

## **IX. Secondary Spectrum Markets Can Lead to Efficient Use of Spectrum**

As part of its spectrum management task, the Task Force should use this opportunity to help develop a secondary spectrum market mechanism that will encourage a robust market in currently unused spectrum. While the Commission should concentrate its efforts on speeding the delivery of spectrum to rural regions of the country as well as urban and suburban areas, spectrum leasing and other secondary market mechanisms can be used to augment the auction process and promote more efficient use of spectrum. Secondary markets can rectify a situation in which rural carriers typically have potential wireless customers, but no spectrum assets, while spectrum licensees are unwilling to serve rural and less populated areas or share their spectrum usage rights with rural carriers.

Spectrum leasing has the potential of bringing the benefits of the wireless and digital broadband revolution to even the remotest portions of the United States. The Task Force can use this proceeding to urge the Commission to rethink its approach to apportioning rights and responsibilities between licensee/lessors and spectrum user/lessees. Rather than imposing liability on lessors for the bad acts of lessees, the Commission should focus its compliance and enforcement resources on the beneficial, day-to-day operator of the spectrum usage right—the lessee. With the specter of forfeitures and even license revocations facing them due to the independent actions of lessees, few licensees will risk the leasing of spectrum for the little incremental income it provides. Unless the Commission changes its enforcement emphasis, the secondary market proposal will die in its infancy.

The Commission has more than ample legal authority to regulate users of the radio spectrum who do not hold FCC licenses. In fact, its entire radio tower enforcement regime is targeted at non-licensees who own towers, not the licensees on the tower, and RTG has no

evidence that this focus adversely impacts FCC resources or the public's safety. With a properly executed due diligence scheme, the Commission can be made aware of all lessees' identities and location and thereafter conduct compliance and enforcement actions against the actual users of the spectrum. RTG encourages the Task Force to take a fresh look at the Commission's secondary markets proceeding.<sup>9</sup>

**X. Conclusion**

RTG would like to see more Commission attention paid to the spectrum issues of rural America. While RTG understands the Commission's emphasis on "nationwide" spectrum issues since telecommunications use can be one of the prime drivers of our economy, RTG exhorts the Task Force remember its statutory duty to consider the impact of all of its policy conclusions on rural consumers. Efficient spectrum use in both urban and rural regions should be a goal of the Task Force.

Respectfully submitted,

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<sup>9</sup> *In re Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Notice of Proposed Rulemaking, FCC 00-402 (November 27, 2000), 65 Fed. Reg. 81475 (December 26, 2000).