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Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition for Rulemaking of Rural Telecommunications Group, Inc. to impose a spectrum aggregation limit on all commercial terrestrial wireless spectrum below 2.3 GHz, DA 08-2279; RM No. 11498.*

Dear Ms. Dortch:

The Telecommunications Industry Association (TIA) opposes resurrection of a spectrum cap and respectfully asks the Commission to dismiss the Rural Telecommunications Group, Inc.'s (RTG) proposal to implement a 110 MHz county-by-county spectrum cap on all commercial terrestrial wireless spectrum below 2.3 GHz.¹ Reinstating spectrum caps would constitute a step backward in the Commission's spectrum policies and would negatively affect the mobile and wireless broadband product market. Such action would potentially limit carrier flexibility to respond to technical evolutions and to maximize the utility of existing allocations. TIA urges the Commission to look to the future in setting its policies and ensure that carriers can use existing spectrum to migrate to wireless broadband technologies and deploy ever-advancing services and applications.

TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, business opportunities, market intelligence and world-wide environmental regulatory analysis. With roots dating back to 1924, TIA enhances the business environment for broadband, mobile wireless, information technology, networks, cable, satellite and unified communications. Members' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the

¹ See Public Notice, *WTB Seeks Comment on Petition for Rulemaking of RTG to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, RM No. 11498, DA 08-2279 (WTB, rel. Oct. 10, 2008).

military, the environment and entertainment. TIA co-owns the SUPERCOMM® tradeshow and is accredited by the American National Standards Institute (ANSI).

RTG seeks to resurrect a spectrum cap policy that was long ago discarded in favor of a more flexible spectrum screen method, which the Commission uses when reviewing competition in the mobile -- and now wireless broadband -- product market.² The Commission stopped using spectrum caps in 2003, based on a 2001 determination that the imposition of spectrum caps was inflexible and failed to address consumer benefits or harms.³

A spectrum screen approach allows the Commission to implement more dynamic, less arbitrarily static spectrum policy. The current screen enables the Commission to look at the collective spectrum holdings in a given market, which reveals a more complete understanding of its competitiveness. Under the current screen approach, an operator can control between 95 MHz and 145 MHz of CMRS, SMR, PCS, and 700 MHz spectrum (as well as AWS-1 and BRS spectrum) depending upon whether, on a market-by-market basis, the spectrum has transitioned to commercial broadband use.⁴

If the screen is triggered, the Commission then undertakes a review of the market to determine if the aggregation of spectrum by a licensee would produce anti-consumer results. If the Commission has concerns regarding consumer benefits, it can compel divestitures on a market-by-market basis.⁵ Divestitures typically arise in the context of mergers and acquisitions but they have recently been extended to Commission consideration of auction awards.⁶ The Commission also periodically adds blocks of spectrum to the screen to take into account new allocations and auctions.⁷ Thus, the

² RTG Petition at 20-22.

³ See 2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22693-94 ¶¶ 49-50 (2001).

⁴ See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 08-258 at ¶ 64 (rel. Nov. 10, 2008) (“*Verizon Wireless/Alltel Order*”); Sprint Nextel Corp. and Clearwire Corp., Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, FCC 08-259 at ¶ 74 (rel. Nov. 7, 2008).

⁵ See, e.g., *Verizon Wireless/Alltel Order* at ¶¶ 100-113, 159 (requiring divestiture for five additional markets where the Commission finds upon further review after completing the initial screen that the transaction is “likely to cause significant competitive harm”).

⁶ See Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction 73, *Memorandum Opinion and Order*, FCC 08-257 at ¶¶ 8, 26 (rel. Nov. 13, 2008).

⁷ Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd

spectrum screen approach enables the Commission to analyze each market with a sensitivity to its particular characteristics; an arbitrary spectrum cap would eliminate this valuable flexibility.

Moreover, there is no basis for the Commission to conclude that its current approach to protecting the public interest is in some way failing. RTG has not established why a reversal of this policy is either necessary to protect consumers or would be any more effective now than it was prior to its elimination in 2003. On the contrary, the issues raised by the RTG -- relative concentration of the market and recent auction results -- are irrelevant to the question of whether consumers are benefiting from existing Commission policy with respect to spectrum aggregation. The only indirect consumer harm RTG discusses involves roaming agreements that smaller carriers need to obtain from national carriers, a topic that has been under separate consideration in a different proceeding.⁸ Therefore, the RTG Petition makes an unpersuasive case for the Commission to consider resurrecting spectrum caps.

Should the Commission nevertheless choose to reevaluate the merit of its spectrum screen policy, TIA recommends that it first examine the effects of its current policy on consumers to determine whether this policy should be affirmed, modified, or discarded in favor of some other policy. The Commission should not conduct a narrow analysis of the marginal benefit of additional entry that might be achieved if the spectrum cap were reinstated. Instead, the Commission should take a broader view and consider that incumbent carriers are in various stages of moving to deployment of wireless broadband networks.

Unlike the voice networks of the past, the new networks will be built on blocks of spectrum ranging from 1.25 MHz to 20 MHz, or more. These building blocks will support the large networks needed to serve densely populated areas. In addition, these new broadband networks will require more contiguous spectrum than the voice networks that preceded them. A network that is constantly evolving to maximize the value of scarce spectrum resources and bring enhanced communications tools to consumers should not be managed with antiquated policies, like spectrum caps.

Further, TIA encourages the Commission to implement spectrum policies that are progressive in nature and ensure that wireless carriers can migrate their spectrum to broadband uses. Such a policy will allow carriers to more rapidly and widely provide wireless broadband, again meeting the Commission's aspiration to provide broadband to rural communities and better serve TIA's and RTG's shared goal of improving broadband deployment in rural communities.

20295, 20312-13 ¶ 30 (2007) (deciding to include 80 MHz of 700 MHz band spectrum to increase the initial spectrum aggregation screen to 95 MHz).

⁸ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Small Entity Compliance Guide, DA 08-1319 (CGB rel. June 6, 2008).

