

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

In the Matter of )  
 )  
Petition for Rulemaking Regarding ) RM No. 11497  
Exclusivity Arrangements Between )  
Commercial Wireless Carriers and Handset )  
Manufacturers )

**Comments of RTG, OPASTCO, and NTCA**

The Rural Telecommunications Group, Inc. (“RTG”)<sup>1</sup>, the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)<sup>2</sup> and the National Telecommunications Cooperative Association (“NTCA”)<sup>3</sup> (collectively, the “Rural Carriers”), hereby submit joint comments in support of the petition for rulemaking (“Petition”)

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<sup>1</sup> RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

<sup>2</sup> OPASTCO is a national trade association representing over 530 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 5.5 million customers. Almost all OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

<sup>3</sup> NTCA is an industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 585 rural rate-of-return regulated telecommunications providers. All NTCA members are full service rural local exchange carriers (RLECs), and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

filed by the Rural Cellular Association (“RCA”) seeking a prohibition on exclusivity arrangements between handset manufacturers and wireless carriers.<sup>4</sup>

The Federal Communications Commission (“FCC” or “Commission”) should prohibit commercial mobile radio service (“CMRS”) licensees from entering into exclusive arrangements with handset manufacturers. Such agreements, particularly those between handset manufacturers and large wireless carriers, harm rural carriers and their customers, and the public interest will be served by their elimination.

RTG, OPASTCO and NTCA members have encountered difficulties in acquiring handsets desired by their customers, including the iPhone; BlackBerry; Motorola Q; LG Voyager VX1000, Shine, Invision, Incite, CU515, CE110, Chocolate, Voyager, Rumor/Scoop, DARE and enV2; UTStarcom G’Zone Type-S; Motorola KRAVE; Palm Centro; and Samsung BlackJack, SideKick I, SideKick II, Beat, T429, T729, T439, Blast, Behold, Epix and 737. While rural carriers have attempted to obtain such devices or generic equivalents from numerous handset vendors or distributors, they have been unable to acquire them, even where a commercial credit agreement is in place, sometimes due to a cited inability to meet a minimum volume requirement. Many rural carriers face competition in their markets from larger carriers who are able to offer customers popular handsets with advanced features that rural carriers are unable to offer their own customers. A direct result of such discriminatory access to handsets is the migration of customers from rural carriers to their larger in-market competitors.

The exclusivity arrangements cited by RCA in its Petition have serious harmful ramifications for rural carriers and their customers. Rural carriers face a significant competitive disadvantage. Already disadvantaged by having to compete against carriers such as AT&T and

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<sup>4</sup> *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, Public Notice, DA 08-2278, RM No. 11497, rel. October 10, 2008.

Verizon with enormous resource advantages, rural carriers find the playing surface they compete on further tilted against them as a result of the large carriers' ability to offer the latest generation of handsets demanded by consumers. In contrast to the hoopla surrounding the rollout of Apple's iPhone, no consumers are camping out overnight outside of rural carrier retail outlets to be the first to purchase the basic, low end handsets that are frequently the only handsets made available by vendors to small rural carriers and other carriers without exclusive arrangements with manufacturers and distributors.

For consumers, exclusivity arrangements mean higher prices for those who are able to purchase premium handsets because the carriers who benefit from such exclusivity face no competition that would drive the price of such handsets down. For consumers residing or working in rural areas not served by large carriers with exclusivity arrangements<sup>5</sup>, such handsets are not even available, leaving these consumers without access to the advanced features offered by such handsets.<sup>6</sup>

Exclusivity arrangements also impose impediments to carriers attempting to comply with FCC hearing aid compatibility (HAC) requirements. Such arrangements not only make compliance difficult, but because the advanced, feature rich phones that are the subject of these agreements tend to be HAC compliant, these arrangements force smaller carriers to limit the breadth of their handset inventory in order to meet their HAC obligations, ultimately resulting in hearing impaired customers being denied a choice of desirable handset models.

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<sup>5</sup> As RTG has noted in numerous proceedings before this Commission, many rural areas go unserved by large carriers holding licenses for such areas.

<sup>6</sup> The Petition notes, for example, that residents of rural areas in 16 states cannot obtain the iPhone due to AT&T's exclusive deal with Apple. Rural Carriers have not researched the current status of iPhone availability in these states, but have firsthand knowledge that customers throughout the entire states of North Dakota, South Dakota and Montana continue to be denied access to the iPhone because AT&T does not provide GSM service in these states.

Exclusive handset agreements harm the public interest by distorting the competitive marketplace for wireless services and denying rural consumers the benefits of advanced telecommunications technology. To allow such agreements to remain in place is no different than permitting cable television service providers to enter into exclusivity agreements with flat screen TV manufacturers such that customers could only purchase a certain type of flat screen TV if they took video service from a certain provider. Neither arrangement would serve the public interest.

Due to the harm caused to small and rural carriers and the consumers they serve, exclusive arrangements between handset vendors and large wireless carriers are contrary to the public interest. Accordingly, the FCC should utilize its authority under the Communications Act to prohibit wireless carriers from entering into handset exclusivity agreements.<sup>7</sup> In addition, the Commission should prohibit handset manufacturers and distributors from setting volume discounts that effectively preclude smaller (i.e., Tier III) carriers from acquiring such handsets.

For the foregoing reasons, the Rural Carriers urge the Commission to act consistent with the views expressed herein to prevent the continued use of exclusive handset agreements and pricing to hinder competition in rural markets.

Respectfully submitted,

**Rural Telecommunications Group, Inc.**

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<sup>7</sup> See, e.g., 47 C.F.R. §§ 154(i), 254(b)(3), 303(r).

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