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JUL 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 26, 1999

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
Washington, D.C. 20554

Re: In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, PR Docket No. 93-253 (rel. May 24, 1999)

***EX PARTE* NOTICE**

Dear Secretary Salas:

On behalf of The Rural Telecommunications Group ("RTG") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), and in accordance with Section 1.1206 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), we hereby file an original and a copy of a letter to Thomas Sugrue, Chief of the Wireless Telecommunications Bureau, regarding the above-mentioned proceeding.

If you have any questions concerning this matter, please do not hesitate to contact us.

Sincerely,

Kenneth C. Johnson

Enclosures

No. of Copies rec'd 0+3
List A B C D E

July 26, 1999

Thomas J. Sugrue
Bureau Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Dear Mr. Sugrue:

The Rural Telecommunications Group (RTG) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) would like to call your attention to an unjustified dismissal of rural wireless concerns in the latest Wireless Telecommunications Bureau (WTB) paging auction Order.[1] RTG and OPASTCO appreciate the numerous viewpoints and interests WTB must balance when crafting an Order. However, in the latest paging Order, the rural telephone industry is summarily dismissed with "cookie-cutter" arguments that do not even apply to the paging issue at hand. RTG and OPASTCO hope this letter can help keep the Bureau up to date about the nature of rural areas served by small telephone companies so that rural subscribers do not miss out on the benefits of wireless technologies.

Specifically, the Bureau has effectively eliminated rural telephone companies from any chance of acquiring paging spectrum in the upcoming spectrum auction. The licenses are being auctioned by Economic Areas (EAs) and Major Economic Areas (MEAs). A rural telephone company, or even a consortium of rural telephone companies, will be hard pressed to bid for an EA that encompasses an entire state. MEAs, which can contain several states, are out of the question. While WTB claims that rural telephone companies can rely on partitioning, to date, partitioning has been the exception rather than the rule. Large telecommunications companies have told members of RTG and OPASTCO that the transaction costs for partitioning outweigh whatever financial benefits a small company can pay for partitioning. The Bureau has been made aware of these concerns, yet the Commission states that it "has no reason to believe the geographic area licensees will be unwilling to enter into partitioning agreements."[2]

WTB also ignores the Section 309(j) mandate that the Commission should prescribe regulations that will allow rural telephone companies to have a reasonable chance at acquiring spectrum. WTB's overlooking of Section 309(j) is exacerbated by the arguments it uses to

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[1] *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, WT Docket No. 96-18, PR Docket No. 93-253 (rel. May 24, 1999). ("*Order*")

[2] *Order* at ¶ 20.

justify its position. WTB argues that rural telephone companies are advantaged by "existing benefits" such as Rural Electrification Administration (REA) loans, the Universal Service Fund (USF), and economies of scale.[3] These three arguments highlight a pressing need for the Bureau to be educated about high cost universal service mechanisms.

First, REA has been called the Rural Utilities Service (RUS) for years and REA/RUS loans are specifically for wireline-based telecommunications projects, not spectrum-based projects such as paging, PCS, Local Multipoint Distribution Service, 39 GHz, etc. RUS loans are also subject to numerous restrictions and requirements, unlike venture capital available to large companies. In reality, large companies can receive low cost capital to build paging enterprises while rural telephone companies are restricted from using their RUS loans for anything other than wireline-based undertakings.

Second, WTB misinterprets the universal service program. Currently, with respect to rural telephone companies, USF is for legitimate high-cost recovery for telephone service in remote rural areas. Moreover, while the Commission has ruled that paging carriers, as telecommunications carriers, must pay into USF, paging carriers are not allowed to obtain universal service support for paging services.

Third, WTB's claim that rural telephone companies benefit from "economies of scale" is an oxymoron. Rural telephone companies are inherently small. Small companies do not benefit from economies of scale that would enable them to bid for large EAs and MEAs.

Rural telephone companies are specifically singled out in Section 309(j) as a group worthy of designated entity status in spectrum auctions and should be given the opportunity to obtain bidding credits and other considerations that are available to other designated entities. Despite this Congressional mandate, WTB has dismissed rural telephone companies with a grab bag of incorrect justifications. As a result, it is the rural customer that will be without paging service as large EA and MEA winners inevitably ignore less profitable rural markets.

WTB has done an admirable job through the years of regulating with as light a touch as possible one of the fastest growing and highly competitive telecommunications industries. It is a shame that the Bureau's recent treatment of the rural telephone industry should mar this record. RTG and OPASTCO would be pleased to visit the Bureau at anytime to aid the Bureau in developing a better understanding of the dynamics of rural telecommunications.

Sincerely,

John Smith,
Leaco Rural Telephone Cooperative, Inc.,
Co-Chair, RTG Steering Committee

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[3] *Order* at ¶ 114.

Mark Rutherford | KJ

Mark Rutherford,
Colorado Valley Telephone Cooperative,
Inc., Co-Chair, RTG Steering Committee

Stuart Polikoff | KJ

Stuart Polikoff
OPASTCO
Director of Government Relations
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CERTIFICATE OF SERVICE

I, Joy Barksdale, an employee at the Law Offices of Bennet & Bennet, PLLC, hereby certify that on this 26th day of July, 1999, a copy of the foregoing "*Ex Parte* Notice" was served by hand delivery to the parties listed below:

Mark Bollinger
Wireless Telecommunications Bureau
Auctions and Industry Analysis Branch
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

Kris Monteith, Chief
Wireless Telecommunications Bureau
Policy Division
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

Steven Weingarten, Chief
Commercial Wireless Division
Federal Communications Commission
445 Twelfth Street, SW
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Commissioner Harold Furchtgott-Roth
Federal Communications Commission
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Federal Communications Commission
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