

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

In the Matter of)
)
Amendments to Parts 1, 2, 87 and 101)
of the Commission’s Rules) **WT Docket No. 99-327**
To License Fixed Services)
at 24 GHz)

To: The Commission

**PETITION FOR RECONSIDERATION
OF THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group (“RTG”), by its attorneys, hereby respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) August 1, 2000 *Report and Order*¹ in the above-captioned proceeding. The *Report and Order* sets the auction and service rules for the 24.25-24.45 GHz and 25.05-25.25 GHz bands (“24 GHz band”). Specifically, RTG requests that the Commission reconsider its use of the 172 large Economic Areas (“EAs”) and 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, upon reconsideration, decides to continue to pursue its policy of licensing the 24 GHz service on the basis of large, rather than small, geographic areas, then the FCC should adopt build-out policies which promote the provision of 24 GHz services to all individuals within a license area including those in the rural portions, rather than the vague and almost meaningless “substantial service” standard.

¹ *In the Matter of Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz*, Report and Order, WT Docket No. 99-327, FCC 00-272, (rel. Aug. 1, 2000). (“*Report and Order*”)

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 have started 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. Many RTG members are interested in using the 24 MHz band to augment their current operations and to provide additional fixed services to their customers.

II. The FCC Has Recognized that Large License Areas Will Overlook Rural Areas

RTG urges the Commission to reconsider its reliance on large license areas in the 24 GHz spectrum auction. Without smaller geographic license areas, the Commission is virtually guaranteeing that rural regions of the country will not see the benefits of 24 GHz service. What is particularly disturbing about the *Report and Order* is that three out of the five Commissioners expressed concern that the Commission's policies in this *Report and Order* would exclude meaningful auction participation by rural carriers. On this fact alone, the Commission should revisit the *Report and Order* and mandate the use of smaller geographic license areas in at least two of the five blocks to be auctioned. As Commissioner Gloria Tristani stated in her concurring statement to the *Report and Order*, "I would have preferred to take further steps that could serve to foster fixed wireless build-out in America's smaller cities and rural areas. In particular, I would have licensed one or two of the five 24 GHz license

blocks in smaller geographic areas.” Commissioner Harold Furchtgott-Roth also called for “subdividing one or two of the five license areas into smaller license units” and Commissioner Susan Ness noted that the “[a]uction of larger service areas limits the ability of smaller providers with rural strategies to obtain spectrum.” In light of the majority opinion, the Commission should reconsider its rules and license at least two of the five blocks on an MSA/RSA basis.

Not only do the Commissioners acknowledge that the 24 GHz licensing scheme will disadvantage rural carriers, the FCC’s recent *Competitive Bidding Order*² states that Section 309(j) of the Communications Act, as amended, requires the FCC to disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies, and to promote the development and rapid deployment of new technologies to the public, including those residing in rural areas.³ The Commission suggests that the Section 309(j) mandate can be best met by service-specific small license areas.⁴ While not adopting an “ironclad” rule against large license areas, the FCC only comes up with certain satellite-based services that might justify large footprints.⁵ In light of the Commission’s own analysis, it should reconsider solely using EAs in the 24 GHz band.

III. Large License Areas Unjustly Favor a “National” Business Plan

The Commission’s decision to use only EAs demonstrates a bias toward a “national” business plan. Spectrum policy in this *Report and Order*, according to Commissioner Harold Furchtgott-Roth, should be “business plan neutral.” As the Commission’s rules stand now, Teligent stands to benefit the most. While this outcome will introduce more local competition in America’s big cities, the FCC should

² *In the Matter of Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking, WT Docket No. 97-82, (rel. Aug. 14, 2000). (“*Competitive Bidding Order*”)

³ 47 U.S.C. § 309(j).

⁴ *Competitive Bidding Order* at ¶ 53.

⁵ *Id.*

not be in the position of choosing winners. RTG applauds Teligent's offering of local exchange competition throughout approximately fifty of the country's largest cities, but seriously doubts that Teligent's investors will look kindly upon a Teligent foray into the nation's less-populated, less-profitable rural hinterlands.

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, and harsh weather, remain expensive and challenging locations to serve. "National" auction participants will use the 24 GHz spectrum to deploy high speed data and Internet access to businesses and Multi-Dwelling Units ("MDUs") in dense urban areas, the business strategy pursued by Teligent and Winstar. This business case does not apply to sparsely-populated rural areas. Rural telephone companies and cooperatives do not have the short profit deadlines that a large carrier like Teligent must meet. Teligent, as a publicly traded company, will be acquiring spectrum to turn a profit as should be expected. Rural telephone companies, less driven by shareholder profit responsibilities, can concentrate on the public interest of offering their customers new services and are able to use the telecommunications infrastructure they already have in place to utilize the 24 GHz band in an economically efficient manner. Commissioners Furchtgott-Roth, Ness, and Tristani have recognized the public interest benefits of using smaller geographic license areas to allow small, rural carriers access to 24 GHz spectrum. The Commission should reconsider its *Report and Order* and balance profit with the public interest by heeding the Commissioners' concerns.

Moreover, a fixed service such as 24 GHz does not presuppose a national strategy when it can only propagate for a few miles. While mobile carriers might desire a national footprint since their customers are likely to roam, fixed services do not have such a justification. Fixed services, by their

very definition, are localized services. Teligent will be offering “local” service while the *Report and Order* is biased toward a national service. Smaller license areas will permit rural carriers to pursue more localized strategies – strategies that the FCC’s “national” rules repress.

IV. There Is No Reasonable Justification for “Parity Within the Broadband Services”

The Commission’s arbitrary rationale that it must use large geographic license areas to meet some ideal of “parity within the broadband services”⁶ is no justification for the *de facto* exclusion of rural carriers from any significant participation in the 24 GHz auction. The Commission’s manufactured concern about having the 24 GHz license areas be on equal footing with the 39 GHz license areas should not override genuine statutory concerns such as the congressionally mandated deployment of new services to rural areas as codified in Section 309(j) of the Communications Act, as amended.⁷ In addition, the FCC’s arbitrary concern for “broadband parity” among spectrum license sizes makes no sense in light of the hodgepodge of licensing schemes already in place in the broadband arena. The 39 GHz band is heavily encumbered by licensees with rectangular licenses, LMDS was auctioned by BTA, and MMDS has both site-specific licenses and BTA licenses. It is bad public policy for the FCC to pursue the unreachable ideal of “broadband parity” when such pursuit contravenes the congressional mandate of Section 309(j). In sum, the law outweighs administrative “parity” ease.

V. Partitioning and Disaggregation Has a Mixed Record

The FCC’s reliance upon partitioning and disaggregation to foster the rapid delivery of wireless service to rural areas is misplaced. The FCC’s partitioning and disaggregation rules, according to Commissioner Harold Furchtgott-Roth, “have a mixed record and appear to create substantial transaction costs.” Costs that in many cases are more than the fair market value of a portion of

⁶ *Report and Order* at ¶ 16.

spectrum that a rural carrier desires to partition and serve. Commissioner Gloria Tristani notes that the Commission's partitioning and disaggregation policy "has produced mixed results at best." The support the Commission offers for its reliance on its partitioning and disaggregation rules in the *Report and Order* of the transfer of a few PCS C and F block licenses, while encouraging, is altogether too rare. The 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 will have a higher resale value. The Commission should reconsider its misplaced reliance upon the "mixed" record of its partitioning and disaggregation rules and allow small, rural carriers a chance at licenses through the auction process.

VI. There Will Be No "Substantial Service" in Rural Areas Under the FCC's Current Rules

The FCC's "substantial service"⁸ requirement will not speed the delivery of 24 GHz service to rural areas. As Commissioner Susan Ness recognized, "[t]he vagueness of the current standard, however, may inhibit the deployment of wireless service to rural areas." The meaningless substantial service requirement will cause rural areas to continue to go unserved since EA license winners will be

⁷ 47 U.S.C. § 309(j).

⁸ *Report and Order* at ¶ 37.

able to meet the requirement by serving a portion of the urban area. While smaller geographic license areas that separate urban and rural areas (*i.e.*, MSAs/RSAs) are the recognized solution to spur rural build-out, if the Commission insists upon using large EAs, it should require 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.⁹ In addition, the Commission should 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.

VII. Smaller License Areas Will Allow Rural Participation in the 24 GHz Auction

The FCC can ensure 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. MSAs and RSAs, by definition, separate rural areas from urban areas. De-linking 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 localized service to rural areas will not have to compete against “national” companies that value a license based solely on dense urban areas. Companies interested in providing service to more profitable populated markets may acquire MSAs without holding the surrounding rural areas hostage.

⁹ See 47 C.F.R. § 24.203(a).

While not as desirable as MSAs and RSAs because there is no metropolitan/rural de-linkage, the Commission could 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 rural telephone companies and other small carriers to offer localized 24 GHz service.¹⁰

VIII. Conclusion

Three Commissioners have realized that smaller geographic license areas are needed to allow meaningful rural participation in spectrum auctions. If the Commission does not reconsider the *Report and Order* and allow at least two of the five license blocks to be auctioned on a smaller geographic basis, the Commission will have effectively slammed the door on any rural participation in the upcoming 24 GHz auction. RTG finds it hard to believe that the FCC, in light of the majority of Commissioners’ concerns and the FCC’s recent policy discussions in the *Competitive Bidding Order* favoring small geographic license areas, will allow rural regions to miss out on 24 GHz services. The Commission has a statutory duty under Section 309(j) to consider rural telephone companies and their customers in the 24 GHz auction and all future auctions. At the moment, none of the Commission’s post-auction mechanisms has had much success in furthering the deployment of wireless service to rural areas.

¹⁰ RTG notes that most smaller EAs are east of the Mississippi, making most western EAs too large for rural carriers to

The FCC can no longer leave rural America behind and must reconsider the *Report and Order* and follow the majority's suggestion to use smaller geographic license areas.

RURAL TELECOMMUNICATIONS GROUP

Caressa D. Bennet
General Counsel

Kenneth C. Johnson
Director – Regulatory and Legislative Affairs

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

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