

markets but also in rural areas, to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest.

7. The *NPRM* focuses upon the following issues: (1) Determining an appropriate definition of what constitutes a "rural" area for purposes of our policies and requirements; (2) creating mechanisms for access to "unused" spectrum; (3) relaxing performance requirements to remove disincentives to serve rural areas and to allow all geographic area licensees to satisfy construction requirements by providing "substantial service" in their initial license term; (4) determining whether geographic area licensees should be required to provide coverage to increased portions of their licensed areas after their initial license term; (5) amending our regulations to permit increased power limits in rural areas for both licensed services and unlicensed services; (6) evaluating the appropriate size of licensing areas for geographic area licenses; (7) determining what, if any, regulatory or policy changes should be made to complement the RUS program for low interest loans for deployment of broadband services; (8) considering whether we could enhance access to capital by permitting the grant of conditional security interests in spectrum licenses to RUS; (9) considering whether we should modify application of the cellular cross-interest rule in Rural Service Areas (RSAs) with greater than three competitors; (10) establishing a clear, predictable policy on infrastructure sharing; and (11) updating and refining our rules governing the Rural Radiotelephone Service (RRS) and Basic Exchange Telephone Radio Systems (BETRS).

II. Notice of Proposed Rulemaking on Increasing Flexibility and the Deployment of Spectrum-Based Services in Rural Areas

A. Definition of "Rural"

8. As an initial matter, we seek comment on an appropriate definition of a "rural area" for use in conjunction with each of the policies addressed in this proceeding. Furthermore, given the various definitions of "rural" that already have been utilized, we believe that some clarification of the term is necessary. Although sections 309(j)(3) and 309(j)(4) of the Communications Act direct the Commission to promote the development and deployment of spectrum-based services to "rural areas," the Communications Act does not define "rural areas," nor has the Commission adopted a specific

definition of "rural areas" for purposes of implementing section 309(j). In the *Seventh and Eighth Competition Reports*, 17 FCC Rcd 12985 (2002) and 18 FCC Rcd 14783 (2003), the Commission used three different proxy definitions of "rural" for purposes of analyzing the average number of mobile telephony competitors in rural versus non-rural counties. The Commission compared the number of competitors in: (1) RSA counties versus MSA counties; (2) non-nodal Economic Area (EA) counties versus nodal EA counties; and (3) counties with population densities below 100 persons per square mile versus those with population densities above 100 persons per square mile. In connection with administering universal service support programs for schools, libraries, and rural health care providers, the Commission defines "rural area" as any county outside of an MSA (with some exceptions). Moreover, the federal government has multiple ways of defining "rural," reflecting the multiple purposes for which the definitions are used. The Commission has used RSAs as a proxy for "rural" in certain instances. In administering its financial assistance program for broadband access to rural areas, RUS defines "rural" as any place that is not located within an MSA and that has no more than 20,000 inhabitants (based upon the most recently available Census data). The Economic Research Service of the USDA, in conjunction with others, developed a definition of "rural" based on a set of metrics that delineates each census tract as being either rural or urban. By contrast, the Census Bureau established a different metric for defining "rural" areas during its 2000 census. Although there are many definitions of "rural" used by the federal government, we have developed a record in response to our *Rural NOI* proceeding that provides some guidance with respect to an appropriate definition of "rural area."

9. Based upon the record developed in the *Rural NOI* proceeding, as well as certain definitions used by the Commission and by other federal agencies as proxies for "rural," we have identified and seek comment on the following potential definitions of "rural area," or some combination of elements combined in these potential definitions: (1) Counties with a population density of 100 persons or fewer per square mile; (2) RSAs; (3) non-nodal counties within an EA; (4) the definition for "rural" used by the RUS for its broadband program; (5) the definition for "rural area" used by the Commission in connection with universal service

support for schools, libraries, and rural health care providers; (6) the definition of "rural" based on census tracts as outlined by the Economic Research Service of the USDA; (7) the Census Bureau definition of "rural" counties; and (8) any census tract that is not within ten miles of any incorporated or census-designated place containing more than 2,500 people, and is not within a county or county equivalent which has an overall population density of more than 500 persons per square mile of land. In the event that commenters disagree with these potential definitions, we ask commenters to provide alternative definitions of "rural." Commenters that believe that none of these potential definitions are workable or feasible should identify specific factors that the Commission should consider when determining whether an area is a "rural area," such as population density, Census rankings, or other criteria. Finally, we seek comment on whether we should adopt different definitions of what constitutes a "rural area" depending upon the policy initiative for which the definition is used, as set out in this proceeding.

B. Improved Access to Unused Spectrum

1. Background

10. The Commission has promoted access to and efficient use of spectrum through a variety of means that may foster the rapid and efficient deployment of wireless services in rural areas. Applied to licensed spectrum, these approaches may be viewed as existing along a continuum, with voluntary, market-based mechanisms at one end, regulatory incentives and other approaches in the middle, and regulatory mandates and enforcement mechanisms at the other end. More specifically, the means by which the Commission may promote access to and use of spectrum range from allowing voluntary arrangements that move spectrum and licenses between users to establishing regulatory mechanisms by which the Commission reclaims and re-licenses unused spectrum.

11. In many spectrum-based services, the Commission has established rules by which it reclaims unused spectrum and makes it available to other parties. This process for reclaiming unused licensed spectrum differs across services. For example, with site-based private land mobile radio services, licensees generally are given one year to construct particular sites. A licensee with an unconstructed site after one year loses its authorization to operate at that site,