

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

**COMMENTS OF AT&T WIRELESS SERVICES, INC.**

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**COMMENTS OF AT&T WIRELESS SERVICES, INC.**

Pursuant to Section 1.419 of the Commission’s rules,<sup>1/</sup> AT&T Wireless Services, Inc. (“AWS”) hereby submits its comments on the Commission’s Notice of Proposed Rulemaking issued in the above-captioned proceeding.<sup>2/</sup>

**INTRODUCTION AND SUMMARY**

AWS fully supports the Commission’s goal of promoting the rapid deployment of wireless services to rural areas. AWS has made great strides in recent years in expanding its services outside of urban markets, and it has extensively utilized Commission-created

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<sup>1/</sup> 47 C.F.R. § 1.419 (2003).

<sup>2/</sup> *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless*

mechanisms, such as partitioning and disaggregation, to provide opportunities for other carriers in more than 100 rural markets to construct complementary networks and offer wireless service to rural customers. The Commission's recently-adopted establishment of a secondary market in spectrum will likewise promote the availability of wireless service in rural areas. Rural consumers would be best served by the adoption of additional measures to facilitate these spectrum transactions, such as credits for the return of unutilized spectrum, and the elimination of unnecessary obstacles like the cellular cross-interest rule.

In the absence of any evidence of market failure, however, there is no justification for imposing new performance requirements on wireless carriers licensed to serve rural areas. The Commission itself recognizes that the wireless market is extremely robust, and the evidence indicates that rural areas are reaping the benefits of competition among providers of commercial mobile radio service ("CMRS"). Indeed, as the Commission notes, all but five percent of the U.S. population has access to *three* or more mobile providers. Having paid billions in spectrum auctions, CMRS licensees have every incentive to serve as many customers as possible. While wireless carriers deployed first in areas with dense populations, they are now moving as quickly as resources will allow to extend their coverage in rural areas. Government-mandated deployment schedules could lead to construction in areas with little demand and result in stranded investment in wireless infrastructure. Untested spectrum "easement" proposals should also be rejected because they create a significant risk of interference with existing wireless providers in rural areas.

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(cont.)

*Services, and To Facilitate Capital Formation*, WT Docket Nos. 02-381, 01-14, 03-202, *Notice of Proposed Rulemaking*, 18 FCC Rcd. 20802 (rel. Oct. 6, 2003) ("*NPRM*").

In addition, the Commission should streamline the procedures by which wireless carriers qualify for universal service eligible telecommunications carrier (“ETC”) status and require incumbent local exchange carriers (“ILECs”) to meet their obligations to provide wireless carriers with access to unbundled network elements. Together with its policies that facilitate the transfer and leasing of spectrum among carriers, ensuring that wireless carriers have access to the same universal funds and components of the ILEC networks available to other competitors will help foster the goal of providing ubiquitous nationwide wireless coverage.

**I. THE COMMISSION’S MARKET-ORIENTED APPROACH TO CMRS AND THE INCREASED FLEXIBILITY ACCORDED SPECTRUM TRANSFERS HAVE ENCOURAGED WIRELESS COMPETITION IN RURAL AREAS**

The Commission itself has recognized that “rural as well as urban consumers and businesses have benefited from [the Commission’s] market-oriented [CMRS] policies.”<sup>3/</sup> Under these policies, 270 million people, or 95 percent of the total United States population, live in counties with access to *three or more* different mobile telephone operators, and more than 83 percent of the population live in counties with *five or more* mobile telephone operators competing to provide service.<sup>4/</sup> Indeed, the Commission “recently found that there is effective competition in the CMRS market place as a whole, *including rural areas.*”<sup>5/</sup> As the record demonstrates, wireless carriers have taken extensive advantage of the increased flexibility that the Commission has granted them to tailor their spectrum holdings to their actual needs and

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<sup>3/</sup> NPRM ¶ 6.

<sup>4/</sup> NPRM ¶ 45 (emphasis added).

<sup>5/</sup> NPRM ¶ 6 (citing *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*, WT Docket No. 02-379, *Eighth Report*, 18 FCC Rcd. 14783, ¶¶ 12-13 (2003)) (emphasis added).

move underutilized spectrum to its highest and fullest use.<sup>6/</sup> The expansion of wireless service in rural areas plainly has been promoted by this flexible regulatory policy.

AWS' experience confirms the utility of the Commission's approach for both carriers and consumers. Specifically, the ability to partition and disaggregate spectrum has allowed AWS to conduct transactions with other entities to expedite the deployment of CMRS in rural areas. Over the past year, AWS entered into more than a dozen agreements that involved the sale of more than 100 separate market areas or portions of market areas, and six or seven additional similar transactions are currently being negotiated. Many of the transactions involved small and rural carriers, including Union Telephone Company, MobileTel LLC, Commnet Capital, LLC, Westlink Communications L.L.C., Highland Cellular, Inc., Indigo Wireless, Inc., RCC Minnesota, Inc., Siouxland PCS, Inc., Lone Star Wireless, Inc., and Texas RSA 1 Limited Partnership. While there were a few small cities included in the transactions, the vast majority of markets transferred were rural and suburban counties, rural service areas, and sparsely populated areas in more than twenty states. As such, partitioning and disaggregation not only provides compensation to larger carriers for a valuable, but potentially underutilized, resource, it affords them an extended roaming footprint. At the same time, these policies give smaller carriers the flexibility to tailor their spectrum purchases to their specific needs at any given time.

Although small entities often have the ability to focus their attention on constructing in one or two rural markets, AWS, in many instances, has chosen to expand its network into rural areas on its own or with joint venture partners. AWS and Cingular, for instance, have begun operating their "RoadRunner" project, which is designed to provide state-of-the-art

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<sup>6/</sup> *NPRM* ¶ 3 ("Existing data indicates that wireless service providers have taken advantage of these regulatory mechanisms.").

GSM/GPRS/EDGE service to their customers and roamers along more than 4000 miles of select major highways in rural parts of the country. In addition, AWS and Cingular have recently filed a series of assignment applications seeking Commission approval to expand the RoadRunner joint venture to serve approximately 500 additional rural highway miles. This joint construction/spectrum transaction will allow consumers to remain connected as they travel lengthy stretches between cities and towns for work, school, and vacations, and it is likely to have the added effect of providing wireless service to many small communities and homes in close proximity to the highway corridors the RoadRunner project is designed to cover.

As the Roadrunner project and the numerous transactions described above demonstrate, the Commission's partitioning and disaggregation policies have helped foster rural wireless deployment by enabling wireless carriers to concentrate their efforts where they can be most efficient. The result is better coverage, the latest technological innovations, and better rates for *all* consumers, all on the most expeditious schedule possible. AWS believes that the Commission's recently-adopted secondary market rules and procedures<sup>7/</sup> will yield similar benefits in rural areas, and it has urged further streamlining and expansion of the rules to make them even more useful to carriers and consumers.<sup>8/</sup> Indeed, AWS is in the process of negotiating agreements to lease some of its spectrum to other entities that are interested in using the spectrum to serve rural and suburban areas. The leasing rules augment the partitioning and disaggregation rules by permitting spectrum to be used in even more sparsely populated areas where capital might not be available for outright spectrum purchases.

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<sup>7/</sup> *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 20604 (2003) ("*Secondary Markets Proceeding*").

<sup>8/</sup> *See generally* AWS Comments, *Secondary Markets Proceeding* (filed Dec. 5, 2003).

## II. LICENSEES OPERATING IN RURAL AREAS SHOULD NOT BE SUBJECT TO ADDITIONAL REQUIREMENTS

Despite the evidence of the efficacy of its existing policies, the Commission nonetheless proposes to deviate from its primary reliance on the marketplace to foster CMRS deployment in rural areas on the ground that “fewer competitors in rural areas *may* indicate a market failure.”<sup>9/</sup> An unsupported supposition of market failure, however, does not provide adequate justification for imposing government-mandated deployment schedules or other similar directives in rural areas. As the Commission itself acknowledges, there are “inherent economic challenges of providing telecommunications services in sparsely populated, expansive rural areas”<sup>10/</sup> and “varying technical and demographic characteristics” make “the economics of providing service . . . significantly different in rural areas as compared to urban areas.”<sup>11/</sup> In many situations, “if there were more than an efficient number of providers in a market, absent such other support such as subsidies, . . . some of these providers would go out of business, causing a loss of service and other inconvenience to consumers.”<sup>12/</sup>

Having completed construction in denser markets, wireless carriers are moving quickly to the more difficult, but necessary, task of extending their networks to rural areas. Not only do wireless carriers want to satisfy consumer demand for connectivity where existing and potential subscribers live, work, play, and travel, given the billions of dollars paid at spectrum auctions,

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<sup>9/</sup> *NPRM* ¶¶ 6-7 (emphasis added).

<sup>10/</sup> *NPRM* ¶ 4.

<sup>11/</sup> *NPRM* ¶ 7.

<sup>12/</sup> *NPRM* ¶ 6.

they have every incentive to expand their rural service as soon as economically feasible.<sup>13/</sup> There is no reason to believe that competitors will cease their efforts to improve and expand service further into rural markets. The Commission should therefore decline to impose any additional performance requirements or impose new construction requirements on licensees beyond the initial term of the license.<sup>14/</sup>

The Commission is not equipped to make the many distinctions necessary to determine when and what level of deployment may be appropriate in any given area and, in any event, the regulatory mechanism is simply too inflexible to adjust to rapidly changing markets, technologies, and consumer needs. Replacing market-based policies with regulatory burdens, far from promoting faster deployment, is as likely to have the opposite of its intended effect, driving competitors out of the market by subjecting them to performance requirements that are not economically sustainable in more sparsely populated areas. Such a result would not serve the best interests of rural consumers or their communities.

In addition, AWS opposes any proposal that would result in the forfeiture of spectrum not being currently used by the licensee. As noted above, carriers serving rural areas have the incentive to put spectrum to use as soon as practicable because to do otherwise would result in the waste of a valuable resource. AWS has in many instances met this goal through the sale of portions of its spectrum or service areas to other entities whose business plans call for rapid deployment in specific rural markets. This mechanism, however, should remain completely voluntary, and carriers should not be punished for failing to build out all areas at a Commission-

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<sup>13/</sup> *NPRM* ¶ 8 (The addition of users to a communications network increases the value of that network and “enable[s] Americans who travel, reside or conduct business throughout the country to communicate effectively.”).

<sup>14/</sup> *NPRM* ¶¶ 43-46.

dictated schedule when they have already met initially established Commission construction benchmarks. If anything, to encourage the free flow of spectrum to its highest use, leased spectrum should count toward construction requirements.<sup>15/</sup>

Similarly, the Commission should not consider the use of mandatory spectrum easements because of the serious interference risks to incumbent licensees that such easements would create. In any event, such a step would be extremely premature. As the Commission itself notes, “the Spectrum Policy Task Force recommended that the Commission, in the first instance, focus on secondary markets as the primary means to increase access to spectrum,” and only “*after there has been sufficient time to consider the effectiveness of this approach,*” should the Commission “consider alternative mechanisms such as government-defined easements.”<sup>16/</sup> Considering that the secondary markets rules are still a month away from going into effect, there has clearly been no practical test of the effectiveness of those rules in fostering the availability of service in rural areas.

Moreover, as AWS and other carriers have explained at length in prior pleadings,<sup>17/</sup> the technology to allow use of such underlays without risk of interference does not yet exist. Indeed, the Association of Public Safety Communications Officials (“APCO”) recently expressed “grave concerns about any effort to rush smart radio technology to market” and questioned “the viability

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<sup>15/</sup> See *Secondary Markets Proceeding* ¶ 146 (counting lessee activity towards lessor construction requirement).

<sup>16/</sup> *NPRM* ¶ 30 (emphasis added).

<sup>17/</sup> See, e.g., AWS Initial Comments, *Secondary Markets Proceeding*, at 4-5 (filed Dec. 5, 2003); Cellular Telecommunications & Internet Association Initial Comments, *Secondary Markets Proceeding*, at 5-6 (filed Dec. 5, 2003); Cingular Wireless, LLC Initial Comments, *Secondary Markets Proceeding*, at 8-12 (filed Dec. 5, 2003).

and reliability of such technology.”<sup>18/</sup> In light of the availability of voluntary, market-based options and the lack of record evidence as to the practical effects of the operation of cognitive radio technologies in occupied spectrum, the Commission should not consider underlays or easements in this proceeding.<sup>19/</sup>

Finally, the Commission should continue its policy of determining the appropriate size of licensed service areas on a service-by-service basis, rather than basing such decisions on whether the licenses are for rural or urban areas. Such an approach is necessary to ensure that the technical and other requirements specific to the various services can be met. The continued use of this approach would have no negative effect on the ability of carriers to utilize spectrum fully for rural use. As discussed above, the Commission’s policies promoting the use of partitioning and disaggregation can and do fully accommodate the needs of smaller or rural carriers for right-sized licenses and allow such carriers to expand coverage as their financial resources and business plans permit.

### **III. ANY ACTION TAKEN BY THE COMMISSION TO FURTHER RURAL DEPLOYMENT SHOULD BE IN THE FORM OF INCENTIVES OR REDUCED REGULATORY BURDENS**

Given the inevitable inefficiencies of government-issued deployment mandates, certain regulatory incentives or rule changes that better enable carriers to make deployment decisions would most effectively encourage rural wireless service. To this end, the Commission should eliminate barriers (such as the cellular cross-interest rule) to the undertaking and completion of

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<sup>18/</sup> Communications Daily, 2003 WL 5957311 (December 19, 2003); *see also* APCO Press Release (Dec. 18, 2003), *available at* <http://apco911.org/news/SmartRadio.htm>

<sup>19/</sup> The Commission has just commenced a rulemaking proceeding to examine the appropriate uses of smart radio technology, and has yet to receive, much less consider, any comments in that proceeding. *See FCC Opens Proceeding on Smart Radios*, ET Docket No. 03-108, *News Release* (Dec. 17, 2003).

efficient spectrum transactions, decrease the transaction costs of such deals by implementing “reverse discounts” and auction credits for the return to the Commission of underutilized spectrum, increase the ease of obtaining ETC status for wireless carriers providing or seeking to provide rural service, and ensure that wireless carriers have access to the ILECs’ unbundled network elements.

First, the Commission can build on the success of partitioning and disaggregation by giving licensees additional incentives to make spectrum available to third parties who can put it to its highest and best use.<sup>20/</sup> Because, as some rural carriers have noted, transaction costs are often the most significant impediment to the successful completion of partitioning and disaggregation agreements,<sup>21/</sup> providing “reverse discounts” to carriers that partition portions of their service area to rural carriers could encourage carriers to enter such agreements.<sup>22/</sup> Similarly, accepting unused spectrum in exchange for a monetary credit toward a carrier’s future auction purchases could increase participation in auctions and foster private transactions among carriers.<sup>23/</sup> Adoption of such policies would make the sale of rural territories more economically

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<sup>20/</sup> The *Spectrum Policy Task Force Report* explicitly notes the benefits that a secondary markets regime can bring to promote access to rural spectrum, and specifically recommends that “[t]o improve providers’ ability to gain access to spectrum in rural areas, the Commission [ ] promote the development of an efficient and flexible secondary markets regime that, in addition to partitioning, facilitates the leasing of spectrum usage rights in rural areas, which would significantly lower transaction costs.” Spectrum Policy Task Force, Federal Communications Commission, ET Docket No. 02-135, *Report*, at 59-60 (Nov. 2002) (“*Spectrum Policy Task Force Report*”), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-228542A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-228542A1.pdf).

<sup>21/</sup> *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*, 17 FCC Rcd. 25554, ¶ 20 n.80 (2002) (“*NOI*”) (citing to Testimony of Caressa Bennet, Counsel for the Rural Telecommunications Group); see also South Dakota Telecommunications Association Comments, *NOI Proceeding*, at 15 (filed Feb. 3, 2003) (asking the Commission to provide large licensees with greater incentives to deal with rural carriers).

<sup>22/</sup> See Corr Comments, *NOI Proceeding*, at 9 (filed Feb. 3, 2003).

<sup>23/</sup> See Rural Cellular Association Comments, *NOI Proceeding*, at 12 (filed Feb. 3, 2003).

feasible, as well as ensure that the Commission remains in the same position financially as if a rural carrier had successfully bid on the spectrum in the first place.<sup>24/</sup>

Second, the Commission should simplify the current ETC designation procedures, which entail a difficult, multi-layered process for wireless carriers that often takes years to complete.<sup>25/</sup> Providing universal service funds to wireless carriers has been an effective method of encouraging the deployment of a variety of new and innovative telecommunications services to rural, remote, and tribal lands.<sup>26/</sup> The ETC rules provide “exactly the right incentive for [carriers] to extend service into areas that would otherwise not be economically feasible to construct and maintain.” It makes sense to streamline the ETC process to better meet the goals of, and maximize the benefit of, the Commission’s universal service policies.<sup>27/</sup>

Conversely, the Commission should decline to adopt proposals that could discourage wireless carriers from obtaining ETC status, such as an equal access requirement or primary line limitations. Wireless carriers are in a far better position than competitive wireline carriers to enter rural markets and they have been deploying service to some areas that previously had no telecommunications services at all.<sup>28/</sup> Assisting wireless carriers in securing ETC designation

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<sup>24/</sup> See Corr Comments, *NOI Proceeding*, at 10 (filed Feb. 3, 2003).

<sup>25/</sup> See Western Wireless Comments, *NOI Proceeding*, at 19-20 (filed Feb. 3, 2003).

<sup>26/</sup> See CTIA Comments, *NOI Proceeding*, at 5 (filed Feb. 3, 2003); Western Wireless Comments, *NOI Proceeding*, at 19-22 (filed Feb. 3, 2003); Dobson Comments, *NOI Proceeding*, at 16 (filed Feb. 3, 2003); Monet Comments, *NOI Proceeding*, at 8 (filed Feb. 3, 2003).

<sup>27/</sup> Smith Bagley Comments *NOI Proceeding*, at 6 (filed Feb. 3, 2003).

<sup>28/</sup> See, e.g., CTIA Comments, *NOI Proceeding*, at 3 (filed Feb. 3, 2003); Dobson Comments, *NOI Proceeding*, at 17 (filed Feb. 3, 2003); Rural Cellular Association Comments, *NOI Proceeding* at 9 (filed Feb. 3, 2003); Smith Bagley Comments, *NOI Proceeding*, at 6 (filed Feb. 3, 2003); Western Wireless Comments, *NOI Proceeding*, at 5-6 (filed Feb. 3, 2003); Marion County Chamber of Commerce Letter, *NOI Proceeding*, at 1 (filed Jan 27, 2003); Hattiesburg Chamber of Commerce Comments, *NOI Proceeding* at 1 (Jan. 28, 2003).

would reduce the costs of deploying wireless services to rural communities<sup>29/</sup> and significantly enhance intermodal competition in those areas.

Finally, the Commission should ensure that wireless carriers continue to have the right – explicitly recognized in the recent *UNE Triennial Order* – to access ILEC unbundled network elements on the same basis as other competitive carriers.<sup>30/</sup> Wireless providers compete directly with ILECs in the local exchange market and may, especially in rural areas, provide the best or only alternative to the incumbents’ local residential service. So long as wireless carriers continue to rely on ILEC interoffice transport facilities to link cell sites and mobile switching centers, ready access to such facilities is essential to the deployment of wireless services in rural as well as urban areas.<sup>31/</sup>

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<sup>29/</sup> See Monet Comments, *NOI Proceeding*, at 8 (filed Feb. 3, 2003).

<sup>30/</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 16978, ¶¶ 140, 368 (2003) (“*UNE Triennial Order*”).

<sup>31/</sup> See generally, AT&T Wireless Services, Inc., *Petition for Clarification or Reconsideration of UNE Triennial Order* (filed Oct. 2, 2003).

## CONCLUSION

For the foregoing reasons, AWS respectfully urges the Commission to retain its market-oriented approach to encouraging the deployment of wireless services in rural areas. These mechanisms, together with full access to the network elements and universal service funds available to other competitors, will enjoy far greater success in spurring wireless carriers to make their services available to rural customers than the imposition of new performance requirements or spectrum forfeitures.

Respectfully submitted,

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I, Laura Rychak, hereby certify that on this 29th day of December, 2003, the foregoing Comments of AT&T Wireless Services, Inc. were filed electronically on the FCC's Electronic Comment Filing System and electronic copies were served via electronic mail to the following:

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