

E blocks and the upper C and D blocks.⁶⁶ The propagation characteristics of the 700 MHz band are very similar to the 800 MHz cellular bands in which both RCC and Verizon Wireless hold licenses, and it is widely accepted that this band will spur further competition in rural markets.⁶⁷ The favorable propagation characteristics of the 700 MHz band could reduce the costs for new market entrants. Indeed, the existing 12 MHz C Block 700 MHz licensees are positioned to implement service immediately, subject to coordination with existing television stations, but all encumbrances will be removed in February of 2009 when analog television transmission will cease.⁶⁸

Finally, the Applicants also believe that the Commission should revisit its previous conclusion that to “exclude satellite carriers, wireless VoIP providers, MVNOs, and resellers from consideration when computing initial measures of market concentration.”⁶⁹ The Applicants believe that the national resellers/MVNOs that have recently emerged to compete successfully on the strength of uniquely packaged voice and data services using their own proprietary brand names should also be considered as legitimate market participants. The Commission itself has

⁶⁶ See Auction of 700 MHz Band Licenses Scheduled for Jan. 16, 2008, *FCC Public Notice*, DA 07-3415 (rel. Aug. 17, 2007); see also *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, FCC 07-132 (Aug. 10, 2007).

⁶⁷ See FCC Revises 700 MHz Rules to Advance Interoperable Public Safety Commc’ns and Promote Wireless Broadband Deployment, WT Docket Nos. 06-150, 01-309, 03-264, 06-169, and 96-86; CC Docket No. 94-102; PS Docket No. 06-229, Statement of Chairman Kevin J. Martin (July 31, 2007) (stating that the 700 MHz build-out requirements will “ensure that this spectrum is put to use quickly in both urban and rural areas”); Statement of Deborah Taylor Tate (July 31, 2007) (stating “the item helps promote broadband service in rural America”).

⁶⁸ Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”).

⁶⁹ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,544 (¶ 33); *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 (¶ 58); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,070-071 (¶¶ 38-39); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,564 (¶ 92).

found in other contexts that wireless resellers provide additional competition.⁷⁰ Some MVNOs are formidable competitors— TRACFONE, for example, serves over 6.5 million customers nationally through resale, while Virgin Mobile served over 4.8 million customers and, as of March 31, 2007, Boost Mobile served nearly 4.3 million customers nationally, including customers in virtually all of the subject areas. Qwest Wireless resells wireless plans in 14 states, 6 of which are included in the overlap geographic license areas. Cable operators are also expected to bundle wireless together with their video and VoIP offerings.⁷¹ The Commission should consider these providers to be participants in the relevant product market as well.

c. Initial Screen

In prior mobile transactions, the Commission has used an initial “screen” to focus its competitive inquiry. Specifically, the Commission looks at markets where:

- the post-transaction Herfindahl-Herschman Index (“HHI”) would be greater than 2800 and the change in HHI would be 100 or greater;
- the change in HHI would be 250 or greater regardless of the level of the HHI; or

⁷⁰ See, e.g., 2000 Biennial Regulatory Review, *Spectrum Aggregation Limits for Commercial Mobile Radio Servs.*, Report and Order, 16 FCC Rcd 22,668, 22,690 (¶ 42) (2001) (“[C]arriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (‘MVNO’) arrangement.”); *id.* n.145 (The MVNO arrangement “is one in which ‘a network operator acts as a wholesaler of airtime to another firm, which then markets itself to users just like an independent operator with its own network infrastructure.’”); see also J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004) (“[T]here may be five or more large scale companies reselling wireless service by 2005, along with the five facilities-based wireless providers (post the Cingular/AT&T Wireless transaction.)”).

⁷¹ See Jim Barthold, *Sprint Nextel Hedges Wireless Bets*, *Telecommunications Int’l Magazine*, May 2007 at 1 (describing joint venture formed by four of the largest cable MSO’s—Comcast, Time Warner Cable, Advance/Newhouse, and Cox Communications—and Sprint to acquire wireless spectrum and provide wireless service).

- post-transaction, the Applicants would hold 70 megahertz or more of spectrum.⁷²

The Applicants, in Exhibit A, have provided a chart detailing the amount of spectrum attributable to Verizon Wireless in the RCC markets. Exhibit A also provides a list of competitors operating in the overlap markets, as well as entities holding significant additional spectrum.

2. The Proposed Merger Will Not Result in Competitive Harms

a. As the Commission Has Found, the Mobile Market Is Highly Competitive

The Commission's most recent report on Commercial Mobile Radio Services ("CMRS") competition found that "there is effective competition in the CMRS marketplace,"⁷³ noting that:

To date, 280 million people, or 98 percent of the total U.S. population, have three or more different operators (cellular, PCS, and/or digital SMR) offering mobile telephone service in the counties in which they live. . . . Roughly 268 million people, or 94 percent of the U.S. population, live in counties with four or more mobile telephone operators competing to offer service. In addition, roughly 145 million people, or 51 percent of the U.S. population, live in counties with five or more mobile telephone operators competing to offer service, while 50 million people, or 18 percent of the population, live in counties with six or more mobile telephone operators competing to offer service.⁷⁴

⁷² See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,546 (¶ 36); *Sprint-Nextel Order*, 20 FCC Rcd at 13,993 (¶ 63); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,073 (¶ 46); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,568 (¶ 106). Consistent with the discussion in the preceding section, the amount of spectrum now available for commercial wireless spectrum dictates a revision of the 70 MHz trigger. The Commission set 70 MHz as the threshold amount for review when there was only 190 MHz of commercial spectrum available for similar services. Today, however, the availability of BRS/EBS spectrum, AWS spectrum and C Block 700 spectrum raises that amount to approximately 365 MHz. Accordingly, the Commission should raise the initial trigger substantially.

⁷³ *11th Annual Competition Report* at 4 (¶ 2).

⁷⁴ *Id.* at 20 (¶ 41).

Additionally, the report explained that this determination that effective competition exists, as well as the consumer benefits achieved through effective competition, extends to rural markets as well.⁷⁵

The report also documented the beneficial impact of robust competition for U.S. subscribers, noting that “competitive pressure continues to drive carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers.”⁷⁶ Moreover, the constant threat of dissatisfied customers switching providers, a threat that has grown significantly since the Commission’s adoption of local number portability rules for wireless service, ensures the existence of a competitive wireless marketplace focused on meeting the pricing and service needs of consumers.⁷⁷ The *11th Annual Competition Report* underscores the observations of equity analysts and industry observers describing “wireless price competition in the United States as intense,” so much so that that “even a carrier with large market share in an area has very little pricing power.”⁷⁸ The report goes on to note another analyst’s estimate that the “average per-minute cost of wireless calling plunged 72 percent in the past five years alone.”⁷⁹

If anything, competition has become even more robust since the *11th Annual Competition Report*. First, in the intervening time, several large, well-financed cable television providers, in

⁷⁵ *Id.* at 40-41 (¶ 88).

⁷⁶ *Id.* at 4 (¶ 3).

⁷⁷ *Id.* at 5 (¶ 4), 65-67 (¶¶ 144-148).

⁷⁸ *Id.* at 67 (¶ 150).

⁷⁹ *Id.* at 68 (¶ 150).

conjunction with Sprint,⁸⁰ acquired a near national AWS footprint, including substantial additional spectrum capacity in many major metropolitan areas. These providers have already developed a wireless mobile voice service branded “Pivot”⁸¹ that enables them to provide “triple play” offerings of cable television, data services, and wireless, as well as “quad play” offerings that also include local toll telephone service. Pivot service is “now available in 20 markets with plans for at least 40 by year-end,” and “allows Sprint and its cable partners to bring the benefits of mobility and convergence to their customers by leveraging both landline and wireless networks.”⁸² The company “expects meaningful growth in Pivot subscribers over the next 18 months, and that the service is expected to generate new revenue streams through new services, including remote DVR programming and video-on-demand.”⁸³

Also relevant to potential competition is the vast amount of new spectrum the FCC has—and will—make available for mobile services. Indeed, within the past year, the Commission completed the AWS auction⁸⁴ and made significant progress on the BRS/EBS transition.⁸⁵ Just

⁸⁰ Sprint recently indicated its intent to exit the SpectrumCo venture, although it continues to work with these same companies under the Pivot brand.

⁸¹ See, e.g., http://cfl.mybighthouse.com/products_and_pricing/wireless/about.aspx (last visited Aug. 26, 2007).

⁸² “Sprint Nextel Demonstrates Key Technologies For Mobility Strategy,” Press Release (August 16, 2007), available at: <http://www.fiercewireless.com/press-releases/press-release-sprint-nextel-demonstrates-key-technologies-mobility-strategy> (last visited Aug. 26, 2007).

⁸³ *Id.*

⁸⁴ Substantially all, if not all, of the AWS licenses have now been granted, giving rise to the cable television SpectrumCo venture, among other providers. AWS rules for relocation of incumbents have also been finalized, and the U.S. Government has moved forward under the Commercial Spectrum Enhancement Act to vacate the bands. Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in scattered sections of Title 47 of the United States Code) (“CSEA”).

⁸⁵ Finally, since the 11th Annual Competition Report, significant progress has been made on the BRS/EBS transition. As noted, *supra*, the two major carriers with holdings in that band

as importantly, in January of 2008, the FCC will conduct an auction of the remaining⁸⁶ reclaimed analog television spectrum from channels 52-69, which will include—for commercial mobile services—two 12 MHz lower 700 MHz blocks, one unpaired 6 MHz lower 700 MHz block, one 22 MHz upper 700 MHz block and one 10 MHz upper 700 MHz block to be used in conjunction with Public Safety spectrum. That spectrum, with its favorable propagation characteristics, is valued for its ability to be rapidly deployed and cover broad areas. And, additional new entrants, such as DBS providers and Google,⁸⁷ have participated in rulemakings and may be eying the spectrum as a point of entry into the mobile marketplace. Thus, competition in mobile services is intense, and recent events support the notion that competition will continue to rise as new entrants enter the mobile space.

b. The Proposed Merger Does Not Diminish Competition in the National Market for Mobile Telephony

As the Applicants have previously noted, the market for mobile services has become increasingly national in scope. In such regards, the *11th Annual Competition Report* observes that “[t]he basic economic principle for defining the scope of the relevant geographic market is to include customers facing the choice of similar competitive alternatives in the same geographic

(Sprint’s holdings alone comprise over 49 percent of the available MHz-POPs) have formed a joint venture that should compete with national mobile carriers. Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations File Nos. 0002031766, et al., WT Docket No. 05-63 (filed Feb. 8, 2005) at Attachment 1 to Attachment E.

⁸⁶ The FCC previously auctioned 18 MHz of channel 52-59 spectrum and 6 MHz of channel 60-69 spectrum.

⁸⁷ “Google CEO says mobile auction bid still probable,” Reuters (Aug. 22, 2007 1:05AM EDT), available at <http://www.reuters.com/article/businessNews/idUSN2140502020070822> (stating that Google Chief Executive Eric Schmidt states that his company would “probably” move ahead with plans to bid for wireless spectrum freed up once broadcast television networks switch to digital from analog in 2009).

market.”⁸⁸ Like most other national carriers, Verizon Wireless prices—and advertises—on a national basis, leaving very little room for local (or even regional) variation in pricing. Prices are set on a national level, and therefore local market conditions are less relevant to a carrier’s competitive strategy than actions taken by other national carriers. In fact, because of the demand for national coverage, approximately 82 percent of the nation’s mobile customers subscribe to a national carrier or an affiliate of a national carrier.⁸⁹ This supports the conclusion that consumers shop for national plans and shop national rates—all of which are set on a national level.

On a national basis, it is clear that the proposed transaction will have no negative impact on competition. Based on the market share figures from the FCC’s *11th Annual Competition Report*, on a national level the proposed transaction involves the merger of the fourteenth largest carrier into the second largest carrier, resulting in a net increase in the HHI of 16, going from 1808 to 1824. On that basis, the impact of the proposed acquisition is inconsequential. Nonetheless, the Applicants have analyzed below the impact on local markets.

c. The Proposed Merger Does Not Diminish Significantly Competition in Any Local Market

(1) Unilateral Effects

In the Commission’s prior competitive analyses, it has undertaken to determine whether a post-merger firm is capable of unilateral effects. “Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by ‘elevating price and suppressing output.’ . . . in the case of mobile telephony, this might take the form of delaying improvements

⁸⁸ *11th Annual Competition Report* at 18 (¶ 37).

⁸⁹ *Id.* at 108-109 (Tables 4 & 5).

in service quality or adversely adjusting plan features without changing the plan price.”⁹⁰ As discussed below, unilateral effects are typically constrained by competitive responses by rival firms (*i.e.*, other competitors adjusting their behavior to undercut the merged firm’s ability to extract supra-competitive profits); the potential for new entry (*i.e.*, the ability of new firms to enter the market); the market share of the post-transaction entity; and the penetration rate in the local market (*i.e.*, the ability of firms to acquire new customers as opposed to churning customers from other carriers). Each of these factors is discussed below.

(a) Competitive Responses by Rivals

In assessing whether a merged firm has market power, the FCC has stated that “[w]e examine whether competitive responses by rivals to the merged entity—such as through repositioning by existing licensees or entry by a new licensee—would sufficiently counter the merged entity’s exercise of market power.”⁹¹ Specifically, the FCC has noted that “where a firm is already present in a market, has comparable service coverage, and has excess capacity relative to its current subscriber base, it should be able to relatively quickly adjust such factors as rates, plan features, handsets, and advertising.”⁹² The ability of competitors to respond to actions taken by the merged firm, in specific local markets, is discussed in further detail in Section II(C)(3) below.

⁹⁰ See *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,550 (¶ 47 & n.175) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,001 (¶ 91); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,075 (¶ 54); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,570 (¶ 115); *DOJ/FTC Merger Guidelines* § 2.2).

⁹¹ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,551 (¶ 50 & n.175) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,007-009 (¶¶ 108-114); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,079-081 (¶¶ 65-72); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,575-576 (¶¶ 134-137)).

⁹² *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,551 (¶ 50).

(b) Spectrum and Barriers to Entry

As the FCC has explained in the context of the *ALLTEL/Midwest Order*, “[a]lthough we no longer have a *per se* limit on the amount of spectrum suitable for mobile telephony that an entity may hold in any one market, we are mindful of the unique role of spectrum as a critical input in the market for wireless services and have carefully analyzed the potential impact of [the ALLTEL/Midwest] merger on that input.”⁹³ The amount of suitable substitute spectrum provides a metric for determining both the ability of competitors to expand capacity, but also—because spectrum is one of the largest barriers to entry into mobile services—a measure of whether other firms could enter the market as a competitive response to the merged firm’s attempt to exercise market power. Notably, the FCC has recognized that the relevant question is whether the combined company’s competitors would have the capacity to absorb sufficient current subscribers of the merging companies to thwart any prospective exercise of market power (*i.e.*, price increases). The availability of AWS, BRS/EBS, and 700 MHz spectrum greatly reduces the capacity restraints faced by the merging companies’ competitors.⁹⁴

As shown in Section II(C)(3) below, each of the overlap markets has sufficient spectrum capacity post-merger for new market entry in the overlap markets to render futile any attempt by Verizon Wireless to extract supracompetitive profits.

(c) Market Share and Penetration

The FCC has traditionally recognized that “the presence of few competitors or potential entrants that consumers consider to be good substitutes for the merged firm, combined with a

⁹³ *Id.* at 11,552 (¶ 53).

⁹⁴ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,576 (¶ 136 & n.379); *Sprint-Nextel Order*, 20 FCC Rcd at 13,985 (¶ 158), and Appendix C, n.2.

large market share by the merged entity, may increase the likelihood of unilateral effects.”⁹⁵

Also relevant to this analysis is the potential for the market itself to expand—“another factor [the FCC] consider[s] in determining the consequences of a unilateral attempt to exercise market power is penetration rate, both the current rate in a local market as well as the potential for growth in market penetration.”⁹⁶ As discussed in Section II(C)(3), the relative market shares pre- and post-merger do not give rise to competitive issues.

(2) Coordinated Interaction

Beside unilateral effects, the FCC also analyzes the potential for coordinated action. In other words, “in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.”⁹⁷ The FCC recognizes that “[s]uccessful coordination depends on ... the ability to reach terms that are profitable for each of the firms involved, and ... the ability to detect and punish deviations that would undermine the coordinated interaction.”⁹⁸ As discussed below, the overlap markets do not pose any risk of coordinated interaction because the overall market for mobile services is highly competitive, each market will have a substantial number of competitors post-merger, and the products are generally fungible.

⁹⁵ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,552 (¶ 55 & n.194) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,001 (¶ 92); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,076-077 (¶ 58); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,570-571 (¶¶ 117-118); *DOJ/FTC Merger Guidelines* § 2.211).

⁹⁶ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,553 (¶ 58) (citing *ALLTEL-WWC Order*, 20 FCC Rcd at 13,083-085 (¶¶ 78-83); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,578-580 (¶¶ 146-149)).

⁹⁷ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,554 (¶ 60) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 13,995 (¶ 69); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,085 (¶ 85); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,580 (¶¶ 150); *DOJ/FTC Merger Guidelines* § 0.1).

⁹⁸ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,554 (¶ 60).

(3) Market by Market Evaluation

In the aggregate, the post-merger PCS and cellular spectrum held by the combined Verizon Wireless and RCC would exceed the 70 MHz “initial screen” in only 26 of the 328 counties where RCC holds PCS and/or cellular licenses. Specifically, the post-merger company would hold approximately 80 MHz in the Fargo-Morehead, ND-MN CMA, 75 MHz in the Burlington, VT CMA, 70 MHz in the Grand Forks, ND-MN CMA, 80 MHz in two counties within the New York 2 – Franklin CMA, 80 MHz in one county in the North Dakota 3 – Barnes CMA, between 75-80 MHz in three counties in the Vermont 2 – Addison CMA, 80 MHz in the Washington 2 – Okanogan CMA, and 90 MHz in the Washington 3 – Ferry CMA. Consistent with the discussion in Section III(H), RCC holds leases in some of these areas. The Applicants have not aggregated spectrum for, or analyzed, spectrum holdings under leases where the combined company will terminate the lease shortly after closing. The Applicants have aggregated spectrum for and analyzed leased spectrum in those markets where the combined company will not be able to terminate the lease in the short term. As discussed below, substantial competition will continue to exist post-transaction in each of these markets.

(a) Fargo-Morehead, ND-MN (CMA221)

In the two counties comprising the Fargo-Morehead, ND-MN CMA (CMA221), the combined company would have 80 MHz of attributed PCS and cellular spectrum. Verizon Wireless currently operates on the B Block cellular authorization and the D Block PCS license.⁹⁹ In addition, Vista PCS¹⁰⁰ holds, but is not operating on, a 15 MHz C Block PCS license. RCC,

⁹⁹ Verizon Wireless also holds a 20 MHz A Block AWS license.

¹⁰⁰ Vista PCS, LLC (“Vista”) is a designated entity in which Verizon Wireless holds an 80 percent equity (but not voting) interest. Verizon Wireless does not control Vista and, absent a contractual relationship, the spectrum held by Vista is not available to Verizon Wireless. Nonetheless, Verizon Wireless has attributed to itself spectrum held by Vista based upon the Commission’s prior spectrum cap rule, which attributed any spectrum held by any licensee in

for its part, operates using 20 MHz of disaggregated B Block PCS spectrum and the F Block PCS license.

Substantial competition will continue to exist in the Fargo-Morehead ND-MN CMA following the proposed transaction. As an initial matter, RCC's network serves only a limited segment of the population in Fargo—approximately 2.5% of the population of Cass county where Fargo is located. Moreover, other operational carriers in the market include ALLTEL, which operates on the A Block cellular license and a 10 MHz PCS license, and Sprint, which operates on a 30 MHz PCS license and approximately 10 MHz of ESMR spectrum; notably, Sprint also holds 10 MHz of "G" block spectrum¹⁰¹ and 36 percent of the total MHz-POPs of BRS/EBS spectrum in the Fargo BTA (BTA138). In addition, LEAP has 15 MHz of PCS spectrum and LL License Holdings has an additional 10 MHz Block E PCS license.¹⁰² IdeaOne Telecom Group, a coalition of North Dakota telephone companies and cooperatives, holds 700 MHz spectrum that could be immediately deployed, since there appear to be no incumbent television broadcasters in the CMA that would interfere with mobile operations. Thus, following the proposed transaction, the market would have three strong, existing competitors (including

which the entity held an equity interest of 20 percent or more, regardless of voting rights or control.

¹⁰¹ As a result of rebanding in the 800 MHz band, Sprint has been authorized to use the band 1910-1915/1990-1995 MHz (the "G" Block), the 10 MHz immediately above the F Block PCS license. See *Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14,969 (2004).

¹⁰² LL License Holdings is related to Long Lines, LLC, the Iowa telephone company that acquired Great Lakes of Iowa, Inc. and Siouxland PCS in early 2007. Long Line's service area has rapidly expanded into northeast Nebraska, southeast South Dakota, and western Iowa. See *Long Lines Employees Celebrate Wireless Services*, Press Release (June 22, 2006), available at <http://www.longlineswireless.com/about/index.php?id=11&newsid=9> (last visited Aug. 26, 2007).

two national carriers) with substantial spectrum holdings, and the prospect of rapid entry by no less than three other experienced telecommunications companies.

(b) **Burlington, VT CMA (CMA248)**

In the Burlington, VT CMA, Verizon Wireless currently operates on the B Block cellular authorization and a 15 MHz C Block PCS license.¹⁰³ RCC operates using the A Block cellular license and a 10 MHz F Block PCS license. In the aggregate, the combined company would therefore be attributed 75 MHz of PCS and cellular spectrum.

However, other carriers are operational in the market and have substantial potential for expansion. Sprint operates on a 30 MHz B Block PCS license and approximately 10 MHz of ESMR spectrum. Sprint also holds an additional 10 MHz "G" Block license as a result of the FCC's 800 MHz rebanding proceeding, so the company has access to approximately 50 MHz of CMRS spectrum. Sprint has recently expanded its network in Burlington, and has not only a retail presence, but numerous agents selling Sprint-branded products. US Cellular, for its part, operates a network on a 10 MHz D Block PCS license. AT&T Wireless also has a limited network operational in Burlington (limited in the sense that it does not appear engaged in marketing activity), holding 10 MHz of A Block PCS spectrum, a 15 MHz C Block PCS license, and the 10 MHz E Block PCS license. However, over the past few years, AT&T Wireless has aggressively expanded its coverage in the New England area.¹⁰⁴ Moreover, T-Mobile also holds

¹⁰³ Verizon Wireless also holds a 20 MHz A Block AWS license.

¹⁰⁴ See, e.g., AT&T Expanding Wireless Coverage in Maine, <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=24298>, last visited Aug. 29, 2007 (indicating planned investment of \$4 million, and a three year total of \$10 million, in their wireless network in the state, including six new cell sites); AT&T Expanding Wireless Coverage in Buffalo; Investing More Than \$50 Million This Year in the Upstate New York Wireless Network, <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=24299>, last visited Aug. 29, 2007 (indicating planned investment of \$50 million, and a three year total of \$230 million, in their wireless network in upstate New York, including eighteen new cell sites); AT&T Expanding Wireless Coverage in New Hampshire, <http://www.att.com/gen/press->

20 MHz of A Block PCS spectrum and could initiate operation at any time.¹⁰⁵ Vermont Telephone Company, a local telephone company that operates wireline and wireless properties, also holds the 12 MHz 700 MHz C Block license for the Burlington, Vermont VT CMA,¹⁰⁶ as well as 20 MHz of AWS spectrum. The Chief Technical Officer of Vermont Telephone has indicated the company is investing heavily in WiMAX for its broad coverage area.¹⁰⁷ Other AWS spectrum holders in the market include MetroPCS, which holds 10 MHz of D Block AWS, and the cable television-backed SpectrumCo venture, which holds 20 MHz of B Block AWS.

Thus, while the number of mobile competitors in the Burlington CMA is nominally going from five to four, there are significant opportunities for additional entry. Such potential new entrants include T-Mobile, an experienced national carrier that holds an aggregate of 40 MHz of mobile spectrum, and Vermont Telephone Company, an incumbent landline telephone carrier in southern Vermont,¹⁰⁸ which has 32 MHz of mobile spectrum. In addition, while AT&T operates a limited network, AT&T has a substantial amount of spectrum to expand its operations. MetroPCS, which holds AWS spectrum and has announced plans to aggressively deploy in that band, has also demonstrated that it is capable of rapidly rolling out network coverage and attracting customers.

room?pid=4800&cdvn=news&newsarticleid=24300, last visited Aug. 29, 2007 (indicating planned investment for 11 new cell sites, bringing their three year total investment in New Hampshire to \$18 million).

¹⁰⁵ T-Mobile also holds 20 MHz of E Block AWS spectrum.

¹⁰⁶ There appear to be no significant television incumbents precluding use of those channels.

¹⁰⁷ "Vermont's telecom landscape is about to change. Hello?," Vermont Business Magazine, Vol. 34 No. 12 (Oct. 2006) at 39.

¹⁰⁸ See <http://www.vermontel.com/calling.html>, last visited Aug. 28, 2007.

(c) **Grand Forks, ND-MN (CMA276)**

The combined company will be attributed with 70 MHz of spectrum in the Grand Forks, ND-MN CMA (CMA276). Specifically, Verizon Wireless operates on the Block B cellular license and Vista holds, but is not currently operating on, a 15 MHz C Block PCS license. RCC operates on a disaggregated 20 MHz B Block PCS license and the E Block PCS license. Other operating carriers in the market include ALLTEL, which uses the Block A cellular license and 10 MHz of disaggregated B Block PCS spectrum, and Sprint, which operates on a 30 MHz PCS license and approximately 10 MHz of ESMR spectrum. Sprint also holds the 10 MHz "G" block license. Other carriers that are licensed, but not yet operational, include LEAP, with 15 MHz of C Block PCS spectrum; AT&T, with 20 MHz of AWS spectrum, T-Mobile, with 10 MHz of AWS spectrum; LL License Holdings, with a 10 MHz D Block PCS license, and Justkake, with the 10 MHz F Block PCS license.¹⁰⁹

Again, in this market, while the number of competitors is going from four to three, the already operating competitors Verizon Wireless will face—Sprint and ALLTEL—are both experienced, well financed wireless operators with substantial spectrum holdings capable of absorbing significant capacity. Moreover, RCC's actual operations in Grand Forks cover only approximately 1 percent of the population, which limits RCC's competitive impact in any event. In addition, no less than two other national carriers, and one coalition of local telephone companies, hold unused PCS licenses in the market. Any of those entities could rapidly enter the market and begin to provide service.

¹⁰⁹ Paul Bunyan Rural Telephone Cooperative also holds 20 MHz of AWS spectrum; and, Denali, a US Cellular affiliate, holds 10 MHz of AWS spectrum.

(d) **New York 2 – Franklin CMA (CMA560)**

The New York 2 – Franklin CMA (CMA560) is comprised of five counties and overlaps three BTAs. Specifically, Fulton and Hamilton counties lie in BTA007 (Albany-Schenectady, NY), Clinton and Essex counties in BTA352 (Plattsburg, NY), and Franklin county in BTA463 (Watertown, NY). While the combined company would be attributed with less than 70 MHz in the CMA560/BTA463 overlap county, it would be attributed with 70 MHz or more in the CMA560/BTA007 and CMA560/BTA352 counties. Specifically, in the CMA560/BTA007 overlap counties, Verizon Wireless manages¹¹⁰ the B Block cellular license and owns the 10 MHz PCS C Block license.¹¹¹ Vista also holds, but is not operating on, 10 MHz of C Block PCS spectrum. RCC operates on the A Block cellular license and a 10 MHz D Block PCS license partition for Fulton and Hamilton counties. Thus, in the aggregate, the combined company would be attributed 80 MHz of PCS and cellular spectrum in the CMA560/BTA007 counties. In the CMA560/BTA352 overlap counties the cellular holdings are consistent, but in these counties, Verizon Wireless has attributable interests in 10 MHz of PCS C Block spectrum, RCC owns 10 MHz of PCS E Block spectrum, and RCC leases 2.5 MHz of F Block spectrum. Thus, the combined company would be attributed 72.5 MHz of PCS and cellular spectrum.

The combined company would face significant competition in all parts of the New York 2 – Franklin CMA. Sprint is operating on approximately 40 MHz of combined B Block PCS and ESMR spectrum throughout the area (and owns or leases approximately 70 percent of the

¹¹⁰ Verizon Wireless holds a minority 42.86 percent ownership interest in, and is the system manager for, New York RSA 2 Cellular Partnership (“NYR2LP”), the licensee of the B Block cellular system for the NY 2 – Franklin CMA. Verizon Wireless does not control this authorization and its role as manager is subject to the continuing approval of a majority of the system owners. The remaining 57.14 percent of NYR2LP is indirectly owned, through various subsidiaries, by United States Cellular Corp. See ULS Ownership File No. 0002980284.

¹¹¹ Verizon Wireless also holds a 20 MHz E Block AWS license.

available BRS/EBS spectrum in BTA007). AT&T Wireless operates on 20 MHz of PCS spectrum in the CMA560/BTA007 overlap counties, 30 MHz in the CMA560/BTA463 counties, and 10 MHz of PCS spectrum in the CMA560/BTA352 counties (AT&T Wireless also holds an additional 10 MHz D Block PCS license in the BTA352 overlap area).¹¹² And, as previously noted, AT&T Wireless is aggressively expanding its upstate New York coverage.¹¹³ Both Sprint and AT&T Wireless have a retail presence in the area, and AT&T Wireless has recently expanded its network with several new sites in the Plattsburgh, New York area. Potential new entrants include T-Mobile, which holds 20 MHz of PCS A Block spectrum,¹¹⁴ SpectrumCo, which holds 20 MHz of AWS spectrum in the CMA, and MetroPCS, which holds 10 MHz of AWS spectrum in the CMA.

(e) **North Dakota 3 – Barnes (CMA582)**

In the twelve counties comprising the North Dakota 3 – Barnes CMA (CMA582), Verizon Wireless operates on a B Block cellular authorization, Vista holds, but does not operate on, a disaggregated 15 MHz of C Block PCS spectrum, and RCC owns 10 MHz of E or F Block PCS spectrum (but is currently operational only in Griggs and Traill county). Verizon Wireless also operates on the D Block PCS license in nine counties, resulting in aggregation of 60 MHz for eight of those nine counties.¹¹⁵ In one county—Traill—RCC also operates on a 20 MHz partition of the PCS B Block, which would result in aggregation of 80 MHz.

¹¹² Dobson, which has entered into a merger agreement with AT&T Wireless, also holds 20 MHz of AWS spectrum throughout the CMA.

¹¹³ See n.103, *supra*.

¹¹⁴ T-Mobile also holds 10 MHz of AWS spectrum throughout the region.

¹¹⁵ The eight North Dakota counties where the combined company would be attributed 60 MHz are: Barnes, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, and Steele.

As an initial matter, Verizon Wireless observes that the county where the overlap occurs—Traill—comprises only 7.4 percent of the total POPs in the CMA. Obviously, any spectrum imbalance in Traill county will not impact competition in the overall CMA. Existing competitors in this market include Sprint, which operates on a 30 MHz A Block PCS license and approximately 10 MHz of ESMR spectrum (and holds the “G” Block license and 36 percent of the total MHz-POPs of BRS/EBS spectrum in the Fargo BTA); ALLTEL, which operates on the A Block cellular license and 20 MHz of PCS spectrum in all of the counties except Traill, where it has 10 MHz of PCS spectrum; and, T-Mobile, which operates using 10 MHz of PCS B Block spectrum in all counties except Traill. In addition, LEAP holds 15 MHz of PCS spectrum and could enter the market at any time.

(f) Vermont 1 – Franklin CMA (CMA679)

In the Vermont 1 – Franklin CMA, Verizon Wireless currently operates on the B Block cellular license for Addison, Rutland and parts of Windsor counties. Verizon Wireless also operates on 15 MHz of C Block PCS spectrum in Addison and Rutland counties, and a 10 MHz F Block PCS license in Windsor county.¹¹⁶ RCC operates on the A Block cellular license, 10 MHz of A Block PCS spectrum in Windsor county, 10 MHz of E Block PCS spectrum in Rutland county, and 10 MHz of F Block PCS spectrum in Addison county. In the aggregate, the combined company would therefore be attributed with 75 MHz of spectrum in Addison county, 75 MHz in Rutland county, and 70 MHz in Windsor county.

The Vermont 1 – Franklin CMA, however, has three other operating carriers and the potential for significant new entry. The operational carriers include Sprint, which operates on a 30 MHz B Block PCS license and approximately 10 MHz of ESMR spectrum (and holds a 10

¹¹⁶ Verizon Wireless also holds the 20 MHz E Block AWS license.

MHz “G” Block license). US Cellular operates on a 10 MHz E Block PCS license. AT&T Wireless, which has significantly expanded its New England coverage over the last three years,¹¹⁷ is also operational using 10 MHz of Block A PCS spectrum, 15 MHz of Block C PCS spectrum, and the E Block PCS license in the market, but does not appear engaged in marketing activity. Vermont Telephone, a local exchange company in the region, holds 12 MHz of 700 MHz spectrum and 10 MHz of AWS C Block spectrum in four of the seven counties—Caledonia, Franklin, Lamoille and Orleans. SpectrumCo also holds 20 MHz of AWS spectrum throughout the region, and MetroPCS and T-Mobile both hold 10 MHz of AWS spectrum each. Thus, the combined company would still face significant competition and the prospect of rapid entry by numerous other competitors.

(g) Vermont 2 – Addison CMA (CMA680)

In the Vermont 2 – Addison CMA, Verizon Wireless operates on the B Block cellular license for a partition of the market and RCC operates on the A Block cellular license. In Addison county, where CMA680 overlaps BTA063, Verizon Wireless also operates on 15 MHz of C Block PCS spectrum and RCC on the 10 MHz F Block PCS license. Thus, in the CMA680/BTA063 overlap county, the combined company would be attributed with 75 MHz of PCS and cellular spectrum. In the county where CMA680 overlaps BTA227, Verizon Wireless operates on 20 MHz of C Block spectrum and RCC on 10 MHz of A Block PCS spectrum, but Verizon Wireless does not hold any cellular spectrum. Thus, the combined company would be attributed with 55 MHz of PCS and cellular spectrum. In Rutland county, one of the two

¹¹⁷ See n.103, *supra*.

counties where CMA680 overlaps BTA388,¹¹⁸ Verizon Wireless operates on the cellular authorization and 15 MHz of C Block spectrum, and RCC also operates on a 10 MHz E Block PCS license. This results in 75 MHz of aggregate attributable spectrum for the combined company. Finally, in Windsor county where CMA680 overlaps BTA249, Verizon Wireless provides cellular service in a portion of the county and using an F Block PCS license. In Windsor county, in addition to its cellular license, RCC also operates on 10 MHz of A Block PCS spectrum, resulting in 70 MHz of attributed spectrum.

The combined company faces significant competition throughout the Vermont 2 – Addison CMA. Sprint operates on a 30 MHz PCS license and approximately 10 MHz of ESMR spectrum, and holds the 10 MHz “G” Block license. AT&T holds 20 MHz of PCS spectrum across the CMA, has an additional 10 MHz of AWS spectrum in Windham and Windsor counties, already operates in Bennington, Rutland, and Windsor counties, and has been engaged in significant new network builds in New England.¹¹⁹ US Cellular operates on the cellular B Block in those counties where Verizon Wireless is not operating, but also holds 10 MHz of D Block PCS spectrum in three counties, including the two counties where Verizon Wireless exclusively operates on the cellular B Block. T-Mobile, which holds 10 MHz of AWS spectrum throughout the region, 30 MHz of PCS spectrum in Windsor county and 20 MHz of PCS spectrum in Windham county, is also operational and has at least one cell site in close proximity to the most popular ski resorts in the area. However, T-Mobile does not appear engaged in marketing activity in the region. Vermont Telephone, a local exchange company in the

¹¹⁸ Verizon Wireless does not hold cellular spectrum in Bennington county, the other county where CMA680 overlaps BTA388. The combined company would hold 50 MHz of cellular and PCS spectrum in that area.

¹¹⁹ See n.103, *supra*.

region,¹²⁰ holds 12 MHz of 700 MHz spectrum across the CMA, a 10 MHz E Block PCS license in Windsor county, a 10 MHz F Block PCS license in Windham county, and 10 MHz of AWS C Block spectrum in Addison and Rutland counties. In addition, SpectrumCo holds 20 MHz of AWS spectrum throughout the CMA and MetroPCS holds 10 MHz of AWS spectrum. As a result, a large number of experienced, sophisticated potential entrants exist across the market.

(h) Washington 2 – Okanogan CMA (CMA694)

In the Washington 2 – Okanogan CMA, Verizon Wireless currently operates on the B Block cellular authorization, 10 MHz of A Block PCS spectrum, 10 MHz of D Block PCS spectrum, and 10 MHz of E Block PCS spectrum. RCC operates on the A Block cellular authorization and the 10 MHz E Block PCS license. In the aggregate, the combined company would therefore be attributed with 80 MHz of cellular and PCS spectrum.

However, each of AT&T, Sprint, and T-Mobile operate in the CMA. AT&T operates on 35 MHz of PCS spectrum and also holds 10 MHz of AWS spectrum. T-Mobile operates on a 15 MHz PCS license and also holds a 20 MHz AWS license. Sprint, for its part, operates on a 30 MHz PCS license and approximately 10 MHz of ESMR spectrum. Sprint also holds the 10 MHz “G Block” spectrum and owns or leases approximately 52 percent of the BRS/EBS MHz-POPs in the larger Wenatchee BTA¹²¹—given the vast amount of BRS/EBS spectrum, Sprint’s holdings would equate to over 100 MHz per POP in the BTA if evenly distributed. Sprint’s network is the most complete, and the other two carriers have expanded their networks in the past year. Sprint has one retail store and multiple agents; AT&T has multiple agents; and T-Mobile has at least one agent in this CMA.

¹²⁰ See <http://www.vermontel.com/calling.html>, last visited Aug. 28, 2007.

¹²¹ A BRS/EBS transition plan was filed for the Wenatchee BTA in early November of last year by Clearwire.

Thus, while the proposed transaction would decrease the number of competitors from five to four, each of the remaining competitors should have substantial capacity available. Moreover, Vulcan Ventures—an entity controlled by Paul Allen, one of the founders of Microsoft Corp. and the fifth wealthiest individual in the United States¹²²—holds a 12 MHz block of Lower 700 MHz C Block spectrum across Washington state. In addition, the SpectrumCo venture holds 20 MHz of AWS spectrum and MetroPCS holds 10 MHz of AWS spectrum.¹²³ There is thus substantial possibility for credible new entry in the market.

(i) **Washington 3 – Ferry CMA (CMA695)**

In the Washington 3 – Ferry CMA, Verizon Wireless operates on the B Block cellular authorization, 10 MHz of A Block PCS spectrum, the 10 MHz E Block PCS license and the 10 MHz F Block PCS license. RCC operates on the A Block cellular authorization and the 10 MHz D Block PCS license. In the aggregate, the combined company would therefore be attributed with 90 MHz of cellular and PCS spectrum.

However, each of AT&T, Sprint, and LEAP Wireless operate in the CMA, each with multiple agents in the region. AT&T operates on 30 MHz of B and F Block PCS spectrum and holds 10 MHz of AWS spectrum. LEAP Wireless operates on a 15 MHz PCS license and holds a 10 MHz AWS license. Sprint, for its part, operates on a 30 MHz PCS license and approximately 10 MHz of ESMR spectrum; holds the 10 MHz “G Block” spectrum; and, owns

¹²² See http://www.forbes.com/lists/2006/54/biz_06rich400_The-400-Richest-Americans_FinalWorth.html (last visited Aug. 27, 2007).

¹²³ Two additional carriers are also licensed in the market—Stelera Wireless, LLC and Daredevil Communications, LLC.

or leases approximately 74 percent of the BRS/EBS MHz-POPs in the larger Spokane BTA.¹²⁴

Thus, while the proposed transaction would decrease the number of competitors from five to four, each of the remaining competitors has substantial capacity available. Moreover, given that T-Mobile holds 20 MHz of AWS spectrum, Vulcan Ventures holds a 12 MHz block of Lower 700 MHz C Block spectrum across Washington state, the SpectrumCo venture holds 20 MHz of AWS spectrum, and MetroPCS holds 10 MHz of AWS spectrum, substantial possibility for credible new entry in the market exists.

III. PROCEDURAL CONSIDERATIONS.

A. Additional Authorizations

As set forth in the Applications, RCC controls entities holding numerous Commission licenses. The lists of call signs referenced in the Applications are intended to be complete and to include all licenses held by the respective licensees that are subject to the transaction. RCC, however, may have on file or may hereafter file additional requests for authorizations for new or modified facilities, which may be granted or remain pending during the pendency of the Applications. Accordingly, the Applicants request that the FCC authorize Verizon Wireless to acquire control of the following upon the grant of the transfer of control applications:

- Any authorization issued to RCC or its subsidiaries during the Commission's consideration of the Applications and the period required for consummation of the transaction following approval;
- Construction permits held by such licensees that mature into licenses after closing; and
- Applications that are filed after the date of the Applications and that are pending at the time of consummation.

¹²⁴ A BRS/EBS transition plan was filed for the Spokane BTA in early November of last year by Clearwire. If evenly distributed, Sprint's BRS/EBS holdings would equate to approximately 150 MHz of spectrum per POP.

Such actions would be consistent with Commission precedent.¹²⁵ Moreover, the parties request that Commission approval of the transfer applications include any facilities that may have been inadvertently omitted.

B. Exemption from Cut-Off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2) and 1.933(b) of the Commission's Rules,¹²⁶ to the extent necessary¹²⁷ the Applicants request a blanket exemption from any applicable cut-off rules in cases where RCC or its subsidiaries file amendments to pending applications to reflect consummation of the proposed transfer of control. This exemption is requested so that amendments to pending applications to report the change in ultimate ownership of RCC or its subsidiaries, which are parties to these Applications, would not be treated as major amendments. The scope of the transaction between Verizon Wireless and RCC demonstrates that the ownership change would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose.

¹²⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,626 (¶ 275); *Application of WorldCom, Inc., and MCI Commc 'ns Corp. for Transfer of Control of MCI Commc 'ns Corp. to WorldCom, Inc., Memorandum Opinion and Order*, 13 FCC Rcd 18,025 (¶ 226) (1998); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order*, 12 FCC Rcd 19,985, 20,097 (¶ 247) (1997) ("*NYNEX-Bell Atlantic Order*"); *Applications of Craig O. McCaw and AT&T for Consent to Transfer of Control of McCaw Cellular Commc 'ns, Inc. and Its Subsidiaries, Memorandum Opinion & Order*, 9 FCC Rcd 5,836, 5909 (¶137 & n.300) (1994) ("*McCaw-AT&T Order*").

¹²⁶ 47 C.F.R. §§ 1.927(h), 1.929(a)(2), and 1.933(b).

¹²⁷ With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission has previously found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. See *Applications of Ameritech Corp. and GTE Consumer Servs. Inc., Memorandum Opinion and Order*, 15 FCC Rcd 6,667, 6,668 (¶ 2 & n.6) (1999); *In re Applications of Comcast Cellular Holdings, Co. and SBC Commc 'ns, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 10,604, 10,605 (¶ 2 & n.3) (1999).

Grant of such application would be consistent with previous Commission decisions routinely granting a blanket exemption in cases involving similar transactions.¹²⁸

C. Unconstructed Facilities

Nearly all of the FCC authorizations covered by the transfer of control applications involve constructed facilities. However, RCC's Local Multipoint Distribution Service ("LMDS") and three recently issued common carrier Point-to-Point Microwave Radio Service licenses are authorized but not yet required to be constructed.¹²⁹ The transfer of control of these unbuilt facilities is incidental to this transaction, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from the perspective of trading in licenses.¹³⁰

D. Unjust Enrichment

None of the authorizations held by RCC were obtained pursuant to set-asides or bidding credits for designated entities. Thus, the unjust enrichment provisions of the Commission's auction rules¹³¹ do not apply.

¹²⁸ See, e.g. *NYNEX-Bell Atlantic Order*, 12 FCC Rcd at 20,091-0922 (¶ 234); *Applications of PacifiCorp Holdings, Inc., Transferor, and Century Tel. Enters., Inc., Transferee, For Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc., Memorandum Opinion and Order*, 13 FCC Rcd 8,891, 8915-16 (¶ 47) (1997); *McCaw-AT&T Order*, 9 FCC Rcd at 5909 (¶137 & n.300).

¹²⁹ The station call signs for the unbuilt microwave facilities are: WPQS732, WPQS733, and WQFZ749.

¹³⁰ See 47 C.F.R. § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the "principal purpose of speculation"); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities provided that they are "incidental to the sale [of] other facilities or merger of interests"); *id.*

¹³¹ 47 C.F.R. § 1.2111(b) - (d).