Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Facilitating the Provision of Spectrum-Based	)	WT Docket No. 02-381
Services to Rural Areas and Promoting	)	
Opportunities for Rural Telephone Companies	)	
To Provide Spectrum-Based Services	)	

COMMENTS OF CORR WIRELESS COMMUNICATIONS, LLC

Donald J. Evans
Fletcher, Heald Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

February 3, 2003

TABLE OF CONTENTS

		Page
SUMMARY		i
I.	BACKGROUND	1
II.	SERVICE ENHANCEMENT PROPOSALS	3
	1. Maintain offerings to smaller geographic areas	3
	2. Give small businesses bigger discounts	4
	3. Local business discounts	4
	4. Prevent phony small businesses from monopolizing the licenses	6
	5. Reduce minimum or reserve bids	7
	6. Reverse discounts	9
	7. Reclaim unused territory	10
	8. Modify build-out rules for rural areas	11
	9. Make automatic roaming mandatory	11

SUMMARY

Rural service providers face distinct problems in terms of meeting both a host of unfunded mandates and the need to serve widely dispersed populations economically. If these populations are to be served, the FCC licensing process should not only favor small, locally owned businesses, but also allot these businesses significant discounts in auction proceedings. By reducing licensing costs, actual service can be improved.

To accomplish these ends, Corr suggests (1) maintaining and expanding spectrum allocations which permit locally or regionally based license acquisitions at auction, (2) increasing the size of auction discounts for small businesses, (3) granting a discount for locally-owned businesses, (4) capping the number of licenses which ostensible small businesses can acquire in any one auction, (5) reducing minimum initial bids to account for artificial mutual exclusivity, (6) giving reverse discounts (refunds) to auction winners who partition their licenses to small businesses, (7) reclaiming unserved territories for re-auction after ten years, (8) liberalizing the build-out criteria for rural areas, and (9) requiring mandatory automatic roaming among carriers.

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Facilitating the Provision of Spectrum-Based	)	WT Docket No. 02-381
Services to Rural Areas and Promoting	)	
Opportunities for Rural Telephone Companies	)	
To Provide Spectrum-Based Services	)	

COMMENTS OF CORR WIRELESS COMMUNICATIONS, LLC

Corr Wireless Communications, LLC (Corr Wireless) submits these comments in response to the Commission's invitation[1] to offer suggestions for improving the delivery of spectrum-based service to rural America.

I. BACKGROUND

Corr is a wireless carrier operating primarily in rural parts of Alabama. The suggestions which follow are based on Corr's experience of more than a decade providing service to rural areas. In that decade, Corr has seen a number of auctions where "small businesses" bid several billion dollars for licenses, thus freezing out true small businesses who cannot possibly have access to that kind of money. It has seen industry consolidation where five or six national carriers have achieved such power that they can effectively dictate the terms of roamer agreements to smaller local and regional carriers who are dependent on such agreements for their customers' needs. It has seen large segments of rural America go unserved while winning bidders concentrate on serving the most densely populated portions of the large territories won at

[1] Notice of Inquiry, WT Docket No. 02-381, rel. December 20, 2002, Facilitating the Provision of Spectrum-Based Services to Rural Areas,

auction. It has seen many licenses put up for auction for which there was only a single bidder or no bidder, with the high minimum bid deterring any one from bidding. It has also seen an increasing array of unfunded mandates imposed on all carriers. These include CALEA, E-911, number portability, and others. These unfunded mandates impose a disproportionate burden on small rural carriers who have higher costs of doing business and lower sources of revenue to begin with. Reform and improvement of the Commission's methods of making spectrum available should take into account all of these factors.

The Commission has gradually gained experience in the auction process over the last ten years. It has streamlined the bidding system; it has done away with installment payments; it has eliminated the possibility of bid signaling. The process has thus become less prone to abuse and more effective at delivering spectrum to those who value it most. The Commission's willingness to open this Docket reflects a recognition that merely maximizing auction revenue is not the best or most effective way to ensure that wireless service actually gets delivered to rural populations. The incentives of local ownership and community ties have historically been the prime drivers of service to rural areas. In rural region after region, it is locally owned and operated businesses which bid on wireless spectrum in order to provide service to their customers. Huge regions of the U.S. simply fall outside the radar of major carriers because the revenue potential is so small relative to the return in urban areas. Thus, if service is to be provided at all, it is by small companies with roots in the communities they seek to serve. In addition, rural carriers hobbled by high costs and low revenues, simply cannot devote the same resources to license acquisition that major urban carriers can. The public interest should therefore put a priority on devoting rural funds to implementing and improving service rather than spending large amounts on the licensing process itself. Corr urges the Commission to carry through on the initiative of this Docket by actually making useful changes in the licensing process which will accomplish the stated goals of speeding and improving service to rural areas, even where these changes might result in slightly lower auction revenues.

II. SERVICE ENHANCEMENT PROPOSALS

1. Maintain offerings to smaller geographic areas. In the last couple of years there has been a trend toward offering new spectrum in national or vast regional configurations. The underlying theory appears to be that national carriers will need to amalgamate spectrum on a far-ranging level in order to accomplish their business plans. In the Lower 700 MHz auction, however, the large regional licenses went largely unclaimed, while smaller (and some larger) companies bid on the MSA and RSA-based CMAs. These smaller service areas correlate more closely to service areas that individual rural companies might actually be able to administer. There are many local and regional carriers left in the U.S., and the movement toward vast license areas would either make licenses unaffordable for such carriers or ensure that large portions of the licensed areas would remain unserved or ineffectively served for some time. A company that does business only in southwestern Virginia, for example, has no need whatsoever for an eight-state mega-license but it may very well need more spectrum in the area where it is serving customers today. The results of the 700 MHz auction demonstrate that there is a continuing need for both wide-area systems and more localized license offerings. Indeed, it appears that rather than allotting only one channel block for localized service, the Commission might have been better off having at least two CMA licenses available. In many markets this would have permitted two bidders who were interested in providing service in a particular area to both get

licenses, thus both enhancing the Commission's take in the auction and permitting competition to develop in the affected market. By contrast, there was virtually no demand for the regional licenses.

2. Give small businesses bigger discounts. Locally owned businesses should be given the tools necessary to win auctions. Under current procedures, even very small businesses receive only a 35% discount in most auctions. That amount is often insufficient to permit the small business to outbid a large competitor which may be backed by foreign money. By increasing the small business discounts to 75% for entrepreneurs, 65% for very small businesses and 50% for small businesses, the Commission can not only make it more likely that such small enterprises will prevail against more deep-pocketed rivals but also reduce in absolute terms the capital necessary for a small business to acquire the license. This will leave the small business with more funds to actually construct and operate the system rather than just paying empty and unproductive dollars into the FCC's treasury. After all, the purpose of this entire exercise is to put the spectrum to productive use for the people of the United States, not just make a buck for the government.

3. Local business discounts. The Commission has felt to date that diversity of ownership mandated by Section 309(j) of the Communications Act is best encouraged by simply awarding discounts for small businesses. While such discounts certainly help to make spectrum available to new entrants, minorities and other small businesses, they do nothing *per se* to favor localism in ownership. In the broadcast area, the FCC for many years encouraged localism as a positive licensee attribute by awarding preferences in comparative hearings to local residents. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965). In the auction

context the Commission should promote the same localism by structuring auctions to encourage these qualities. In the past, we have seen all too often that entities which are technically “small businesses” under the Commission’s attribution rules are actually funded by billion dollar backers. Using the combination of the small business discount and big business capital, they are easily able to bid billions and win hundreds of licenses across the U.S. One solution to this problem is to award a distinct discount to a company which actually operates a telecommunications business in the state of license or a state immediately adjacent thereto. This discount would help to ensure that companies with a real, existing stake in the local community would have a leg up in the competition for the local license. In bookstore terms, a locally owned independent bookstore like Politics and Prose would have a chance against Waldenbooks if book store licenses were issued by the government. Absent such a preference, all bookstores would become homogenized and undifferentiated franchises with no connection to the communities which they serve. The same thing is true of communications companies.

The importance of localism cannot be overemphasized. The Commission has rules, for example, mandating E-911 and CALEA on a national basis. But a carrier like Corr, with generations of roots in the local community, is able to work directly with public safety personnel and police to locate emergency callers and cooperate in criminal investigations just because it is a concerned part of the community in which it operates. There is real value there which cannot be quantified but can still be recognized and promoted. An additional 10% or 15% discount for local entities would help to foster that goal.

In this regard, we stress that local and small business discounts should not be limited to local telephone companies alone. There are many non-telecommunications companies who provide rural telecommunications services, whether it be cable TV, cellular (like Corr), paging or even broadcasting. There is absolutely no reason why one particular category of rural telecommunications provider, *i.e.*, telcos, should be favored over all others. Indeed, to the extent that such telcos have assured rates of return from their monopoly customer bases, they have an advantage over other non-monopoly providers. Rural telcos should be entitled to the same preferences as other rural telecommunications providers – no less, but also no more.

4. Prevent phony small businesses from monopolizing the licenses. The Commission would have to be blind not to recognize that in many of the auctions to date, companies have "gamed" the system to qualify as small businesses despite having large ownership interests by mammoth corporations which guarantee huge funding commitments. Sometimes it seems like the Commission is trying to stem this kind of abuse by plugging loopholes in its rules, and other times it seems like the Commission actually fosters such strange organizations by adopting safe harbors for "control groups." These rules encourage precisely the sort of ownership legerdemain which should be discouraged. What is going on in auctions is the same type of thing which occurred in the broadcast area when comparative preferences were awarded to entities with female and minority owners. The D.C. Court of Appeals eventually threw up its hands in disgust at the "strange and unnatural" business arrangements which that policy engendered. *Bechtel v. FCC*, 957 F. 2d 873, 880 (D.C. Cir. 1992). It is simply preposterous that "small businesses" are out there auction after auction bidding literally billions of dollars for licenses. That circumstance turns the concept of "small business" inside out; it cannot have been what Congress intended when it directed the FCC to take steps to ensure that small businesses had access to auctioned spectrum.

One simple solution to this problem which would not involve re-working the auction attribution rules as they now exist is to simply put a cap on the number of licenses a "small business" could successfully bid on in any one auction. A bidder which is the high bidder on more than fifteen different licenses should presumptively be deemed <u>not</u> to be a small business and lose its small business discount regardless of whether its ownership structure meets the technical small business definitions in the rules. (Such businesses could still win any number of licenses; they just would not receive the small business discount.) The imposition of this cap would put a stop to the contorted business arrangements designed to squeeze big business pegs into the small business holes.

5. <u>Reduce minimum or reserve bids to account for true non-mutual exclusivity.</u> In recent years we have also noticed that many prospective bidders in auctions check the block for "all licenses" on the auction short form. This practice is understandable because it maintains maximum flexibility for the bidder if the markets it is most interested in become unavailable during the auction. On the other hand, the practice has the effect of creating "false" mutual exclusivity in many markets where the applicant has no intention whatsoever of bidding. In Auction 44 there were scores of markets in which there was only a single bid placed or no bids placed, even though 50 or 100 applicants had technically expressed an interest in bidding on those markets. There were scores of applicants who said they were interested in applying for licenses in rural Alaska, for example, though, not surprisingly, only one bid was placed for all such licenses. Nobody in his right mind would be interested in such a license except an entity with deep roots in the community itself. The reality is that there is very little interest in many rural markets, but the applications nevertheless become mutually exclusive and therefore subject

to auctions because people don't want to foreclose their options. In a perfect system, it would have been clear at the outset that no one but the City of Ketchikan was truly interested in the license for Ketchikan, AK, and that license could have been awarded to the city without the need to go through an auction, make a minimum bid of $21,000, await the outcome of the entire auction process, etc. In other words, the City of Ketchikan's application could have been treated as a singleton with all the advantages that entails. This situation occurred, we suspect, in many other markets where there was only one entity with real interest in the market but scores of ostensible competing applications.

One solution to this problem would be to significantly drop the minimum opening bid to a nominal sum of about $1,000. The *second* bid in any market would then be the minimum that the Commission now requires. This process would allow effective singletons like the City of Ketchikan to get the license for a low sum of money and use the difference to expedite and improve service to its little community.[2] On the other hand, if there were really two companies interested in the market, the bids would jump up in the next bidding round to a level that the FCC considers appropriate for true competitive situations. To illustrate, let us apply these principles to the Auction 44 Ketchikan situation. The City of Ketchikan would have placed an opening bid of $1,000. Presumably, no one else would place another bid and the City of Ketchikan would get the license for that amount. However, if another entity did place a bid, the second bid would have to be no less than $21,000 (the minimum bid established by the FCC's usual minimum bid determination method) and the bidding would go up from there. This

[2]We stress that Corr has no connection with the City of Ketchikan whatsoever. Its plight is just a perfect example of how the auction process creates artificial mutual exclusivity whereas in reality there is only a single party with any *bona fide* interest in the market.

process actually gives practical effect to the Congressional intention that auctions should not be held at all where there is only one applicant interested in a market. 47 U.S.C. 309(j)(1). Congress intended such licenses to be issued for free, and the mechanism suggested above serves to approximate that goal by recognizing that in many rural situations the presence of competing applications is illusory. Indeed, since § 309(j)(6)(E) obligates the Commission to avoid mutual exclusivity where possible, the Commission's current procedures (which actually promote mutual exclusivity) are improper. The jump up for the minimum second bid ensures that, if there truly are multiple interested bidders, the Treasury will not lose out by having started too low.

6. Reverse discounts. The Commission is under the impression that rural areas can be served because winners of large regional licenses will partition off portions of their service areas to small rural carriers who could not afford to buy the large area at auction. By the Commission's own statistics, however, it appears that only about 70 markets have been partitioned or disaggregated to rural carriers since 1997. *Notice of Inquiry* at ¶ 8. Given the hundreds and hundreds of rural service areas in numerous spectrum bands, there is really very little partitioning going on. Our experience has been that partitioning is rare because there is little incentive for the large licensees to split off part of their authorized area to someone else. The Commission could help to create the proper incentives by giving a reverse discount when a major carrier partitions a portion of its service area to a small business. A "reverse discount" would be the refund to the licensee carrier of the amount of money equal to the discount which would have applied if the small business had won the license at auction. To illustrate, suppose that Verizon won a large area at an auction without any discounts. Three years later it is considering partitioning off one fourth of its licensed area to a rural carrier. If reverse discounts

were available, Verizon could sell the segment to a very small rural business and put in a claim to the FCC for a proportional amount of 35% of the amount it had originally paid for its license. It could then reduce the purchase price to the rural carrier accordingly.

This proposal has two salutary effects. It makes economically feasible the sale of rural territories that would otherwise likely not be served by the large carrier at all. And, second, it puts the FCC in the same position financially it would have been in if a rural carrier had bought the territory in the first place. This plan simply maintains permanently the same incentives to get licenses into small business hands that the Commission now applies only at the original licensing stage.

7. Reclaim unused territory. Any area which is unserved at the end of a licensee's first ten-year term should revert back to the public domain and be open to new bidders (excluding the original license bidder). This proposal gives carriers an extremely strong incentive to either provide service to the entirety of their market in the ten-year term or sell it to someone who will. Most carriers would rather sell it than have it simply lapse back into the public domain. By the same token, ten years is a long time. If the carrier does not provide any service to an area in that time frame, there is little likelihood that it will ever do so. It is therefore far better to reclaim that territory and re-auction it so that someone else can provide service instead.

This approach worked effectively in the cellular context. There carriers had five years to build out their systems or "lose" the area that was unserved. The incentives worked exactly as we have suggested here: carriers hurried to provide service even to rural parts of their service areas to avoid forfeiting the territory, or they sold it to someone else who would build it out and "save" it. By applying these principles to newly auctioned spectrum, the Commission will encourage partitioning of rural areas to those most interested in serving them.

8. Modify build-out rules for rural areas. The Commission's PCS rules call for 25% of a licensee's territory to be built out in the first five years of the license or the entire license is forfeited. The natural consequence of this rule is that licensees concentrate their build-out activities where the population density is highest. That often leaves large segments of rural BTAs unserved altogether. In many cases there are economic reasons why this scenario is necessary. Perhaps as a corollary to the reclamation of unused territory, the Commission could adopt a more liberal rule for service to rural areas. For example, where population density is below a certain threshold, a licensee would only have to serve 10% of a given population or territory to be considered to be providing service. With this liberalized service standard, carriers would be encouraged to provide at least some service to rural areas in the knowledge that it would preserve a large segment of their licensed territory at reasonable cost.

9. Make automatic roaming mandatory. A number of commenters in WT Docket 00-193 expressed concern that small rural carriers are being squeezed on roaming rates by large national carriers who no longer have any incentive to enter into reasonable reciprocal automatic roaming agreements with small independents. The nationals have so much territory themselves that they can usually enter into agreements with just a couple of other major carriers and ensure that they have automatic roaming access almost anywhere in the United States. This is not so for the small independents. Such carriers must depend on their huge neighbors for reasonable roaming agreements or risk having their customers cut off from automatic access in the major markets. This price squeeze is happening more and more around the country and it threatens the

economic well being of small independents. The Commission should ensure that automatic roaming continues to be available to all carriers on reasonable and non-discriminatory terms to preserve not only the livelihood of small rural carriers but also their ability to provide good service to their customers inside and outside their home markets.

Respectfully submitted,

CORR WIRELESS COMMUNICATIONS, LLC

_____________/S/____________________
Donald J. Evans

Fletcher, Heald Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

February 3, 2003

Its Counsel

SERVICE LIST

Robert Krinsky (4 paper copies by hand)
Federal Communications Commission
445 12th Street, SW, Room 4-B551
Washington, DC 20554