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

In the Matter of	)	
	)	
Amendments to Parts 1, 2 and 101	)	
of the Commission's Rules	)	**WT Docket No. 99-327**
To License Fixed Services	)	
at 24 GHz	)	

To: The Commission

COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP

RURAL TELECOMMUNICATIONS GROUP

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SUMMARY

The Rural Telecommunications Group ("RTG") supports the Commission's efforts to auction and license spectrum in the 24.25-24.45 GHz and 25.05-25.25 GHz bands (collectively, "24 GHz") for a variety of fixed wireless uses. RTG's members are eager to acquire this spectrum to expand their service offerings and coverage areas by offering voice, high speed data and wireless Internet access to rural areas of the country. Consistent with the mandate of Sections 309(j) of the Communications Act of 1934 (the "Act") and 706 of the Telecommunications Act of 1996, the Commission should auction 24 GHz licenses on the basis of Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). In the event that the FCC auctions 24 GHz licenses on the basis of Economic Areas ("EAs"), the FCC should adopt minimum coverage requirements as well as "compulsory" partitioning and "fill-in" licensing which will allow interested companies to provide service to geographic areas in which the licensee does not provide service. The FCC should not impose any eligibility restriction on incumbent local exchange carriers ("ILECs"). In addition, the Commission should increase the amount of the bidding credits for small and very small businesses. Finally, the FCC should award bidding credits to rural telephone companies based exclusively on their status as designated entities.

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The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") November 10, 1999 Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding. The *NPRM* seeks comment on proposed auction and service rules for the 24.25-24.45 GHz and 25.05-25.25 GHz bands ("24 GHz band"). RTG specifically directs its comments to the development of auction and service rules that will encourage rural telephone companies and other rural telecommunications providers to acquire and utilize this spectrum and to deploy 24 GHz service in rural areas. To that end, the Commission must license the 24 GHz service on the basis of small geographic license areas such as Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). In the event that the FCC licenses this service on the basis of large, rather than small, geographic areas then the FCC should adopt build-out and "fill-in" policies which promote the provision of 24 GHz services to all individuals within a license area including those in the rural portions. The Commission should also increase the amount of bidding credits for all eligible "designated entities" and award rural telephone companies bidding credits based on their status as designated entities pursuant to Section 309(j) of the Communications Act of 1934, as amended (the "Act").

I. STATEMENT OF INTEREST

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.

II. DISCUSSION

A. Section 309(j) of the Act and Section 706 of the Telecommunications Act of 1996 *Require* the Commission to Adopt Rules and Policies That Promote the Rapid Deployment of 24 GHz Services to Rural Areas and Ensure That Rural Telephone Companies Have an Opportunity to Participate in the Provision of Such Spectrum-Based Services

In the *NPRM*, the Commission seeks comment on whether it should take any specific steps to ensure that licensees deploy 24 GHz service in rural areas and/or to promote the participation of rural telephone companies in the 24 GHz service pursuant to Section 309(j) of the Act.[1] RTG applauds the Commission for undertaking this inquiry, and focuses its comments on policies and rules that, if adopted, would promote rural telephone company participation and ensure rural deployment, thereby advancing the goals of and complying with the mandate of Section 309(j).

[1] *See NPRM* ¶ 51.

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."[2] Congress specifically directed the Commission to meet this objective in part by ensuring that rural telephone companies have a meaningful opportunity to participate in the provision of spectrum-based services such as the 24 GHz service.[3] To this end, Congress *enumerated* the separate and distinct entities to which the Commission is to afford special consideration and benefits in the dispensing of spectrum-based telecommunications licenses. Section 309(j)(4)(D) 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]

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[2] 47 U.S.C. § 309(j)(3)(A).

[3] *See*, 47 U.S.C. § 309(j)(3)(B).

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

Congress understood that rural telephone companies would deploy new spectrum-based services to rural America. Accordingly, Congress recognized rural telephone companies, not for their size, but for their unique structural position in the nationwide communications network, and directed the Commission to afford them opportunities to provide new services to rural areas.[5] Unlike other "small businesses," rural telephone companies necessarily fill a particular niche in the lives of rural Americans by providing the newest, most technologically advanced services to areas of this country that, for purely economic reasons, do not attract larger providers or new entrants.[6] The cost of providing telecommunications services to rural areas with rugged terrain, harsh climates and population densities so low there might be tens of miles of empty space between individual subscribers is financially prohibitive for some entities, and economically unattractive for most. The primary reason that rural telephone companies and cooperatives were formed is that residents of rural areas did not have telephone service and realized that the Bell companies and larger independents had no plans to serve them. These rural residents had to fend for themselves by providing their own telephone service.

Section 309(j) of the Act compels the Commission to adopt auction and service rules for the 24 GHz service that will ensure service to rural areas and promote rural telephone company opportunity. In Section 706 of the Telecommunications Act of 1996 ("1996 Act") Congress also directed the FCC to promote the deployment of advanced telecommunications services to all Americans. Because the 24 GHz service can be used to provide high speed, broadband service,

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[5] In addition to Section 309(j), other provisions of the Act reflect Congress's acknowledgment of the important and unique role of rural telephone companies. *See, e.g.*, 47 U.S.C. § 251(f) (rural telephone company exemption from interconnection obligations); 47 U.S.C. § 254 (Universal Service Support).

[6] For example, three RTG members provide wireless cable service to their telephone subscribers not because of the high return on their investment, but because their members requested video programming and the local cable company would not extend cable service to the

licensees can use it to provide advanced services to rural America. Accordingly, consistent with Section 706 of the 1996 Act, the Commission should adopt auction and license rules that promote the deployment of 24 GHz service to rural areas.

Pursuant to the mandates of Section 309(j) of the Act, and Section 706 of the 1996 Act, RTG respectfully requests that the Commission take the actions proposed herein and adopt service and license rules that promote the deployment of service to rural areas and ensure rural telephone company participation in the 24 GHz service.

2. To Promote the Deployment of 24 GHz Service to Rural Areas and to Ensure the Participation of Rural Telephone Companies in the Deployment of Such Services, the Commission Must Auction Licenses on the Basis of Small Geographic Service Areas Such As MSAs and RSAs

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areas.

Although there are numerous policy decisions which will affect whether or not licensees deploy service to rural areas and whether or not rural telephone companies have a realistic opportunity participate in the 24 GHz service, no decision is more critical than the size of the geographic areas on which the service will be licensed and auctioned. Unfortunately, in the *NPRM*, the Commission proposes auctioning 24 GHz licenses on an Economic Area ("EA")-basis.[7] In the *NPRM*, the FCC tentatively concludes that licensing 24 GHz on an EA-basis will "facilitate service to rural areas" because "EAs typically contain both urban and rural areas" and a licensee will therefore have the "legal authority"and the "financial incentive" to provide service to both areas.[8] With all due respect, the Commission's logic is entirely backwards. As explained below, combining rural and urban areas and auctioning the spectrum on an EA-basis will effectively foreclose rural telephone companies and small businesses from participating in the deployment of 24 GHz service and will virtually assure that rural areas remain unserved.

1. Urban and Rural Areas Attract Different Kinds of Investors and Telecommunications Providers With Differing Expertise, Financial Expectations and Business Plans

The demographics and physical characteristics of rural and urban areas differ dramatically. Even utilizing wireless technologies, rural areas, with their vast spaces, low population densities, difficult terrain (*e.g.*, mountain ranges and deserts), and harsh weather, remain expensive and challenging locations to serve. In rural areas, providers must construct more extensive physical plant covering larger geographic areas than in urban areas, yet in rural areas there are fewer subscribers over which to spread the costs.

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[7] *See NPRM* ¶ 9.

[8] *See id.*

Because of the differing characteristics of rural and urban areas, the proposed service offerings, business cases and expected financial returns also differ substantially in rural and urban areas. Most auction participants will attempt to use the 24 GHz spectrum to deploy high speed data and Internet access to businesses and Multi-Dwelling Units ("MDUs") in dense urban areas. Obviously, this business case is not applicable to sparsely populated rural areas. By its very nature, the provision of telecommunications services to rural areas is not as lucrative as the provision of similar services to more densely populated areas and, more importantly, requires a longer horizon for investors to realize a return on investment.

These differing service offerings and economics in rural and urban areas attract different types of investors and providers with different telecommunications expertise, financial expectations and business plans. Venture capitalists backing communications start-ups look for a large return in a short time period. Providing service to rural areas is not part of the business plan. Because of the need to maximize profits and to deploy capital in a manner that will garner the highest return, large publicly traded companies also eschew service to rural areas. The limited financial gain and long return horizon makes providing service to rural areas unattractive relative to the potential for significant profits in serving urban areas. Experience in other services, and the history of the wireline telephone industry in general, demonstrate that these large carriers and venture capital backed-companies deploy service to the more densely populated sectors in their license areas and not in the rural areas.

RTG does not mean to demonize these companies. RTG recognizes that they must utilize their expertise and follow business plans which deploy their capital in a manner that maximizes their return on investment, and that providing service in rural areas generally is not consistent with such plans. Unfortunately, the Commission fails to recognize the true demographic and economic differences in urban and rural areas. A company whose business plan hinges on providing Internet

access to urban businesses should not be expected to acquire a license for a rural area. It is unrealistic for the Commission to assume that the same company that intends to provide service in a densely populated urban area will also have the incentive and *expertise* to provide service in a rural area. Yet this is precisely what the *NPRM* assumes.

2. Rural Telephone Companies Possess the Expertise and Incentive to Provide 24 GHz Service to Rural Areas

In contrast, rural telephone companies and other small local telecommunications providers are experts in providing telecommunication services to difficult-to-serve rural areas. They can build off existing infrastructure. They are poised to take advantage of 24 GHz spectrum to introduce competition to larger incumbent local exchange carriers ("ILECs") and to provide new and advanced services to their existing subscribers. Some of RTG's members are actively deploying LMDS systems to provide competition to ILECs in neighboring towns. In describing its deployment of an LMDS system in a small town, one of RTG's members explained, "a town of 10,000 may not be much to an RBOC, but to us it's the Garden of Eden."

Most importantly, rural telephone companies are committed to the rural communities they serve. Their owners, board members, and managers participate in the life and health of these rural communities. Many rural telephone companies interested in the 24 GHz service are cooperatives owned by the very customers they seek to serve. The subscriber-owners of these cooperatives, are willing to accept a lower rate of return than large commercial wireless companies in order to ensure that they, their families and neighbors are able to receive the type and quality of services demanded by the community. Accordingly, rural telephone companies see opportunity and long-term benefits, where others see only a low rate of return on a high-risk undertaking.

3. Rural Telephone Companies and Small Businesses Will Be Unable to Acquire EA-Size Licenses

Unfortunately, rural telephone companies and other small businesses which would be willing to serve rural areas simply cannot acquire a license for an EA or other large area. They lack the ability to raise sufficient capital to acquire enormous licenses.[9] They also lack the staff or the expertise to construct and manage an EA or larger system. In addition, just as urban providers lack the expertise in providing service to rural areas, rural telephone companies may also lack the expertise to provide service to a densely populated urban area.

Large, well financed national and regional wireless providers will be the only entities which can afford to acquire EA-sized licenses. They will value such licenses on the basis of the urban areas, a valuation which far exceeds the value of the rural portions of each EA. Consequently, rural providers, which are willing to serve rural areas, will not be able to acquire EA or larger licenses while larger providers, who shun serving rural areas, will likely be the winning bidders in the 24 GHz spectrum auction. Such an outcome results in inefficient license allocation and fails to comply with the mandates of Sections 309(j) of the Act and 706 of the 1996 Act.

4. Geographic Partitioning Does Not Facilitate Service to Rural Areas or Rural Telephone Company Participation

[9] In a recent meeting with Chairman Kennard, Senate Minority Leader Tom Daschle and several members of the Senate "Farm Team" discussed, among other things, the difficulties of attracting capital to rural areas and the need to encourage capital investment in telecommunications facilities to serve rural areas.

In the *NPRM*, the Commission tentatively concludes that the use of geographic partitioning and spectrum disaggregation will result in economic opportunity for a wide variety of applicants including rural telephone companies.[10] The Commission has previously stated that partitioning and disaggregation allow the Commission to offer larger licenses but still ensure that rural providers have the opportunity to acquire and utilize spectrum for the provision of services to non-urban areas.[11]

Unfortunately, the Commission's reliance on partitioning and disaggregation is misplaced and unsupported by experience. The current disaggregation and partitioning rules do not serve as an incentive for license holders to "carve out" portions of their license areas for rural carriers. RTG members have been repeatedly rebuffed in their attempts to entice 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. Licensees are also unwilling to partition portions of their licenses because they want to retain the entire area to sell the systems as a whole in the future. Licensees perceive that unpartitioned licenses have a higher resale value. Because these licensees usually are able to fulfill the Commission's relaxed "build-out" requirements by simply serving larger, urban areas, the rural areas remain unserved. The rural areas become a kind of "by-product" of the FCC's licensing process.

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[10] *See NPRM* ¶ 17.

[11] *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).

5. *Auctions Are an Efficient Method of Aggregating Licenses*

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 participates who wish to combine smaller license areas into one or more large license areas may do so easily. Because of the simultaneous nature of the auction process, it is far easier for a large company to aggregate a large license area during an auction than it is for a small company to attempt to partition out a small license area post auction. Accordingly, the Commission should auction 24 GHz licenses on the basis of smaller, rather than larger, license areas.

6. Economic Areas are Not "Small"

Contrary to the Commission's assertion, there is nothing "small" about an EA. RTG notes that EA's are nearly three times as large as Basic Trading Areas ("BTAs"). The size of EAs alone will effectively prohibit rural telephone companies and other small businesses from successfully participating in the 24 GHz auction. Each EA includes vast geographic areas and multiple urban areas.

7. Using MSAs and RSAs Will Facilitate the Deployment of Service to Rural Areas and the Participation of Rural Telephone Companies

The FCC can ensure that licensees deploy service to rural areas and that rural telephone companies have an opportunity to participate in the acquisition and deployment of 24 GHz spectrum by auctioning 24 GHz licenses on the basis of MSAs and RSAs. The use of MSAs and RSAs will allow the marketplace, through the auction process, to function most efficiently. MSAs and RSAs by definition separate rural areas from urban areas. De-coupling metropolitan areas from rural areas will allow the marketplace — through the auction process — to determine an accurate valuation for each area. Companies interested in providing service to rural areas will

not have to compete against large companies who value a license based solely on the dense urban areas. Those companies interested in providing service to more densely populated markets may acquire MSAs without holding the surrounding rural areas hostage. This will lead to a more efficient distribution of licenses. As discussed above, companies wishing to aggregate licenses may do so easily through the auction process.

In addition, use of MSAs and RSAs will encourage the participation of the greatest number of small businesses and rural telephone companies consistent with Section 309(j) of the Act. Section 309(j)(4)(c) requires the FCC to adopt license areas which promote economic opportunity for a wide variety of applicants, including rural telephone companies**.** Rural telephone companies and other small businesses will be capable of buying and utilizing RSA-sized licenses to provide both basic and advanced telecommunications services to rural customers as mandated by Section 309(j) of the Act and Section 706 of the 1996 Act. Licensing 24 GHz spectrum on the basis of MSAs and RSAs will also encourage innovation and will facilitate the most rapid deployment of services.

The determination of the size of the license areas is the central issue impacting deployment of service to rural areas and participation by the broadest range of companies. Rather than including rural and urban areas within each license as proposed by the Commission, the Commission should license rural and urban areas separately to allow the marketplace to function most efficiently. Accordingly, as demonstrated above, in order to ensure the rapid roll-out of this service to all areas of the country including rural areas, to encourage the participation of rural telephone companies and other small businesses in the provision of such services, and to foster the efficient use of 24 GHz licenses generally, the Commission should auction this spectrum on an MSA/RSA-basis.

Although RTG prefers the use of MSAs and RSAs, it would support the use of BTAs or BTA-like areas rather than EAs or other large license areas. In the event that the Commission considers BTAs unworkable because of copyright issues, RTG requests that the FCC license 24 GHz in Component Economic Areas ("CEAs") rather than EAs. The 348 CEAs are the building blocks of the 172 EAs. Although CEAs are still much larger than RTG would prefer, their use would be a marked improvement over EAs and would allow additional opportunities for some rural telephone companies to participate in the 24 GHz service.

3. The Commission Should Allow Open Eligibility for Participation in the 24 GHz Service

In the *NPRM*, the FCC tentatively concludes that it is not necessary to impose eligibility restrictions on incumbent local exchange carriers ("ILECs").[12] RTG vigorously supports this conclusion. No eligibility restriction is necessary to prevent competitive harm. Open eligibility will foster competition and encourage innovation. In addition, open eligibility will help promote the deployment of service to rural areas by broadening the number of potential providers. Accordingly, the Commission should maintain open eligibility for participation in the 24 GHz service.

4. To Ensure the Deployment of Services to All Individuals Within a License Area, the Commission Should Adopt Minimum Coverage Requirements and Compulsory Partitioning and "Fill-In" Policies Which Allow Companies to Provide 24 GHz Service in Unserved Areas

[12] *See NPRM* ¶¶ 20-21.

In the *NPRM*, the Commission seeks comment on whether a 24 GHz licensee should be required to provide "substantial service" or as an alternative, some minimum coverage requirement as a condition for license renewal.[13] With respect to the minimum coverage requirement, the FCC seeks comment on whether it should require licensees be able to transmit to reach a minimum of one-third of the population in their licensed area, not later than the mid-point of the license term and two-thirds of the population by the end of the license term.[14]

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. RTG applauds the Commission for revisiting the issue of minimum performance requirements.

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 on the basis of large geographic areas. Accordingly, if the FCC license the 24 GHz service on an EA-basis as proposed, then RTG supports the use of minimum construction requirements -- similar to those applicable to 30 MHz PCS licensees.

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[13] *See id.* ¶ 32.

[14] *See id.* ¶ 33.

Namely, a licensee must provide service to one-third of the population within five years and two-thirds of the population within ten years.[15]

Unfortunately, even these construction requirements will have little impact on rural areas. A licensee will still be able to meet these population-based requirements by providing service to the urban and dense suburban regions of a license area. Such minimum requirements may, however, provide some additional opportunity for small businesses and rural telephone companies to participate in the 24 GHz service because they may create a small incentive for licensees to partition part of their licenses areas to other companies who will assist in buildout.

Should the FCC license 24 GHz 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 24 GHz service on the basis of MSAs and RSAs will result in a more efficient distribution of licenses and will alleviate the need to impose construction requirements.

In addition, although the stricter buildout requirements discussed above may help facilitate the deployment of service to rural areas, minium construction requirements alone will not ensure the deployment of service to rural areas if the Commission licenses the 24 GHz service 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. As discussed above, 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.

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[15] *See* 47 C.F.R. § 24.203(a).

Accordingly, should the FCC license the 24 GHz service 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 five of the license term, the Commission require licensees to enter into partitioning negotiations with any rural telephone company that proposes to provide service to an area in which the licensee itself does not 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 tied to 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 24 GHz service 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 24 GHz 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 such bidders are either unwilling or unable to serve. These license use policies will encourages more capital to flow into

the 24 GHz 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.

5. The Commission Should Increase the Level of Bidding Credits for Designated Entities and Should Provide Specific Bidding Credits for Rural Telephone Companies

1. The Commission Should Significantly Increase the Level of Bidding Credits

In its *NPRM*, the Commission proposes defining a "small business" as any firm with average annual gross revenues for the three preceding years not in excess of $40 million, and a "very small business" as a firm with average annual gross revenues for the three preceding years not in excess of $15 million. The FCC proposes providing small businesses with a 15 percent bidding credit and very small businesses with a 25 percent bidding credit.

Unfortunately, the proposed bidding credits are not sufficient to ensure that rural telephone companies and small businesses will have the opportunity to participate in the provision of 24 GHz service or to allow small businesses and rural telephone companies to compete with large, cash-rich entities. The proposed bidding credits are particularly inadequate in light of the Commission's proposal to license 24 GHz spectrum on an EA-basis. As discussed above, small businesses and rural telephone companies have almost no hope of competing against large, cash rich companies for EA licenses. Large companies will value EAs based entirely on the high density areas, and this valuation will place EAs well beyond the reach of most rural telephone companies.

In the LMDS auctions (Auction Nos 17 and 23), the FCC awarded very small businesses a 45 percent bidding credit, small businesses a 35 percent bidding credit and "entrepreneurs" a 25

percent bidding credit. The FCC licensed LMDS on a BTA-basis. Although may rural telephone companies were still foreclosed from acquiring LMDS licenses, the combination of significant bidding credits coupled with relatively small license areas, allowed some small businesses and rural telephone companies to participate in LMDS.

The capital requirements for providing LMDS and 24 GHz service will be very similar, especially in rural areas, where the high cost of customer premisses equipment ("CPE") remains a significant hurdle to the deployment of service. Based on the Commission's experience in LMDS, and based on the similarity of the two services, if the Commission licenses 24 GHz on an EA-basis, the Commission should, at a minimum, provide the same levels of bidding credits that it provided in the LMDS auctions (*i.e.*, 45%, 35%, and 25%). Awarding any lesser credits will virtually assure the exclusion of rural telephone companies and small businesses from the provision of 24 GHz service and the delay or denial of service to rural America.

2. *The Commission Should Provide Bidding Credits to Rural Telephone Companies*

In the *NPRM*, the FCC seeks comment on whether it should take any specific measures to promote economic opportunities for rural telephone companies to participate in the 24 GHz service consistent with Section 309(j) of the Act. RTG applauds the Commission for this inquiry. As discussed in Section II. A. *infra*, Congress recognized the unique role which rural telephone companies play in the deployment of service to rural areas. Accordingly, Congress mandated that the Commission afford rural telephone companies special consideration and benefits.

Pursuant to the mandate of Section 309(j)(3) & (4), the Commission should provide rural telephone companies with specific bidding credits irrespective of such companies' gross revenues. Section 309(j) specifically designates "rural telephone companies" in addition to "small businesses" as a class whose participation the Commission is to ensure. Requiring rural telephone companies to "qualify" as small businesses in order to be eligible to for a bidding credit imposes

additional and unnecessary regulatory complexity to their participation in an auction that is inconsistent with Section 309(j). RTG notes that the most expensive and time consuming aspect of preparing a short-form application is preparing the necessary financial showing. Rural telephone companies must also prepare lengthy financial showings when they are involved in assignments or transfers of FCC licenses subject to designated entity provision. The FCC could significantly reduce the cost of auction participation and after market transactions by recognizing rural telephone companies for the designated entities which they are.

A rural telephone company's annual gross revenues may also give a distorted view of such company's access to capital. Because of the high cost of providing service to rural areas, a rural telephone company's gross revenues may greatly exaggerate its financial outlook. That is, because of the high cost of providing service to rural areas, a rural telephone company may have significantly less net revenue and available capital than a similarly-sized urban telecommunications provider. In addition, most of RTG's members are cooperatives.[16] Their access to capital in public financial markets has historically been very limited.

In order to comply with the mandate of Section 309(j), the Commission should award rural telephone companies bidding credits based on their status as designated entities. RTG suggests that the level of the bidding credit could be based on the total number of access lines controlled by such company. RTG proposes that rural telephone companies with fewer than 10,000 access lines receive the same level of bidding credit as a "very small business" and all other rural telephone companies receive a bidding credit equal to that of a "small business." By awarding rural telephone companies bidding credits based solely on their status as rural telephone

[16] The Commission's broad affiliation rules sometimes lead to ridiculous results such as requiring a rural telephone company to attribute the gross revenues of the family farms and ranches of its cooperative board members.

companies, the Commission will facilitate, their participation in the 24 GHz service and will promote the deployment of 24 GHz service to persons residing in rural areas.

III. CONCLUSION

RTG welcomes the auction and licensing of the 24 GHz spectrum as a means by which rural telephone companies may enter the broadband wireless market and increase their coverage areas and expand their service offerings by deploying advanced wireless services to rural America. Unfortunately, the promise of this spectrum and its potential use in rural areas will be thwarted by auctioning 24 GHz spectrum in large license areas. To promote the deployment of 24 GHz service to rural America and to ensure the participation of rural telephone companies in the provision of service as Section 309(j) of the Act mandates, the Commission should auction licenses on an MSA/RSA-basis. In the event that the FCC auctions 24 GHz licenses on an EA-basis, the FCC should adopt minimum coverage requirements as well as "compulsory" partitioning and "fill-in" licensing which will allow interested companies to provide service to geographic areas in which the licensee does not provide service. The FCC should not impose any eligibility restriction on ILECs. In addition, the Commission should increase the amount of the bidding credits for small and very small businesses. Finally, the FCC should award bidding credits to rural telephone companies based solely on their status as designated entities.

RTG respectfully requests that the Commission take the actions requested herein.

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