

effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMGRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In the December 19, 2000 **Federal Register** notice eliminating the counterpart Federal regulation, we estimated that there would be no change to industry costs resulting from the changes made to 30 CFR part 773, which, before the changes, had contained the counterpart Federal regulation (65 FR 79582, 79659). Similarly, the removal of the amendment requiring the corresponding State provision will not have a significant economic impact.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated above, this rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that, by removing the required

amendment, we are not mandating any State action.

#### **List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

**Vann Weaver,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03-157 Filed 1-6-03; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[VA085/086/089/102/103-5046b; FRL-7428-1]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. EPA is proposing approval of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution control regulations.

In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be

addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by February 6, 2003.

**ADDRESSES:** Written comments should be addressed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 17, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 03-94 Filed 1-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Chapter 1**

**[WT Docket No. 02-381; FCC 02-325]**

#### **Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; notice of inquiry.

**SUMMARY:** This document seeks comment on the effectiveness of the Commission's current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. Specifically, we ask whether and how the Commission could modify its policies to promote the further development and deployment of such services to rural areas. In addition, we request comment on the extent to which rural telephone companies ("rural telcos") and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services. This document fulfills a Commission commitment to develop a record on these matters to determine the extent to which the Commission has achieved these statutory goals.

**DATES:** Comments are due on or before February 3, 2003 and reply comments are due on or before February 18, 2003.

**ADDRESSES:** All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Robert Krinsky, Federal Communications Commission, Room 4-B551, 445 12th Street, SW., Washington, DC 20554. See "Supplementary Information" for comment and reply comment filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Robert Krinsky at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Notice of Inquiry* released on December 20, 2002. The complete text of the *Notice of Inquiry* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The *Notice of Inquiry* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

## I. Introduction

1. The *Notice of Inquiry* seeks comment on the effectiveness of our current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. Specifically, we ask whether and how the Commission could modify its policies to promote the further development and deployment of such services to rural areas, pursuant to section 309(j) of the Communications Act of 1934, as amended ("Communications Act"). In addition,

we request comment on the extent to which rural telephone companies ("rural telcos") and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services, pursuant to sections 309(j)(3) and 309(j)(4) of the Communications Act. The *Notice of Inquiry* fulfills a Commission commitment to develop a record on these matters to determine the extent to which the Commission has achieved these statutory goals. Based on the record developed in this proceeding, we will determine whether it would be appropriate to revise existing policies or adopt new policies to promote more extensive provision of spectrum-based services to rural areas and the acquisition of spectrum by rural telcos. While satellite services may, in the future, play a critical role in bringing telecommunications services to rural America, the *Notice of Inquiry* addresses issues related only to the provision of terrestrial wireless service to rural areas, not the provision of general telecommunications services to rural areas.

## II. Background

2. The Omnibus Budget Reconciliation Act of 1993 added section 309(j) to the Communications Act, authorizing, but not requiring, the Commission to award licenses for use of the electromagnetic spectrum through competitive bidding where mutually exclusive applications are accepted for filing. In 1997, Congress expanded the Commission's auction authority by requiring it to award mutually exclusive license applications for initial applications or construction permits by competitive bidding unless certain specific exemptions apply. Section 309(j) requires the Commission to promote various objectives in designing a system of competitive bidding. A number of those objectives focus on the provision of spectrum-based services to rural areas, and three provisions mention providing the opportunity to rural telcos to acquire spectrum and provide spectrum-based services. For example, section 309(j)(3)(A) requires the Commission to encourage the development and rapid deployment of new technologies, products, and services for the benefit of the public, "including those residing in rural areas." Section 309(j)(3)(B) directs the Commission to disseminate spectrum licenses among a wide variety of applicants, including "rural telephone companies." Section 309(j)(4)(D) requires the Commission to ensure that rural telcos are given the opportunity to acquire spectrum and provide spectrum-

based services. In addition to the rural service objectives mandated by section 309(j), Congress directed the Commission to pursue other broader public interest goals in designing a system of competitive bidding. Specifically, section 309(j)(3) requires the Commission to promote efficient and intensive use of the spectrum, encourage economic opportunity and competition, and recover for the public a portion of the value of the public spectrum.

3. In an effort to fulfill the rural service objectives set forth in section 309(j), the Commission has adopted a number of policies intended, among other things, to encourage the provision of spectrum-based services to rural areas and the participation of rural telcos in the competitive bidding for spectrum licenses. Specifically, these policies include: (i) The availability of small business bidding credits; (ii) the designation of various sizes of geographic service areas for spectrum licenses; (iii) the opportunity to obtain licenses through service area partitioning and spectrum disaggregation arrangements with existing licensees; and (iv) the adoption of construction benchmark performance requirements. In addition, apart from its obligation under section 309(j), the Commission has expressed support for the provision of telecommunications services to tribal lands. The Commission also established the Rural Radiotelephone Service, which may operate in the paired 152/158 and 454/459 MHz bands, and Basic Exchange Telephone Radio Systems ("BETRS"), which may operate in those same bands as well as on 10 channel blocks in the 816-820/861-865 MHz bands, primarily to facilitate the provision of basic telephone service to remote and sparsely populated areas where wireline service is not feasible.

4. In 1994, the Commission adopted small business bidding credits to encourage broad participation in spectrum auctions. A bidding credit is a payment discount on a winning bid determined at the conclusion of the bidding process. Small business bidding credits are available to businesses — including rural telcos — whose gross revenues do not exceed a specified threshold. These bidding credits are intended to encourage participation in the competitive bidding process by entities that otherwise might have difficulty gaining access to capital. Through the use of small business bidding credits, the Commission has sought to promote the participation of small businesses, rural telcos, and women- and minority-owned firms

(collectively referred to as “designated entities”), thereby addressing Congress’s mandate to ensure diversity in the ownership of spectrum licenses. The Commission determines on a service-specific basis whether bidding credits will be offered, the eligibility criteria for receiving a bidding credit, and the amount of the bidding credit.

5. However, in the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission declined to adopt a bidding credit specifically for rural telcos. Rather, the Commission determined to continue to make small business bidding credits available to entities, including rural telcos that meet the requisite revenue criteria. In 2000, the Commission also began offering a tribal land bidding credit, the size of which is determined by the amount of tribal land area reached by the service provider. All telcos, including rural operators that fulfill the requisite criteria may obtain a tribal land bidding credit.

6. Recent statistics indicate that rural telcos have actively participated in spectrum auctions and have had some success in winning licenses. A significant portion of rural telcos that have participated in spectrum auctions have received small business bidding credits. For instance, an examination of the 29 auctions completed by the Commission as of September 18, 2002, that offered small business bidding credits, reveals that 84 percent of the qualified bidders that identified themselves as rural telcos and 79 percent of all qualified bidders were eligible to receive a small business bidding credit. In the Commission’s most recent auction for licenses in the lower 700 MHz Band, 89 percent of qualified bidders that identified themselves as rural telcos won licenses. In addition, 77 percent of all winning rural telco bidders in that auction received a bidding credit.

7. In addition to bidding credits, another way in which the Commission has sought to enhance rural telco participation in spectrum auctions is by adopting service areas of varying sizes. Although in many services we offer licenses that cover geographic areas of only one size, in a number of services, we license areas of varying sizes, ranging from small to large, in order to attract a diverse group of prospective bidders. Larger entities, for instance, may seek to acquire licenses that cover whole regions of the country, while other entities, such as rural telcos, may be interested in obtaining licenses to serve only particular rural areas. After seeking comment, the Commission has varied the size of the geographic service

area depending upon the nature of the service provided and the likely users. In services for which we have adopted one size of license area, such areas are usually larger than Rural Service Areas (“RSAs”). In determining the appropriate size of a license area, we seek to balance two competing concerns. On one hand, we seek to adopt service areas of a size that results in efficient and intensive use of spectrum resources. On the other hand, we seek to adopt licensing areas that will permit the dissemination of licenses among a wide variety of applicants. The smallest of these geographic service areas are RSAs and Metropolitan Statistical Areas (“MSAs”), of which there are 734 licenses comprising the United States and its territories. Adopting service rules that provide for licenses with small geographic areas allows bidders to target the precise areas they are interested in serving, rather than having to compete for expansive geographic areas that encompass smaller, sought-after areas. The Commission has also licensed spectrum according to Economic Area Groupings (“EAGs”), which make up six licensing areas for the entire country. Some terrestrial wireless services, such as narrowband Personal Communications Services (“PCS”) and 1670–1675 MHz, have geographic service areas that have nationwide coverage. Other geographic service areas fall along a range of intermediate sizes between RSAs and nationwide service areas, e.g., BTAs, Economic Areas (“EAs”), and Major Economic Areas (“MEAs”).

8. The Commission has also adopted partitioning and disaggregation policies to enable service providers, including rural telcos, to acquire spectrum without bidding on licenses that may not be suited to their particular needs. “Partitioning” is the assignment by a licensee of geographic portions of the license. “Disaggregation” is the assignment by a licensee of discrete portions or “blocks” of spectrum of the license. Where permitted by our rules, licensees may partition or disaggregate any of their licensed spectrum to other entities. Obtaining spectrum through partitioning or disaggregation, rather than competitive bidding, is often appealing to service providers with limited financial resources, specific service area needs, or small bandwidth requirements because licenses offered at auction may be more costly, cover larger geographic areas, and have greater bandwidth than desired. For instance, the geographic service area of a license made available at auction may include

both urban and rural areas. A rural telco interested in serving only a rural area may seek to obtain spectrum post-auction through partitioning or disaggregation, rather than bid for a license covering an area that it does not intend to serve. In this manner, our partitioning and disaggregation policies may help service providers, such as rural telcos, to obtain spectrum tailored to their specialized service area and financial needs. The Commission’s analysis of applications for geographic partition and spectrum disaggregation reveals that 13.5 percent of all assignees have voluntarily identified themselves as rural telcos. Our analysis also demonstrates that 13.8 percent of all assignees (including rural and non-rural telcos) claim they are, or will be, serving rural areas.

9. The Commission has sought to enhance service to rural areas by requiring winning bidders of spectrum licensees to meet certain performance requirements. Section 309(j)(4)(B) of the Act specifically directs the Commission to prescribe such “performance requirements” to ensure prompt delivery of service to rural areas, to prevent stockpiling of spectrum, and to promote investment in and rapid deployment of new technologies and services. Performance requirements include construction benchmarks. Construction benchmarks typically require licensees to serve either a specific portion of the geographic service area or a specific percentage of the population in the geographic service area by a certain period of time. In some instances, the Commission has adopted a “substantial service” requirement as its construction requirement. Under this approach, licensees are required to provide “substantial service” to either a geographic service area or to the population within the geographic service area within a specific period of time. The Commission has defined “substantial service” as “service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.” The “substantial service” requirement was established to assess meaningful service through a measure not based on population or geographic metrics. Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. The Commission may consider such factors as whether a licensee’s operations serve

niche markets or focus on serving populations outside of areas served by other licensees. The Commission has indicated that a "substantial service" construction requirement may help foster service to less densely populated areas. Because this requirement can be met in a variety of ways, the Commission has stated that it will review substantial service showings on a case-by-case basis. The Commission has rarely found that a commercial mobile radio service ("CMRS") carrier has failed to meet its performance requirements.

10. Another step the Commission has taken to encourage the provision of wireless services to rural areas is the retention, in RSAs, of the cellular cross-interest rule, which is designed to protect against the cellular incumbents developing cross interests that may create the incentive and ability to restrict the availability of services in those areas. The cellular cross-interest rule limits the ability of parties to have attributable interests in cellular carriers on different channel blocks in a single geographic area. In its recent reevaluation of this rule, the Commission determined that the cross-interest rule was no longer necessary in MSAs because the cellular duopoly conditions that prompted the rule's adoption no longer existed. However, the Commission found that in RSAs competition to the incumbent cellular licensees was not as developed as in MSAs. Accordingly, the Commission concluded that a combination of interests in cellular licensees serving RSAs would more likely result in a significant reduction in competition in these areas. The Commission therefore decided to retain the cellular cross-interest rule in RSAs, subject to waiver of the rule based on certain conditions. The Commission noted that retention of the cross-interest rule in RSAs does not preclude cellular carriers from obtaining PCS licenses in order to expand capacity or offer advanced services.

### III. Request for Comment

11. Under section 309(j), the Commission has a statutory mandate to promote the development and deployment of wireless technologies to rural areas and economic opportunities for rural telcos and other entities seeking to serve rural areas. Indeed, as discussed, the Commission has implemented a number of initiatives toward achieving those goals. We seek to better understand the nature of spectrum supply and demand and the services currently provided and planned to be offered in rural areas. We are also interested in developing a record on

whether there are any discrepancies between rural and urban America in the availability, use and cost of wireless services. Approximately 80 percent of the U.S. population lives in metropolitan areas. However, our society is increasingly mobile and, therefore, ubiquitous wireless service is essential, not only for those living in rural areas, but also for individuals whose business and leisure activities take them to all parts of the nation. Thus, it is in the larger public interest to promote seamless wireless service throughout the country. By the *Notice of Inquiry*, we seek to broaden our understanding of the effect our current policies have had on the availability of spectrum-based services in rural America and on access to spectrum licenses by rural telcos and other entities seeking to serve rural areas. Further, we are interested in exploring whether it is appropriate to adopt new approaches in these areas. We therefore seek comment on the effectiveness of our current regulatory tools in facilitating the delivery of spectrum-based services to areas that traditionally may have been underserved by telecommunications providers and on our efforts to provide rural telcos with the opportunity to participate in spectrum auctions. We also invite comment on ways in which the Commission could modify its policies to best fulfill these statutory goals.

12. At the outset, we request comment on the types of wireless services that are currently provided, and that are planned to be offered, in rural areas. We seek information on the availability of wireless services in rural areas and the providers of such services. We ask commenters to identify which service providers, in addition to rural telcos, are providing wireless services to rural populations. To the extent possible, we request that commenters provide particularized data on wireless coverage and provision of services to rural areas. The more specific data we receive, the better able we will be to tailor our regulations to meet our rural service goals. We particularly seek comment from consumer groups, community groups, State Commissions, local governments and others about any geographic areas that lack adequate wireless coverage, have inadequate quality of service, or inequitable pricing. We also ask commenters to identify the obstacles to providing wireless service in rural areas. In particular, we ask commenters to address the economic viability of building out in rural areas. In what ways, if any, can the Commission modify its rules to promote

build-out to rural regions? We also seek comment on whether we should maintain a Web site that would include information that would be helpful to entities seeking to provide wireless services to rural areas. Such a Web site, for instance, could have links to other sites that contain information about programs and financial incentives that are available to those seeking to serve rural populations. Should we maintain a database that would provide information to prospective service providers, including rural carriers, on the availability of spectrum for initial licensing or leasing? In addition to the specific issues identified in the *Notice of Inquiry*, we also invite comment on any other issues within the Commission's jurisdiction that may directly relate to the provision of wireless service in rural areas.

13. Apart from the rural service mandate set forth in section 309(j), Congress also directed the Commission to pursue other public interest objectives in designing a system of competitive bidding, including the efficient and intensive use of the spectrum, the development and rapid deployment of new technologies and services, the promotion of competition, and the recovery for the public of a portion of the value of the spectrum. In providing comment on how the Commission may best fulfill the rural objectives, we ask that commenters also address how any proposed suggestions would further, or impede, the Commission's achievement of the other public interest goals set forth in section 309(j)(3).

14. Finally, we recognize that issues involving spectrum leasing opportunities are of significant interest to rural telcos. They have expressed interest in gaining access to spectrum usage rights through secondary markets. We plan to address these matters in our proceeding on secondary markets.

15. In addition, we note that rural interests have raised issues related to the controlling interest standard that the Commission adopted in the *Part 1 Fifth Report and Order*. In essence, they argue that application of this rule will inappropriately disqualify rural telco cooperative applicants from attaining small business bidding status and will frustrate the objectives of the Commission's small business bidding preference program and the mandates of section 309(j). Because we will respond to petitions for reconsideration of the *Part 1 Fifth Report and Order* in a subsequent order, as part of the Part 1 rulemaking proceeding, we do not seek comment on, and will not address these matters in the *Notice of Inquiry*.

### A. Definition of "Rural Areas"

16. As discussed, sections 309(j)(3) and 309(j)(4) direct the Commission to promote the development and deployment of spectrum-based services to "rural areas." The statute, however, does not provide a definition of what constitutes a "rural area." The federal government has multiple ways of defining "rural," reflecting the multiple purposes for which the definitions are used. The Commission has used RSAs to define "rural" in certain instances. In the *Seventh Report*, 17 FCC Rcd 12985 (2002), the Commission used three different proxy definitions of "rural" for purposes of analyzing the average number of competitors in rural versus non-rural counties. We compared the number of competitors in (i) RSA counties versus MSA counties, (ii) non-nodal EA counties versus nodal EA counties, and (iii) counties with population densities below 100 persons per square mile versus those with population densities above 100 persons per square mile. We request comment on whether and how the Commission should define "rural area" for purposes of determining the extent to which the Commission has met its mandate under section 309(j). In addition, we seek comment on whether we should adopt different definitions of what constitutes a "rural area" depending upon the regulatory initiative for which the definition is used. Commenters should identify the factors that the Commission should consider when defining "rural area." In addition, we are interested in compiling a comprehensive list of the number of telephone companies that meet the definition of "rural telephone company" as defined in 47 U.S.C. 153(37). The identical definition is also included in 47 CFR 1.2110(c)(4) and 51.5. We ask that commenters provide data to assist us in this effort.

### B. Bidding Credits

17. As explained, bidding credits are intended to foster broad participation in the competitive bidding process for licenses. A bidding credit reduces the amount of the winning bid paid for a license by a qualifying entity. The Commission requests comment on whether, and the extent to which, small business bidding credits have facilitated the participation of rural telcos in competitive bidding and the delivery of spectrum-based services to rural areas. Our research demonstrates that rural telcos often qualify as small businesses and are therefore eligible to receive small business bidding credits. Is the availability of small business bidding credits effective in assisting rural telcos

to gain access to spectrum? Is the availability of such credits helpful in promoting the provision of spectrum-based services to rural areas? Commenters should support their responses to these questions with data or other empirical information. For instance, if commenters contend that small business bidding credits are not helpful in promoting rural telco participation in Commission auctions, commenters should provide data or statistics supporting that assertion. If empirical evidence demonstrates that small business bidding credits are not effective in facilitating the provision of wireless services to rural areas or the participation of rural telcos in competitive bidding, should the Commission adopt a bidding credit specifically for rural telcos or based on the provision of service to rural areas? For instance, should the Commission adopt a rural service bidding credit modeled after the tribal lands bidding credit? In responding to these questions, commenters should discuss why the use of small business bidding credits is or is not effective in creating opportunities for rural telcos or in spurring the provision of services to rural areas.

18. If the Commission were to adopt a bidding credit specifically for rural telcos, what criteria should it use to determine eligibility for the credit (if it is not based on financial size) and what should be the size of the credit? Is it appropriate, for instance, to adopt a bidding credit for all rural telcos irrespective of how large or well-financed these entities may be? When initially considering the adoption of a rural telco bidding credit in 1994, the Commission found that rural telcos do not *per se* have the same difficulty accessing capital as other groups, such as small businesses. The Commission stated that the parties advocating the adoption of a rural telco credit had "failed to demonstrate a historical lack of access to capital that was the basis for according bidding credits to small businesses, minorities and women." In subsequent decisions, the Commission has reiterated that large rural telcos do not appear to have barriers to capital formation similar to those faced by other designated entities. In commenting on this issue, parties that advocate the adoption of a bidding credit specifically for rural telcos should address whether we should consider access to capital as a factor in determining whether to adopt such a bidding credit. We note that rural telcos may seek below-market rate lending through the Department of Agriculture's Rural Utilities Service ("RUS"). In addition, section 6103 of

the recently-enacted Farm Security and Rural Investment Act of 2002 provides loans and loan guarantees to construct, improve, and acquire facilities and equipment to provide broadband service to rural communities with 20,000 or fewer residents. These financing options suggest that rural telcos may have greater ability than other designated entities to attract capital. We seek comment on what role these programs should play, if any, in our consideration of adopting an independent rural telco bidding credit.

### C. Geographic Service Areas

19. The sizes of geographic service areas vary on a service-by-service basis depending upon such factors as the nature of the service and the likely users. We seek comment on the extent to which the size of the geographic service area affects the ability of rural telcos to acquire spectrum licenses through competitive bidding. In addition, commenters should discuss whether, and in what ways, the size of the geographic service area affects the provision of wireless services to rural areas. Commenters should provide data to support their positions.

20. Does the size of the geographic service area affect the provision of wireless services to rural areas by entities other than rural telcos? Large license areas, for instance, may enable nationwide carriers to compete with local or regional carriers in providing service to rural areas. Such large areas may also provide opportunities for new entrants to compete on a wide-area basis in an existing service. With regard to commercial mobile telephony specifically, there is considerable industry support for the notion that relatively large licenses are most efficient. The original geographic scope of cellular, broadband PCS, and certain SMR licenses was small and, as a result, the licenses were assigned to a large number of entities. The predominant trend since then, however, has been for operators progressively to aggregate licenses and build large geographic footprints. The Commission has found that these footprint-expanding transfers and assignments result in important public benefits. Today, six providers approach nationwide status. However, less than 50 percent of the geographic area of the country is served by three or more carriers. Given this evidence, are small license areas inefficient for licenses of spectrum suitable for provision of mobile voice and data service? And for such licenses, do the interests of consumers of rural service diverge from the interests of rural telcos that wish to supply such service?

Alternatively, does the use of small geographic licensing areas stimulate competition in the provision of wireless services to rural populations? Does the adoption of smaller service areas enable rural telcos to compete more effectively in spectrum auctions? If rural telcos win licenses covering small geographic service areas, are they more likely to provide services to those areas than are other service providers? Is there evidence that smaller geographic areas will result in more rapid deployment of services? Are rural carriers better positioned to serve the needs of rural America than nationwide carriers? Reliance on nationwide licenses assumes that nationwide carriers and local carriers are equally well positioned to serve rural consumer needs. Is this correct? On the other hand, are rural populations better served by carriers that operate on a nationwide basis as opposed to local carriers? For example, are nationwide carriers better able to offer lower prices, better roaming capability, or more services due to economies of scale? If the adoption of smaller service areas for licenses does enhance the participation and success of rural telcos in competitive bidding and/or the provision of services to rural areas, should the Commission adopt varied-sized or small-sized geographic service areas for all auctionable services? Are there particular services that are more appropriate for licensing by smaller geographic areas? If smaller geographic service areas promote competition, service, and access to spectrum by rural telcos, what size service areas would be most effective to achieve these benefits? In addition, we seek comment on whether certain auction designs, such as combinatorial or "package" bidding, facilitate license configurations that are efficient and likely to foster the provision of wireless services to rural areas.

#### *D. Partitioning and Disaggregation*

21. Partitioning and disaggregation policies and regulations are designed to facilitate more efficient and intensive use of the spectrum, including use by rural telcos to serve rural areas. In paragraph eight, we provide statistics regarding partition and disaggregation assignees that have identified themselves as rural telcos, and assignees that claim that they are or will be serving rural areas. However, because we do not require applicants to identify themselves as rural telcos when applying for licenses, we cannot with certainty determine the extent of transactions involving rural telcos based solely on our licensing records.

Therefore, we seek comment on the extent to which rural telcos have received licenses through geographic partitioning and spectrum disaggregation. We are interested in learning whether, and in what ways, partitioning and disaggregation policies have been helpful in providing rural telcos with access to spectrum. We also ask for comment on whether, and to what extent, partitioning and disaggregation rules have enhanced the provision of services to rural areas. In responding to these questions, commenters should provide data or other empirical information to support their positions. We also solicit comment on whether partitioning and disaggregation policies enhance competition in the provision of wireless services to rural areas. If partitioning and disaggregation facilitate the provision of services to rural areas, do sufficient incentives exist for both winning bidders and prospective licensees to participate in the spectrum partitioning and disaggregation process? For instance, to what extent do the potential transaction costs involved in partitioning and disaggregation discourage licensees from pursuing such options? We note that some rural interests maintain that such transaction costs and other factors lead licensees to avoid pursuing partitioning and disaggregation agreements. If sufficient incentives do not exist to encourage partitioning of service areas and disaggregation of spectrum, should the Commission adopt additional incentives to motivate parties to pursue these options? For example, should the Commission require that licensees disaggregate or partition under certain circumstances, such as when there is unused spectrum or unserved portions of geographic service areas?

#### *E. Performance Requirements*

22. Performance requirements, such as construction benchmarks, are intended to help ensure that licensees promptly provide service to potential subscribers. The type of construction benchmark the Commission adopts for a license may determine whether services are deployed expeditiously to rural areas. For instance, depending on the level at which it is set, a population-based requirement may be achievable by a licensee providing service only to the urban areas covered by its license. In contrast, a geography-based benchmark targets the delivery of services to a percentage of a geographic area, rather than to a percentage of the population in an area. Because population is only rarely distributed uniformly across a geographic area, the same percentage

requirement under a geography-based standard may result in greater geographic area and population coverage than that percentage under a population-based requirement.

23. We seek comment on whether and how construction benchmarks may be utilized to encourage licensees to deliver wireless services to rural populations. To what extent are our current construction benchmarks effective in ensuring that spectrum-based services are provided to rural areas? In what instances, and under what circumstances, should the Commission adopt a population-based, geography-based, or substantial service construction benchmark? For example, in licensing service areas that are predominantly rural, should the Commission adopt geography-based construction benchmarks? Are there other types of construction benchmarks that would better promote service to rural regions? For instance, should we adopt a separate construction benchmark applicable only to service areas that constitute rural areas? Alternatively, should we revise our current construction benchmarks to permit service providers to serve either smaller portions of the population or service area if they meet a second construction benchmark applicable to the rural portions of a licensee's market? If so, commenters should explain what construction benchmarks we should adopt for the rural portions of the service area? If, as suggested, we were to require licensees to disaggregate or partition unused spectrum or unserved portions of geographic service areas, should the Commission adopt additional construction benchmarks to implement this requirement? If so, what penalties should the Commission impose on licensees for failure to timely meet such additional construction benchmarks? As noted, the Commission has generally accepted certifications of CMRS carriers that they have met their construction benchmarks. To what extent are our self-certification procedures an adequate means of ensuring compliance with our construction benchmark requirements?

24. In addition to employing varying types of construction benchmarks for auctioned licenses, the Commission has also utilized different models with respect to enforcing construction requirements. In the Cellular Radiotelephone Service, initial licensees are given five years to construct facilities and begin providing service to their market. At the end of the initial five-year period the licensee is allowed to "keep what it builds" and the remaining portions of the market

become available for licensing to other parties via the cellular "unserved area" licensing process. In contrast, auctioned services such as broadband PCS provide for an "all or nothing" penalty for failing to meet the construction benchmarks, *i.e.*, if a licensee does not meet the five- or ten-year benchmark or make a showing of substantial service (where applicable) it forfeits the entire license and does not get to "keep what it builds." With this past experience in mind, we seek comment on whether these models, a hybrid model, or some combination of targeted models, may be utilized to facilitate service in rural areas. We also seek comment on whether the Commission should adopt performance requirements other than construction benchmarks to encourage the provision of wireless services to rural areas.

25. For unserved areas in the Cellular Radiotelephone Service, should the Commission adopt a different approach to assigning spectrum usage rights? Specifically, should the Commission adopt a "commons" model, which allows unlimited numbers of unlicensed users to share frequencies, with usage rights that are governed by technical standards but with no right to protection from interference? In addition, should the Commission amend the application filing process for cellular unserved areas to further encourage service providers to operate in rural areas? Furthermore, should the Commission apply the policy it has adopted with respect to unserved areas in the Cellular Radiotelephone Service to other services to promote wireless service in rural areas, *i.e.*, allow licensees to continue to serve the areas they have built-out, but make available for licensing to other parties those portions of a market that are not being served by current licensees? With respect to our ownership rules for the Cellular Radiotelephone Service, we seek comment on whether and to what extent our retention of the cellular cross-interest rule for RSAs advances spectrum-based services to rural areas. Should the Commission amend this rule to further the provision of wireless services to rural areas?

26. Finally, it may be economically inefficient, and thus harmful to customers, to require for each wireless service the same number of competitors in urban and rural areas. This appears to be true, for example, with regard to mobile telephony. How should a performance requirement policy for rural areas address this issue? Economic theory predicts that where licensees are in competitive markets, and no market failures exist and transactions costs are sufficiently low, market forces will

drive optimal decisions on what is built, where, and when. In that setting, build-out rules arguably would distort resource allocation, or at best be irrelevant. We ask parties to comment on the application of this economic theory to construction benchmarks that cover rural areas. In particular, for those services and rural markets where there is competition, how should we balance the putative efficiency harm of build-out rules against the potential equity benefit? Moreover, for those services and rural markets where there is a lack of competition, *e.g.*, as a result of small market size not being able to support multiple operators, is it possible that build-out rules would impose efficiency costs in the form of spending on excess capacity?

#### F. Band Manager Licensing

27. A band manager is a licensee that is specifically authorized to lease its licensed spectrum usage rights for use by third parties through private contractual agreements without having to seek prior Commission approval. Band managers may make their licensed spectrum available to facilitate all types of spectrum use that are consistent with the technical restrictions adopted for the particular band and in accordance with certain requirements imposed on the leasing relationship. The Commission has adopted band manager licensing for several bands. The band manager may subdivide its spectrum in any manner it chooses and make it available to any third party, consistent with the frequency coordination and interference rules specified for the particular band. Band managers are permitted to apportion spectrum based on both geographic area and frequency. Such spectrum apportionment differs from traditional geographic partitioning and spectrum disaggregation because it does not involve the transfer or assignment of the band manager's licenses to other parties. Band manager licensing is an innovative spectrum management approach that can enable parties to acquire spectrum more readily for varied uses. The band manager option will also enable small businesses to acquire spectrum in amounts to serve particular geographic areas, and for periods of time, that better suit their unique characteristics and specialized communications needs. We seek comment on whether rural telcos would be able to obtain more affordable access to spectrum through a band manager than by acquiring licenses directly at auction or through partitioning and disaggregation. We also seek comment on whether rural telcos would be more likely to obtain access to spectrum that

is tailored to their particular needs from a band manager than by acquiring licenses in an auction or through partitioning and disaggregation. Comments should also discuss whether band manager licensing would promote service or enhance the quality of service to rural areas.

#### G. Technical and Operational Rules

28. The Commission has developed technical and operational rules throughout its spectrum-based services in order to facilitate efficient use of the radio spectrum while minimizing the potential for harmful interference among licensees. We seek comment on the degree of flexibility that these regulations afford to providers of spectrum-based services in rural areas. Are there aspects of these rules that could be modified or made more flexible to encourage expanded service to rural areas while ensuring that services remain free of harmful interference? For example, would increasing permissible power levels be beneficial for particular types of services in areas where there is less spectrum congestion? Commenters should explain how their proposed changes would satisfy the goal of expanded rural service while not increasing the likelihood of harmful interference to existing licensees.

29. With respect to the Rural Radiotelephone Service, which includes BETRS, we note that as of November 2002, there were 67 active BETRS licenses with facilities in 17 states and 580 active Rural Radiotelephone licenses with facilities relatively uniformly spread throughout the continental United States. Of these, only one BETRS and two Rural Radiotelephone licenses were issued within the last two years. We seek comment on how we might revise the rules for these services to further facilitate the provision of wireless service to rural areas.

#### H. Unlicensed Spectrum

30. We also seek comment on the extent to which unlicensed spectrum is being used to provide wireless services to rural communities. We ask commenters to identify the service providers that are utilizing unlicensed spectrum and the types of services they are offering. Further, we seek comment regarding actions the Commission could take to encourage or facilitate the use of unlicensed spectrum. For example, unlicensed operation is generally limited to very low power levels in order to help ensure that the operation does not interfere with licensed services. However, the interference



potential of unlicensed devices may be low or negligible in rural communities. Should unlicensed devices be permitted to use higher output power levels in such environments? If so, what criteria would have to be met in order to qualify to use the higher power levels?

#### I. Eligible Telecommunications Carriers

31. The Commission's rules concerning universal service support for eligible telecommunications carriers ("ETCs") may impact deployment of wireless services to rural areas. Under the Communications Act, only carriers designated as ETCs under section 214(e) may receive federal universal service support. Under the Commission's rules, wireless carriers may be designated as ETCs and may receive universal service support for providing service to consumers that use wireless service as their only phone service as well as to consumers that also maintain wireline service. The Commission recently asked the Federal-State Joint Board on Universal Service (Joint Board) to review the ETC rules and provide recommendations regarding if and how these rules should be modified. We anticipate that the Joint Board will develop information on the impact of the Commission's ETC rules on deployment of wireless services to rural areas. In this docket, we seek comment generally on whether the Commission's ETC rules have promoted deployment of wireless service to rural areas and greater subscribership in these areas. We also seek to gather factual information. Specifically, we direct the Universal Service Administrative Corporation to provide us with information on the number of wireless carriers currently designated as ETCs, the amount of federal universal service support they have received, and the number of lines they serve. We ask that commenters provide any information available on how many of the customers served by wireless carrier ETCs also maintain wireline phones. How many customers had no phone service whatsoever until they purchased wireless service?

#### IV. Procedural Issues

##### A. Ex Parte Presentations

32. This is an exempt proceeding in which *ex parte* presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

##### B. Filing of Comments and Reply Comments

33. We invite comment on the issues and questions set forth. Pursuant to §§ 1.415 and 1.419 of the Commission's

rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 3, 2003, and reply comments on or before February 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Commenters that wish confidential treatment of their submissions should request that their submission, or specific part thereof, be withheld from public inspection.

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an email to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street,

SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Robert Krinsky, Federal Communications Commission, Room 4-B551, 445 12th Street, SW., Washington, DC 20554.

#### V. Ordering Clauses

35. Accordingly, it is ordered that, pursuant to the authority contained in 47 U.S.C. 151, 4(i), and 303(r) the *Notice of Inquiry* is adopted.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. 03-219 Filed 1-6-03; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter 1

[WT Docket No. 02-379; FCC 02-327]

#### Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; notice of inquiry.

**SUMMARY:** This document solicits data and information on the status of competition in the CMRS industry for our Eighth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services ("Eighth Report"). The Eighth Report will provide an assessment of the current state of competition and changes in the CMRS competitive environment.

**DATES:** Comments are due on or before January 27, 2003 and reply comments are due on or before February 11, 2003.

**ADDRESSES:** All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Chelsea Fallon, Federal Communications Commission, Room 4-A335, 445 12th Street, SW., Washington, DC 20554. See "Supplementary Information" for comment and reply comment filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Fallon at (202) 418-7991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Notice of Inquiry* released on December 13, 2002. The complete text of the *Notice of Inquiry* is