

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

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

To: Wireless Telecommunications Bureau

**REPLY COMMENTS OF THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES AND THE
RURAL TELECOMMUNICATIONS GROUP**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)¹ and the Rural Telecommunications Group (“RTG”)² hereby submit joint reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Inquiry* seeking comment on the effectiveness of its current regulatory

¹ OPASTCO is a national association representing approximately 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, collectively serve over 2.5 million consumers. Nearly one half of OPASTCO’s members provide some type of wireless service. All of its members are “rural telephone companies” as defined in 47 U.S.C. § 153(37).

² RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services such as cellular telephone service and Personal Communications Service (“PCS”) to their subscribers. RTG’s members are affiliated with rural telephone companies and/or are small businesses serving or seeking to serve secondary, tertiary, and rural markets.

tools for ensuring the delivery of spectrum-based service to rural areas.³ Specifically, these reply comments address the large, nationwide carrier perception that this proceeding is unnecessary.

I. New Policies Are Needed to Deliver Meaningful Service to Rural America

In its comments, the Cellular Telecommunications and Internet Association (“CTIA”) asserts that rule changes are unnecessary because “the wireless industry provides services throughout the United States.”⁴ CTIA’s position reflects a large carrier bias in this proceeding. According to CTIA, “new rules or policies” should be avoided “that would seek to create ‘winners or losers’ in any area, including rural service areas.”⁵ OPASTCO and RTG submit that since the large, nationwide carriers that largely fund CTIA are already “winners” in the acquisition of spectrum, while rural carriers and their customers are left without meaningful access to spectrum-based services, it is no surprise that CTIA opposes almost any suggestion put forth by small and rural carriers that could aid in the delivery of such services to rural America.

CTIA selectively cites the FCC’s *Seventh Annual CMRS Competition Report*, finding that 94 percent of the U.S. population lives in counties with access to three or more commercial mobile radio service (“CMRS”) providers as support for its position against any new rules or policies.⁶ In citing this statistic, CTIA would like the FCC to believe that rural customers are already afforded numerous choices for new and advanced spectrum-based services. The rural reality, as noted by the Commission in its *Seventh Annual CMRS Competition Report*, is that a substantial number of rural customers are without significant spectrum-based service options. In

³ *In re Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Inquiry, WT Docket No. 02-382 (December 20, 2002).

⁴ CTIA Comments at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 2 (citing *In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 12990-91 (2002)).

fact, in its latest report, the Commission found that in 50 percent of the country, consumers have a choice of two or fewer wireless carriers.⁷ This is not the “fierce competition” that CTIA trumpets.⁸ Further, CTIA’s use of the statistic that 94 percent of U.S. counties have multiple providers is misleading because there is not always *meaningful* service coverage in those counties. All that statistic means is that 94 percent of U.S. counties have at least one business or residence capable of being served by multiple providers (*i.e.*, a county is deemed to have access to service from multiple providers even when only a tiny geographic portion of the county is capable of receiving service).⁹ In reality, large carriers tend to concentrate on building out the major interstates and urban areas, overlooking or ignoring the remaining outlying rural areas of many counties.¹⁰

The comments filed by Representative Bart Stupak (D-MI) illustrate rural consumer frustration with the lack of meaningful rural coverage. In Representative Stupak’s district, which consists of 31 counties, the Congressman speaks of numerous occasions where there are “gaps”

⁷ *Seventh Annual CMRS Competition Report* at 37, n. 246.

⁸ CTIA Comments at 2.

⁹ *Seventh Annual CMRS Competition Report* at 24 (stating that “[t]here are several important caveats to note when considering these data. First, to be considered as ‘covering’ a county, an operator need only be offering any service in a portion of that county.”)

¹⁰ *See In re Wireless Telecommunications Bureau Grants Consent for the Full and Partial Assignment and Transfer of Control of Licenses to Implement GSM Corridor, LLC Joint Venture*, WT Docket No. 02-354, Public Notice, DA 03-418 (February 12, 2003) (allowing AT&T Wireless Services, Inc. and Cingular Wireless LLC “to build infrastructure using GSM technology that will enable the joint venture partners to provide service to subscribers along approximately 4,000 miles of select highways in rural parts of the country.”) This “creamskimming” of highways has resulted in large, nationwide carriers moving roaming traffic off of independent rural wireless carriers’ rural networks and onto the large, nationwide carriers’ networks. This raises the roaming rates of these same rural carriers and results in a loss of revenue and increased costs. This leaves the independent rural wireless providers serving only the high cost area with a limited subscriber base. If the smaller carriers are no longer used to provide ubiquitous coverage for urban-based customers traveling along interstate highways, provision of service in the rural areas past the highway coverage area will be threatened.

in coverage and “many areas” where there are no wireless signals.¹¹ Representative Stupak urges the FCC to correct what can be a critical problem with the lack of rural coverage in times of national emergencies by modifying its spectrum auction process “to diminish the economic difficulties faced by rural providers” when competing with larger providers who concentrate on serving “profitable urban markets.”¹² While the 31 counties in Rep. Stupak’s district may have coverage according to CTIA, they do not have the type of *meaningful* coverage that is usually only provided by rural carriers.¹³

II. Small License Areas Are the Proven Solution for Rural Coverage

The consensus among the rural wireless industry is that the use of Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) is the best way to ensure that rural areas receive new and advanced spectrum-based services,¹⁴ and past auction results bear out this conclusion. Over a decade ago, the Commission ensured that cellular service would reach rural America by awarding landline telephone companies, including those landline companies serving rural areas, B Block spectrum in RSAs. The large number of small, rural cellular carriers is a testament to the success of the Commission’s cellular rules and procedures. The “rural” success of MSAs/RSAs in delivering wireless services into rural areas belies CTIA’s belief that the size of license areas does not play “a major role in either hastening or impeding the development of

¹¹ Comments of Representative Bart Stupak at 1.

¹² *Id.* at 2.

¹³ Rural telephone companies and rural wireless providers have the demonstrated ability and interest to offer a wide variety of services and technologies, on a bundled basis, to rural regions, which are often overlooked by the national carriers. Rural carriers are able to leverage their current telecommunications infrastructure to provide new services at incremental costs. In other words, rural carriers are not “starting from scratch.” In addition, rural carriers are more likely to serve the entire population of a rural area. *See* National Telecommunications Cooperative Association (“NTCA”) Comments at 3-4.

¹⁴ *See* NTCA Comments at 9-10; Rural Cellular Association (“RCA”) Comments at 3-4; and OPASTCO and RTG Comments at 8-10.

wireless services in rural areas.”¹⁵ Specifically, in the 700 MHz auction (Auction 44), over two thirds of the applicants were rural telephone companies or affiliated with a rural telephone company. In that auction, 58 percent of the winning bidders were affiliated with rural telephone companies.

In addition, the use of MSAs and RSAs spurs auction activity. As RCA noted, in Auction 44, for the lower 700 MHz Band licenses, interest and bidding activity on the MSA/RSA licenses “substantially exceeded that evidenced for the larger license areas.”¹⁶ Accordingly, there is a direct correlation between the use of RSAs and the high level of participation in the auction process by rural carriers.

OPASTCO, RTG, and the majority of the rural carrier industry recommend that the Commission expand upon its successful use of small geographic license areas and continue to use MSAs/RSAs.

III. Large Carriers Should Not Be Allowed to Control Rural Spectrum Access

In CTIA’s ideal world, the Commission would continue to rely on partitioning and disaggregation as a means of disseminating spectrum to rural areas.¹⁷ Such Commission reliance on failed mechanisms only perpetuates the ability of large carriers to continue holding rural areas hostage. The large carriers are disingenuous when they tell the Commission that they are waiting to “quickly take advantage of new opportunities in rural areas,”¹⁸ and such lip service should not be countenanced. Rural consumers should not be required to wait, like Estragon and Vladimir, for the large carriers to act on their definition of rural “opportunities,” which like Godot, never materialize.

¹⁵ CTIA Comments at 6.

¹⁶ RCA Comments at 4, n. 6.

¹⁷ *Id.* at 6 and 8.

¹⁸ *Id.* at 6.

As RCA points out, large carriers use their disproportionate bargaining power to establish onerous terms and conditions for partitioning and disaggregation.¹⁹ These terms include network buildout specifications based solely on the large carrier's business plans and agreements to abide by the large company's roaming rates.²⁰ Not surprisingly, many rural carriers balk at such onerous terms when there is no indication that they can ever recover their investment. As NTCA, OPASTCO and RTG point out, experience has shown that partitioning and disaggregation have essentially failed due to the lack of incentives for large carriers to participate in any agreements with small, rural carriers.²¹ Given the rural industry experience with partitioning and disaggregation, "flexible" partitioning and disaggregation policies, as vaguely proposed by CTIA,²² will only give the large carriers the flexibility to continue controlling rural spectrum while rural end users suffer.

Large carriers are also able to control rural spectrum by exploiting the Commission's impotent buildout policies. In rejecting the rural carrier industry's call for tougher "use it or lose it" buildout policies,²³ CTIA promises the Commission that the large carrier desire to create a national "footprint" will eventually spur development in rural areas.²⁴ However, in its opposition to stricter buildout requirements, CTIA notes that the telecommunications sector is in a "severe capital crunch."²⁵ And, "under these trying financial circumstances," CTIA asks the Commission to allow it to allocate resources "where market demand indicates a need for such

¹⁹ RCA Comments at 11.

²⁰ *Id.*

²¹ NTCA Comments at 11; OPASTCO and RTG Comments at 11-12.

²² CTIA Comments at 6.

²³ NTCA Comments at 12; OPASTCO and RTG Comments at 12; and RCA Comments at 10.

²⁴ CTIA Comments at 8.

²⁵ *Id.*

services.”²⁶ In other words, CTIA is asking the Commission to allow it to continue to overlook less-profitable rural markets for the foreseeable future. This policy argument is antithetical to the public interest and the inevitable result of its adoption is that rural spectrum would continue to lie fallow.

The Commission should adopt the “use it or lose it” approach. As NTCA suggests, if the failure of a carrier to buildout is unexcused due to a lack of equipment, or if the original licensee does not make a binding promise to buildout a rural area, a more willing provider should be given the opportunity to provide service and claim the unbuilt area as part of its license territory.²⁷ If CTIA members cannot afford to provide service to rural markets due to a severe capital crunch, the Commission should afford rural carriers the opportunity to leverage their existing infrastructure to provide such service in rural America.

IV. The Commission Has a Statutory Duty to Rural Telephone Companies

In stating that “the Commission’s responsibility is to promote the availability of wireless service to rural consumers – not the interests of rural telcos,”²⁸ Western Wireless would like the FCC to ignore its statutory duty to promote the interests of rural telephone companies in the acquisition of spectrum. OPASTCO and RTG agree that the Commission has a duty to promote the delivery of new and advanced services to rural *consumers*.²⁹ However, Western Wireless brushes aside the Commission’s ongoing statutory obligation pursuant to Section 309(j) of the Communications Act of 1934, as amended, to ensure not only that new, spectrum-based technologies are deployed “in rural areas,” but to use its regulations to “*ensure that small*

²⁶ *Id.*

²⁷ NTCA Comments at 12.

²⁸ *See* Western Wireless Comments at 8 (emphasis in original).

²⁹ *Id.*

*businesses and rural telephone companies” have unqualified access to spectrum.*³⁰ In creating Section 309(j), Congress recognized that rural telephone companies possess an expertise in delivering spectrum-based services to rural consumers and, therefore, need specific mechanisms to make sure they have access to spectrum. Western Wireless may want to ignore the fact that rural telephone companies were *specifically selected* by Congress as entities to be aided in the acquisition of spectrum. However, the Commission may not as a matter of law, nor as a matter of good public policy ignore the role that rural telephone companies play in ensuring that telecommunications services reach the rural public.

Bidding credits for rural telephone companies are needed to ensure that they are able to effectively compete in future spectrum auctions.³¹ As RCA notes, many large companies are able to fund supposedly “small” or “very small” businesses that receive bidding credits in Commission auctions.³² In addition, as NTCA points out, many rural telephone companies do not receive bidding credits and many are discouraged from participating in auctions due to the lack of available bidding credits.³³ The instant proceeding is an ideal opportunity for the Commission to establish mechanisms such as bidding credits or other incentives for rural telephone companies that would enable them to deliver spectrum-based services to their rural customers.

V. Conclusion

The Comments filed in this proceeding indicate a definitive rural consensus for MSAs and RSAs, stricter rural buildout requirements, and bidding credits for rural telephone companies. By implementing such policies in the future, the Commission can help to ensure that

³⁰ See 47 U.S.C. §§ 309(j)(3)(A) and (4)(D) (emphasis added).

³¹ NTCA Comments at 7-8.

³² RCA Comments at 5.

³³ NTCA Comments at 7.

meaningful wireless coverage exists in *all* regions of America, not just those urban areas and highways served by large carriers.

Respectfully submitted,

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