

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

In the Matter of )  
)  
Rural Telecommunications Group, Inc. )  
)  
Petition for Rulemaking to Impose ) RM-11498  
A Spectrum Aggregation Limit on )  
All Commercial terrestrial Wireless )  
Spectrum Below 2.3 GHz )

**COMMENTS OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) files these comments in support of the Petition for Rulemaking filed by the Rural Telecommunications Group, Inc. (RTG) on July 16, 2008.<sup>1</sup> Specifically, NTCA agrees that the Commission should adopt rules providing that no licensee of commercial terrestrial wireless spectrum below 2.3 GHz, including all parties under common control, should be permitted to have an attributable interest in more than 110 MHz of licensed spectrum with any significant overlap in any county.

**I. STATEMENT OF INTEREST**

NTCA is a trade association representing rural telecommunications providers. Today, NTCA represents 589 full service rural exchange carriers, about half of whom provide wireless service in their rural communities or hold wireless licenses. NTCA's members are finding it increasingly challenging to provide competitive wireless service in today's era of wireless consolidation and massive nationwide wireless providers. The

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<sup>1</sup> In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz (filed July 16, 2008) (Petition).

spectrum cap proposed by RTG will result in increased wireless opportunities for smaller providers and help to ensure that nationwide providers do not use their market power to push competitors out of the industry.

The ability to offer wireless service is considered a vital component to the small carriers' service offerings. However, a variety of circumstances and policies have made it increasingly difficult for small wireless carriers to compete.

## **II. WIRELESS MARKET CONDITIONS HAVE CHANGED**

Much has changed in the rural marketplace since the Commission removed its wireless spectrum cap. Since 2001, more than a dozen wireless mergers or acquisitions have occurred. Large carriers are getting larger and small carriers indicate that their greatest obstacle in providing wireless service is their ability to compete with those nationwide providers.<sup>2</sup> Despite the difficulties, more small companies see wireless service as a necessary offering to remain viable.

The number of small companies searching for wireless opportunities has increased dramatically over the past six years, but the actual number of small company participation has not increased. In a 2001 wireless survey of NTCA's members, 77% of respondents indicated that they had no intention of participating in spectrum auctions.<sup>3</sup> By 2007, nearly half of the members not currently offering wireless service indicated that

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<sup>2</sup> 2007 NTCA Wireless Survey Report, January 2008, p. 9. Available online at [www.ntca.org](http://www.ntca.org).

<sup>3</sup> 2001 NTCA Wireless Survey Report, September 2001, p. 5. Available online at [www.ntca.org](http://www.ntca.org).

they are considering entering the wireless arena.<sup>4</sup> Despite the dramatic increase in interest and a number of spectrum opportunities, only about half of NTCA's members currently offer a wireless service, or hold wireless spectrum – about the same as in 2001. A variety of policies and circumstances are preventing small carriers from obtaining a larger share of the wireless market.

The top nationwide carriers have dominated the last few spectrum auctions. Despite success in earlier auctions, NTCA's members find it increasingly difficult to win spectrum. The top four national wireless service providers dominated Auction 66 – accounting for 78 percent of all winning bids. Those with designated entity preferences won a combined share of just four percent of the auction total. Although Auction 73 was widely touted as a success, it was a success for the largest carriers. The nation's largest carriers heavily dominated the auction, accounting for \$16.3 billion of the total \$19.6 billion in provisional winning bids. While 55% of the winning bidders were “designated entities,” the Commission's rules were abused in such a way as to permit a bidder with financial backing by one of the nation's largest carriers to obtain bidding credits and win spectrum at a discounted rates while truly small businesses were shut out. Only 37% of NTCA's members who participated in the 700 MHz auction were successful at obtaining spectrum. Every one of the large carriers was successful. Small carriers cannot compete with large carriers interested in the same spectrum asset. Without a spectrum cap, the larger carriers will continue to obtain more spectrum to the detriment of small carriers and rural consumers.

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<sup>4</sup> 2007 NTCA Wireless Survey Report, p. 7.

As NTCA gears up for its 2008 wireless survey, it anticipates that large carrier competition and the ability to obtain financing are going to be major impediments to small carriers entering or remaining in the wireless marketplace.<sup>5</sup> Increasing spectrum needs, but decreasing spectrum opportunities are making it difficult for small carriers to remain viable.

### **III. WIRELESS COMPETITION IS DECREASING**

According to one well-respected economic tool for measuring market concentration, the Commission's lifting of the spectrum cap has resulted in less market competition. The Herfindahl-Hirschman Index (HHI) is calculated by squaring the market share of each firm in the market and summing the totals. Generally, the larger the HHI, the more concentrated the market. For example, a competitive market with 100 firms with equal market share would have an HHI of 100. A market with only three competitors, one with a 50% market share and two with equal 25% market shares, would have an HHI of 3,750.

According to data contained in the Commission's CMRS Competition Reports, CMRS markets have become significantly less competitive between 2003—when the Commission eliminated the spectrum cap--and 2006 in both rural and non-rural areas. In 2003, the HHI in the top 100 Economic Areas (EAs) by population density was 2,009; by

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<sup>5</sup> In 2001, obtaining financing was reported by 44% of survey respondents as being "very easy" or "relatively easy" (2001 NTCA Wireless Survey Report, p. 8.). In 2007, 75% of survey respondents classified the process of obtaining financing as "somewhat difficult" to "very difficult" (2007 NTCA Wireless Survey Report, p. 8.). It is expected that the current financial crisis is going to make it incredibly difficult for small carriers to obtain financing today.

2006 it grew to 2,562—a 27.5% increase.<sup>6</sup> Similarly, the HHI in those EAs with less than 100 residents per square mile grew over the same period from 2,922 to 3,263—an 11.7% increase.<sup>7</sup>

## **VI. INDUSTRY CONSOLIDATION IS ADVERSELY AFFECTING SMALL CARRIERS AND RURAL CONSUMERS**

Industry consolidation without a spectrum cap adversely affects a variety of market factors. Without a spectrum cap, large carriers have the ability and incentive to obtain spectrum to thwart competition and/or hoard it. Large carriers can obtain spectrum, whether through auction or acquisition, and hold onto it indefinitely. There is no incentive or reason to part with unnecessary or unused spectrum. Rather than spectrum being held by carriers that seek to serve less profitable rural areas, large carriers can keep unused spectrum as an asset to be used or sold at some point in the distant future. Carriers may bid on or otherwise acquire spectrum for reasons other than need and hold onto it indefinitely.

Industry consolidation also adversely affects the market for wholesale roaming agreements. Regional and local carriers offer a small footprint and must partner with other carriers through roaming agreements to offer their subscribers competitive expanded coverage. In rural regions, large carriers may abuse their market power, forcing rural carriers into unfair and inequitable roaming agreements. Rural carriers' customers may be forced to pay a premium to roam on a nationwide network, while the

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<sup>6</sup> Federal Communications Commission, Wireless Telecommunications Bureau, *Twelfth Annual CMRS Competition Report*, released February 4, 2008, Table A-3; *Ninth Annual CMRS Competition Report*, released September 24, 2004, Table 3.

<sup>7</sup> *Id.*

nationwide carriers' customers pay less to roam on the rural network. As the industry has consolidated and competitive roaming options have shrunk, small carriers have seen a decline in the roaming rates that nationwide carriers are willing to pay.

**V. A SPECTRUM CAP WILL SERVE THE PUBLIC INTEREST  
CONVENIENCE AND NECESSITY**

NTCA urges the Commission to adopt the spectrum cap as proposed by RTG. Excessive concentration of licenses contradicts the Commission's stated goal and Congressional mandate of avoiding such concentration, and undermines its goal of diversity among licensees.<sup>8</sup> A cap on the amount of spectrum on carrier can hold will promote competition and further diversity, providing opportunity for a greater number of wireless participants.

A spectrum cap would eliminate the hoarding of spectrum by fewer large carriers and allow new providers to offer innovative service offerings. Rural carriers would have the opportunity to obtain otherwise unused spectrum to offer service in rural areas. Large carriers will be less able to engage in anticompetitive behavior to the detriment of consumers.

The spectrum cap, as proposed, provides carriers with enough spectrum and concentration to offer a viable, competitive service with room for growth and new service offerings. The cap is minimally intrusive, but offers protections to smaller providers and the customers they seek to serve.

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<sup>8</sup> 47 USC § 309(j).

**VI. CONCLUSION**

For the above stated reasons, the Commission should initiate a rulemaking to adopt a spectrum aggregation limit for all wireless spectrum below 2.3 GHz.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in RM-11498, DA 08-2279, was served on this 2<sup>nd</sup> day of December 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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