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

In the Matter of	**)**	
	)	
Amendment of the Commission's Rules	**)**	
Regarding Installment Payment Financing for	**)**	
Personal Communications Services (PCS)	**)**	
Licensees	**)**	**WT Docket No. 97-82**

REPLY COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP
AND THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES

The Rural Telecommunications Group ("RTG") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), hereby respectfully submit these reply comments in response to the comments filed in response to the Federal Communications Commission's ("FCC" or "Commission") *Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 00-197, released June 7, 2000 regarding the Commission's tentative decision to revise certain aspects of the Commission's PCS C and F block rules.[1] The comments are sharply divided between the large carriers with insatiable spectrum appetites, upset that the Commission is "setting aside too much C block spectrum exclusively for small businesses,"[2] and the small carriers concerned about being relegated to spectrum scraps as the large carriers pressure the Commission "to turn the wireless

1 *In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service (PCS) Licensees*, WT Docket No. 97-82, Further Notice of Proposed Rulemaking, FCC 00-197 (rel. June 7, 2000). ("*Further Notice of Proposed Rulemaking*").
[2] US WEST ("US WEST") Wireless , LLC Comments at 1.

industry into a 'largest carriers only' game at the expense of the small- and medium-sized carriers, and ultimately at the expense of consumers."[3]

I. Large Carriers Ignore the Facts Regarding Small Carrier PCS Buildout

In their zeal to further decimate designated entity set-asides, the large carriers have resorted to speculation and untruths. SBC Communications Inc. ("SBC") predicts that "market realities… will prevent [small] companies from competing effectively with large national carriers."[4] Gazing into its crystal ball, Nextel Communications, Inc. ("Nextel") foresees a future where the "[c]ontinuation of the set-aside… is likely to spawn additional bankruptcies rather than increased competition."[5] Nextel goes on to posit that "*true* small businesses – by definition – do not have and cannot attract the financial prerequisites to acquire, construct, and deploy a competitive wireless telecommunications system in almost any BTA in the U.S."[6] SBC and Nextel are wrong. Other than their knowledge of a few, well-publicized bankruptcies, SBC and Nextel appear to know nothing of the successful small businesses that they are perhaps competing against, and their predictions of future small business doom are likely to be as accurate as their faulty sketches of the current PCS landscape.[7]

For example, CFW Communications Company ("CFW"), a designated entity headquartered in Waynesboro, Virginia, currently provides PCS services through the Virginia PCS Alliance, L.C. and the West Virginia PCS Alliance, L.C. in thirteen BTAs with a combined population of 2.8 million.[8] In

---

[3] Powertel, Inc. ("Powertel") Comments at 4.
[4] SBC Comments at 2.
[5] Nextel Comments at 3.
[6] Nextel Comments at 5-6.
[7] "In fact, since the FCC eliminated installment payments for the C-Block, and successfully re-auctioned licenses in the spectrum, not one additional licensee has declared bankruptcy or failed to provide competitive services." Office of Advocacy, U.S. Small Business Administration ("SBA") Comments at 2.
[8] Personal Communications Industry Association ("PCIA") Comments at 9.

addition to successfully competing with large national entities, CFW, a company with rural telephone company roots, has attracted $925 million in investments from various private equity firms including the likes of Morgan Stanley Dean Witter.[9] Designated entities such as CFW can and do attract the investment capital to construct PCS systems in large markets.

Further examples of small carrier success stories abound. Northcoast Communications, L.L.C. ("Northcoast"), a "very small business" under the Commission's rules, expects to launch service in its first market, Cleveland, by the end of 2000, in Boston and Minneapolis by second quarter 2001, in Columbus, Providence, and New Haven by the third quarter of 2001, and in the New York BTA by the end of 2001.[10] In the Southeast region, Powertel went from a small rural wireless carrier to a leading PCS carrier with licenses to provide wireless PCS services in 12 states to a population of more than 24 million people in major cities including Atlanta, Augusta, Columbus, Birmingham, Chattanooga, Jackson, Jacksonville, Knoxville, Lexington, Louisville, Macon, Memphis, Nashville, and Savannah.[11] With the Commission's five-year construction benchmark for a majority of the broadband PCS licenses approaching, large carriers such as SBC and Nextel can expect even more effective competition from the smaller players. The facts show that very small businesses and rural telephone companies have the wherewithal to provide service to customers quickly and efficiently.

II. Large Carriers Provide No Legitimate Rationale for the FCC to Change its Rules

As NTCA states, "[t]he Commission does not adequately explain how it may abandon its C and F block eligibility restrictions in view of the clear Congressional mandates that form its

[9] *The Wall Street Journal*, May 18, 2000.
[10] Northcoast Comments at 2.
[11] Powertel Comments at 1 and 4.

underpinnings. The only rationale the Commission provides for its policy reversal is that large carriers have requested it…"[12] The large carriers appear to have swayed the FCC to change its rules by claiming that in order to compete they need additional spectrum to meet projected subscriber growth and to roll out third-generation applications.[13] However, additional spectrum is going to be available very soon. In recognition of this appetite for spectrum and the demand for third-generation services, the Commission plans to reallocate "approximately 200 megahertz of spectrum mandated by Congress over the next three to five years."[14] Third-generation technology will require more spectrum, but it should not be the spectrum that has been legitimately set aside to meet the congressional mandate of Section 309(j).

SBC attempts to justify the removal of set-asides by insinuating that only large companies "have the resources to build facilities and commence service quickly…"[15] As discussed in detail above, SBC's public interest argument is based upon ignorance of the facts. Verizon Wireless ("Verizon") argues "the law is clear that, when the facts on which regulation is premised change, the agency not only should, but must, change course."[16] Verizon backs up this statement with no legal support. Section 309(j) has not magically disappeared. It is the law and it must be followed. Eviscerating the FCC's regulations that carry out the Section 309(j) congressional mandates is not only bad public policy, but illegal as well. As Leap Wireless International, Inc. ("Leap") notes, "for all the pages of comment the Commission has received to date, Leap remains astonished at the paucity of record evidence or

---

[12] National Telephone Cooperative Association ("NTCA") Comments at 3.
[13] AT&T Wireless Services, Inc. ("AT&T") Comments at 5.
[14] *In the Matter of Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium*, Policy Statement, FCC 99-354 (rel. November 22, 1999).
[15] SBC Comments at 2.

persuasive policy reasoning that would justify altering the… rules."[17] The large carriers are at a loss to provide any changed circumstances. As PCIA points out, "[t]he only thing that truly has changed since 1994 is that consolidation within the industry has greatly increased."[18] If the Commission abandons its 309(j) obligations, more such consolidation will occur and there will be no participation by small businesses or rural telephone companies as required by Section 309(j)(4)(C).[19]

III. Conclusion

The FCC offers no sound public policy reason for eliminating or loosening eligibility restrictions on any C and F block license. The only sound public policy directive present in the comments is the Section 309(j) mandate for 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.[20] The FCC's set-aside policies are the only way rural telephone companies and other small businesses will have a meaningful chance to deliver new services to their customers. The record of success for small PCS carriers is apparent in the comments filed and the large carriers have presented neither evidence nor legitimate public

---

[16] Verizon Comments at 2.
[17] Leap Comments at 2.
[18] PCIA Comments at 7.
[19] RTG and OPASTCO remind the Commission that 47 U.S.C. § 309(j)(4)(C) requires the Commission to "prescribe area designations and bandwidth assignments that promote… economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies…"
[20] 47 U.S.C. § 309(j)(3)(A).

policy concerns that justify the Commission's proposed abandonment of its statutory obligations under Section 309(j).

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP AND ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF RURAL TELECOMMUNICATIONS COMPANIES

By:_____/s/

Caressa D. Bennet, General Counsel
Kenneth C. Johnson, Director of Regulatory and Legislative Affairs
Rural Telecommunications Group
1000 Vermont Avenue, NW
Tenth Floor
Washington, DC 20005
(202) 371-1500

Stuart Polikoff, Director of Government Relations
Stephen Pastorkovich, Senior Policy Analyst
Organization for the Promotion and Advancement of Rural Telecommunications Companies
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

Dated: June 29, 2000

CERTIFICATE OF SERVICE

I, Joy Barksdale, an employee at the Law Offices of Bennet & Bennet, PLLC, hereby certify that the foregoing Comments have been served via hand delivery on the following, this 29th day of June, 2000:

William E. Kennard
Federal Communications Commission
445 Twelfth Street, SW,
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, SW, Room 8-B115
Washington, DC 20554

Commission Harold Furchgott-Roth
Federal Communications Commission
445 Twelfth Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, SW, Room 8-C302
Washington, DC 20554

*Robert S. Foosaner, Esq.
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191-3436

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 3-C252
Washington, DC 20554

Michael K. Powell,
Commissioner
Federal Communications Commission
445 Twelfth Street, SW, Room 8-A204
Washington, DC 20554

Kathleen O'Brien Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 3-C255
Washington, DC 20554

Karen Edwards Onyeije
Legal Advisor to Chairman Kennard
Federal Communications Commission
445 Twelfth Street, SW, Room 8-B201
Washington, DC 20554

Robert Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
445 Twelfth Street, SW, Room 7-C450
Washington, DC 20554

*Brent Weingardt
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314

Christopher Wright
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, SW, Room 3-C252
Washington, DC 20554

Bryan Tramont
Legal Advisor to Commissioner
Furchtgott-Roth
Federal Communications Commission

445 Twelfth Street, SW, 8-A302
Washington, DC 20554
Adam Krimsky, Legal Advisor to
Commissioner Tristani
Federal Communications Commission
445 Twelfth Street, SW, Room 8-C302
Washington, DC 20554

*Douglas I. Brandon
AT&T Wireless Services, Inc.
Vice President — External Affairs
1150 Connecticut Avenue, NW
Washington, D.C. 20036

Mark Schneider
Senior Legal Advisor to
Commissioner Ness
Federal Communications Commission
445 Twelfth Street, SW, Room 8-B115
Washington, DC 20554

Peter Tenhula
Senior Legal Advisor
to Commissioner Powell
Federal Communications Commission
445 Twelfth Street, SW, Room 8-A204
Washington, DC 20554

Amy Zoslov
Chief, Auctions and Industry
Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 4-A624
Washington, DC 20554

*James D. Ellis
Wayne Watts
Carol L. Tacker
SBC Communications, Inc.
175 E. Houston
San Antonio, TX 78205

*Jonathan M. Chambers and
Roger C. Sherman
Sprint PCS
401 9th Street, NW, Suite 400
Washington, DC 20004

*Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge
P. O. Box 152092
Irving, TX 75015-2092

Mark Bollinger
Federal Communications Commission
445 Twelfth Street, SW,
Washington, DC 20554

*Jill Canfield
National Telephone Cooperative Association
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203

*George Y. Wheeler
Peter M. Connolly
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, NW
Washington, DC 20036

* Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry
Association
1250 Connecticut Avenue, NW
Suite 800
Washington, DC 20036

* Jere W. Glover
Office of Advocacy
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

* Theresa A. Zeterberg
Attorney for Northcoast Communications, LLC
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, NW
Second Floor
Washington, DC 20006

* Jill Dorsey
Powertel, Inc.
1233 O.G. Skinner Drive
West point, GA 31833

* Jeffry A. Brueggeman
US WEST Wireless, LLC
Suite 700
1020 19th Street, NW
Washington, DC 20036

* Cheryl A. Tritt, Phuong N. Pham, and David Munson
Attorneys for Burst Wireless, Inc.
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006

* James H. Barker and William S. Carnell
Attorneys for Leap Wireless International, Inc.
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004-2505

* John T. Scott, III
Verizon Wireless
1001 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC 20004-2595

**Served via first class mail*

_____/s/_____
Joy Barksdale