

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	Federal Communications Commission
)	GN Docket No. 09-51
A National Broadband Plan for Our Future)	

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”)¹, by its attorneys and pursuant to 47 C.F.R. §§ 1.1415 and 1.1430, hereby submits these comments in response to the *Notice of Inquiry*² issued by the Federal Communications Commission (“FCC” or “Commission”) on April 8, 2009.

I. Introduction

As part of its mandate under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”)³, the FCC must deliver to Congress by February 17, 2010 a national broadband plan that seeks to ensure that every American has access to broadband capability while at the same time establishing clear benchmarks for achieving that goal. Throughout its *Notice of Inquiry* seeking public comment, the Commission repeatedly recognizes that there are three primary means of broadband delivery existing today: wireline, wireless and satellite.

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies. RTG’s members are small 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.

² *In the Matter of A National Broadband Plan For Our Future*, Notice of Inquiry, GN Docket No. 09-51, FCC 09-31 (released April 8, 2009) (“*Notice of Inquiry*”).

³ The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009) (“Recovery Act”).

However, the Commission makes special note that it is wireless in particular that is destined to become the most heavily relied upon means of broadband access in the future, and that wireless is absolutely necessary if this country wishes to deploy broadband to rural and hard to serve markets.⁴ No discussion of “a national broadband plan” is complete without a thorough study of wireless and mobile technologies and their unique ability to deliver broadband access to the people of those rural markets void of broadband access today.

In an effort to help the FCC craft a sound national broadband plan, RTG respectfully submits these comments that focus on not just the promotion of wireless broadband, but on the ancillary issues that impact the effectiveness of the wireless marketplace. RTG believes that if the FCC institutes the following core concepts of wireless marketplace regulation, ubiquitous wireless broadband will become a reality in even the furthest reaches of rural America and true competition will follow.

II. The FCC Should Mandate Automatic Roaming and Eliminate the “Home Roaming” Exception.

Not every wireless operator owns licenses throughout the United States. Therefore, roaming is an indispensable tool to allow all citizens the ability to access voice and data services beyond their home market. However, there exist today two glaring deficiencies in the Commission’s roaming rules that must be addressed as part of a comprehensive national broadband plan.

⁴ *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51, Statement of Commissioner Jonathan S. Adelstein (rel. April 8, 2009), (“And of course we recognize that any effective effort will rely heavily on wireless broadband as the wave of the future, and a key element to reach hard to serve areas.”); *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, released by Michael J. Copps, Acting Chairman (rel. May 22, 2009) (“Wireless technologies are extending broadband into areas unreachable by cables and wires, and enabling consumers to be connected while on the move. Wireless providers have been launching new broadband technologies that allow subscribers to access the Internet, while mobile, at speeds that are beginning to rival those on landline networks. We expect to see further advancements on the wireless broadband front as wireless service providers begin to build out networks using advanced technologies – such as Long Term Evolution (LTE) or Worldwide Interoperability for Microwave Access (WiMAX) – that support data rates that may exceed 100 Mbps.”)

First, the FCC needs to mandate automatic data roaming. The Commission unequivocally ruled that automatic roaming is a common carrier service subject to the protections outlined in Sections 201 and 202 of the Communications Act of 1934, as Amended.⁵ If broadband is truly the “great enabler that restores America’s economic well-being and opens doors of opportunity for all Americans”⁶ while at the same time wireless is the most viable means of delivering broadband to many unserved and underserved rural markets, then the FCC should treat data services the same as voice services (i.e. as a common carrier service). There is no rational policy justification for treating wireline and wireless broadband differently, yet that is precisely what is happening today. RTG strongly urges the Commission to mandate automatic roaming, at just and reasonable rates, for all data services and broadband applications.

The existing “home roaming” exception to the automatic roaming requirement, which allows a serving carrier to deny a requesting carrier roaming access if the two carriers share a common area where both have wireless licenses or spectrum usage rights, is the second major roadblock related to roaming that thwarts a future of ubiquitous broadband service. While that policy in theory strives to encourage network build-out, its unintended consequence is that it does just the opposite. If new market entrants are unable to build-out a network comparable to their competitors in every corner of their licensed area, then they are at an immediate disadvantage. With no guarantee of even a “ramp up” period, new entrants are discouraged from building-out or from even acquiring licenses in the first place. Unless the Commission wishes to continue a policy that discourages wireless broadband network build-out and deprives consumers of the benefits of competition, innovative services, and seamless wireless coverage, the “in-

⁵ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265, FCC 07-143, (released August 16, 2007) (“Roaming Order”).

⁶ *See* Statement of Acting Chairman Michael J. Copps Re: *A National Broadband Plan for Our Future*, GN Docket No. 09-51 (released April 8, 2009).

market” or “home roaming” exception to the automatic roaming obligations should be permanently eliminated.

III. The FCC Should Impose a Spectrum Cap and Modify Its Auction Rules to Facilitate the Provisioning of Broadband to Rural America.

Just as with roaming, there exist under the umbrella of “spectrum management” two issues that inhibit meaningful competition and a wireless broadband build-out throughout the country, but especially in rural markets: a lack of spectrum caps and an ineffective policy surrounding Designated Entity qualifications. RTG strongly believes that the FCC should impose, at the county level, a spectrum cap of 110 MHz for all CMRS licenses in the bands below 2.3 GHz due to changing market conditions over the last 8 years. Due to hyper-consolidation within the CMRS marketplace, there are ever fewer mobile operators offering voice and mobile broadband services. For instance, in Auction 66, the four national mobile operators (consisting of AT&T, T-Mobile, Sprint Nextel and Verizon) accounted for 78 percent of all the winning bids and together they won approximately 60 percent of the total MHz-POPs available in that auction.⁷ By forcing mobile operators to jettison spectrum that exceeds that threshold, especially in rural markets, the FCC can help foster new market entrants and increase wireless broadband deployment. In addition to the re-imposition of a fair and sensible spectrum cap, the FCC should conduct a thorough spectrum inventory, an action promised by current agency Commissioners and proposed in the *Notice of Inquiry*.⁸

With respect to Designated Entities and access to spectrum, RTG supports the Commission’s efforts to limit bidding credits and other Designated Entity benefits to “genuine” small and very small businesses. Specifically, RTG believes the Commission should revise rules

⁷ See generally Petition for Rulemaking To Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz, RM Docket No. 11498 (filed July 16, 2008).

⁸ *Id.*

for all upcoming CMRS auctions so that they actually benefit small and very small businesses by prohibiting the award of bidding credits or other small business benefits to entities that have a significant “material relationship” with large, in-region incumbent wireless service providers. Rules put in place for recent auctions unintentionally prevented genuinely small and very small operators from submitting bids in the first place.

Additionally, future FCC spectrum auctions should be structured so that the available bands are divided into licenses on the basis of Cellular Market Areas (CMAs) and auctioned without blind-bidding or combinatorial-bidding procedures. Such procedures favor large carriers at the expense of small and rural carriers and their customers.⁹

IV. The FCC Should Prohibit Handset Exclusivity Arrangements.

In order for wireless broadband consumers to access the Internet, they need state-of-the-art mobile devices. Unfortunately, the largest of this country’s mobile broadband providers enter into exclusivity agreements with the small handful of mobile broadband device vendors manufacturing these products. The downstream impact of these exclusivity arrangements is troublesome.¹⁰ First, 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. Second, rural consumers are disproportionately affected by the lack of availability of highly-sought after broadband devices such as AT&T’s iPhone, T-Mobile’s Sidekick, recent Blackberry models by Verizon, and numerous other advanced and cutting-edge mobile broadband devices. For instance, if a prospective wireless broadband consumer who lives in a part of rural America not covered by

⁹ See generally *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et.al.*, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 06-150 (filed May 23, 2007).

¹⁰ See generally *In the Matter of Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, Comments of RTG, OPASTCO, and NTCA, RM No. 11497 (filed February 2, 2009).

one of the larger mobile operators wishes to buy an exclusive device offered only by that larger operator, that consumer is unable to do so. Over time, this scenario culminates with large segments of the rural population being deprived of the most advanced wireless broadband devices. Volume discount agreements are tantamount to exclusivity arrangements and those too disproportionately affect rural wireless subscribers. Finally, and most importantly, without these functioning devices, which small and rural mobile broadband carriers either cannot purchase outright due to exclusivity or because they do not have enough purchasing power to get volume discounts, mobile broadband networks are completely ineffective in delivering the Internet and its myriad of life-enhancing services to citizens in remote portions of the country currently without broadband access and where wireless broadband is the most cost-effective solution. In order to promote wireless broadband as an integral part of a national broadband strategy, RTG respectfully asks the FCC to prohibit CMRS licensees from entering into exclusive arrangements with mobile broadband device manufacturers.

V. The FCC Should Allow Licensed Wireless Backhaul in the TV “White Spaces.”

Even if operators, whether new or incumbent, receive Recovery Act funds to build “last-mile” wireless broadband networks and even if their customers have access to the latest mobile devices, there is still a crucial piece missing in order for broadband to “flow” between the public Internet and the end user, namely, middle-mile backhaul. Just as with last-mile delivery, wireless is often the most cost effective middle-mile delivery mechanism. Middle-mile infrastructure, which connects end-user networks to the public Internet or to network switching centers, must be built before consumers can fully realize the benefits of new unlicensed and licensed broadband networks and devices. The Commission has previously adopted rules to allow the operation of unlicensed devices in unused portions of the broadcast television spectrum, also known as “TV White Spaces.”

Although the Commission correctly determined that it should authorize more extensive use of the TV White Spaces for broadband and other services, it erred in failing to dedicate spectrum for fixed, licensed services, including critical wireless backhaul services. This infrastructure is necessary for broadband mobile wireless networks, first responder networks, and broadband connectivity to municipal buildings, including medical facilities, schools, and libraries. Absent this infrastructure, all broadband networks (and future TV White Spaces unlicensed devices) simply cannot operate. The Commission must allow point-to-point backhaul services to be licensed in the TV White Spaces.¹¹

VI. The FCC Should Act to Facilitate Tower Siting.

Rural wireless broadband providers are beginning to have problems with tower siting. No amount of broadband stimulus funding or good intentions of mobile broadband service providers can overcome local and state zoning restrictions specifically promulgated to limit the speedy deployment of cell towers. The Commission needs to take a proactive role in the regulation of tower siting if it wishes to have wireless broadband complement wireline broadband in the years to come.¹² First, the Commission should clarify the time periods in which a state or locality must act on wireless facility siting requests pursuant to Section 332(c)(7)(B) of the Communications Act. Second, the Commission should clarify that Section 332(c)(7) of the Act prohibits zoning decisions and requirements that have the effect of prohibiting an additional entrant from offering mobile services in a given area. Third, the Commission must take decisive action to preempt local ordinances and state laws that subject wireless siting applications to

¹¹ See generally *In the Matter of Unlicensed Operation in the TV Broadcast Bands and Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Petition for Reconsideration, ET Docket Nos. 02-380, 04-186 (filed March 19, 2009), and Reply to Oppositions (filed May 18, 2009).

¹² See generally *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Reply Comments of the Rural Telecommunications Group, Inc., WT Docket No. 08-165 (filed October 14, 2008).

unique, burdensome requirements, such as those treating all wireless siting requests as requiring a variance. Only if all these steps are taken by the Commission will wireless broadband flourish in urban, suburban and rural markets. Inaction will delay the deployment of much needed wireless Internet access to disadvantaged and unserved consumers.

VII. The FCC Should Expand the Availability of Universal Service Support and Condition Such Support as Necessary to Facilitate the Provisioning of Wireless Broadband to Rural Areas.

Existing Universal Service support, and the grants and loans recently made available by the Recovery Act, are desperately needed by incumbent and prospective broadband providers, whether wireless or wireline, to make Internet access a reality in high-cost areas. Thus, going forward, the Commission should support competitive neutrality and not limit high-cost universal support to just one broadband technology. Furthermore, while the FCC is not directly overseeing grant and loan programs under the Recovery Act, RTG believes that the federal government has a duty to act in the public interest and require any wireless (or wireline) carrier receiving funds to allow for roaming, interconnection and/or “middle-mile” transport to any other requesting party and do so by offering non-discriminatory prices, terms and conditions.

VIII. Conclusion.

The FCC has a monumental, and perhaps unenviable, task in preparing a national broadband strategy for this country. The *Notice of Inquiry* does an admirable job outlining the goals of the federal government and the means of making the achievement of those goals possible. As stated above, wireless broadband is destined to become the most dependent delivery mechanism of Internet and data access. It is used to help citizens start businesses, connect to higher education institutions, communicate with their government, receive public safety and emergency response resources in a timely fashion, and “connect” rural citizens with their brethren in larger cities and towns. Quite simply, the United States needs a national

broadband plan that embraces wireless access and rural connectivity in order to remain competitive in the 21st Century. RTG strongly urges the Commission to act upon its aforementioned recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Comments of the Rural Telecommunications Group, Inc. was served on this 8th day of June, 2009, by email on those listed below:

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