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

In the Matter of	)	
	)	
Qwest Wireless, LLC	)	WT Docket No. 04-264
and Cellco Partnership	)	
d/b/a Verizon Wireless	)	
Seek Commission Consent for the	)	
Assignment of Sixty-Two Broadband	)	
Personal Communications Services	)	
Licenses	)	
	)	

To: The Wireless Telecommunications Bureau

REPLY TO QWEST/VERIZON WIRELESS OPPOSITION TO SNAKE RIVER REQUEST FOR INFORMAL ACTION

CTC Telecom Inc., Eagle Telephone System, Incorporated, Farmers Mutual Telephone Company, and Rural Telephone Company d/b/a collectively as Snake River Personal Communications Services ("Snake River"), by its attorneys, hereby replies to the Opposition to Snake River Request for Informal Action ("Opposition") filed by Qwest Wireless LLC ("Qwest") and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (collectively, "Nationwide Carriers") regarding Snake River's request that the FCC examine the roaming practices of Verizon Wireless and the assignment of Qwest Wireless' personal communications services ("PCS") licenses and assets to Verizon Wireless and place certain conditions on the Verizon Wireless acquisition of Qwest's licenses.[1]

[1] Snake River Personal Communications Services, Informal Request for Commission Action, WT Docket No. 04-264, filed Sept. 13, 2004 ("Request").

I. DISCUSSION

A. Failure to Allow Automatic Roaming Access to Snake River on Verizon Wireless' Network Will Result in Harm to Competition and the Public

The Nationwide Carriers argue that the Commission's rules obligate commercial mobile radio service ("CMRS") providers only to provide manual roaming capabilities to customers of co-channel licensees from other markets and that such carriers do not need to enter into automatic roaming arrangements with other carriers.[2] While it is true that carriers are currently under no obligation to provide automatic roaming,[3] the Commission has an obligation under Section 310(d) of the Communications Act of 1934, as amended (the "Act") to determine whether applicants have demonstrated that the proposed assignment of licenses will serve the public interest, convenience, and necessity.[4] The legal standards that govern the Commission's public interest analysis require that the Commission weigh the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.[5] In applying the public interest test, the Commission must

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[2] Opposition at 2-3.

[3] Although automatic roaming is not currently mandated, as discussed further below, the Commission has proposed that carriers be required to provide automatic roaming in certain circumstances. *See Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services,* Notice of Proposed Rulemaking, 15 FCC Rcd. 21628 (2000) ("*2000 NPRM*").

[4] 47 USC §310(d).

[5] *See, e.g., Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in Possession, to Subsidiaries of Cingular Wireless LLC,* WT Docket 03-217, Memorandum Opinion and Order, 19 FCC Rcd. 2570, 2580-81, ¶ 24 (2004) (Cingular-NextWave Order); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee,* MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd. 473, 483, ¶ 15 (2004). . (GM-News Corp. Order); *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee,* WC

assess whether the proposed transaction complies with the specific provisions of the Communications Act, the Commission's rules, and federal communications policy.[6] The public interest analysis considers the likely competitive effects of the proposed transaction and whether such assignments raise significant anticompetitive concerns.[7]

As a Code Division Multiple Access ("CDMA") carrier, Snake River is limited to partnering with other CDMA carriers in entering into roaming agreements. When Snake River initially purchased its FCC licenses from Qwest in the third quarter of 2000, it was able to enter into a favorable roaming agreement with Qwest Wireless. Thereafter, Snake River built out its CDMA network, focusing largely on areas that are generally unserved by large, nationwide or regional carriers. However, with the proposed sale of Qwest's licenses to Verizon Wireless, the roaming agreement between Snake River and Qwest is not being assigned to Verizon Wireless and is expected to terminate once the purchase closes.

Although Snake River entered into a roaming agreement with Verizon Wireless in February of 2002, that agreement does not provide for automatic roaming across Verizon Wireless' entire network. Specifically, Verizon Wireless does not allow Snake River's subscribers to roam in Verizon Wireless' Idaho 2 – Idaho market. Snake River anticipates that nearly 72% of its subscribers will be impacted by this lack of automatic

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Docket No. 02-215, Memorandum Opinion and Order, 18 FCC Rcd. 26484, 26492-93, ¶ 12 (2003) (WorldCom Order); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee,* MB Docket No.02-70, Memorandum Opinion and Order, 17 FCC Rcd. 23246, 23255, ¶ 26 (2002).

[6] *See, e.g., Cingular-NextWave Order* at 2580-81, ¶ 24; GM-News Corp. Order at 483-84.

[7] *See, e.g., Cingular-NextWave Order* at 2580-81, ¶ 24; WorldCom Order at 26492-93, ¶ 12.

roaming. In those areas where Snake River does not have an agreement for automatic roaming, Snake River's lone option, manual roaming, simply will not provide a real world solution that will allow Snake River to compete. Moreover, manual roaming, which requires a subscriber to provide their credit card information and incur exorbitant charges of upwards of three dollars per minute anytime the subscriber wants to complete a call, is not a viable alternative that Snake River's subscribers will endure. Many consumers do not even know that manual roaming exists and how it works and even if they did it is highly unlikely they would accept such an inconvenience and cost. Manual roaming requires the caller to give a credit card number over the phone. Subscribers will be reluctant to divulge credit card information over the phone, especially if they are unfamiliar with the carrier or the carrier's agent and they are informed that the per minute charge is six times greater than their usual per minute charge. In fact, many of Snake River's customers have opted not to make a phone call rather than enter their credit card number. For all intents and purposes, Snake River subscribers that are blocked from automatic roaming on Verizon Wireless' network will be without service and as subscribers switch to other carriers, Snake River will be forced to cease operations. Since Snake River is the *sole* CMRS provider in parts of its Idaho and Oregon markets,[8] if Snake River is forced to cease operation consumers would be without a CMRS provider in those regions and CMRS competition would be chilled in contravention of the public interest.

The Nationwide Carriers wrongly contend that the assignment of the sixty-two PCS licenses will have no bearing on Snake River's existing roaming arrangements

[8] *See* Attachment A, which is a map depicting Snake River's coverage area.

because the Snake River-Qwest roaming agreement would have terminated irrespective of the assignment and Snake River already has a roaming agreement with Verizon Wireless.[9] The transfer of the sixty-two PCS licenses prematurely ends the agreement that Snake River entered into with Qwest. Additionally, if Qwest were to continue to hold the sixty-two licenses at the end of the agreement's term, Snake River and Qwest would have likely extended the term of the agreement. Moreover, although Verizon Wireless is correct in stating that Snake River has a roaming agreement with Verizon Wireless, that roaming agreement does not cover the entirety of Verizon Wireless' network and specifically excludes markets that are essential to Snake River's long term viability and the provision of service in rural areas that would otherwise go unserved. Therefore, if the Qwest-Verizon Wireless transaction is consummated without conditioning the assignment on Verizon Wireless' honoring the terms of the Qwest-Snake River roaming agreement, Snake River will have no way for its subscribers to automatically roam across major portions of Idaho without being subject to onerous terms and conditions.

The Commission has already acknowledged in a pending rulemaking proceeding that providers should be required to provide automatic roaming when current practices would hinder the operation of the market to the detriment of consumers.[10] Accordingly, where as here Snake River faces possible cessation of operations to the detriment of competition and consumers in Idaho as a result of not having access to automatic roaming, the Commission should condition approval of the assignment on Verizon

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[9] *Id.*

[10] *See 2000 NPRM* at 21636. Incredibly, in the nearly four years since releasing the *2000 NPRM* the Commission has not made a ruling on whether automatic roaming should be mandated, leaving rural wireless carriers to wither and die on the vine.

Wireless honoring the current Qwest roaming agreement or modifying its existing roaming agreement to incorporate the terms, rates and conditions in the Qwest roaming agreement into Snake River's and Verizon Wireless' roaming agreement.

B. Verizon Wireless' Purchase of Qwest's Assets Is Further Evidence of Major Market Consolidation

The Nationwide Carriers claim that there will be no CMRS consolidation as a result of the assignment because Qwest and Verizon Wireless will remain competitors.[11] This claim is disingenuous and a Section 310(d) review of the impact of the assignment raises significant anticompetitive concerns.

Although Qwest and Verizon Wireless will remain competitors, the assignment will result in Verizon Wireless owning more licenses and network assets and further consolidating market power. Moreover, even though Qwest will continue to provide service as a reseller, Verizon Wireless will have greatly increased its market power as a result of the transaction and will therefore be able to negotiate one-sided terms for the provision of roaming service. In rural areas, where there are few service providers and little competition to begin with, this consolidation of market power hurts both consumers and competition.

C. Snake River's Claims are Properly Raised, are not Speculative and are Best Addressed in this Proceeding.

The Nationwide Carriers argue incorrectly that the Request is procedurally defective because its claims relate to the CMRS industry generally and that the harm that Snake River will face is speculative.[12] The relief that Snake River seeks relates directly to Verizon Wireless' relationship with Snake River. Although the issues raised also

[11] Opposition at 4.
[12] *Id.* at 5.

relate to broader policy concerns, the specific relief that Snake River requests is most narrowly addressed by placing conditions on the Verizon Wireless/Qwest assignment that ensure that Snake River subscribers continue to receive the competitive benefits of the Snake River/Qwest roaming agreement. Moreover, the harm that Snake River faces is not speculative. If Snake River subscribers are only able to roam in Verizon Wireless' service area through manual roaming they will need to utilize the American Roaming Network, which requires the use of a credit card and a three dollar per minute charge. As stated above, Snake River subscribers will not endure such inconvenience or charges for very long before they switch carriers to the immediate detriment of both Snake River and its subscribers.

II. CONCLUSION

For the foregoing reasons and those stated in its Request, Snake River respectfully requests that the Commission examine the Verizon Wireless/Qwest transaction and its negative impact on Snake River and consumers and condition Commission approval on Verizon Wireless honoring the current Qwest roaming agreement or modifying its existing roaming agreement to incorporate the favorable terms, rates and conditions in the Qwest roaming agreement into Snake River's and Verizon Wireless' roaming agreement.

Respectfully submitted,

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Dated: October 1, 2004

ATTACHMENT A

Snake River

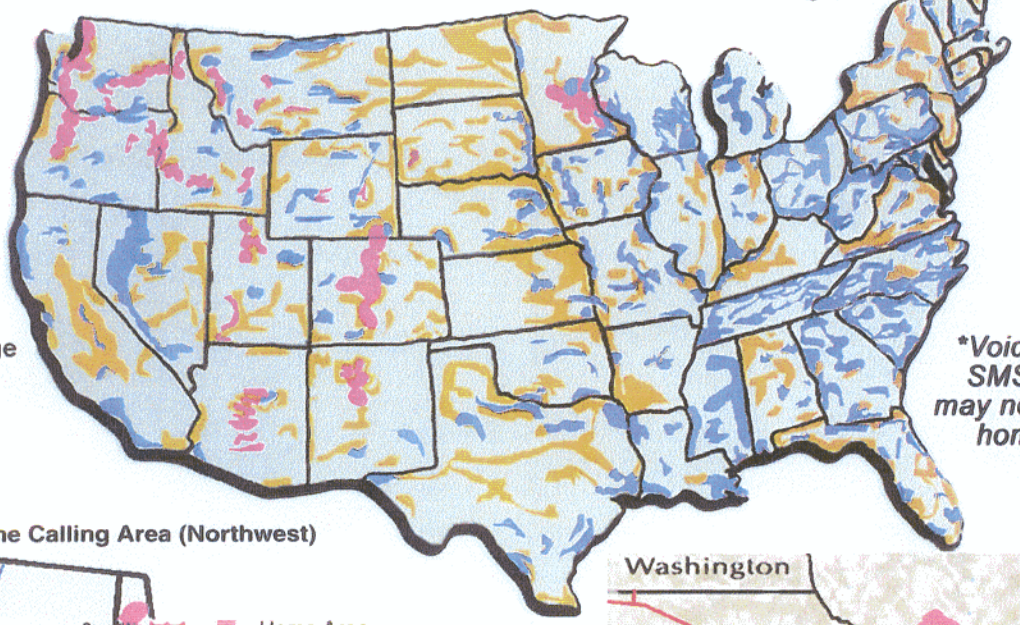
Personal Communication Services

Digital Coverage Maps

Canada Coverage

$.35 or $.69

*Multiple Carrier Coverage. Rates May Vary

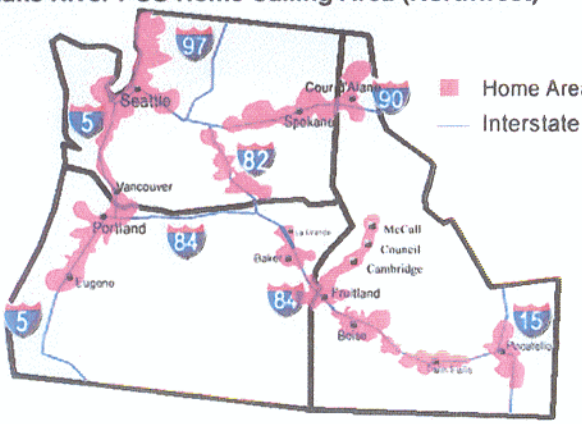


National PCS Coverage

- Free Home Calling Area
- $.35 per minute
- $.69 per minute

*Voice mail and SMS indicator may not work in all home areas.

Snake River PCS Home Calling Area (Northwest)



"Home Territory" is an attempt to identify where you will have no roaming fees. It is not necessarily an indication of a service area owned or operated by Snake River PCS. Extra services such as SMS, Voice Mail and 7 vs 10 digit dialing may not be supported by our partnering network.

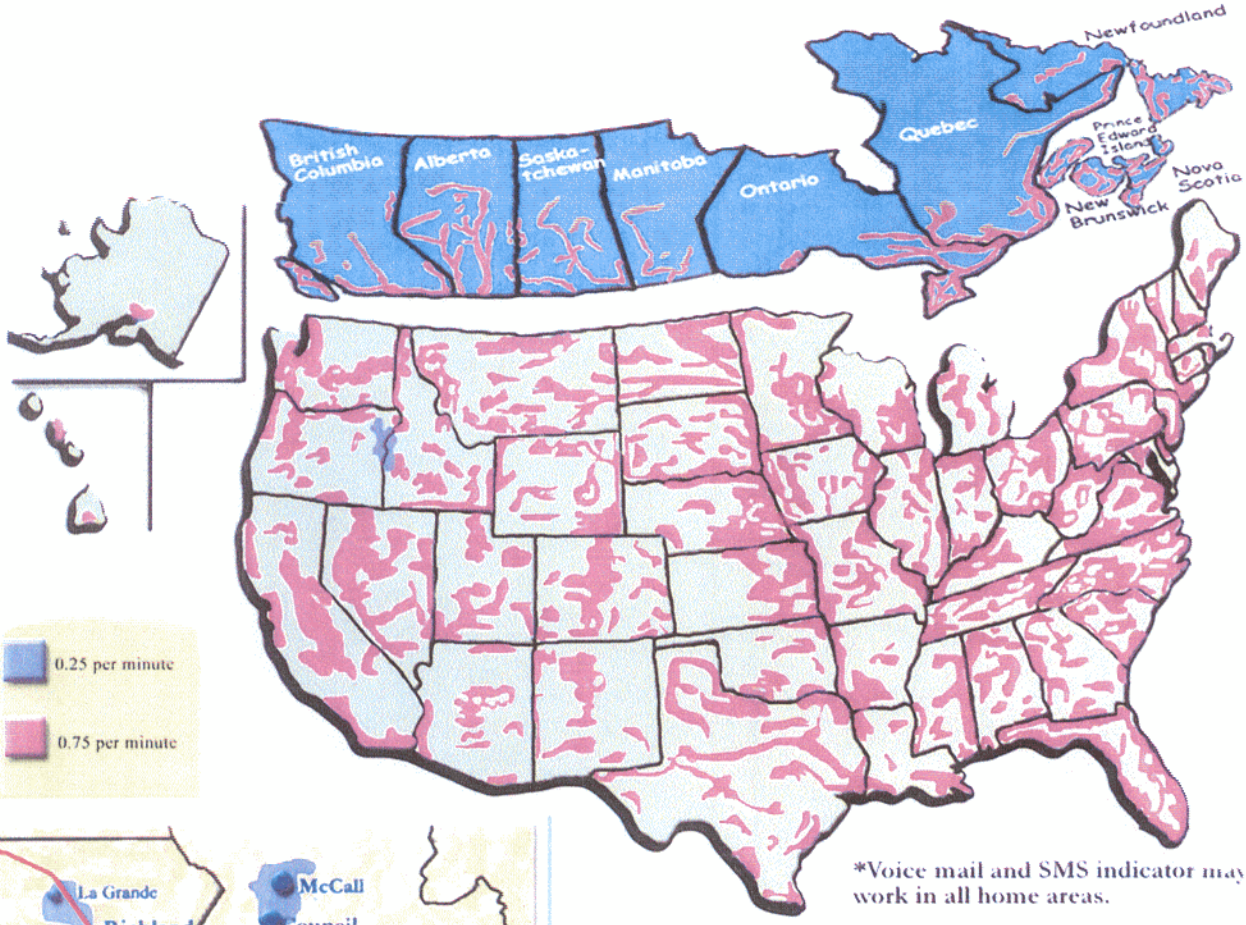
Prepared by Snake River PCS, copyright 2000

*Coverage shown is approximate

Snake River

Personal Communication Services

PrePaid Digital Coverage Maps



*Voice mail and SMS indicator may not work in all home areas.

Home calling area:

Cambridge, ID
Council, ID
Emmett, ID
Fruitland, ID
Glenn's Ferry, ID
McCall, ID
Midvale, ID
Mountain Home, ID
New Plymouth, ID
Payette, ID
Weiser, ID
Baker County, OR
Halfway, OR
Keating, OR
La Grande, OR
Nyssa, OR
Ontario, OR
Richland, OR
Vale, OR

Prepared by Snake River PCS, copyright 2000

CERTIFICATE OF SERVICE

I, Linda Braboy, with the law firm of Bennet & Bennet, PLLC, do hereby certify that I have on this 1st day of October, 2004, served copies of the foregoing "REPLY TO QWEST/VERIZON WIRELESS OPPOSITION TO SNAKE RIVER REQUEST FOR INFORMAL ACTION" via electronic transmission to the following:

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