

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

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

ORDER

Adopted: October 23, 2012

Released: October 23, 2012

By the Chief, Wireless Telecommunications Bureau

1. On July 16, 2008, the Rural Telecommunications Group (RTG) filed a petition asking the Commission to initiate a rulemaking regarding spectrum aggregation limits.¹ Specifically, the RTG Petition requested that the Commission initiate a rulemaking aimed at imposing, on a county level, a 110 megahertz cap on the amount of commercial terrestrial wireless spectrum below 2.3 GHz that one entity can hold.² On October 10, 2008, the Wireless Telecommunications Bureau released a public notice seeking comment on the RTG Petition.³ In response, some parties urged the Commission to dismiss RTG’s petition and not initiate the requested rulemaking,⁴ while others supported the petition and recommended that the Commission initiate the rulemaking sought by RTG.⁵ As courts have long recognized, the Commission has broad discretion to determine whether and when to initiate a rulemaking.⁶

2. In a recently released *Notice of Proposed Rulemaking*,⁷ the Commission declined to initiate the rulemaking RTG requested in its petition and instead launched a broader rulemaking that will address policies regarding mobile spectrum holdings from a more comprehensive perspective.⁸ In light of the

¹ See RTG Petition for Rulemaking filed July 16, 2008, RM 11498 (RTG Petition).

² See *id.* at 3 and 5.

³ 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*, 23 FCC Rcd 14875 (“*WTB Public Notice*”). Comments on the petition were due December 2, 2008, and reply comments were due December 22, 2008.

⁴ See, e.g., Comments of AT&T Inc., RM No. 11498 (Dec. 2, 2008).

⁵ See, e.g., Comments of Leap Wireless International, Inc. (Dec. 2, 2008).

⁶ See, e.g., *WWHT, Inc. v. FCC*, 656 F.2d 807, 817 (D.C. Cir. 1981).

⁷ In the Matter of Policies Regarding Mobile Spectrum Holdings, *Notice of Proposed Rulemaking*, WT Docket No. 12-269, FCC 12-119 (rel. Sept. 28, 2012).

⁸ See *id.* at 10, n.41.

broader rulemaking recently initiated, we now exercise our discretion, pursuant to the authority delegated under Sections 0.131 and 0.331 of the Commission's rules,⁹ and deny the RTG Petition and terminate this proceeding.

3. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), and the authority delegated under Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, that the Petition for Rulemaking filed by RTG is DENIED and the proceeding in RM-11498 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief, Wireless Telecommunications Bureau

⁹ 47 C.F.R. §§ 0.131 and 0.331.