

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

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 Proposed Rulemaking* (“*Notice*”) seeking comment on the effectiveness of its current regulatory tools in helping to facilitate the delivery of spectrum-based

¹ OPASTCO is a national association of over 550 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, collectively serve over 3.5 million consumers. Nearly one half of OPASTCO’s members provide some type of wireless service. All 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 Services 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.

services to rural areas.³ Specifically, these reply comments address the large, nationwide carrier misperception that this proceeding and the implementation of measures to help stimulate the growth of spectrum-based services in rural portions of the United States are unnecessary.

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

In comments filed in this proceeding, large nationwide carriers and their representatives argue that the Commission's *Notice* is "premature"⁴ and that many Commission proposals are unnecessary because of the "highly competitive services" being offered throughout all regions of the United States.⁵ Specifically, Cingular Wireless LLC ("Cingular") notes that, "given the effectiveness of marketplace forces, the Commission should not attempt to *force* further deployment in rural areas."⁶ As representatives of rural interests have demonstrated however, if many of the new policies being considered by the Commission in its *Notice* are not adopted, rural carriers will continue to face an uphill battle in their attempts to provide meaningful wireless services to rural America.⁷

It is not surprising that large nationwide carriers such as Cingular, AT&T Wireless Services, Inc. ("AT&T"), as well as the Cellular Telecommunications & Internet Association ("CTIA"), strongly oppose many of the initiatives contemplated by the Commission in this

³ *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*, Notice of Proposed Rulemaking, WT Docket No. 02-381 (October 6, 2003).

⁴ Comments of Cingular Wireless, LLC at 1 ("Cingular Comments").

⁵ Comments of Cellular Telecommunications & Internet Association, at 2 ("CTIA Comments").

⁶ Cingular Comments at 3.

⁷ See generally Comments of Blooston Law Firm ("Blooston Comments"); Comments of National Telephone Cooperative Association ("NTCA Comments"); Comments of Rural Cellular Association ("RCA Comments").

proceeding.⁸ These companies control and represent the majority of the nationwide commercial mobile radio service (“CMRS”) licensees throughout the United States and, absent action by the Commission requiring rural deployments, will likely never provide spectrum-based services to rural areas until, as Cingular tellingly states, “there [is] some economic reason” for doing so.⁹ In its comments, AT&T adds that “wireless carriers are moving quickly to the more difficult, but necessary, task of extending their networks to rural areas,” but offers no timeline or deployment schedule to backup such a claim.¹⁰

To bolster their arguments that significant wireless competition has taken hold in rural America and that, as a result, the new policies discussed in the *Notice* are largely unnecessary, AT&T, CTIA and Cingular selectively cite portions of the Commission’s recent *Eighth CMRS Competition Report* (“*Competition Report*”).¹¹ AT&T and CTIA both note that, according to the *Competition Report*, 270 million people, or 95 percent of the total United States population, have three or more CMRS providers available to them, and more than 83 percent of the population lives in counties with five or more mobile telephone operators competing to provide service.¹² In citing these statistics, AT&T and CTIA would like the FCC to believe that rural customers are already afforded numerous choices for new and advanced spectrum-based services. However,

⁸ See Comments of AT&T (“AT&T Comments”) at 3 (“the Commission’s market-oriented approach to CMRS. . . [has] encouraged wireless competition in rural areas”); CTIA Comments at 2 (the Commission should “embrace the pro-competitive policies that have already done so much to speed the deployment of wireless service offerings at competitive prices to rural areas.”).

⁹ Cingular Comments at 4, n. 13. By contrast, rural telephone companies and cooperatives play a critical role in their communities by providing much-needed services. As NTCA suggests in its comments, “rural telcos are motivated not only by the bottom line, but also by a civic duty to ensure the viability of their community” NTCA Comments at 3.

¹⁰ AT&T Comments at 6.

¹¹ *Implementation of Section 602(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*, 18 FCC Rcd 14783 (2003).

the rural reality, as noted in the *Competition Report*, is that a substantial number of rural customers are without significant spectrum-based service options. In fact, in the same report, the Commission found that in slightly less than 50 percent of the country, consumers have a choice of two or fewer wireless carriers.¹³ When discussing the accuracy of the Commission's data-collection process, the Commission's *Competition Report* also readily-admits that "[b]ecause many . . . publicly available sources report national averages that reflect trends in the nation as a whole or in urban markets, they may provide limited insight into the extent of competition in sub-national markets and in rural areas."¹⁴ Upon closer review, the major carriers' reliance on the *Competition Report* to demonstrate that robust wireless competition exists in most rural portions of the United States is misguided and completely ignores the economic realities that face rural carriers and consumers.

In comments, Nextel Partners, Inc., Cingular, AT&T and CTIA urge the Commission to be patient and allow the spectrum leasing rules adopted in its *Secondary Markets* proceeding to spur the development of wireless services in rural areas.¹⁵ AT&T adds that that the Commission's existing partitioning and disaggregation rules currently work to "foster rural wireless deployment by enabling wireless carriers to concentrate their efforts where they can be

¹² CTIA Comments at 2; AT&T Comments at 3 (citing *Competition Report* at ¶¶ 12-13).

¹³ *Competition Report* at 23, n. 149.

¹⁴ *Id.* at 7.

¹⁵ See Cingular Comments at 5 ("The Commission should refrain from adopting any regulations designed to spur development in rural areas until it has had the opportunity to evaluate the success of its Secondary Markets initiative."); Comment of Nextel Partners, Inc. ("Nextel Comments") at 6 ("...Eliminating barriers to the development of secondary markets in spectrum will help to promote efficient use of spectrum, and thereby enhance the prospect of rural system development"); AT&T Comments at 3 ("...the...leasing of spectrum among carriers...will help foster the goal of providing ubiquitous nationwide wireless coverage."); CTIA Comments at 7 ("It would be. . .appropriate for the Commission to promote service to rural areas through the operation of market forces, including the recently liberalized rules designed to facilitate secondary markets.").

most efficient.”¹⁶ While OPASTCO and RTG believe that the steps taken by the Commission in its *Secondary Markets* proceeding have the potential to create additional spectrum opportunities for rural companies, the similarity of these rules to the Commission’s failed partitioning and disaggregation rules is startling. As is the case with partitioning and disaggregation, the decision to enter into a spectrum lease with a rural company remains exclusively with the licensee. Should such a licensee determine that the cost of negotiating and executing a spectrum lease with a rural carrier will not yield an acceptable return during the term of such a lease, as most licensees have determined in the partitioning and disaggregation realm, it is unlikely that a lease will ever materialize.¹⁷ Additionally, as is the case with partitioning and disaggregation, the current spectrum leasing rules provide little incentive for large licensees to effectuate leases with rural companies because construction of wireless systems in rural areas is usually unnecessary to help larger licensees meet their “substantial service” build-out requirements. By contrast, the “use what you lose” approach to licensing, contemplated by the Commission in its *Notice* and supported by OPASTCO and RTG, would incent large carriers to construct wireless facilities in rural and unserved areas, or face the loss of portions of their license. While spectrum leasing may eventually open up new opportunities for rural companies to access spectrum, based on the failures of partitioning and disaggregation in the rural context, rural carriers cannot afford to wait to find out if it is going to work.

Arguing that they are in the best position to determine when rural services should be deployed, the major nationwide carriers participating in this proceeding argue that new measures

¹⁶ AT&T Comments at 5.

¹⁷ Rural carriers have, for years, been on the wrong side of such cost/benefit analyses when attempting to partition or disaggregate portions of licensed spectrum from large, nationwide wireless carriers. Although, unlike partitioning, spectrum leasing would not result in a complete

considered in the *Notice* are unnecessary to ensure future deployment of spectrum-based services in rural areas. However, in order to ensure that meaningful spectrum-based services are provided to rural Americans, the Commission must move quickly to enact many of the specific proposals contained in the comments filed by OPASTCO and RTG.

II. Adoption of a “Keep What You Use” Approach to Licensing in Service Areas Larger Than BTAs Will Effectively End the Warehousing of Rural Spectrum

In comments filed in this proceeding, AT&T, Nextel, CTIA, and Cingular seek to continue the “large carrier” stranglehold over licensed spectrum in many rural areas. By opposing the adoption of a “keep what you use” approach to licensing and supporting the expansion of the lenient substantial service benchmark, these large nationwide carriers and their advocates seek to continue to hold rural spectrum hostage.¹⁸

While OPASTCO and RTG maintain that the implementation of a “keep what you use” approach to licensing is the only realistic means available to ensure that rural spectrum is deployed and not warehoused by large licensees, OPASTCO and RTG also agree with Blooston Law Firm (“Blooston”) that “where smaller license areas are used, re-licensing by a ‘keep what you use’ or ‘unserved area’ model would actually provide a disincentive to carriers that want to focus their efforts on extending service to sparsely populated areas.”¹⁹ Accordingly, OPASTCO and RTG support the implementation of a “keep what you use” approach for geographic service areas larger than Basic Trading Areas (“BTAs”). For BTAs and smaller sized geographic

transfer of the license, OPASTCO and RTG have no reason to believe that the end result for spectrum will be any different than past experiences for rural carriers.

¹⁸ See, AT&T Comments at 7; CTIA Comments at 9; Nextel Comments at 10; Cingular Comments at 7.

¹⁹ Blooston Comments at 10.

service areas (including Rural Service Areas and Metropolitan Statistical Areas), OPASTCO and RTG concur with other rural commenters that the “substantial service” build-out requirement is more appropriate. As NTCA notes in its comments, “providing ‘substantial service’ in a small geographic service area covering a rural territory necessarily involves serving the rural territory.”²⁰

The implementation of a “keep what you use approach” as outlined by OPASTCO and RTG in their comments,²¹ combined with a “substantial service” build-out option for small geographic service areas, will ensure that rural spectrum is not continually warehoused by carriers only interested in securing more populated areas. Taken in sum, this mechanism will ensure meaningful rural coverage by carriers with licenses in rural areas and will provide real access to unused spectrum as contemplated by Congress when it enacted Section 309(j) of the Communications Act of 1934, as amended.

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

While it is not surprising that the rural commenters in this proceeding, including OPASTCO and RTG, support the continued use of MSAs and RSAs when licensing new wireless services,²² the most telling comments come from CTIA, which also supports the use of MSAs and RSAs in future spectrum auctions.²³ OPASTCO and RTG agree with CTIA’s recommendation that “the Commission pursue. . .a balanced approach for new spectrum blocks,

²⁰ NTCA Comments at 10.

²¹ Comments of OPASTCO and RTG at 6.

²² *See generally* NTCA Comments at 6; Blooston Comments at 20; RCA Comments at 10.

²³ CTIA Comments at 11.

and mix combinations of larger geographic service areas. . .with smaller geographic service areas, such as [MSAs] and RSAs.”²⁴

Past auction results and the success of B Block cellular licenses serve to illustrate that the use of MSAs and RSAs is the best way to ensure that rural areas receive new and advanced spectrum-based services. Over a decade ago, the Commission attempted to make sure 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. Most recently, RSAs were used in the Commission’s Lower 700 MHz Band auction, where, as Blooston aptly points out in its comments, many rural telephone companies were successful in obtaining RSA licenses.²⁵

Because the unavailability of licenses for small service areas still remains the most daunting obstacle to rural spectrum access, OPASTCO and RTG urge the Commission to set aside at least one spectrum block for every newly-created wireless service to be licensed in RSAs and MSAs. Such an MSA/RSA spectrum block should be equal in size to the spectrum blocks set aside for licensing by larger geographic service areas. By doing so, the Commission will satisfy the needs of the entire wireless industry by, “providing options for both national carriers and small providers operating in rural areas.”²⁶

²⁴ *Id.*

²⁵ Blooston Comments at 20.

²⁶ CTIA Comments at 11.

IV. Overwhelming Support Exists for the Elimination of the Cellular Cross Interest Rule

Virtually all of the commenters participating in this proceeding support the elimination of the cellular cross-interest rule in some fashion or another.²⁷ OPASTCO and RTG concur with CTIA's notion that "the cross-interest rule is impeding investment in and development of new wireless technologies in rural areas," and that the rule "may actually harm [competition] by inhibiting investment in RSAs."²⁸ OPASTCO and RTG believe that eliminating the cellular-cross interest rule will not have a chilling effect on competition in rural markets because, as previously discussed, significant wireless competition does not exist in many of these markets. By letting market forces dictate the correct number of carriers, the Commission will help ensure that carriers that are prepared to finance, construct and provide reliable wireless services to customers in rural areas have an opportunity to do so. Based on the totality of the comments submitted in this proceeding, by both large and small carriers, elimination of the cross-interest rule is clearly warranted.

V. Conclusion

The comments filed in this proceeding indicate a definitive rural carrier consensus for stricter rural buildout requirements, the adoption of a "keep what you use" approach to licensing in areas larger than BTAs and the future allocation of additional wireless licenses in smaller geographic service areas. Additionally, the record in this proceeding clearly refutes the large carrier misconception that the Commission's existing rules and policies are adequate to ensure

²⁷ See generally AT&T Comments at 9; CTIA Comments at 12; RCA Comments at 13; Cingular Comments at 5; United States Cellular Corporation Comments at 4.

²⁸ CTIA Comments at 13.

that spectrum based will be deployed in rural areas. Instead, by implementing the policies considered in the *Notice* and advocated by OPASTCO and RTG, the Commission can help to ensure that *meaningful* wireless coverage exists in all regions of America, not just those urban areas and highways served by large carriers.

Respectfully submitted,

Rural Telecommunications Group

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