

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

**In the Matter of** )  
 )  
**Reallocation and Services Rules for** ) **GN Docket No. 01-74**  
**the 698-746 MHz Spectrum Band** )  
**(Television Channels 52-59)** )

**To: The Commission**

**REPLY COMMENTS OF  
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group (“RTG”),<sup>1</sup> by its attorneys, hereby replies to the initial comments to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.<sup>2</sup>

The Commission proposed to generally model its rules for the Lower 700 MHz Band (698-746 MHz) on those previously created for the Upper 700 MHz commercial bands (746-764 and 776-794 MHz).<sup>3</sup> While RTG supports the Commission’s initiative to

---

<sup>1</sup> The Rural Telecommunications Group 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. Other RTG members seek to acquire spectrum or to be able to utilize the spectrum of others. They have found it difficult to acquire spectrum through auctions or to structure management or lease arrangements due to existing FCC rules, policies and case precedent. RTG's members are all affiliated with rural telephone companies or are small businesses.

<sup>2</sup> *In re Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Notice of Proposed Rulemaking, GN Docket No. 01-74, FCC 01-91 (March 28, 2001) (“NPRM” or “Notice”).

<sup>3</sup> *In re Service Rules for the 746-764 and 776-794 Bands, and Revisions to Part 27 of the Commission’s Rules*, First Report and Order, 15 FCC Rcd 476 (2000). (“*Report and Order*”).

reallocate the Lower 700 MHz Band, RTG and the overwhelming majority of commenters emphatically disagree with several fundamental aspects of the FCC's proposal. Contrary to the Commission's proposals, the record indicates that the Commission should license the Lower 700 MHz Band in the smallest possible geographic areas, preferably Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). The majority of commenters also urge the Commission to create multiple spectrum blocks within each license area. The comments support the Commission providing rural telephone companies with distinct auction incentives and establishing strict performance requirements.

Notably only one commenter, Qwest Wireless, LLC ("Qwest"), an entity affiliated with a Bell Operating Company, disagreed with RTG's position while twenty other (20) commenters agreed that the Commission should reject the approach used for the Upper 700 MHz Band licensing.<sup>4</sup>

## **I. THE FCC SHOULD LICENSE THE LOWER 700 MHZ BAND IN THE SMALLEST POSSIBLE GEOGRAPHIC AREAS**

In its comments, RTG called upon the Commission to create geographic license areas comparable to MSAs and RSAs. The comments overwhelmingly support this view. Cellular South Licenses, Inc. ("Cellular South"), Leap Wireless International, Inc. ("Leap"), Telecom Consulting Associates ("TCA"), the National Telephone Cooperative

---

<sup>4</sup> The non-broadcast commenters that concurred with RTG include: U.S. Cellular Corporation, Gila River Indian Community, Leap, CROW, TCA, Kennebec Telephone, RC Communications, Golden West Communications d/b/a Vivian Telephone Company, Splitrock Telecom Cooperative, Baltic Telecom Cooperative, Golden West Telecommunications Cooperative, Midstate Communications, Roberts County Telephone Cooperative Assn., McCook Telephone Cooperative, Golden West Technologies, SDN Communications, Interstate Telecommunications Cooperative, James Valley Telecommunications, NTCA, Cellular South Licenses.

Association (“NTCA”), U.S. Cellular Corporation (“U.S. Cellular”), Gila River Indian Community (“Gila River Community”), the Coalition for Rural Opportunities in Wireless (“CROW”), Kennebec Telephone, RC Communications, Golden West Communications d/b/a Vivian Telephone Company, Splitrock Telecom Cooperative, Baltic Telecom Cooperative, Golden West Telecommunications Cooperative, Midstate Communications, Roberts County Telephone Cooperative Assn., McCook Telephone Cooperative, Golden West Technologies, SDN Communications, Interstate Telecommunications Cooperative, and James Valley Telecommunications are among the parties who call on the FCC to do the same.<sup>5</sup>

Qwest states that although smaller license areas may provide additional spectrum ownership opportunities, “licensing on a small area basis would necessitate significant aftermarket transactions, likely hindering the rapid deployment of new services.”<sup>6</sup>

Qwest’s concern is misplaced. The spectrum needs of carriers with regional or national ambitions have already been met in the Upper 700 MHz Band, to the total exclusion of small and medium-sized carriers seeking to serve rural and less-populated areas.<sup>7</sup>

Moreover, if the Commission shares Qwest’s concerns about efficient spectrum licensing, it can adopt combinatorial bidding with these smaller geographic areas to allow larger carriers to bid on multiple areas. Elsewhere in its comments, Qwest itself recognizes the efficacy of combinatorial bidding and the danger of relegating rural carriers to a

---

<sup>5</sup> See e.g., Cellular South Comments at 6; Leap Comments at 4; TCA Comments at 4; NTCA Comments at 2.

<sup>6</sup> Qwest Comments at 7.

<sup>7</sup> U.S. Cellular Comments at 7.

secondary market with large licensing areas.<sup>8</sup> As RTG previously noted, the FCC could also reserve a portion of the Lower 700 MHz band's 48 megahertz of spectrum for Economic Area Groups ("EAGs") and the other portion for MSAs and RSAs.<sup>9</sup>

The Gila River Community provides a telling example of the consequences of licensing with EAGs. If the Lower 700 MHz Band spectrum is valued at "\$3.00 per MHz/POP, a 24 MHz license for one EAG would cost more than \$3 billion dollars."<sup>10</sup> Rural telephone companies and small businesses could not participate in an auction that requires a bid of \$3 billion dollars. If, however, the FCC auctions this spectrum on the basis of MSAs and RSAs (or similarly sized areas), it could facilitate auction participation by existing cellular companies that do not need or desire a regional or national footprint.

Qwest rightly decries a "one-size-fits-all" approach to license sizes,<sup>11</sup> but its suggestion of nationwide licenses and EAGs is just that; a prescription that ignores the needs of local, regional, and rural carriers at the expense of national plans. Gila River Community shows the insurmountable burden it will face as a "small business" if the FCC licenses through EAGs. If the Gila River Community desires to provide service on its reservation and the Commission uses EAGs, Gila River Community will have to bid on EAG-5, which has a population of over 40 million people and encompasses 13

---

<sup>8</sup> Qwest Comments at 5-6. RTG agrees with Qwest, though, that the FCC must promote secondary market mechanisms. Qwest Comments at 8-9.

<sup>9</sup> RTG Comments at 6-7.

<sup>10</sup> Gila River Community Comments at 4.

<sup>11</sup> Qwest Comments at 5.

states.<sup>12</sup> Just like rural telephone companies, entities such as the Gila River Community can simply not afford to bid on a license area that large. Gila River Community will have to rely on secondary market mechanisms to serve its own reservation.

Cellular South, NTCA, Leap and TCA also agree that the Commission should create small geographic license areas comparable to MSAs and RSAs so as not to drive up the price for smaller carriers seeking to serve rural areas. All of these commenters note that the use of EAGs can only lead to high auction bids. MSAs and RSAs are appropriate for both rural carriers and large carriers. The larger carriers can aggregate multiple licenses to achieve a national footprint and rural or smaller carriers will be able to participate in the auction, creating a more efficient distribution of spectrum.<sup>13</sup>

The record clearly reflects ways for the Commission to accommodate the needs of both the nation's most urban and rural communities. By using the building blocks of MSAs and RSAs, carriers with large and small ambitions can fashion spectrum footprints in the Lower 700 MHz Band.

## **II. THE FCC SHOULD CREATE MULTIPLE SPECTRUM BLOCKS**

The commenters support the need to divide the available 48 MHz into two or more blocks. Qwest agrees with RTG that the FCC should not license the spectrum in a single 48 megahertz block. It explains that smaller frequency blocks are necessary “to promote competitive service provisions and diversity in spectrum licensing, consistent with the Commission’s Section 309(j) mandates.” Qwest correctly states that “smaller

---

<sup>12</sup> Gila River Community Comments at 4-5.

<sup>13</sup> Cellular South Comments at 6; Leap Comments at 4; TCA Comments at 4; NTCA Comments at 2.

block sizes are necessary to allow small and mid-sized carriers to participate successfully in an auction for such services, instead of being relegated to obtaining spectrum in the secondary market.<sup>14</sup>

The Cellular Telecommunications & Internet Association (“CTIA”) and the CROW also urge the Commission to make available a sufficient number of licenses in each geographic area to permit entry by multiple competitors.<sup>15</sup> CROW specifically suggests that the Commission license the Lower 700 MHz Band spectrum in two 24 MHz frequency blocks and use MSAs and RSAs, similar to those used in the Cellular Radiotelephone Service, in order to encourage access to and use of spectrum by rural telephone companies.

Cellular South rejects the Commission’s suggestion that a nationwide license would offer carriers more flexibility in the build-out of their service areas and create fewer problems with protection and interference. Although a large nationwide license may create greater flexibility, Cellular South argues that this type of licensing scheme precludes small and mid-sized businesses from participating in the auction at all, and hence, serving rural areas.<sup>16</sup>

---

<sup>14</sup> Qwest Comments at 5.

<sup>15</sup> CTIA Comments at 5; CROW Comments at 2.

<sup>16</sup> Cellular South Comments at 2-3.

### **III. THE FCC MUST PROVIDE RURAL TELEPHONE COMPANIES WITH AUCTION INCENTIVES**

RTG urges the Commission to create a distinct auction benefit for rural telephone companies, as required by law.<sup>17</sup> In its comments, Leap correctly notes that Section 309(j) of the Communications Act clearly requires the Commission to create rules that ensure prompt delivery of service to rural areas including bidding credits for rural telephone companies.<sup>18</sup> NTCA also supports rural telephone company auction incentives, explaining that there is no “evidence that licenses have been widely disseminated as required by 309(j)” or that secondary markets efficiently move spectrum from large holders to entities seeking to serve rural areas.<sup>19</sup>

Nor can the Commission rely on partitioning and disaggregation as a means for rural telephone companies to participate in spectrum-based businesses. Leap explains that large carrier licensees cannot be counted on to partition or disaggregate the licenses in the post-auction market.<sup>20</sup> As past experience has demonstrated, large carriers do not want to give up their rights to the spectrum, which results in spectrum warehousing and an inefficient distribution of much needed spectrum.<sup>21</sup> As TCA explains, “the Commission seemingly relies upon the prospect of spectrum partitioning as a way for small carriers to gain a foothold in the wireless markets, including the provision of 3G

---

<sup>17</sup> RTG Comments at 8-9.

<sup>18</sup> Leap Comments at 2. “Section 309(j) also includes as objectives for competitive bidding, the avoidance of ‘excessive concentration of licenses and ... disseminating licenses among a wide variety of applicants ...’.”

<sup>19</sup> NTCA Comments at 5.

<sup>20</sup> Leap Comments at 3.

<sup>21</sup> TCA Comments at 5.

services. An examination of the history of PCS licenses demonstrates that this technique, while encouraged by the Commission, is simply not embraced nor supported by license holders.”<sup>22</sup> The U.S. Cellular Corporation also agrees with RTG that the Commission should not rely on partitioning and disaggregation to get spectrum to rural telephone companies.<sup>23</sup> Rather, the Commission should create a bidding credit specifically for rural telephone companies. Section 309(j) of the Communications Act requires no less.

Although RTG applauds the Commission for attempting to create greater incentives for smaller companies, the Commission should also identify rural telephone companies as a separate class of designated entity, as did Congress, rather than establishing one class of designated entity bidding credit based merely upon the gross revenues of a company.

#### **IV. THE FCC MUST ESTABLISH STRICTER PERFORMANCE REQUIREMENTS**

As NTCA notes in its comments, the Commission’s liberal build-out rules promote warehousing of spectrum, which Section 309(j) expressly prohibits, by minimizing coverage requirements and permitting carriers to ignore rural areas.<sup>24</sup> The Commission’s proposed “substantial service” requirement is simply not strict enough to ensure that a licensee will build-out its system to serve the population of its entire license area. A strict build-out requirement or unserved area approach<sup>25</sup> will encourage potential

---

<sup>22</sup> *Id.*

<sup>23</sup> U.S. Cellular Comments at 9.

<sup>24</sup> NTCA Comments at 5.

<sup>25</sup> *See e.g.*, Section 22.949 for the cellular service rule.

bidders to value a license block as a whole and not only for the most-populated portions. U.S. Cellular explains that national carriers have only built out their facilities to serve approximately seventy-five (75) percent of their populations, leaving rural areas generally unserved.<sup>26</sup> Leap commented that the Commission's current build-out requirements provide little motivation to licensees of large service areas to serve rural markets.<sup>27</sup>

The Commission must also create a strict performance requirement to meet the Congressional directive that auction spectrum be put to use in communities large and small.<sup>28</sup> Couple with smaller geographic license areas, this policy would encourage entities to acquire only those licenses where they intend to offer service.

## V. CONCLUSION

Twenty commenters agree with RTG that the Commission should use MSAs and RSAs (or similarly-sized license areas) to license the Lower 700 MHz Band. Based on this record, the Commissioner should abandon its Upper 700 MHz Band policies. The FCC should also create multiple spectrum blocks, provide rural telephone companies with auction incentives and establish strict performance requirements to ensure that the Lower 700 MHz Band is equitably distributed across the country and put to use in urban and rural communities.

---

<sup>26</sup> U.S. Cellular Comments at 6.

<sup>27</sup> Leap Comments at 6.

<sup>28</sup> 47 U.S.C. § 309(j)(4)(B).

Respectfully Submitted,

THE RURAL TELECOMMUNICATIONS GROUP

By: \_\_\_\_\_/s/

Caressa D. Bennet, General Counsel  
Brent H. Weingardt, Regulatory Counsel  
Kenneth C. Johnson, Director of Regulatory and  
Legislative Affairs  
Rebecca L. Murphy

Rural Telecommunications Group  
Bennet & Bennet, PLLC  
1000 Vermont Avenue, NW  
Tenth Floor  
Washington, DC 20005  
202-371-1500

June 4, 2001

**CERTIFICATE OF SERVICE**

I, Fatmata B. Deen, an employee at the Law Firm of Bennet & Bennet, PLLC, hereby certify that copies of the foregoing “Reply Comments of the Rural Telecommunications Group” were sent to the following via U. S. mail unless otherwise indicated.

Scott A. Mackoul \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Policy and Rules Banch  
445 12<sup>th</sup> Street, SW, Room 4-A361  
Washington, DC 20554

James Schlichting, Deputy Chief \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 3-C254  
Washington, DC 20554

Public Reference Room \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room CY-B400  
Washington, DC 20554

Kelly Quinn, Legal Advisor \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street, SW, Room 3-C224  
Washington, DC 20554

James H. Barker  
Raymond B. Grochowski  
Patrick H. Shannon  
Latham & Watkins  
555 11<sup>th</sup> Street, NW  
Washington, DC 20004-1304

Kathy Harris, Deputy Chief \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Commercial Wireless Division  
445 12<sup>th</sup> Street, SW, Room 4-C236  
Washington, DC 20554

William Kunze, Chief \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Commercial Wireless Division  
445 12<sup>th</sup> Street, SW, Room 4-C236  
Washington, DC 20554

George Y. Wheeler  
Peter M. Connolly  
Holland & Knight, LLP  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, DC 20006

Kris Monteith, Chief \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Policy Division  
445 12<sup>th</sup> Street, SW, Room 3-C124  
Washington, DC 20554

Sharon J. Devine  
Blair A. Rosenthal  
Qwest Wireless, LLC  
1020 19<sup>th</sup> Street, NW  
Suite 700  
Washington, DC 20036

Michael F. Altschul  
Cellular Telecommunications  
& Internet Association  
1250 Connecticut Avenue, NW  
Suite 800  
Washington, DC 20036

Tom W. Davidson  
Daniel E. Pollner  
Akin, Gump, Strauss, Hauer & Feld, LLP  
1333 New Hampshire Avenue, NW  
Suite 400  
Washington, DC 20036

James H. Barker  
Patrick H. Shannon  
Latham & Watkins  
555 11<sup>th</sup> Street, NW  
Washington, DC 20004

John A. Prendergast  
Gerard J. Duffy  
Blooston, Mordkofsky, Dickens  
& Prendergast  
2120 L Street, NW, Suite 300  
Washington, DC 20037

Karen Twenhafel  
TCA, Inc.  
1465 Kelly Johnson, Blvd.  
Suite 200  
Colorado Springs, CO 80920

L. Marie Guillory  
Jill Canfield  
National Telephone Cooperative  
Association  
4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203

David L. Nace  
Pamela L. Gist  
B. Lynn Ratnavale  
Lukas, Nace, Gutierrez & Sachs, Chtd.  
1111 19<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20036

---

Fatmata B. Deen

\* via hand-delivery