

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

In the Matter of )  
 )  
Rural Telecommunications Group, Inc. ) RM No. 11498  
 )  
Petition for Rulemaking to Impose a )  
Spectrum Aggregation Limit on all )  
Commercial Terrestrial Wireless )  
Spectrum Below 2.3 GHz )

**REPLY COMMENTS OF AT&T INC.**

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby submits its reply to comments on the Petition for Rulemaking (the “*RTG Petition*”) filed by the Rural Telecommunications Group, Inc. (“RTG”).<sup>1</sup> AT&T’s comments in this proceeding opposed the *RTG Petition* as proposing to reverse years of pro-competitive regulatory policies. AT&T further noted that the *RTG Petition* was legally infirm in that it provided no factual basis for the radical proposed shift in policy. As discussed below, the record in this proceeding fails to cure these defects.<sup>2</sup> In contrast, a number of commenters provided substantial evidence of the highly competitive nature of the mobile marketplace that refutes any need for the regulation RTG seeks. AT&T therefore urges the

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<sup>1</sup> See Rural Telecommunications Group, Inc., *Petition for Rulemaking*, RM No. 11498 (filed July 16, 2008) (“*RTG Petition*”); see also “Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking of Rural Telecommunications Group, Inc. to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz,” Public Notice, RM No. 11498 (Oct. 10, 2008).

<sup>2</sup> Unless otherwise noted, all comments and oppositions cited in this document were filed in RM No. 11498 on December 2, 2008.

Commission to reject RTG's baseless proposal, as well as the additional unjustified regulatory burdens other commenters have attempted to graft onto this proceeding.

**I. THE RECORD IN THIS PROCEEDING FAILS TO JUSTIFY THE REVERSAL OF THE COMMISSION'S PRO-COMPETITIVE REGULATORY POLICIES IN FAVOR OF A SPECTRUM CAP.**

AT&T and other commenters in this docket argued that the *RTG Petition* must be denied because RTG has failed to provide any legal or public policy justification for the re-imposition of a spectrum cap.<sup>3</sup> Notably, notwithstanding a number of "form" comments in support of the *RTG Petition*,<sup>4</sup> this grave deficiency has not been cured on the record. Specifically, while RTG and its supporters baldly assert that imposing a cap is justified by competitive conditions, they provide no real evidence contradicting the Commission's own findings that the mobile market is robustly competitive, they offer no evidence of any harms that would be redressed by rationing spectrum, and they cite no basis for concluding that the existing system of case-by-case review is not

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<sup>3</sup> Comments of AT&T Inc. at 1-2 ("AT&T Comments"); *see also* Comments of the Telecommunications Industry Association at 1 (filed Dec. 1, 2008) ("TIA Comments") ("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."); Comments of Union Telephone Company at 3 ("Union Comments") ("RTG's requested spectrum cap is too rigid and fails to take into account the wide variety of circumstances and factors that affect competition in each market, as well as how the public interest in each market may best be served."); Opposition of Verizon Wireless at 1 ("Verizon Wireless Opposition") ("RTG fails to provide any basis for the Commission to begin a rulemaking to consider reimposing the same blunt and unwarranted economic restraint on the commercial mobile radio services market that the Commission properly repealed seven years ago."); Wireless Communications Association International, Inc. Opposition to Petition for Rulemaking at 2 ("WCAI Opposition") ("Now more than ever, the Commission needs the flexibility to address spectrum aggregation issues through case-by-case review rather than an inflexible, prophylactic spectrum cap.").

<sup>4</sup> *See* Comments of Arctic Slope Telephone Association Cooperative, Inc.; Comments of CT Cube, L.P. d/b/a West Central Wireless; Comments of Kaplan Telephone Company, Inc.; Comments of Mid-Rivers Cellular; Comments of Pine Belt Communications, Inc.; Comments of Pioneer Telephone Cooperative, Inc.; Comments of Public Service Communications, Inc.; Comments of RSA 1 Limited Partnership d/b/a Cellular 29 Plus and Iowa RSA 2 Limited Partnership d/b/a Lyrix Wireless; Comments of Westlink Communications, LLC.

working. The Commission therefore should reject the *RTG Petition* and maintain its existing, more flexible, spectrum review policies.

Despite RTG's unsubstantiated claims to the contrary,<sup>5</sup> the record is clear that the mobile telephony and broadband marketplace is thriving and highly competitive.<sup>6</sup> AT&T and others cited to the Commission's February 2008 *12<sup>th</sup> CMRS Competition Report* which, like the ones before it, documented how mobile consumers continue to reap increasing benefits from competition. CTIA, for example, explains that by "nearly any measure U.S. wireless carriers provide consumers with more service at a lower price than other carriers around the world."<sup>7</sup> Verizon, for its part, notes that each of the FCC's competition reports "has found that the CMRS industry has continued to experience increased competition, innovation, lower prices for consumers, both in terms of price per minute of use and roaming costs, increased diversity of service offerings, expansion of their data networks and development of innovative products."<sup>8</sup> RTG has provided no evidence to justify its drastic proposal to reverse Commission policy in light of this record evidence of tremendous competition and clear consumer benefits.

Similarly, neither RTG nor its supporters have presented evidence that they, or any other carrier, have been denied spectrum needed to serve their customers, much less any such example

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<sup>5</sup> See *RTG Petition* at 8, 14 (claiming that since 2001 the changes in the wireless market have caused "detriment to the consumer" and provided mobile telephony providers with "increased opportunities to engage in anticompetitive behavior").

<sup>6</sup> AT&T Comments at 3-9; Verizon Wireless Opposition at 9 ("The wireless industry is at least as competitive today as it was in 2001 by almost every measure the FCC used to assess the competitive state of the wireless market."); Comments of CTIA – The Wireless Association® at 10 ("CTIA Comments") ("[A]ccording to the Twelfth Competition Report, rural and urban consumers enjoy comparable numbers of competitors and the gap between the number of competitors in urban and rural markets is closing.").

<sup>7</sup> CTIA Comments at 7.

<sup>8</sup> Verizon Wireless Opposition at 9.

that would be cured by rationing spectrum through a spectrum cap. Nor could they as no basis exists for reinstating regulations designed when spectrum resources for mobile services were far more limited and could have been construed as a potential barrier to entry.<sup>9</sup> Indeed, the record demonstrates the opposite—that since the elimination of the spectrum cap, the Commission has made substantially more spectrum available, including 80 MHz of 700 MHz spectrum, 90 MHz of AWS spectrum, and 55.5 MHz of BRS spectrum.<sup>10</sup> In this context, not only is the re-imposition of a spectrum cap wholly unnecessary, but it would harm consumers by distorting competition and denying carriers and their customers the benefits of increased efficiencies and economies of scale.

As a final matter, RTG and its supporters fail to establish why the Commission’s current case-by-case approach is ineffective. The Commission itself found that a case-by-case review process most effectively balances the need for efficiency-creating combinations while guarding against consolidations that might lead to anticompetitive harms,<sup>11</sup> noting that “case-by-case

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<sup>9</sup> AT&T Comments at 9 (citing *In the Matter of Regulatory Treatment of Mobile Services, Third Report and Order*, 9 FCC Rcd 7988, 8100 (¶ 239) (1994) (noting that such “[spectrum aggregation limits] seek to promote diversity and competition in mobile services, by recognizing the possibility that mobile service licensees might exert undue market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum”).

<sup>10</sup> It is expected that additional valuable spectrum suitable for mobile telephony and broadband service will soon become available, including the Commission’s auction of an additional 30 MHz of AWS-2 and AWS-3 spectrum. *See* AT&T Comments at 10-11. AT&T also continues to believe that additional BRS and EBS spectrum should be accounted for in the spectrum screen. The Commission’s decision to include only 55.5 MHz of BRS spectrum in the input market was very conservative. Moreover, to the extent EBS spectrum is leased to commercial providers, that spectrum should be considered part of the input market.

<sup>11</sup> *See* *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19113 (¶ 63) (2004) (“[R]eliance on a uniform case-by-case review process for aggregations of spectrum and cellular cross interests in RSAs is currently the better approach as compared to prophylactic limits.”).

review [has a] greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and the ability to account for the particular attributes of a transaction or market.”<sup>12</sup> This conclusion is buttressed by WCAI and other commenters, who observe that in this “evolving, nascent mobile wireless broadband environment, the flexibility provided by the case-by-case review remains the best way for the Commission to promote competition, minimize barriers to deployment, and encourage additional investment in wireless broadband infrastructure.”<sup>13</sup> The RTG Petition and the record in this proceeding provide no justification for stripping the Commission of this flexibility in favor of an arbitrary cap.

In the end, RTG offers no factual basis for re-imposing a spectrum cap in this time of intense wireless competition and increased availability of spectrum. In fact, the record supports the conclusions diametrically opposed to the unjustified assertions in the petition—that mobile competition is robust, entry opportunities have increased, and case-by-case review is an efficient and effective regulatory tool to guard against anticompetitive activity. Since RTG failed to carry its regulatory burden, the Commission must reject the *RTG Petition*.

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<sup>12</sup> *Id.*, 19 FCC Rcd at 19115 (¶ 67).

<sup>13</sup> WCAI Comments at 2; *see also* CTIA Comments at 11 (explaining that the flexibility inherent in the Commission’s case-by-case review process “is particularly important given the rapid introduction of new technologies and services that impact the amount of spectrum required to meet consumer demands”); TIA Comments at 2 (“A spectrum screen approach allows the Commission to implement more dynamic, less arbitrarily static spectrum policy.”); Union Comments at 3 (“Union is especially concerned that a spectrum cap could have unintended consequences that could deprive regional and rural carriers of the very tools they need to compete with the large nationwide carriers and to provide quality wireless services and coverage to consumers, particularly those in rural areas.”).

## II. ATTEMPTS TO IMPOSE ADDITIONAL RESTRICTIONS ON WIRELESS CARRIERS IN THIS PROCEEDING ARE UNNECESSARY AND IMPROPER.

Though the RTG Petition focuses exclusively on imposing a new spectrum cap upon wireless carriers, some commenters have gone even further and requested that the Commission bootstrap additional regulations on spectrum ownership and use. Specifically, one commenter seeks re-imposition of the cellular cross-ownership rule, while another seeks implementation of previously rejected “use-it-or-lose-it” policies. Both of these requests have been squarely rejected by the Commission, and neither commenter provides any reasoned basis for revisiting those conclusions.

One commenter has requested that the Commission “adopt rules prohibiting one entity from holding both cellular licenses in a given market”<sup>14</sup> based upon nebulous competitive reasons.<sup>15</sup> As the Commission has explicitly found, however, the cellular cross-interest rule is unjustified and unwarranted in today’s competitive wireless telephony marketplace. With regard to Metropolitan Statistical Areas (“MSAs”), the Commission long ago recognized that the cellular cross-interest rule only hindered the growth of mobile telephony and that services offered by cellular and broadband PCS providers in urban markets are indistinguishable, thereby rendering the rule moot.<sup>16</sup> The Commission noted, in fact, that digital service in the cellular band is “virtually identical” to digital service in the PCS band.<sup>17</sup> This finding in 2001 stands in

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<sup>14</sup> Comments of NTELOS at 2.

<sup>15</sup> *See id.* at 5 (suggesting that Verizon’s and AT&T’s 700 MHz and 800 MHz licenses provide them a competitive advantage over other carriers who rely on PCS licenses).

<sup>16</sup> *See In Re 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Report and Order*, 16 FCC Rcd 22668, 22707 (¶ 85) (2001).

<sup>17</sup> *Id.* at 22708 (¶ 86).

stark contrast to the unsubstantiated assertion made by commenters in this proceeding.<sup>18</sup> More recently, the Commission also abolished the cellular cross-interest rule for Rural Statistical Areas (“RSAs”). In doing so, the Commission recognized that further imposition of the rule would impede market forces that expedite development of new services in rural and underserved areas.<sup>19</sup> At that time, the Commission recognized that its Section 310(d) case-by-case review should be extended to all cellular markets as it provided more flexibility in reviewing wireless competition than the one-size-fits-all approach of the cellular cross-interest rule.<sup>20</sup>

There is no basis for reversing these decisions by the Commission. If anything, PCS technology has matured greatly since the Commission abolished the cellular cross-interest rule in its entirety in 2004 and, to the extent that propagation is an issue, the Commission has also made 80 MHz of spectrum available in the 700 MHz band with characteristics similar to 800 MHz cellular. Notably, two of the four largest carriers in the United States—T-Mobile and Sprint—have no 800 MHz cellular holdings, nor have they acquired any 700 MHz spectrum (although Sprint does hold 800 MHz ESMR spectrum). Simply put, there is no convincing basis for differentiating PCS, cellular, and other commercial mobile spectrum bands and, with the mobile telephony marketplace as competitive as ever, there is absolutely no reason to impose the cellular cross-interest rule on wireless carriers.

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<sup>18</sup> See *supra* note 15.

<sup>19</sup> See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19113 (¶ 63) (2004).

<sup>20</sup> See *id.* at 19115 (¶ 67) (finding that the “public interest is better served by the benefits of case-by-case review with its greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and ability to account for the particular attributes of a transaction or market”).

Another commenter—the “Rural Independent Competitive Alliance”—has also suggested that the Commission take this opportunity to mandate partitioning of spectrum in rural areas.<sup>21</sup> Notably, in 2004, when the Commission examined ways of promoting entry opportunities in rural areas, it considered, and did not adopt, so-called “use it or lose it” rules similar to those RICA proposes. In so doing, the FCC identified a number of concerns with such rules, noting commenters’ concerns that:<sup>22</sup>

- “[A]dopting a “keep what you use” approach may not actually result in additional rural deployment, because, if it is economically beneficial for a carrier to deploy services in a particular area, they have sufficient incentive to do so without regulatory intervention.”
- “[A]dopting a “keep what you use” approach may upset the valuation of spectrum licenses and chill investment in wireless services.”
- “Such an approach might result in uneconomic construction, in an attempt to “save” licensed area,” by “forc[ing] carriers ‘to make the Hobson’s choice of making uneconomic investments or forfeiting their licenses in rural areas (even though entry may be justified in the future).”
- “[A]dopting the “keep what you use” approach may result in numerous administrative and legal costs, including the costs of initially assessing whether the spectrum is being ‘used,’ reclaiming the subject spectrum and resolving ‘any controversy or litigation that may arise as a result,’ engaging in the re-licensing process, and ‘waiting to see whether the new licensees actually provide the desired wireless service to the indicated rural territory.’”
- “[A]dopting a ‘keep what you use’ approach may ‘strip[ ] a licensee of legitimate business opportunities, such as the ability to lease excess spectrum in the secondary market.’”

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<sup>21</sup> Comments of The Rural Independent Competitive Alliance (“RICA”) at 7. RICA also suggests that leasing and partitioning rules be modified to permit lessors and partitioners to “count” the activity of lessees and partitionees for purposes of build-out requirements. In fact, that flexibility exists under the Commission’s rules today. *See, e.g.,* In Re Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604, 20667 (¶ 146) (2003).

<sup>22</sup> *See supra* note 19 at 19157-158 (¶¶ 153-54).

Of course, the proponent of this new rule provides no substantive basis for adopting it. In fact, proponents of mandatory partitioning liken it to the Commission's "fill-in" concept in Part 22 of its cellular rules.<sup>23</sup> However, the general absence of unserved area cellular license applications shows that there is little demand for spectrum potentially available under this kind of policy. RICA's proposal is thus unnecessary, unjustified, and may have vast unintended—and potentially detrimental—consequences.

### III. CONCLUSION

For the foregoing reasons, the Commission should reject the calls for counterproductive and unjustified spectrum regulation by RTG and others. The Commission concluded long ago that a rigid spectrum cap is unnecessary and inferior to the more flexible tools the Commission currently uses to address spectrum aggregation. The record does not support reversing this sound decision. The Commission should also refrain from imposing other restrictions unrelated to the *RTG Petition* as they are unnecessary and will only harm the public interest.

Respectfully submitted,

**AT&T INC.**

By: /s/  
Paul K. Mancini  
Gary L. Phillips  
Michael P. Goggin  
1120 20th Street, NW  
Washington, DC 20036  
(202) 457-2054

*Its Attorneys*

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<sup>23</sup> Comments of RICA at 8 (citing 47 C.F.R. § 22.949).

## CERTIFICATE OF SERVICE

I, Vanessa Lansdowne, do hereby certify that on this 22<sup>nd</sup> day of December 2008, I caused copies of the foregoing "Reply Comments of AT&T, Inc." to be delivered to the following via First Class U.S. mail and/or email.

Angela Kronenberg  
Spectrum and Competition Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Caressa D. Bennet  
Michael R. Bennet  
Bennet & Bennet, PLLC  
4350 East West Highway  
Suite 201  
Bethesda, MD 20814

Best Copy and Printing, Inc.  
445 12<sup>th</sup> St., S.W., Portals II  
Room CY-B402  
Washington, D.C. 20554

John T. Scott, III  
Vice President and Deputy General Counsel –  
Regulatory Law  
Verizon Wireless  
1300 I Street, NW  
Suite 400 West  
Washington, D.C. 20005

David J. Redl  
Counsel, Regulatory Affairs  
CTIA – The Wireless Association  
1400 16<sup>th</sup> Street, NW  
Suite 600  
Washington, D.C. 20036

Richard Ruhl  
Pioneer Telephone Cooperative, Inc.  
108 East Roberts Ave.  
Kingfisher, OK 73750

Stephen G. Kraskin  
Rural Independent Competitive Alliance  
2154 Wisconsin Ave. NW  
Washington, D.C. 20007-2280

Catherine Moyer  
WestLink Communications, LLC  
120 West Kansas Avenue  
Ulysses, KS 67880

Leap Wireless International, Inc.  
c/o James Barker  
Latham & Watkins LLP  
555 Eleventh Street, N.W.  
Suite 1000  
Washington, D.C. 20004-1304

Jill Canfield  
National Telecommunications Cooperative  
Association  
4121 Wilson Boulevard  
10<sup>th</sup> Floor  
Arlington, VA 22203

Mary McDermott  
NTELOS  
401 Spring Lane  
Waynesboro, VA 22980

United States Cellular Corporation  
c/o Peter M. Connolly  
Holland & Knight LLP  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006-6801

Wireless Communications Association  
International, Inc.  
c/o Paul J. Sinderbrand  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW  
Suite 700  
Washington, D.C. 20037

Union Telephone Company  
c/o Shirley S. Fujimoto  
McDermott Will & Emery LLP  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096

David S. Fauske  
General Manager and CEO  
Arctic Slope Telephone Association  
Cooperative, Inc.  
4300 B Street, Suite 501  
Anchorage, AK 99503

Carl A. Turnley  
Vice President  
Kaplan Telephone Company d/b/a PACE  
Communications  
110 North Irving Avenue  
Kaplan, LA 70548

Gerry Anderson  
General Manager  
Mid-Rivers Cellular  
904 C Avenue  
Circle, MT 59215

John C. Nettles  
President  
Pine Belt Communications, Inc.  
3984 County Road 32  
P.O. Box 279  
Arlington, AL 36722

NTCH, Inc.  
c/o Donald Evans  
Fletcher, Heald & Hildreth  
1300 N. 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

E. Kelly Bond  
President  
Public Service Communications, Inc.  
8 North Winston Street  
Reynolds, GA 31076

Mike Higgins, Jr.  
General Manager  
CT Cube, L.P. d/b/a West Central Wireless  
3389 Knickerbocker Road  
San Angelo, TX 76902

Robert Mauer  
General Manager  
RSA 1 L.P. d/b/a Cellular 29 Plus and Iowa  
RSA 2 L.P. d/b/a Lyrix Wireless  
404 Howland Street  
Emerson, IA 51533

Danielle Coffey  
Vice President, Government Affairs  
Telecommunications Industry Association  
10 G Street NE  
Suite 550  
Washington, D.C. 20002

*/s/ Vanessa Lansdowne*

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