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	)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies	)	
To Provide Spectrum-Based Services	)	
	)	
2000 Biennial Regulatory Review	)	
Spectrum Aggregation Limits	)	WT Docket No. 01-14
For Commercial Mobile Radio Services	)	
	)	
Increasing Flexibility To Promote Access to and	)	
The Efficient and Intensive Use of Spectrum and	)	WT Docket No. 03-202
The Widespread Deployment of Wireless Services,	)	
and to Facilitate Capital Formation	)	

REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these reply comments in response to the *Further Notice* in the above-captioned proceeding, which seeks comment on various proposals to increase the deployment of wireless services in rural areas.[1] The CMRS industry has been steadily expanding wireless services in rural areas, and recent Commission actions will promote this expansion. Despite these developments, the *Further Notice* requests comment on the adoption of "keep what you use" re-licensing mechanisms, renewal term substantial service requirements, and involuntary spectrum easements.[2] There is no factual basis and no legal justification for imposing new performance or construction

[1] *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, 2000 Biennial Regulatory Review 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 Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 19078 (2004) ("*Report and Order"* and "*Further Notice,"* respectively).

[2] *See Further Notice* at ¶ 132.

requirements on licensees. Moreover, additional requirements would undermine the auction process by jeopardizing business plans that were developed based on existing build out and performance obligations. Finally, the FCC should not abandon market-based policies in favor of easements and underlays. Instead, the Commission should take additional actions that will reduce the high costs of cellular deployments in sparsely populated areas, such as it already has done by increasing transmitter power limits on a per carrier basis.

I. The Commission's Market Based Approach to CMRS Has Delivered Competition to Rural Areas.

In the *Report and Order*, the Commission notes that its current policies "are working to provide wireless services in rural areas."[3] The *Ninth CMRS Competition Report,* in which the Commission confirms that carriers continue to expand service into previously unserved or underserved areas, further supports this conclusion.[4]

While the *Ninth CMRS Competition Report* found that "on average, a smaller number of operators are serving rural areas than urban areas," it nonetheless concluded, "effective CMRS competition does exist in rural areas."[5] The *Ninth CMRS Competition Report* further found that 96.8 percent of the total U.S. population lived in counties with access to three or more different CMRS operators by year end 2003 – which represented an almost 10 percent increase from just four years ago.[6] This strong growth in coverage, declining rates, and increased consumer demand clearly indicate that the Commission's current rules, which are based on market principles, are allowing CMRS carriers to

---

[3] *Report and Order* at ¶ 3.
[4] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 04-111, Ninth Report, 19 FCC RCD 20597 (2004) ("*Ninth CMRS Competition Report*").
[5] *Id.* at 20643.
[6] *Id*. at 20700, Appendix A, Table 10.

increase their footprints in rural areas while delivering new services. Any changes to the Commission's rules could disrupt this trend.

Expansion of wireless services into rural areas has benefited from the Commission's market-based and flexible regulatory policy.[7] For example, AT&T Wireless noted in its comments to the *Notice of Proposed Rule Making* in this proceeding, that wireless carriers have taken extensive advantage of the ability to partition and disaggregate spectrum in rural areas, and that it has completed transactions resulting from the increased flexibility involving "more than 100 separate market areas or portions of market areas…."[8] Similarly Dobson holds approximately fifteen PCS licenses that have been either partitioned and/or disaggregated over time.[9] Given this obvious success, the Commission should continue to rely on such policies.

Dobson noted in its comments that the Commission has recognized that "the average number of mobile operators estimated to be serving rural areas in the United States is greater than the average number of mobile operators serving countries with a reputation of having highly advanced mobile services such as Japan, South Korea, and Finland.[10] Given the lack of evidence that market forces have failed to deliver wireless services to rural markets, there is no reason for the FCC to alter its current performance requirements on PCS licensees. Competition in the wireless industry has flourished precisely because competitors are free to make investments in response to market forces.

---

[7] *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, 2000 Biennial Regulatory Review 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 Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 20802 (2003) ("*Notice of Proposed Rulemaking"*) at ¶ 3.

[8] AT&T Wireless Comments at 4.

[9] Dobson Communications Corporation ("Dobson") Comments at 9.

[10] *Id.* at 7 *citing Ninth Report,* 19 FCC Rcd at 20643.

The cost of spectrum combined with other costs of deploying service has dictated that service is first provided in the most densely populated areas. Wireless services have been widely deployed throughout urban and suburban areas, and have been extended to many rural areas as well. We expect this trend to continue, for both mobile voice and data services. Requiring licensees to make investments that are not predicated on economic responses to market forces could distort the competitive wireless marketplace, by potentially stranding capital investment in markets where it is not justified and limiting competitors from fully investing in markets where it is. As NTCA notes in its comments to the *Notice of Proposed Rule Making* in this proceeding, "competition for competition's sake may prove disastrous for a rural community. Pushing competition into an area that cannot support multiple providers causes all providers and their subscribers to suffer."[11] Accordingly, Verizon Wireless opposes the adoption of any new rules that would dictate where, when, and how licensees must provide service as unnecessary and counterproductive.

II. The "Keep What You Use" Proposal Should Not be Adopted.

In the *Further Notice*, the Commission seeks comment on whether to impose a "keep what you use" licensing approach on all licensed terrestrial wireless services that are within the scope of the proceeding, licenses that have been auctioned in the past as well as those that will be auctioned in the future.[12] Verizon Wireless opposes this concept as it would substantially disrupt the competitive wireless market and force carriers to make uneconomic investments. Moreover, there is no record showing that reclaiming portions of a geographic license where the licensee does not meet the Commission's

[11] National Telecommunications Cooperative Association ("NTCA") Comments at 4.
[12] *See Further Notice* at ¶ 154.

threshold of where, when, and how service should be deployed would accelerate the deployment of service in rural areas.

The premise of "keep what you use" -- that forcibly retrieving spectrum and making it available will promote faster CMRS build out in rural areas -- is incorrect. As CTIA notes, there is no evidence in this proceeding or any other that would indicate that a shortage of available spectrum is blocking the deployment of wireless services in rural areas.[13] Even those commenters that supported "keep what you use" fail to provide any evidence that the lack of spectrum is impeding service to rural areas.[14] The Commission itself previously recognized that "access to spectrum does not appear to be a substantial barrier to entry in RSAs".[15] Further, as Cingular comments, "[r] elicensing does not guarantee the establishment of additional competitors throughout rural areas." [16]

A. The Commission's Partitioning and Disaggregation, Leasing, and Auction Rules are Working to Provide Access to Spectrum in Rural Areas.

The Commission has already adopted policies that facilitate the provision of service in rural areas. For instance, the partitioning and disaggregation rules have proven to be an effective means of ensuring spectrum is used in the most efficient way. In fact the *Further Notice* cites the experience of AT&T Wireless, which was involved in the sale of more than 100 separate market areas, the majority of which were in rural areas.[17] Further, as CTIA correctly notes, the FCC's own licensing database confirms that there are well over 795 additional licenses in the cellular and PCS bands that have been created

---

[13] CTIA – The Wireless Association ("CTIA") Comments at 7.
[14] *See generally* Comments of NTCA and Rural Cellular Association ("RCA").
[15] *2000 Biennial Review – Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, Report and Order, 16 FCC Rcd. 22668, 22691 (2001).
[16] Comments of Cingular Wireless LLC ("Cingular") at 5.
[17] *See Further Notice* at ¶ 147.

as a result of partitioning and disaggregation.[18] Verizon Wireless holds many licenses that have been partitioned and/or disaggregated. Nextel Partners believes that the partitioning rules and policies have been largely successful in accelerating rural build out.[19]

The leasing rules that were adopted by the Commission in 2003 in the *Secondary Markets Report and Order* have provided another means to provide spectrum to new market entrants in rural markets.[20] The Commission recognized in the *Further Notice* that it was premature to understand the full impact of these new rules.[21] As CTIA notes, early indications are good that the leasing may be a more attractive mechanism for increasing access to spectrum than partitioning and disaggregation because leasing does not require permanent assignment of spectrum. For example, since the rules became effective in early 2004, 15 broadband PCS spectrum manager lease notifications have been accepted by the FCC, and 13 broadband PCS, 7 cellular, and 39 ESMR-related de facto transfer lease applications have been granted as well.[22] These rules and procedures will more likely lead to further development of CMRS services in rural areas than new "mandates," but they have been in effect only a short time.

While it is clear that the deployment of service in rural markets is not affected by a shortage of spectrum, upcoming spectrum auctions will provide additional opportunities for those who want access to spectrum in rural markets. For example Auction 58 that commenced on January 26, 2006, is making spectrum available in many rural areas. The

---

[18] CTIA Comments at 9.
[19] Nextel Partners, Inc. ("Nextel") Comments at 5.
[20] *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets,* WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003) ("*Secondary Markets Report and Order*")
[21] *See Further Notice* at ¶ 40.
[22] CTIA Comments at 10.

Commission has also announced the auction of licenses in the Advanced Wireless Service ("AWS") as early as mid-2006. One of these licenses in the first AWS auction will be auctioned based on an MSA/RSA market basis, precisely to foster service to rural areas.[23] Additional AWS auctions will be held for spectrum in blocks that are commonly known as the H and J Blocks. Finally, the 700 MHz band, parts of which have already been auctioned on an MSA/RSA basis, will provide additional spectrum for those wishing to provide service in rural markets. Several Commissioners supported the auction of MSAs and RSAs in the 700 MHz band to meet the needs of rural America, to "provide unique opportunities for rural and small interests to obtain licenses -- one of the public interest objectives of Section 309(j) of the Communications Act."[24] In 2002 Congress expressly required the FCC to auction the MSA/RSA spectrum in the lower 700 MHz band,[25] which it did in mid-2002.

As CTIA notes, the "keep what you use" approach is inconsistent with not only the highly successful market-oriented spectrum policies, but also with the decision in the *Report and Order* portion of this proceeding where the FCC extended the "substantial service" construction benchmark to all wireless services that are licensed on a geographic basis. The Commission determined that licensees could provide meaningful and socially beneficial service without providing ubiquitous service and that providing licensees with

---

[23] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands,* Report and Order (rel. Nov. 25, 2003) at ¶¶35-39

[24] *See* Separate Statement of Chairman Michael K. Powell, *Auction of Licenses in the 747-762 and 777-792 MHz Bands (Auction No. 31) Postponed Until January 14, 2003; Auction of Licenses in the 698-746 MHz Band (Auction No. 44) Will Proceed As Scheduled*, Public Notice (May 24, 2002) ("*Auctions PN*") at 6. *See also* Separate Statement Of Commissioner Kathleen Q. Abernathy, Auctions PN at 7 ("I am particularly pleased that we are moving forward because of the potential for rural providers to access an additional 12 MHz of spectrum via MSA/RSA licensing."). *See also* Statement of Commissioner Michael J. Copps, Auctions PN at 8 ("I believe that moving forward with the lower 700 MHz band will … advance the goal of deploying rural wireless services.").

[25] Auction Reform Act of 2002, H.R. 4560, 107th Cong. (2nd Sess. 2002).

sufficient flexibility to respond to market conditions will promote the public interest. In contrast, a "keep what you use" approach would require licensees to deploy service in specific markets in advance of when it is economically justified to do so. Thus, licensees would be forced to make uneconomic investments in order to maintain the entire area for which they currently hold a license.[26]

B. "Keep What You Use" Would Undermine Auction Integrity.

Auction integrity would be undermined by the imposition of additional build out or substantial service obligations. Incumbent CMRS licensees purchased licenses – either in private transactions or pursuant to auction – based on various valuation criteria.[27] The valuation was partially based on known build out obligations and upon the expectancy of prospective bidders that their entire licenses will be renewed if they comply with the rules established prior to the auction. If the Commission were to alter these assumptions after the auction has taken place, carriers' ability to formulate reliable business plans and to participate in auctions in a prudent manner would be disrupted. Verizon Wireless agrees with Cingular that "uncertain or ill-defined rights make it difficult for both buyers and sellers to value properties; they cause markets to work less efficiently."[28] PCS licensees paid billions of dollars at spectrum auctions based on the expectation that they would have exclusive rights to the entire market they bid on as long as they met specified construction requirements.

The Commission should not adopt these proposals because they would place undue regulatory burden on the Commission and licensees alike. When adopting PCS rules, the Commission chose not to require PCS licensees to register individual cell sites

[26] CTIA Comments at 14.
[27] Cingular Comments at 6.
[28] Cingular Comments at 7.

because it would be burdensome.[29] If the Commission were to permit other entities to acquire "unused" PCS spectrum, it would first have to require licensees to submit reams of information for the Commission to determine what geographic areas were in fact "unused," which would be administratively burdensome on both licensees and the FCC. Further as Dobson notes, developing a standard definition of "coverage" would be virtually impossible given the various technologies that are currently deployed on PCS spectrum. For instance, the 32 dBu analog standard that is used to define a cellular licensee's cellular geographic service area ("CGSA") has not been updated since its adoption despite the wide spread use of digital technologies. Even if it were possible to agree on a standard, the standard would likely be outdated by the development of even newer technologies by the time it was implemented.[30]

III. The Commission Should Not Adopt Additional Performance Requirements in Subsequent License Terms.

In the *Further Notice* the Commission seeks comment on whether it should impose substantial service performance requirements after initial license terms as a means to encourage access to spectrum and the provision of service in rural areas.[31] Verizon Wireless opposes this proposal and agrees with Cingular that adoption of additional substantial service requirements would interfere with the effective functioning of market forces by requiring licensees to deploy where it is not economically viable or risk losing their licenses.[32]

---

[29] *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order,* Gen Docket 90-314, 9 FCC Rcd 4957, 5031 (1994) ("The information that would be submitted on . . . applications [to obtain separate authorizations for each transmitter] is unnecessary to the Commission, and its filing would be overly burdensome for PCS licensees").
[30] *See generally* Dobson Comments at 15.
[31] *See Further Notice* at ¶ 157.
[32] Cingular Comments at 8.

Verizon Wireless has led the wireless industry in investing billions of dollars in building its network and improving the quality of its service. It has moved from analog to digital and now to 3G. Nothing in the record or in Verizon Wireless's history suggests that this commitment to innovation will not continue simply because it has or will soon satisfy its initial license performance requirements.

IV. The Commission Should Adopt Positive Incentives that Would Increase Investment in Rural Markets.

As already noted, the substantial costs of deploying wireless service cause rural deployment to lag deployment in more densely populated areas. Commenters proposed specific incentives that could increase investment in rural markets.[33] Verizon Wireless supports the Commission's continued evaluation of such proposals that should include both monetary based incentives as well as technical incentives.

The Commission can promote wider availability of wireless services by establishing rules that enable licensees to deploy infrastructure in a more cost effective manner. For example, the Commission recently adopted rules that permit the use of base stations operating at higher power levels in rural areas, noting that such flexibility "can benefit consumers in rural areas by reducing the cost of infrastructure and otherwise making the provision of spectrum-based services to rural areas more economic."[34] The Commission should give such rules a chance to work.

CTIA – The Wireless Association recently recommended additional changes to the Commission's rules designed to promote greater flexibility in the deployment of wireless services, including wireless broadband services that employ wideband

---

[33] *See generally* Dobson and Nextel Comments.
[34] Report and Order at ¶ 86.

technologies.[35] The Commission's current rules limit base station power on a "per carrier" basis. This disadvantages wideband technologies like CDMA, which employ communications carriers with a wider bandwidth. This limitation makes it even more difficult to deploy economically wireless broadband technologies. CTIA recommends adoption of a "per MHz" limit that would put all wireless technologies on an equal footing and substantially improve a licensee's ability to deploy service (especially broadband data service) in rural areas economically. Verizon Wireless strongly supports CTIA's proposal, and urges the Commission to adopt it.

V. The Commission Should Not Adopt Involuntary Easements for Licensed Spectrum.

Similarly, the Commission should not abandon market-based policies in favor of "alternative mechanisms such as government-defined easements" for new licenses.[36] The Commission asks commenters to clarify their objections to such easements and, where possible, provide examples of potential adverse consequences of such a proposal.[37] Verizon Wireless has addressed elsewhere the considerable problems with permitting easements in licensed CMRS spectrum, and placed on the record compelling technical and economic data describing such problems.[38] We ask that those comments be made a part of the record here. As evidenced by the growth in mobile wireless after the adoption

---

[35] *See Ex Parte Communication of CTIA, Biennial Regulatory Review-Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264* (filed Feb. 7, 2005).

[36] *See Further Notice* at ¶ 159.

[37] *Id.*

[38] *See* Comments of Verizon Wireless, *In the Matter of Promoting Efficient Use of Spectrum Through the Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice, WT Docket No. 00-230 (filed Dec. 5, 2003) at 4. *See also* Comments of Verizon Wireless, *Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands*, ET Docket 03-237 (filed Apr. 5, 2004) ("*VZW Interference Temperature comments*"). *See also* Comments and Reply Comments of Verizon Wireless, *Facilitating Opportunities for Flexible, Efficient and Reliable Spectrum Use Employing Cognitive Radio Technologies, Authorization and Use of Software Defined Radios,* ET Docket 03-108, (comments filed May 3, 2004; reply comments filed Jun. 1, 2004).

of flexible rules for PCS, the best way to promote the introduction of innovative wireless services, especially wide-area mobile and broadband services, is through the use of licensed spectrum that is both flexible and assigned exclusively for use by a given licensee. To promote those benefits, the Commission should ensure that licensees have control over the use of the spectrum for which they are licensed, including control over so-called "non-interfering" opportunistic devices. Establishing a licensee's control over its spectrum and strengthening the "exclusive use" model is a critical component of a transition to market-oriented spectrum policies. In effect, if an underlay or easement is not under the licensee's control, any future increases in a *licensed user's* efficiency yield benefits for the *unlicensed* users in the band.[39] Damage to existing services can occur both through harmful interference to existing licensees, as well as by skewing a licensee's economic incentives and restricting the licensee's ability to its use the spectrum to meet market demands. The Commission should rightfully limit any "easements" in exclusive use spectrum to those that are negotiated by the licensee in the secondary market. In addition, as we have noted elsewhere and CTIA echoes in its comment to this proceeding, market pressures and consumer demand have motivated CMRS carriers to take full advantage of their available spectrum by designing their systems to operate down to the noise floor.[40] Allowing involuntary spectrum easements in licensed CMRS spectrum will limit CMRS carriers' channel capacity and reduce their coverage.

---

[39] Application of such an easement to existing licensed spectrum would unlawfully strip licensees of the exclusive use rights and flexibility granted with their licenses. The Commission would be unlawfully granting access to licensees' spectrum to other parties and enabling those parties to reap the benefits of an asset held by the licensees.

[40] *See* VZW Interference Temperature comments at 8-9 and CTIA at 17 *citing* Comments in ET Docket No. 03-237, at 6 (filed Apr. 5, 2004). *See also* V-Comm Comments in Itemp at 16-19.

VI. Conclusion

As discussed above, the Commission should not adopt any new regulations that require CMRS licensees to meet additional service or buildout requirements. Instead, it should adopt changes in its technical rules to reduce the high cost of serving rural areas, and the recently adopted secondary market rules should be given an opportunity to function – as these rules provide additional opportunities to parties seeking access to spectrum in rural areas. Lastly, the Commission should not adopt involuntary easements for licensed spectrum.

Respectfully submitted,

By: John T. Scott, III

John T. Scott, III
Vice President and Deputy
General Counsel – Regulatory Law

Charla M. Rath
Director Spectrum and Public Policy

Michael Samsock
Senior Attorney
Verizon Wireless

1300 I Street, N.W., Suite 400W
Washington, DC 20005
(202) 589-3768

February 14, 2005