

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

To: The Commission

**REPLY COMMENTS OF NEXTEL PARTNERS, INC.  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Nextel Partners, Inc. (“Nextel Partners”), by its attorneys, hereby files these reply comments in response to the initial comments filed pursuant to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

In the *Further NPRM*, the Commission asks whether it should adopt “keep what you use” re-licensing measures and renewal term performance requirements as a means to further the build out of spectrum services for the benefit of rural citizens. The vast

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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; *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, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078 (2004) (“*Rural Report and Order*” or “*Further NPRM*”).

majority of commenters oppose implementing such regulatory changes. As these commenters correctly point out, would-be market entrants already have significant opportunities to obtain spectrum through the Commission’s existing licensing/auctioning processes and newly-adopted marketplace mechanisms, and there is no evidence of a spectrum shortage in rural areas that might justify adopting the draconian command-and-control measures discussed in the *Further NPRM*. Moreover, as demonstrated in the comments, adoption of such regulatory changes would likely result in uneconomic investment in rural areas, uncertainty in the financial markets, and, most importantly, higher service costs and fewer choices for rural citizens as *potential* competitors are eliminated from rural markets.

While no commenters support implementing new renewal term performance requirements, only two commenters—Rural Cellular Association (“RCA”) and the National Telecommunications Cooperative Association (“NTCA”)—support adopting “keep what you use” re-licensing mechanisms. As discussed in more detail below, the RCA and NTCA comments fail to provide sound support for adopting “keep what you use” requirements. These commenters have failed to demonstrate that there is a shortage of available rural spectrum or that the newly adopted secondary markets policies will not work adequately to alleviate any perceived shortage. These commenters also fail to demonstrate that citizens in rural areas will benefit from implementation of “keep what you use” measures; in fact, the public is more likely to be harmed as carriers are forced to choose between making uneconomic investments or losing spectrum in rural areas.<sup>2</sup> Ultimately, RCA and NTCA are more interested in hampering national carriers from

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<sup>2</sup> Even the RCA acknowledges that a “keep what you use” spectrum policy may cause uneconomic construction. *See* RCA Comments at 5-6.

competing in rural markets than in fostering the public interest. The Commission should reject “keep what you use” measures and seek instead to continue encouraging investment in rural markets by further strengthening the secondary spectrum markets and adopting measures to lower the cost of financing rural build out.

**I. THE SUPPORTERS OF “KEEP WHAT YOU USE” SEEK TO IMPEDE NATIONAL CARRIERS FROM COMPETING IN RURAL MARKETS.**

NTCA asserts in its comments that its members’ future wireless plans are being impacted by concerns about their “inability to obtain spectrum at auction and the lack of a level playing field in the regulatory arena.”<sup>3</sup> NTCA cites to its 2004 Wireless Survey Report as support for its assertion.<sup>4</sup> While a minority of NTCA members may have concerns about their ability to obtain spectrum at auction and an even smaller percentage are concerned about an alleged “lack of a level playing field in the regulatory arena,” the *2004 NTCA Report* itself reveals that the *number one concern of NTCA’s members is competition from national carriers.*<sup>5</sup> Nearly 60% of survey respondents indicated they are concerned about competition from national carriers. The second-highest concern, expressed by 50% of survey respondents involves financing, or “the ability to make necessary investments.”<sup>6</sup> The ability to obtain spectrum at auction came in a distant third, having been noted by only 28% of survey respondents.<sup>7</sup> The *2004 NTCA Report*

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<sup>3</sup> NTCA Comments at 3.

<sup>4</sup> See NTCA’s 2004 Wireless Survey Report (December 2004), [www.ntca.org](http://www.ntca.org) (hereafter, *2004 NTCA Report*).

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

lumps the “lack of a level playing field in the regulatory arena” concern in with several “other” concerns that were cumulatively expressed by only 12% of survey respondents.<sup>8</sup>

In light of the various concerns expressed by NTCA’s membership, it appears that the primary goal underlying NTCA’s support of “keep what you use” measures is the intention of impeding competition from national carriers. Similarly, it can be surmised that RCA’s primary concern in pushing “keep what you use” measures is to impede the ability of national carriers to deploy systems in rural areas. For example, RCA complains about an alleged “imbalance of market power that favors the large company,”<sup>9</sup> and seeks to rectify this perceived imbalance in favor of its own members by encouraging the Commission to adopt “keep what you use” measures.

As discussed below, there is no reason to believe that would-be rural entrants are unable to obtain spectrum through available channels; and rural citizens will not benefit from a “keep what you use” approach. Such measures will serve to eliminate potential competitors from a market by taking away their spectrum rights, require potential competitors to make uneconomic investments, or force potential competitors to deploy less robust systems. Ultimately, the only parties that will benefit from the implementation of the proposed anti-competitive “keep what you use” measures in rural areas are the existing providers in the affected markets -- many of whom are members of RCA and/or NTCA -- whose number one concern is fear of competition from national carriers.

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<sup>8</sup> *Id.* The 2004 NTCA Report states, “Twelve percent noted other concerns, such as their ability to obtain cost-effective equipment, difficulty in negotiating roaming agreements, rural population depletion, and the lack of a level playing field in the regulatory arena.”

<sup>9</sup> RCA Comments at 3.

**II. THERE IS NO EVIDENCE THAT THE COMMISSION’S EXISTING MARKET-ORIENTED POLICIES ARE INADEQUATE TO PROVIDE WOULD-BE ENTRANTS WITH ACCESS TO RURAL SPECTRUM.**

The major underlying public interest premise of the “keep what you use” proposal is that deployment of service to rural areas is somehow being delayed because would-be market entrants are unable to obtain spectrum.<sup>10</sup> As CTIA correctly shows in its comments, the premise is false because there is no rural spectrum shortage and would-be entrants have ample opportunities to obtain spectrum.<sup>11</sup> Neither NTCA nor RCA present any competent evidence that might show otherwise.

Although NTCA contends that, “secondary markets do not satisfy rural carrier needs for additional spectrum,”<sup>12</sup> it neither defines what those “needs” might be nor provides any concrete evidence that they are not being met. NTCA even acknowledges that it “does not know exactly how many potential wireless providers have sought access to spectrum either through partitioning, disaggregation, or spectrum leasing.”<sup>13</sup> NTCA contends nonetheless, based on admittedly “anecdotal” information, that “the process can be lengthy, burdensome, and often, unsuccessful” and that leasing opportunities are “virtually nonexistent.”<sup>14</sup> NTCA provides no further detail or explanation. The Commission should require more than merely anecdotal evidence or generalized contentions before adopting a change as drastic as “keep what you use.”

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<sup>10</sup> See *Further NPRM* at ¶ 133.

<sup>11</sup> See CTIA Comments at 7-13.

<sup>12</sup> See NTCA Comments at 3.

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

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

Similarly, while RCA asserts that, “Partitioning, disaggregation and leasing do not meet [small carriers’] potential for delivering wireless services to rural areas,”<sup>15</sup> it also fails to support its assertion with concrete evidence and offers only generalized observations. In fact, it fails to provide any evidence that its own members, all of whom presumably already are operating wireless systems, have been unable to obtain sufficient spectrum. Nor does it demonstrate that its own members have tried to lease spectrum but have been unsuccessful. Instead, RCA makes sweeping pronouncements about unidentified “small” companies and “large” companies and their respective market powers. For example, RCA states that small companies cannot successfully enter into agreements for partitioning, disaggregation or leasing because, “The large carrier almost always mandates the type of technology which must be used by the partitionee, disaggregatee or lessee.”<sup>16</sup> RCA also complains that large companies seek to mandate the “ongoing operating standards” and that this “exacerbates the expense for the small company.”<sup>17</sup>

Although the assertions are unsupported, even assuming *arguendo* that they are true, what RCA in essence is saying is that its members, who already have deployed systems in rural areas, do not want to commit to upgrading to the newer and more advanced technologies and the more rigorous operating standards utilized by national wireless carriers, in order to obtain spectrum in the secondary market. Instead, they want the Commission to take the national carriers’ spectrum away. This in turn would reduce the threat of competition from national wireless carriers, thereby alleviating the need of

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<sup>15</sup> RCA Comments at p.3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

the rural carrier to upgrade its own system and practices to remain competitive. The end result would be a bifurcated national system, with rural areas relegated to relying on less advanced technologies and practices. The better approach from the standpoint of the consumer is the one fostered by the Commission's market-oriented policies that rely on competitive market forces to bring the most advanced technologies and services to rural citizens.

NTCA is mistaken in contending that "large carriers" are uninterested in serving rural areas.<sup>18</sup> In fact, the suggestion is disingenuous in light of the findings of the *2004 NTCA Report* that the number one concern of NTCA's members is competition from national wireless carriers. While Nextel Partners cannot speak for other carriers, as discussed at length in Nextel Partners initial comments, Nextel Partners is strongly committed to continuing to expand its state-of-the-art wireless services in rural areas. Providing service to mid-sized and rural markets is a core focus of Nextel Partners.<sup>19</sup>

Ultimately, there is no basis for believing that would-be rural wireless providers are unable to obtain spectrum under the Commission's existing auction and secondary market policies. The anecdotal and generalized assertions presented by RCA and NTCA are simply not enough on which to base the self-serving, draconian regulatory changes these parties are seeking. The Commission should send a strong message to supporters of the "keep what you use" approach that they should actively seek spectrum utilizing the existing market mechanisms and should demonstrate a "real need" prior to asking the Commission to take back spectrum from existing licensees. The public interest, particularly the interest of rural citizens, is best served by relying on market forces to

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<sup>18</sup> See NTCA Comments at 5.

<sup>19</sup> See e.g., Nextel Partners SEC Form 10K (filed Mar. 15, 2004) at 7.

encourage the deployment of spectrum services in rural areas. Rather than imposing new “keep what you use” mechanisms, the Commission should therefore seek to strengthen its existing market-oriented policies and adopt other policies that will increase access to capital for rural build out.

**CONCLUSION**

In view of the foregoing, Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

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