LUKAS, NACE, GUTIERREZ & SACHS
CHARTERED
1111 NINETEENTH STREET, N.W.
SUITE 1200
WASHINGTON, DC 20036
(202) 857-3500

WRITER'S DIRECT DIAL
(202) 828-9469

March 19, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communication,
WT Docket Nos. 02-381, 01-14, and 03-202

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of an oral *ex parte* presentation in connection with the above-captioned proceedings. On Thursday, March 18, 2004, representatives of the Rural Cellular Association ("RCA") met with the following individuals to discuss means to facilitate the provision of spectrum-based services to rural areas:

Kathleen Q. Abernathy, Commissioner
Matthew Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy
Daniel Gonzalez, Senior Legal Advisor to Commissioner Kevin J. Martin
Jennifer Manner, Senior Counsel to Commissioner Kathleen Q. Abernathy
Kevin J. Martin, Commissioner
Jessica Rosenworcel, Legal Advisor to Commissioner Michael J. Copps
Sheryl J. Wilkerson, Legal Advisor to Chairman Michael K. Powell
Jason Williams, Special Assistant to Commissioner Kevin J. Martin

In addition to undersigned counsel, RCA representatives John McMillan, Tom Walsh, Art Prest and Tom Attar participated in the meeting on RCA's behalf.

RCA's representatives referred to the association's formal Comments filed December 29, 2003, and discussed points noted on the attached summary sheet provided to attendees of the meetings.

Sincerely,

David L. Nace
Counsel for Rural Cellular Association

cc: Kathleen Q. Abernathy, Commissioner
Matthew Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy
Daniel Gonzalez, Senior Legal Advisor to Commissioner Kevin J. Martin
Jennifer Manner, Senior Counsel to Commissioner Kathleen Q. Abernathy
Kevin J. Martin, Commissioner
Jessica Rosenworcel, Legal Advisor to Commissioner Michael J. Copps
Sheryl J. Wilkerson, Legal Advisor to Chairman Michael K. Powell
Jason Williams, Special Assistant to Commissioner Kevin J. Martin

FACILITATING THE PROVSION OF SPECTRUM-BASED SERVICE TO RURAL AREAS (WT DOCKET NO. 02-381)

Re: RCA Comments filed with the FCC December 29, 2003

I. Background on Rural Cellular Association

- Approximately 100 cellular and PCS licensees are represented by RCA
- RCA members serve more than 135 rural and small markets of the U.S. where some 15 million people reside
- RCA is uniquely qualified to comments on the challenges of providing wireless services to rural areas. Its members have an outstanding record of subscriber service and it is the norm, not the exception, that RCA members provide better coverage of the rural areas they serve than the Big-6 nationwide competitors

II. Questions addressed by RCA in comments filed with the FCC

A. Definition of "rural area"

RCA submits that simpler is better:

For purposes of spectrum licensing, the continued use of Rural Service Areas ("RSAs") provides continuity in license areas and generally serves the intended purpose

For the purpose of imposing and administering operational requirements, a somewhat broader definition of "rural" is appropriate: (1) any area within an RSA, and (2) counties that may lie outside an RSA but that have a population density of not more than 100 persons per square mile.

B. Improved access to unused spectrum

The FCC should adopt a "keep what you use" approach, and reclaim unused spectrum as of a pre-announced time such as the 5-year anniversary of license grant

This approach allows others who can make use of the spectrum to purchase the license rights from the FCC, not from a large company that has warehoused rural area spectrum

This approach eliminates the need for a "build-out" showing to keep the entire license area – under this approach there would not be license forfeitures based upon failure to serve a percentage of the population in the geographic area

There is no need for a "substantial service safe harbor." That concept invites warehousing of valuable spectrum.

C. Relaxed power limits

RCA is informed by manufacturers that smart antennas and intelligent system design have the potential to permit higher power operation in rural areas

RCA asks the FCC to view such proposals in a favorable light to grant additional flexibility to companies who have a desire to serve the rural areas

D. Appropriate size of geographic service areas

When the FCC auctions spectrum with service areas larger than MSAs and RSAs, it effectively eliminates from the auction smaller entities whose goal is to serve rural areas and small markets

Why not make most spectrum available according to market sizes that allow all companies with an interest to compete for licenses? Where is the public benefit in eliminating potential applicants for spectrum in the FCC's auctions? If large companies want the spectrum, they will participate. If small companies cannot compete, rural areas suffer from the familiar problem of waiting until the large companies get around to them.

Rural areas lack density, so they are not as profitable to serve. Large license areas such as REAGs have the effect of delaying service to rural areas. Delay only serves to preserve the status quo.

The most current example of this problem is the plan to auction 90 MHz of spectrum at 1.7 – 2.1 GHz for 3G services (this is the subject of a Petition for Reconsideration by RCA in WT Docket No. 02-353)

E. The cellular cross-ownership rule has outlived its usefulness in many rural areas

The quality of service availability has less and less to do with who holds the cellular licenses. PCS competition is here, and 700 MHz and 1.7-2.1 GHz competition is almost here.

If the FCC considers it necessary to retain the rule, it should be limited in application to areas where there are 3 or fewer competitors

The waiver process is costly, time consuming and unpredictable. A better approach is to eliminate the rule as to RSA markets where four or more commercial wireless competitors will continue to operate.

III. Conclusion

Availability of USF support for wireless companies serving rural areas is critical to infrastructure deployment, safety of users, and economic development.

Adoption of a "use it or lose it" approach for reclaiming unused spectrum will stop warehousing and allow companies with an interest in serving rural areas to acquire needed spectrum.

Use of MSA/RSA license areas promotes uniformity that benefits service providers and the FCC alike. All companies with an interest in serving the public have a chance to be competitive in bidding for MSA/RSA sized areas. Larger areas effectively eliminate RCA members whose service record to rural areas is outstanding.