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

In re:	)	
	)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993	)	WT Docket No. 09-66
	)	
Annual Report and Analysis of Competitive Market Condition With Respect to Mobile Wireless including Commercial Mobile Services	)	

COMMENTS OF CELLULAR SOUTH, INC.

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SUMMARY

The Commission, as part of its analysis of the mobile wireless marketplace in its *Mobile Wireless Competition Report*, should analyze three issues that are of particular importance to the promotion of competition in rural and smaller regional markets, and to the provision of broadband services and other services to consumers in these markets. The importance of these issues and need for Commission action to address them is highlighted by data compiled by Cellular South on wireless carriers' net subscriber additions. AT&T and Verizon Wireless together accounted for approximately 86% of the net subscriber additions by the nation's largest wireless carriers in the second quarter of 2009, the most current available period for which data is available.

▪ ***700 MHz Band Equipment.***—Small rural and regional carriers that acquired spectrum licenses in Auction 73 for the Lower 700 MHz Band A Block are facing the prospect of being unable to acquire equipment for the Lower A Block which means that these carriers could not deploy broadband services and other advanced wireless services using Lower A Block spectrum.

The reason for this is that equipment manufacturers—in response to demands from AT&T Mobility and Verizon Wireless—are concentrating their efforts on developing equipment that is usable only in the 700 MHz spectrum blocks where these two carriers have the greatest concentration of spectrum. Accordingly, the manufacturers do not have plans to develop equipment for the Lower A Block spectrum.

The failure to develop and produce equipment that is usable both in the Lower A Block and the other blocks in the 700 MHz Band would have serious consequences for consumers and for competition. Consumers in rural and regional markets would have less access to broadband

services as well as a reduced ability to roam both in the Lower A Block and in other 700 MHz Band spectrum blocks.

The competitive consequences of the Lower A Block equipment problems are particularly troubling. First, the marketplace decisions now being made about the types of equipment that will and will not be produced for use in the 700 MHz Band are the latest manifestation of how competition and consumers can be adversely affected by the disproportionate market power of the large national carriers.

Second, investment which is critical for the competitiveness of mobile wireless markets will be curtailed in the Lower A Block. The investment incentives of small carriers in rural and regional areas will be diminished if the carriers are unable to provide equipment to end users in the Lower A Block at reasonable cost. In addition, the inability of these carriers to make optimum use of the Lower A Block spectrum (because of their lack of access to end user devices) will reduce the revenues of these carriers, which will further complicate their capability to invest in future infrastructure build-out.

Third, these investment problems, as well the small carriers' loss of roaming revenues and diminished capacity to roll out broadband services due to the Lower A Block equipment problems, will erode the competitiveness of these carriers, which in turn will have an impact on the overall state of competition in the mobile wireless marketplace.

- ***Exclusive Device Agreements.***—The Commission should examine whether AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile USA are using exclusive device arrangements to block competing carriers and their customers from obtaining access to the latest and most popular devices. These exclusive deals make it particularly difficult for consumers in rural and

regional markets to obtain these popular devices, and this is inhibiting the competitiveness of smaller carriers serving these markets.

- ***Automatic Roaming and Interoperability.***—Mobile data roaming agreements are important to small rural and regional carriers because their customers expect to have access to wireless services with advanced functionalities on a nationwide basis. The Commission should assess the extent to which the large national carriers have refused to enter into data roaming agreements with smaller carriers with reasonable rates, terms, and conditions, and should examine the adverse competitive consequences of the national carriers' actions. The Commission should also evaluate the extent to which interoperability between carriers' networks is being impaired by the difficulties small carriers face in entering into data roaming agreements with the large national carriers.

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COMMENTS

Cellular South, Inc. ("Cellular South"), by its attorneys, hereby submits Comments in response to a *Notice of Inquiry* adopted by the Commission, the purposes of which include inquiring about the state of competition in the commercial mobile radio service ("CMRS") market, and seeking information to assist in the agency's analysis of both the CMRS market and the broader mobile wireless market.[1] The record compiled in response to the *Notice of Inquiry* will be used in connection with the Commission's preparation of a report to be entitled the Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless including Commercial Mobile Services ("*Mobile Wireless Competition Report*").

[1] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, *Notice of Inquiry*, FCC 09-67, rel. Aug. 27, 2009 ("*Notice of Inquiry*"), at para. 4. Comments are due in this proceeding not later than September 30, 2009. *See* Commission Extends Comment and Reply Comment Deadlines for Mobile Wireless Competition Notice of Inquiry (FCC 09-67), *Public Notice*, FCC 09-72, rel. Sept. 10, 2009.

Cellular South is the Nation's largest privately-held wireless carrier.[2] It is a regional Code Division Multiple Access carrier serving more than 800,000 customers primarily in rural areas. It provides cellular service in nine Cellular Market Areas ("CMA") in Mississippi, consisting of two Metropolitan Statistical Areas and seven Rural Service Areas. Cellular South also provides Personal Communications Service ("PCS") in twelve Mississippi Basic Trading Areas. In addition, Cellular South holds authorizations to provide PCS, Advanced Wireless Service and/or 700 MHz Service in portions of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, and Virginia.

I. INTRODUCTION.

Cellular South recommends in these Comments that the Commission examine in the *Mobile Wireless Competition Report* three issues that have a bearing on competition in the wireless industry, and especially in small rural and regional markets. The issues take on a higher level of urgency in the light of data that Cellular South has compiled, showing that AT&T and Verizon Wireless together accounted for approximately **86 percent** of the net customer additions by the largest U.S. carriers in the second quarter of 2009.[3] The same two companies account for a similar heavy share of net subscriber additions during other recent quarterly periods.[4]

First, recent market developments are threatening the ability of small rural and regional carriers to make optimum use of the Lower 700 MHz Band spectrum for the deployment and provision of mobile broadband services and other wireless services to consumers. These developments, which are a product of imbalances in market power between the two largest

[2] Cellular South was the second largest privately-held wireless carrier prior to consummation of the merger between Alltel Corporation ("Alltel") and Verizon Wireless.

[3] The subscriber data, which is the most current available, was compiled by Cellular South from public disclosures by AT&T, Verizon Wireless, Sprint, T-Mobile, MetroPCS, Leap, US Cellular and Ntelos, all of which are publicly held companies.

[4] See Exhibit 1.

national wireless carriers and small rural and regional carriers, could erode competition in the wireless marketplace and also hinder achievement of the Commission's objectives for efficient utilization of 700 MHz spectrum.[5]

Second, exclusive device arrangements between national wireless carriers and device manufacturers are distorting the wireless marketplace and interfering with the opportunity of small rural and regional carriers to acquire new and popular devices for their customers.

Third, the Commission should evaluate in the *Mobile Wireless Competition Report* the extent to which practices being engaged in by national wireless carriers regarding roaming agreements and interoperability are harming competition in the wireless marketplace.

The latter two issues have been addressed by Cellular South in its Comments responding to the request of the Wireless Telecommunications Bureau for data and information in order to evaluate the state of competition among CMRS providers for the Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services ("*Fourteenth Report*").[6] Therefore, Cellular South's position on these two issues will only be briefly summarized in these Comments.

Cellular South also notes that it has recently joined with other members of the 700 MHz Block A Good Faith Purchasers Alliance ("Purchasers Alliance") in submitting a rulemaking

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[5] Issues relating to the effect of impediments to the utilization of Lower 700 MHz Band A Block spectrum on the Commission's policies and objectives concerning wireless innovation and investment are discussed by Cellular South in its Comments regarding the Commission's Notice of Inquiry concerning innovation and investment, which are being filed in GN Docket No. 09-157 and GN Docket No. 09-51 contemporaneously with these Comments. *See* Fostering Innovation and Investment in the Wireless Communications Market, GN Docket No. 09-157, A National Broadband Plan for Our Future, GN Docket No. 09-51, *Notice of Inquiry*, FCC 09-66, rel. Aug. 27, 2009 ("*Wireless Innovation and Investment NOI*").

[6] *See Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition*, WT Docket No. 09-66, Public Notice, 2009 WL 1362703 (WTB rel. May 14, 2009) ("*Fourteenth Report Public Notice*").

petition seeking Commission action to address the problems relating to the use of 700 MHz spectrum that are discussed in a following section of these Comments.[7] Cellular South's purpose in discussing the 700 MHz issue here is to help "shed light on the current state of competition" in the wireless marketplace,[8] especially the extent to which imbalances in the marketplace can negatively affect the Commission's spectrum policies, in order to assist the Commission in "ensur[ing] that competition in the mobile wireless market continues to bring substantial benefits to American consumers."[9]

II. THE MOBILE WIRELESS COMPETITION REPORT SHOULD EXAMINE MARKET DEVELOPMENTS IN THE 700 MHz BAND THAT THREATEN THE COMPETITIVE POSITION OF SMALL RURAL AND REGIONAL CARRIERS.

The Commission in the 700 MHz proceeding sought to promote competition in the wireless marketplace by devising spectrum allocation and assignment rules and competitive bidding mechanisms that would promote economically efficient use of spectrum, ensuring that auction winners would put the 700 MHz spectrum to its best and most valuable use.

Cellular South urges the Commission to examine recent market developments involving the production of equipment for use in selected 700 MHz Band Classes because these developments demonstrate how the interplay between the service provider and device segments of the wireless market ecosystem can affect the Commission's spectrum policies as well as competition in the wireless marketplace.

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[7] *See* 700 MHz Block A Good Faith Purchasers Alliance, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment To Be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, RM-____, filed Sept. 29, 2009. The petition demonstrates that the Nation's two largest wireless carriers have succeeded in getting a Long-Term Evolution standards group to establish self-serving band classes for 700 MHz equipment, and requests that the Commission adopt rules prohibiting restrictive mobile equipment banding arrangements and also suspend (during the pendency of the rulemaking proceeding) equipment authorizations for all 700 MHz equipment unless the equipment is capable of operating on all paired commercial 700 MHz spectrum blocks.

[8] *Notice of Inquiry* at para. 2.

[9] *Id*.

A. The Commission Has Established Important Goals for the Use of 700 MHz Spectrum, But These Goals Are Being Undermined by Recent Marketplace Developments.[10]

1. The Utilization of 700 MHz Spectrum Will Play a Key Role in Broadband Deployment.

The 700 MHz spectrum auction (designated as Auction 73 and concluded on March 18, 2008) resulted in bids covering 1,091 licenses and totaling $19.6 billion.[11] Auction 73 enabled a "diverse mix of new entrants and small regional and rural providers . . . [to] acquir[e] access to spectrum needed to deploy the next generation of wireless networks."[12] Small and rural wireless service providers "won spectrum that almost covers the entire United States."[13]

Efficient utilization of 700 MHz spectrum will play a significant role in deployment of wireless broadband services throughout the Nation. The spectrum "is particularly well-suited for wireless broadband services[,]"[14] a factor which was taken into account by the Commission in determining that its goals for the 700 MHz Band are:

> to promote dissemination of licenses among a wide variety of applicants, accommodate the competing need for both large and small licensing areas, meet

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[10] The discussion in this Section II.A is adapted in large part from Cellular South's Comments filed today in the *Wireless Innovation and Investment NOI* proceeding.

[11] Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, Report No. AUC-08-73-I (Auction 73), 23 FCC Rcd 4572, 4572 (para. 2) (2008).

[12] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 08-27, *Thirteenth Report*, 24 FCC Rcd 6185, 6221 (para. 68) (2009).

[13] *Id*.

[14] Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; and Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Second Report and Order*, 22 FCC Rcd 15289, 15316 (para. 64) (2007) ("*700 MHz Second Report and Order*").

> the various needs expressed by potential entrants seeking access to spectrum and incumbents seeking additional spectrum, and provide for large spectrum blocks that can facilitate broadband deployment in the band.[15]

The Commission has also sought to take advantage of the excellent propagation characteristics of the 700 MHz Band in order to "promote the provision of innovative services to consumers throughout the license areas, including in rural areas."[16]

The Commission established a 12-megahertz A Block in the Lower 700 MHz Band for commercial use, consisting of 6-megahertz paired blocks, and established Economic Areas ("EA") as the service areas for the A Block, resulting in 176 licenses available for the block.[17] The Commission noted that its decision to locate the Lower A Block next to a 12-megahertz CMA block (the 6-megahertz paired B Block) would enable smaller providers to benefit from both the EA and CMA blocks,[18] thus giving them flexibility in implementing their business plans.[19] The Commission indicated that its goal in establishing the Lower A Block was to "create opportunities for a variety of bidders, including small and regional providers, to acquire licenses for small geographic areas in the Lower 700 MHz Band."[20]

The Commission also noted, as a general matter, that its decision to use competitive bidding to assign commercial 700 MHz licenses "serves the public interest by assigning licenses to the parties that value the licenses the most. Such parties are presumed to be most likely to put

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[15] *Id*.

[16] *Id*. at 15348 (para. 154).

[17] *Id*. at 15324 (para. 83).

[18] *Id*. at 15325 (para. 85) (finding that, "[b]ecause the A Block is next to a second 12-megahertz block of spectrum, the B Block, that will be licensed using CMAs, small, regional, and rural providers will also have opportunities to combine these blocks").

[19] *Id*. at 15324 (para. 84).

[20] *Id*. at 15325 (para. 85) (footnote omitted).

the public spectrum resource to its most effective use."[21] The agency's expectation, therefore, is that service providers obtaining Lower A Block licenses will be in a position to utilize the licensed spectrum in an optimum manner, including the deployment of wireless broadband services in rural and small regional markets. The Commission also expressed confidence that, "[g]iven the number of actual wireless providers and potential broadband competitors, it is unlikely that . . . large wireless carriers [or other large service providers] would be able to behave in an anticompetitive manner as a result of any potential acquisition of 700 MHz spectrum."[22]

Nonetheless, some competitive concerns were expressed by Commissioners in connection with the Commission's decisions for the utilization of 700 MHz spectrum. Commissioner Copps, in criticizing the decision not to use a wholesale carrier model to encourage competitive entry, noted that "we have seen a wave of consolidation among wireless incumbents that has substantially increased the hurdles facing potential new entrants. And now we live in a world where the two leading wireless companies are owned in whole or in part by the leading wireline telephone companies."[23] Commission McDowell added a pointed criticism that reflected his concerns about how spectrum would be controlled and utilized in the Lower 700 MHz Band:

> [T]he encumbered spectrum structure [for the Upper 700 MHz Band] supported by the majority will force large wealthy bidders away from the Upper Band and into the smaller, unencumbered blocks in the Lower Band. Smaller players, especially rural companies, will be unable to match the higher bids of the well-funded giants. Depriving the nascent 700 MHz market place of smaller new entrants will result in less innovation and

[21] *Id*. at 15385 (para. 259) (footnote omitted) (citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2349-50 (paras. 3-7) (1994)).

[22] *Id*. at 15384 (para. 256).

[23] *Id*. at 15562 (Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part).

> competition, not more. Consumers could be short-changed as a result. And it is small new entrants that should be as important to this equation as large new entrants.[24]

As discussed in the following section, these concerns about the size of wireless incumbents and problems that could be faced by small rural carriers are now materializing in the Lower A Block.

2. The Small Rural and Regional Carriers' Efforts To Utilize 700 MHz Spectrum Are Being Undercut by the Development of Equipment for Band Classes that Exclude the Lower 700 MHz A Block.

A significant problem has emerged since the 700 MHz Band auction was completed last year. The rural and regional carriers that obtained Lower A Block licenses in the 700 MHz auction are facing artificial technical obstacles that threaten to affect the carriers' plans to deploy broadband infrastructure using Lower A Block spectrum.

Based on current indications, it appears that equipment manufacturers are not likely to develop and produce equipment for the Lower A Block spectrum. Thus far, three band classes have been established for commercial spectrum suitable for two-way use in the Upper and Lower 700 MHz Bands.[25] These three band classes, which provide the framework for the development of equipment for use with commercial paired 700 MHz spectrum, are as follows:

BAND CLASS	EQUIPMENT CAN BE USED IN:
12	Lower A Block Lower B Block Lower C Block
13	Upper C Block
17	Lower B Block Lower C Block

Equipment manufacturers are in the process of developing devices for Band Class 13 and Band Class 17, but they have no current plans to develop equipment in Band Class 12—the one Band Class that includes all three blocks of paired, commercial spectrum in the Lower Band..

[24] *Id*. at 15572 (Statement of Commissioner Robert M. McDowell, Approving in Part, Dissenting in Part).

[25] The band classes for the 700 MHz Band are developed pursuant to the Third Generation Partnership Project ("3GPP") Technical Specifications and Technical Reports Release 8. See http://www.3gpp.org.

The principal reason for this development is that the two largest national carriers—Verizon Wireless and AT&T Mobility—are pushing equipment manufacturers to develop substantial volumes of equipment that will work in Band Class 13 or Band Class 17 in the 700 MHz spectrum, but that will not work in Band Class 12 (which includes the Lower A Block).

The initial standards developed by 3GPP pursuant to Release 8 called for establishing Band Class 12, which included the A, B, and C Blocks in the Lower 700 MHz Band. AT&T Mobility, however, successfully pressed for the establishment of an additional category—Band Class 17—which is the same as Band Class 12 except that it excludes the Lower A Block.[26] AT&T Mobility's apparent strategy will now enable it to order Band Class 17 equipment in bulk, which serves its needs but which threatens to undermine efficient utilization of Lower A Block spectrum.

Verizon Wireless, meanwhile, acquired Lower A Block spectrum licenses in Auction 73, but—given its extensive license holdings in the Upper C Block[27]—Verizon Wireless thus far has not shown signs of any plans to utilize its Lower A Block spectrum, nor has it expressed any interest in requesting equipment manufacturers to develop devices that will work in the Lower A Block. This is clear from the developing ecosystem for Band Class 13 equipment—Verizon's Upper Band C Block— and the lack of any plans for equipment in the one Band Class that includes Verizon Wireless' Lower A Block spectrum, Band Class 12.

These marketplace developments pose a significant problem for small rural and regional wireless carriers. These small carriers holding Lower A Block licenses are faced with the

[26] AT&T Mobility bid selectively in the 700 MHz auction, acquiring B Block spectrum in key markets. *See* Kevin Fitchard, "Auction winners lay bare 700 MHz plans," TELEPHONY ONLINE, Apr. 4, 2008, accessed at http://telephonyonline.com/wireless/news/winners-700-mhz-plans-0404/.

[27] Verizon Wireless "won the lion's share of the Auction's C Block, giving it 22 MHz of coverage . . . in the lower 48 U.S. states and Hawaii." *Id*.

uneconomic choice of ordering devices for the Lower A Block in small quantities (relative to the size of orders likely to be placed by AT&T Mobility and Verizon Wireless for devices that will work in the other 700 MHz Blocks), assuming that these devices will be built at all. The inability of small rural and regional carriers to purchase Lower A Block equipment in bulk significantly increases the cost of equipment purchases for these carriers.

This problem is exacerbated by the fact that interference issues present in the Lower A Block require that devices developed for use in this block must have filters to lessen the interference problems, thus further increasing the cost of Lower A Block devices. Although the increment of this additional cost would not likely be substantial, it nonetheless adds to the burdens faced by the small carriers as a result of the current decision not to include the Lower A Block in a high-volume equipment category.

Of course, this also results in higher costs for consumers. The most obvious example is the higher price that consumers will pay for Lower A Block equipment that will not be produced in bulk. Additionally, many consumers (including large numbers of rural consumers) will have devices that have limited compatibility with other network operators. This will not only restrict roaming for consumers, but it will deny many consumers the opportunity switch network providers while keeping the same 700 MHz device.

If this situation is allowed to persist, the consequences will be problematic for small rural and regional carriers and their customers. Moreover, the processes that are controlling the manner in which equipment will be developed and produced for use in commercial spectrum in

the 700 MHz Band point out the need for the Commission to take steps "to fulfill strategic objectives of fostering [wireless] investment and innovation for our country."[28]

B. Problems Relating to the Manufacture of Equipment for the Lower A Block Threaten To Harm Competition and Consumer Welfare.

The Commission, in its *Mobile Wireless Competition Report*, should examine the competitive implications of the fact that AT&T Mobility and Verizon Wireless—the two largest nationwide wireless carriers—appear to have sufficient market power to substantially influence the course and pace of the development and production of equipment for use in the 700 MHz Band.

As Cellular South observed in its Comments in June of this year concerning the *CMRS Competition Fourteenth Report*,[29] one estimate indicates that AT&T Mobility and Verizon Wireless together hold a 65 percent share of the wireless marketplace,[30] and, "as a result of the acquisition of Alltel by Verizon Wireless, 'the combined Verizon-Alltel will provide coverage to

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[28] Written Statement of Julius Genachowski, Chairman, FCC, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, Sept. 17, 2009, at 2.

[29] *See* Comments of Cellular South, Inc., filed June 15, 2009, in response to "Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition," DA 09-1070, WT Docket No. 09-66, *Public Notice*, rel. May 14, 2009 ("Cellular South CMRS Competition Comments"), at 4-5.

[30] *An Examination of Competition in the Wireless Industry: Hearing Before the Subcomm. on Communications, Technology, and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong., Written Statement of Victor H. "Hu" Meena, President and Chief Executive Officer, Cellular South, Inc. (May 7, 2009), at 1-2. Another estimate indicates that AT&T serves approximately 27.1 percent of all wireless subscribers in the United States, and Verizon Wireless serves approximately 30.4 percent of all subscribers. Reply Comments of United States Cellular Corporation, In the Matter of Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed Feb. 20, 2009), at Attachment, William P. Rogerson, *An Economic Analysis of Exclusivity Arrangements Between the Big Four Wireless Carriers and Handset Manufacturers and a Proposal for a Modest Restriction on These Exclusivity Arrangements*, at Table 1 (the percentage for AT&T includes Centennial subscribers, and the percentage for Verizon Wireless includes Alltel and Rural Cellular Corporation subscribers). *See* Cellular South CMRS Competition Comments at 5 & n.10.

98.4% of the U.S. population and will serve approximately 82 million subscribers.'"[31] The 700 MHz Band Class issue that has emerged with respect to utilization of Lower A Block spectrum by small rural and regional carrier licensees is a sobering manifestation of how the wireless marketplace can be affected by industry consolidation and movement "in the direction of a duopoly . . . ."[32]

The Commission in the *Notice of Inquiry* observes that "[i]nvestment is critical to the development of the mobile wireless market[,]"[33] and seeks comment regarding "the relationship between competition and domestic investment in the mobile wireless ecosystem."[34] As Cellular South has described in these Comments, the marketplace imbalance between AT&T Mobility and Verizon Wireless on the one hand, and small rural and regional carriers on the other, is threatening to produce a situation in which equipment for use in the Lower 700 MHz A Block is not available while equipment for use in other blocks of the 700 MHz Band spectrum is available in abundance. The Commission should examine the investment and competitive consequences of such a development.

The potential lack of equipment that can be used both in the Lower A Block and in other blocks in the Lower 700 MHz Band has negative implications for network build-out by small rural and regional carriers. Notwithstanding the fact that these carriers acquired Lower A Block licenses with the intention of investing in infrastructure necessary to deploy broadband and other services in the Lower A Block, these rural and regional carriers may not be able to obtain

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[31] Cellular South CMRS Competition Comments at 5 (quoting Caressa D. Bennet, General Counsel, Rural Telecommunications Group, Inc., and David L. Nace, General Counsel, Rural Cellular Association, Ex Parte Filing in WT Docket No. 08-95, WT Docket No. 05-265, RM No. 11497, and RM No. 11498 (filed Oct. 24, 2008), at 2).

[32] Cellular South CMRS Competition Comments at 4.

[33] *Notice of Inquiry* at para. 28.

[34] *Id*.

equipment to build out the Lower A Block spectrum. In addition, the lack of equipment would reduce the carriers' service revenues, which, in turn, would reduce the carriers' capital available for other network investment as well as their ability to attract investment capital.[35]

The *Mobile Wireless Competition Report* should examine whether this cloud over investment in the Lower A Block by small rural and regional carriers will have negative effects on these carriers' efforts to utilize 700 MHz Band spectrum for the deployment of broadband services in rural and small regional markets. The deployment of broadband in rural areas has been problematic,[36] and Cellular South believes that the equipment development problems that have emerged in the Lower A Block will exacerbate these difficulties, thus threatening to squander spectrum that is ideally suited for broadband.

In addition to these concerns about broadband deployment, the Lower A Block equipment problems have competitive consequences. It could be said that the relationship between competition and wireless investment[37] is that competition drives investment which drives competition. In other words, a marketplace with robust competition will prompt investment by the competing carriers as they try to maintain or improve their market position by deploying more infrastructure and facilities and offering more innovative services. This investment, in turn, will fuel competition, as carriers make capital expenditures in an effort to match and exceed the deployment activities and service innovations of their competitors.

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[35] *See 700 MHz Second Report and Order*, 22 FCC Rcd at 15384 (para. 258) (the Commission recognized the fact that small and rural wireless carriers "may have limited access to capital . . . .").

[36] *See* Michael J. Copps, Acting Chairman, FCC, BRINGING BROADBAND TO RURAL AMERICA: REPORT ON A RURAL BROADBAND STRATEGY (May 22, 2009), at para. 15 (observing that "[r]ural communities have long been unserved or underserved by broadband technology, but the full implication of this divide has only emerged as the Internet has become less and less a novelty, and more and more a necessity.").

[37] *See Notice of Inquiry* at para. 28.

The Commission should analyze in the *Mobile Wireless Competition Report* whether it is correct (as Cellular South believes) that marketplace decisions being made by AT&T Mobility and Verizon Wireless affecting the development of equipment for use in 700 MHz Band service areas will negatively impact this favorable symbiosis between wireless investment and wireless competition. In Cellular South's view, it is clear that the unavailability of equipment for use in the Lower A Block will impair the growth of small rural and regional carriers because their plans for to utilize of the Lower A Block spectrum will be stymied, which will reduce these carriers' revenues, which in turn will degrade their competitive position and undermine their capacity to invest in infrastructure deployment and in the offering of broadband and other services (which will further erode their competitive position).

The *Mobile Wireless Competition Report* should also examine whether a similar dynamic would apply with respect to roaming in the Lower A Block and in other spectrum blocks in the 700 MHz Band, if the problems associated with the unavailability of Lower A Block equipment were to persist. Specifically, the Commission should determine the extent to which subscribers of small rural and regional carriers in the Lower A Block will not be able to roam in other blocks of the 700 MHz Band if equipment is not produced that can operate across all paired blocks in the Band, and whether this inability will affect competitive conditions in the wireless marketplace.

Similarly, the Commission should analyze in the *Mobile Wireless Competition Report* the extent to which the lack of such equipment would prevent customers of carriers operating in other 700 MHz Band spectrum blocks (such as AT&T Mobility and Verizon Wireless) from roaming by using the facilities of small rural and regional carriers operating in Lower A Block service areas that are not served by other carriers.

Cellular South believes that both of these impediments to roaming will result from the unavailability of equipment that is usable in the Lower A Block as well as other 700 MHz Band spectrum blocks, and that such a result will further impair the competitive strength of small rural and regional carriers.

Cellular South notes that, because of its view that marketplace decisions being made regarding 700 MHz equipment pose immediate dangers to the utilization of Lower A Block spectrum and to the competitiveness of small rural and regional carriers, Cellular South has joined with the Purchasers Alliance in filing a petition for rulemaking seeking Commission action to address and rectify these problems.

In addition to this immediate action by the Commission, Cellular South also urges the Commission to analyze in the *Mobile Wireless Competition Report* how the 700 MHz equipment problems are likely to affect competition in the mobile wireless industry. Such an analysis would be in keeping with the Commission's intent to broaden the scope of its inquiry to include the device segment of the industry,[38] and would also be consistent with the agency's recent practice of examining service provider conduct as part of its evaluation of competitive market conditions.[39]

III. THE MOBILE WIRELESS COMPETITION REPORT SHOULD ASSESS THE ADVERSE COMPETITIVE CONSEQUENCES OF EXCLUSIVE DEVICE AGREEMENTS.

Especially in light of the Commission's expressed intention to cover the device segment of the mobile wireless marketplace as part of its analysis in the *Mobile Wireless Competition*

[38] *Id*. at para. 5.

[39] *Id*. at para. 8.

Report,[40] Cellular South renews the suggestion made in its earlier Comments[41] that the Commission evaluate the adverse competitive effects of exclusive device arrangements.

The Commission should examine concerns that AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile USA are exercising their market power by entering into exclusive agreements with device manufacturers for the purpose of blocking competitive carriers' access to the latest and most popular devices. The *Mobile Wireless Competition Report* should assess the degree to which these exclusive agreements are harmful to the competitiveness of smaller carriers because the agreements handicap the ability of these carriers to meet consumer demand for the latest, multi-functional devices that have been embargoed by the national carriers' exclusive agreements.

Cellular South also notes that recent expressions of concern regarding device exclusivity agreements underscore the advisability of examining the issue in the *Mobile Wireless Competition Report*. For example, on the same day that Cellular South submitted its Comments in response to the *Fourteenth Report Public Notice*, four Senators sent a letter to the Commission "to express [their] concern regarding the use of exclusivity arrangements between commercial wireless carriers and handset manufacturers with respect to wireless handsets that are made available to consumers."[42]

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[40] *Id*. at para. 5.

[41] See Cellular South CMRS Competition Comments at 8-17.

[42] Letter from Senator John F. Kerry, Senator Roger F. Wicker, Senator Byron L. Dorgan, and Senator Amy Klobuchar, to Michael J. Copps, Acting Chairman, and Commissioners, June 15, 2009 ("Senators' Letter"), at 1.

Citing a rulemaking petition filed by the Rural Cellular Association ("RCA"),[43] the Senators requested that the Commission examine a number of issues relating to device exclusivity agreements, including "[w]hether exclusivity agreements are manipulating the competitive marketplace between commercial wireless carriers. Specifically, whether the ability for a dominant carrier to reach an exclusive agreement with a handset manufacturer is inhibiting the ability of smaller, more regional carriers to compete . . . ."[44]

In addition, Chairman Genachowski, during his Senate confirmation hearings in June, addressed the issue of device exclusivity agreements and committed to acting "to promote competition and consumer choice" based upon a review of the full record in the RCA rulemaking proceeding.[45]

These concerns, coupled with the Commission's indication in the *Notice of Inquiry* that "not all consumers have equal access to the same . . . handsets[,]"[46] support Cellular South's view that the Commission should focus attention in the *Mobile Wireless Competition Report* on the extent to which exclusive device agreements are skewing competition in the wireless marketplace.

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[43] *See* RCA, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008). Since filing the petition, RCA more recently has observed that:

> Exclusivity agreements also drive up the cost of wireless plans for all Americans because they short-circuit competition between wireless carriers. When exclusive devices only exist on a single network, consumers cannot choose freely between wireless providers. Americans today pay as much as $200 more each year for their wireless plans compared to consumers in Europe, where customers are allowed to match the device and their wireless plan free of exclusivity agreements.

RCA Press Release, "RCA Urges End to Anti-Consumer Handset Exclusivity Deals in Wake of Congressional Hearing Today," Sept. 17, 2009, at 1.

[44] Senators' Letter at 1.

[45] Amy Schatz, "FCC May Review Exclusive Handset Deals," WALL STREET JOURNAL, June 18, 2009, accessed at http://online.wsj.com/article/SB124535799230328853.html.

[46] *Notice of Inquiry* at para. 33 (footnote omitted).

IV. THE COMMISSION SHOULD EXAMINE WHETHER THE CONDUCT OF NATIONAL WIRELESS CARRIERS IS PREVENTING SMALL RURAL AND REGIONAL CARRIERS FROM OBTAINING AUTOMATIC ROAMING AGREEMENTS AND INTEROPERABILITY.

The Commission has invited parties "to provide . . . general comment on the proper treatment of roaming services in the [broad] analytical framework under consideration" in the *Notice of Inquiry*.[47] Cellular South briefly reiterates here its arguments presented in its Comments in response to the *Fourteenth Report Public Notice* that the large national wireless carriers have shown little inclination to negotiate with small rural and regional carriers to enter into mobile data roaming agreements with reasonable rates, terms, and conditions.

The opportunity for these smaller carriers to enter into mobile data roaming agreements with the national carriers is becoming increasingly important because their customers expect nationwide access to wireless services with advanced functionalities. Moreover, mobile data roaming agreements are important because they can serve as a basis for enhancing network interoperability between carriers having such roaming agreements.

For these reasons (as discussed in greater detail in Cellular South's earlier Comments), Cellular South encourages the Commission to examine in the *Mobile Wireless Competition Report* the extent to which the absence of mobile data roaming agreements is adversely affecting the competitiveness of the mobile wireless marketplace, and to assess the extent to which interoperability between carriers' wireless networks is being hindered by national carriers' avoidance of mobile data roaming agreements with small rural and regional carriers.

[47] *Id*. at para. 22. The Commission noted that certain issues concerning automatic roaming are currently under examination by the agency in a separate rulemaking proceeding. *Id*.

V. CONCLUSION.

Wireless industry consolidation, and the attendant growth in the market power of the national carriers, should be a central focus of the *Mobile Wireless Competition Report*, with particular attention paid to the extent to which this market power is having adverse consequences for rural consumers and for small carriers providing services in rural and regional markets.

There is an urgent need for the Commission to address issues that would promote competition in the wireless industry. Data compiled by Cellular South on wireless carriers' net subscriber additions shows that AT&T and Verizon Wireless together accounted for approximately 86% of the net subscriber additions by the nation's largest wireless carriers in the second quarter of 2009, the most current available period for which data is available.

The manifestations of the national carriers' market power are evident in the equipment development issues that have emerged in the Lower 700 MHz Band A Block, with respect to the exclusive device agreements that have become a staple of the large carriers' business practices, and with respect to the practices of the large carriers concerning mobile data roaming agreements with small rural and regional carriers.

For the reasons discussed in these Comments, the Commission should probe these issues as one means of ensuring that the current state of competition in the mobile wireless marketplace is accurately and comprehensively depicted in the *Mobile Wireless Competition Report*.

Respectfully submitted,

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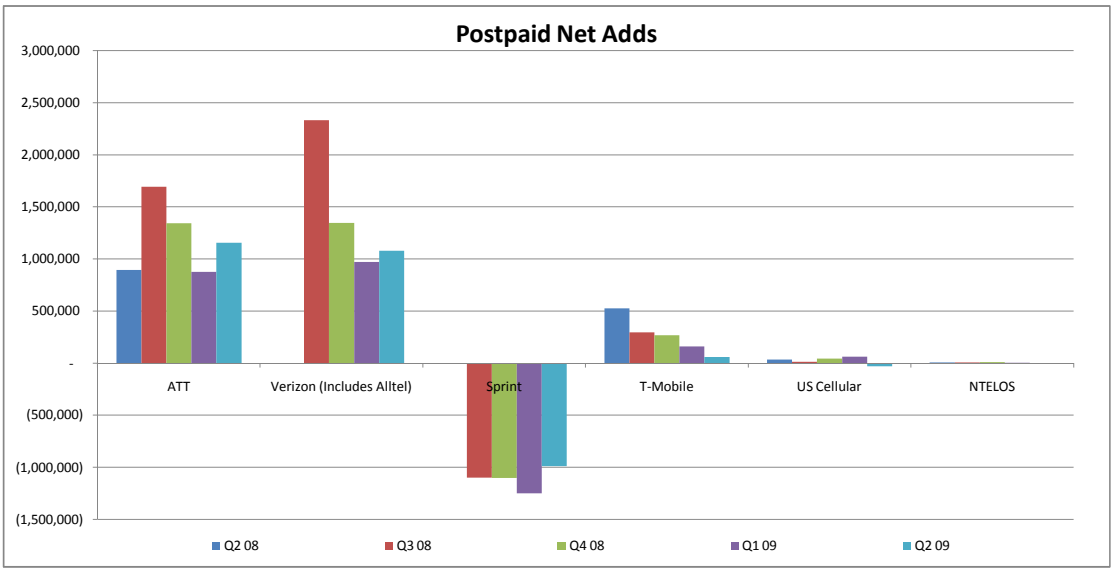
September 30, 2009

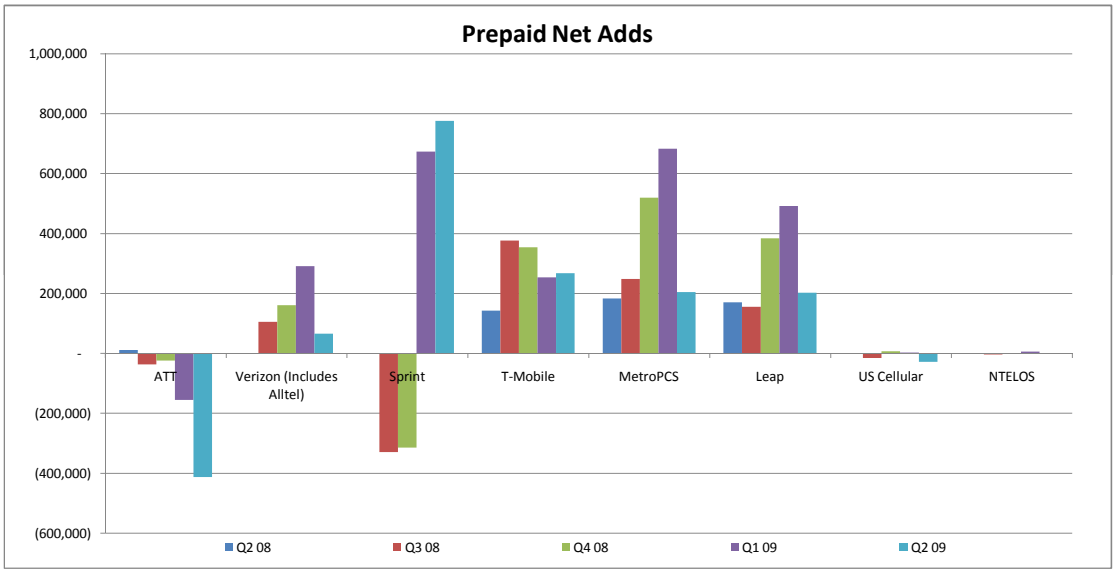
Exhibit 1

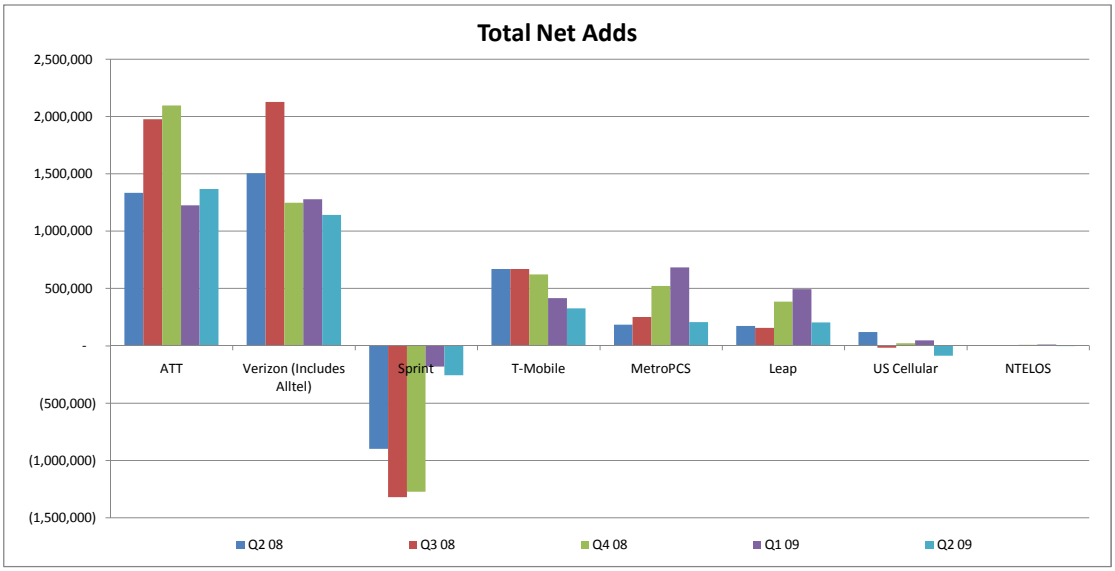
	Ending Customers					Gross Adds					Net Adds					
	Q2 09	Q1 09	Q4 08	Q3 08	Q2 08	Q2 09	Q1 09	Q4 08	Q3 08	Q2 08	Q2 09		Q1 09	Q4 08	Q3 08	Q2 08
ATT																
Total	79,600,000	78,232,000	77,009,000	74,871,000	72,882,000	4,900,000	4,800,000	5,740,000	5,700,000	4,900,000	1,368,000	*	1,223,000	2,095,000	1,976,000	1,333,000
Post	62,096,000	60,957,000	60,098,000	58,735,000	57,043,000	3,200,000					1,153,000		875,000	1,342,000	1,693,000	894,000
Pre											(412,000)		(155,000)	(23,000)	(36,000)	12,000
Verizon (Includes Alltel)																
Total	87,694,000	86,552,000	85,304,000	83,177,000	68,681,000	4,723,000	5,065,000	4,263,000	4,264,000		1,142,000	*	1,277,000	1,248,000	2,127,000	1,503,000
Post											1,078,000		969,000	1,343,000	2,329,000	
Pre											67,000		292,000	162,000	106,000	
Sprint																
Total	48,826,000	49,083,000	49,265,000	50,538,000	51,859,000	N/A	2,377,000	1,917,000	2,025,000		(257,000)		(182,000)	(1,273,000)	(1,321,000)	(901,000)
Post	34,437,000	35,428,000	36,678,000	37,783,000	38,905,000						(991,000)		(1,250,000)	(1,105,000)	(1,100,000)	
Pre	5,048,000	4,271,000	3,597,000	3,911,000	4,240,000						777,000		674,000	(314,000)	(329,000)	
MVNO/Reseller	9,341,000	9,384,000	8,990,000	8,844,000	8,714,000						(43,000)		394,000	146,000	108,000	
T-Mobile																
Total	33,497,000	33,173,000	32,758,000	32,136,000	31,466,000	N/A	N/A	3,834,000	3,532,000		325,000		415,000	621,000	670,000	668,000
Post	27,022,000	26,966,000	26,806,000	26,539,000	26,246,000						57,000		160,000	266,000	293,000	525,000
Pre	6,475,000	6,207,000	5,952,000	5,597,000	5,220,000						268,000		255,000	355,000	377,000	143,000
MetroPCS																
Total	5,710,226	5,504,641	4,820,641	4,300,641	4,598,049	1,289,000	1,500,000	1,301,000	935,000	793,000	205,585		684,000	520,000	249,000	184,000
Post																
Pre																
Leap																
Total	4,540,180	4,337,180	3,844,180	3,459,180	3,305,251	790,933	890,000	801,000	594,000	542,000	203,000		493,000	385,000	156,000	171,000
Post																
Pre																
US Cellular																
Total	6,155,000	6,243,000	6,196,000	6,176,000	6,194,000	317,000	404,000	395,000	367,000		(88,000)	*	47,000	20,000	(18,000)	119,000
Post	5,711,000	5,770,000	5,707,000	5,674,000	5,677,000	286,000	366,000	352,000	325,000	318,000	(32,000)	**	60,000	41,000	12,000	33,000
Pre											(27,000)	**	3,000	8,000	(15,000)	1,000
NTELOS																
Total	442,089	444,475	435,008	427,028	425,880	37,944	50,426	48,964	41,322	36,599	(2,386)		9,467	7,980	1,148	4,615
Post	312,766	314,270	311,009	303,577	298,461	17,783	23,205	26,076	23,595	18,659	(2,058)		2,416	6,671	4,390	4,171
Pre	129,323	130,205	123,999	123,451	127,419	2,161	27,221	22,888	17,727	17,900	(328)		7,051	1,309	(3,242)	444

*** Total will not tie because of MVNO customers**

**** Retail Postpay only**


Postpaid Net Adds
3,000,000
2,500,000
2,000,000
1,500,000
1,000,000
500,000
-
(500,000)
(1,000,000)
(1,500,000)
ATT
Verizon (Includes Alltel)
Sprint
T-Mobile
US Cellular
NTELOS
Q2 08
Q3 08
Q4 08
Q1 09
Q2 09


Prepaid Net Adds
1,000,000
800,000
600,000
400,000
200,000
-
(200,000)
(400,000)
(600,000)
ATT
Verizon (Includes Alltel)
Sprint
T-Mobile
MetroPCS
Leap
US Cellular
NTELOS
Q2 08
Q3 08
Q4 08
Q1 09
Q2 09


Total Net Adds
2,500,000
2,000,000
1,500,000
1,000,000
500,000
-
(500,000)
(1,000,000)
(1,500,000)
ATT
Verizon (Includes Alltel)
Sprint
T-Mobile
MetroPCS
Leap
US Cellular
NTELOS
Q2 08
Q3 08
Q4 08
Q1 09
Q2 09

CERTIFICATE OF SERVICE

I, Linda J. Evans, hereby certify that on this 30th day of September, 2009, copies of the foregoing COMMENTS OF CELLULAR SOUTH, INC. were sent by e-mail, in pdf format, to the following:

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