

license itself would link the secured party more directly to the Commission. It is our understanding that under current financing practices involving FCC licensees, the secured party's rights stem from its relationship as a lender (and possibly an equipment vendor, bondholder or stockholder) to the licensee, not directly to the Commission, even after default and foreclosure on the secured assets. We seek comment on whether the grant by a licensee of a contingent interest in a Commission authorization to RUS—without the Commission's permission or review—would undermine our regulatory authority embodied in sections 301 and 304. We also ask how the existence of RUS, as a secured creditor, may affect the ability of the licensee to seek financing from other sources in this situation? In sum, we seek comment on what, if any, difference from the perspective of RUS, a third-party lender, or the licensee, would there be on a relaxation of the current security interest policies in the circumstances described above.

75. Finally, we seek comment on one other concern that had been raised in the past by the Commission in connection with prior similar proposals. In particular, in the context of broadcast licenses, the Commission expressed concern about the independence of broadcast stations and about the ability of creditors to have substantial influence over a borrower station. We seek comment on whether such dangers exist in the connection with RUS's attainment of security interests in non-broadcasting wireless licenses, especially as it relates to preserving and protecting facilities-based competition and innovation by and among wireless service providers.

## 2. Cellular Cross-Interests in Rural Service Areas

### a. Background

76. Section 22.942 of the Commission's rules substantially limits 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 have any degree of overlap between their respective cellular geographic service areas (CGSAs) in an RSA, section 22.942 prohibits any entity from having a direct or indirect ownership interest of more than 5 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. 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 an RSA.

77. The Commission initiated a comprehensive review of the cellular cross-interest rule in January 2001 as part of its 2000 biennial regulatory review of spectrum aggregation limits. In December 2001, pursuant to section 11 of the Communications Act, the Commission released its *Spectrum Cap Sunset Order* and, on the basis of the state of competition in CMRS markets, sunset the CMRS spectrum cap rule in all markets effective January 1, 2003. See 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 67 FR 1626 (Jan. 14, 2002) (*Spectrum Cap Sunset Order*). In that order, the Commission also determined that cellular carriers in urban areas no longer enjoyed first-mover, competitive advantages, and it therefore eliminated the cellular cross-interest rule in MSAs on that basis, also pursuant to section 11 of the Act. While the Commission left the cross-interest rule in place in RSAs, it indicated that it would consider waiver requests and reassess the need for the rule at a future date.

78. In March 2002, the Commission sought comment on petitions filed by Dobson Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation (Dobson/Western/RCC) and Cingular Wireless LLC (Cingular) seeking reconsideration of the decision in the *Spectrum Cap Sunset Order* to retain the cellular cross-interest rule in RSAs. Petitioners and commenting parties focused on the sufficiency of the competitive market analysis underlying the decision to retain the cellular cross-interest rule in RSAs, as well as the consequences of relying on case-by-case review to examine cellular competition in rural areas. Parties also asserted that the waiver process established in the *Spectrum Cap Sunset Order* creates regulatory uncertainty and discourages potential transactions and financing that could benefit rural consumers. These petitions remain pending and are being consolidated into the instant rulemaking.

79. In its December 2002 *Rural NOI*, the Commission sought comment on the cellular cross-interest rule as it reviewed its policies to encourage the provision of wireless services in rural areas. The Commission received comments supporting either modification or elimination of the rule so as to facilitate

investment and financing arrangements for rural cellular providers.

### b. Discussion

80. We seek comment on whether the continued application of the cellular cross-interest rule in all RSAs may impede market forces that drive investment and economic development in rural areas. The recent downturn in telecommunications markets, worsening financial condition of many carriers, and the ongoing need for capital investment to keep up with technological and regulatory changes, has made it more difficult for wireless carriers, especially those serving rural areas, to obtain financing. In light of the foregoing, we seek comment regarding whether we should modify the cellular cross-interest rule to promote investment while protecting against potential competitive harms. Specifically, we tentatively conclude to retain the cellular cross-interest rule as it applies only in RSAs with three or fewer CMRS competitors and we seek comment on removing the rule as it applies to other RSAs and to non-controlling investments in all RSA licensees.

81. In the *Spectrum Cap Sunset Order*, the Commission concluded that it would be more efficient and less costly to the Commission to maintain a prophylactic cross-interest rule applicable to all RSAs and to entertain waiver requests for the small subset of transactions in RSAs where competition was more robust. As a consequence of that decision, cellular licensees in MSAs are free to procure financing that involves ownership interests that fall below the threshold that triggers the cross-interest rule, while cellular licensees in all RSAs are not. While the Commission attempted to address this barrier to investment in rural areas by providing a specific waiver process, the transactions costs and regulatory uncertainty surrounding any waiver procedure may deter some beneficial investment in these areas.

82. We seek comment on whether changing the cellular cross-interest rule for RSAs that enjoy a greater degree of competition will spur needed investment in these rural areas and foster even more competition in others. As an initial matter, we seek comment regarding what constitutes a "competitor" for purposes of this rule. We also seek comment regarding whether, in the event we do eliminate the cellular cross-interest rule for RSAs with greater than three competitors, we should adopt a transition period after which time the rule would sunset for these RSAs. In the event that