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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act )  
Competitive Bidding )

PP Docket No. 93-253



REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

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## SUMMARY

In order to fulfill the congressional mandate of participation in auctions by designated entities (including rural telcos with cellular affiliates), the FCC must adopt rules that do not favor "deep pocket" bidders. The RCA, therefore, advocates the use of (1) the open oral bidding method; (2) auctioning smaller geographic areas first, followed by larger geographic areas; and (3) the auctioning of smaller spectrum blocks before the auctioning of larger spectrum blocks. The RCA is vehemently opposed to combinatorial bidding since it clearly favors "deep pocket" players and does not foster the award of licenses to designated entities.

In order to ensure rural telco participation, telephone companies that serve 50,000 or fewer access lines, or those that serve areas whose largest communities have populations of 10,000 or less should be eligible for designated entity status. Further, rural telcos should be able to bid inside and outside their telephone service areas. Rural telcos that do not win in the bidding process should be allowed to partition their rural telephone service area from the licensed service area.

With respect to PCS, Channel block C should be set aside exclusively for rural telcos. Also, the FCC should exempt members of the designated preference group from the cellular attribution rules which would otherwise limit their eligibility to obtain spectrum for the provision of PCS.

Finally, the RCA urges the Commission not to auction spectrum used as an intermediate link because it will unnecessarily add to the cost of providing service in rural areas.

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REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to 1.415 of the Commission's rules, on behalf of itself and its members, replies to the comments filed in the above captioned proceeding.

Over two hundred parties filed comments in response to the NPRM, including the RCA, on November 10, 1993. The RCA limits its replies to those comments concerning (1) the auctioning of intermediate links; (2) bidding methods and procedures; and (3) treatment of members of the designated preference groups.

**I. Intermediate Links Should Not Be Subject To Competitive Bidding.**

1. In its comments, the RCA stated that spectrum used as an intermediate link, such as Point-to-Point Microwave Radio Service ("PPMRS"), should not be subject to competitive bidding inasmuch as compensation is not received from subscribers for the use of the spectrum. Nearly all of the commenters who addressed this issue oppose the Commission's proposal to auction spectrum used for

intermediate links.<sup>1</sup> The RCA agrees with those commenters who observed that the findings embodied in the legislative history of the Omnibus Budget Act of 1993 ("Budget Act") require competitive bidding only for that spectrum directly used to provide mobile services to the public. See comments of NYNEX (pp. 12-13); Sprint (p. 21); APC (pp. 8-9); SWB (pp. 6-8). Bidding for spectrum to obtain a microwave facility to use as an intermediate link for rural cellular service providers will unnecessarily add to the cost of providing service in rural areas. The RCA, accordingly, urges the Commission not to auction spectrum used as an intermediate link.

**II. Competitive Bidding Methods and Procedures  
Must Be Structured To Ensure Rural Telco  
Participation.**

**A. Open Oral Bidding Will Better Ensure Dissemination Of  
Licenses Among A Wide Variety of Applicants.**

2. The majority of commenters support the use of oral bidding as the primary method for awarding licenses via auctions.<sup>2</sup>

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<sup>1</sup> See e.g., comments filed by ATT (p. 20), GTE (p. 3), Sprint (p. 21), California Microwave, Inc. ("CMI") (pp. 2-6), McCaw Cellular ("McCaw") (p. 25), BellSouth (p. 45), Utilities Telecommunications Council ("UTC") (pp. 8, 34), Ameritech (pp. 3-4), Telocator (p. 18), Time-Warner (pp. 6-7), American Personal Communications ("APC") (pp. 8-9), NYNEX (pp. 12-13), Southwestern Bell ("SWB") (pp. 6-8), Cellular Telecommunications Industry Association ("CTIA") (p. 31), United States Telephone Association ("USTA") (p. 2), Telephone and Data Systems, Inc. ("TDS") (p. 4), and Organization for the Advancement and Protection of Small Telephone Companies ("OPASTCO") (p. 11).

<sup>2</sup> McCaw (p. 2), Rochester Telephone (p. 11), Telmarc (p. 3), GTE (p. 5), Geotek (p. 10), Cellular Communications (pp. 1, 7, 13), BellSouth (p. 4), NYNEX (pp. 13-14), SWB (pp. 15-22), CTIA (p. 7), Minnesota Equal Access Network Services ("MEANS") (p. 2), Council

Several commenters suggest using a combination of oral and sealed bids.<sup>3</sup> These commenters are primarily interested in obtaining spectrum on a nationwide or large regional basis and have specifically tailored their comments to promote rules that will assist them in achieving this objective with respect to PCS. The RCA is opposed to the use of sealed bidding for new technologies because it allows secretive, unfair manipulation of the bidding process. Accordingly, the RCA submits that the Commission should adopt oral bidding as the only method for auctioning spectrum for new technologies.

**B. The Sequence Of Bidding Should Be From Smaller Geographic Areas To Larger Geographic Areas And From Smaller Amounts Of Spectrum To Larger Amounts Of Spectrum.**

3. The Commission is required to establish auction procedures that will achieve the congressional mandate to ensure that "new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants." Budget Act, § 309(j)(3)(B) (emphasis added). The RCA, therefore,

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of 100 (p. 2), Rural Cellular Corporation ( p. 2), U.S. Intelco Networks, Inc. ("USIN") (p. 8), Small Telephone Companies in Louisiana ("Small Telcos in Louisiana") (p. 5); Telocator (p. 3), Arch Communications Group (p. 9), National Association of Black Owned Broadcasters (NABOB") (p. 6), NABER (p. 6) APC (p. 1), Pagenet (pp. 9-15), Wireless Services Corp. (p. 3), Corporate Technology Partners (p. 3), TDS (p. 8), Comcast Corporation and Phase One Communications, Inc. (p. 2).

<sup>3</sup> See comments filed by MCI (p. 10), Callcell Wireless (pp. 6-8, 17), Richard L. Vega (p. 3), General Communications (p. 4), Wisconsin Wireless (p. 1), Nextel Communications, Inc. ("Nextel") (pp. 4-7), and Bell Atlantic Personal Communications, Inc. ("Bell Atlantic") (pp. 11-13) and Point Communications, Inc. (p. 2).

urges the Commission to auction small markets first then larger markets, and to auction spectrum allocated to designated preference groups before auctioning spectrum to others. The RCA is further supported by General Communications, Inc. ("GCI"), USIN and the Small Telephone Companies of Louisiana ("Small Telcos of Louisiana"). GCI argues that ". . . this is consistent with most auctions, in which the auctioneer starts with the smallest, less valued item and builds up to the grandest item. This will enable bidders to evaluate the various MTAs as the auction proceeds to those that are largest and, presumably, the most valuable."<sup>4</sup> Accordingly, the RCA urges the FCC to adopt this proposed bidding sequence.

**C. Combinatorial Bidding Clearly Favors "Deep Pockets" And Does Not Foster The Award of Licenses To The Designated Preference Groups.**

4. The RCA is opposed to combinatorial bidding on both a geographic aggregation basis and a spectrum aggregation basis. The comments filed in support of combinatorial bidding have not convinced the RCA to change its position. Combinatorial bidding is inconsistent with Congress's mandate to disseminate licenses among

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<sup>4</sup> Comments of GCI at p. 12. See also, USIN Comments at p. 9 ("...the auction should be conducted on a band-by-band basis, with the smaller spectrum bands being auctioned first, starting with the smaller population areas within each band. Given the reality of competition with deep-pocket players for these band/service areas in any event, smaller entities would benefit from this proposed progression because larger entities would be more inclined to conserve their resources in anticipation of bidding on the larger, more 'desirable' bands/service areas.") and Small Telcos in Louisiana at p. 6 ("The Small Companies suggest that the FCC begin by auctioning the smaller bands of spectrum first.").

a wide variety of applicants. Combinatorial bidding favors "deep pocket" bidders by fostering the concentration of licenses in the hands of a few. The RCA supports those commenting parties who have recognized the inherent problems associated with combinatorial bidding<sup>5</sup> and respectfully requests the Commission not to adopt a combinatorial bidding scheme.

**D. Minimum Bids Artificially Limit The Number Of Potential Service Providers.**

5. The commenters, including the RCA, support the Commission's proposal to allow unrestricted bidding. Accordingly, the Commission should not adopt any minimum bid standard.

**E. Full Payment Of The Bid Less The Deposit Should Be Submitted Prior To The Issuance Of The License. Members Of The Designated Preference Groups Should Be Eligible For Alternative Payment Methods.**

6. Most commenters agree with the RCA and advocate that lump sum payments should be paid by all winning bidders, except those that qualify as members of the designated preference groups.<sup>6</sup> The RCA, therefore, urges the Commission to adopt rules that require full payment soon after the winning bidder is announced.

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<sup>5</sup> See comments filed by Pacific Bell (p. 8), Liberty Cellular d/b/a Kansas Cellular ("Liberty") (pp. 2-3), Small Business PCS (pp. 5-6), Pacific Telecom Cellular, Inc. (pp. 2-3), Telocator (p. 5-6), Pagenet (p. 18), McCaw (p. 7), Sprint (p. 4), ATT (p. 4), GTE (p. 6), BellSouth (p. 6), USIN (p. 10), Small Telcos in Louisiana (p. 7) and NABOB (p. 4).

<sup>6</sup> See comments filed by Telmarc (p. 4); ATT (p. 33); GTE (p. 9); Richard L. Vega (p. 4); BellSouth (p. 43); National Telephone Cooperative Association ("NTCA") (p. 10); Pacific Bell (p. 29); SWB (p. 39); MCI (p. 13); Wisconsin Wireless (p. 2); Point Communications ("Point") (p. 4); and Comcast Corporation (p. 16).

7. None of the commenters are opposed to deferred payment schedules for members of the designated preference groups. Several commenting parties have proposed deferred payment plans similar to the payment plans proposed by the RCA. These plans include either the use of installment payments<sup>7</sup> or the payment of royalties<sup>8</sup> over the course of the initial license term. The RCA has put forth two detailed payment options for members of the designated preference groups that are fully consistent with these proposals.<sup>9</sup> The adoption of these proposals by the Commission will further the legislative mandate of ensuring that members of the designated preference groups are given an opportunity to feasibly participate in the licensing process. Accordingly, the RCA urges the

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<sup>7</sup> See e.g., NTCA (p. 11); Unique Communications Concepts ("Unique") (pp. 3-4); Comtech (p. 3); Valley Management, Inc. ("Valley") (p. 3); Corporate Technology Partners (p. 8); California Public Utility Commission ("CAPUC") (p. 4); Telephone Association of Michigan (pp. 11-13); and TDS (p. 16), USIN (p. 12), Small Telcos of Louisiana (p. 14).

<sup>8</sup> See e.g., comments filed by NTCA (p.11), Unique (p. 3) and Pacific Bell (p. 29).

<sup>9</sup> A recap of the two payment options is set forth below:

**Payment Option No. 1**

Ten percent down payment with remaining amount paid over the course of the license with interest. Interest to be tied to ten year U.S Treasury Bonds.

**Payment Option No. 2**

Twenty percent down payment with royalties equalling two percent of the gross revenue per year over the initial term of the license.

Commission to adopt one or both of these payment plans for members of the designated preference groups.

**F. To Fulfill The Congressional Mandate, The Commission Must Adopt Rules That Ensure Participation By Small Telephone Companies.**

- a. Small Telephone Companies That Serve 50,000 Or Fewer Access Lines, Or Serve Only Areas With Populations of 10,000 Or Less, Should Be Considered Among the Designated Entities.**

8. The definition of "rural telephone" has sparked a wide variety of responses from the commenting parties. The RCA originally proposed that a rural telephone company be defined as a company serving 50,000 or fewer access lines.<sup>10</sup> After reviewing the comments, the RCA has been convinced to modify its definition to include not only telephone companies serving 50,000 or fewer access lines, but also telephone companies serving areas whose largest town, community or incorporated area does not exceed a population of 10,000.<sup>11</sup> This modified definition will comply with the Congressional intent of designating both small companies and rural telephone companies as preference entities. The definition does not include large companies which serve both rural and non-rural areas; but, it does include those companies which have been designated for treatment as small companies in other Commission

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<sup>10</sup> The RCA is supported by at least seven other commenting parties, including MEANS (p. 2); Iowa Network Services ("INS") (p. 12); Rural Cellular Corporation ("RCC") (p. 2); MEBTEL, Inc. (p. 3); Telephone Electronics Corporation ("TEC") (p. 10); USIN (p. 14); and Louisiana Small Telcos (p. 11).

<sup>11</sup> See Comments filed by USIN (p. 15); TEC (p. 10); and INS (p. 12).

proceedings (i.e., those that serve 50,000 or fewer access lines) and those that serve only rural areas (populations of 10,000 or less) regardless of the number of total access lines served.

**b. Broadband PCS Channel Block C Should Be Set Aside Exclusively For Rural Telcos.**

9. The RCA agrees with those commenters advocating the set-aside of PCS Channel Block C exclusively for bidding by rural telcos.<sup>12</sup> An exclusive set aside of this 20 MHz channel block would fulfill the legislative mandate by giving rural telcos a meaningful opportunity to participate in the provision of PCS. Additionally, the RCA submits, in view of the past demonstration of the rapid deployment of cellular service to rural areas, that rural telephone companies are the best positioned designated entity to ensure that rural areas are served. Accordingly, rural telcos should be the only designated entities allowed to bid on PCS channel Block C.

**c. Attribution Limitations Should Not Apply To Cellular Licensees Affiliated With Rural Telcos.**

10. Several commenters have suggested that the attribution limitations imposed on cellular licensees not apply to otherwise

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<sup>12</sup> See e.g., comments of Western Alliance (pp. 6-11); Unique (p. 4); MEANS (p. 1); and USIN at p. 16 ("...in view of the Commission's positive experience with rural telephone companies' rapid and efficient deployment of rural cellular radio, that Channel Block C should be reserved exclusively for small telephone companies to ensure that rural areas are served and also to promote the participation of rural telephone companies in the provision of state-of-the-art telecommunications services.")

eligible members of the designated preference groups.<sup>13</sup> The RCA supports this position and encourages the FCC to adopt it. By eliminating the attribution limitation for cellular licensees that are also members of the designated preference groups, the FCC will promote the legislative mandate to disseminate licenses among a wide variety of applicants, including members of the designated preference groups.

11. The Commission's basis for limiting the amount of spectrum available to entities with cellular licenses is not applicable to rural telephone companies. In urban areas there may be a legitimate public interest concern to impose the proposed limitation in order to ensure that spectrum is not concentrated in the hands of a few. In rural areas, however, there is a greater concern -- ensuring that services are deployed. Rural telephone companies have traditionally demonstrated a continued willingness to meet this commitment which should not be thwarted. If rural telephone companies hold significant interests in cellular licenses, but are additionally willing to construct and operate new facilities utilizing PCS spectrum, they should not be discouraged from doing so.

12. Permitting rural telephone companies to fully participate in PCS spectrum regardless of their cellular interests will not stifle competition in rural areas; even if a rural telephone company successfully aggregated 40 mhz of PCS spectrum, there would

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<sup>13</sup> See Comments filed by Bell Atlantic Personal Communications, Inc. (p. 16); APC (p. 7); Western Alliance (p. 6); and Chickasaw Telephone Company (p. 5).

still be 80 mhz available to competitive service providers. Moreover, the attribution of minority interests of rural telephone companies in rural cellular licenses hardly constitutes control of the provision of cellular services. As a result of the Commission's policy fostering settlements among B band rural cellular applicants, many small rural telephone companies hold limited partnership interests in cellular licenses. Although the limited partnership interest may exceed 20%, the public interest will surely not be fostered by precluding companies which hold such interests from bringing new services to rural America. Accordingly, with respect to PCS, the FCC should exempt members of the designated preference group from the cellular attribution rules which would otherwise limit their eligibility to obtain spectrum for PCS.<sup>14</sup>

**d. Rural Telephone Companies Should Be Allowed To Bid Outside Their Telephone Service Areas.**

13. The RCA disagrees with those commenters that would restrict rural telco participation to FCC defined service areas in which the rural telco operates.<sup>15</sup> Rural telephone service areas and cellular service areas served by rural telephone companies do not overlap neatly with the MTA/BTA structure adopted by the FCC in

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<sup>14</sup> The RCA intends to also formally request that the Commission reconsider this rule in a petition for reconsideration of the Commission's Rules to Establish New Personal Communications Services (Second Report and Order), 8 FCC Rcd \_\_\_\_ (1993).

<sup>15</sup> See e.g., comments of Western Alliance (pp. 6-11); McCaw (p. 20); APC (p. 7) and NTCA (p. 13).

the narrowband and broadband PCS proceedings.<sup>16</sup> A prohibition on eligibility based on this distinction does not further the stated Congressional objective to promote the participation of rural telephone companies in the provision of spectrum services. Accordingly, inasmuch as there is no Congressional indication whatsoever that rural telephone companies should be confined to participate, or be confined to participate on a preferential basis, within their telephone service areas, the RCA joins with those commenters that propose that small telephone companies be able to participate in the bidding process as designated entities both inside and outside their telephone service areas.<sup>17</sup>

**e. Rural Telcos That Do Not Prevail In The Bidding Process Should Have The Option To Partition and Serve In Their Telephone Service Area.**

14. Separate from the adoption of the rural telco set aside for Channel Block C, the RCA recommended that the Commission permit rural telephone companies to partition the rural telephone service area out from the licensed service area. The adoption of this policy will further promote the inseparable goals of rapid deployment of service to rural areas and assurance of rural telco participation. USIN supports the RCA's position and agrees that rural telephone companies should be allowed to apply to partition

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<sup>16</sup> See Rules to Establish New Narrowband Personal Communications Services (First Report and Order), 8 FCC Rcd 7162 (1993); Rules to Establish New Personal Communications Services (Second Report and Order), 8 FCC Rcd \_\_\_\_ (1993).

<sup>17</sup> See comments of Telephone Association of Michigan (p. 14); Pacific Telecom Cellular (p. 5); TEC (p. 13); Palmer Communications, Inc. (p. 2); MEANS (p. 2); and RCC (p. 2).

their telephone service area from the licensed area prior to construction by the successful bidder. Comments of USIN at p. 4.

15. Under this proposal, if a rural telco does not succeed in the auction process, it would have the option of requesting the FCC to partition its rural telco service area out from the winning bidder's market and pay the FCC for the pro rata share of the winning bid determined on the basis of the percentage of the total license area population residing within the telephone company's service area. Adoption of this proposal will promote the public interest by ensuring the participation by rural telephone companies in the provision of PCS within their respective service areas as well as the rapid deployment of PCS to rural areas.

**f. The FCC Should Permit Transfer Of Licenses Among Members Of The Designated Preference Groups.**

16. There is consensus among the commenters that members of the designated preference groups should be allowed to transfer their licenses to other members of the group.<sup>18</sup> There is no statutory prohibition regarding the transfer of a license from one designated member of the preference group to another; consequently, the Commission should not restrict transfers to other members of the designated preference group.

**g. Deposits For Designated Entities Should Be Half Of The Required Deposit For Other Bidders.**

17. The RCA supports those commenters that suggest that the

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<sup>18</sup> See e.g., comments of Bell Atlantic (p. 18); ATT (p. 27); Utilities Telecommunications Council (p. 16); Small Telcos in Louisiana (p. 16); USIN (p. 19); AWCC (p. 34); MCI (p. 20) and Corporate Technology Partners (p. 7).

Commission's proposal to require substantial deposits not be applied to rural telcos and other members of designated groups.<sup>19</sup> Accordingly, the RCA urges the Commission to require members of the designated preference groups to submit not more than one-half the amount of deposit required of other bidders and to credit bid deposits towards the purchase price for the successful bidder.

**h. To Qualify As A Designated Entity, The Applicant Should Be Controlled By Eligible Designated Entities.**

18. The RCA agrees with those commenters that advocate strict measures to ensure that licenses awarded to designated entities are truly controlled by members of the designated groups during the initial term of the license.<sup>20</sup> Accordingly, the RCA proposes that eligibility for preferences be accorded only to consortia in which over 50 percent of control is in the hands of entities and/or persons which are individually eligible for award of the preferences. Additionally, all ownership qualification rules should be carefully crafted to ensure that attributed affiliations with and ownership by designated entities preserve preferential treatment to the beneficiaries intended by Congress.

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<sup>19</sup> See e.g., comments of NTCA (p. 10); Rural Cellular Corporation (p. 2); AIDE (p. 6); Small Telcos in Louisiana (p. 18); USIN (p. 22); California PUC (p. 3); Telephone Association of Michigan (p. 16) and Telepoint Personal Communications (p. 2).

<sup>20</sup> See e.g., comments of Point (p. 3); Telephone and Data Systems (p. 17); NTCA (p. 3); Small Telcos in Louisiana (p. 13); USIN (p. 18); Telmarc (p. 3); ATT (pp. 25, 27); GTE (p. 14) and BellSouth (p. 29).

**III. The Commission's Application Procedures Should Ensure Prompt Provision Of Service To The Public.**

19. The RCA supports those commenting parties that advocate the use of a short-form application.<sup>21</sup> The short form will reduce administrative processing burdens and enable the Commission to conduct auctions with greater speed. The RCA also agrees with those commenters opposed to the application of a letter perfect standard.<sup>22</sup> The RCA respectfully submits that the auction process itself will deter speculation. In the context of competitive bidding, it is unlikely that the Commission will be required to expend its valuable time to process numerous applications since there will only be one successful application per license per market. Moreover, the draconian penalty exacted for failure to meet the "letter perfect" standard is not appropriate where the good faith of an applicant is demonstrated by participation in an expensive proceeding.

**CONCLUSION**

20. Congress has given the Commission a specific structure which addresses both the form and substance of the expected outcome of this proceeding. Many of the Commission's proposals, however, could inadvertently result in rules which will favor excessive

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<sup>21</sup> See e.g., comments of Pacific Bell (p. 22); CTIA (p. 27); MCI (p. 18); Rural Area Alliance (p. 6); Liberty Cellular (p. 6); Fairness Alliance (p. 12); USIN (p. 21); Wisconsin Wireless (p. 3) and Comcast (p. 16).

<sup>22</sup> See e.g., comments of Point (p. 4); Western Alliance (p. 27); Pacific Bell (p. 24); USIN (p. 22); CTIA (p. 27) and BellSouth (p. 35).

concentration of spectrum in the hands of a few. By favoring deep-pocket players over the designated preference groups, the Commission could easily seal the fate of the telecommunications industry in a way that could never be reversed. Consequently, each proposed rule must be examined carefully to ensure that the overall structure will not obstruct legislative objectives. The RCA therefore respectfully submits that adherence to the Congressional mandate as set forth in the RCA's initial comments and the instant reply comments will provide the guidance necessary to achieve a workable and successful regulatory model.

For these reasons, the Commission's adoption of the recommendations set forth in the RCA's initial Comments, and as modified above, will serve the public interest.

Respectfully submitted,

**RURAL CELLULAR ASSOCIATION**



---

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November 30, 1993

Certificate of Service

I, Colleen von Hollen, of Kraskin & Associates, 2120 L Street, NW, Suite 810, Washington, DC 20037, hereby certify that copies of the foregoing Reply Comments of Rural Cellular Association were served on the 30th day of November, by first class, U.S. mail, postage prepaid, to the following:

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