Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

Reply Comments of Dobson Communications Corporation

Dobson Communications Corporation ("Dobson") hereby submits its reply comments in the above-captioned proceeding.[1] As there were few, if any, surprises contained in the comments filed in this proceeding, we wish to use this opportunity to highlight the rural service policies that Dobson believes will, if implemented, best achieve the Commission's goals of facilitating the deployment of spectrum-based services in rural areas.

In the *Notice*, the Commission explores several proposed methods that some believe will foster deployment of wireless services in rural America, including designating smaller service areas and requiring partitioning and disaggregation of underutilized spectrum. If there is one idea that Dobson would have the Commission come away from this inquiry with, it is this: because of the practical realities of the rural wireless marketplace, the Commission will not succeed in promoting deployment of wireless services in rural areas by creating small service areas in which rural carriers can provide stand-alone wireless service. Dobson's experience shows that economies of scale are needed in order to successfully deploy wireless service in rural areas. This is true both because of the marginal costs of providing services to rural subscribers and because a certain size is needed in order for a rural carrier to negotiate

[1] *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Notice of Inquiry*, FCC 02-325 (rel. Dec. 20, 2002) ("*Notice*").

roaming arrangements that provide a steady revenue stream. The Commission must not ignore this basic reality, as several of the ideas contained in the *Notice* seem to do.

As Dobson stressed in its Comments, the Commission can best accomplish the statutory goal of promoting the development and rapid deployment of new technologies, products and services in rural areas by continuing to pay attention to marketplace realities and by employing market-based initiatives and policies.

I. Market-Based Solutions Will Most Effectively Advance the Commission's Goal of Promoting Deployment of Spectrum-Based Services in Rural Areas

Dobson explained in its Comments that rural wireless markets have developed to the point where they are simply part of a broader nationwide market for wireless services. Rural residents are well aware of the products, services, and rate plans offered by nationwide carriers in urban markets and demand the same for themselves. Rural wireless carriers have responded with competitive offerings and vigorous competition for the rural customer now exists. Today, there is no meaningful competitive distinction between rural and urban wireless markets.

Competition has produced a marked increase in the quality of services available to rural customers, a decrease in the prices for such services, and an expansion of coverage to provide service to previously unserved or underserved areas. Given the level of competition that exists in rural areas, market-based solutions will work to facilitate the further improvement of services in these areas.

Though wireless is the telecommunications industry's most competitive sector, the recent increase in competition also has a darker side. Wireless stock values have crashed in part because of Wall Street's view that there are too many competitors. This financial climate for wireless carriers, along with the overall downturn in the economy over the past two years, has magnified the challenge rural carriers face in raising the capital they need to expand coverage in rural areas, especially since rural carriers like Dobson compete directly with the nationwide carriers for capital in the financial markets.

The Commission, however, can be part of the solution to this problem by helping to foster the overall recovery of the wireless sector. First and foremost, the Commission should view favorably some

consolidation among the major wireless carriers. If, consistent with antitrust principles, the Commission allows some consolidation to take place, this will improve the overall financial climate for wireless carriers, and thus raise rural carriers' ability to obtain capital to improve their services in rural America.

A. Mandatory Partitioning and Disaggregation Will Be Counterproductive to the Commission's Goals

Dobson opposes the idea that carriers should be required to partition unused service areas or disaggregate unused spectrum.[2] Partitioning and disaggregation are useful tools for carriers when market forces identify unmet service needs, but they should only be used voluntarily. The Commission is ill-equipped to make the judgment necessary to determine, on a market-by-market basis, whether spectrum is underutilized; nor should it substitute its judgment for the marketplace.

Furthermore, imposing a partitioning/disaggregation requirement would be bad public policy. It would upset the competitive bidding regime by reducing the certainty upon which bidders rely when assessing the value of spectrum and the rights acquired with that spectrum. Depriving auction winners of a portion of the value that they put on the licenses they bid on will, in turn, effect participation in future auctions.[3] As other commenters have said, mandatory partitioning and disaggregation "could [also] result in uneconomic spectrum use and limit future deployment opportunities as they become available."[4] Dobson strongly believes that spectrum is best utilized when carriers are free to allow marketplace forces to dictate spectrum use. Carriers should not be forced to relinquish rights to licensed spectrum simply because the Commission has deemed it underused and believes that it could be put to better use by someone else. Given the state of competition in rural areas, the determination of the best use of spectrum should be made by the market.

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[2] *See e.g.*, Comments of Lynn R. Merrill, P.E. of Monte R. Lee and Company, at 4; Comments of the National Telecommunications Cooperative Association at 12; Comments of TCA, Inc. at 8.

[3] Comments of Monet Mobile Networks, Inc. at 9-10.

[4] Comments of Western Wireless Corporation at 33.

Some carriers simplistically and unrealistically believe that requiring carriers to partition and/or disaggregate unused spectrum will improve the level of service in rural areas.[5] In today's competitive rural market, areas will be built-out if sufficient demand exists to make service economically viable and if carriers have the capital to invest. Proponents of mandatory partitioning/disaggregation fail to recognize that providing a stand-alone wireless service to a partitioned service area with a limited number of customers is not an economically viable proposition. Considering the highly competitive market for capital that currently exists, it seems highly unlikely that such a service would be funded. Mandatory partitioning/disaggregation therefore would do nothing to advance the Commission's rural service goals.

B. Smaller Service Area Sizes Do Not Necessarily Foster Build-Out in Rural Areas

Similarly, auctioning spectrum licenses according to smaller service area sizes would not necessarily foster build-out in rural areas. Arguments that the Commission should always offer a portion of the spectrum sold at auction in smaller geographic areas in order to facilitate build-out in rural areas,[6] ignores the broader point. To be sure, smaller service areas may enable small rural carriers, in some cases, to avoid competing with deeper-pocketed bidders. However, as discussed above, the practical realities of operating wireless systems suggest that smaller carriers operating stand-alone systems will not be successful. Dobson's experience illustrates that a carrier must be able to spread costs over a larger customer base. Dobson holds mostly RSA licenses, but they are grouped together into clusters, thereby affording economies of scale that allow Dobson to serve rural markets efficiently and negotiate relationships with larger carriers that provide mutual benefits.

Designating smaller service areas would not advance the Commission's goals for rural service. Indeed, such action would merely impose additional transaction costs on rural service providers that would hinder their efforts to improve service in rural areas.

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[5] Comments of Lynn R. Merrill, P.E. of Monte R. Lee and Company, at 4; Comments of the National Telecommunications Cooperative Association at 12; Comments of TCA, Inc. at 8.

[6] *See* Comments of NTCA at 9-10; Comments of South Dakota Telecommunications Association at 11; Comments of TCA, Inc. at 5.

II. The Commission Should Retain ETC Rules That Promote Competition and Encourage Build-Out of Rural Markets

Dobson joins commenters who urge the Commission to maintain a universal service support system that does not limit or eliminate the ability of wireless carriers to receive the same amount of support as received by the incumbent local exchange carrier ("ILEC") serving that market.[7] By making support portable, the Commission removed the barrier to entry that previously existed when support was provided to only ILECs and allows non-ILECs to provide service in high-cost areas they previously could not afford to service.[8] Wireless carriers' entry into these markets has created competition which results in expanded service areas, access to new and innovative services, and lower rates. Because this competition benefits the consumer, the Commission should continue to take action to promote fairness and equality in the amount of support provided to ILECs and non-ILECs alike.[9]

While the amount of support provided to wireless ETCs has increased modestly, wireless ETCs are using the support to enhance the availability of service in rural areas at competitive prices. There is no basis to suggest, as one commenter does, that wireless carriers have not done anything with the support they have received.[10] Section 254(e) requires a carrier that receives support to "use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[11] Failure to do so would amount to a violation of the Act and the Commission's Rules. Universal service support allows wireless carriers to offer service in areas where they could not previously afford to provide service and to improve service in sparsely populated areas. Rural customers have benefited as a result.

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[7] *See* Cellular Telecommunications & Internet Association Comments at 5, n.12; Comments of Rural Cellular Association ("RCA") at 7; *see also* Dobson Comments at 16.

[8] *See* Comments of RCA at 6; Comments of Western Wireless at 17.

[9] Comments of RCA at 8.

[10] *See* Comments of South Dakota Telecommunications Association at 19 ("The excessive and unrestrained designation of wireless carriers as Competitive Eligible Telecommunications Carriers in rural telephone company service areas has done virtually nothing to enhance the availability of affordable and reasonably comparable telecommunications services in Rural America.").

[11] 47 U.S.C. § 254(e).

The wireline telephone system reaches into many remote areas of this country, in large part, because of the universal service support that ILECs have received. Wireless services can also succeed in bringing new and valuable services to rural America, but only if wireless carriers receive the same level of support, made available on fair and equitable terms.

Although more wireless carriers have obtained ETC status, the designation of wireless ETCs has not, as suggested by some, been liberal.[12] As Dobson described in its comments, the process is arduous for wireless carriers because the rules are skewed in favor of wireline carriers. Indeed, it is somewhat disingenuous for an incumbent LEC group to claim that wireless ETC designations have been overly liberal when most incumbent LECs received their ETC designations through pro forma orders, often without even having to file an application. In contrast, wireless carriers have endured long and elaborate hearing proceedings as states have scrupulously undertaken the inquiries required under state and federal law.[13] Rural customers benefit from competition and Dobson therefore urges the Commission to maintain a system that allows for the designation of competitive ETCs pursuant to competitively neutral criteria and for wireless carriers to continue receiving portable, high cost support.

III. The Commission Would Promote Deployment of Wireless Service in Rural Areas by Relaxing Mandates That Force Rural Carriers to Divert Capital from Service-Enhancing Activities.

As we stated in our Comments, Dobson wishes to emphasize that the Commission would go a long way toward removing a major obstacle to the deployment of wireless service in rural areas by relaxing mandates that would force rural carriers to divert capital from service-improving activities.[14] As

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[12] Comments of South Dakota Telecommunications Association at 20.

[13] In fact, the Federal-State Joint Board on Universal Service ("Joint Board") recently sought comment on the ETC designation process, particularly on ways in which to make the process more uniform, and therefore easier for both states and applicants. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, *Public Notice*, FCC 03J-1 (rel. Feb. 7, 2003). Dobson expects to participate in that proceeding and will encourage the Joint Board to recommend that the Commission adopt a process that makes it more equitable for wireless carriers to obtain ETC designation.

[14] Dobson Comments at 18.

several commenters (including Dobson) have explained in this proceeding, the significant capital expenditures imposed by the Commission to implement such mandates as wireless local number portability would be better spent on pro-competitive activities, such as network improvements and offering additional products and services.[15] Allowing rural carriers like Dobson to use their limited financial and human resources to improve services and expand coverage to previously underserved and unserved areas would advance the Commission's goal of promoting service to rural areas.

IV. Conclusion

For the foregoing reasons, Dobson Communications Corporation respectfully submits that the Commission will advance its goals in this proceeding best by maintaining market-based regulatory policies and resisting the temptation to impose overly regulatory fixes that ignore marketplace realities.

Respectfully submitted,

DOBSON COMMUNICATIONS CORPORATION

By: /s/ Ronald L. Ripley

Ronald L. Ripley, Esq.
Vice President and Senior Corporate Counsel
Dobson Communications Corporation
14201 Wireless Way
Oklahoma City, OK 73134
(405) 529-8500

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[15] *See, e.g.*, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Telecommunications Group at 15; Comments of NTCH, Inc.; *see also* Dobson Comments at 18-20.

[16] Because of the closure of the federal government on February 18, 2003 due to the East Coast snowstorm, these reply comments are being filed one day after the due date set in the *Notice*.