Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based Service 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 Facilities Capital Formation	)	WT Docket No. 03-202

SPRINT REPLY COMMENTS

Sprint Corporation submits this reply to the comments filed in response to the Further Notice of Proposed Rulemaking ("*Rural Spectrum FNPRM*" or "*FNPRM*").[1]

I. RURAL CARRIERS THEMSELVES ARE SHARPLY DIVIDED OVER WHETHER A "USE IT/ LOSE IT" REGIME SHOULD BE ADOPTED

Only three parties – the National Telecommunications Cooperative Association ("NTCA"), the Rural Cellular Association ("RCA"), and the Rural Telecommunications Group ("RTG") – support the idea of converting existing geographic licenses into unserved area, or "use it or lose it" licenses. According to these parties, such a conversion is "necessary" to ensure

[1] *See Facilitating the Provision of Spectrum-Based Services to Rural Areas,* WT Docket Nos. 02-381, 01-14 and 03-202, *Further Notice of Proposed Rulemaking,* FCC 04-166, 19 FCC Rcd 19078 (Sept. 27, 2004), *summarized in* 69 Fed. Reg. 75174 (Dec. 15, 2004)("*Rural Spectrum FNPRM*" or "*FNPRM*").

"the deployment of wireless services in rural areas,"[2] despite the fact that NTCA's rural company members report competing with "between three and six other carriers" in various areas.[3] Moreover, NTCA supports a "use it/lose it" regime, whereby licensees would be compelled to build in areas where it is not economic, even though it previously told the Commission that "[p]ushing competition into an area that cannot support multiple providers causes *all* providers and their subscribers to suffer."[4]

Importantly, many rural carriers do not share the view that a "use it/lose it" regime would benefit competition or residents of rural areas. For example, Dobson, which serves 1.6 million customers even though 85 percent of its coverage is rural, "strongly opposes" use of "use it/lose it" for existing licenses and future licenses:

> With the Commission allocating more than eight terrestrial CMRS licenses for any given geographic area, spectrum take-backs will lead to unnecessary and likely uneconomic construction of network facilities in sparsely populated areas simply to "save the license." * * * Marketplace forces, and not regulation, are thus driving Dobson and other rural carriers to extend coverage and introduce innovative services to rural areas wherever it is economically feasible to do so.[5]

Similarly, another successful rural carrier, Nextel Partners, which provides wireless services to over 1.3 million residents of rural areas (after only five years), observes that conversion of geographic licenses into "use it/lose it" licenses would "not be beneficial in terms of facilitating the expansion of wireless service in rural areas":

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2 RTG Comments at 10. *See also* NTCA Comments at 2; RCA Comments at 3 ¶ 3.

3 *See* NTCA 2004 Wireless Survey Report at 11 (Dec. 2004), *available at* www.ntca.org.

4 NTCA NPRM Comments, WT Docket No. 03-202, at 4 (Dec. 29, 2003(emphasis added). *See also id.* ("If [government] policies are designed to introduce four or five competitors of a competing service into an area that can support no more than one or two, there is the substantial risk that all will fail. As the companies struggle for their survival, the customer loses as none of the companies can afford to upgrade service or equipment.").

5 Dobson Comments at 2-3, 11 and 13.

> [S]uch a radical shift in regulatory requirements would not serve the public interest and would instead jeopardize the ability of competitive carriers to build out rural areas by forcing them to divert resources in ways that would not otherwise be economically justified, for the purpose of protecting their existing spectrum investments.[6]

Western Wireless, which serves 1.2 million customers despite the fact that its service territory averages only 11 people per square mile, has also advised the Commission that "market forces will promote the use of underutilized spectrum."[7]

Accordingly, there is no "rural position" on the issue of whether the Commission should replace its current successful policy of relying on market forces with a "use it/lose it" regime. Indeed, it is noteworthy that it is the most successful and efficient rural carriers that vigorously oppose a change in the Commission's current policies.

II. PROPONENTS OF A "USE IT/LOSE IT" REGIME FAIL TO JUSTIFY SUCH A SIGNIFICANT CHANGE IN SPECTRUM LICENSING POLICY

There are two fundamental flaws with the "use it/lose it" position. First, the proponents have not presented facts indicating that service to rural areas is being denied or unreasonably delayed because firms supposedly willing and able to deploy service lack access to spectrum. Second, "use it/lose it" proponents do not dispute the numerous undesirable consequences that would flow from adoption of such a regime. In short, "use it/lose it" proponents have not provided any reason for the Commission to consider adoption of their proposal.

A. "Use It/Lose It" Proponents Have Not Provided Any Facts to Support Their Position

"Use it/lose it" proponents claim that their approach is necessary because there are firms unable to provide service in rural areas because they cannot obtain needed spectrum. The Com-

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6 Nextel Partners Comments at iv and 22.

7 *See* Western Wireless Reply Comments, WT Docket No. 03-202, at 12 (Jan. 26, 2004).

mission has received five different sets of comments on this issue.[8] Yet, in not one of these filings has a "use it/lose it" proponent identified a single firm that has been unable to secure the spectrum it needs to provide service.

NTCA relies on its annual wireless surveys to support its position. For example, NTCA states that according to its 2004 survey, "[w]hile 57% of survey respondents indicated that they currently hold at least one wireless license," an unstated number of respondents "indicated they would prefer access to additional licensed spectrum."[9] Of course, existing licensees generally would "prefer" to hold more spectrum than they currently have. One cannot conclude from this "preference," however, that a licensee does not currently have the spectrum it needs to provide its services. And, this general "preference" certainly does not support NTCA's conclusion that there exists an "immediate need . . . for more spectrum in rural areas."[10]

NTCA further relies on its 2004 survey for the proposition that its members have "concerns" about their "inability to obtain spectrum at auction."[11] According to this survey, 36 of its 560 members – or 6.4 percent of its membership – expressed a "concern" about their "inability to obtain spectrum at auction."[12] But NTCA neglects to mention in its comments that its members identified far greater "concerns," including the competition they face from national carriers and

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8 Comments have been filed in response to the *Rural Spectrum FNPRM*, note 1 *supra*. Comments and reply comments were filed in response to the *Rural Spectrum NPRM*, 18 FCC Rcd 20802 (2003). And finally, comments and reply comments on this subject were filed in response to the *Rural Spectrum NOI*, 17 FCC Rcd 25554 (2002).

9 NTCA Comments at 2-3.

10 *Id.* at 2.

11 *Id.* at 3.

12 *See* NTCA 2004 Wireless Survey Report at 5 and 10 (Dec. 2004). NTCA also asserts that "two-thirds of those respondents not currently offering wireless wish to do so." *Id.* at 13. In fact, NTCA's survey notes that "[s]ixty-five percent of those respondents not currently offering wireless service indicated they are *considering doing so*." *Id.* at 8 (emphasis added).

their ability to make necessary investments.[13] And, NTCA did not ask its members regarding their experience and efforts to obtain spectrum *via* methods other than auctions, including disaggregation, partitioning or leasing.

The three "use it/lose it" proponents all claim that the partitioning/disaggregation/leasing alternatives to acquire spectrum are not working – but again, they do not present any evidence in support of this assertion. Indeed, the "use it/lose it" proponents cannot even agree over why these alternatives are not working. According to NTCA and RTG, the problem is caused because "large carriers are unwilling to work with [rural carriers] and frequently neglect to respond to inquiries."[14] On the other hand, RCA states that national carriers respond to rural carrier inquiries, but complains that national carriers "almost always" place "unreasonable" demands, such as use of compatible air interfaces and operating standards that would facilitate roaming between the involved networks.[15]

There are available facts regarding partitioning, disaggregation and leasing, and these facts confirm that these alternatives are working. As CTIA documents, in less than a decade, the number of broadband PCS licenses (excluding C block licenses) has increased by over 34 percent (from the original 1,581 licenses to the current 2,127 licenses).[16] Although the Commission's new leasing rules have been in effect for only one year, 59 CMRS leases have been granted and another 15 have been accepted.[17] Carriers providing wireless services extensively in

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13 *See id.* at 10 and Figure 5.

14 NTCA Comments at 3. *See also* RTG Comments at 8 ("[R]ural carriers have been consistently shut out of such transactions by nationwide carriers.").

15 *See* RCA Comments at 3. Sprint submits that it is unclear how a carrier's specification regarding appropriate operating standards that facilitate advanced features or roaming might be characterized as "unreasonable."

16 *See* CTIA Comments at 8-9.

17 *See id.* at 10.

rural areas document the importance of these alternatives to their businesses, both in acquiring spectrum they need and in divesting spectrum that is not part of their business plans.[18] In fact, NTCA's own surveys confirm that its members are obtaining spectrum, although nearly half of the survey respondents state they are waiting for the 700 MHz auctions.[19] According to NTCA, 10 percent of survey respondents acquired spectrum during 2004, while another 23 percent acquired spectrum during 2003.[20]

In summary, there is no evidence indicating that access to spectrum in rural areas is a problem and is delaying the provision of service in rural areas. Without such evidence, there is no reason for the Commission to consider replacing geographic licenses with "use it/lose it" licenses – especially when the Commission has acknowledged that its market-oriented policies have been a "huge success" and are "working to provide wireless services in rural areas."[21]

B. "Use It/Lose It" Proponents Do Not Challenge any of the Identified Drawbacks of Their Position

The Commission in its *FNPRM* identified numerous possible "drawbacks" to a "use it/lose it" regime, including:

- The arrangement could upset valuation of spectrum licenses and chill investment in wireless services;
- It could result in uneconomic construction;
- It could result in numerous administrative and legal costs; and
- It could strip licensees of legitimate business opportunities.[22]

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18 *See, e.g.*, Dobson Comments at 9-10; Nextel Partners Comments at 5-7.

19 *See* NTCA 2004 Wireless Survey Report at 10 ("The most desired spectrum among survey respondents was 700 MHz, cited by 47% of those who indicated they wished to add additional spectrum. PCS and MMDS were a distant second and third at 22% and 16% respectively.").

20 *See* NTCA Comments at 3.

21 *See Rural Spectrum NPRM*, 18 FCC Rcd 20802, 20804 ¶ 3 (2003); *Rural Spectrum Order*, 19 FCC Rcd at 19081 ¶ 3.

22 *See Rural Spectrum FNPRM*, 19 FCC Rcd 19078 at ¶¶ 153-54.

With the exception of RCA, which concedes that its "use it/lose it" proposal may result in uneconomic construction,[23] none of the "use it/lose it" proponents challenge (or even address) any of these "drawbacks." The only conclusion the Commission can reasonably reach is that these proponents concede their "use it/lose it" proposal will have these undesirable consequences.

C. RTG's Warehousing Allegation Is Frivolous

RTG, unable to present facts in support of its "use it/lose it" position and not addressing any of the drawbacks of its position, instead attempts to support its position by accusing "large, nationwide carriers" of engaging in spectrum "warehousing":

> Large carrier opposition to "keep what you use" further highlights their desire to warehouse valuable rural spectrum.[24]

Sprint disagrees strongly with this RTG assertion. Sprint's wireless business has been operational for less than eight years, yet it operates over 24,000 cell sites – or, more cell sites than the entire wireless industry constructed during the first 11 years of its existence (1985-1995).[25] Sprint also developed its affiliate program precisely to expedite deployment in more rural areas and to accelerate the date that residents of rural areas would enjoy more competitive wireless service options.[26]

Moreover, Sprint has begun executing operational alliances with small carriers that serve even more remote rural areas, alliances that often take advantage of the regulatory tools that the

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[23] *See* RCA Comments at 5-6. RCA's only response is that the FCC has "never guaranteed success of any licensee's business plan." *Id.* at 6. But business plans created in competitive markets do not assume that the government, after the plans are developed and being implemented, will change course and require licensees to engage in uneconomic construction.

[24] *See* RTG Comments at 1 and 5.

[25] *See* CTIA Semi-Annual Wireless Industry Survey.

[26] For a description of the Sprint affiliation program, *see Ninth Annual CMRS Competition Report,* 19 FCC Rcd 20597 at ¶ 79 (2004).

Commission has provided (*e.g.*, partitioning, disaggregation, leasing). For example, just last week Sprint announced an alliance with the Pioneer Partnership Group ("Pioneer"), owned by three small rural LECs, that provide wireless services in western Oklahoma and southern Kansas. Under the terms of the arrangement, Pioneer will acquire a portion of Sprint's spectrum in certain parts of Oklahoma and Kansas and triple the number of cell sites in western Oklahoma and southern Kansas (from 71 to 238 sites). Sprint North Supply, a supply-chain solutions provider owned by Sprint will manage the provision of materials needed to build or lease the 167 additional sites in order to streamline Pioneer's construction efforts and reduce its costs.[27] This arrangement is a "win-win" for both companies. Sprint customers will enjoy the benefit of using their services in more remote areas of the country, while Pioneer customers will enjoy state-of-the-art CDMA-based services in their own rural communities and enjoy seamless roaming when traveling throughout the country. The Daily Oklahoman observed that this new arrangement will address "the frustration many business people have experienced when they can't get a signal and use their cell phones in rural western Oklahoma."[28]

Sprint has executed similar arrangements with rural carriers in other states, including Colorado, Kansas and Montana, and it expects to enter into additional partnership arrangements in the future. Given this track record, there is no merit to RTG's assertion that large carriers that oppose a "use it/lose it" regime are warehousing spectrum.

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27 *See* DAILY OKLAHOMAN, *Pioneer, Sprint Announce Alliance* (Feb. 11, 2005), *available at* http://newsok.com/article/1421564/?template=business/main. A copy of this article is also reprinted as an attachment to these reply comments.

28 *Id.*

Moreover, according to NTCA, only one third of its members holding radio licenses provide service throughout their licensed area, because it is not "economically feasible to offer wireless service to all of their ILEC customers."[29] As one NTCA member candidly stated:

> How do we bring wireless service to our rural area without assistance such as was made available to bring wired services to areas not served by for-profit companies?[30]

Is RTG suggesting that two-thirds of NTCA's members are engaged in spectrum "warehousing" because they have determined that it is not economically feasible to provide ubiquitous coverage at the present time? The fact is, as RCA has recognized, rural carriers, like non-rural carriers, "will construct when there is an economic incentive to do so."[31]

Further, the Commission has already noted that it can be "a prudent business decision . . . for firms to hold spectrum in anticipation of future needs."[32] Indeed, one federal appellate court has observed that the warehousing argument that RCA makes is "a foolish notion that should not be entertained by anyone who has had even a single undergraduate course in economics":

> [A] rational licensee will voluntarily put its spectrum into service only when the additional revenue it expects to earn from doing so exceeds the additional cost it must incur to do so.[33]

In the end, it is simply inaccurate to assert that unused licensed spectrum in rural areas is not productive, given the role that potential competitive entry plays in moderating the conduct of the rural cellular incumbents.[34]

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29 *See* NTCA 2002 Wireless Survey Report at 6 (Oct. 2002).

30 *Id.* at 15.

31 Rural Cellular Association Comments, WT Docket No. 02-381, at 11 ¶ 19 (Feb. 3, 2003).

32 *Spectrum Cap Order*, 16 FCC Rcd 22668, 22692 n.148 (2001).

33 *Fresno Mobile Radio* v. *FCC*, 165 F.3d 965, 969 (D.C. Cir. 1999). *See* Sprint Comments at 10-11.

34 *See* Sprint Comments at 9-11.

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The Commission has recognized that "market forces generally better serve the public interest than regulation" and that it should consider imposing new regulation only when there is "an identifiable market failure."[35] Here, the Commission has correctly observed that its market-oriented policies are "working to provide wireless services in rural areas."[36] The Commission should summarily reject the "use it/lose it" proposal, for both existing licenses and any new licenses that the Commission may establish in the future.

For the foregoing reasons, Sprint respectfully requests that the Commission take action consistent with the views expressed above.

Respectfully submitted,

SPRINT CORPORATION

Luisa L. Lancetti
Vice President, Wireless Regulatory Affairs
Roger C. Sherman
Senior Attorney
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
202-585-1924

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35 *1998 Biennial Regulatory Review – Spectrum Aggregation Limits,* 13 FCC Rcd 25132, 25135 ¶ 5 (1998).

36 *Rural Spectrum Order,* 19 FCC Rcd at 19081 ¶ 3.

Pioneer, Sprint announce alliance

By Carmel Perez Snyder
Business Writer

Cell phone users in western Oklahoma and southern Kansas likely will get a clearer signal because of a $25 million alliance announced Thursday between Pioneer Telephone Cooperative and Sprint Corp.

Pioneer, based in Kingfisher, has 71 tower sites and reaches about 40,000 cellular customers in northwestern Oklahoma.

The company will build an additional 167 sites and likely add another 80,000 customers, said Loyd Benson, president and principal executive officer for Pioneer Telephone Cooperative.

Though build-out of the system will occur over the next 30 months, service to existing Pioneer customers will be improved almost immediately through this strategic roaming alliance with Sprint, according to a news release issued by the company.

"For the first time, Pioneer will be able to offer full-scale wireless services to all of its members throughout western Oklahoma, a goal of the Board of Trustees for many years," Benson said.

As a part of the alliance, the Pioneer Partnership Group has bought a spectrum that will allow Pioneer to overlay its land line system across western Oklahoma, as well as in southern Kansas from Medicine Lodge to Coffeyville.

The alliance also includes a nationwide voice and data roaming arrangement with Sprint that allows Pioneer wireless customers to have access to Sprint's network.

"Once the Pioneer partnership's wireless network is constructed, when Sprint wireless customers travel to the territory covered by this network, not only will their CDMA phone work to make voice calls, but all of the other features, such as Sprint PCS VisionSM, will also work on the Pioneer partnership's network," Bennett Gamel, Sprint director of Business Development, said in a news release.

Though most companies provide some coverage to rural areas, this alliance will allow Sprint to offer seamless coverage.

"It's just as important for a person in rural America to have use of all the services their phone can provide as it is for me to have it here in Kansas City," said Tracy Smith, an investment banker with George K. Baum Advisors LLC, who was instrumental in facilitating the agreement.

Pioneer General Manager Richard Ruhl said the alliance was a "historic event" for the company that has been providing telecommunication services since 1953 and first deployed its wireless network in the northwest quadrant in 1988.

"We are excited to be able to provide this innovation to all of our members," Ruhl said.

The parties have been negotiating the agreement for about 19 months and signed the agreement in late January, Benson said.

A recent article in The Oklahoman highlighted the frustration many business people have experienced when they can't get a signal and use their cell phones in rural western Oklahoma.

"We recognized the importance of cellular communications to members of our cooperative," Benson said. "They conduct business in today's market and need to have this communications tool."