Federal Communications Commission
Washington, D.C. 20554

February 2, 2005

Small Entity Compliance Guide

Rural Report and Order

DA 05-281

WT Docket Nos. 02-381, 01-14, 03-202

This Guide is prepared in accordance with the requirements of Section 212 of The Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the above-referenced FCC rule. This Guide is not intended to replace the rule, and final authority rests solely with the rule. While we have attempted to cover all parts of the rule that might be especially important to small entities, the coverage may not be exhaustive. In any civil or administrative action against a small entity for a violation of a rule, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be made based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update text. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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COMPLIANCE REQUIREMENTS

Objectives of the proceeding

The actions the Commission adopted in the *Report and Order* are derived from those proposed in the *Notice of Proposed Rule Making,* Facilitating the Provision of Spectrum-Based Services 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 Facilitate Capital Formation, WT Docket No. 03-202, *Notice of Proposed Rulemaking*, 18 FCC Rcd 20802 (2003) (*Rural NPRM*). In the *Report and Order,* the Commission adopted several measures intended to increase the ability of wireless service providers to use licensed spectrum resources flexibly and efficiently offer a variety of services in a cost-effective manner. By the Commission actions, steps are taken to promote access to spectrum and facilitate capital formation for entities seeking to serve rural areas or improve service in rural areas. In the *Report and Order,* the Commission took action affecting the provision of commercial and private terrestrial wireless services. While the policies and regulations discussed in this *Report and Order* are targeted to promote wireless services in rural areas, it is noted that certain Commission actions will likely have broader application to non-rural areas as well.

Regulations and Policies that the Commission Modified

- **Definition of "rural area".** The Commission established the presumption that, unless otherwise specified in the context of specific policies or regulations governing wireless communications services, counties with a population density of 100 persons or less per square mile constitute "rural areas" for purposes of the Commission's wireless spectrum policies. The Commission believes the "100 persons or less" definition best serves the Commission's goals both in ease of the definition's administration and its foundation in widely available population data. Further, by treating the designation not as a uniform definition but rather as a presumption that will apply only to Commission proceedings for which the term "rural area" has not been expressly defined, the Commission can maintain continuity and avoid confusion with respect to definitions of "rural" already in existence for specific policies.

- **Size of geographic service areas.** The Commission concluded that maintaining the flexibility to establish geographic areas on a service-by-service basis and promoting the use of a variety of service areas, including small areas such as Metropolitan Statistical Areas/Rural Service Areas (MSAs/RSAs), are in the public interest. When determining the scope of geographic licenses, the Commission generally considers a number of factors, including the size for each area or areas that will be licensed, the amount of spectrum to be available under each license, and whether there should be paired spectrum

blocks available for auction. The Commission has designated various sizes of geographic service areas, including smaller market sizes, in order to encourage participation in spectrum auctions and to facilitate deployment of wireless services. The Commission's service-specific approach allows it to consider the appropriate size of each future service area in the context of geographic partitioning and spectrum disaggregation rules and permits the Commission to structure service areas in light of potential costs relating to aggregation, partitioning and disaggregation for the particular spectrum. Geographic partitioning and spectrum disaggregation are available to promote efficient spectrum use and economic opportunity by a wide range of applicants, including rural telephone companies, and they ensure flexibility while providing an opportunity for spectrum to be made available over small areas such as MSAs or RSAs depending on the record and other considerations relevant to the specific spectrum. This in turn increases the likelihood of service to rural markets by all carriers, including small entities.

- **Cellular cross-interest rule.** The Commission increased access to capital for rural licensees by eliminating the remaining components of the cellular cross-interest rule that currently apply only in RSAs and transitioned to case-by-case review for certain cellular transactions in RSAs. By employing this approach to monitor those cross-interests that pose a particular risk to competition in the near term, the FCC concluded that it struck the proper balance between promoting investment and protecting consumers against potential competitive harms in rural areas. The Commission found that elimination of the current cellular cross-interest rule and reliance on a uniform case-by-case review process for all aggregations of spectrum and potentially anticompetitive cellular cross-interests in RSAs is currently the better approach as compared to the old, prophylactic limits. The Commission believes that modification of the rule was necessary to better encourage more transactions and levels of financing that are in the public interest while still maintaining much of the protection afforded by the cellular cross-interest rule. Also, the Commission believes that the elimination of the existing cellular cross-interest rule will provide greater flexibility to all carriers, including small entities.

  Accordingly, the Commission took three steps:

  - **First,** it deleted Section 22.942 from its rules. Under Section 22.942, a party with a controlling interest in one of the cellular licensees was prohibited from having more than a 5 percent direct or indirect ownership interest in the other licensee in the same cellular geographic service area (CGSA). This prohibition substantially limited the ability of parties to have interests in cellular carriers on different channel blocks in the same rural geographic area. To the extent licensees on different channel blocks in an RSA had any degree of overlap between their respective CGSAs, Section 22.942 prohibited any entity from having a direct or indirect ownership interest of more than five percent in one such licensee when it has an attributable interest in the other licensee. An attributable interest is defined generally to include an ownership interest of 20 percent or more or any controlling interest. Under both the old and new rules, an entity may have a non-controlling and otherwise non-attributable direct or indirect ownership interest of less than 20 percent in licensees for different channel blocks in

overlapping CGSAs within the same RSA.

- **Second,** the Commission added a new Section 1.919(c) to its rules. As a result of this addition, if a party with a controlling or otherwise attributable interest in one cellular licensee within an RSA obtains a non-controlling interest of more than 10 percent in the other cellular licensee in an overlapping CGSA, that party must notify the Commission within 30 days of the date of consummation of the relevant transaction by filing updated ownership information (using an FCC Form 602) reflecting the specific level of investment. Thus, under the new notification requirement, the Commission will allow a party with a controlling or otherwise attributable interest in one of the cellular licensees to have a non-controlling or otherwise non-attributable direct or indirect ownership of up to and including 10 percent in the other cellular licensee in overlapping CGSAs without notification. However, the Commission continues to require a party with a controlling interest in one cellular licensee in a CGSA to apply for prior Commission approval of the acquisition of a controlling interest, no matter how small, in the other licensee in that market.

- **Finally,** the Commission included in the new section 1.919(c) a provision that this new cellular cross-interest notification requirement will sunset at the earlier of: (1) five years after February 14, 2005, or (2) at the cellular licensee's specific renewal deadline.

- **Conditional security interests to Rural Utilities Service (RUS).** The Commission revised the policies governing security interests in wireless licenses which will enable more prospective borrowers to qualify for certain government loans by permitting licensees, at their discretion, to grant such interests to the Department of Agriculture's Rural Utilities Service (RUS), subject to the Commission's prior approval of any assignment or transfer of control. By conditioning any assignment or transfer of control of the license on prior Commission approval pursuant to Section 310(d), the FCC ensures that it retains ultimate control over the spectrum. Thus, the FCC's approval must be obtained before RUS can foreclose on a security interest it may hold in an FCC license or before RUS, or any other entity, may otherwise obtain control of the license or licensee. Licensees will have the option of obtaining financing through RUS; in the event they find RUS's terms unsuitable, they may elect to work with private lenders. Licensees are not required to provide RUS with a conditional security interest, although this modification of the Commission policy permits them to do so, at their option. The Commission relaxed its security interest policy to permit commercial and private wireless, terrestrial-based licensees to grant RUS a conditional security interest in their FCC licenses. The Commission believes that relaxing its security interest policy to permit licensees to grant RUS a conditional security interest in their FCC licenses will greatly enhance the value of a licensee's available collateral by facilitating RUS's ability (as a secured party) to keep the licensees' assets together as a package. Also, the Commission believes that allowing FCC licenses to be used as collateral with the RUS will serve the public interest by facilitating licensees' access to capital and this action will significantly increase the financing opportunities for all licensees, including those classified as small entities, by

increasing the value of their available collateral. In doing so, the policy will provide increased flexibility for all licensees, including small entities, seeking to expand into rural areas.

- **Increase of power limits for certain services.** The Commission took several actions to increase licensee flexibility and permit more cost-effective coverage of rural areas by amending its regulations to increase permissible power levels for base stations in the Cellular Radio Service (Cellular), Personal Communications Service (PCS), and Advanced Wireless Services (AWS) in rural areas as a means of encouraging service to these areas. In doing so, the Commission evaluated the technical and operations rules for the various services at issue and found that increasing these power limits may provide measurable benefits without creating harmful interference and may provide increased coverage of rural areas using fewer base stations and less associated infrastructure costs. The licensees in all services may file a request for waiver of service-specific power limits.

  - **Cellular.** Under the new rules, the effective radiated power (ERP) of base transmitters and cellular repeaters must not exceed 1000 watts for those systems operating in areas more than 72 km (45 miles) from international borders that (1) are located in counties with population densities of 100 persons or fewer per square mile, based upon the most recently available population statistics from the Bureau of the Census; or (2) extend coverage on a secondary basis into cellular unserved areas, as those areas are defined in Section 22.949 of the Commission's rules.

  - **Broadband PCS.** Under the new rules, base stations that are located in counties with population densities of 100 persons or fewer per square mile, based upon the most recently available population statistics from the Bureau of the Census, are limited to 3280 watts peak equivalent isotropically radiated power (EIRP) with an antenna height up to 300 meters height above average terrain (HAAT). *See* Sec. 24.53 of the Commission's rules for HAAT calculation method. (47 C.F.R. § 24.232(b)).

  - **AWS.** Under the new rules, the following power and antenna height requirements apply to stations transmitting in the 1710-1755 MHz and 2110-2155 MHz bands (47 C.F.R. § 27.50 (d) (1), (2)):

    - (1) The power of each fixed or base station transmitting in the 2110-2155 MHz band and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to a peak EIRP of 3280 watts and a peak transmitter output power of 200 watts. The power of each fixed or base station transmitting in the 2110-2155 MHz band from any other location is limited to a peak EIRP of 1640 watts and a peak transmitter output power of 100 watts.

- ❖ (2) Fixed, mobile, and portable (hand-held) stations operating in the 1710-1755 MHz band are limited to a peak EIRP of 1 watt.

- **Substantial service construction requirement.** The Commission amended its regulations to provide a substantial service construction benchmark for the following licensees: 30 MHz broadband PCS licensees; 800 MHz SMR licensees (blocks A, B, and C); certain 220 MHz licensees; LMS licensees; and 700 MHz public safety licensees. These licensees now have the option of satisfying their construction requirements by providing substantial service or by complying with other service-specific construction benchmarks already available to them under the Commission's rules.

The Commission will consider the following factors in evaluating substantial service showings:

- ❖ Coverage of counties or geographic areas where population density is less than or equal to 100 persons per square mile;
- ❖ Significant geographic coverage;
- ❖ Coverage of unique or isolated communities or business parks; and
- ❖ Expanding the provision of E911 services into areas that have limited or no access to such services.

While this list is not intended to be exhaustive or exclusive, it illustrates the sorts of material factors the Commission will consider in evaluating substantial service showings in any rural substantial service analysis. Also, by adopting substantial service "safe harbors," as well as by providing examples of the factors to be considered, the Commission believes it satisfactorily balanced the competing interests of maximizing licensee flexibility while providing some measure of certainty.

Although substantial service is determined on a case-by-case basis, the Commission has set certain safe harbors in order to provide licensees with guidance:

With respect to **mobile wireless services**, a licensee will be deemed to have met the substantial service requirement if it provides coverage to at least 75 percent of the geographic area of at least 20 percent of the "rural areas" within its licensed area.

For **fixed wireless services**, the substantial service requirement is met if a licensee constructs at least one end of a permanent link in at least 20 percent of the number of "rural areas" within its licensed area.

The Commission emphasized, however, that these safe harbors do not constitute the only means by which a licensee may provide substantial service. A licensee is therefore free to meet the substantial service test by satisfying one of the safe harbors or providing some alternative coverage to its licensed area, depending upon the individual needs of

their consumers or their own unique business plans. The Commission will take into consideration if a licensee is serving a "very rural area" or a very large geographic area.

Licensees may satisfy these construction requirements through lease agreements, provided these arrangements satisfy the conditions set forth in the *Secondary Markets Report and Order*. *(See Secondary Markets Report and Order*, 18 FCC Rcd at 20655, 20667, 20676 ¶¶ 114-115, 146, 177; *see also* 47 C.F.R. §§ 1.9020(d)(5) (governing spectrum manager leasing arrangements), 1.9030(d)(5) (governing long-term *de facto* transfer leasing arrangements), 1.9035(d)(3) (governing short-term *de facto* transfer leasing arrangements).

The Commission intent in providing licensees with a substantial service option is not to mandate, but to encourage and facilitate construction in less populated areas by providing licensees with sufficient flexibility to develop unique business plans that do not require ubiquitous coverage or coverage of densely populated areas. In keeping with its market-oriented policies, the Commission does not propose to require licensees to deploy services where their market studies or other analyses indicate that service would be economically unsustainable. The Commission implemented this rule change in order to increase licensees' flexibility to develop rural-focused business plans and to allow all licensees, including small entities, to deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements.

- **Infrastructure sharing.** The Commission clarified its policies governing infrastructure sharing and discussed the various types of infrastructure arrangements that parties generally may enter into without the need for Commission review. The Commission adopted a more flexible *de facto* transfer of control standard when interpreting whether a licensee (or spectrum lessee) retains control for purposes of Section 310(d) when engaging in an infrastructure sharing arrangement involving facilities only. Under this standard, the licensee (or spectrum lessee) remains responsible for ensuring compliance with the Communications Act and all applicable policies and rules. This responsibility includes:

  - Maintaining reasonable operational oversight with respect to any activities relating to the infrastructure sharing arrangement so as to ensure that the operator of the facilities complies with all applicable technical and service rules, including safety guidelines relating to radiofrequency radiation;

  - Retaining responsibility for meeting all applicable frequency coordination obligations;

  - Resolving interference-related matters;

  - Retaining the right to inspect the facility operations and to terminate the infrastructure sharing arrangement to ensure compliance.

Although the *Secondary Markets Report and Order* initially set out this policy for the purposes of spectrum sharing only, the Commission believes that extending this policy to infrastructure sharing arrangements will provide the potential for savings in both capital costs for the construction of facilities and for improved coverage in rural areas. The Commission pointed out that all parties to infrastructure sharing arrangements, including small entities, must continue to comply with the Commission's interference and non-interference related rules and policies.

Rural Radiotelephone Service (RRS)/Basic Exchange Telecommunications Radio Service (BETRS)

The Commission removed the eligibility restrictions contained within Section 22.702 of its rules (47 C.F.R. § 22.702) regarding state approval prior to the issuance of a BETRS license. The Commission believes the removal of this restriction is in the public interest. By eliminating this restriction, a potential regulatory barrier is removed and the process for gaining access to BETRS spectrum is simplified and expedited. Under this approach, a carrier could seek approval from a state and the Commission at the same time, shortening deployment time. Nonetheless, the Commission retains the current requirement that a BETRS station must be constructed within 12 months of the issuance of a license, therefore minimizing the potential for warehousing spectrum in those instances where a BETRS licensee does not receive state approval, where required, to provide basic exchange telephone service.

Impact on Small Business

Based on the actions the Commission took, there are potential significant economic impacts on small entities.

Recordkeeping and Other Compliance Requirements

With respect to **the cellular cross-interest rule**, in the event that a party with a controlling or otherwise attributable interest in one cellular licensee within an RSA obtains a non-controlling interest of more than 10 percent in the other cellular carrier in an overlapping CGSA, the Commission will require under Section 1.919 (c) of its rules (47 C.F.R. § 1.919 (c)) that:

- The cellular licensee files with the Commission within 30 days of the date of consummation of the transaction a notification that will include updated ownership information submitted on the FCC Form 602 to reflect the specific level of investment.
- This notification requirement will sunset at the earlier of:
  - Five years after February 14, 2005, or
  - At the cellular licensee's specific renewal deadline.

Weblinks:

Report and Order and Further Notice of Proposed Rule Making – FCC 04-166, released on September 27, 2004.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-166A1.doc
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