

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

**Commission Seeks Comment on Spectrum
Policy Task Force Report**)

ET Docket No. 02-135

*FCC Public Notice (FCC 02-322), released
November 25, 2002.*)

To: The Commission

REPLY COMMENTS OF THE RURAL COMMENTERS

The Rural Commenters, by their attorneys, hereby submit these reply comments in response to the Report of the FCC’s Spectrum Policy Task Force that was released in November of 2002.¹ A listing of the rural telephone companies, cooperatives and rural telco subsidiary companies that comprise the “Rural Commenters” is attached below.

A review of the initial comments on the FCC’s Spectrum Policy Task Force Report reflects support for wide variety of policies designed to promote access to spectrum and spectrum efficiency. However, commenters that have a demonstrated interest in providing spectrum-based services to rural areas agree that the Commission will promote interests of spectrum access and spectrum efficiency by adopting a policy favoring the assignment of at least one spectrum block in each auction on a Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) basis.

¹ *Spectrum Policy Task Force Report*, ET Docket No. 02-135 (*filed*, November 15, 2002) (“Task Force Report”); *see also*, *Public Notice*, “Commission Seeks Public Comment on Spectrum Policy Task Force Report,” ET Docket No. 02-135, FCC 02-322 (*rel.* November 25, 2002) and *Order*, ET Docket No. 02-135, DA 02-3400 (*rel.* December 11, 2002).

The record reflects widespread agreement that the Commission should act promptly to complete its secondary spectrum markets proceeding as a way to further enhance rural spectrum access. While this may provide some further opportunities, the FCC should not view secondary markets as a primary tool for ensuring that rural carriers obtain spectrum rights in the first instance. The Rural Commenters agree with other commenters that the Commission should not seek to improve access to licensed spectrum by permitting underlay operations or opportunistic easements, which would increase the possibility of harmful interference to licensed operations, reduce the reliability and quality of communications, as well as threaten the significant investments of commercial wireless carriers. Any use of licensed spectrum for unlicensed operations should only be allowed with the consent of affected licensees. The FCC should also move forward with Task Force proposals to investigate rule changes that enable licensed and unlicensed spectrum users the flexibility to operate at higher power in rural areas, so long as such higher power operations do not cause harmful interference and agree to accept any interference received.

I. The Comments Demonstrate That a Policy Favoring Assignment of Geographic Licenses on an MSA/RSA Basis is the Best Way to Promote Access to Spectrum in Rural Areas

The Task Force specifically recommends that the Commission “explore ways to promote spectrum access and flexibility in rural areas.”² The Task Force also recommends that the Commission should “consider the impact of its rules on access to rural spectrum” and suggests that “it may be appropriate to use licensing areas that distinguish between rural and urban areas so that rural interests can more readily acquire

² Task Force Report at p. 59.

spectrum in the areas they serve.”³ Commenters addressing these issues in their initial comments agree that a policy favoring assignment of geographic licenses on an MSA/RSA basis is the best way for the Commission to promote access to spectrum in rural areas.⁴

The Rural Commenters note that the reasons for using MSA/RSA license areas are supported by a number of spectrum management policies espoused by the Task Force. In particular, the use of smaller geographic license areas will promote interests of spectrum access and spectrum efficiency because licensees are able obtain spectrum that is closely tailored to the areas where they want to provide service. Large companies with nationwide service areas will be able to acquire spectrum in urban and suburban markets without “locking up” spectrum for rural and remote areas that they have no interest in serving. Conversely, small businesses and rural telephone companies can acquire spectrum in RSA markets and the Commission’s existing buildout requirements will ensure that service is provided to rural and underserved communities. This approach would not compromise any economies of scale that can be achieved by nationwide carriers, since there are generally multiple spectrum blocks available in each auction, and the Commission can continue to auction nationwide or regional licenses in addition to MSA/RSA blocks.

For these reasons, the Rural Commenters agree with NTCA that national spectrum policy should include a provision whereby when more than one block of

³ *Id.* at p. 60.

⁴ Comments of National Telecommunications Cooperative Association (“NTCA Comments”) at pp. 2-4; Comments of the Rural Telecommunications Group (“RTG Comments”) at pp. 2-4, 6-7.

spectrum is being made available in any auction, there should be a presumption that a portion of the spectrum will be licensed according to small geographic areas, such as MSAs and RSAs.⁵

II. The FCC Can Further Improve Spectrum Access and Efficiency by Promptly Completing its Secondary Markets Proceeding

To further the goal of a flexible and efficient secondary markets model, the Task Force has recommended that the Commission adopt rules in its ongoing secondary spectrum markets proceeding, and that it take additional steps to implement secondary markets to the extent that it has statutory authority to do so.⁶ In this regard, the Rural Commenters join numerous commenters in urging the Commission to act quickly in adopting flexible rules by which exclusive use licensees in a variety of services can make unused or underutilized spectrum available to others.⁷

The Rural Commenters agree with RTG that “spectrum leasing has the potential of bringing the benefits of the wireless and digital broadband revolution to even the remotest portions of the United States.”⁸ However, while spectrum leasing could provide rural telephone companies with a valuable tool for obtaining access to spectrum, the Rural Commenters urge the Commission not to view leasing as the only tool, or even a primary tool for this purpose. Many rural carriers will be inhibited from investing in

⁵ NTCA Comments at p. 2.

⁶ Task Force Report at p. 57.

⁷ *See, e.g.*, NTCA Comments at pp. 4-5; RTG Comments at pp. 10-11; Comments of AT&T Wireless Services (“ATTWS Comments”) at pp. 18-19; Comments of Cellular Telecommunications Industry Association (“CTIA Comments”) at 20-22; Comments of Sprint Corporation (“Sprint Comments”) at pp. 2-4 (urging the Commission to give its “highest priority” to completing its secondary markets rulemaking).

⁸ RTG Comments at pp. 11.

expensive infrastructure equipment and antenna sites on the basis of a spectrum lease.⁹ While leases will facilitate certain transactions, in many situations the would-be service provider will need the greater certainty and “iron-clad” rights associated with holding a license.

In contrast to the near unanimous support for efforts to further the development of secondary markets, one commenter questions the wisdom of allowing spectrum leasing by licensees that do not operate solely as a band manager and urges the Commission to consider regulatory safeguards “that minimize the potential negative impact of haphazard spectrum leasing efforts.”¹⁰ While such regulatory safeguards have been discussed in the context of the Secondary Markets proceeding,¹¹ the Rural Commenters respectfully disagree with any assertion that allowing leased access to commercial spectrum bands would be unwise.

The Rural Commenters urge the Commission to promptly move forward with the proposed changes to its rules on partitioning, disaggregation, and spectrum leasing as advocated by the rural industry in numerous proceedings; but also focus on the MSA/RSA licensing model as the more important tool to promote wireless service in rural areas.

⁹ See Initial Comments of the Rural Commenters at pp. 8-9.

¹⁰ Comments of Access Spectrum, L.L.C. (“Access Spectrum Comments”) at 2.

¹¹ See In re: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Notice of Proposed Rulemaking*, FCC 00-402 (rel. November 27, 2000), 65 Fed. Reg. 81475 (December 26, 2000).

III. The FCC Should Proceed With Caution Before Introducing Underlay Operations or Opportunistic Easements Into Exclusive Use Spectrum

Among its recommendations to improve access to spectrum, the Task Force has suggested the possibility of introducing unlicensed “underlays” into exclusive use bands.¹² While the Rural Commenters agree that the Commission should explore the possibilities created by such operations, it is extremely important for the Commission to ensure that there are no adverse consequences to incumbent licensees. Some commenters have focused upon interference and logistical concerns,¹³ while others have emphasized the substantial sums that commercial wireless carriers have paid for their licenses at auction and the multi-billion dollar networks that these entities have constructed in reliance on having exclusive license rights.¹⁴ The Rural Commenters agree that these are legitimate concerns and urge the Commission to proceed with caution before permitting such “underlay” operations. Before defining unlicensed users’ access rights, as the Task Force recommends, the Commission must address fundamental questions, including the feasibility and enforceability of such an approach, as well as the potential impact on service to current and future customers.

The Task Force has also suggested that an easements model may offer a viable way for unlicensed devices to operate above the interference temperature threshold on licensed spectrum. On this issue, the Rural Commenters agree with commenters who believe that any adoption of an easement approach to secondary access “above the

¹² Task Force Report at p. 39.

¹³ CTIA Comments at pp. 20-22.

¹⁴ ATTWS Comments at pp. 14-16; Comments of Cingular Wireless, L.L.C. (“Cingular Comments”) at pp. 18-20 (arguing that any creation of underlay or easement rights is inconsistent with Section 301 of the Communications Act).

threshold” would be a step in the wrong direction.¹⁵ Any use of unlicensed spectrum at higher power by unlicensed users should require the consent of the affected licensees.

IV. The FCC Should Investigate Rule Changes that Enable Increased Power and Technical Flexibility in Rural Areas

Commenters addressing the issue support the Task Force recommendation that the FCC should consider raising maximum permissible power levels and permitting increased technical flexibility in rural areas so that services can be provided over larger areas at lower cost.¹⁶ The Rural Commenters believe that this principle should apply to both licensed and unlicensed operations, so long as such higher power operations do not cause harmful interference and (as to unlicensed operations) agree to accept any interference received.

Allowing licensed carriers and spectrum users to use higher power transmitters in rural areas makes sense because economic and technical considerations in rural areas are different than in urban areas. The fact that few commenters found it necessary to address this issue as part of the Spectrum Policy Task Force proceeding should be viewed by the FCC as an indication that the Task Force’s policy recommendation is non-controversial and that few businesses (other than rural telephone companies and cooperatives) have a true interest in providing wireless services to rural and remote areas. The Rural Commenters therefore urge the Commission to take steps to implement the Task Force’s recommendation as soon as possible.

¹⁵ See, e.g., CTIA Comments at pp. 20-22; Comments of Sprint Corporation (“Sprint Comments”) at pp. 13-14.

¹⁶ Task Force Report at pp. 17, 19, 55; Rural Commenters at p. 10; RTG Comments at p. 12; Microsoft Comments at pp. 5-6.

To be sure, some commenters have raised concerns about an increased potential for harmful interference to licensed operations in frequency bands that are shared with, or that are adjacent to, bands used for the provision of satellite services.¹⁷ In response to these concerns, the Rural Commenters do not object to maintaining the current power restrictions and technical rules in such bands. The Commission may want consider whether a simple registration requirement for certain facilities (*e.g.*, an FCC database providing contact information and identifying the location and operating parameters of individual high-power transmitters) might be an appropriate safeguard in certain instances.

The Commission should further note that many commenters in Rural NOI proceeding (where the same issue is more directly addressed) have supported the idea of increased transmitter power and technical flexibility in rural and underserved areas, subject to the protections described above.¹⁸

¹⁷ See, *e.g.*, Comments of the Satellite Industry Association (“SIA Comments”) at pp. 18-20; Comments of Hughes Network Systems (“Hughes Comments”) at pp. 8-10.

¹⁸ See, *e.g.*, Comments filed on or about February 3, 2003 in WT Docket No. 02-381 (Facilitating the Provision of Spectrum-Based Services in Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services) (“*Rural Spectrum NOI*”).

V. CONCLUSION

The Rural Commenters respectfully request that the Commission take the above concerns into consideration in adopting its spectrum management policies or in fashioning any rule proposals based on the findings of the Spectrum Policy Task Force.

Respectfully Submitted,

/s/ John A. Prendergast
John A. Prendergast
D. Cary Mitchell
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830

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Attachment A

The rural telephone companies, cooperatives and rural telco subsidiary companies that comprise the “Rural Commenters” include the following:

- Cameron Telephone Company, LLC (and its subsidiary Cameron Communications, LLC)
- Chibardun Telephone Cooperative, Inc. (and its subsidiary CTC Telecom, Inc.)
- Dickey Rural Telephone Cooperative (and its subsidiary Dickey Rural Services, Inc.)
- Elizabeth Telephone Company, LLC
- Golden West Telecommunications Cooperative, Inc. (and its subsidiary GW Wireless, Inc.)
- Interstate Telecommunications Cooperative, Inc. (and its subsidiaries Stateline Telecommunications, Inc. and Interstate Satellite Services, Inc.)
- James Valley Cooperative Telephone Company (and its subsidiary Northern Valley Wireless, Inc.)
- Kennebec Telephone Company, Inc.
- McCook Cooperative Telephone Company (and its subsidiaries Hanson County Telephone Company and Hanson Communications, Inc.)
- Midstate Communications, Inc. (and its subsidiary Midstate Wireless, Inc.)
- Mon-Cre Telephone Cooperative, Inc.
- Penasco Valley Telephone Cooperative, Inc. (and its subsidiary PVT Networks, Inc.)
- Polar Communications
- Santel Communications Cooperative
- SRT Communications, Inc. (and its subsidiary North Dakota Network Co.)
- South Slope Cooperative Telephone Company, Inc.
- Splitrock Telecom Cooperative, Inc. (and its affiliate Baltic Telecom Cooperative)
- Valley Telecommunications Cooperative Association, Inc. (and its subsidiary Valley Cable & Satellite Communications, Inc.)
- Venture Communications, Inc. (and its subsidiary Venture Wireless, Inc.)
- Webster-Calhoun Cooperative Telephone Association
- West River Cooperative Telephone Company

SERVICE LIST

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW – Room 8-B201
Washington, DC 20554

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Federal Communications Commission
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Washington, DC 20554

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Federal Communications Commission
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Washington, DC 20554

John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW – Room 3-C252
Washington, DC 20554