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September 27, 2004

Via Electronic Delivery

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: Notice of Ex Parte Presentation:
WT Docket No. 04-70

Dear Ms. Dortch:

On September 24, 2004, Mr. Don E. Bond, President of Public Service Communications ("PSC"), Mr. Michael K. Kurtis of Bennet & Bennet, PLLC, counsel for PSC, Ms. Jessica Bridges, CEO of the Rural Telecommunications Group ("RTG") and Mr. Richard Schadelbauer of the National Telecommunications Cooperative Association ("NTCA") met with Mr. Martin K. Perry, Chief Economist, Mr. Donald K. Stockdale, Jr., Director of Research, Office of Strategic Planning and Policy Analysis, and Mr. Charles Needy Senior Economist with the Commission's Office of Strategic Planning and Policy Analysis. The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), was unable to have a representative at the meeting due to a scheduling conflict but the Commission representatives were advised that OPASTCO joined in the matters presented. The meeting participants discussed the issues set forth in the "Talking Points" paper appended hereto, a copy of which was provided to all attendees.

RTG advised that it was in attendance because a significant number of its members had advised, after having seen the press coverage relating to Cingular's responses to the Ex Parte meetings PSC had had with the offices of Commissions Abernathy, Adelstein, Copps and Martin on September 7 and 8, that they too had experienced similar issues. A copy of the "Talking Points" paper from one of those previous meetings is appended hereto not as an additional attachment from the subject meeting but to memorialize the additional issues which were discussed

In response to an inquiry regarding the number of carriers utilizing the IS-136 protocol, NTCA provided a copy of a survey of its membership. In addition to those items, there was also discussion relating to frequency coordination issues PSC had had with Cingular relating to areas where the two service providers' networks abut.

Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is being filed electronically. Please refer any questions regarding this matter to counsel for PSC.

Very truly yours,

/s/ Michael K. Kurtis

Michael K. Kurtis

cc: Mr. Martin Perry
Mr. Charles Needy
Mr. Donald K. Stockdale, Jr.

Talking Points

Public Service Communications, OPASTCO, NTCA and RTG
Meeting with the Office of the Chief Economist
September 24, 2004

Re: Impact of Large Company Mergers on Rural Wireless Carriers
WT Docket No. 04-70

- AT&T Wireless and Cingular are asking the Commission to redefine the relevant market for broadband wireless service as a national (as compared to local) market. One necessary corollary of any such redefinition is that the Commission must redouble its efforts to protect the ability of local and regional carriers to enter into and maintain reasonable nationwide roaming arrangements that permit them to compete in the relevant market.
- For purposes of analyzing the effect of the merger on competition and on nationwide roaming, the Commission must recognize that the broadband PCS market has become segmented. Careful consideration must be given to, and distinctions must be drawn between (a) analog versus digital systems; (b) 850 MHz versus 1900 MHz systems; and, (3) incompatible digital technologies (CDMA versus GSM).

  - One core concern about the acquisition of AT&T Wireless and Cingular is that one of the two competing national providers of digital GSM service with substantial 850 MHz spectrum (Cingular) is acquiring the other provider (AT&T Wireless). T-Mobile, the other national GSM carrier, is almost exclusively a 1900 MHz service provider. So, T-Mobile does not provide a meaningful competitive alternative as a roaming partner to many cellular carriers and subscribers.
  - Local and regional carriers already are at a disadvantage in their efforts to negotiate reasonable reciprocal roaming agreements because of the disparity in the market size they deliver to the nationwide incumbent. The disparity, and potential for an anticompetitive use of market power, will increase if Cingular buys out AT&T Wireless and has a *de facto* monopoly on 850 MHz GSM nationwide roaming services.
  - If small or regional carriers have only one company to go to get GSM roaming services for cellular customers, and if securing those roaming services on reasonable terms is essential for the survival of the small or regional carrier, then the merged entity will control what is in effect a "bottleneck."

- Cingular, after its acquisition of AT&T Wireless, could exercise its increased market power by doing any of a number of things that would disadvantage the local or regional competitor:

  - Canceling or refusing to extend roaming agreements.
  - Imposing non-reciprocal rates, or premium rates for roaming in specified markets.
  - Taking steps to "block" their subscribers from roaming on particular systems or in particular areas (e.g. LAC restrictions).
  - Terminating their IS-136 service offering in the major market. (With AT&T Wireless and Cingular having been the only major-market carriers to implement IS-136, rural IS-136 carriers can be faced with a loss of major-market access for their rural subscribers.)

- The Commission should place conditions on the Cingular / AT&T Wireless approval to protect the legitimate roaming interests of small and regional carriers:
  - Prohibit the merged entity from terminating any existing roaming agreement without the consent of the roaming partner for a transition period of four (4) years.
  - Allow roaming partners of both AT&T Wireless and Cingular to pick and choose the particular existing roaming arrangement(s) to be maintained subsequent to the merger. This would mean that a carrier who had a more favorable roaming agreement with AT&T than with Cingular, or more favorable rates, would be able to maintain the agreement and the rates after the merger for the transition period.
  - Require the merged entity to allow local and regional carriers to have roaming access to the merged network on terms no less favorable than AT&T Wireless and Cingular have been charging one another for access since the merger was announced.
  - Require the merged entity to provide comparable roaming arrangements on its next generation technology system (e.g. UMTS) so that it cannot avoid its roaming obligations through an accelerated technology change.
  - Require the merged entity to make publicly available copies of all of its active roaming agreements so that small and regional carriers can identify instances of discrimination or preferences.
  - Ban the merged entity from implementing, or requiring roaming partners to implement, call blocking or LAC restrictions, with the result that GSM service for the transition period would be provided by the carrier providing the best signal coverage to the end-user.
  - Require that the merged entity seek Commission approval prior to terminating IS-136 operations in any market, with the opportunity for public comment on any such filing.
  - After the transition period, require the merged entity to notify the Commission in advance whenever it is proposing to cancel or materially modify a roaming agreement.
  - Require the merged entity to deal with T-Mobile as a "true competitor" as opposed to entering into agreements that include preferential treatment.

- The relief requested is consistent with Section 20.12(c) of the Commission's rules that *requires* carriers to provide roaming service to any cellular customer in good standing, including a roamer, that is located within the carrier's service area and is utilizing a compatible handset.
- Commission has the authority to address these important issues by placing appropriate conditions on its approval of the Cingular acquisition. It the applicants prefer to have these roaming issues be addressed on an industry-wide basis in a rulemaking proceeding, then processing of the application should await the outcome of that rulemaking.

Talking Points

Re: Impact of Large Company Mergers on Rural Wireless Carriers
WT Docket No. 04-70

The Commission needs to consider the impact of allowing major market consolidation by large wireless carriers on small, rural providers.

- Unlike the large "nationwide" carriers that have built out their networks providing service to the major population centers and connecting traffic arteries, the rural CMRS carriers have invested significant monies extending CMRS to the most rural parts of the country. This degree of service is only possible due to roaming revenues from the large roaming partners.
- Rural carriers have migrated their analog networks to digital based upon the technology selected by their major roaming partners. Those that moved to TDMA (in support of AT&T Wireless and Cingular) have also had to expend monies to overbuild entirely new networks to move to GSM.
- With the proposed merger of AT&T Wireless and Cingular, those two competitors have already begun to shift traffic to one another's networks to the preclusion of the rural wireless carriers they used to roam with. This sudden loss of revenue is devastating to the small carriers.
- The shift of roaming traffic has taken the form of not only "preferring" the networks of their former competitors but, in many instances, actually "blocking" their subscribers' ability to even access the rural CMRS carriers' networks.
- With the incompatibility of digital technologies, the small rural carriers that had built-out their networks to be compatible with AT&T and Cingular have no other source of roaming revenues. T-Mobile, the only other GSM carrier of any size, also appears to be preferring the combined AT&T Wireless and Cingular networks. In many cases, T-Mobile has been unwilling to even enter into roaming agreements with rural wireless carriers.
- Rural wireless carriers are also seeing the large carriers beginning to require that rural carriers pay roaming "premiums" to enable their subscribers to roam in major markets on their networks. Loss of access to major markets at affordable prices is also devastating to the rural carriers. Originally, the Commission had "set aside" CMRS spectrum for use by "designated entities" (PCS C-Block) which would have provided an alternative service provider in every market. With the Nextwave bankruptcy and the relaxation of the set aside, that has not materialized and the only service providers in virtually every major market are the large nationwide carriers.
- In other cases where changes being considered would have a material adverse effect on a class of existing carrier, the Commission has recognized a need for a "phase in" period to avoid the catastrophic effects of a sudden loss of revenue. (see, e.g., ISP reciprocal compensation, intercarrier compensation, etc.) Here, the FCC has placed the AT&T Wireless/Cingular merger on a "fast track" schedule.

Prior to granting the proposed merger, the Commission should fully consider the impact on the rural carriers, that are often the only source for wireless service in the truly rural parts of the nation. While there is a substantial question as to whether mergers of the major competitive service providers for any single technology would be in the public interest, at a minimum the Commission should condition such mergers on:

1) Requiring the merged entity to allow roaming access to the merged network ***by all carriers*** at rates no less favorable than they have been charging one another since the merger was announced.
2) Banning the practice of barring their subscribers from accessing any network. (Section 20.12(c) of the Commission's Rules ***requires*** that carriers provide roaming service to any cellular customer in good standing, including roamers, that is located within the carrier's service area, where the customer has a compatible handset. Blocking subscriber roaming access to a carrier's network precludes the serving carrier from meeting its obligations to allow service to roamers under this rule).
3) Establish an interim phase-in requirement for an orderly shift of traffic from the rural CMRS carriers to the merged network.
4) Preclude the merged entity and T-Mobile from preferring each other's networks where there are alternative service providers available.

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

NTCA 2003 WIRELESS SURVEY REPORT

December 2003

DISCLAIMER: Data from the survey has been presented as reported.

To get more information on this report please contact Rick Schadelbauer at NTCA (703-351-2019, richards@ntca.org) or Jill Canfield at NTCA (703-351-2020, jcanfield@ntca.org).

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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EXECUTIVE SUMMARY

In the fall of 2003, the National Telecommunications Cooperative Association (NTCA) surveyed its members on their activities in the area of providing wireless services to their customers. The survey was sent to each of the companies in NTCA's membership database; 135 members (28%) responded.

Fifty-nine percent of survey respondents indicated that they hold at least one wireless license; 56% are providing wireless service to their customers. Forty-six percent of those providing wireless service offer mobile voice, 32% broadband, 31% data, and 29% paging. Fifty-two percent of those respondents not currently offering wireless service are considering doing so.

The average total (cumulative) investment in wireless facilities, excluding spectrum, is \$4.1 million; average total (cumulative) investment in spectrum totaled \$1.6 million.

Three-quarters of survey respondents characterized the process of obtaining financing for wireless projects as ranging between "somewhat difficult" and "virtually impossible." Nineteen percent have sought an RUS loan for the deployment of wireless or broadband services.

Thirty-eight percent of respondents are utilizing unlicensed spectrum to provide wireless services to their customers. Given the choice, however, 71% would prefer access to additional licensed spectrum over additional unlicensed spectrum.

Nearly half of all respondents indicated that the ability to make investments necessary to continue to provide the latest services was their greatest concern, 44% selected competition from nationwide carriers, and 23% their ability to obtain spectrum at auction. Fourteen percent noted other concerns, such as the cost of changing technology and maintaining a sufficient level of technical expertise, equipment availability, and the costs of complying with wireless local number portability and E911 regulations.

Of those respondents providing CMRS services, 38% utilize TDMA, 31% CDMA, 24% GSM, and 7% AMPS. The average subscriber's monthly minutes of use are 378, and the average monthly bill is just over \$43. Respondents' average total wireless revenues are \$7.8 million annually.

Twenty-eight percent of respondents serve as a local presence for a national carrier, or market a national brand; 76% have a partnership agreement with a national wireless carrier to handle their roaming traffic at a contracted fee. Nearly 80% find it difficult to compete with promotions offered by the national carriers.

Twenty-one percent of respondents offer their wireless customers caller ID and voice mail, 18% buckets of long distance minutes, and 16% three-way calling and text messaging.

Forty-eight percent of survey respondents experience annual customer churn of less than 10%, while 33% reported annual churn of between 10% and 25%.

NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

INTRODUCTION

In late fall of 2003, the National Telecommunications Cooperative Association (NTCA) surveyed its members on their activities in the areas of providing wireless services to their members/customers. NTCA is a national association of approximately 560 local exchange carriers in 44 states that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996 ("Act"). While some offer local exchange service to as few as 44 lines and a small handful to 90,000 or more, nearly 50% of NTCA members serve between 1,000 and 5,000 lines. Population density in most member service areas is in the 1 to 5 customers per square mile range. Approximately half of NTCA's members are organized as cooperatives and the other half are commercial companies.

This latest wireless survey is a follow-up to a similar survey last conducted by NTCA in 2002, and seeks to build upon the results of that survey[1].

OVERVIEW OF SURVEY

The 2003 NTCA Wireless Survey was conducted online. Member companies were provided with a URL through which they could access the survey. Every effort was made to minimize the reporting burden on the survey respondents.

The survey itself was organized into two sections. The first section was comprised of general questions about the respondent's current operations and future plans. The second section, which applied only to those respondents providing CMRS services to their customers, asked more specific questions about technology, customers, revenues, features offered, and capabilities.

SURVEY RESULTS

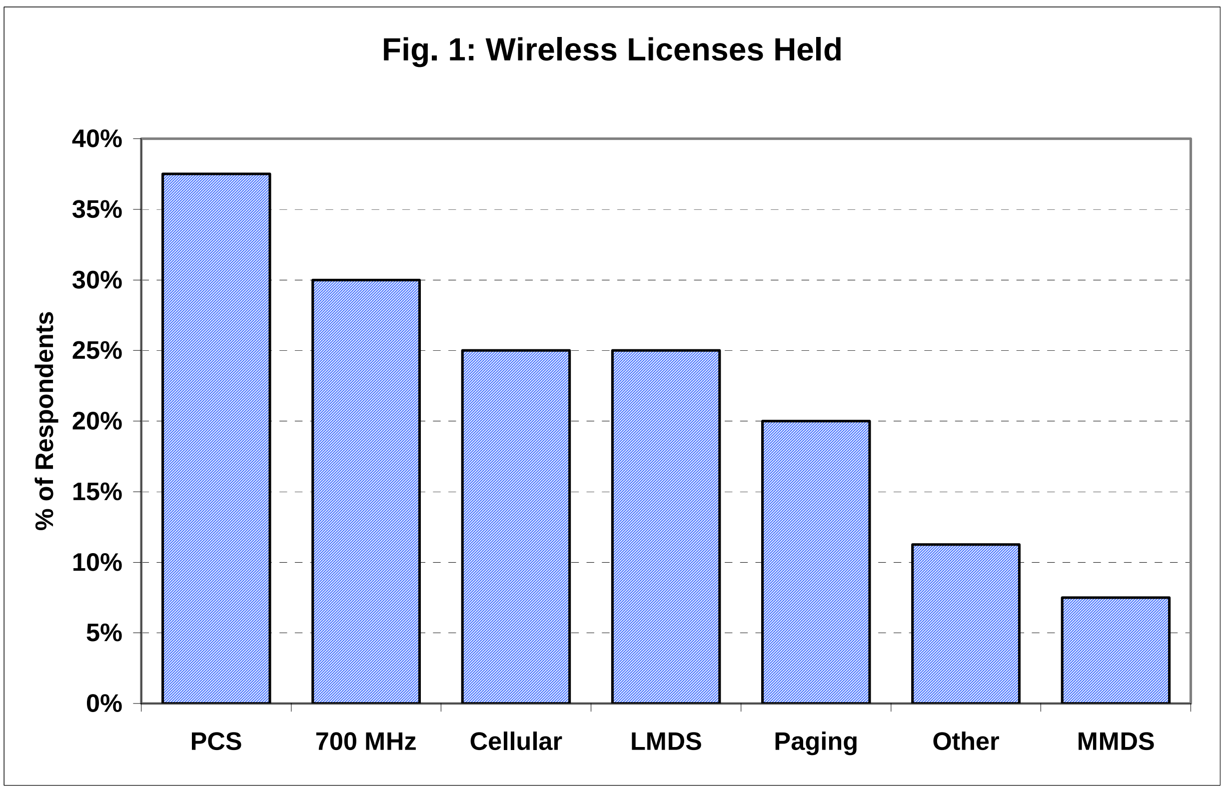
The survey URL was distributed vie email and fax to all of the NTCA member companies in NTCA's database. The messages contained instructions for online access to the survey. Responses were received from 135 member companies, a 28% response rate.

Survey responses were received from companies in 32 states. Respondents (or, in some cases, their parent companies) ranged in size from approximately 100 access lines to more than 95,000, and the average respondent served 7,800 access lines. This

[1] Copies of this and previous NTCA survey reports may be downloaded from the NTCA website, www.ntca.org.

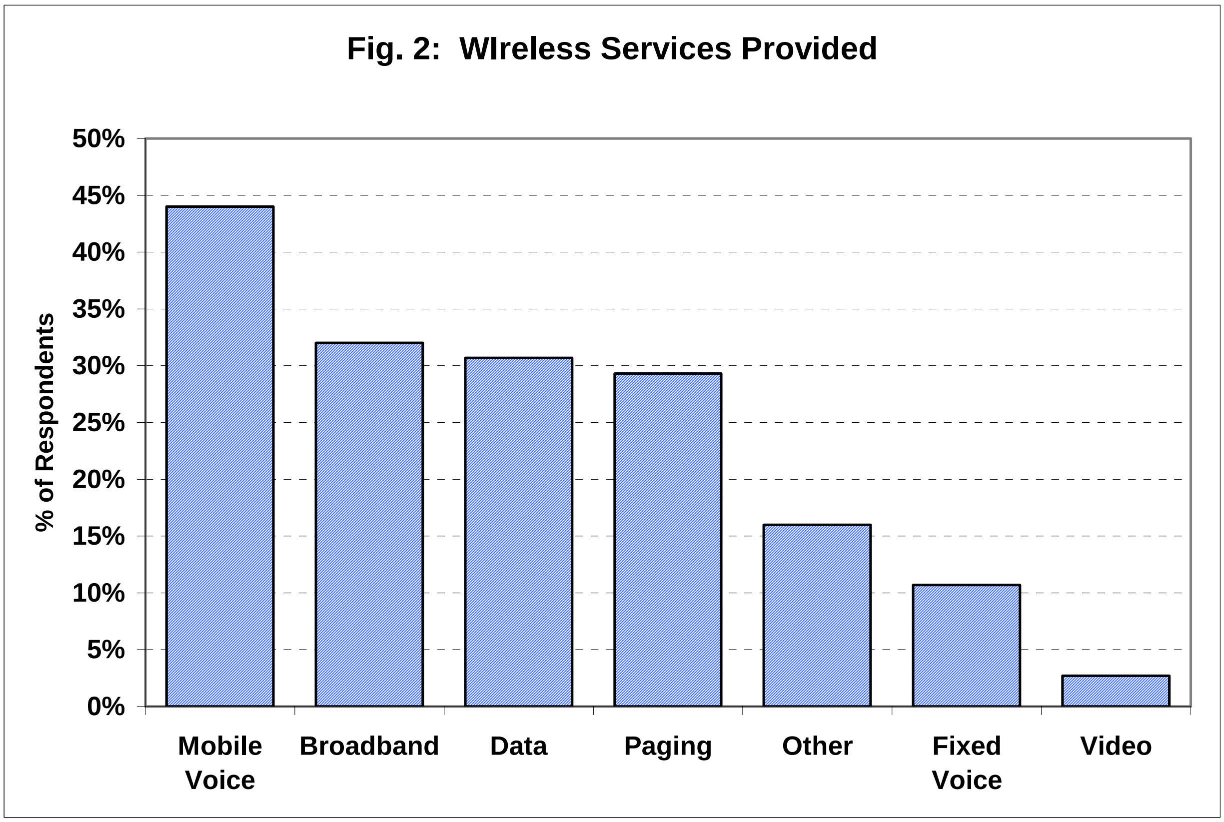
heterogeneity in size and geographic location mirrors that of NTCA's membership as a whole.

Fifty-nine percent of survey respondents indicated that they currently hold at least one wireless license. Thirty-eight percent of those who hold a license have a PCS license, 30% 700 MHz, 25% each cellular and LMDS, and 20% paging. (See Fig. 1.)



Note: Totals exceed 100% as respondents may hold more than one license.

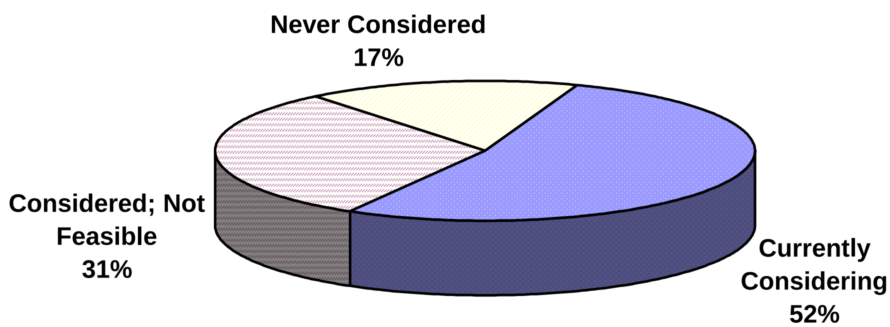
Fifty-six percent of survey respondents are providing wireless service to their customers. Forty-four percent of those providing wireless service offer mobile voice, 32% broadband, 31% data, and 29% paging. (See Fig. 2.)



Note: Totals exceed 100% as respondents may provide more than one service.

Fifty-two percent of those respondents not currently offering wireless service indicated they are considering doing so. Thirty-one percent have previously considered offering wireless service and deemed it not feasible, while 17% have never considered wireless. (See Fig. 3.)

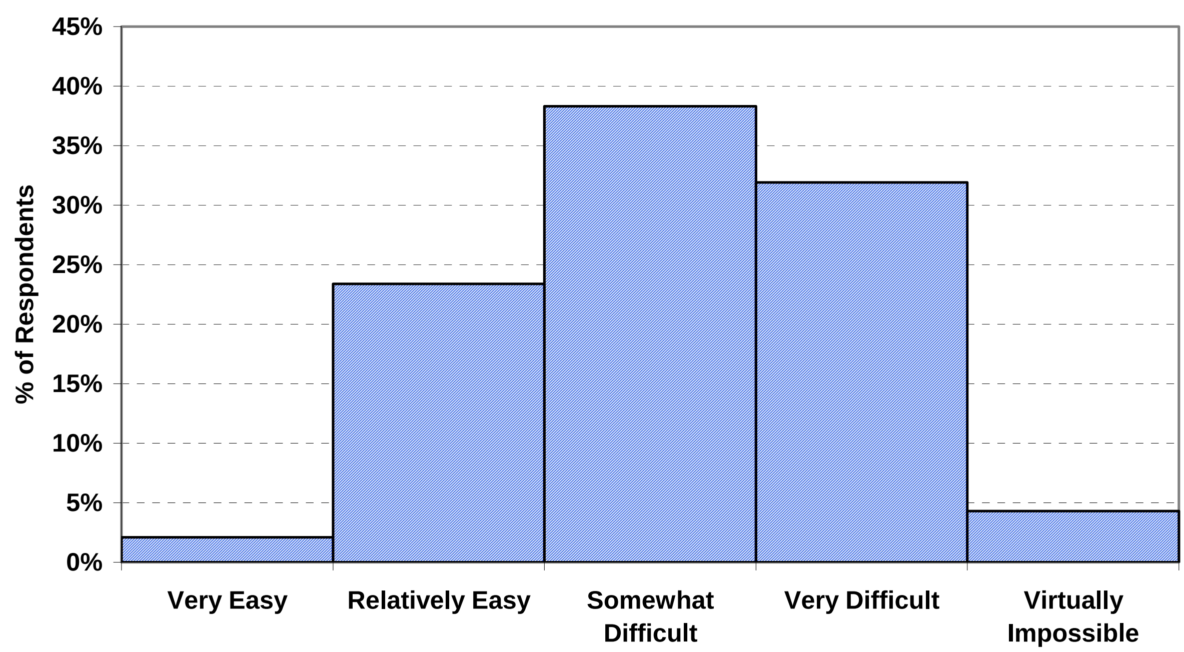
Fig. 3: Future Wireless Plans?



Survey respondents indicated that they have invested considerable resources in wireless. The average total (cumulative) investment in wireless facilities, excluding spectrum, was $4.1 million, ranging from a high of $61 million to a low of $1,500. Average total (cumulative) investment in spectrum totaled $1.6 million. Survey respondents invested an average of $1.7 million in wireless facilities in the twelve-month period prior to the survey.

Obtaining financing for wireless projects continues to pose a challenge for survey respondents. Of those with experience in obtaining financing, 38% categorized the experience as “somewhat difficult,” 32% “very difficult,” and 23% “relatively easy”. Three-quarters characterized the process as ranging within “somewhat difficult” to “virtually impossible.” (See Fig. 4.)

Fig. 4: Obtaining Financing



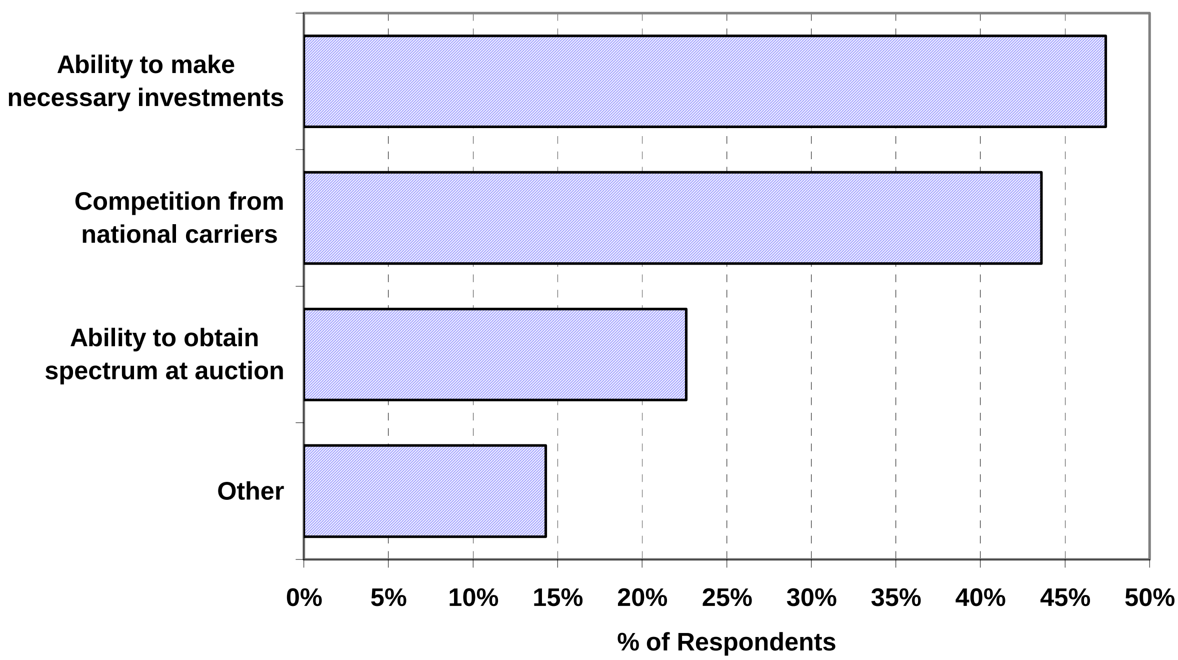
Nineteen percent of respondents have sought an RUS loan for the deployment of wireless or broadband services. Every one of those respondents indicated that their efforts were either successful or still pending.

Respondents have been active: 23% indicated that they had acquired spectrum in the preceding twelve-month period; 11% entered into negotiations for the acquisition of spectrum; and 5% made arrangements for the utilization of previously-acquired spectrum.

Thirty-eight percent of survey respondents are utilizing unlicensed spectrum to provide wireless services to their customers. Among the services identified are point-to-point microwave, Wi-Fi, wireless Internet, internal WAN/LAN, and T1 backhaul. Only a handful of respondents indicated that they had experienced difficulties with interference in their use of unlicensed spectrum. Unlicensed spectrum is, evidently, far from an ideal solution: given their choice, respondents indicated they would prefer access to additional licensed spectrum over additional unlicensed spectrum by a 71% to 29% margin.

Respondents intend to offer their customers a wide variety of new services over the next 12 to 18 month period: broadband, GSM/GPRS, fixed wireless, bundled voice, data and Internet, video over DSL, push-to-talk, paging, and text messaging were all noted. A number of concerns, however, threaten survey respondents' future plans. Forty-seven percent indicated that they were concerned about their ability to make the investments necessary to continue to provide the latest services, 44% selected competition from national carriers, and 23% their ability to obtain spectrum at auction. Fourteen percent noted other concerns, such as the cost of changing technology and maintaining a sufficient level of technical expertise, equipment availability, and the costs of complying with wireless local number portability and E911 regulations. (See Fig. 5.)

Fig. 5: Concerns for the Future



Note: Totals exceed 100% as respondents were allowed to select more than one concern.

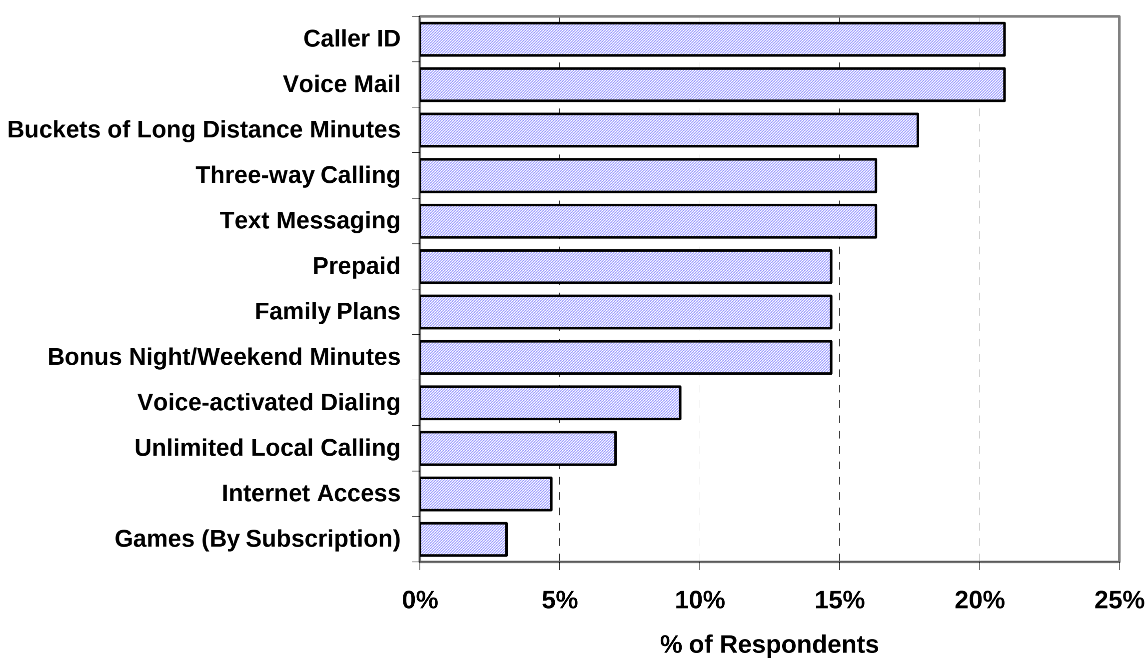
Of those respondents providing CMRS services, 38% utilize TDMA, 31% CDMA, 24% GSM, and 7% AMPS. Of the 45% utilizing either TDMA or AMPS, virtually all indicated that they intend to upgrade within the next 12 months, with GSM preferred over CDMA by more than two to one.

The average customer's monthly minutes of use are 378, and the average monthly bill is just over $43. Respondents' average total annual wireless revenues are $7.8 million.

Twenty-eight percent of survey respondents serve as a local presence for a national carrier, or market a national brand. Seventy-six percent have a partnership agreement with a national wireless carrier (AT&T, Verizon, Cingular, Sprint, Voice Stream, Nextel) to handle their roaming traffic at a contracted fee. Fifty percent offer a wireless package that they feel is competitive with the national carriers, while 79% find it difficult to compete with promotions—such as buckets of long-distance minutes—being offered by the national carriers.

Survey respondents offer myriad features to their wireless customers. Twenty-one percent offer caller ID and voice mail; 18% offer buckets of long distance minutes, and 16% offer three-way calling and text messaging. (See Fig. 6.)

Fig. 6: Features Offered to Wireless Customers



Respondents indicated considerable customer loyalty. Forty-eight percent experienced an annual customer churn rate of less than 10%, while 33% reported annual customer churn of between 10% and 25%.

CONCLUSIONS

NTCA member companies continue to do an admirable job of providing wireless services to their customers. Despite the economic and technological impediments inherent to providing wireless to rural customers, NTCA member companies continue to provide a variety of wireless services to a large number of rural Americans. Further, survey respondents indicated their intention to expand their service offerings in the near future.

Financing wireless operations poses a formidable challenge for NTCA member companies. According to the survey, financing wireless operations poses the greatest challenge to rural providers. The ability to make necessary investments was cited as the number one impediment to providing wireless services. Unless rural providers are able to obtaining necessary funding for wireless projects, customers in those areas will be underserved.

While unlicensed spectrum provides some relief for those carriers who are unable to obtain spectrum licenses at auction, it is far from an ideal solution to the problem. Nearly forty percent of survey respondents are currently utilizing unlicensed spectrum to provide wireless services. Several, however, indicated difficulties with interference from other unlicensed spectrum users—a problem that will continue to worsen as more and more wireless users try to use a limited available quantity of unlicensed spectrum. Tellingly, an overwhelming majority of respondents would prefer access to additional licensed spectrum over additional unlicensed spectrum.