

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands)	WT Docket No. 04-356
)	
Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands)	WT Docket No. 02-353
)	
To: The Commission		

**COMMENTS OF THE
RURAL TELECOMMUNICATIONS GROUP, INC.**

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby submits comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“*Notice*”) seeking comment on proposed service rules for Advanced Wireless Service (“AWS”) operations in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands (collectively, “1.9 GHz AWS Bands”).² Specifically, RTG urges the Commission to set aside a

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² *In the Matter of Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Service Rules for*

significant portion of the 1.9 GHz AWS Bands, but in no event less than ten megahertz of spectrum, to be licensed in Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”). RTG also urges the Commission to adopt a “keep what you use” regulatory regime to replace the Commission’s proposed “substantial service” performance requirement for future licensees in the 1.9 GHz AWS Bands. By licensing the 1.9 GHz AWS Bands in smaller geographic service areas and by allowing licensees to keep only portions of the spectrum that they have actually used, the Commission will ensure that rural service providers will have an adequate opportunity to acquire the spectrum and utilize it for the deployment of third generation (“3G”) wireless services.

I. The FCC Should Set Aside At Least 10 Megahertz of AWS Spectrum to be Licensed in MSAs and RSAs

In its *Notice*, the Commission seeks comment on “what geographic area basis [it] should license the 1915-1920 and 1995-2000 MHz bands and the 2020-2025 and 2175-2180 MHz bands.”³ In order to ensure that AWS spectrum is deployed and utilized in both urban and rural portions of the United States, RTG submits that it is critical that the Commission license at least 10 megahertz of spectrum in the 1.9 GHz AWS Bands in MSAs and RSAs.

As the Commission is well aware, the demographics and physical characteristics of rural and urban areas differ dramatically. Even utilizing wireless technologies, rural areas, with their vast spaces, low population densities, difficult terrain and harsh weather, remain expensive and challenging locations to serve. Nationwide carriers concentrate on

Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket Nos. 04-356 & 02-353, Notice of Proposed Rulemaking, FCC 04-218 (September 24, 2004).

³ *Notice* at ¶25.

cities, suburban areas and highways for mobile services, and generally use spectrum to target businesses and Multi-Dwelling Units in dense urban areas for non-mobile spectrum services. Such a business model simply does not work in sparsely-populated rural areas.

Over a decade ago, the Commission ensured that cellular service would reach rural America by awarding landline telephone companies, including those landline companies serving rural areas, B Block spectrum in RSAs. The near ubiquity of cellular service in rural regions, as well as the large number of small, rural carriers, is a testament to the success of the Commission's cellular rules and procedures. The Commission licensed the cellular spectrum in MSAs and RSAs. The use of MSAs and RSAs created a metropolitan/rural dichotomy, that served the cellular market well. Carriers that were interested in serving rural customers could concentrate on these specific markets, whereas nationwide carriers could focus their attention on more-profitable urban and suburban areas. In fashioning its cellular rules, the Commission developed strict cellular buildout rules that led to the delivery of cellular service to almost all regions of the country.

MSAs and RSAs, by definition, separate rural areas from urban areas. De-linking metropolitan areas from rural areas will allow the marketplace, through the auction process, to determine an accurate valuation for each area. In addition, companies interested in providing localized service to rural areas will not have to compete against "national" companies that value a license based solely on dense urban areas. A de-linking approach benefits the public and meets the mandate of Section 309(j) of the Communications Act of 1934, as amended,⁴ by allowing small companies interested in

⁴ 47 U.S.C. § 309(j).

providing service to rural areas to do so without residents of those areas being held hostage by large carriers only interested in serving the more profitable populated markets.

In recent spectrum allocations, the Commission has made efforts to set aside specific spectrum blocks for licensing in MSAs and RSAs. Significantly, in its recent AWS proceeding for the 1710-1755 MHz and 2110-2155 MHz bands (collectively, “1.7 GHz AWS Band”), the Commission set aside 10 megahertz of spectrum to be licensed in MSAs and RSAs. The Commission licensed the remaining 40 megahertz of available AWS spectrum in larger Economic Areas and Economic Area Groupings. In doing so, the Commission noted that “by including these varied-sized geographic service areas in [the] band plan for licensing, [the Commission] promote[s] the policy goal of disseminating licenses among a wide variety of applicants.”⁵ In adopting MSAs and RSAs for the AWS D Block, the Commission noted that “these local service areas...favor smaller entities, such as rural telephone companies and small service providers, with localized business plans and no interest in providing large-area service.”⁶

As the Commission points out in its *Notice*, many rural carriers have expressed concern that the 10 megahertz of spectrum set aside to be licensed in MSAs and RSAs in the 1.7 GHz AWS Band will not provide enough spectrum to allow rural carriers to utilize these important spectrum bands to deploy meaningful 3G wireless services.⁷ By licensing at least an additional 10 megahertz of spectrum in the 1.9 GHz AWS Band in

⁵ See, *In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, WT Docket 02-353 (November 25, 2003) ¶35.

⁶ *Id.*, ¶39.

⁷ Notice at ¶28. See also, *In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, WT Docket 02-353, Petition for Reconsideration by Rural Cellular Association (filed March 8, 2004).

MSAs and RSAs, the Commission will ensure that rural providers can compete on a level playing field with nationwide carriers for the acquisition of spectrum and the deployment of 3G wireless services.

II. The FCC Should Abandon the “Substantial Service” Performance Requirement and Adopt a “Keep What You Use” Regulatory Regime for the 1.9 GHz AWS Bands

In its *Notice*, the Commission seeks comment on whether it should apply its “substantial service” construction benchmark to the 1.9 GHz AWS Bands⁸ and “whether the [1.9 GHz AWS Bands] should be subject to any performance requirements in addition to a substantial service requirement at license renewal.”⁹ As RTG set out in comments in the Commission’s *Rural Notice of Proposed Rulemaking* proceeding,¹⁰ in order to ensure that spectrum is adequately deployed in rural areas, the Commission must abandon its “substantial service” requirement and adopt stricter, more specific build-out obligations. Specifically, RTG urges the Commission to implement a “keep what you use” approach for licensing the 1.9 GHz AWS Bands, an approach similar to the “unserved area” licensing regime established for cellular service.¹¹ By holding licensees to stricter build-

⁸ *Notice* at ¶70.

⁹ *Notice* at ¶73.

¹⁰ *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*, Notice of Proposed Rulemaking, WT Docket No. 02-381 (October 6, 2003)(“*Rural Notice of Proposed Rulemaking*”).

¹¹ While RTG is aware that the Commission is currently seeking comment on an expanded “keep what you use” licensing approach as part of its *Rural Further Notice of Proposed Rulemaking*, that proceeding should not preclude the Commission from implementing this licensing scheme on a forward-looking service-by-service basis. See *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*, Further Notice of Proposed Rulemaking, WT Docket No. 02-381 *rel.* Sept. 27, 2004 (“*Rural Further Notice of Proposed Rulemaking*”).

out requirements and by allowing rural carriers to acquire licenses for and provide service to portions of service areas in which the original licensee has not yet constructed or operated, the Commission will further its goal of providing entities greater access to “unused” spectrum in remote and rural areas.

In licensing the 1.9 GHz AWS Bands, the Commission should refrain from repeating its recent use of the vague and nearly unenforceable “substantial service” standard. A “substantial service” requirement will not provide additional opportunities for rural carriers to access “unused” spectrum. In fact, just the opposite will occur. The vagueness of the current “substantial service” standard will continue to inhibit the deployment of wireless service to rural areas. The virtually meaningless “substantial service” requirement causes rural areas to continue to go unserved when auction winners are able to meet the requirement by serving only a small geographic area with a high population density. While no licensee has yet been required to demonstrate that it has met the Commission’s “substantial service” requirement, there is currently no evidence to support the notion that the “substantial service” requirement is facilitating the deployment of wireless services in rural and unserved areas.

The elimination of the “substantial service” performance requirement, in conjunction with the adoption of a “keep what you use” approach to licensing, will ensure that entities willing to provide service to previously unserved portions of license areas will have adequate access to spectrum. Specifically, when adopting a “keep what you use” mechanism, the Commission should specify a set period of time for construction to occur, such as half the original license term. After half of the term is over, any area of significant size (*e.g.*, a minimum of fifty square miles) in which spectrum has not been

“used” should be available for others to utilize. In determining whether spectrum is being used, the Commission should use real world propagation studies. Licensees should be required to file maps depicting their coverage area at the time of their construction deadline (based on when half the term of the license is over). Based on the cellular model, the Commission should determine actual “use” pursuant to these “real world” coverage maps. In order to ensure that the most up-to-date information is submitted, the Commission should implement strict reporting guidelines for submitting underlying engineering parameters to allow the industry to “police” itself with regard to actual service provided to rural communities.

The implementation of a “keep what you use” approach will ensure that spectrum in the 1.9 GHz AWS bands is not continually warehoused by carriers only interested in serving more populated areas and will provide an important means by which rural companies can access spectrum in the event that the Commission chooses not to allocated licenses in very small geographic service areas. Taken in sum, the “keep what you use” mechanism will ensure *meaningful* rural coverage by carriers with licenses in rural areas and will provide real access by rural carriers to “unused” spectrum as contemplated by Congress when it enacted Section 309(j) of the Act.

III. Conclusion

RTG applauds the efforts of the FCC to bring key spectrum below 3 GHz to the marketplace for commercial use. By setting aside at least 10 megahertz of spectrum in the 1.9 GHz AWS Bands for licensing in MSAs and RSAs, and by adopting a “keep what you use” licensing approach for these bands, the Commission will ensure that these important spectrum bands will be utilized in both urban and rural environments.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS
GROUP, INC.**

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Dated: December 8, 2004

**Federal Communications Commission**

The FCC Acknowledges Receipt of Comments From ...
Rural Telecommunications Group, Inc.
...and Thank You for Your Comments

Your Confirmation Number is: **'2004128530533'**

Date Received: **Dec 8 2004**

Docket: **04-356**

Number of Files Transmitted: **1**

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Rural Telecommunications Group, Inc.
...and Thank You for Your Comments

Your Confirmation Number is: **'2004128181281'**

Date Received: **Dec 8 2004**

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