

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
Petition for Rulemaking or, Alternatively a)
Waiver of the Closed Bidding Rules for) **RM No. 11019**
C Block Licenses in the Broadband Personal)
Communications Services)

**OPPOSITION OF THE RURAL TELECOMMUNICATIONS GROUP
AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)² hereby opposes a petition filed by the Cellular Telecommunications & Internet Association (“CTIA”) requesting that the Federal Communications Commission’s (“FCC” or “Commission”) initiate a rulemaking proceeding to remove the entrepreneur eligibility restrictions for all C Block licenses (“Petition”) in its upcoming auction of Personal

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed 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 and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² OPASTCO is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO’s members are rural telephone companies as defined in 47 U.S.C. §153(37). Approximately fifty percent of OPASTCO’s members also offer wireless telecommunications services.

Communications Service (“PCS”) licenses (“Auction No. 58”).³ Alternatively, CTIA requests a waiver of the application of the entrepreneur eligibility restrictions to Auction No. 58. RTG and OPASTCO oppose both requests and urges the Commission to continue to enforce its previously-established designated entity (“DE”) rules and policies for Auction No. 58 and for all future PCS spectrum auctions.⁴ By preserving the DE designations for certain available spectrum blocks in Auction No. 58, RTG and OPASTCO believe that the upcoming auction will provide rural carriers with a meaningful opportunity to acquire additional spectrum, which will continue to allow rural companies to develop innovative services for the benefit of wireless consumers living in rural America. Indeed, the Commission’s enforcement of the DE rules as they relate to the auction of PCS spectrum is entirely consistent with its ongoing effort to promote the rapid growth and efficient deployment of quality spectrum-based services in rural areas.⁵ Accordingly, the Commission should deny CTIA’s Petition and preserve its proposed DE rules for Auction No. 58.

In its Petition, CTIA argues that removing the eligibility restrictions from Auction No. 58 and from all future PCS spectrum auctions is necessary to ensure prompt and efficient use of the

³ See Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 04-1639 (rel. June 18, 2004).

⁴ *Id.*

⁵ See generally Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, WT Docket No. 02-381; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Notice of Proposed Rulemaking*, 18 FCC Rcd 20802 (2003) (Rural Spectrum NPRM).

spectrum to provide broadband services to both urban and rural areas.⁶ CTIA also argues that lifting the eligibility restrictions is necessary because there is currently a shortage of available spectrum appropriate for Commercial Mobile Radio Service (“CMRS”) use.⁷ In place of the eligibility restrictions placed on holding a C Block PCS license, CTIA suggests that other measures, including the establishment of bidding credits, and adoption of measures to allow licensees to partition and disaggregate spectrum have, in the past, proven more effective than DE restrictions to promote small business market entry.⁸ Taken in sum, CTIA sets forth the same arguments that large, nationwide carriers have been peddling at the FCC for years—that an “open market” regulatory regime will ultimately satisfy consumer demand.⁹ Such arguments, while beneficial to nationwide carriers that define “rural” service as building out portions of their service areas only along rural highways, ignores the realities of rural marketplace and flies in the face of Section 309(j) of the Communications Act of 1934, as amended (“Act”).¹⁰

RTG and OPASTCO urge the Commission to dismiss CTIA’s Petition and adopt the entrepreneur eligibility restrictions proposed for Auction No. 58. Enforcing these current rules will foster regulatory and legal certainty, and will permit the auction to begin as soon as possible. Rural and independent wireless carriers need to rely on the Commission’s representations that the modifications to the Commission’s DE rules developed for Auction No. 35 “will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or

⁶ Petition of CTIA—The Wireless Association for Expedited Rulemaking or, Alternatively, A Waiver (“CTIA Petition”) at 2.

⁷ CTIA Petition at 9.

⁸ *Id.*

⁹ CTIA Petition at 6.

¹⁰ 47 U.S.C. § 309(j); *See also*, Rural Spectrum NPRM, 18 FCC Rcd 20821-20822, fn. 84.

reclaimed from bankruptcy proceedings in the future.”¹¹ Additionally, the Commission’s careful consideration of the diverse proposals submitted regarding this issue in 2000 represented a reasonable and fair balance of the objectives of Section 309(j) of the Act.¹² During that proceeding, following a full notice and comment process, the Commission properly determined that the DE program, which includes closed bidding (and thereby allows smaller carriers that serve rural areas a meaningful opportunity to enter the PCS marketplace), is consistent with Section 309(j) because it promotes economic opportunity and competition and ensures that new and innovative technologies are readily accessible to all Americans, no matter where they live.¹³ The overwhelming success of Auction No. 35 demonstrated that DEs will participate in the auction process when they have meaningful incentives (in the form of set asides combined with bidding credits). CTIA has failed to provide a valid reason for the Commission to believe that DE participation in Auction No. 58 will be any different. In fact, contrary to CTIA’s contention, bidding credits alone, and/or reliance on the continuation of the Commission’s failed partitioning and disaggregation policies, have conclusively shown in previous spectrum auctions that they do not adequately provide the same opportunities for small businesses as the establishment of “closed” bidding.

Finally, recent wireless industry consolidation, including the Cingular / AT&T Wireless merger and Verizon’s recent acquisitions (including Quest’s wireless assets), serves as evidence that the Commission should take meaningful steps to promote, not suppress, diversity of ownership in wireless communications, pursuant to Congressional intent. If anything, in the

¹¹ *Id.*

¹² *Sixth R&O* ¶ 23.

¹³ *Id.*

current environment of consolidation, the Commission would be justified in further enhancing the DE provisions, providing greater advantages to DEs in order to promote Commission goals and objectives. For example, RTG and OPASTCO believe that the Commission should limit the creation of new “shell” companies created and backed by nationwide carriers for the sole purpose of obtaining DE status and/or bidding credits at auction. Such “shell” companies have, in the past, been allowed to exploit the Commission’s DE provisions, effectively keeping valuable spectrum in the hands of the same major players and leaving independent and rural companies on the outside looking in. Opening of larger markets to true entrepreneurs also gives rural operators the future opportunity to align and negotiate fairer rates for roaming agreements for current services and future data services in nearby larger markets. Accordingly, RTG strongly urges the FCC to adopt rules consistent with the U.S. Small Business Administration’s definition of disadvantaged and/or very small businesses which would preclude entities with any investment or exclusive agreements from the non-DE carriers.

RTG and OPASTCO submit that further erosion of the DE provisions would run afoul of Section 309(j) of the Act and would subject the Commission to litigation and uncertainty regarding the outcome of Auction No. 58. While CTIA argues that removal of eligibility restrictions will be in the public interest because of increased consumer demand, in reality, lifting such restrictions will only serve to deny rural consumers access to wireless services. At a time when the availability of spectrum to small and rural operators is extremely scarce, lifting the Commission’s proposed eligibility restrictions will price such carriers out of Auction No. 58, deepening the “digital divide” and reaffirming the perception that big business, and not rural consumers, comes first at the FCC.

Accordingly, for the reasons stated herein, OPASTCO and RTG oppose CTIA's Petition and urge the Commission to stand firm against CTIA and its member companies that wish to derail the existing DE rules. Instead, the Commission should enforce its already well-established auction rules. Adoption of these rules will ensure the robust participation of DEs in this important wireless spectrum auction.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP,
INC.**

By: /s/ Caressa D. Bennet
Caressa D. Bennet
Donald L. Herman, Jr.

Its Attorneys

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS
COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Stephen Pastorkovich
Jeffrey W. Smith

Bennet & Bennet, PLLC
1000 Vermont Avenue, NW
10th Floor
Washington, DC 20005
(202) 371-1500

OPASTCO
21 Dupont Circle, NW – Suite 700
Washington, DC 20036
(202) 659-5990

July 8, 2004