

FILED/ACCEPTED

NOV 13 2007

Federal Communications Commission
Office of the Secretary

RUSSELL W. RAY, PLLC.

Attorney and Counselor at Law
6212-A Old Franconia Road
Alexandria, Virginia 22310

Russell W. Ray ◦

◦ Admitted in DC, VA

Tel: (703) 760-7823

Fax: (703) 313-8004

November 13, 2007

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

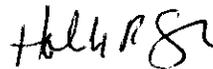
RE: *Application of Rural Cellular Corporation and Celco Partnership d/b/a Verizon Wireless; WT Docket No. 07-208; DA 074192; File No. 0003155487, et al.*

Dear Secretary Dortch:

Enclosed, please find the original and four (4) copies of the Vermont Department of Public Service Petition to Condition Approval or Deny in the above-referenced proceeding.

Please stamp the "file-stamp" copy and return it with the messenger. Do not hesitate to contact the undersigned counsel if you have questions regarding this filing.

Sincerely,



Holly Rachel Smith
Russell W. Ray, PLLC
Attorneys for Vermont Department of Public Service

cc: Erin McGrath, Mobility Division, Wireless Telecommunications Bureau
Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau
Linda Ray, Broadband Division, Wireless Telecommunications Bureau
David Krech, Policy Division, International Bureau
Neil Dellar, Office of General Counsel
Jim Bird, Office of General Counsel

No. of Copies rec'd _____
List ABOVE

Before the
Federal Communications Commission
Washington, DC 20554

FILED/ACCEPTED
NOV 13 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
)
)
RURAL CELLULAR CORPORATION and)
)
CELLCO PARTNERSHIP d/b/a VERIZON)
WIRELESS)
)
for Consent to Transfer Control of Licenses and)
Authorizations)
)
File No. 0003155487, *et al.*)

DA 07-4192
WT Docket No. 07-208

PETITION TO CONDITION APPROVAL
OR DENY OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE

Holly Rachel Smith, Esq.
Russell W. Ray, Esq.
Russell W. Ray, PLLC
6212A Old Franconia Road
Alexandria, Virginia 22310
(703) 313-9401

November 13, 2007

TABLE OF CONTENTS

SUMMARY.....	i
INTRODUCTION.....	1
THE TRANSACTION, WITHOUT CONDITIONS, POSES SERIOUS POTENTIAL PUBLIC INTEREST HARMS TO THE RESIDENTS AND ECONOMY OF THE STATE OF VERMONT.....	2
BECAUSE OF VERMONT’S CURRENT RELIANCE ON RCC AS THE SINGLE GSM OPERATOR, THE TRANSACTION POSES UNIQUE AND SERIOUS PUBLIC INTEREST HARMS TO THE STATE OF VERMONT.....	4
APPLICANTS HAVE FAILED TO PROVE BY A PREPONDERANCE OF EVIDENCE THAT THE TRANSACTION SERVES THE PUBLIC INTEREST	7
APPLICANTS’ MARKET-BY-MARKET ANALYSIS DEMONSTRATES THAT THE TRANSACTION THREATENS COMPETITION FOR WIRELESS SERVICES IN THE VERMONT CMAS	9
BASED ON THE EXISTING RECORD, THE COMMISSION CANNOT APPROVE THE TRANSACTION WITHOUT CONDITIONS	14

SUMMARY

The Vermont Department of Public Service respectfully submits this *Petition to Condition Approval or Deny the Application for Transfer of Control of Licenses* in the acquisition of Rural Cellular Corporation by Verizon Wireless (“the Transaction”). For the reasons set forth below, grant of the applications absent conditions recommended by the Department to preserve and protect the State of Vermont, would be contrary to the public interest.

In applying the public interest standard, the Commission should discount certain of the claimed benefits that would result from the Transaction. Applicants’ claimed benefit of improved service quality is not likely to be immediately available post-transaction. Instead, the Transaction could compromise Vermont’s continuing progress to improve wireless telephone service across the state. Claimed benefits of improved service quality should not weigh against potential harms, such as the likelihood that Verizon Wireless will abandon the GSM network entirely, fail to upgrade or maintain it at current levels, or exert monopoly control over access to it. The Commission must ensure that, post-transaction and any proposed transition period, visitors to the State of Vermont with GSM handsets are not cut-off from mobile phone service and have access to emergency services using their mobile phones.

The potential abandonment or degradation of Vermont’s only GSM network, together with the Verizon Wireless’s combined market spectrum holdings of 70 MHz, 75MHz, or even greater amounts of spectrum in almost all Vermont markets, severely threatens competition in the market for wireless telephone service in the State of Vermont. As is routinely required where merger transactions would otherwise result in

spectrum attributions of 70 MHz or more, the Commission should require that the Verizon Wireless's Vermont markets be divested. Such divestiture should be structured in a manner that preserves Vermont's existing GSM network. To the extent that divestiture is not required in all Vermont markets, the Commission should require that Verizon Wireless maintain the existing GSM network at the current level of investment for a period of at least six years. Without these conditions, the Application should be denied.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
)
RURAL CELLULAR CORPORATION and)
) DA 07-4192
CELLCO PARTNERSHIP d/b/a VERIZON)
WIRELESS) WT Docket No. 07-208
)
for Consent to Transfer Control of Licenses and)
Authorizations)
)
File No. 0003155487, *et al.*)

**PETITION TO CONDITION APPROVAL OR DENY
OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE**

I. INTRODUCTION

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Rural Cellular Corporation (“RCC”) (collectively, “the Applicants”) have filed a series of applications pursuant to Sections 214 and 310(d) of the Communications Act, as amended, seeking Commission approval of the transfer of control of licenses, authorizations and spectrum manager leases held by RCC and its subsidiaries from RCC to a wholly-owned indirect subsidiary of Verizon Wireless (“Application”).¹

RCC, through its subsidiaries, currently holds FCC spectrum licenses in Vermont CMAs. The Vermont Department of Public Service (“the Department of Public Service” or “the Department”) is an executive branch agency in the State of Vermont with the mission of

¹ *Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases and Authorizations*, WT Docket No. 07-208, Public Notice (DA 07-4192, rel. Oct. 11, 2007).

representing the public interest of the state in matters regarding energy, telecommunications, and water, including before the Vermont Public Service Board and federal regulatory agencies such as the Commission.

For the reasons set forth below, grant of the applications without appropriate conditions to preserve and protect the State of Vermont, would be contrary to the public interest. Therefore, the Application should be denied.

II. THE TRANSACTION, WITHOUT CONDITIONS, POSES SERIOUS POTENTIAL PUBLIC INTEREST HARMS TO THE RESIDENTS AND ECONOMY OF THE STATE OF VERMONT

Applicants request Commission approval of the acquisition of one of the few remaining regional wireless carriers by one of a small handful of national wireless carriers. Although the transaction may have cognizable public interest benefits for some RCC customers in some states, as detailed below, the transaction presents cognizable public harms to Vermont residents, Vermont vacationers and business travelers, and Vermont's economy.

The State of Vermont is comprised primarily of sparsely-populated, mountainous rural areas. Burlington, Vermont's largest city boasts a population of less than 40,000. Vermont's rural nature, rugged terrain and low population density provide unique challenges to mobile telephone service providers. Wireless carriers in Vermont, as compared to wireless carriers in many other parts of the United States, face higher costs per user, and natural barriers that limit signal propagation. As a result, wireless coverage in Vermont depends more heavily on cellular spectrum – as opposed to other types of wireless spectrum such as PCS that have smaller area coverage and require many more cell sites. Indeed, there is no commercial mobile radio service provider currently operating in Vermont that does not have at least some spectrum in bands below 1 GHz.

The current state of mobile telephone coverage in Vermont is inadequate. Since 2003, RCC has doubled the number of cell sites, has “sectorized” a portion of existing sites, and has invested heavily in infrastructure to fill coverage gaps and increase signal strength. Yet, despite these efforts one need only travel minutes from Burlington – Vermont’s largest city – to lose cell phone service, and throughout the remainder of the state, cell phone coverage is spotty at best.²

The Vermont Legislature has taken dramatic steps to improve Vermont’s mobile telephone service. During the current session, Vermont has passed legislation with the objective of achieving, among other things, the universal availability of adequate mobile telephone services including voice and data by the end of the year 2010.³ The Act also states that when private and public sector partnerships fail to deliver on the promise of broadband, it is necessary for “the state to support and facilitate the construction of infrastructure” that is needed through financial and other incentives.⁴ Vermont’s legislative efforts to ensure access to reliable wireless phone service underscore that the provision of mobile telephone service is especially challenging in Vermont.

Vermont’s tourism trade attracts millions of visitors to the state each year and tourism is one of Vermont’s major industries. The large number of persons visiting from outside the state requires that Vermont mobile service networks support users of mobile devices commonly deployed in other parts of the United States and around the world.

Moreover, Vermont’s wireless telephone market is unique as compared to the majority of the United States because Vermont relies on a single wireless carrier to support a single GSM

² Letter of Senator Bernard Sanders to the Honorable Kevin Martin, Chairman of the Federal Communications Commission, dated October 29, 2007.

³ See Act of the General Assembly No 79, for the 2007-2008 Session, *An Act Relating to Establishing the Vermont Telecommunications Authority to Advance Broadband and Wireless Communications Infrastructure Throughout the State*, codified at Vt. Stat. Ann. § 8060 *et seq.* (West 2007).

⁴ *Id.*

network. RCC, doing business in Vermont as Unicef, maintains the only substantial GSM network in the state. Currently, visitors to Vermont with GSM handsets rely on RCC's network for their mobile communications and even roam on RCC's GSM network when they dial 9-1-1.

Low population density, mountainous topography, reliance on a single GSM compatible wireless carrier, and inadequate coverage present a combination of market characteristics unique to Vermont. These factors distinguish the proposed acquisition by Verizon Wireless of RCC from predecessor transactions in the wireless merger and acquisition arena. If the Application is approved without conditions, Vermont residents, vacationers and business travelers, and the state as a whole, would face cognizable and disproportionate public harm.

III. BECAUSE OF VERMONT'S CURRENT RELIANCE ON RCC AS THE SINGLE GSM OPERATOR, THE TRANSACTION POSES UNIQUE AND SERIOUS PUBLIC INTEREST HARMS TO THE STATE OF VERMONT

The Vermont Department of Public Service is particularly concerned about the impact of Applicants' stated plans to integrate RCC's GSM network with Verizon Wireless' CDMA network on the State of Vermont, its residents, vacationers and business travelers, and economy.⁵ Applicants state that after consummation, Verizon Wireless will integrate RCC's analog, GSM, TDMA and CDMA networks in various markets.⁶ The transition will require that Verizon Wireless collocate CDMA equipment on many of RCC's existing towers while continuing to operate the GSM equipment ("GSM/CDMA overlay").⁷ The Applicants anticipate that the GSM/CDMA overlay will be complete in approximately eighteen months.⁸ At that time,

⁵ *Rural Cellular Corp. and Celco Partnership d/b/a Verizon Wireless for Consent To The Transfer Of Control Of Commission Licenses And Authorizations*, WT Docket No. 07-208, File no. 0003155487, Attachment: Description of Transaction, Public Interest Showing and Related Requests and Demonstrations of the Applicants (filed Sept. 4, 2007) ("Public Interest Showing") at p. 23.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Verizon Wireless will switch out RCC's customer's GSM handsets, enabling them to access only the CDMA network. The Applicants also plan, post-GSM/CDMA overlay, to eliminate redundant cell sites to achieve cost savings.⁹

The Applicants' proposed GSM/CDMA overlay poses several substantial cognizable public interest harms. First, absent any post-transaction conditions, Verizon Wireless may abandon Vermont's sole GSM network at any time. Second, until Verizon Wireless abandons the GSM network, it will enjoy potentially harmful market power as both a monopolist over Vermont's GSM network and the most extensive operator of a CDMA network. Finally, the transition will slow the continuing progress toward remedying inadequate wireless coverage in the State of Vermont.

As previously noted, Vermont is unique in that it relies on a single carrier – RCC – to sustain the state's GSM network. While Applicants contend that T-Mobile is offering wireless service in Windsor and Windham counties, it operates only one cell site.¹⁰ Thus, RCC is effectively the sole operator of a GSM network in the state of Vermont.

While the Applicants state that they intend to operate the GSM network even after the GSM/CDMA overlay is complete, the Applicants make no commitment regarding the period of time during which they will support the GSM network after the Transaction. As the Commission noted in its order approving the Cingular/AT&T Wireless merger, national carriers made network technology decisions in hopes of gaining a non-price related competitive edge.¹¹ Cingular and AT&T Wireless chose TDMA and GSM as their 2G digital technology; T-Mobile

⁹ *Id* at pp. 23-24.

¹⁰ *Id* at p. 52.

¹¹ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order (FCC 04-255, rel. Oct. 26, 2003) (“*Cingular/AT&T Order*”) at ¶ 64.

chose GSM; Sprint and Verizon chose CDMA; and Nextel chose iDEN.¹² These past network decisions have profound impacts on today's wireless markets, as handsets designed for one particular technology cannot roam on another. Thus, the impact of the elimination of the only GSM provider in a market is that users of GSM handsets receive no signal at all—not even to access emergency service. The Applicants credit the GSM/CDMA overlay as a cost-savings benefit to weigh in favor of the Transaction, when in fact the pursuit of this cost-savings is a financial incentive for Verizon Wireless to abandon the GSM network at the soonest possible time, which would harm Vermont's interests.

Even if Verizon Wireless continues to operate the GSM network, it will have monopoly powers that could “enable it to act on its own to raise prices, lower quality, reduce innovation or restrict deployment of new technologies.”¹³ Given its partiality to CDMA technology, and the lack of a competitor GSM network, Verizon Wireless faces no incentive to maintain the GSM network at its current quality level, and certainly faces no incentive to invest in network innovations or new technology deployments. To the contrary, it has stated in its Application that it seeks to realize cost-savings by eliminating cell sites. Post GSM/CDMA overlay, vacationers and business travelers to the state of Vermont with GSM handsets will experience inferior mobile telephone service.

Post-transaction, Verizon Wireless, can exert other monopoly powers that will negatively harm the market for wireless services in the State of Vermont. Having monopoly control over the State of Vermont's only GSM network, Verizon Wireless can extract high rents from GSM service providers that require roaming agreements in order to provision service to their customers traveling through Vermont. Moreover, given the aggregate spectrum holding of

¹² *Id.*

¹³ *Cingular/AT&T Wireless Order* at ¶ 70. There are specific markets in which competitive conditions are sufficiently different such that unilateral effects pose a threat to competition. *Id.* at ¶ 149.

Verizon Wireless in Vermont post-transaction (especially in lower frequency bands), there would be substantial barriers for a new entrant to acquire enough suitable spectrum to deploy a truly competing GSM network.¹⁴

Finally, the Applicants' proposed GSM/CDMA overlay could delay ongoing initiatives to improve service coverage statewide. RCC has been making significant capital investments each year to fill coverage gaps, increase signal strength and deploy advanced wireless services. Applicants offer no assurance that they will continue these investments to the GSM network. In fact, Verizon Wireless will have a disincentive to invest in the GSM network, especially given the Applicants stated objective of consolidating two networks into one to achieve cost-savings. The Applicants' plan to overlay one network over another at existing sites could likely result in the diversion of resources away from the expansion of both Verizon Wireless's and RCC's current networks, which has been occurring.

IV. APPLICANTS HAVE FAILED TO PROVE BY A PREPONDERANCE OF EVIDENCE THAT THE TRANSACTION SERVES THE PUBLIC INTEREST

The public interest standards of Sections 214(a) and 310(d) of the Communications Act involve a balancing process that weighs the public interest harms of the proposed transaction against the public interest benefits.¹⁵ Applicants bear the burden of proving by a preponderance of evidence that the proposed transaction, on balance, serves the public interest.¹⁶ In evaluating claimed public benefits, the Commission applies several criteria. Specifically, claimed benefits must be "likely to be accomplished as a result of the merger but unlikely to be realized by other

¹⁴ The Commission has recognized that the response of rivals to a merger transaction may depend on their ability to obtain access to additional spectrum suitable for the provision of mobile telephone services. *Cingular/AT&T Wireless Order* at ¶ 189.

¹⁵ *Id.* at ¶ 40.

¹⁶ *Id.*

means that entail fewer anticompetitive effects.”¹⁷ Claimed benefits must also be verifiable.¹⁸ Specifically, the Commission has discounted claimed benefits when it cannot confirm either the magnitude of these benefits, or the speed with which they are likely to be achieved.¹⁹

In weighing the potential public interest harms of the proposed transaction against the public interest benefits, the Commission should discount some of the Applicants’ claimed public interest benefits because they are unverifiable or will not be realized in the State of Vermont in the immediate future. For instance, the Applicants claim that “RCC customers will experience improved quality of service” and “RCC customers will experience expanded seamless network coverage.”²⁰ This professed benefit will certainly not be immediately available in Vermont post-transaction. In fact, the Applicants’ plan to overlay RCC’s EDGE-enhanced GSM network with CDMA over eighteen months will likely halt RCC’s continuous progress towards filling coverage holes in the GSM network. The proposed transaction provides the opportunity for the Applicants to expand primarily through acquisition of the network which is its major direct competitor in Vermont instead of expanding through the addition of new sites and new coverage. Absent from the Application are commitments on the part of Verizon Wireless to add cell sites or take other measures toward the continuous and ongoing efforts to improve existing wireless mobile service quality in the State of Vermont.

Moreover, other claimed public interest benefits should be discounted in the public interest analysis because they are based on misstatements. For instance, as part of the Applicants’ support for its claimed benefit of improved service quality, the Applicants state that

¹⁷ *Id* at ¶ 205 (*citations omitted*).

¹⁸ *Id.*

¹⁹ *Id* at ¶ 214.

²⁰ *Public Interest Showing* at pp. 11, 13.

“RCC has only announced plans to upgrade its network to EDGE technology.”²¹ This is simply untrue. RCC has already completed the first regional deployment of EDGE technology in New England, investing \$45 million and deploying wireless data services to its customers in Vermont.²² The Applicants improperly characterize the baseline level of service RCC Vermont customers receive today, and significantly overstate the claimed improvement in service quality that RCC customers will experience post-transaction.

V. APPLICANTS’ MARKET-BY-MARKET ANALYSIS DEMONSTRATES THAT THE TRANSACTION THREATENS COMPETITION FOR WIRELESS SERVICES IN THE VERMONT CMAS

In reviewing proposed merger and acquisition transactions, the Commission examines the characteristics of competition in the markets of the merging firms to determine the impact of the transaction.²³ Because spectrum is an essential component of competition in the market for wireless services, the Commission strictly scrutinizes, on a market-by-market basis, those markets where a single entity would hold 70 MHz or more relevant spectrum in at least part of the market.²⁴ Relevant spectrum includes cellular, PCS and SMR spectrum because this spectrum represents the total bandwidth available for mobile telephony today.²⁵ Here, post-transaction, cellular, PCS and SMR spectrum (“relevant spectrum”) holdings of Verizon Wireless will be 75 MHz or greater in 11 of Vermont’s 14 counties.²⁶ Verizon Wireless will

²¹ *Id* at p. 13.

²² *Unicel Invests \$45 Million to Build High-Speed Wireless Network*, Business People, at <http://www.vermontguides.com/featured.business/unicel.html>

²³ *Cingular/AWS Order* at ¶ 57.

²⁴ *Id* at ¶ 109. *See also* Applications of *Western Wireless and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order (FCC 05-138, rel. Jul. 19, 2005) (“*Western Wireless/ALLTEL Order*”) at ¶ 49. AWS spectrum should not be included in the local market analysis. AWS has not yet impacted the market for wireless voice communications in the State of Vermont.

²⁵ *Cingular/AT&T Wireless Order* at ¶ 109; *see also Western Wireless/ALLTEL Order* at ¶ 38 (mobile telephony services offered by cellular, PCS, and SMR licensees provide the same basic voice and data functionality).

²⁶ The Department disagrees with the Applicants’ treatment of leased spectrum. Although Applicants state that Verizon Wireless will cancel leases after closing, this spectrum will not be immediately available for use by a competitor and, thus, should be attributed to Applicants. Were the leased spectrum to be included, post-transaction,

hold 70 MHz or greater, 65 MHz or greater, and 50 MHz or greater, respectively, in each of the remaining three counties.²⁷ The CMAs containing these counties should receive the highest level of scrutiny because post-transaction, (1) Verizon Wireless will control the only GSM network in Vermont and (2) there lacks enough remaining suitable spectrum for an entrant to reconstruct Vermont's existing GSM network.

Moreover, in the past, the Commission has identified as particularly troublesome in terms of threats to competition, those markets in which the total number of providers (or the total number of providers of nationwide service) is low. In fact, the Commission has stated in reviewing similar transactions that "it almost certainly would be harmful to competition if a transaction resulted in a reduction in the number of rival carriers from 3 to 2."²⁸ If approved, the Transaction would reduce the number of rival wireless carriers from three to two throughout most of Vermont.

Additionally, wireless carriers in Vermont heavily rely on cellular spectrum – as opposed to other types of wireless spectrum such as PCS that have smaller area coverage and require many more cell sites. Signal strength is a pervasive problem throughout the state. In most areas of Vermont, a new or existing entrant without an existing network and without A or B block cellular holdings would find it very difficult to cobble together enough spectrum to support a GSM platform with true geographic reach in Vermont.

Burlington, Vermont CMA (CMA248): The Burlington, Vermont CMA is located in the northern portion of Vermont and is comprised of the following counties: Chittenden and Grand

Verizon Wireless would control 88.2 MHz of cellular, PCS and SMR spectrum in the two counties that serve Burlington, Vermont's largest city, as well as 85 MHz in each of Essex and Rutland counties.

²⁷ If the leases were included in Applicants' calculation, post-transaction, Verizon Wireless would control 70 MHz, 75 MHz, and 60 MHz in the remaining three counties.

²⁸ *Western Wireless/ALLTEL Order* at ¶ 120.

Isle. Effectively, there are three wireless providers actively offering wireless service in this CMA today; Verizon Wireless, RCC, and Spint/Nextel.

RCC currently holds licenses on 35 MHz of the relevant spectrum in this CMA and Verizon Wireless holds 40 MHz. However, RCC leases spectrum – 3.2 MHz in Chittenden County and 10 MHz in Grand Isle County – from AT&T. Because this spectrum will not be available for use by a rival carrier immediately following the transaction, it should arguably be attributed to RCC. Thus, post-merger, Verizon Wireless will control 88.2 MHz of spectrum throughout the entire Burlington CMA.

Applicants state that U S Cellular is operational in the Burlington CMA,²⁹ yet U S Cellular's website lists stores in Southern Vermont and New Hampshire as the closest retail locations to Burlington, Vermont.³⁰ Store location is relevant to this local market analysis because geographic markets depend on “where customers do and would travel to purchase wireless services.”³¹ Additionally, U S Cellular operates on a CDMA platform; its presence in the market does not diffuse the harm that could result if Verizon Wireless, post-transaction, were the only GSM operator in the state.

Applicants improperly count AT&T as a competitor in this or any other Vermont CMA. Applicants acknowledge that AT&T “has a limited network operational” in the Burlington CMA and states that AT&T has aggressively expanded coverage in New England. However, Applicants make no showing regarding AT&T's investments in the State of Vermont. In fact, the press releases cited in support of AT&T's presence in the Burlington CMA describe AT&T's investments in Maine, New York and New Hampshire, but not Vermont. In fact, entering a Burlington zip code (05401) at AT&T's wireless service website, generates the following

²⁹ *Public Interest Statement* at p. 45.

³⁰ See http://www.uscc.com/uscellular/SilverStream/Pages/r_storefinder.html?zip=05401&mkt=605940&tm=0

³¹ *Cingular/AT&T Wireless Order* at ¶ 90.

message: “We are expanding our coverage every day but unfortunately this is one of the few areas we haven't reached yet. . .”³² That iPhones would not work in Vermont, confirms that AT&T does not offer residents of the Burlington CMA an additional choice of wireless providers today.³³

The prospective market entrants that Applicants include in their analysis, such as T-Mobile (holding spectrum but not operating) and Vermont Telephone Company (not yet operating and with plans to deploy WiMax) do not substantially reduce competitive concerns.

Thus, effectively the Transaction would reduce the number of wireless providers in the Burlington CMA from 3 to 2, with Verizon Wireless being the only GSM network operator.³⁴

Vermont 1 – Franklin CMA (CMA679)

The Franklin CMA is located in northern Vermont outside of the Burlington CMA. CMA679 is comprised of the following Vermont Counties: Caledonia, Essex, Franklin, Lamoille, Orange, Orleans, and Washington. However, Applicants improperly include spectrum holdings in Addison, Windsor and Rutland counties in this discussion.³⁵ CMA679 is much larger, more mountainous and more rural than the neighboring Burlington CMA.

Throughout this CMA, RCC holds licenses representing 35 MHz of relevant spectrum and Verizon Wireless holds 40 MHz. There is 10 MHz of spectrum in Essex County that RCC leases from AT&T that should be attributed to RCC. Thus, in Essex County, post-transaction Verizon Wireless would control 85 MHz of relevant spectrum.

³² http://www.wireless.att.com/cell-phone-service/get-started/index.jsp?q_returnUrl=/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp&_requestid=948758

³³ *Apple iPhones Useless in Vermont*, Rutland Herald (Jun. 28, 2007) at

<http://www.rutlandherald.com/apps/pbcs.dll/article?AID=/20070628/NEWS01/706280373/1002/NEWS01>

³⁴ Applicants allege that the transaction would reduce the number of wireless providers in the Burlington Market from 5 to 4. *Public Interest Statement* at p. 46.

³⁵ *Id* at p. 50.

Applicants allege that CMA679 has five operating carriers today, Verizon Wireless, RCC, Sprint/Nextel, U S Cellular, and AT&T.³⁶ As described in the analysis for Burlington above, AT&T and U S Cellular are not really offering service to customers in the Franklin CMA. Thus, in actuality, the Transaction would reduce the number of active wireless providers serving CMA679 from three to two. Again, Verizon Wireless post-merger would operate the only GSM network.

Vermont 2 – Addison CMA (CMA680)

The Addison Vermont CMA is comprised of the remaining counties in mid and southern Vermont, including: Addison, Bennington, Rutland, Windham and Windsor. In Addison and Rutland counties, Verizon Wireless holds 40 MHz of relevant spectrum and RCC holds 35 MHz. In Windsor County, Verizon Wireless and RCC each hold 35 MHz of relevant spectrum. In Windham County, Verizon Wireless holds 20 MHz and RCC holds 45 MHz. Finally, in Bennington County, Verizon Wireless holds 15 MHz and RCC 35 MHz of relevant spectrum. Additionally, RCC leases 10 MHz of spectrum from AT&T in Bennington, Rutland and Windham counties. Thus, post-transaction, Verizon Wireless will control 85 MHz of relevant spectrum in Rutland County, 75 MHz in Addison and Windham Counties, 70 MHz in Windsor County and 60 MHz in Bennington County.

Like Burlington and Franklin CMAs, there are few competitors of wireless service in CMA680. Here, instead of only three providers, U S Cellular holds a cellular license in Bennington and Windham counties, as well as in a portion of Windsor County.³⁷ Therefore, the transaction will reduce the number of wireless providers from four (Verizon Wireless, RCC, Sprint/Nextel, U S Cellular) to three in the southern portion of the CMA, and from three

³⁶ *Id* at pp. 51-52.

³⁷ A carrier with only partial service coverage in a geographic market may not be perceived as a close substitute for a carrier with ubiquitous local coverage. *Western Wireless/Alltel Order* at ¶ 66.

(Verizon, RCC, Sprint/Nextel) to two in the remainder. Again, AT&T may hold spectrum that it is not leasing to RCC, however, as described above it does not provide service in Vermont. Post-transaction, Verizon Wireless would not face a significant amount of competition in CMA680. Despite that levels of competition vary across the CMA, the Commission should require that the CMA680 in its entirety be divested; CMAs are the most exact divestiture area for purposes of eliminating competitive harm.³⁸

VI. BASED ON THE EXISTING RECORD, THE COMMISSION CANNOT APPROVE THE TRANSACTION WITHOUT CONDITIONS

Section 303(r) of the Communications Act, as amended, authorizes the Commission to prescribe conditions, not inconsistent with law, which may be necessary to carry out the public interest.³⁹ For example, these conditions may include divestiture of licenses, including associated facilities and customers.⁴⁰ Although the Commission has broad authority, it imposes conditions only to remedy harms that will actually result from the transaction.

The Transaction, as proposed, is not in the public interest because it will harm Vermont's residents, vacationers, business travelers and economy by slowing the progress of improving wireless service coverage across the state. Moreover, the Transaction threatens the integrity and continuation of, and carrier access to, Vermont's only GSM network. These harms outweigh the claimed public benefits, such as improved service quality, which will not be immediately realized in Vermont. Finally, the Transaction will result in Verizon Wireless holding a dangerously high concentration of the spectrum suitable for the provision of wireless telecommunications service in Vermont. As a result, divestiture of the Vermont CMAs is an

³⁸ *Western Wireless/Alltel Order* at n. 288.

³⁹ 47 U.S.C. § 303(r).

⁴⁰ *Cingular/AT&T Wireless Order* at ¶ 43.

appropriate, narrowly tailored condition that will enable the Transaction to yield overall public benefits.

Divestiture is appropriate because post-transaction, Verizon Wireless will control 70 MHz or more of total amount of cellular, PCS and SMR spectrum in all but one of Vermont's counties. The heavy reliance on lower frequency bands capable of providing signal coverage across challenging terrain decreases the amount of suitable spectrum available for competitors to the combined entity in Vermont. Moreover, Verizon Wireless' post-transaction control of Vermont's only GSM network furthers the potential competitive harm that could result from the Transaction.

Moreover, in order to condition the Transaction in a way that will remedy its resulting harms, it is vital that the Commission preserve and protect Vermont's only GSM network. Therefore, any divestiture requirements should include provisions to preserve the GSM network. The Department does not argue that one technology is superior to another, only that the very large installed base of GSM customers and handsets makes it imperative that these devices continue to work in Vermont. Moreover, in any Vermont market for which the Commission determines the competitive thresholds for requiring divestiture are not met, the Commission should require that Verizon Wireless maintain the GSM network for a period of six years.

* * * * *

For the reasons set forth herein, grant of the applications without appropriate conditions would be contrary to the public interest. Therefore, the Department of Public Service respectfully requests that the Applications seeking Commission approval of the transfer of control of licenses, authorizations and spectrum manager leases held by RCC and its subsidiaries from RCC to a wholly-owned indirect subsidiary of Verizon Wireless be denied.

Respectfully submitted,



Holly Rachel Smith, Esq.
Russell W. Ray, Esq.
Russell W. Ray, PLLC
6212A Old Franconia Road
Alexandria, Virginia 22310
(703) 313-9401

*Attorneys for the Vermont Department of
Public Service*

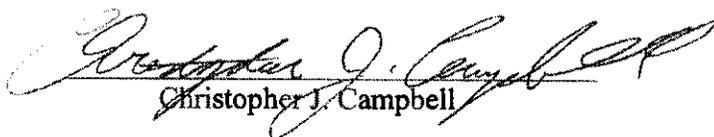
November 13, 2007

Declaration of Christopher J. Campbell

I, Christopher J. Campbell, do hereby attest and state as follows:

1. I am Christopher J. Campbell. I am Director for Telecommunications for the Vermont Department of Public Service.
2. I have read the foregoing Petition to Condition Approval or Deny, and I have personal knowledge of the facts stated therein concerning the impact on the public interest in the State of Vermont of the acquisition of Rural Cellular Corporation by Verizon Wireless.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 13, 2007.


Christopher J. Campbell

Subscribed and sworn to me this 13th day of November, 2007.

Susan M. Pittsley
A notary public of Orange County Vermont
My commission expires: 02/10/11

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing PETITION TO
CONDITION APPROVAL OR DENY via overnight courier to the following parties:

Nancy Victory
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006

David L. Nace, Esq.
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Blvd., Suite 1500
McLean, VA 22102

This 13th day of November, 2007.



Holly Rachel Smith

RUSSELL W. RAY, PLLC
6212A Old Franconia Road
Alexandria, Virginia 22310
(703) 313-9401
(703) 313-8004 (fax)

*Attorneys for Vermont Department of Public
Service*