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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
12th Street Lobby, TW-A325  
Washington, DC 20554

Re: Ex Parte Presentation in WT Docket No. 99-327

Dear Ms. Salas:

David Turetsky and Terri Natoli of Teligent, Inc. discussed via telephone yesterday, July 19, 2000, issues concerning the service areas to be auctioned in the 24 GHz band with Clint Odom, Legal Advisor to Chairman Kennard, Mark Schneider, Senior Legal Advisor to Commissioner Ness, Bryan Tramont legal advisor to Commissioner Furchtgott-Roth, Adam Krinsky legal advisor to Commissioner Tristani, and Kathleen Ham and D'wana Terry of the Wireless Bureau. They explained how the proposal by some commenters in the above-captioned proceeding to reduce the market-size of the 24 GHz licenses to be auctioned from Economic Areas (EAs) to Component Economic Areas (CEAs) would fail to realize the commenters' objectives or increase public welfare in any meaningful way. In addition, they explained why EA service areas do not prejudice rural interests because these interests are fully protected under the Commission's proposal to adopt liberal partitioning and disaggregation policies for the 24 GHz band that will ensure service to all areas of the nation. Finally, they explained how the recent 38 GHz auction, which appropriately used EA's for comparable fixed wireless service, confirms these facts.

The proponents of CEA-based licenses seek to modify the Commission's proposed EA-based licensing scheme on the belief that smaller license areas will increase the likelihood that rural carriers will be more successful in the 24 GHz auction (apparently suggesting, that, if successful, rural carriers will provide better service in these areas). The Rural Telecommunications Group ("RTG") readily acknowledges, however, that there is no correlation

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between CEA-based licenses and the division of rural and metropolitan areas.<sup>1</sup> In fact, a CEA license is only a smaller version of an EA license that will almost always comprise both metropolitan and rural areas.<sup>2</sup> Indeed, proponents proffer no evidence or explanation demonstrating how CEA-based licenses will lead to improved service in rural areas (assuming they will be underserved at all). In actuality, their support for CEAs is rooted in the notion that smaller licenses would provide certain specific carriers with a better chance at winning licenses in the auction.<sup>3</sup>

RTG's argument in support of smaller licenses to benefit smaller carriers seems to depend upon the proposition that opportunities for efficiency vary with the identity of the supplier/licensee, *i.e.* rural carriers will provide better service in rural areas. But in the absence of any record evidence, the Commission must consider this highly improbable. In fact, every licensee has the incentive to provide service whenever profits can be derived. Commenters supporting smaller geographic areas have no reason to doubt that those carriers that acquire EA licenses containing rural areas will provide service to those areas. If another carrier can offer service more efficiently to a particular area, then the licensee can be expected to act in an economically rational manner and partition the license to the operator with the greater demand for the spectrum. (This is the prediction of the Coase Theorem, which provides the basis for the Commission's disaggregation and partitioning initiative). There is no basis to support a view that EA license areas will result in "rural areas of the EAs [being] held hostage as the spectrum winner concentrates... in the more lucrative urban... areas."<sup>4</sup> The Commission must keep in mind that current 24 GHz licenses cover only urban areas, *i.e.* Standard Metropolitan Statistical Areas (SMSAs) which do not include rural areas. These service areas were established by the Commission in the early 1980s. In addition, since August 1996 incumbent 24 GHz licenses have been unable to apply for additional spectrum for new service areas anywhere.

Moreover, the notion that the Commission's auction policies should favor one class of auction participant is contrary to the Commission's efforts to adopt spectrum policies that lead to improved competition and the more efficient provision of telecommunications services. It is well accepted that through these policies consumer welfare nationwide has been, and will continue to

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<sup>1</sup> Rural Telecommunications Group, *ex parte* at 2 (July 12, 2000) ("CEAs do not have the metropolitan/rural de-linkage of MSAs/RSAs . . . .") (RTG *ex parte*).

<sup>2</sup> Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. Of the nodes, 90 percent are metropolitan, and 10 percent are non-metropolitan. Thus, of the 348 CEAs, 310 contain metropolitan areas. Each metropolitan area is the node of a different CEA; with minor exceptions, the non-metropolitan nodes are non-metropolitan counties where newspapers widely read in these areas are published. See Redefinition of the BEA Economic Areas, Kenneth P. Johnson, <<http://www.bea.doc.gov/bea/regional/articles/0295rea/maintext.htm>>.

<sup>3</sup> See RTG *ex parte* at 2.

<sup>4</sup> Id.

be, enhanced. Distributional concerns such as those suggested by RTG should not be favored over the gains realized by all consumers through greater competition and the provision of telecommunications services more efficiently.

In this proceeding, as in the 39 GHz proceeding, the Commission has properly defined the market size of 24 GHz licenses in a manner that it believes is optimal for the provision of competitive, wireless telecommunications service.<sup>5</sup> Stated differently, EA licenses promote greater consumer welfare and facilitate wider service because they permit the realization of scale economies. If the Commission were to adopt smaller license areas, it should only do so because increased efficiencies, and the enhancements to consumer welfare that would derive from such efficiencies, warrant such a decision. In this case, smaller license areas would likely lead to increased transaction costs as carriers are forced to combine licenses to obtain the necessary scale -- costs that carriers in other competitive spectrum bands do not have to incur.<sup>6</sup>

Notwithstanding the economies of scale of EA licenses, if a carrier elects not to provide service to the entire license area (the apparent basis for this proposition), the disaggregation and partitioning rules the Commission has proposed permit that carrier to sell that portion of the license. In its comments, RTG claimed, without any substantiation, that this was not a viable option. Thus, RTG would have the Commission assume that a carrier would rather retain an unused, and therefore non-revenue producing, portion of a license than sell it to another carrier. In a market driven licensing scheme, where, through auctions and disaggregation policies, licenses are in the hands of users that value them most, this assumption cannot possibly be the basis for government policy because it posits, as the norm, irrational behavior. A rational licensee would be expected to profit maximize either by providing service to the area or partitioning the license and selling the unused portion to someone who would. Furthermore, arguments that partitioning and disaggregation are not currently working cannot be used as a basis for modifying the proposed EA service area for 24 GHz fixed wireless licenses as the first auctions for fixed wireless licenses on an EA basis have just recently occurred and it is far too soon to determine whether the license winners will utilize the full EA or seek to divest portions of it.

The Commission's focus in this proceeding should not be diverted from the proposition set forth in its recent policy statement: pursuing "policies that promote competition and encourage

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<sup>5</sup> In the 39 GHz proceeding, RTG raised the same opposition to EA licenses and petitioned the Commission to delay the auction of 39 GHz licenses so that they could be modified and reduced in size. The Commission, apparently recognizing the soundness of its decision to issue EA licenses, went ahead with the auction as scheduled. See Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band Scheduled for April 11, 2000, Reply Comments of the Rural Telecommunications Group (filed Dec. 20, 1999).

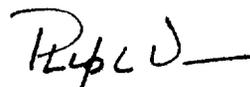
<sup>6</sup> Other costs would increase as well for 24 GHz licenses that would not exist for fixed wireless licenses in other bands which provide similar and competing service, such as those attributable to RF coordination and planning costs and increased capital costs.

the development of emerging telecommunications technologies."<sup>7</sup> Concerns over the distribution of those licenses in a competitive market such as this should not enter the calculation. To the extent concerns may exist over the provision of service in certain parts of the nation, the Commission can be sure that rational market actors will provide service in those areas, or transfer those portions of the license to someone who will.

Lastly, the results of the recent 38 GHz auction which was just completed in April bear out the fact that EA service areas provide sufficient opportunities for small (or very small) entities to obtain spectrum at affordable prices, if they desire. Based on Teligent's summary analysis of the results of that auction, well over 25% of the licenses available were purchased or could have been purchased on a full EA basis for \$10,000 or less before the applicable 25% or 35% bidding credits are applied. Assuming a very small entity having a 35% bidding credit won these licenses, the actual price to be paid for the entire EA would be \$6,500 or less. A more detailed analysis of the results of this auction indicates that small entities, had they desired, had numerous opportunities to obtain licenses and the EA service area did not prevent them from acquiring desired spectrum.

In accordance with the Commission's rules, we are submitting two copies of this letter.

Respectfully submitted,



Philip L. Verveer

cc: Kathleen Ham  
Adam Krinsky  
Clint Odom  
Mark Schneider  
D'wana Terry  
Bryan Tramont

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<sup>7</sup> Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, FCC 99-354 at ¶ 2 (rel. Nov. 22, 1999).