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August 11, 2009

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Rural Telecommunications Group, Inc.
Letter to the Honorable Jay Rockefeller, Chairman of the Committee on Commerce, Science and Transportation
Letter to the Honorable Kay Bailey Hutchison, Ranking Member of the Committee on Commerce, Science and Transportation
Letter to the Honorable Rick Boucher, Chairman, Subcommittee on Communications, Technology and the Internet; House Energy and Commerce Committee
WT Docket No. 08-95; WT Docket No. 09-104; RM-11497

Dear Ms. Dortch:

Because of the relevance of the information included in the attached letters from the Rural Telecommunications Group, Inc. ("RTG") to the Hon. Jay Rockefeller, the Hon. Kay Bailey Hutchison, and the Hon. Rick Boucher, RTG hereby requests that the Commission also associate these letters with the above-captioned proceedings.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

By: */s/ Caressa D. Bennet*

Caressa D. Bennet
Counsel to Rural Telecommunications Group, Inc.

Attachments

August 7, 2009

The Honorable Jay Rockefeller
Chairman
Committee on Commerce, Science,
and Transportation
531 Hart Senate Office Building
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science,
and Transportation
284 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Hutchison,

The Rural Telecommunications Group, Inc. (RTG) is highly committed to policies that foster genuine competition in the wireless marketplace and provide more choices for American consumers. Recently, leaders of the House Committee on Energy and Commerce and Senate Committee on Commerce, Science & Transportation received a letter from Verizon Wireless (Verizon) in which the nation's largest wireless service provider committed itself to take voluntary actions with regards to handset exclusivity agreements.

In its July 17, 2009 letter, Verizon offered to immediately lift, for small wireless carriers (those with 500,000 customers or less), all new exclusivity provisions on all of its mobile devices, from all manufacturers, after six months time. While at first glance this offer might seem like a noble gesture, it is far from a complete solution to a problem that is pervasive, industry-wide, and growing. This problem is larger than Verizon. In fact, it goes beyond just mobile operators. Promises made by just one mobile operator designed to benefit, at best, only a small subset of the country's population do nothing to promote true competition in the mobile marketplace. Something more expansive is required, and soon.

The underlying problem with handset exclusivity agreements is that they prevent consumer choice to a degree not observed in any other service industry. This restriction on choice is even more pronounced in rural areas. Individually, the country's largest mobile operators do not cover every square mile of the nation with wireless service. Not even the four "nationwide" mobile operators combined can achieve this task. The reality is that millions of mobile consumers, almost all of them in rural areas, must rely on small and rural mobile carriers to provide necessary wireless service. We are not talking about a single rural carrier going by the name "Other," but instead over a hundred small businesses, pillars of their local community, who in addition to offering a service that connects rural citizens to the rest of the country, provide sustainable jobs in a high-tech industry. Some of these small carriers only have a few thousand customers each, but they provide invaluable communications and public safety services into the most remote corners of this country. The names of these wireless carriers are known

only to their loyal customers and perhaps a handful of lawmakers and regulators in Washington, DC.

When the country's largest mobile providers engage in handset exclusivity agreements with mobile device manufacturers, such action inevitably excludes a segment of the population from having an opportunity to purchase the device of their choice. This is for two simple reasons. First, those large mobile operators who typically engage in handset exclusivity agreements with mobile device manufacturers often do not sell retail service in a particular rural county, parish, borough or reservation. Second, the small and rural mobile operators who do provide much needed mobile voice and data services in those forgotten markets are prohibited from acquiring and selling those highly sought after mobile devices. Because the country's largest mobile operators each offer multiple "exclusive" handsets or mobile devices, this problem is compounded further.

The result is that rural Americans are denied the ability to purchase the mobile device of their choosing, typically a handset that would perfectly fit their individual need (and, it must be added, that would function just fine on the mobile network of their local mobile operator) due only to geography. Simply put, rural Americans are denied the same choice afforded to urban Americans. RTG strongly encourages Congress and the Federal Communications Commission to work together to prohibit the continued use of these exclusive arrangements among mobile carriers and mobile device manufacturers selling products in the United States.

On May 7, 2009, the House Subcommittee on Communications, Technology, and the Internet held a hearing on possible ways in which federal policy may be adjusted with respect to mobile telecommunications. Numerous witnesses, representing mobile operators and consumer protection groups, testified as to the anticompetitive effect handset exclusivity agreements have on the wireless landscape and how it limits consumer choice.

Shortly thereafter, on June 17, 2009, the Senate Commerce Committee held a hearing on wireless issues entitled "The Consumer Wireless Experience." In his opening remarks, Senator John Kerry correctly noted that the landmark *Carterphone* decision "was good for consumers" when it "separated the network from the end use technologies." He also found it noteworthy that it was "not easy to find witnesses willing to testify to the benefits of these exclusive agreements." The fact that every major handset manufacturer was invited to testify but turned down the offer further emphasizes the dubious positions held by both the large mobile operators and mobile device manufacturers.

Yet exclusivity agreements are only half of the problem. In order for all Americans to be afforded true choice, one of two additional steps must be taken. Either all mobile device manufacturers selling products in the United States must be allowed to sell devices approved to carrier network standards (detached from a wireless service provider) directly to a consumer willing to purchase that device at a fair and reasonable market price, or all mobile device manufacturers must agree to sell all of their models, once commercially launched, to handset distributors or directly to mobile carriers regardless of the number of devices requested at fair and reasonable rates regardless of quantities sold to individual carriers. Neither of these scenarios would stop mobile device manufacturers from "customizing" a highly anticipated

device with one or more mobile carriers in order to craft the carrier-specific "look" or "feel" that Verizon and other large operators insist upon. Furthermore, a mobile device manufacturer will not be forced to specifically create devices for more than one air-interface if they do not already do so. Instead, these scenarios will ensure that a sufficient number of non-customized or "generic" devices are available to those consumers not served by the largest, nationwide carriers.

Verizon's offer of lifting its handset exclusivity agreements is essentially hollow. It retains Verizon exclusivity for the most advantageous time period in a mobile device's life-cycle (the first six months after product launch), and once exclusivity is lifted, millions of American mobile consumers still remain shut-out from purchasing those devices. Verizon's newly adopted policy is only a beginning; much more must be done to ensure that rural consumers can obtain the same devices offered to urban consumers.

RTG respectfully requests that your Committee work with the FCC to establish rules through a formal rulemaking proceeding to prohibit exclusivity among carriers and handset manufacturers.

Respectfully yours,

Caressa D. Bennet
General Counsel

cc: The Honorable John Kerry

August 7, 2009

The Honorable Rick Boucher
Chairman, Subcommittee on Communications, Technology and the Internet
House Committee on Energy and Commerce
U.S. House of Representatives
2187 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Boucher,

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The result is that rural Americans are denied the ability to purchase the mobile device of their choosing, typically a handset that would perfectly fit their individual need (and, it must be added, that would function just fine on the mobile network of their local mobile operator) due only to geography. Simply put, rural Americans are denied the same choice afforded to urban Americans. RTG strongly encourages Congress and the Federal Communications Commission to work together to prohibit the continued use of these exclusive arrangements among mobile carriers and mobile device manufacturers selling products in the United States.

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Respectfully yours,

Caressa D. Bennet
General Counsel

cc: The Honorable Henry Waxman, Chairman House Committee on Energy and Commerce
Ranking Member Stearns
Ranking Member Barton