

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

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993	)	WT Docket No. 04-111
	)	
Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services	)	
	)	
To: The Commission		

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS  
GROUP, INC.**

The Rural Telecommunications Group, Inc. (“RTG”),<sup>1</sup> by its attorneys, hereby submits reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Inquiry* (“*Notice*”) soliciting data and information in order to evaluate the state of competition among providers of Commercial Mobile Radio Service (“CMRS”) for its *Ninth Annual Report and Analysis of Competitive*

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<sup>1</sup> RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. 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.

*Market Conditions with Respect to Commercial Mobile Services (“Ninth Report”).*<sup>2</sup>

Specifically, RTG supports comments and data submitted by the National Telecommunications Cooperative Association, Inc. (“NTCA”), the law firm of Blooston, Mordkofsky, Dickens, Duffy and Prendergast (“Blooston”) and the Rural Cellular Association (“RCA”) stating that the ability of rural CMRS carriers to compete effectively with nationwide and regional carriers is threatened by: (1) the burden that unfunded regulatory mandates place on rural carriers;<sup>3</sup> (2) the inability of small carriers to negotiate acceptable roaming rates with nationwide and regional carriers;<sup>4</sup> and (3) the lack of transferable handsets and customer equipment.<sup>5</sup>

**I. The Commission Should Use Rural Service Areas to Define “Rural Areas” in its *Ninth Report*.**

As an initial matter, the Commission’s *Notice* seeks comment on how it should define “rural areas” for the purposes of its *Ninth Report*.<sup>6</sup> In comments filed in the Commission’s *Notice of Proposed Rulemaking* seeking input on the effectiveness of the FCC’s current regulatory tools to help facilitate the delivery of spectrum-based services to rural areas,<sup>7</sup> RTG urged the Commission to “designate any county with a population

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<sup>2</sup> *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Notice of Inquiry, WT Docket No. 04-111 (*rel.* March 24, 2004).

<sup>3</sup> Comments of the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (“Blooston Comments”) at 3; Comments of the Rural Cellular Association (“RCA Comments”) at 5.

<sup>4</sup> Blooston Comments at 5.

<sup>5</sup> Comments of the National Telecommunications Cooperative Association, Inc. (“NTCA Comments”) at 5; Blooston Comments at 4.

<sup>6</sup> *Notice* at ¶12.

<sup>7</sup> *Facilitating the Provision of Spectrum Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Notice of Proposed Rulemaking, WT Docket No, 02-381 (October 6, 2003)(“*Rural NPRM*”).

density of 100 persons or fewer per square mile as a ‘rural area.’”<sup>8</sup> This proposed definition of a “rural area” is supported in comments filed in this proceeding by the Cellular Telecommunications & Internet Association (“CTIA”).<sup>9</sup>

While RTG still strongly believes that population density is the best means by which the Commission should define a “rural area,” it echoes Blooston’s notion that for the sake of this proceeding only, the Commission should use Rural Service Areas (“RSAs”) to differentiate between rural and urban markets.<sup>10</sup> Specifically, RTG agrees that “when choosing among the various market designations [currently] used by the Commission for CMRS (which are not based on population density). . .RSAs are an appropriate geographic model for the FCC to use in its *Ninth Report*.”<sup>11</sup> RTG echoes Blooston’s assertion that, because RSAs are, by their very nature, rural areas that do not include major or medium-sized urban centers, the use of RSAs to define rural areas in this proceeding is appropriate.<sup>12</sup>

## **II. The FCC Should Adopt Policies To Ensure the Continued Provision of CMRS Services to Rural Communities.**

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<sup>8</sup> Joint Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and RTG, *Rural NPRM* (“OPASTCO and RTG Comments”), at 3.

<sup>9</sup> Comments of the Cellular Telecommunications & Internet Association (“CTIA Comments”) at 11 (“CTIA believes that the Commission should adopt a flexible definition of ‘rural areas’ . . . one that includes areas that either (1) fall into a Rural Service Area (“RSA”), or (2) are in counties with a population density of 100 persons or fewer per square mile.”).

<sup>10</sup> Blooston Comments at 7. RTG still urges the Commission to adopt a definition of “rural area” based on counties with population densities of 100 people or less per square mile. See OPASTCO and RTG Comments at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

In its *Notice*, the Commission seeks comment on whether the FCC’s market-oriented policies have provided benefits to consumers, and whether such policies have had the same effect in rural and urban areas.<sup>13</sup> The Commission also seeks comment on barriers to entry in the mobile telecommunications market and asks whether barriers to entry are different between rural and urban markets.<sup>14</sup> RTG agrees with commenters in this proceeding urging the Commission to adopt policies to: (1) reduce the impact that unfunded government mandates have on rural carriers;<sup>15</sup> (2) ensure fair and equitable roaming agreements between large and small carriers;<sup>16</sup> and (3) ensure that rural carriers have adequate access to customer equipment and handsets.<sup>17</sup>

*A. Rural CMRS Operators Should Be Allowed To Invest Resources in Infrastructure and Spectrum, Rather than in Compliance with Unfunded Government Mandates*

In its comments, CTIA states that a “threat [to deployment of service] in rural markets is the disproportional impact of government mandates that must be recovered over a smaller customer base and typically a larger service territory.”<sup>18</sup> Blooston adds that “one way the Commission can help to ensure rural carrier participation [in the deployment of rural services] is by adopting policies that help to reduce the disproportionate impact that unfunded regulatory mandates such as E911, CALEA and [Local Number Portability] have on rural carriers.”<sup>19</sup> RTG agrees that the

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<sup>13</sup> *Notice* at ¶4.

<sup>14</sup> *Notice* at ¶24.

<sup>15</sup> Blooston Comments at 3; RCA Comments at 5; CTIA Comments at 9.

<sup>16</sup> Blooston Comments at 5.

<sup>17</sup> NTCA Comments at 5; Blooston Comments at 4.

<sup>18</sup> CTIA Comments at 9.

<sup>19</sup> Blooston Comments at 3.

implementation of such mandates, while necessary to ensure public safety in rural areas, continues to deplete the already limited resources of rural CMRS carriers.

While the FCC is not in a position to appropriate money to rural CMRS carriers to assist in the deployment of mandated services in rural areas, the FCC is in a position to advocate for such funding by Congress. The FCC is called on by Congress time and time again to make recommendations and lend its expert agency advice to Members of Congress. The FCC must let Congress know of the need to fund such mandates for rural carriers whose subscribership is much more limited (and therefore insufficient to fund implementation of these mandates) than their urban counterparts.

*B. The FCC Should Ensure that Rural CMRS Carriers are Afforded Fair, Non-Discriminatory Roaming Rates*

In comments filed in this proceeding, Blooston states that “in order to remain competitive, small carriers are finding it increasingly difficult to negotiate acceptable roaming rates from regional and national carriers.”<sup>20</sup> Blooston cites as an example the plight of a rural company that is being charged by a mid-sized carrier more than three times the roaming rate that same mid-sized carrier charges other nationwide carriers to provide identical roaming services on the same network.<sup>21</sup> Many of RTG’s members face similar discriminatory roaming practices, which, as Blooston points out, forces rural carriers to “either subsidize that [roaming] rate down to a competitive level (putting its bottom line at risk), or to offer unattractive roaming rates to its customers.”<sup>22</sup> The FCC currently has an ongoing proceeding on roaming issues that has languished for almost six

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<sup>20</sup> Blooston Comments at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

years. This proceeding must be completed so that rural carriers may finally get much-needed assistance in combating these unfair and discriminatory roaming practices.<sup>23</sup>

*C. The FCC Should Ensure that Rural CMRS Carriers Have Adequate Access to Equipment and Handsets*

RTG supports comments filed in this proceeding urging the Commission to take steps to prohibit the practice of locking of customer handsets and to ensure that rural carriers have adequate access to the latest handset technology.<sup>24</sup> As the Commission was recently made aware in a letter to FCC Chairman Michael Powell from the Consumer's Union, technology currently exists which would allow consumers to take their existing handset to a different carrier utilizing the same or similar technology.<sup>25</sup> Many carriers stymie such a practice by programming handsets so that they may only be activated and operated on their existing networks, thus preventing consumers from taking handsets with them should they transfer service to a competitor.<sup>26</sup>

Accordingly, as NTCA states in its comments, "by locking a handset...wireless providers require those customers who wish to take service with a different provider to invest in a brand new handset, [which requires the carrier] to absorb that cost."<sup>27</sup> For rural CMRS carriers--carriers with smaller customer bases and much

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<sup>23</sup> *Public Notice, Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular Broadband, PCS and Covered SMR Networks*, CC Docket No. 94-95, DA 97-2558 (December 5, 1997).

<sup>24</sup> NTCA Comments at 5, Blooston Comments at 4.

<sup>25</sup> Letter to The Honorable Michael Powell from Chris Murray, Legislative Counsel to the Consumers Union, March 12, 2004 ("Consumers Union Letter").

<sup>26</sup> *Id.* RTG also agrees with the Consumers Union's assessment that "eliminating the practice of wireless handset locking will have a very positive impact on public health and the environment" because the need to "dispose of technology" will be significantly reduced. Consumers Union Letter at 2.

<sup>27</sup> NTCA Comments at 5

larger buildout costs than their urban counterparts—underwriting handset expenses significantly impacts the carrier’s bottom line, slowing further investment in infrastructure and the deployment of advanced services. Additionally, as RTG has previously pointed out, small and rural carriers simply lack the market power to obtain locked handsets from handset manufacturers and are often forced to obtain unlocked handsets from third party distributors.<sup>28</sup> The handset “lockdown” issue has adversely impacted almost every member of RTG and frustrated RTG members’ customers, who take unlocked phones subsidized by RTG members to major carriers when changing service, only to find that these same phones become locked and unusable when those same customers try to re-initiate their service with their rural carrier. This problem is exacerbated when a consumer, who desires to switch to a rural carrier for better wireless coverage and keeps their existing popular and new handset, is forced to purchase an inferior phone from a rural carrier because their previous carrier has locked the handset.

The handset “locking” issue is merely indicative of larger distribution problems between manufacturers and small and rural carriers. Simply put, most rural carriers lack market power to obtain newer, more popular handsets and find it more difficult to compete with the large national carriers on this uneven playing field.<sup>29</sup> RTG agrees with NTCA and Blooston’s sentiments that handset availability provides major challenges for rural and small carriers, and puts rural carriers at a competitive disadvantage with larger carriers.<sup>30</sup> RTG urges the Commission to act swiftly to remove

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<sup>28</sup> Letter to The Honorable Michael Powell from Caressa D. Bennet, RTG General Counsel, March 15, 2004 (“RTG Letter”).

<sup>29</sup> *Id.*; Blooston Comments at 4.

<sup>30</sup> NTCA Comments at 5, Blooston Comments at 4; Consumers Union Letter at 2; RTG Letter at 2.

this key barrier to competition and to enact rules to prohibit anti-competitive conduct on the part of equipment manufacturers and large, nationwide carriers.

### **III. Conclusion**

RTG strongly supports comments filed in this proceeding urging the Commission to adopt policies to: (1) reduce the impact that unfunded government mandates have on rural carriers;<sup>31</sup> (2) ensure fair and equitable roaming agreements between large and small carriers;<sup>32</sup> and (3) ensure that rural carriers have adequate access to customer equipment and handsets.<sup>33</sup> The implementation of these policies will help remove barriers that currently serve to thwart competition and slow the rollout of meaningful, advanced CMRS services to rural areas.

Respectfully submitted,

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GROUP, INC.**

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<sup>31</sup> Blooston Comments at 3; RCA Comments at 5; CTIA Comments at 9.

<sup>32</sup> Blooston Comments at 5.

<sup>33</sup> NTCA Comments at 5; Blooston Comments at 4.