

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Tenth Annual Report and Analysis of) WT Docket No. 05-71
Competitive Market Conditions with)
Respect to Commercial Mobile)
Radio Services)
)

To: The Wireless Telecommunications Bureau

COMMENTS OF LEACO RURAL TELEPHONE COOPERATIVE, INC.

Leaco Rural Telephone Cooperative, Inc. (“Leaco”), by its attorney, hereby files these comments in response to the Federal Communications Commission (“FCC” or “Commission”) Wireless Telecommunications Bureau’s (“WTB”) *Public Notice* requesting comments regarding the state of competition among providers of Commercial Mobile Radio Service (“CMRS”) for its Tenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.¹ Specifically, Leaco, a small, rural CMRS carrier, comments on the state of competition in its service area and its growing concern regarding recent industry consolidation among the large, nationwide CMRS providers. The effect of consolidation in the industry is eliminating roaming revenue opportunities for smaller carriers like Leaco and, without such revenue, the result will be the loss of meaningful CMRS coverage and service throughout Leaco’s service areas and, likewise, throughout many of the most rural portions of the United States.

¹ *WTB Seeks Comment on CMRS Market Competition*, WT Docket No. 05-71, Public Notice, DA 05-487 (February 24, 2005) (“*Public Notice*”).

I. Background

Leaco is a small CMRS carrier providing service in rural New Mexico (Lincoln, New Mexico RSA 6 (Segment B-3), CMA558, consisting of Lea County, New Mexico; BTA191 (C2) Hobbs in Lea County, New Mexico; BTA068 (C) Carlsbad in Eddy, New Mexico; and BTA386 (E) Roswell, consisting of the counties of Chaves and Lincoln, New Mexico). At the moment, Leaco is competing with Western Wireless, Sprint PCS, and Nextel. In order to compete with these larger carriers, Leaco must be able to distinguish its service from its competitors' and to be able to offer nationwide roaming. Leaco has distinguished itself by providing better quality coverage than any other wireless carrier in the service area in which it is licensed. While the other carriers cover Leaco's service area to some extent, Leaco has invested in more cell towers and in the infrastructure to offer a better quality of service. There are many regions where Leaco is the only CMRS carrier providing coverage. In fact, Leaco is the sole provider of wireless service in some areas where it is prohibitively expensive to provide wireline service. Leaco provides superior coverage in its high cost, rural service area, but must rely on roaming agreements for those times when its rural customer base inevitably roams outside of Leaco's small service area. Thus, nationwide roaming is vital to Leaco's customer base and its ability to stay competitive.

II. Leaco has Witnessed a Significant Decline in the Amount of Roaming Minutes on Its Network

The Cingular and AT&T merger, ALLTEL's acquisition of Western Wireless, and the proposed merger of Sprint PCS and Nextel, should reduce by one the number of

providers of CMRS in Leaco's territory.² However, the recent industry consolidation has a direct effect on competition in Leaco's market area, especially the Sprint PCS/Nextel and ALLTEL/Western Wireless mergers. Sprint PCS has a total of four sites in the Hobbs BTA and depends on roaming from Leaco for any service outside the immediate communities of Hobbs and Lovington, the only two sizable communities in the market. Nextel has one site in Hobbs and had announced plans for one site in Lovington. The large companies have deployed the latest in technology because of their economies of scale and have taken a large market share in the more densely populated Hobbs and Lovington markets, leaving Leaco to provide roaming services through its superior coverage in the more remote rural areas. Leaco has found that, in spite of the need by large carriers to roam in the more rural areas Leaco serves, they are unwilling to offer Leaco any roaming price breaks when Leaco requests roaming arrangements in urban areas such as Dallas, Texas. In essence, Leaco's rural "competitors" are only competing in the portions of the rural markets where they can "cream skim" towns.

The CMRS industry mergers create significantly fewer nationwide roaming options for Leaco. With less nationwide roaming partners available, Leaco is concerned that the remaining nationwide carriers will be able to use their increased market power to adversely affect roaming negotiations in the future. Additionally, Leaco is concerned that the amount of traffic exchanged has been significantly reduced as the large carriers enter into favorable deals with other larger carriers and avoid roaming on smaller carriers', such as Leaco's, networks.

² It remains to be seen how ALLTEL will act after it acquires Western Wireless.

In Leaco's case, AT&T/Cingular has blocked its customers from roaming on Leaco's network, even when Leaco's network is the only network available. As a result, Leaco has experienced the loss of vital roaming revenue from AT&T/Cingular, and AT&T/Cingular's customers receive no service whatsoever when they roam into Leaco territory. Apparently, AT&T/Cingular would rather provide its customers with degraded service than to consent to roam with Leaco.³ Leaco believes such behavior is indicative of a larger industry trend where the larger carriers have begun to favor each other to the exclusion of smaller competitors, ignoring high cost rural areas. A substantial portion of Leaco's revenue comes from roaming revenue and the loss of such revenue makes it difficult for Leaco to remain viable. Also, as roaming rates rise, Leaco has lost a number of customers due to increased roaming fees. For a rural, high cost carrier like Leaco, it cannot rely solely on its customer base to sustain its business.

Favorable deals between large carriers eliminates a vital source of revenue for Leaco and similarly situated smaller carriers. If Leaco continues to lose roaming revenue, it will not be able to continue to upgrade its network or provide the caliber of service its rural customers have become accustomed to receiving. Further, this discrimination among carriers is in violation of Section 202 of the Communications Act of 1934, as amended ("Act"). Section 202(a) of the Act makes it unlawful for any common carrier to unjustly or unreasonably discriminate among customers in the provision of a "like communication service."⁴ The FCC needs to take action to stop these discriminatory roaming practices.

³ Leaco seeks reasonable roaming rates that allow it to recover its costs.

⁴ 47 U.S.C. § 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities,

A major factor in the competitive CMRS landscape is the availability of roaming. Since Leaco, as a small, rural carrier by nature serves a smaller area, it is dependent upon its neighboring nationwide and super-regional carriers for roaming options in order to remain economically viable. With industry consolidation, the large carriers are able to behave in an anti-competitive manner when it comes to roaming agreements. They can and are driving the cost of roaming down to as low a level as possible because they understand that small carriers are dependent upon large carriers for roaming agreements. Because nationwide carriers control such large areas of the country, there is no room for equal negotiations when it comes to a small carrier discussing roaming rates with a large carrier. The small carrier is basically forced to accept whatever the large carrier proposes since the alternative for the small carrier is not being able to roam at all. This situation, exacerbated by industry mergers and acquisitions, creates roaming rates that are unjust and unreasonable, in violation of Section 201 of the Act.⁵

The Commission voiced concern about such anti-competitive practices threatened by Leaco's nationwide roaming partners in the *AT&T/Cingular Order*, when it noted that roaming partners may "pay higher roaming rates that are passed on to their customers, or the roaming partners' customers are no longer able to obtain roaming services in certain markets and they cannot replace that loss with equivalent or superior alternatives."⁶ Even before the recent industry consolidation, the FCC was aware that such anti-competitive

or services for or in connection with like communication service"). Persons engaged in the provision of CMRS are treated as common carriers under the Act. *See* 47 U.S.C. § 332(c)(1)(A).

⁵ 47 U.S.C. § 201(b) (declaring unlawful any charge that is not just and reasonable).

⁶ *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, et. al., FCC 04-255 (October 22, 2004) at ¶ 172 ("*AT&T/Cingular Order*").

practices were a distinct possibility and sought comment in its *Automatic Roaming NPRM* whether “there is any history of wireless providers denying roaming agreements to other providers in a manner that harms consumers.”⁷ The practice of blocking access to certain carriers’ networks violates a CMRS carrier’s obligation to provide service to all roamers within its market.⁸ AT&T/Cingular is engaging in such blocking in the Leaco market. The Commission recognized the potential anticompetitive harm to consumers of this practice when it conditioned its approval of the Cingular/AT&T merger on Cingular’s discontinuance of this practice.⁹

Large carriers recognize that they can substantially reduce their roaming payments to Leaco by overbuilding only the major traffic arteries and population centers in Leaco’s service area. Thus, the large carriers “competitive” presence in Leaco’s rural market is merely as a service provider in those limited areas to afford roaming service to their own “large city” customers as they travel through the rural area. The availability of multiple service providers along the interstate highways in a rural market is in no way indicative of the presence of “competition” to the citizens of that rural market. In most cases, coverage “off of the interstate” has been largely limited to that which the rural-only CMRS carriers had built.

⁷ *In re Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, FCC 00-361, 65 FR 69891, Notice of Proposed Rulemaking (November 1, 2000) at ¶ 18 (“*Automatic Roaming NPRM*”).

⁸ 47 C.F.R. § 20.12(c).

⁹ *AT&T/Cingular Order* at ¶ 182.

III. Large Carriers Dominate the Auction Process

The FCC has auctioned licenses on such a large geographical scope that a small company like Leaco cannot possibly afford to participate. Also, Leaco has found that the large carriers who do acquire licenses in Leaco's market are not willing to partition any of the rural areas that they do not build. The Commission must not allow large carriers to "warehouse" useful spectrum in rural regions of the Nation. Rather, the Commission should institute a "use it or lose it policy."

The Commission's use of strict rural buildout requirements in the cellular arena led to the current robust cellular service footprint that includes rural areas. This "use it or lose it" approach to spectrum use provided incentives for carriers to either buildout in rural areas or hand over the spectrum to entities like Leaco that are ready, willing, and able to provide such service.

The Commission's vague and nearly unenforceable "substantial service" standard has led to the current spectrum warehousing situation. A "substantial service" requirement does not speed the delivery of new, spectrum-based services to rural areas since license winners are able to meet the requirement by serving a small portion of an urban area. It has been Leaco's experience that its larger competitors are content to serve only the more populated towns while leaving more remote rural areas to others. Yet, the larger carriers insist upon hoarding the spectrum that could be used to serve there remote regions. To date, the Commission's evaluation of rural competition have not reflected the possible anti-competitive aspects of spectrum warehousing.

IV. The Commission's Decision to Sunset Analog Service Has Contributed to a Decline in Competition and the Ability of Rural Consumers to Obtain Quality Service

The Commission should also be aware that its policies, and not just unprecedented industry consolidation, have dramatically affected the state of competition in rural areas. The phase-out of analog service¹⁰ hurts the rural subscriber and harms the competitiveness of rural CMRS providers. Further, the disappearance of analog negatively affects the quality of service in rural regions. Analog service in the rural regions served by Leaco provides service where digital cannot. Rural consumers rely on having the option to use analog services in specific situations. Leaco and its customers rely upon the more robust analog capabilities and higher power levels to provide service where digital capabilities cannot function.

Analog is the only technology where higher-powered 3-watt phones are capable of functioning. Many Leaco customers in rural New Mexico rely upon their admittedly “old-fashioned” 3-watt “bag” phones when they are out working in remote areas. The FCC’s movement away from analog will require customers to supposedly “upgrade” their equipment where no comparable equipment exists. A typical 0.6-watt phone, even with a car kit and external antenna cannot come close to providing the level of service and reliability that exists with a 3-watt phone. With the sunset of analog service, a once simple and elegant coverage solution in rural areas, relied upon by rural carriers in order to distinguish themselves from nationwide competitors, will be extinct.

¹⁰ See 47 C.F.R. § 22.901(b) (allowing carriers to discontinue analog service on February 18, 2008); see also *in re Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, WT Docket No. 01-108, Order on Reconsideration, FCC 04-22 (February 12, 2004) at 33 (affirming the five-year sunset of the analog service requirement).

Further, large carriers are already effectively eliminating analog service prior to the FCC's 2008 sunset by leaving only one or two analog channels at their base stations. In practice, this essentially removes analog service from the equation, but allows carriers to play lip service to the rules. Such behavior degrades the quality of service provided by Leaco which has customers who still need analog services at home and when they roam. The disappearance of analog, the common denominator among wireless services, will affect the ability of all carriers to easily roam with one another and affect overall service quality throughout the Nation and in Leaco's service area.

V. Conclusion

The provision of high quality service in rural areas should be a goal of not only carriers like Leaco, but also the Commission. The alarming trend toward consolidation by the larger carriers is threatening the provision of any services in genuinely remote rural areas. Carriers like Leaco depend upon roaming revenue to help make the needed investments for their provision of high cost services where large carriers will not serve. As the number of carriers with which to roam dwindles, it can hardly be said that the roaming market is competitive. As experienced by Leaco, large carriers are taking away roaming minutes from small, rural carrier, and are even willing to prohibit their customers from roaming in regions served by such rural carriers.

If the large carriers are not willing to serve more rural areas themselves, they need to at least allow rural carriers to do so by either releasing hoarded spectrum or by allowing their customers to roam in more rural regions. FCC policies must encourage large

carriers to release fallow spectrum to the only carriers that are providing quality CMRS beyond the towns and highways.

Respectfully submitted,

**LEACO RURAL TELEPHONE
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_____/s/_____
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DECLARATION OF JOHN SMITH

I, John Smith, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Leaco Rural Telephone Cooperative, Inc.
2. I have read the foregoing "Comments of Leaco Rural Telephone Cooperative, Inc. Regarding the Tenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



John Smith

3-28-05

Date