

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

In the Matter of	)	
	)	
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	)	WT Docket No. 01-14
Spectrum Aggregation Limits for Commercial Mobile Radio Services	)	
	)	
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
	)	

To: The Commission

**REPLY COMMENTS**

Cingular Wireless LLC (“Cingular”), by its attorneys, hereby submits reply comments in the above-captioned proceeding which seeks comments regarding possible approaches for facilitating the deployment of additional wireless services in rural areas.<sup>1</sup> As discussed below, the record demonstrates that there is no need for Commission action at this time.

*No party* supported the adoption of easements/underlays or a strengthening of the substantial service renewal requirement as mechanisms for facilitating deployment in rural

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<sup>1</sup> *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, *Report and Order and Further Notice of Proposed Rulemaking*, 19 F.C.C.R. 19078 (2004) (“FNPRM”).

areas.<sup>2</sup> The sole debate was whether adoption of a “keep what you use” regulatory regime would serve the public interest.<sup>3</sup>

Most commenters opposed adoption of a keep what you use regime because it would be inconsistent with the Commission’s long-standing policy of relying on the marketplace, rather than regulation, to accomplish its objectives.<sup>4</sup> These parties agreed with prior Commission determinations that existing, market-based regulations are spurring deployment in rural areas.<sup>5</sup> The Commission’s *Ninth Annual CMRS Competition Report*<sup>6</sup> was cited as evidence that rural

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<sup>2</sup> Comments were filed by: Cingular Wireless LLC; CTIA – The Wireless Association<sup>TM</sup>; Dobson Communications Corporation; National Telecommunications Cooperative Association (“NTCA”); Rural Cellular Association (“RCA”); Rural Telecommunications Group, Inc. (“RTG”); Sprint Corporation; Nextel Partners, Inc.; and T-Mobile USA, Inc.

<sup>3</sup> The “keep what you use” or “re-licensing” approach would essentially impose the cellular build-out model on other wireless services. Under this model, a licensee would have a specified period of time to serve the entire geographic area associated with its license. Any area unserved at the end of this period would be made available to others and re-licensed.

<sup>4</sup> See Comments of Cingular Wireless LLC, WT Docket Nos. 02-381, 01-14, 03-202, at 2-8 (filed Jan. 14, 2005)(“Cingular Comments”); Comments of CTIA-The Wireless Association<sup>TM</sup>, WT Docket Nos. 02-381, 01-14, 03-202, at 13-16 (filed Jan. 14, 2005)(“CTIA Comments”); Comments of Dobson Communications Corporation, WT Docket Nos. 02-381, 01-14, 03-202, at 5-10 (filed Jan. 14, 2005)(“Dobson Comments”); Comments of Sprint, WT Docket Nos. 02-381, 01-14, 03-202, at 2-6 (filed Jan. 14, 2005)(“Sprint Comments”); Comments of T-Mobile USA, Inc., WT Docket Nos. 02-381, 01-14, 03-202, at 3-4, 6 (filed Jan. 14, 2005)(“T-Mobile Comments”); Comments of Nextel Partners Inc. WT Docket Nos. 02-381, 01-14, 03-202, at 2-3, 17-18 (filed Jan. 14, 2005)(“Nextel Partners Comments”).

<sup>5</sup> See Cingular Comments at 3 (noting that the Commission has concluded that its “current policies are working to provide wireless services in rural areas” and that “CMRS providers are competing effectively in rural areas”); CTIA Comments at 13-16; Dobson Comments at 5-10; Sprint Comments at 2-6; T-Mobile Comments at 3-4, 6; Nextel Partners Comments at 17-18.

<sup>6</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 04-111, *Ninth Report*, FCC 04-216 (rel. Sept. 28, 2004)(“*Ninth Annual Report*”).

counties generally had numerous service providers.<sup>7</sup> Many parties also cited to hundreds of secondary market, partitioning, and disaggregation transactions that have taken place over the last few years as evidence that spectrum is available to those interested in serving rural areas.<sup>8</sup>

As the Commission recognized in this very proceeding:

[O]ver 60 percent of all counties in the broadband PCS service have been partitioned at least once. . . . For example, of the partitioned broadband PCS counties, 72 percent are counties with a population density of 100 persons per square mile or less. In addition, 77 percent of the partitioned broadband counties are contained within RSAs.<sup>9</sup>

Despite these facts, NTCA, RCA, and RTG claim that market-based regulations should be replaced.<sup>10</sup> These commenters allege that licensees are unwilling to lease spectrum,<sup>11</sup> but fail

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<sup>7</sup> See Cingular Comments at 3 (citing the Commission's finding that rural counties have an average of 3.7 mobile competitors); T-Mobile Comments at 5 (same); Sprint Comments at 3 (same) CTIA Comments at 5 (citing the *Ninth Annual Report's* finding that 96.8 percent of the total U.S. population lived in counties with access to three or more different CMRS providers); Dobson Comments at 6 (citing an RCA survey quoted in the *Ninth Annual Report* for the proposition that there was an average of 5.1 wireless competitors in markets surveyed by RCA).

<sup>8</sup> See Cingular Comments at 7; CTIA Comments at 8-10; Dobson Comments at 8; Sprint Comments at 5-6; Nextel Partners Comments at 2.

<sup>9</sup> *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, *Notice of Proposed Rulemaking*, 18 F.C.C.R. 20802, 20835-36 (2003).

<sup>10</sup> See NTCA Comments at 3, 6-7; RCA Comments at 3-5; RTG Comments at 5-9.

<sup>11</sup> See NTCA Comments at 3, 6-7; RCA Comments at 3-5; RTG Comments at 5-9. RCA also claims that the inclusion of roaming rates in secondary market negotiations is somehow improper. See RCA Comments at 3. The Commission has recognized, however, that the public interest is served by transactions that reduce roaming costs. See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation; For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 F.C.C.R. 21522, 21610 (2004) ("Cingular Order"); *Applications of Vodafone AirTouch, PLC, and Bell Atlantic Corporation*, File Nos. 0000032969 *et al.*, *Memorandum Opinion and Order*, 15 F.C.C.R. 16507, 16519 (2000) ("Bell Atlantic Order"). By including roaming costs in secondary

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to present any evidence to support this claim. One of these commenters – NTCA – actually conducted a survey of its membership that contradicted this claim by demonstrating that access to spectrum was *not* a significant problem for its membership.<sup>12</sup> According to members responding to the study:

- Ten percent acquired spectrum in the last year and another ten percent had made arrangements to utilize previously acquired spectrum;<sup>13</sup>
- Eight percent entered into negotiations to acquire spectrum over the last twelve months;<sup>14</sup>
- Only 28 percent expressed concern about spectrum availability.<sup>15</sup>

Spectrum availability is not the real concern for NTCA, RCA, and RTG; the real concern is access to capital.<sup>16</sup> In the NTCA 2004 Survey, for example, two-thirds of survey respondents

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market agreements, the licensee/lessor can ensure that the new entrant does not deploy a system with high roaming rates. Although a small carrier may claim that such efforts could undermine certain business plans – such as the establishment of roaming toll booths (*i.e.*, small systems with exorbitant roaming rates) – any efforts taken to reduce roaming rates serves the public interest. *See Cingular Order*, 19 F.C.C.R. at 21610; *Bell Atlantic Order*, 15 F.C.C.R. at 16519.

<sup>12</sup> *See NTCA 2004 Wireless Survey Report* at 9 (Dec. 2004), available at [http://www.ntca.org/content\\_documents/NTCA\\_2004WirelessSurveyReport.pdf](http://www.ntca.org/content_documents/NTCA_2004WirelessSurveyReport.pdf) (“NTCA 2004 Survey”).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3, 9-10. This survey question was not tied to the need for spectrum in rural areas. Thus, the percentage of respondents expressing a need for spectrum in rural areas would be smaller. It is well known that most CMRS carriers desire additional spectrum, but not necessarily in rural areas.

<sup>16</sup> *See* NTCA Comments at n.5 (“Small carriers serving rural areas lack access to the capital of large carriers and need additional time to successfully implement their business plans.”); *accord* CTIA Comments at 15-16; T-Mobile Comments at 7-8; Nextel Partners Comments at 2-3, 13-14.

indicated that financing was a major concern.<sup>17</sup> The reality is that NTCA, RCA, and RTG seek the adoption of draconian “use it or lose it” regulations designed to compel existing licensees to sell spectrum to their constituents at fire sale prices. Adoption of a re-licensing regime, however, will merely exacerbate the access to capital problem.<sup>18</sup> As Dobson aptly noted:

[T]hese proposals will create uncertainty for mobile providers and the capital markets upon which they rely, causing precisely the opposite effect on development as desired by the Commission. Because mobile telephony “has historically been an industry characterized by large investments in network infrastructure and vast economies of scale,” access to capital is critical for new market entrants and existing providers to expand coverage, implement technological advancements, and improve service quality. Proposals that call into question the spectrum rights of licensees, whether those rights have been acquired through auctions or market transactions, will inherently weaken investor confidence, and thus negatively impact a licensee’s ability to obtain capital for on-going and future business plans.<sup>19</sup>

The re-licensing approach would not be a panacea for rural service needs. Instead of expediting service, this approach merely would shift the incentives and negotiating strength of parties. As discussed above, CMRS carriers have entered into hundreds of leasing, partitioning, and disaggregation agreements covering numerous rural areas.<sup>20</sup> Most of these agreements involve PCS and may never have materialized if the service was subject to a re-licensing

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<sup>17</sup> See NTCA 2004 Survey at 3, 9-10. The Commission has previously concluded that “access to spectrum does not appear to be a substantial barrier to entry in RSAs.” *2002 Biennial Review – Spectrum Cap Order*, WT Docket No. 01-14, *Report and Order*, 16 F.C.C.R. 22668, 22691 (2001).

<sup>18</sup> See CTIA Comments at 15-16; T-Mobile Comments at 7-8.

<sup>19</sup> Dobson Comments at 5 (footnotes omitted).

<sup>20</sup> See Cingular Comments at 7; CTIA Comments at 8-10; Dobson Comments at 8; Sprint Comments at 5-6.

approach. Rather than negotiate lease, partition, or disaggregation agreements, many entities may have opted to wait until the end of the build-out period to see whether they could obtain the spectrum for free or at a sharply discounted price. Thus, a re-licensing approach would encourage parties interested in serving such areas to wait for spectrum to become available through re-licensing, rather than attempt to address their spectrum needs immediately in secondary market transactions.

Finally, although NTCA, RCA, and RTG claim that their membership would roll-out services to rural areas more quickly than larger CMRS licensees, they fail to justify this claim.<sup>21</sup> To the contrary, NTCA's comments demonstrate that smaller carriers are unlikely to roll-out service to rural areas more quickly:

If the Commission determines that "keep what you use" will apply to small geographic license territories, the Commission's policies must recognize that small carriers serving RSAs need more time for build out than large carriers serving MSAs. Small carriers serving rural areas lack access to the capital of large carriers and need additional time to successfully implement their business plans.<sup>22</sup>

## CONCLUSION

For the foregoing reasons, as well as those set forth in Cingular's initial comments, the Commission should not adopt a re-licensing regime for CMRS or any new regulations that *require* additional CMRS deployment in rural areas or create easements for unlicensed

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<sup>21</sup> See NTCA Comments at 3-7; RCA Comments at 3-6; RTG Comments at 4-9.

<sup>22</sup> NTCA Comments at n.5.

operations. There has been no market failure and, therefore, Commission intervention is unnecessary.

Respectfully submitted,

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