

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

In the Matter of

Rural Cellular Association

RM No. 11497

Petition for Rulemaking Regarding
Exclusivity Arrangements Between
Commercial Wireless Carriers and
Handset Manufacturers

**COMMENTS OF
CALIFORNIA RSA NO. 3 LIMITED PARTNERSHIP
D/B/A GOLDEN STATE CELLULAR**

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California RSA No. 3 Limited Partnership d/b/a Golden State Cellular (“Golden State”), by and through counsel, hereby submit these comments in response to the Petition for Rulemaking filed with the Commission by the Rural Cellular Association (“RCA”) in the above-captioned proceeding.¹ Golden State agrees with RCA that the Commission must initiate a rulemaking proceeding to examine the anti-competitive effects of handset exclusivity arrangements between nationwide carriers and the handset manufacturers and, if necessary, to use its authority to adopt rules to eliminate such arrangements when it harms competition.

Golden State is a Tier III carrier that operates a CDMA/1x system in rural parts of Northern California. Its service area consists of Alpine, Mariposa, Tuolumne, Amador and Calaveras counties and includes Yosemite National Park. Golden State offers both

¹ *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking of Rural Telecommunications Group, Inc. to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Public Notice, DA 08-2279 (rel. Oct. 10, 2008).

local and nationwide calling plans and its competitors include large CDMA carriers such as Verizon and Sprint Nextel.

Golden State believes that small rural carriers are an important part of the wireless marketplace, providing a competitive alternative to the larger carriers. Typically, rural carriers have more familiarity with the communities in their service area, provide superior coverage in the local communities than the national carriers, and can better tailor their service offerings to the needs of the consumers they serve. Therefore, the Commission must do all it can to facilitate fair competition between the nation's largest and smallest wireless carriers.

Like many rural carriers, Golden State directly feels the harmful impact of handset exclusivity arrangements. These exclusive arrangements prevent smaller rural carriers from being able to offer its customers the most advanced and desired handsets on the market, unfairly impeding competition between Golden State and the nation's largest wireless carriers. Golden State believes that Commission intervention is necessary so that carriers of all sizes can compete with each other on a more level playing field.

I. THE NATION'S LARGEST CARRIERS ARE USING THEIR MARKET POWER TO UNFAIRLY LIMIT ACCESS TO HANDSETS WHICH STIFLES COMPETITION AND HARMS CONSUMERS

The biggest obstacle for small carriers, like Golden State, in competing with the nation's largest wireless carriers is overcoming a customer's or potential customer's desire to purchase a specific exclusive handset that the smaller carrier is unfairly prohibited from selling to customers. Although Golden State offers consumers a choice from about fifteen handset models, none are among the Top 10 most popular handsets in the country because most of these handsets, at the insistence of the national carriers, are

subject to exclusivity arrangements, making them available only to one of the nationwide carriers (*i.e.*, Verizon Wireless, AT&T, Sprint Nextel and T-Mobile).²

Frequently, consumers see these exclusive handsets being advertised and do not connect a particular handset with a specific technology (*e.g.*, CDMA or GSM) or even a specific service provider and assume that any exclusive handset is available to them. Only after visiting a Golden State retail store or calling our customer service center to either initiate service or upgrade their phone do consumers realize that these exclusive handsets are not available from Golden State. Unfortunately, as a result, Golden State is frequently unable to attract that new customer or retain an existing customer because of its inability to carry a popular handset.

Exclusive handset arrangements result in consumers purchasing wireless service from a carrier that has monopolistic control over the desired handset, paying higher prices for the services and accessories available with the exclusive handset, and, often times, agreeing to unusual (and undesirable) terms and conditions of service. These same concerns were previously raised in several recent merger proceedings (*e.g.*, Sprint-Clearwire and Verizon-Alltel), but the Commission deferred taking any action in the merger context, stating that the appropriate venue is in this proceeding.

When smaller carriers are able to secure a new handset offering, they generally do so several months after such handsets have been made available to the nationwide carriers. This disparity was brought to the forefront in the context of the Commission's Hearing Aid Compatibility (HAC) requirements in which Tier III carriers were consistently having difficulty meeting the Commission's HAC requirements because

² Kristin Beckman, *By the numbers: Top 10 Most Popular U.S. Handsets in November*, RCR Wireless News (rel. Jan. 8, 2009) (listing the 10 most popular phones according to AvianResearch L.L.C. in November 2008).

HAC-compatible phones were generally not available to them, but had already been made available to the nation's largest carriers.

II. THE COMMISSION HAS PREVIOUSLY TAKEN ACTION TO ENSURE THAT SMALL AND LARGE CARRIERS COMPETE FAIRLY AND SHOULD DO SO AGAIN BY BANNING HANDSET EXCLUSIVITY ARRANGEMENTS

The Commission has, on numerous occasions, taken action to ensure competition for the benefit of smaller carriers. The most common examples of such action have occurred in the auction context. For example, upon the realization that small carriers were at a financial disadvantage if they were forced to compete head-to-head with larger carriers for spectrum, the Commission established auction rules to level the playing field. At the direction of Congress, the Commission set aside spectrum for small carriers and also established auction bidding credits. The Commission recognized that a bidding credit would function as a discount on the price a small carrier bidder would have to pay to obtain a license and would directly address the financing obstacles encountered by small carriers.³

Based upon the same principle of ensuring that smaller carriers are competing on a level playing field, Golden State believes that the Commission must now take regulatory action and prohibit exclusive handset arrangements in order to ensure that smaller carriers have the same access to handsets as the nation's largest wireless carriers, thereby leveling the competitive playing field.

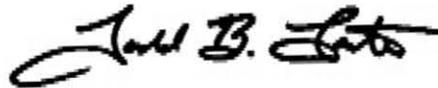
³ *In the Matter of Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, Report and Order, 10 FCC Rcd. 9589 (1995) ("A bidding credit should accordingly 'level the playing field' by helping small businesses...compete effectively...against larger enterprises, such as the large telecommunications carriers.").

V. CONCLUSION

Based on the foregoing, Golden States requests that the Commission utilize its authority to protect consumers from anti-competitive behavior and implement rules barring exclusive handset arrangements to ensure that all wireless carriers compete on an equal basis.

Respectfully submitted,

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