

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993)	WT Docket No. 04-111
)	
Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services)	
)	
To: The Commission)	

COMMENTS OF RURAL CELLULAR ASSOCIATION

1. Rural Cellular Association (“RCA”),¹ by its attorneys, respectfully submits these Comments in response to the invitation of the Federal Communications Commission (“Commission”)² to comment and provide data and information relevant to the Commission’s evaluation of the state of competition among providers of Commercial Mobile Radio Services (“CMRS”) for its Ninth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.³

2. RCA from time to time participates in Commission rulemakings and inquiries where

¹ RCA is an association representing the interests of wireless licensees that provide commercial mobile services in rural areas throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers. The number of carrier members in RCA has steadily increased since the association’s founding in 1993. With over 100 current members that operate wireless systems, RCA’s membership is at the largest size in its history, and it is the largest carrier association dedicated to the representation of wireless carriers serving rural areas.

² *Notice of Inquiry*, WT Docket No. 04-111, FCC 04-38, released March 24, 2004 (“*NOI*”).

³ The *NOI* indicated that comments were invited by April 25, 2004. These comments are timely filed, on the first business day after the comment deadline which fell on a “holiday” as defined by Section 1.4(e)(1) of the Commission’s rules.

it anticipates that small and/or rural carrier interests will be affected. Many RCA members are original cellular licensees in their rural markets, others have found opportunities to acquire spectrum and offer wireless services that fill a need in rural communities. It is not unusual that RCA members will have better coverage and wireless service than their national wireless competitors in rural markets, while at the same time offering competitive rates and service plans. RCA members, in almost all instances, provide automatic roaming service for customers of large wireless carriers and allow their own customers to benefit from automatic roaming on the networks of at least one large wireless carrier.

3. RCA members are offered the opportunity each year to participate in a survey exclusively of RCA members, conducted by the independent accounting firm of Kiesling Associates LLP (the “Kiesling RCA Survey”). No carrier-specific or market-specific information is maintained by RCA as a result of the survey, although the aggregate results are shared with RCA members and, as to matters relevant to the Commission’s *NOI*, the results will be shared herein with the Commission. Data collected in the survey includes information on wireless competition faced by RCA members, total service revenues, roaming revenues as a subset of total service revenues, and the average monthly customer bill.

4. The *NOI* invites comment to allow the Commission to analyze, among other things, the ease or difficulty with which new operators can enter the mobile telecommunications market.⁴ In the past the Commission has found relevant to this analysis such indicators as the current number of operators per county; planned spectrum auctions that may enable the entry of additional operators;

4 *NOI*, para. 8.

and consolidation and exit of operators from the mobile telecommunications market.⁵ In this proceeding the Commission indicates interest in these and possibly other indicators of the mobile telecommunications market structure. The *NOI* expresses special interest in obtaining a better understanding of the state of competition below the national level, particularly in rural areas.⁶ A consistent definition of the term “rural” has been elusive, and the Commission asks whether there should be a single distinction between rural and non-rural areas, or if rural and non-rural should be defined on a continuum.⁷

5. The most recent Keisling RCA Survey was conducted in 2003 and shows that the number of wireless service providers in market areas served by RCA members has grown year-to-year over the last five years. The survey results show there was an average of 3.0 wireless providers in survey participants’ markets in 1998; and that the number of wireless competitors increased to 3.6 in 1999; to 4.7 in 2000; to 4.9 in 2001; and to 5.1 in 2002 which is the last calendar year for which survey data is currently available. The survey results indicate there is robust and effective competition, increasing year-to-year, in the markets served by RCA members.

6. RCA’s members desire to remain competitive with large carriers and to keep pace with technological developments that allow the latest wireless technologies to be offered in rural markets. To do so requires that small carriers have available to them the opportunity to acquire more spectrum in Commission auctions. RCA members were alarmed to learn that the Commission adopted a bandplan for its forthcoming auction of 90 MHz of spectrum in WT Docket No. 02-353 that makes

5 *Id.*

6 *NOI*, para. 12.

7 *Id.*

only 10 MHz of spectrum available according to geographic areas of a size where RCA members have a reasonable expectation that they can be competitive in the auction.⁸ RCA last year filed comments in the proceeding urging that MSAs/RSAs be the geographic area for new licenses. Following release of the *AWS Order* RCA filed a Petition for Reconsideration, on March 8, 2004, in which the Commission was requested to make larger blocks of spectrum available according to MSAs/RSAs. In that petition RCA observed that spectrum availability according to MSAs/RSAs allows all interested carriers and other entities to participate and acquire spectrum according to market areas that align with current and planned service areas. Offering of spectrum according to large geographic license areas such as EAs and REAGs is an insurmountable “barrier to entry” that effectively denies small carriers, including RCA members, the opportunity to participate competitively in spectrum auctions. Ultimately, EA and REAG license areas reduce or eliminate the ability of small carriers to offer the types of advanced wireless services that large carriers will offer. Large geographic license areas favor large carriers because they have the ability to attract capital to acquire spectrum in areas such as EAs and REAGs. Maintaining and enhancing competition requires that the Commission preserve the ability of small carriers to compete for spectrum by making most spectrum available in blocks and geographic areas that small carriers can afford to purchase.^{9 10}

⁸ *In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, 18 FCC Rcd 25162 (2003) (the “*AWS Order*”). In the *AWS Order* the Commission adopted a bandplan for the 90 MHz that provides for five licenses in each area of the U.S. Three of the licenses would be for large Regional Economic Area Groupings (“REAGs”) of which there are 12 nationwide, one of the licenses would be for mid-size Economic Areas (“EAs”) of which there are 176 nationwide, and only one of the licenses with just 10 MHz of spectrum would be for Metropolitan Statistical Areas and Rural Service Areas (“MSAs/RSAs”) of which there are 734 nationwide.

⁹ In Auction #44, for the Lower 700 Band licenses, the Commission offered MSA/RSA-sized licenses as well as licenses for larger geographic areas. The Commission may take official notice of the fact that interest and bidding activity on the MSA/RSA licenses substantially exceeded that evidenced for the larger license areas.

7. Equally important to maintaining competitive service offerings in rural areas is that the Commission not place costly new obligations on wireless carriers with the understanding that such costs may be recovered from customers. While this is an important issue for all wireless carriers, it disproportionately affects small carriers. RCA members have far fewer customers from whom to recover costs than do large carriers. The proposed expansion of CALEA-related obligations, for example, would have a much more serious impact on small carriers than large carriers if the system modifications requested by law enforcement are not funded by the federal government.¹¹

8. RCA has suggested,¹² and suggests again in these comments, that the Commission adopt a definition of “rural” for purposes of regulating CMRS that classifies all RSAs as rural, as well as any county in an MSA where the population density is less than 100 persons per square mile.¹³ Such

10 Partitioning and disaggregation can be effective under some circumstances, but any use of these spectrum reassignment methods is an indication that appropriately sized geographic license areas and useful blocks of spectrum were not available for purchase at the outset. When a geographic area or block of spectrum becomes available for partitioning, it is almost always a large wireless company that is offering it to a small wireless carrier that has experience in serving rural areas. Not surprisingly, the large companies have disproportionate bargaining power in establishing the terms for any partitioning and disaggregation. Large companies that acquire rural area spectrum when they purchase large license areas can meet FCC performance requirements without ever serving the rural areas. The unfortunate result is that the large companies can dictate terms for partitioning and disaggregation or decline to make the area and spectrum available at all. Typical conditions imposed upon partitionees and disaggregatees include network build-out requirements according to the large company’s specifications, and agreement to a large company’s proposed roaming rates without any indication of whether the investment can be recouped.

11 In RM-10865, the Commission is considering a “Joint Petition For Expedited Rulemaking” filed by the Federal Bureau of Investigation, U.S. Department of Justice, and U.S. Drug Enforcement Administration in which it is proposed that wireless carriers recover from their customers the costs of complying with the expanded CALEA-related responsibilities sought by the petitioners.

12 See, RCA comments in response to the Commission’s *Notice of Proposed Rulemaking* in WT Docket No. 02-381, 18 FCC Rcd 20802 (2003) to examine ways to promote the rapid and efficient deployment of spectrum-based services in rural areas.

13 RCA has not conducted a study to determine if there are indeed any counties in the MSAs where population density is less than 100 persons per square mile. If there are such counties, it appears reasonable to classify such areas on a presumptive basis as “rural” for regulatory purposes.

a definition of rural is consistent with the original cellular licensing plan and promotes uniformity in the application of Commission rules and policies aimed at promoting the availability of wireless services in rural areas, in like kind to the services that are deployed and will be developed in the urban areas that are classified as MSAs.

9. In the following portion of these comments, RCA offers results from the 2003 Keisling RCA Survey to the extent relevant to questions asked in the *NOI*. Some of the data is reflective of consumer preferences in rural and small markets, while other data reflects financial performance of RCA carriers in the aggregate. While not all RCA members participated in the voluntary survey, some of the smallest as well as some of the largest RCA members participated, so as to render a representative sampling of the RCA membership. The Commission may note that all RCA members fit the Commission's definition of "Tier 3" carriers because none has more than 500,000 subscribers to wireless services.

10. Keisling RCA Survey results for 2003 show that average revenue per month per subscriber in 2002 was \$48.18, compared with \$45.74 in 2001, \$46.48 in 2000, \$46.03 in 1999 and \$44.92 in 1998. Net of roaming revenue, those amounts were \$35.80 for 2002, \$35.12 for 2001, \$35.12 for 2000, \$35.43 for 1999 and \$35.08 for 1998.

11. Monthly minutes of use per subscriber equaled 221 minutes in 2002; 165 minutes in 2001; 124 minutes in 2000; 118 minutes in 1999; and 106 minutes in 1998.

12. Average monthly customer churn was 2.2% in 2002; 2.2% in 2001; 1.9% in 2000; 1.6% in 1999; and 1.55% in 1998. Where comparisons are possible, these figures indicate lower churn rates that experienced by the large wireless carriers.¹⁴

14 See, Legg Mason's Equity Research Industry Analysis 4Q 2002 as referring to churn rates experienced by

13. Prepaid revenue as a percent of total revenue equaled 1.22% in 2002; .083% in 2001; 0.61% in 2000; 0.34% in 1999 and 0.10% in 1998.

Conclusion

14. RCA members are competitive in their wireless service offerings and have an outstanding record of service in the markets they serve. They also have a desire to improve service offerings as technology evolves, allowing rural consumers to benefit from the same advances in telecommunications as are enjoyed by urban citizens.

15. RCA respectfully urges the Commission to recognize the public benefits that accrue from vibrant competition in the CMRS marketplace, as enhanced by the service offerings in rural and small markets by the wireless carriers that are RCA members. While there are natural barriers to entry for smaller companies, principally due to capital constraints, RCA asks that the Commission avoid regulatory policies and auction bandplans that erect unnecessary barriers to entry. A prime example is the Commission's recent decision to auction 90 MHz of spectrum for advanced wireless services with geographic license areas too large for most if not all of RCA's 100 carrier members to compete successfully at auction. RCA members desire to remain competitive in their markets by offering 3G wireless services in the rural and small markets they serve. The Commission itself can remove an overwhelming barrier to entry for small carriers by reconfiguring the bandplan for that upcoming spectrum auction.

16. RCA also requests that the Commission avoid imposing new unfunded mandates on wireless carriers, because of the impact upon small carriers if they are left to recover costs from their relatively small number of subscribers. RCA members cannot raise rates or add fees to customer

invoices in a sufficient amount to recover such costs if they are to remain as competitors in their rural and small markets.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION



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CERTIFICATE OF SERVICE

I, Kim Verven, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 26th day of April, 2004, sent by U.S. Mail, a copy of the foregoing COMMENTS OF RURAL CELLULAR ASSOCIATION to the following:

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