

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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	)	
	)	
2000 Biennial Regulatory Review	)	WT Docket No. 01-14
Spectrum Aggregation Limits For	)	
Commercial Mobile Radio Services	)	
	)	
Increasing Flexibility To Promote	)	WT Docket No. 03-202
Access to and the Efficient and	)	
Intensive Use of Spectrum and the	)	
Widespread Deployment of Wireless	)	
Services, and To Facilitate Capital	)	
Formation	)	

COMMENTS OF  
UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("U.S. Cellular"), by its attorneys, submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") [FCC 03-222] in WT Docket No. 02-381, released October 6, 2003.

INTRODUCTION

We propose that the Commission take the following steps to foster the continued development and operation of wireless technologies serving rural areas:

- We strongly support the Commission's tentative conclusion that the public interest is served by balancing the needs of different providers for license

area sizes that "...more closely resemble their service areas." <sup>1</sup> The Commission should continue to select service area sizes on a service-by-service basis in ways which balance the competing needs of national, regional and local providers.

- We also support adoption of the Commission's proposals to modify Section 22.942 of its rules to permit noncontrolling investments in licensees for different channel blocks in overlapping CGSAs within an RSA; and
- We agree with the Commission that infrastructure sharing could be a useful tool to promote new and expanded service in rural as well as non-rural markets. The Commission should promote expanded use of such sharing arrangements, particularly where such arrangements might involve a transfer of control, by confirming the definition of "control" adopted in its Secondary Markets Report and Order<sup>2</sup> will be applicable for regulatory compliance purposes.

### DISCUSSION

1. The Commission Should Continue to Adopt Geographic Service Area Sizes on a Service-by-Service Basis for All New Licensed Wireless Services to Provide Initial Licensing Opportunities For the Regional, Rural and Local Providers.

The selection of small geographic service areas preserves opportunities for regional/rural carriers to provide an important source of competition, variety and

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<sup>1</sup> Notice, ¶ 68.

<sup>2</sup> *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order (FCC 03-113) released October 6, 2003 ("Secondary Markets Report and Order").

diversity in rural and less densely populated areas. As the Commission stated in its AWS Report and Order,

"...while some carriers may desire regional or nationwide service territories, others are interested in localized service areas. Our band plan meets this need by including licensing areas based on MSAs and RSAs. These local service areas will be optimal for incumbent operators who may need spectrum capacity only in limited areas. These local service areas also favor smaller entities, such as rural telephone companies and small service providers, with localized business plans and no interest in providing large-area service. As RCA observes, MSAs and RSAs permit entities who are only interested in serving rural areas to acquire spectrum licenses for these areas alone and avoid acquiring spectrum licenses with high population densities that make purchase of license rights too expensive for these types of entities. These types of service providers could acquire a RSA and create a new service area or they could expand an existing service territory or supplement the spectrum they are licensed to operate in by adding a RSA. They could also combine a few MSAs and RSAs to create a larger but localized service territory. MSAs and RSAs allow entities to mix and match rural and urban areas according to their business plans. By being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies. Their inclusion in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas."<sup>3</sup>

We agree with this analysis of the benefits of a balanced approach to geographic service selection as an appropriate means to foster services in rural as well as non-rural markets.

One of the important issues before the Commission is how to encourage licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. The

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<sup>3</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Report and Order, FCC 03-251, released November 25, 2003, ¶ 35.

Commission should recognize in its spectrum policies, as it did in its AWS Report and Order, the importance of adopting service area sizes appropriate for regional/rural providers to provide them adequate spectrum for service and geographic entry and expansion. By affording realistic bidding opportunities to a variety of applicants, the adoption of small service area sizes such as EA or MSA/RSA areas will enhance competition and promote early deployment of advanced technologies consistent with the objectives of Section 309(j) of the Act.

2. The RSA Cellular Cross Interest Rule Should Be Retained, But Modified to Permit a Higher Attribution Threshold.

The Commission's Notice<sup>4</sup> asks whether "our current rule against cellular cross interests in all RSAs remains in the public interest." U.S. Cellular believes that the rule should be retained but amended to allow more flexible treatment of non-controlling cross interests.

U. S. Cellular supports retention of a modified version of Section 22.942 of the FCC's Rules, the cellular cross interest rule. U.S. Cellular supports the rule as is, except that the Commission should raise, from 5 percent to 49 percent, the ownership interest which an individual or entity controlling a cellular licensee may have in its cellular competitor.

As the Commission has noted previously, the cellular cross interest rule was adopted in 1991 when cellular carriers were the "predominant providers of mobile

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<sup>4</sup> See Notice at ¶ 90.

voice services."<sup>5</sup> In order to make certain that the cellular industry would remain competitive in a duopoly environment, the Commission adopted the predecessor rule to Section 22.942, by which it sought to ensure that the licensee on one frequency block should not own an interest in the other frequency block in the same market.<sup>6</sup>

U.S. Cellular believes that there are still valid reasons to have a rule which prohibits one person from controlling both cellular licensees in the same RSA market, despite the action the Commission took in 2001 with respect to the spectrum cap and the cellular cross interest rule in MSAs.<sup>7</sup>

There is no conceivable situation in which the public interest would be better served in a given RSA by having a monopoly cellular provider than by having competition in the provision of cellular service. In such markets, the prohibition on a cellular monopoly is still a valuable competitive safeguard, as it was in 1991. By preventing one carrier, often a large "national" carrier, from owning both cellular licenses in a given RSA, the cross interest rule still increases the chances that a small business and/or rural telephone company will be able to acquire one of the two RSA cellular licenses.

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<sup>5</sup> See In the Matter of 1998 Biennial Regulatory Review - Spectrum Aggregation Limits for Wireless Telecommunications Carriers WT Docket No. 98-105, Notice of Proposed Rulemaking, 13 FCC Rcd 25132, 25137 (1998).

<sup>6</sup> Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket Nos. 90-6, 85-388, First Report and Order and Memorandum Opinion and Order On Reconsideration, FCC Rcd 6185, 6228-29 (1991).

<sup>7</sup> See 2000 Biennial Regulatory Review: Spectrum Aggregation Limits for Commercial Mobile Radio Services WT Docket No. 01-14, Report and Order, 16 FCC Rcd 22668 (2001) ("Spectrum Cap Order").

The Commission should, however, recognize that there have been significant changes in the wireless market structure since 1991, namely the emergence of PCS and ESMR services in much of the country, which do justify a relaxation of Section 22.942's most restrictive aspect, the rule's prohibition on a party which controls a licensee in a market from having any interest exceeding five percent, including a non-controlling interest, in the other cellular licensee in that market. That prohibition can be modified by simply raising the cross interest "attribution threshold" in Section 22.942(a) to 49 percent, provided the minority interest does not constitute a controlling interest. Modifying the rule in this way, but not eliminating it, would serve several beneficial purposes.

It would preserve the obvious and undeniable benefits of cellular competition in relatively underserved rural markets. Cellular remains a distinct service licensed under Part 22, subject to unique "build out," interference, and coverage requirements. The Commission should still want cellular systems on the A and B blocks to compete with each other with respect to service and coverage, since in many RSAs, particularly those not yet served by PCS licensees, the two cellular service providers remain dominant.<sup>8</sup>

The FCC, recognizing the benefits of existing cellular competition in rural markets, proposes to limit the abolition of the cellular cross interest rule to RSAs

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<sup>8</sup> See In the Matter of 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, Eighth Report, WT Docket 02-379, FCC 03-150, released July 15, 2003 ("Eighth Competition Report"), ¶ 113.

served by more than three wireless competitors.<sup>9</sup> However, U.S. Cellular considers that limitation to be inadequate to protect the public interest. The "presence" of an additional two PCS carriers in a given RSA would not, in our view, make up for the loss of one of the two cellular competitors. Also, the flexibility of PCS coverage requirements, set out at Section 24.203 of the FCC's Rules,<sup>10</sup> may well mean that much of an RSA nominally "served" by a PCS licensee is not actually covered by a usable PCS signal from that licensee. This is in contrast to cellular systems, which are subject to strict "unserved area" rules, resulting in widespread actual market coverage. Cellular and PCS systems are not interchangeable and there is no reason to treat them as such.

As reasons for abolishing or drastically modifying the cellular cross interest rule, the Notice cites the alleged difficulties of obtaining "financing" for transactions involving RSAs and the uncertainty and expense of pursuing "waivers" of the existing cross interest rule on a case by case basis.<sup>11</sup>

We submit that those reasons are not sufficient to justify changing the existing rule. The implicit argument underlying the first reason is that "financing" is not available for transactions which involve buying only one of the cellular licenses in an RSA but might be available if both could be bought. Even if that were true and, as the FCC notes, it has received "little empirical evidence on these

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<sup>9</sup> Notice, ¶ 95.

<sup>10</sup> PCS 30 MHz PCS licensees must cover one-third of the area or population of their service areas within five years of licensing; two-thirds of the area or population within ten years. 10 MHz BTA licensees must only cover one-third of their service area or population within five years or meet a lesser "substantial service" requirement.

<sup>11</sup> Notice, ¶¶ 95-99.

questions,"<sup>12</sup> the availability of "financing" to secure an anti-competitive market position or virtual monopoly is no reason for the FCC to authorize such transactions.

Also, by allowing non-controlling interests of up to 49% in a competing cellular licensee, the FCC could eliminate any uncertainties now existing in the waiver process and grant additional transactional flexibility, without giving up the benefits of competition. Licensees could control one cellular license in an RSA and have a non-controlling interest of up to 49% in the other licensee. There would be little need for waivers and it is difficult to see how almost any beneficial transaction would be blocked by such liberal requirements.<sup>13</sup>

The only transactions which the rule would stop would be those which created an RSA cellular monopoly, which is inherently undesirable. For these reasons, U.S. Cellular supports retaining the cross interest rule, but modified as suggested above.

3. The Commission Should Confirm That The *De Facto* Control Standard Which It Developed For Spectrum Leasing Transactions Also Will Apply For Regulatory Compliance Purposes to Infrastructure Sharing Arrangements.

We agree with the Commission that infrastructure sharing arrangements potentially could be useful to help minimize the capital expenditures and maximize coverage in ways which could benefit customers in rural areas. We believe that by clarifying its "control" policies as proposed here, the Commission will be taking

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<sup>12</sup> Notice, ¶ 98.

<sup>13</sup> In a case where a carrier could demonstrate actual coverage by multiple carriers in an RSA comparable to an MSA, then presumably a waiver might be obtainable to acquire both cellular licensees. However, we would anticipate that such circumstances would be rare.

regulatory action which will foster opportunities for parties to enter into such arrangements.

Specifically, we request that the Commission confirm that the "control" standard which the Commission adopted in its Secondary Markets Report and Order is the applicable standard which the parties to infrastructure sharing arrangements should use for regulatory compliance purposes. We request this clarification because the Commission stated in its Secondary Markets Report and Order that "... at this time we are replacing the *Intermountain Microwave* standard for assessing *de facto* control only in the context of spectrum leasing."<sup>14</sup>

We agree with the Commission's conclusion stated in its Secondary Markets Report and Order,

"... the Intermountain Microwave "facilities-based" control standard is outdated in that it unnecessarily impedes the Commission's efforts to develop flexible and efficient leasing arrangements that permit third-party access to unused or underutilized spectrum usage rights (for either short or long term)."<sup>15</sup>

For these same reasons, the Commission Intermountain Microwave standard should also be replaced as applied to infrastructure sharing arrangements.

The Commission restricted the scope of its new definition of de facto control to spectrum leasing arrangements in its Secondary Markets Report and Order but suggested that this initial decision could be revisited "...in other regulatory contexts

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<sup>14</sup> *Secondary Markets Report and Order*, ¶ 53.

<sup>15</sup> *Secondary Markets Report and Order*, ¶ 51.

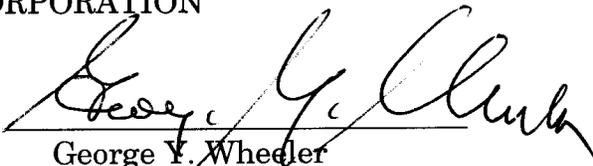
where it could be employed."<sup>16</sup> We request that the Commission do so in these proceedings.

CONCLUSION

We applaud the Commission for continuing to address possible changes in its rules and policies to implement the mandates in Sections 309(j)(3) and (4) of the Act regarding expansions of spectrum-based services in rural areas. The fact is that there are significant economic challenges in providing wireless services in sparsely populated, expansive rural areas. The regional, rural and local providers, many of which are locally-based, are uniquely situated to serve the needs and interests of rural customers. This means that the Commission should avoid adopting rules and policies which inadvertently deny opportunities for these regional, rural and local providers to use spectrum resources to expand their footprints, to increase capacity or to offer advanced services.

Respectfully submitted,

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<sup>16</sup> *Secondary Markets Report and Order*, ¶ 53.