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
	)	
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 Information	)	WT Docket No. 03-202

REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("US Cellular") by its attorneys, hereby files its reply comments in the above-captioned proceeding.

Introduction

In our comments, US Cellular supported the adoption of geographic service areas for newly created wireless services which are sized to provide initial licensing opportunities for regional and rural service providers. US Cellular also asked the FCC to confirm that the de facto control standard which is developed for spectrum leasing transactions would be applied to infrastructure sharing arrangements. Finally, we urged the FCC to retain the existing RSA cellular cross interest rule but

modify it to permit a higher (49%) attribution threshold for non-controlling minority interests in competing RSA cellular licenses.

In reviewing the comments filed in response to the Notice of Proposed Rulemaking in the proceeding,[1] US Cellular has determined that it can best make a contribution to clarifying the issues for FCC consideration in reply comments by focusing on the cross interest rule, concerning which various commenters have opposed our position.

I. None of The Arguments in Other Comments Refutes US Cellular's Showing That The Cellular Cross Interest Rule Should Be Retained.

In our comments US Cellular demonstrated that there is a continuing need for the cellular cross interest rule, originally adopted in 1991 and now set out at Section 22.942 of the FCC's Rules. As we noted, cellular and PCS remain distinct services, with PCS subject to relaxed service requirements, which often result in no actual service being provided to large parts of RSAs, even if the MTA and BTA PCS service areas with which RSAs overlap are nominally "served" by PCS carriers.[2] This is in contrast to the stringent service requirements in the cellular "buildout" and "unserved area" rules set out in Sections 22.911, 22.947 and 22.949 of the FCC's Rules. Those requirements have resulted in widespread actual service in RSAs, as areas not actually covered by a usable signal within five years of initial licensing are "lost" by the cellular carrier. Thus, abolishing the cross interest rule in RSAs

[1] Notice of Proposed Rulemaking, FCC 03-222, released October 6, 2003 ("Notice").
[2] As has been noted, Section 24.203(b) of the FCC's Rules requires, for example, that 10 MHz D, E and F Block PCS licensees cover only 25% of the population of the relevant BTA, five years after licensing, or provide "substantial service," that is, an unspecified but evidently even smaller coverage area.

"served" by two or more PCS licensees, as proposed by the FCC in the Notice, is no competitive safeguard at all.

As US Cellular concluded in our comments, there is no conceivable situation where 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. No discussion of the abstract merits of "flexibility," or the virtues of the "marketplace," or the difficulty of securing "waivers" of the cross interest rule can undermine that basic, and, we believe, inarguable proposition.

US Cellular did, however, recognize that licensees should be permitted greater flexibility to structure their business relationships in light of the last decade's market developments, by permitting non-controlling cross ownerships of up to 49% in RSAs, as long as facilities - based competition was also preserved.

Nothing in the comments filed on this subject undermines this conclusion.

The Rural Cellular Association ("RCA"), after lucidly describing the problem of PCS licensees failing to serve rural areas and demonstrating the need for FCC action to improve service to such areas (Comments, pp. 5-9), nonetheless endorses abolishing the cellular cross interest rule in RSAs "served" by more than three CMRS carriers, in agreement with the FCC proposal in the Notice. The sole justification provided for this course of action is the difficulty of obtaining "waivers" of the rule. However, if a rule should not be "waived" in the first instance, the difficulty of obtaining such waivers is hardly a valid reason to repeal it altogether..

Cingular Wireless, LLC also cites the "waiver" problem in its comments, and the rule's alleged "discourage[ment] of transactions that would otherwise serve the public interest." (Cingular Comments, pp. 5-6). No example of such a transaction is provided. We submit that there may be a good reason for this, namely the difficulty of formulating such examples, even theoretically. We are also unaware of any actual transactions in which such cross interests have been proposed or have been shown to be in the public interest.

CTIA[3] also attacks the cross interest rule for "impeding investment in and development of new wireless technologies in rural areas," and for failing to take into account the undoubted benefits of "one rate" national pricing plans.

To such arguments we would respond as follows. While monopoly is unquestionably beneficial to the monopolist, the FCC has, in countless other proceedings, rejected it as a desirable economic model. A cellular monopoly, in the absence of meaningful PCS competition, would generally lead to <u>less</u> investment and not more in RSAs, as the monopoly provider would often not have the spur of competition to provide better service. Moreover, the monopoly provider would also feel less, and not more, pressure to offer attractive pricing plans, "one rate" or otherwise.

AT & T Wireless Service, Inc. ("AWS") would abolish the rule in the name of "efficient spectrum transactions," (AWS Comments, p. 10). Efficient for whom? We believe that the greatest of all spurs to efficiency is meaningful competition. "Spectrum transactions" which create an RSA cellular monopoly would generally be

[3] See Comments of Cellular Telecommunications and Internet Association, pp. 12-13.

inefficient, and deleterious to consumer interests, except under very unusual circumstances best analyzed under waiver procedures.[4]

Lastly, OPASTCO and RTG[5] argue that the rule has prevented "many rural cellular carriers from acquiring interests in adjacent market cellular operations." Further, they argue that eliminating the cross interest rule will not negatively affect wireless competition in RSAs because competition doesn't exist there now. "Market forces," they maintain, should dictate the "correct number" of wireless carriers in the RSAs and those forces will then ensure that the surviving carriers are able to "finance, construct, and provide reliable wireless service to the customers in rural areas."

First, the present rules do not prevent the acquisition of "adjacent" cellular operations, unless the would-be acquirer is already a cellular licensee in the relevant market. Why is it a good idea to allow such a carrier to acquire both licenses?

Second, OPASTCO/RTG fail to explain, let alone prove, their argument that competition does not now exist in most RSAs. Competition certainly does exist when there are two cellular providers in a given RSA, and the repeal of the rule would help to extinguish such competition.[6]

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[4] AWS also urges, inter alia, "reverse discounts" and auction "credits" for the return of unused spectrum to promote rural service. US Cellular does not object to either, but also does not wish to surrender the service benefits of cellular competition in rural areas.

[5] See Comments of the Organization For The Promotion and Advancement of Small Telecommunications Companies, and Rural Telecommunications Group, pp. 13-14.

[6] In its most recent "Wireless Competition Report," the FCC noted that RSAs have "an average of 3.3 mobile competitors." Thought the report does not break down that number between cellular and PCS providers, history and anecdotal knowledge suggest that generally two of those 3.3 carriers will be cellular licensees. See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competition. Market Conditions With

Third, OPASTCO/RTG appear to argue that eliminating cellular competition will actually improve the cellular service now provided in RSAs. No evidence for this highly debatable proposition is cited either.

As noted above, it may be the case that there are small, very rural RSAs which cannot support more than one cellular provider. If so, a waiver request in the context of an assignment application would be the appropriate vehicle to deal with such situations. But it would be totally unjustified to repeal the RSA cross interest rule based on the idea that most RSAs are now in that circumstance. They are not.

Conclusion

For the foregoing reasons, and those given previously, the RSA cellular cross interest rule should be retained, modified as described above.

Respectfully submitted,

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Respect to Commercial Mobile Services, Eighth Report, WT Docket 02-379, FCC 03-150, released July 15, 2003.