

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

In the Matter of)
)
Wireless Telecommunications Bureau) WT Docket No. 09-66
Seeks Comment on Commercial Mobile)
Radio Services Market Competition)

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”) submits these comments in response to the above referenced *Notice of Inquiry* (NOI)¹ in which the Wireless Telecommunications Bureau (“WTB” or “Bureau”) solicits additional data and information in order to evaluate the state of competition among providers of CMRS for its Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. NTCA is a national association representing more than 580 rural telecommunications providers. While NTCA’s members are all rural incumbent local exchange carriers, most provide their rural communities with a broad array of telecommunications services, including wireless service.

NTCA submitted comments in this docket on June 15, 2009, providing the Commission with data collected from its members about wireless services offered, technology(ies) employed, and customers served.² NTCA incorporates the data of June 15, 2009 comments into this submission.

¹ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services*, Notice of Inquiry, WT Docket No. 09-66 (rel. Aug. 27, 2009)

² See, Comments of NTCA, WT Docket No. 09-66 (filed June 15, 2009)

In this NOI, the Commission seeks information about consumers' mobile wireless purchasing decisions and consumer behavior.³ While wireless markets are competitive in populated areas, the small, rural provider is frequently the only choice for CMRS service in rural areas.⁴ Consolidation in the marketplace and the lack of regulatory response to anticompetitive conditions is making it more difficult for small providers to offer a competitive service and is jeopardizing the availability of wireless service in many rural communities. NTCA points to the comments of the Rural Telecommunications Group (RTG) and its description of how mergers and acquisitions in the CMRS market have created a dangerous duopoly.⁵ This duopoly is exerting its market power in a manner that is making it more difficult for small providers to survive.⁶

The large carriers control the handset market. Exclusive agreements between manufacturers and large carriers ensure that the newest wireless features are available only to their subscribers. Rural carriers have attempted to obtain desired devices or their generic equivalent from manufacturers, but they have been unable to do so. Manufacturers often cite exclusive agreements for specific handsets or an inability of the rural provider to meet a minimum volume requirement as an excuse. Many rural carriers face competition in the more profitable portions of 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. The direct result of such discriminatory access to

³ NOI, ¶ 13.

⁴ The average NTCA Wireless Survey respondent indicated their company competes with between one and four other carriers. Many of these carriers, however, serve only a small part of the NTCA member company service area--typically, the most populated (and hence most profitable) part. See NTCA Comments, WT Docket No. 09-66 (June 15, 2009).

⁵ Comments of the Rural Telecommunications Group, WT Docket No. 09-66, pp 4-5 (June 15, 2009).

⁶ Seventy-eight percent of NTCA's members cite competition from national carriers as a concern threatening future wireless plans. *NTCA 2008 Wireless Survey Report* (released January 2009). Attached as an Appendix to NTCA's June 15, 2009 comments.

handsets is the migration of customers from rural carriers to their larger in-market competitors.

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 exclusive arrangements, the handsets are not available, leaving these consumers without access to the advanced features they see and hear about in advertisements.

Other than competition from national providers, NTCA's members cite the inability to negotiate favorable roaming agreements and the lack of available spectrum as top concerns threatening their future viability.⁷ Both of these concerns are driven by the duopoly's control over the wireless marketplace. Regulation is necessary to ensure that competition can survive.

Currently, there is no requirement that carriers enter into automatic data roaming. Mobile data services are the future of wireless deployment. Wireless broadband deployment is predicated on the availability of a network similar to the one available for voice. Automatic data roaming must be required.

Regulations requiring data roaming with reasonable technical limitations promote the public interest by ensuring that consumers in rural areas will have access to wireless broadband services similar to what is, or will be, available in urban areas.

The in-market roaming exclusion must be eliminated. There is no merit to the argument that requiring roaming access would undermine carriers' incentives to innovate or invest in mobile wireless network facilities. To the contrary, the absence of roaming

⁷ See, *NTCA 2008 Wireless Survey Report*.

agreements hinders the ability of small carriers to invest in their mobile wireless facilities and favors the largest national carriers. Roaming provides small providers additional opportunities to add valued services for which the customer willingly pays, which in turn increases revenues which are then used to improve the wireless system. Roaming agreements also allow small carriers to complement large carriers who often lack adequate coverage in very remote areas, providing a seamless mobile experience for the customer. At a time when the large wireless carriers are getting ever larger, expanded roaming requirements will promote additional competition in the wireless sector by providing the opportunity for new entrants and small carriers to flourish and provide service to communities historically unserved or underserved by the nationwide providers.

The Commission's current rules and policies regarding spectrum are ineffective in getting spectrum into the hands of rural providers.⁸ Auction policies favor large carriers in the quest for additional spectrum. Rural carriers do not stand a financial chance when forced to face off against any of the "the Big Four" at auction. Once spectrum is obtained, there is little incentive for large carriers to serve rural territory or part with unused spectrum to the detriment of rural consumers. Rural providers will offer wireless service in rural areas if offered the opportunity to obtain spectrum.

CONCLUSION

Unfettered mergers and acquisitions in the wireless market and the lack of response by regulators to conditions that negatively impact competition are hurting small wireless providers. A wireless duopoly is emerging and exerting its market power in a manner that is making it difficult, if not impossible, for small, rural carriers to continue to

⁸ NTCA will make recommendations regarding spectrum policy in comments in *Fostering the Innovation and Investment in the Wireless Communications Market, A National Broadband Plan For Our Future*, Notice of Inquiry, GN Docket Nos. 09-157, 09-51.

offer mobile wireless service. The Commission must act to protect competition and rural consumers. Handset exclusivity, roaming, and spectrum acquisition problems exist because of the power wielded by the largest carriers.

The Commission should grant the Rural Cellular Petition for Rulemaking regarding exclusivity arrangements between commercial wireless carriers and handset manufacturers,⁹ grant the Petitions for Reconsideration regarding the in-market roaming exclusion,¹⁰ adopt rules requiring automatic data roaming,¹¹ and formulate policies that put spectrum into the hands of small providers. The situation is dire and regulation is necessary to ensure competition survives.

Respectfully submitted,



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⁹ *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. Oct 10, 2008).

¹⁰ See Public Notice, Rpt. No. 2837 (rel. Oct.12, 2007). The parties that submitted Petitions are: SpectrumCo, LLC ("SpectrumCo"), Sprint Nextel Corporation("Sprint Nextel"), T-Mobile USA, Inc. ("T-Mobile"), MetroPCS Communications, Inc.("MetroPCS") and Leap Wireless International, Inc. ("Leap")

¹¹ See *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143 (rel. Aug. 16, 2007).

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WT Docket No. 09-66, FCC 09-67, was served on this 30th day of September 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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