Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Wireless Telecommunications Bureau Seeks	)	WT Docket No. 13-135
Comment on the State of Mobile Wireless	)	
Competition	)	

To: The Commission

COMMENTS OF

RURAL TELECOMMUNICATIONS GROUP, INC.

RURAL TELECOMMUNICATIONS GROUP, INC.

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SUMMARY

The Rural Telecommunications Group, Inc. ("RTG") submits these comments to assist the Federal Communications Commission ("FCC" or "Commission") in analyzing the degree of competition that exists in the mobile wireless industry today. Specifically, RTG suggests four policy changes that, if adopted, could significantly increase the level of competition in the sector. RTG's comments cover: (1) spectrum caps in general as well as spectrum aggregation limits as part of future FCC spectrum auctions; (2) device interoperability; (3) barriers to a carrier procuring devices; and (4) barriers to a carrier obtaining commercially reasonable data roaming rates.

RTG's recommendations for improving competition in the mobile wireless sector are quite simple. First, in order to ensure that no fewer than four (healthy) competitors are able to prosper in any particular market, RTG asks the FCC to prohibit any carrier from holding more than 25% of suitable and available spectrum or more than 40% of the suitable and available spectrum below 1 GHz. Because spectrum is a finite resource, RTG also proposes that each new FCC spectrum auction, especially those involving prime, low-band frequencies like the 600 MHz Band, include reasonable spectrum caps that prevent incumbent players from amassing excessive amounts of low-band spectrum and foreclosing existing and new market entrants from accessing newly released low-band licenses. Second, with respect to mobile device interoperability, the Commission should mandate that all mobile devices be fully interoperable within any band with paired spectrum, including the 700 MHz Band and the future 600 MHz Band. Third, because American consumers generally desire to combine their mobile device of choice with their service provider of choice, the FCC should impose rules that prevent mobile device manufacturers from limiting the sale of products and devices to any person (or through any serving carrier) based purely on the geographic location of that person or the serving carrier. Fourth and finally, after

recognizing that access to data roaming is only half the battle faced by small and rural carriers, the Commission must take definitive steps to define a commercially unreasonable data roaming rate. Based on years of industry observation, RTG proposes that any wholesale data roaming rate that is higher than a MVNO, reseller or retail rate offered by the same serving carriers should be labeled as *de facto* commercially unreasonable.

By adopting any of these policy recommendations, the Commission can increase the number of competitors in a market, or level the competitive playing field so that large firms are not always given systemic advantages, or both. An increase in competition, generally speaking, leads to more choices for consumers, which in turn routinely leads to lower prices, better customer service, and a diverse and sophisticated selection of product and service offerings. All of these things are important for every American, but they are especially important for those Americans who live, work or travel in rural markets where there is already a diminished level of choice.

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The Rural Telecommunications Group, Inc. ("RTG")[1] files these comments in response to the Federal Communications Commission's ("FCC" or "Commission") public notice ("*Public Notice*") requesting data and public input that will help the FCC draft the *Seventeenth Report* on mobile competition.[2] Upon the release of the *Sixteenth Report*, Acting FCC Chairwoman Mignon L. Clyburn noted that since the release of the most recent competition report, the number of Americans with access to two or fewer mobile providers had *increased* by over 600,000 and that the number of Americans still without any type of mobile service option topped 400,000.[3]

[1] RTG is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. 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. Each of RTG's member companies serves fewer than 100,000 subscribers.

[2] *In the Matter of Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, WT Docket No. 13-135, DA 13-1139 (released May 17, 2013) ("*Public Notice*").

[3] *In the Matter of 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*, Sixteenth Report, Statement of Commissioner Mignon L. Clyburn, WT Docket No. 11-186 (Terminated), FCC 13-34 (released March 21, 2013) (*Sixteenth Report*).

The central purpose of the *Public Notice* is to determine, as accurately as possible, the level of competition in the U.S. mobile industry. When millions of Americans have either no access to the specific service being studied or have a choice of only two or fewer providers (typically the dominant "Twin Bells" of Verizon Wireless and AT&T), this is direct evidence that competition itself is severely threatened. The numbers speak for themselves.

Regardless of the level of technological sophistication offered by today's mobile devices, the capacity of the underlying networks supporting those mobile devices, or the creativity and efficiency of the software and "apps" utilized by those mobile devices and networks, it is all meaningless to everyday Americans if at the end of the day those mobile wireless services are either completely unavailable due to lack of access in a particular rural market, or the mobile wireless services are offered by so few commercial providers in a given market as to make the term "competition" inapplicable on its face.

Rather than focus on raw data on coverage and service provider density, RTG uses these comments to discuss four specific input and downstream segments that have a disproportionate impact on domestic mobile wireless competition, especially for rural Americans. Specifically, RTG will explain how competition has consistently eroded in the domestic mobile wireless marketplace due to: (1) an over-concentration of spectrum in the hands of certain providers; (2) a lack of mobile device interoperability; (3) the inability of small and rural service providers to procure certain, highly-desirous mobile devices; and (4) the continued inability of small and rural mobile carriers to secure commercially reasonable data roaming rates in a timely manner. By formulating policies that address each of these input segments, the Commission can make tremendous strides (in a relatively short period of time) to foster higher levels of marketplace competition.

I. INSTITUTING A PERCENTAGE-BASED SPECTRUM CAP ON THE TOTAL AMOUNT OF SPECTRUM ONE CARRIER CAN HOLD IN A GIVEN MARKET WILL ALLOW MORE CARRIERS TO ENTER THE MARKETPLACE AND REMAIN COMPETITIVE FOR THE LONG TERM.

Spectrum is a finite resource, and there is a general consensus among industry players, regulators and consumers that more spectrum needs to be re-purposed and dedicated solely to support commercial mobile wireless services. However, even the prospects of new FCC spectrum auctions do not change the fact that: (1) the current pool of licensed spectrum designated only for commercial mobile wireless use is inadequate to support the forecasted growth of broadband applications and is not distributed in a manner that supports a competitive marketplace that encourages an *increase* in market players and a correlating *decrease* in the retail rates consumers pay; and (2) the only way to maintain some degree of equitable spectrum distribution both now and in the future is for the FCC to institute a hard, percentage-based spectrum cap on currently held licenses as well as a cap on how much newly licensed spectrum an individual entity can win in FCC auctions, especially in low-frequency bands like the 600 Megahertz ("MHz") Band.

A. Promotion of Marketplace Competition Necessitates the Adoption of a Bright Line, Percentage-Based, Spectrum Cap Applicable to All Carriers

RTG has been a long-time proponent of Commission rules that impose sensible limits on the amount of licensed spectrum commercial mobile wireless carriers can hold in any given market.[4] Both the Commission[5] and the U.S. Department of Justice ("DOJ")[6] have recognized

[4] *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 12-269 (filed November 28, 2012) ("*Spectrum Cap Comments*") at pp. 1-2.

[5] *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, WT Docket No. 11-65, DA 11-1955 (released November 29, 2011) at ¶ 3; *see* http://transition.fcc.gov/transaction/DA-11-1955.pdf.

the competitive harms that result from a degree of spectrum concentration that would result in less than four nationwide carriers. In order to foster competition between no fewer than four separate carriers in each market, the FCC should prohibit any carrier from holding more than 25% of suitable and available spectrum or more than 40% of the suitable and available spectrum below 1 Gigahertz ("GHz"). "Suitable and available spectrum" should include at this time the following spectrum:

- Cellular (824-849 MHz, 869-894 MHz) (50 megahertz total).
- Personal Communications Service (PCS) (1850-1915 MHz, 1930-1995 MHz) (130 megahertz total).
- Specialized Mobile Radio (SMR) (817-824 MHz, 862-869 MHz) (14 megahertz total).
- 700 MHz Band (698-757 MHz, 776-787 MHz) (70 megahertz total).
- Advanced Wireless Services-1 (AWS-1) (1710-1755 MHz, 2110-2155 MHz) (90 megahertz total).
- Broadband Radio Service (BRS) (2618-2673.5 MHz) (55.5 megahertz total).
- Wireless Communications Service (WCS) (2305-2315 MHz, 2350-2360 MHz) (20 megahertz total).

The following bands should be considered suitable and available in the near future:

- AWS-4 (2000-2020 MHz, 2180-2200 MHz) (40 megahertz total).
- AWS-2 (1915-1920 MHz, 1995-2000 MHz) (10 megahertz total).
- AWS-3 (2155-2180 MHz) (at least 35 megahertz available).
- DTV Channels 14-51 (470-698 MHz) (up to 228 megahertz available, depending on outcome of the incentive auction).

The Commission should adopt a process that will allow it to add newly allocated spectrum bands to its list of suitable and available spectrum on a timely basis. Such spectrum should be announced as suitable and available when long-form applications are due for the auction of such spectrum. However, as discussed in greater detail below, the extent to which individual carriers can participate in these future FCC auctions, including the 600 MHz Band "forward" auction,

[6] United States of America, Department of Justice, Antitrust Division, et. al. vs. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG, Amended Complaint, Civil Action No. 11-01560 (ESH) at ¶ 36; *see* http://www.justice.gov/atr/cases/f275100/275128.pdf.

must be limited based on a particular carrier's inventory of low-band and high-band spectrum just prior to the beginning of the auction.

Under RTG's proposal, once new spectrum aggregation rules are promulgated, licensees exceeding the 25% or 40% cap will have 18 months to divest themselves of excess spectrum, or alternatively, keep the excess spectrum on a "grandfathered" basis provided certain conditions are adhered to.[7] The objective of a two-tier, percentage-based spectrum cap is simple: it will ensure that American consumers in all markets benefit from the competitive presence of at least four, spectrum-healthy, facilities-based mobile wireless carriers.

B. The Commission Should Institute Limits on How Much Spectrum Carriers Can Win at FCC Auction for Newly Licensed Spectrum.

The Commission noted in the *Sixteenth Report* that Verizon Wireless, AT&T, T-Mobile, Sprint and Clearwire "hold close to 80 percent of all spectrum, measured on a MHz-POPs basis, that is potentially usable for the provision of mobile wireless services."[8] Additionally, according to a recent DOJ filing, the Twin Bells of AT&T and Verizon Wireless already control no less than 78% of the suitable and available spectrum below 1 GHz in the United States.[9] But perhaps most importantly, DOJ has concluded that "it is important that the Commission devise policies that address the allocation of low-frequency spectrum" and that these new policies, particularly when applied to the "auction of new low-frequency spectrum, can potentially improve the

[7] *Spectrum Cap Comments* at p. i.

[8] *Sixteenth Report* at ¶ 118.

[9] *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Ex Parte Submission of the United States Department of Justice, WT Docket No. 12-269 (filed April 11, 2013) ("*DOJ Ex Parte*") at p. 14.

competitive landscape by preventing the leading carriers from foreclosing their rivals from access to low-frequency spectrum."[10]

The 600 MHz Band forward auction, tentatively planned for late 2014, represents the last great swath of sub 1 GHz spectrum that can be harnessed by the country for commercial mobile wireless use. Former FCC Chairman Julius Genachowski has called the 600 MHz Band "highly desirable"[11] for mobile broadband while carriers like Verizon Wireless have long acknowledged the operational benefits of low band frequencies (including the 600 MHz Band) over higher frequency bands.[12] DOJ correctly determined that "spectrum policies that promote competition and enhance the potential for entry and expansion in the wireless market play a vital role in protecting, and indeed enhancing, the competitive dynamic to the benefit of American consumers."[13] But a straight-up forward auction of 600 MHz Band licenses, without certain limits imposed on legacy carriers, "may not lead to market outcomes that would ordinarily maximize consumer welfare due to the presence of strong…wireless incumbents."[14] The rules for the forward auction of 600 MHz Band spectrum should be a logical extension of those concepts previously introduced by RTG: namely, all legacy carriers, whether AT&T or Verizon or any other carrier large or small, should be precluded from controlling more than 40% of all suitable and available low-band spectrum (below 1 GHz) in any given market. The debate over

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[10] *Id.*

[11] "Winning the Global Bandwidth Race: Opportunities and Challenges for Mobile Broadband," Prepared Remarks of FCC Chairman Julius Genachowski, University of Pennsylvania – Wharton, Philadelphia, PA (October 4, 2012).

[12] Presentation by Tony Melone, Senior V.P. and CTO of Verizon Wireless, Wells Fargo Securities Technology, Media and Telecom Conference (November 10, 2010) at pp. 12-13; http://www22.verizon.com/investor/DocServlet?doc=event_1005_colpre.pdf.

[13] *DOJ Ex Parte* at p. 8.

[14] *Id.* at p. 10.

whether to institute some type of spectrum cap or bidding rules in the forward auction of 600 MHz Band spectrum is not about the Twin Bells versus the other two national carriers (Sprint and T-Mobile), but rather, it is about whether *any* individual carrier should be restricted from amassing excessive amounts of new spectrum that is universally recognized as being highly conducive for mobile broadband operations.

II. MANDATING DEVICE INTEROPERABILITY THROUGHOUT ALL OF THE 700 MHZ BAND AND THROUGHOUT ALL NEW SPECTRUM BANDS AUCTIONED BY THE FCC IN THE FUTURE WILL REDUCE EQUIPMENT PRICES FOR ALL MARKET PLAYERS AND ALLOW CONSUMERS GREATER FLEXIBILITY TO PORT DEVICES BETWEEN CARRIERS.

RTG concurs with Acting Chairwoman Clyburn that the "current lack of interoperability, in the lower 700 MHz band, is impeding the deployment of competitive options for consumers."[15] The decision by the Commission to extend the interim construction benchmark dates for Lower 700 MHz Band A Block licensees[16] and B Block licensees[17] is a direct result of the inability of 700 MHz licensees to satisfy their interim construction benchmark deadlines due to the Lower 700 MHz Band ecosystem allowing the creation and development of mobile devices with LTE band classes that purposefully exclude certain license blocks. The creation of sub-set band classes is a recent phenomenon – it never materialized in the Cellular, PCS and AWS-1 Bands -- but such classes have already hindered the ability of small and rural carriers to

[15] *In the Matter of Expanding Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Statement by Commissioner Mignon L. Clyburn, GN Docket No. 12-268, FCC 12-118 (released October 2, 2012).

[16] *In the Matter of Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver and Extension of Time to Construct 700 MHz A and B Block Licenses*, Public Notice, "Wireless Telecommunications Bureau Extends 700 MHz A Block Licensee Interim Construction Benchmark Deadline Until December 13, 2013," WT Docket No. 12-332, DA 13-210 (released February 13, 2013).

[17] *In the Matter of Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver and Extension of Time to Construct 700 MHz A and B Block Licenses*, Public Notice, "Wireless Telecommunications Bureau Extends 700 MHz B Block Licensee Interim Construction Benchmark Deadline Until December 13, 2013," WT Docket No. 12-332, DA 13-680 (released April 10, 2013).

acquire mobile devices. As will be explained in greater detail in the next section regarding device exclusivity, the mobile device subsector is plagued by a troublesome axiom: vendors who design, test and manufacture mobile wireless devices will only produce a specific type of mobile device if there is sufficient demand by mobile carriers, and furthermore, that critical mass of demand for broadly inclusive band classes such as LTE Band Class 12 is thwarted when "exclusive" band classes such as LTE Band Class 17 favored by AT&T and LTE Band Class 13 favored by Verizon Wireless are developed and those carriers with 700 MHz Band licenses outside of those band classes are unable to stimulate enough demand to warrant mobile device manufacturers to actually produce devices using the more broadly inclusive band classes.

Correcting the industry-wide problem of a palpable lack of interoperability for LTE devices involves a simple, two-part solution. First, the Commission must issue an order requiring that all mobile devices manufactured for operation in the Lower 700 MHz Band be fully interoperable across all paired spectrum within that band. The Commission's notice of proposed rulemaking on mobile device interoperability in the 700 MHz Band has been open for over a year,[18] and the device procurement difficulty experienced by small and rural carriers has snowballed into delayed LTE network launches and fewer retail choices for consumers, all of which is harmful to effective competition. The second part of the solution to help reduce the "Tower of Babel" atmosphere brought upon by multiple band classes covering multiple frequencies is to have the Commission mandate that all devices that will be operational in *any* new commercial mobile wireless spectrum auctioned in the future, including the 600 MHz Band, be fully interoperable across the entire licensed band. Commission policies should be designed to benefit America's paying consumers, and rules mandating universal mobile device

[18] *In the Matter of Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69, FCC 12-31 (released March 21, 2012).

interoperability within a particular spectrum band do just that by allowing a consumer to more easily port a device away from one service provider to another. When the element of device interoperability is removed from a consumer's equation on what device to choose, he or she can then focus on the truly important distinguishing elements such as price, customer service, and local coverage. If a carrier, whether large (like AT&T and Verizon Wireless) or small (like RTG members) is unable to provide the services that truly matter to a paying subscriber, that customer should have the freedom to bring his or her mobile device to a competing carrier and not feel like a hostage solely because that recently purchased (and expensive) smartphone or tablet does not work on adjacent frequencies. RTG is confident that once intra-band device interoperability becomes common place, one barrier to entry for carriers will be erased and one barrier to migration for consumers will also disappear.

III. DETRIMENTAL EXCLUSIVITY AGREEMENTS BETWEEN MOBILE CARRIERS AND MOBILE DEVICE VENDORS HAVE BEEN REPLACED BY VOLUME ORDER LIMITS IMPOSED BY MOBILE DEVICE VENDORS WHICH PREVENT SMALL AND RURAL MOBILE CARRIERS FROM OFFERING HIGHLY-SOUGHT MOBILE DEVICES.

While traditional factors such as price, local coverage and customer service are still guiding factors that influence a particular consumer's choice of mobile wireless carrier, they are by no means the only influences. Americans today, especially younger Americans who are more likely to switch between providers,[19] are also heavily influenced by whether the prospective new carrier of choice offers specific mobile devices operating specific mobile platforms. The prickly matter of device exclusivity agreements between large carriers (like AT&T) and mobile device

[19] "Mobile Trends: Consumer Views of Mobile Shopping and Mobile Service Providers," White Paper by Oracle, released April 2011); http://www.oracle.com/us/industries/communications/oracle-atg-mobile-wp-345770.pdf ("Younger consumers tend to jump around more frequently from one mobile provider to the next. 30 percent of respondents ages 18 to 34 have purchased mobile services from two or more providers in the past five years. By comparison, 22 percent of those ages 35 to 54 and 19 percent of those ages 55 and older have used multiple providers. 20 percent of consumers ages 18 to 34 said they are likely to leave their current mobile provider in the next 12 months.") at p. 10.

manufacturers (like Apple) has not disappeared from the industry; it has merely moved downstream to impact the smallest of the nation's mobile carriers who are often located in rural markets serving rural consumers.

When Apple ceased its exclusive distribution agreement with AT&T in 2011 and started selling the iPhone through Verizon Wireless (and later Sprint, T-Mobile and other large and mid-size carriers), it revealed an interesting insight into the relationship between consumer choice and specific mobile devices/platforms. For example, in a survey conducted by ChangeWave Research, in the final months of the AT&T/Apple exclusivity period in 2011, one-in-four (26%) AT&T iPhone subscribers surveyed responded that they would switch specifically to Verizon Wireless once it began selling the iPhone.[20] By point of comparison, only 15% of all AT&T subscribers, regardless of the device they were using, were willing to leave AT&T for another service provider. This means that all other factors being equal, a significant number of Apple iPhone consumers wanted to keep using the iPhone but were unable to go to another carrier until AT&T lost its rights to exclusivity. A more recent survey by ChangeWave Research noted that 54% of future smartphone buyers in America "are committed to buying the iPhone."[21]

While these surveys clearly show that Americans have an intense love affair with the Apple iPhone, American mobile wireless consumers desire equally the ability to pair their "device of choice" with their "service provider of choice." For example, this April, a news report surfaced showing that at least 250,000 consumers pre-registered with T-Mobile in order to secure the Apple iPhone 5, despite the fact that by this time well over a dozen carriers in the

[20] "New Survey Shows Verizon iPhone Will Have Major Impact on U.S. Wireless Service Providers," Paul Carton, Vice President of Research, ChangeWave Research, (January 13, 2011); http://investorplace.com/2011/01/impact-verizon-apple-iphone-wireless-service-providers/.

[21] "ChangeWave Research Points to Massive Smartphone Buying Wave," MobileMarketingWatch, (January 12, 2012); http://www.mobilemarketingwatch.com/changewave-research-points-to-massive-smartphone-buying-wave-20347/.

United States had distribution and sales agreements with Apple to sell the iPhone.[22] According to the news report, which relied upon an internal T-Mobile communication, 80 percent of those pre-registering to acquire a new iPhone were already T-Mobile customers. This means that hundreds of thousands of T-Mobile subscribers wanted to obtain an iPhone, but were willing to wait in order to use it with T-Mobile service. The news report also reported that 50,000 of those pre-register requests were from subscribers with service on a competitor of T-Mobile's. This means that most, if not all, of those 50,000 consumers could already purchase an Apple iPhone on a host of other service providers, but they wanted to use it with T-Mobile as the underlying carrier.

Accordingly, there is substantial evidence demonstrating that American consumers, and rationally so, want the ability to purchase the mobile device of their choosing but also have a choice in the underlying service provider. Unfortunately, many rural mobile carriers in the United States today are not only unable to offer the Apple iPhone and other recently launched, popular devices, but those very same carriers are sometimes the only mobile service provider with actual coverage in remote, rural locations. This means two, equally disturbing, things: (1) rural carriers, despite any competitive advantages they may have when it comes to price, local coverage and customers service, are skipped over by local consumers because they happen to not sell a specific product and this severely impacts their ability to compete on a level playing field; and (2) rural consumers are harmed because without the local, rural carrier's ability to offer a specific device, all of the associated applications and services are completely and utterly out-of-reach. In other words, certain rural consumers throughout the U.S. are treated differently and denied devices and services solely because of where they live. The demand by local consumers

[22] "Leaked Memo Shows 250K Have Pre-Registered for T-Mobile's Apple iPhone 5," PhoneArena (April 9, 2013); http://www.phonearena.com/news/Leaked-memo-shows-250K-have-pre-registered-for-T-Mobiles-Apple-iPhone-5_id41711.

and rural carriers is there today. Latent demand has always been there. However, impeding the sale in rural America of devices like the iPhone is the reluctance of the vendors to sell those devices in quantities that are not as large (and never will be as large) as those commandeered by the country's largest mobile wireless carriers. This anti-competitive situation is the corollary to the band class and device interoperability situation discussed earlier: there is a small segment of carriers who are denied access to equipment and devices, but often times they are the only carriers available to rural consumers residing in those markets. By mandating device interoperability and preventing device vendors from discriminating against consumers just because of where they live, the Commission can make tremendous strides in removing mobile devices as an input segment that unnecessarily forces consumers to choose between fewer carriers then they would otherwise choose from.

IV. ACCESS TO DATA ROAMING AGREEMENTS DOES NOT ALWAYS GUARANTEE THAT CARRIERS ENJOY COMMERCIALLY REASONABLE DATA ROAMING RATES.

Rural mobile wireless carriers are disproportionately more reliant upon roaming compared to nationwide carriers and even regional carriers. This is so because after their appearance over a quarter-century ago, and after swift adoption by several generations of Americans, "cell phones" are expected to work just like home from coast-to-coast and everywhere in between. While nationwide carriers like the Twin Bells with deep spectrum resources and several decades of a head-start in building out networks rely less on roaming to fill in gaps nationwide, small and rural carriers with more modest spectrum holdings in smaller geographic markets and with less economies of scale and scope need roaming access to the mobile networks of other carriers in order to offer to their current and prospective customers a compelling nationwide footprint. For years larger carriers could strong-arm smaller and rural carriers in roaming negotiations or just deny access to data roaming altogether. Thankfully, in

2011, the Commission adopted the *Second Report and Order*, which mandated that serving carriers extend data roaming to requesting carriers on commercially reasonable terms and conditions.[23] While access to data roaming (at least while using 2G and 3G networks – the jury is still out for 4G LTE networks) seems to no longer be a problem, the wholesale prices that are frequently charged to smaller and rural operators to access data roaming services are far from commercially reasonable. Retail data roaming prices, whether domestic or even international, are fully transparent. Conversely, inter-carrier wholesale data roaming rates are almost universally confidential in nature. Nonetheless, there is a widespread existence of inter-carrier, wholesale data roaming rates which are *higher* than the rates paid by retail consumers and even higher than the rates paid by resellers or MVNOs for those very same network access services. Given the fact that rural carriers need data roaming access nationwide in order to compete effectively, and wholesale data roaming costs are eventually passed on to consumers, it makes it relatively impossible for rural carriers to actually compete when a rural consumer can simply walk across the street and purchase those same services from the roaming partner for less money. This does not mean that the consumer is getting a good deal or making an honest apples-to-apples comparison. Rather, the consumer is being forced to pay whatever the serving carrier is demanding because any competing carrier dependent upon roaming is almost always paying more for roaming access, and by default, forced to offer higher rate plans for all existing and potential consumers. Mandating access to data roaming was only the first half of the battle to create a level playing field in the realm of roaming access. The second and equally important step is to make sure that all carriers across the country, large and small, offer commercially reasonable wholesale data roaming rates. A very simple litmus test to determine whether a rate

[23] *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 5-265, FCC 11-52 (released April 7, 2011).

is commercially reasonable is to ask whether the serving carrier's own customers pay lower retail rates for those same services. If the answer is yes, then the higher wholesale rates offered to roaming partners are *de facto* commercially unreasonable. RTG supports industry initiatives and FCC actions that would set a bright line limit on what constitutes commercially reasonable wholesale data roaming rates, and in all instances those rates should never be higher than the retail rates paid by consumers nor the wholesale rates paid by resellers and MVNOs.

V. CONCLUSION

With just a few modest changes to a handful of policies, the Commission can drastically reduce barriers to competition that for the last few years have hindered the full potential of the mobile wireless industry. Rural consumers and the rural carriers that serve them face a gauntlet of obstacles that tilt the competitive playing field against them. Whether it is the Twin Bells hoarding disproportionate amounts of spectrum or mobile device vendors limiting access to interoperable or highly-coveted devices or crucial roaming partners denying access at commercially reasonable roaming rates (or in many cases, all of the above) rural carriers are constantly behind the proverbial eight ball. Ultimately, it is rural American consumers, many without a meaningful choice of service providers, devices and competitive prices, who suffer.

RTG strongly supports the Commission's meaningful, comprehensive examination of industry competition. Only by looking under the hood with a trained eye can it properly diagnose what is working properly and what needs fixing. By adopting the four relatively

modest proposals detailed above, the Commission can watch the collective mobile wireless industry accelerate to success through vigorous competition, and American consumers will reap the benefits.

Respectfully submitted,

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