RURAL TELECOMMUNICATIONS GROUP

advocate of rural wireless telecommunications providers

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To: **Office of the Secretary**
Federal Communications Commission

From: **Caressa D. Bennet, General Counsel**
Kenneth C. Johnson, Regulatory Director

Date: **May 6, 2003**

Re: ***Ex Parte* Presentation – May 6, 2003**

WT Docket No. 00-230

On May 6, 2003, Caressa D. Bennet and Kenneth C. Johnson, representing the Rural Telecommunications Group ("RTG"), met with Lisa Zaina, Senior Legal Advisor for Federal Communications Commission ("FCC" or "Commission") Commissioner Jonathan Adelstein, and Nancy Zaczek of the Wireless Telecommunications Bureau regarding the above-captioned proceeding. Specifically, RTG discussed the following concerns about nature of secondary markets for spectrum:

- The overwhelming consensus in the Secondary Markets proceeding for the Commission to proceed reflects the pent up demand for additional spectrum and ongoing concerns with the functioning of the primary market.

- The most important decision the Commission will make to ensure a functioning secondary market is how it apportions the respective compliance obligations of spectrum licensees (lessors) and spectrum lessees. If the Commission holds licensees strictly liable for the actions of independent lessees, RTG and the majority of commentors believe that a secondary market will flounder. If the Commission determines that it will follow the approach prevalent in the commercial leasing world whereby lessors are not responsible for the torts, misdemeanors and felonies committed by independent lessees, spectrum leasing will flourish.

- RTG supports the Commission's proposal to radically alter its *Intermountain Microwave* test for determining whether a licensee actually controls its license in accordance with Section 310(d) of the Communications Act of 1934.

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- The Commission can and should place the ultimate responsibility for compliance with its rules and regulations not on the lessor of spectrum, but on the beneficiary and operator of the spectrum – the lessee. Not only does the Communications Act provide the Commission with jurisdiction over these spectrum lessees, but imposing these obligations on lessees focuses enforcement on the party that is directly responsible without implicating innocent licensees.

- The Commission must impose both the rights and obligations of spectrum holding on the actual users if it is to create the proper incentive structure for licensees to voluntarily lease spectrum rights to independent entities. As such, RTG applauds the Commission for fashioning a successor test to the current *de facto* control standard of *Intermountain Microwave*, which currently creates an almost absolute bar to leasing arrangements like those contemplated by the Commission. The Commission should, however, adopt an alternative test for evaluating actual control of licenses that better promotes both the economic incentives of leasing and reflects the practical realities of secondary market transactions that occur elsewhere in the U.S. marketplace.

- RTG discussed how it is important for the FCC to have jurisdiction over the lessees of spectrum in order to provide incentives for spectrum holders to actually lease their spectrum without being held liable for the actions of their lessees. RTG discussed a number of ways in which the Commission could exercise control over lessees, but did not come to a resolution on any mechanism that would work best.

- RTG asks that the Commission examine whether it can help mitigate the risk to lessees if the lessor goes bankrupt. RTG suggests that the Commission consider allowing temporary operating authority by the lessee if its lessor declares bankruptcy. In addition, the Commission should explore how bankruptcy issues may affect the robustness of any secondary market for spectrum.

If you have any questions regarding this filing, please communicate directly with the undersigned.

Sincerely,

_____/s/_____

Caressa D. Bennet
General Counsel, Rural Telecommunications Group

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