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Law Offices of
Bennet & Bennet, PLLC
1000 Vermont Avenue, N.W., 10th Floor
Washington, DC 20005

Caressa D. Bennet
Michael R. Bennet
Marjorie G. Spivak
Gregory W. Whiteaker
Edward D. Kania
Robin E. Tuttle
*Alisa M. Everts**
Donald L. Herman, Jr.

Tel: (202) 371-1500
Fax: (202) 371-1558

e-mail: mail@bennetlaw.com
http://www.bennetlaw.com

Of Counsel
*Philip E. Bennet***

Telecommunications Analyst
Ken C. Johnson

**Admitted in Virginia Only*
***Admitted in New York Only*

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 23, 1999

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: In the Matter of Service Rules for the 7460764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules; WT Docket No. 99-168

Ex Parte Presentation - December 22, 1999

Dear Ms. Salas:

On behalf of the Rural Telecommunications Group, we hereby notify the Federal Communications Commission that the above-referenced Ex Parte Presentation (copy enclosed), which was submitted electronically via the Universal Licensing System on December 22, 1999, was also served via hand delivery on the following:

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If you have any questions concerning this matter, please communicate directly with the undersigned.

Sincerely,

Caressa D. Bennet /HB

Caressa D. Bennet

Enclosure

RURAL TELECOMMUNICATIONS GROUP

the voice of rural wireless telecommunications providers

1000 Vermont Avenue, NW, 10th Floor
Washington, DC 20005

December 22, 1999

BY ELECTRONIC FILING

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

***Ex Parte* Presentation - December 22, 1999**

Re: In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules; WT Docket No. 99-168

Dear Ms. Salas:

The Rural Telecommunications Group ("RTG"),[1] hereby submits this written *ex parte* presentation, pursuant to Section 1.1206(a) of the Federal Communications Commission's ("FCC" or "Commission") rules, in the above-captioned proceeding in which the FCC will develop auction and service rules for the 746-764 and 776-794 MHZ bands ("UHF spectrum"). RTG is extremely concerned that the FCC may license the UHF spectrum on the basis of huge geographic areas, such as Regional Economic Area Groupings ("REAGs") and Major Economic Areas ("MEAs") as suggested in the June 3, 1999 *Notice of Proposed Rulemaking* ("*NPRM*")[2].

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[1] RTG is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Services ("PCS"). and Multichannel Multipoint Distribution Service ("MMDS") to their subscribers. Many of RTG's members also hold Local Multipoint Distribution Service ("LMDS") licenses and intend to use LMDS to introduce advanced telecommunications services and competition in the local exchange and video distribution markets in rural areas. RTG's members are all affiliated with rural telephone companies.

[2] *In the Matter of Service Rules for the 746-764 and 776-794 MHZ Bands, and Revisions to Part 27 of the Commission's Rules*, Notice of Proposed Rulemaking, WT Docket No. 99-168 (rel.

Tel. 202/371-8857 fax 202/371-1558

e-mail: rtg@bennetlaw.com

As explained in its comments in this proceeding, RTG vehemently opposes the use of large geographic licenses areas, because licensing the UHF spectrum on this basis will effectively deny small businesses and rural telephone companies any opportunity to participate in the provision of service using this spectrum and will discourage the provision of service to rural areas of the country in direct contravention of Section 309(j) of the Communications Act of 1934, as amended, (the "Act").

Section 309(j)(3)(A) of the Act requires the Commission to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas."[3] Section 309(j)(4)(D) further directs the Commission to:

> ensure that small businesses, **rural telephone companies**, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services.[4]

In determine the licensing scheme for a particular service, Section 309(j)(4)(C) further requires the FCC to:

> *prescribe area designations* and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, [and] rural telephone companies....
> (emphasis added).

No auction-related factor has more impact on rural telephone company, and small business, participation in the auction process than the size of the geographic areas in which a service will be auctioned and licensed. The use of large geographic license areas is the single most significant barrier to small business and rural telephone company participation in new and innovative spectrum-based services. Rural telephone companies and small businesses simply lack the resources to acquire or serve huge license areas such as MEAs or REAGs. As an initial matter, they lack the capital to finance the purchase of entire MEAs or the construction of facilities to serve huge geographic areas. In addition, as Congress recognized, in Section 309(j), their business plans generally focus on deploying service to rural areas and secondary markets. They should not be required to compete for an entire MEA just to be able to provide service to one region of the MEA.

In addition to rural telephone companies and small businesses not being able to acquire licenses for large geographic areas in the auction, these businesses are also unable to acquire the rural portions of these large geographic areas through partitioning/disaggregation. As discussed

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June 3, 1999).

[3] 47 U.S.C. § 309(j)(3)(A).

[4] 47 U.S.C. § 309(j)(4)(D) (emphasis added).

below, experience has also demonstrated that geographic partitioning has failed to efficiently "subdivide" licenses to distribute them to small businesses and rural telephone companies. Accordingly, if the Commission licenses the UHF spectrum on an MEA or REAG basis, the Commission will be making a deliberate decision to exclude small businesses and rural telephone companies from participation in this service. Such a result clearly violates the mandate of Section 309(j).

At present, the Commission relies on geographic partitioning -- a mechanism for subdividing large geographic license areas into smaller ones -- to ensure that rural telephone companies and small businesses are able to participate in the provision of spectrum-based services.[5] Unfortunately, this reliance on partitioning is misplaced and unsupported by experience. The current partitioning rules provide no incentive for license holders to partition portions of their license areas to rural telephone companies or small businesses. RTG members have been repeatedly rebuffed in their attempts to enter into negotiations with license holders in various services to partition their license areas or disaggregate their spectrum. According to many licensees, the administrative costs of entering into and managing the partitioning/disaggregation process outweigh the realized financial gains. Many licensees are also unwilling to partition portions of their licenses because they perceive that unpartitioned licenses have a higher resale value, especially when the service provider is mobile in nature.

Partitioning is an inefficient and time consuming process for dividing up license areas. By contrast, the auction process provides an efficient and swift method of aggregating license areas. Auction participants who wish to combine smaller license areas into one or more large license areas may do so easily. Accordingly, the Commission should auction licenses on the basis of smaller rather than larger license areas.

Because of the ineffectiveness of partitioning/disaggregation and the fact that most rural providers lack the resources to acquire large geographic area seized licenses, RTG requests that the FCC license the UHF spectrum on the basis of smaller geographic areas such as Metropolitan Statistical Areas ("MSAs") and Rural Service Area ("RSAs"). Licensing the UHF spectrum on this basis will allow the marketplace, through the auction process, to function most efficiently, while distributing licenses to a wide variety of applicants and encouraging the deployment of service to rural areas consistent with Section 309(j) of the Act.

By licensing the UHF spectrum on an MSA and RSA basis, the Commission would ensure that a diverse group of potential licensees, including rural providers, could participate in the auction. However, if the Commission is unwilling to utilize RSA/MSA sized license areas, RTG would support the use of BTA areas over the offering of licenses on significantly larger (i.e., EA) license areas. To the extent that the FCC seeks to avoid copyright issues relating to the use of BTAs, the FCC should consider licensing spectrum on the basis of the 348 Component Economic Areas ("CEAs") that serve as the building blocks for the much larger EAs.

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[5] *See, e.g.,* Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, *Report and Order and Further Notice of Proposed Rule Making,* 11 FCC Rcd 21831 (1996).

In addition to offering these licenses on a smaller geographic areas basis, the Commission should also develop new performance/construction requirements which encourage the deployment of telecommunications services to all sectors of a license areas. In past services, the use of large licenses areas and lax performance requirements has delayed the deployment of service to rural areas. As RTG noted above, large urban licensees have been unwilling to deploy service to rural areas or to partition part of their license areas to companies that would deploy such service.

Section 309(j)(4)(B) requires the Commission to include in its regulations "performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees...." While performance requirements may not be appropriate in some situations, strict performance requirements are critical for ensuring rural deployment of service when the Commission issues licenses for large geographic areas. Accordingly, if the FCC licenses the UHF spectrum on an EA-basis as proposed, then RTG supports the use of minimum construction requirements -- similar to those applicable to 30 MHz PCS licensees. Namely, a licensee must provide service to one-third of the population within five years and two-thirds of the population within ten years.[6] These minimum requirements will encourage licensees to either provide service, or partition part of their licenses to companies who will.

Should the FCC license the UHF spectrum on an MSA/RSA-basis, however, then minimum construction requirements are unnecessary and a "substantial service" requirement will suffice. As discussed above, licensing the UHF spectrum on the basis of MSAs and RSAs will result in a more efficient distribution of licenses and will alleviate the need to impose strict construction requirements.

In addition, although stricter build-out requirements will help to facilitate the deployment of service to rural areas, by creating some incentive for licensees to either build or partition, minium construction requirements alone will not ensure the deployment of service to rural areas if the Commission licenses the UHF spectrum on an EA-basis. As previously noted, large carriers are generally able to satisfy their "substantial service" or minium construction benchmarks by serving only the urban portions of their license areas. Although rural providers would be willing to step in to provide coverage to the remainder of these license areas, larger carriers refuse to participate in partitioning/disaggregation negotiations.

Accordingly, should the FCC license the UHF spectrum on an EA-basis, in order to ensure that licensees either rapidly deploy services to rural areas or partition licenses to those who will, the FCC should also adopt a "compulsory" partitioning policy and/or a fill-in policy similar to the fill-in policy adopted for cellular service. RTG proposes that after year seven of the license term, the Commission require licensees to enter into partitioning negotiations with any company that proposes to provide service to an area in which the licensee itself does not

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[6] *See*, 47 CFR §24.203(a).

provide service. If the companies cannot reach an agreement within 90 days, then the Commission could require the licensee to partition the area at a price based on the pro rata price per POP at which the licensee acquired the license at auction.

RTG also proposes that the Commission adopt a fill-in policy for the UHF spectrum that is similar to the cellular fill-in policy. Specifically, as of the time of license renewal, any party could apply for and provide service to any area in which the original license is not providing service. The cellular fill-in policy was extremely effective in ensuring that licensees deployed service even in rural areas. The adoption of a similar fill-in policy for the UHF service would likewise ensure the widespread deployment of service. The fill-in policy will also encourage licensees of larger areas to partition/disaggregate their licenses by giving them two choices: either partition part of the license area and receive compensation for such an arrangement or refuse to either provide service or partition to someone who will and have another carrier "fill-in" unserved areas and receive no compensation.

The "compulsory" partitioning policy and the fill-in policy will not disrupt the auction process or raise constitutional takings concerns because bidders will be on notice of these restrictions and can formulate their business plans and bidding strategies to reflect the potential that another entity may be ready, willing and able to serve an area that the such bidder is either unwilling or unable to serve. These license use policies will encourages more capital to flow into the UHF service from many additional sources. In addition, these policies will also encourage licensees to form partnerships or other arrangements with companies willing to provide the service.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP

By: /S/

Caressa D. Bennet
Gregory W. Whiteaker
Edward D. Kania

Bennet & Bennet, PLLC
1000 Vermont Avenue, 10th Floor
Washington, DC 20005
(202) 371-1500

Its Attorneys

Dated: December 22, 1999

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchgott-Roth
Commissioner Gloria Tristani
Commissioner Michael Powell
Ari Fitzgerald
Adam Krinsky
Garry Michaels
Mark Schneider
Peter Tenhula
Brian Tramont
Kris Monteith
Thomas Sugrue
Steven Weingarten
Amy Zoslov