

**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
)	

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

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REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

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

INTRODUCTION AND SUMMARY

The record compiled in this proceeding demonstrates that the Commission’s existing market-based regulatory approach has been extremely successful in bringing wireless services to consumers in even the most rural parts of the country. All but five percent of the U.S. population

¹ 47 C.F.R. § 1.419 (2003).

² *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 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”).

has a choice of three competing wireless carriers today and even more live in counties in which digital wireless technology is available. These statistics stand in stark contrast to the poor coverage provided by wireline carriers in many rural areas.

The Commission should therefore reject proposals for government-mandated build-out obligations enforced through harsh spectrum reclamation penalties; resist entreaties to get involved in private roaming agreements; and decline to establish geographic areas for future auctions that are no larger than a county. Not only is such governmental interference completely unnecessary to encourage the deployment of wireless services in rural markets, it is more likely to undermine the Commission's goals by forcing carriers to engage in unsound economic behavior. The rural carriers suggesting such requirements provide no reason to believe that they would be able to serve rural consumers more efficiently or expeditiously than existing licensees, even with the windfalls they would enjoy through such mechanisms.

Rather than attempt to correct a problem that does not exist, the Commission should heed the advice of those carriers that have made it part of their business plans to serve sparsely populated markets. Several commenters, for instance, urge the Commission to adopt and enforce adequately rules that are designed to provide appropriate incentives for rural construction, including streamlining and simplifying the cumbersome process in place today for obtaining universal service funds, instead of imposing new regulatory burdens on larger carriers. Similarly, AWS, which has been a leader in establishing partitioning and disaggregation arrangements in rural markets, and Dobson, which has taken full advantage of the secondary market to obtain spectrum throughout rural America, agree that incentives would do much more to further rural deployment than new performance benchmarks. The Commission should also eliminate outdated and unnecessary regulations, such as the cellular cross-ownership restriction,

and expand its secondary market policies to include purchase and sale transactions. Encouraging rather than burdening wireless deployment in rural areas should be one of the Commission's paramount goals.

I. NO MARKET FAILURE EXISTS THAT WOULD WARRANT THE IMPOSITION OF REGULATORY BURDENS ON WIRELESS CARRIERS

The Commission should not adopt the proposals of some rural wireless commenters to jettison the market-based policies that have demonstrated their efficacy in furthering the deployment of wireless service in rural areas. The Commission has already correctly determined that “there is effective competition in the CMRS marketplace as a whole, *including rural areas.*”³ As the Commission and numerous commenters acknowledge, *95 percent* of the U.S. population is served by three or more wireless carriers,⁴ and *97 percent* of the population lives in counties in which digital wireless service is offered.⁵ These figures evidence the *opposite* of market failure. Like their urban counterparts, rural consumers are reaping the benefits of the Commission's policies that are designed to reduce the regulatory burdens on wireless carriers and provide the correct incentives for companies to build in less populated areas.

The Commission's conclusions on effective rural competition are fully consistent with the experience of carriers that are actually providing wireless service – both voice and advanced data – to rural areas. Dobson, for instance, has focused its business plan on rural markets and has been able, under the Commission's pro-competitive policies, to become “a leading provider of rural and suburban commercial mobile wireless services throughout the United States” since

³ NPRM ¶ 6 (citing *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*, 18 FCC Rcd 14783, ¶¶ 12-13 (2003)) (“*Eighth CMRS Competition Report*”) (emphasis added).

⁴ See NPRM ¶ 45; *Eighth CMRS Competition Report* ¶ 18; AWS Comments at 3; Cellular Telecommunications & Internet Association Comments at 2 (“CTIA”).

⁵ *Eighth CMRS Competition Report* ¶ 78; CTIA Comments at 2-3.

its entry into those markets in 1990.⁶ Similarly, Nextel Partners, states that its system has grown from serving 50,000 customers to covering more than 37 million POPs, and that its “primary focus is to provide digital wireless mobile communication services in mid-sized and smaller markets, including historically underserved and rural markets throughout the United States.”⁷

National carriers also have turned their attention to rural America. As AWS described in its comments, it is aggressively extending its GSM/GPRS/EDGE footprint into rural markets through new construction, joint ventures, and roaming agreements with other carriers, and it has entered into numerous agreements to partition rural markets to smaller entities.⁸ Rural customers today demand the same level of service and rates available to urban wireless customers.⁹ The fact that they receive it demonstrates that the wireless sector of the telecommunications industry has not overlooked their needs.

Even though many rural wireless carriers have made great strides in offering both innovative and profitable service to their communities, the comments filed in this proceeding demonstrate that others wish to enlist the Commission in obtaining undeserved windfalls. For example, organizations such as OPASTCO, RTG, and RCA urge the Commission to adopt a “keep-what-you-use” approach to licensing that would require licensees that have purchased geographic areas larger than a county to hand over the spectrum to other entities if they do not build in every single area encompassed by their license by the half-way mark of their license

⁶ Dobson Communications Corporation Comments at 5 (“Dobson”).

⁷ Nextel Partners, Inc. Comments at 2 (“Nextel Partners”).

⁸ AWS Comments at 4-5.

⁹ Dobson Comments at 5; *see also id.* at 4 (“[A]vailable information shows that the average price of mobile service is very similar in urban and rural areas.”); Nextel Partners Comments at 2 (“Nextel Partners brings to its customers in high cost rural areas and smaller markets the same national network and the same fully integrated four-in-one bundle of services available from Nextel in urban areas”); CTIA Comments at 2 (citing EconOne report that there is virtually no difference in the average monthly rates for wireless service in urban and rural areas).

term.¹⁰ Such proposals are designed to force large licensees to sell off spectrum at fire sale prices rather than to increase service options for rural customers.

A keep-what-you-use model is also unnecessary in light of the Commission's performance requirements, which are intended to deter warehousing and ensure the efficient use of spectrum. Those rules are far preferable to keep-what-you-use, moreover, because they do not force carriers to deploy facilities in a fiscally unsound manner or benefit one particular sector of an industry over another.¹¹ As the Commission acknowledges, and many commenters agree, carriers must be able to operate "at a competitive and efficient scale of operation,"¹² and this often means that urban areas, where the carrier has the chance of recouping its auction and construction investments, must be built first.¹³ Government regulation should not put carriers in the position of either deploying uneconomically or relinquishing portions of their spectrum and service areas that they purchased at auction.¹⁴

¹⁰ Organization for the Promotion and Advancement of Small Telecommunications Companies/Rural Telecommunications Group Comments at 5-6 ("OPASTCO/RTG"); Rural Cellular Association Comments at 5-6 ("RCA"); *see also* National Telecommunications Cooperative Association Comments at 9-10 ("NTCA").

¹¹ *Cf.* Cingular Wireless LLC Comments at 4 ("Cingular").

¹² *See NPRM* ¶ 6; Cingular Comments at 4; *see also* AWS Comments at 2-3, 7; CTIA Comments at 6-7; Dobson Comments at 7-9; Nextel Partners Comments at 18.

¹³ *See, e.g.,* AWS Comments at 6; CTIA Comments at 6 ("[T]he wireless industry has already moved to provide numerous telecommunications options in almost every area of the country" and "[t]he Commission should not disturb this success by imposing requirements that require operators to make construction decisions that are not economically viable or sustainable."); Cingular Comments at 3-4 ("The adoption of additional performance requirements for incumbent services . . . would interfere with marketplace forces by requiring carriers to deploy services in a fiscally unsound manner or cease providing service in marginally profitable areas to avoid costly and unprofitable expansion obligations" which could drive carriers out of service and cause loss of service to consumers); Dobson Comments at 7 (It is only natural for providers to "focus first on serving the more populated and the more heavily trafficked areas before expanding coverage to less-populated areas, providing that expansion is not cost prohibitive.").

¹⁴ Given that carriers make deployment decisions – whether rural or urban – based on the economic viability of deployment, there is no reason to focus more intently on rural areas with respect to spectrum audits than urban areas. *See* Cingular Comments at 7.

While AWS takes very seriously its obligation to operate in the public interest, the Commission itself recognizes “the inherent economic challenges of providing telecommunications services in sparsely populated, expansive rural areas” and that “if there were more than an efficient number of providers in a market, absent other support such as subsidies, in the long run some of these providers would go out of business, causing a loss of service and other inconvenience to consumers.”¹⁵ As Dobson notes, “[t]he bottom line is that wireless carriers are in the business of providing service in areas where people can use it” and “[i]t is unreasonable to expect that any carrier will extend service into an area in which costs make that service uneconomic.”¹⁶ Indeed, rather than promoting additional rural deployment, “[c]hanging the rules now to *mandate* uneconomic investments will only serve to diminish shareholder value in investments made in auctioned spectrum based on existing rules,” which “could eliminate long range benefits from the Commission’s positive steps taken to foster development of a secondary market in spectrum.”¹⁷

The imperatives to deploy only where the costs of deployment can ultimately be recouped apply to small and rural wireless carriers as well as to larger carriers. There is no reason to believe that, if the Commission were to adopt rules forcing larger carriers to relinquish spectrum or sell it at low prices to other entities if they do not build quickly enough, the new licensees would be any more able to serve the area rapidly if the economics do not support the costs of building out and providing service there.

The same would be true if the Commission established a competitive bidding strategy in which it only offered licenses in geographic areas the size of counties. Just because small

¹⁵ *NPRM* ¶¶ 4, 6.

¹⁶ Dobson Comments at 7-8.

¹⁷ Nextel Partners Comments at 18 (emphasis in original).

carriers might be successful bidders at relatively low prices for smaller geographic licenses in rural areas does not mean they will be any more able to attract the funding necessary to actually construct a network and provide service than larger carriers. Indeed, they may be less able to do so. Moreover, such a one-size-fits-all approach would undermine the Commission's ability to tailor its licensing schemes as necessary to ensure the most efficient use of the spectrum at issue. Licensing decisions should depend on the amount of spectrum available, the number and location of incumbents in the band, the services envisioned, and the technical characteristics of the spectrum rather than the application of one cookie-cutter size for all circumstances.¹⁸

Proponents of new regulatory restrictions also underrate the value of the Commission's partitioning and disaggregation rules in bringing wireless service to rural areas.¹⁹ In AWS' experience – and the experience of the dozens of small companies with whom AWS has entered into spectrum deals – these rules are working, and working well, in providing opportunities for rural carriers and speeding service to rural areas. As AWS noted, it entered into more than a dozen partitioning or disaggregation transactions in 2003 alone, most with small entities.²⁰ It has never placed an “a million ‘pops’” threshold on such deals, notwithstanding Blooston's contention that such threshold is the norm in partitioning and disaggregation arrangements.²¹ Indeed, AWS is about to close a few spectrum transactions in which the total number of potential customers is very small. Three sales pending today involve approximately 56,000 POPs spread

¹⁸ AWS urges the Commission to avoid introducing “new” geographic areas to those already in use. Mismatches and overlaps between BTAs/MTAs, MSAs/RSAs, and EAGs/REAGs create inefficiencies, which lead to the underutilization of spectrum. Although AWS understands the copyright issues associated with adopting BTA/MTA market designations in future auctions, to the extent the Commission can avoid establishing multiple different and overlapping service areas in each subsequent auction, it should do so.

¹⁹ *See, e.g.*, Blooston Law Firm Comments at 11 (“Blooston”); NTCA Comments at 7-8.

²⁰ AWS Comments at 4-5.

²¹ *Cf.* Blooston Comments at 11.

across six counties; 292,000 POPs across 13 counties; and 250,000 POPs across 15 counties. Similarly, last year, a wholly-owned subsidiary of AWS partitioned its broadband PCS license for the New Orleans BTA by assigning to MobileTel, LLC an “undefined area” in Jefferson Parrish, Louisiana. The population of the assigned area was a mere 1533. Nextel Partners also notes that it has benefited from the Commission’s current partitioning rules.²² In sharp contrast to these marketplace deals, the keep-what-you-use proposal would provide an unjustified spectrum windfall to rural carriers.

Similarly, there is no basis for further government involvement in roaming arrangements, as proposed by OPASTCO/RTG and Millry.²³ There is no evidence that the agreements AWS enters into with rural carriers are “one-sided,” and its refusal in certain circumstances to support a smaller carrier’s attempt to set itself up as a “roamer trap” does not constitute anticompetitive behavior. In contrast to these unsupported assertions, moreover, Dobson provides significant data to demonstrate that it has had considerable success in obtaining roaming for its own rural customers on fair terms. In 2003, Dobson entered into nationwide reciprocal roaming agreements with both AWS and T-Mobile for GSM service, and it already had in place similar agreements with AWS and Cingular for TDMA service. As Dobson says, these agreements enable it “to offer its rural and suburban customers nationwide service and . . . [i]n turn, Dobson’s roaming partners are able to provide competitive service and expanded coverage in those rural areas covered by Dobson’s network where they lack coverage.”²⁴

The Commission also should decline to exempt rural wireless carriers from the public interest and consumer mandates applicable to all other wireless carriers, such as E911 and local

²² Nextel Partners Comments at 20.

²³ OPATSCO/RTG Comments at 12; Millry Corporation Comments at 1-2.

²⁴ Dobson Comments at 7.

number portability (“LNP”).²⁵ Unless there is a technical reason for non-compliance or, with respect to LNP, unless service is being initiated in an area in which there are no other wireless carriers,²⁶ it would not serve the interests of rural consumers for the Commission to grant such exemptions. Moreover, if technical barriers do exist, they apply equally to all carriers operating in rural markets.²⁷

II. INCENTIVES RATHER THAN REGULATORY BURDENS ARE THE BEST WAY TO PROMOTE RURAL DEPLOYMENT

Instead of burdening some wireless carriers for the benefit of others, there are a number of steps the Commission can – and should – take to encourage wireless carriers of all sizes to expand their deployment in rural areas. Both Dobson and Nextel Partners, for instance, explain that the key to fostering wireless system development is to make such deployment economically viable.²⁸ Specifically, as described below, the Commission should provide incentives, not mandates, for carriers to construct facilities or partition licenses in areas in which the return per customer is low and should eliminate unnecessary regulatory barriers.²⁹

First, wireless carriers serving rural areas should have full and expeditious access to universal service funds.³⁰ Wireless carriers seeking such funding today have met with substantial delay and obstruction, frequently failing to obtain regulatory approval of their ETC

²⁵ See RCA Comments at 7.

²⁶ The very existence of the wireless-to-wireless number porting requests about which these companies complain suggests that there are other competitors in the market and that they have upgraded their switches in order to meet their own porting obligations.

²⁷ For example, the antenna triangulation required for E-911 location fixes can sometimes prove difficult in markets with few cell sites.

²⁸ See, e.g., Nextel Partners Comments at 18-19; Dobson Comments at 2, 7-8.

²⁹ See, e.g., Nextel Partners Comments at 14-20; Dobson Comments at 2, 7-17.

³⁰ See, e.g., Dobson Comments at 2, 7-9.

applications within the six-month period established by the Commission's guidelines.³¹ As Nextel Partners correctly notes, "support for expansion of rural networks is immediately available and further delay in facilitating that funding is contrary to the specific policy objectives being advanced in this proceeding."³² Similarly, a decision to impose equal access requirements on ETC eligibility or adopt certain other proposals currently under consideration, such as a primary line restriction, would deter wireless growth in rural areas.

Second, the Commission could promote additional investment in rural telecommunications service by removing unnecessary barriers to economically efficient transactions. In particular, virtually every commenter, large or small, addressing the issue agrees that the Commission should repeal or substantially modify the cellular cross-interest rule³³ because it impedes deployment without providing any countervailing competitive benefit. Rural consumers today – by virtue of demand and availability of national 'one-rate' offerings – have access to the same rates and services as subscribers in MSAs in which carriers are exempted from the rule.³⁴ Thus, as CTIA correctly recognizes, the rule not only "fails to serve a legitimate purpose as either a competitive 'line-drawing' rule or a valid mechanism for protecting consumers," it actually harms the public interest.³⁵

Third, the Commission should take a more active role in ensuring that state and local governments do not undermine rural deployment through the imposition of unnecessary and unlawful restrictions on wireless carriers. For instance, as CTIA, Dobson, and Nextel Partners

³¹ See Nextel Partners Comments at 8-9.

³² Nextel Partners Comments at 9.

³³ See, e.g., AWS Comments at 9; CTIA Comments at 12-13; Cingular Comments at 5-6; Dobson Comments at 10-11; OPASTCO/RTG Comments at 14; RCA Comments at 13-14; United States Cellular Corporation Comments at 4-8.

³⁴ See CTIA Comments at 12-13.

³⁵ CTIA Comments at 13.

explain, the Commission could reduce the costs of tower siting by preempting unduly burdensome state or local construction requirements or by establishing uniform federal guidelines.³⁶ The Commission should also establish a national policy removing impediments to infrastructure sharing imposed by states and local governments, such as those currently being considered by the New York Public Service Commission.³⁷

Fourth, wireless deployment in rural areas would be promoted through refinement and expansion of the Commission's recently-adopted secondary markets policies.³⁸ Specifically, the Commission should extend the control standard adopted for spectrum leases in the *Secondary Markets Order* to transfers of control, license assignments, and infrastructure sharing arrangements. In addition, leased spectrum should constitute "use" for the purposes of any performance requirements placed on the licensee.³⁹ Further, the Commission should allow carriers, through the use of secondary market procedures, to determine the feasibility of and the demand, if any, for opportunistic technologies. Mandatory underlays and easements are likely to

³⁶ See CTIA Comments at 16; Dobson Comments at 13, Nextel Partners Comments at 16-17.

³⁷ CTIA Comments at 15-16 (citing New York State Public Service Commission, Proceeding on the Motion of the Commission to Examine Telephone Network Reliability, Case 03-C-0922 (rel. Aug. 25, 2003)).

³⁸ See, e.g., *NPRM* ¶ 3; Blooston Comments at 10-11 (asserting that small carriers should not be subject to spectrum revocation and that time should be allowed for the secondary market measures to take effect); CTIA Comments at 8 (asserting that regulatory action with relation to mandatory easements was premature in light of the fact that the Commission's new secondary market measures have not yet taken effect); Cingular Comments at 7 (asserting that the Commission should allow its recently adopted secondary market measures to have an effect before taking regulatory action); Dobson Comments at 9-10 (asserting that regulatory action is premature since the Commission's secondary market procedures have not had time to have their intended effect); Nextel Partners Comments at 15 (asserting that the imposition of regulatory requirements is premature since the Commission's secondary market procedures have not had time to have their intended effect).

³⁹ See, e.g., AWS Comments at 8; Blooston Comments at 3; CTIA Comments at 6; RCA Comments at 6; Wireless Communications Association Comments at 9.

undercut the value of spectrum obtained via auction and interfere with existing operations, thus imposing significant burdens on carriers without any evidence of market need.⁴⁰

Fifth, the Commission could increase the benefits of its partitioning and disaggregation rules by providing “reverse discounts” or credits to carriers that partition their service areas to rural carriers. While AWS does not share Blooston’s assessment that the existing rules have been unsuccessful in promoting rural deployment, it agrees that providing the partitioning licensee with “triple, quadruple or quintuple credit for the population partitioned” would make such transactions more attractive to large carriers.⁴¹ To the extent such incentives are adopted, they should be made retroactive to avoid penalizing carriers like AWS that have been offering, on their own initiative, portions of their licensed territories or frequencies to rural carriers for several years. Likewise, the Commission should reject Blooston’s proposal to limit the availability of credits to those transactions that occur within one year from the initial grant date of the license.⁴² In many instances, the rural carrier’s access to funding for construction is dependent on the extent to which adjacent areas have been built and the existence of potential roaming traffic. It is unlikely that the opportune circumstances for a spectrum purchase – in the view of the rural provider – would be present so soon after licensing.

Sixth, the time is now appropriate to streamline the cellular unserved area procedures to allow the remaining unserved areas in cellular geographic services areas (“CGSAs”) to revert automatically to the incumbent licensee’s CGSA, except for unserved areas greater than 50 square miles.⁴³ As Cingular notes, this rule change would further the Commission’s goals by

⁴⁰ See, e.g., AWS Comments at 8; CTIA Comments at 8; Dobson Comments at 15.

⁴¹ Blooston Comments at 14.

⁴² Blooston Comments at 13.

⁴³ Cingular Comments at 10-11.

allowing incumbents to expand into the rural portions of their license areas with first obtaining site-specific approval.⁴⁴ Such a streamlined approach would also be consistent with the Commission's policies in the *Secondary Markets Order* of attempting, whenever consistent with the public interest, to eliminate barriers hindering carriers from putting spectrum to its most efficient use.

Finally, the Commission should ensure that wireless carriers continue to have the right to access incumbent telephone company unbundled network elements on the same basis as other competitive carriers.⁴⁵ Wireless providers compete directly with wireline carriers in the local exchange market and may, especially in rural areas, provide the best or only alternative to the incumbents' local residential service. Ready access to essential transport facilities and other network facilities is necessary to the efficient deployment of wireless services in rural areas.⁴⁶

⁴⁴ Cingular Comments at 10-11.

⁴⁵ AWS Comments at 12; *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*”).

⁴⁶ *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 urges the Commission to retain the market-oriented approach that has proved successful in promoting wireless deployment, both urban and rural, and to reject the efforts of certain commenters to use the regulatory process to obtain an unfair competitive advantage at the expense of rural subscribers.

Respectfully submitted,

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I, Laura Rychak, hereby certify that on this 26th day of January, 2004, the foregoing Reply 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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