

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

In re Applications of

RURAL CELLULAR CORP. , Transferor

and

WT Docket No. 07-208

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS, Transferee

for Consent to the Transfer of Control of
Commission Licenses and Authorizations
Pursuant to Sections 214 and 310(d) of the
Communications Act.

**PETITION TO DENY
of
CONSUMER FEDERATION OF AMERICA,
CONSUMERS UNION,
FREE PRESS,
U.S. PUBLIC INTEREST RESEARCH GROUP
and
VERMONT PUBLIC INTEREST RESEARCH GROUP**

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February 11, 2008

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To: The Commission

I. Introduction and Summary

Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont Public Interest Research Group (“Joint Petitioners”) respectfully submit this Petition to Deny the above-captioned applications.

Joint Petitioners, individually and collectively, represent a broad range of consumer interests, including consumers who will be harmed by this transfer.¹ As such,

¹ The Consumer Federation of America is an advocacy, research, education and service organization established in 1968. CFA has as its members some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people. As an advocacy group, CFA works to advance pro-

Joint Petitioners are “parties in interest” within the meaning of Section 309(d) of the Communications Act of 1934, as amended, and have standing to participate in this proceeding.

The acquisition, as proposed, would have anti-competitive and anti-consumer effects in several, particularly rural, areas. VZW offers service on a CDMA network while RCC offers service on a GSM network. Following the acquisition, VZW will maintain the GSM network only temporarily and then migrate RCC’s customers to the CDMA network, and will apparently offer generic handsets to the migrating customers.

Applicants have failed to prove by a preponderance of evidence that the proposed transaction, even as restructured to divest certain GSM spectrum and operations to AT&T, would serve the public interest. For the reasons set forth herein, and in the November 13, 2007 “Petition to Deny” filed by the Vermont Department of Public Service (which is incorporated herein by this reference), the applications should be denied or, in the alternative, granted subject to the important consumer safeguards described below.

consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts.

Consumers Union, the publisher of *Consumer Reports*, is an independent, nonprofit testing and information organization serving only consumers. CU does advocacy work from four offices in New York, Washington, San Francisco, and Austin. CU’s public policy staff addresses a broad range of telecommunications, media and other policy issues affecting consumers at the regional, national and international level. CU staff members frequently testify before Federal and state legislative and regulatory bodies and participate in rulemaking activities at the Commission and elsewhere.

Free Press is a national nonpartisan organization working to increase informed public participation in crucial media policy debates, and to generate policies that will produce a more competitive and public interest-oriented media system with a strong nonprofit and non-commercial sector.

U.S. PIRG serves as the federation of state Public Interest Research Groups (including Vermont PIRG). The PIRGs are non-profit, non-partisan public interest advocacy organizations with over one-half million members around the country. U.S. PIRG advocates on behalf of PIRG members before Congress, state legislatures and the FCC on a variety of competition, telecommunications and media reform issues, including wireless telephone service.

II. Argument

A. The “Spinoff” of Overlapping Cellular Properties Should be Considered in a Separate Docket.

Today, on the last day for filing petitions to deny the VZW/RCC applications, VZW filed applications for authority to transfer to AT&T certain of the overlapping cellular properties it will receive if the captioned applications for transfer of control of RCC to VZW are granted. Before granting either the VZW/RCC or the VZW/AT&T applications, the Commission must insist that the public interest showings be supported by clear and convincing evidence and require the applicants to correct *on the record* any factual misstatements in either application and to explain any actual or apparent inconsistencies between the two “public interest” showings. Inconsistencies include (but are not necessarily limited to) the statements in the VZW/RCC “public interest showing” asserting AT&T has network facilities “operational,” or that AT&T “operates” in the Burlington, VT CMA, the Vermont 1-Franklin CMA and the Vermont 2-Addison CMA (at pp. 45, 50 and 51, respectively), when compared with the description of AT&T’s operations in the three Vermont markets in today’s VZW-AT&T submission: “AT&T today has no network presence and does not offer service in Vermont.”² The Commission must require the applicants to meet their burden of demonstrating by a preponderance of the evidence that the benefits of the respective transactions outweigh the potential harm to competition and consumers.

The Wireless Telecommunications Bureau will soon issue a public notice seeking comment on the VZW/AT&T transaction. Joint Petitioners welcome the opportunity to comment on that transaction, which may present different issues than those presented by

² See VZW/AT&T Public Interest statement at 14; see also *id.* at 10: “In all three Vermont markets, AT&T does not provide wireless service.”

the proposed merger of VZW and RCC. Accordingly, consideration of the VZW/AT&T second stage transaction or “spinoff” should be treated as a separate docket with its own comment schedule.

B. Divestiture of Overlapping Cellular Properties Is Necessary, but Not Sufficient, to Warrant Approval of the VZW/RCC Merger.

The Applicants have taken an important first step to address the adverse effects of the proposed transaction by committing to the Department of Justice to divest to AT&T the GSM networks where VZW and RCC cellular licenses overlap. However, further divestitures of RCC spectrum and GSM properties may be necessary.

In Southern Vermont³, and possibly elsewhere, VZW’s divestiture commitment contemplates retention of RCC’s cellular license, with VZW continuing to operate the GSM network built by RCC until “a GSM operator begins to offer service there.”⁴ Presumably, once a GSM operator “begins to offer service” in such an area, VZW would begin to transition the cellular spectrum and legacy RCC customers to CDMA. VZW has no obvious incentive properly to maintain, upgrade, or expand the GSM network, harming legacy RCC subscribers and those roamers who use GSM phones. Even if VZW maintains the GSM network, VZW could set monopoly prices on roaming agreements—having a monopoly on the GSM network in the retained territories.

A simpler solution would be to require divestiture of RCC cellular spectrum and associated GSM operations wherever VZW holds spectrum and is already providing

³ The cellular license held by RCC for a portion of CMA 680 encompassing all of Bennington and Windham Counties and the portion of Windsor County south of State Route 4, where VZW holds no cellular license would be retained.

⁴ Ex Parte Letter dated December 5, 2007, from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless (“VZW December 5 letter”) at 3.

CDMA service.⁵ As noted by the Vermont Department of Public Service, VZW holds PCS licenses in Southern Vermont that it is working to build out.⁶ The same may be true in other areas as well.

A complete divestiture of RCC's cellular spectrum and GSM operations in such "non-cellular overlapping areas" would help ensure the integrity and longevity of the GSM network, while permitting VZW to continue to build out CDMA coverage using its own spectrum. A full divestiture of RCC cellular spectrum and GSM operations where VZW has or will acquire sufficient suitable spectrum to offer CDMA service would eliminate the need for the Commission to define and monitor the end of VZW's obligation to maintain the GSM network, currently couched in such ambiguous terms as "when a GSM operator begins to offer service there."

C. Citizens Paid for the GSM Network and Deserve Access to It.

RCC's GSM network was heavily subsidized by American citizens. In the past five years, RCC has received over 150 million dollars from the Universal Service Fund to build the GSM network.⁷ RCC is a Competitive Eligible Telecommunications Carrier (CETC) in most, if not all, of its 15-state territory.⁸ However, nowhere in the 61-page "Description of Transaction, Public Interest Showing and Related Requests and Demon-

⁵ According to the table accompanying the captioned applications, VZW holds 15 MHz of PCS spectrum in Bennington County and 20 MHz in Windham County. It has commenced offering CDMA service there. *See* Verizon Wireless Press Release, dated January 24, 2008, announcing expansion of service into 10 more towns within Bennington and Windham Counties.

⁶ Comments of the Vermont Department of Public Service, November 26, 2007, at 3.

⁷ Data from the Universal Service Administrative Corp. (USAC).

⁸ Of the 15 states in which RCC holds licenses, RCC offers "Universal Service" or "Community Connections" plans with unlimited local calling in every state except Georgia.

strations” do the Applicants state that VZW intends to continue to provide service as a CETC.⁹

RCC currently offers Universal Service plans with unlimited anytime minutes, often throughout a multistate calling area, to residents of Minnesota for \$14.99 per month;¹⁰ to residents of Maine for \$15.00/mo;¹¹ and to residents of Mississippi for \$19.99/mo.¹² In 14 of 15 states – all except Georgia – RCC offers \$35.00/month Community Connections plans with unlimited anytime minutes and expanded “local” calling areas.¹³

Many rural consumers depend on RCC’s network for basic local telephone service. RCC’s existing GSM customers in several states, including Vermont, Maine, New York and Washington, have filed informal comments with the Commission, expressing concern that the affordable rates, the no-contract plans and the customer service they have enjoyed as RCC/Unicel subscribers will be lost if the RCC operations are taken over by either of the two largest nationwide carriers. Other RCC customers have stated that they chose RCC’s service because they can readily use their GSM phones when traveling internationally by plugging in another operator’s SIM card. One commenter from Maine, where tourism is very important, expressed concern that visitors with GSM phones would be unable to make or receive wireless calls once VZW completed the migration of the RCC system to CDMA.

VZW’s stated intent to divest most of the RCC system and to retire the remainder once another operator begins GSM service would mean that American citizens get little

⁹ This omission is not necessarily surprising. VZW’s controlling shareholder, Verizon Communications, Inc., filed a report with Commission last June urging that funding for CETCs be capped. “Report Claims USF Support Wasted” RCR Wireless News, June 23, 2007.

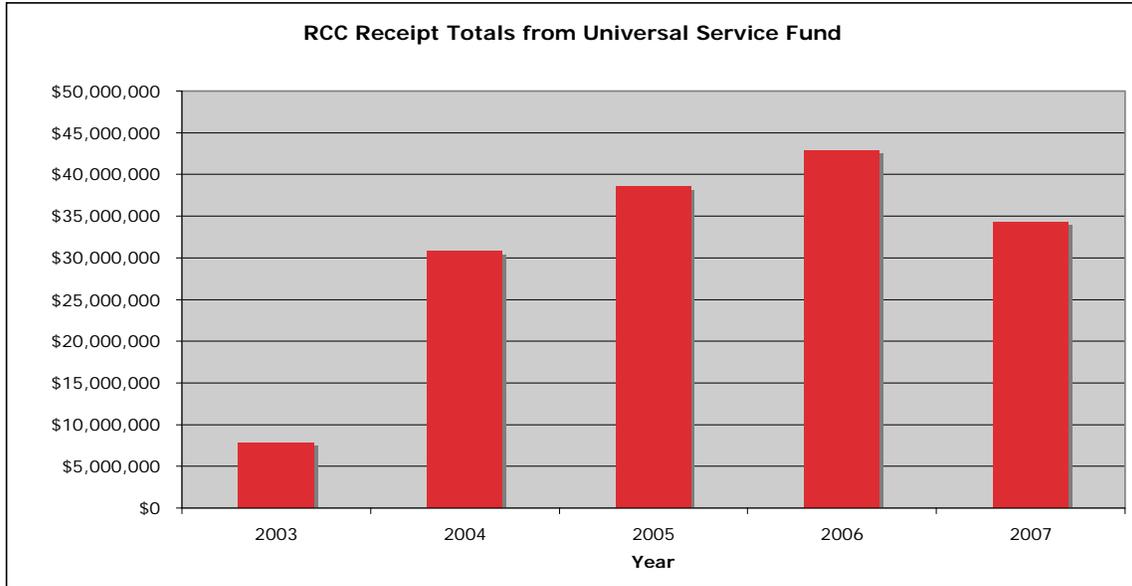
¹⁰ http://www.unicel.com/orphan/mw_universal_plan (last visited Feb. 9, 2008).

¹¹ http://www.rccw.com/orphan/ne_universal_plan (last visited Feb. 9, 2008).

¹² http://www.rccw.com/orphan/s_universal_plan (last visited Feb. 9, 2008).

¹³ See notes 10, 11 and 12, *supra*, http://www.unicel.com/orphan/ks_universal_plan and http://www.rccw.com/orphan/nw_universal_plan (last visited Feb. 9, 2008).

for their investment. Moreover, it would limit the choices of those who paid to have this network built.



The people who helped fund the GSM network—the public—should have access to the network, and RCC subscribers should continue to receive the same quality of service, innovative rate plans and customer service that they currently enjoy.

Although the revised proposal addresses some of the concerns previously expressed by consumers about “forced migration” from GSM to CDMA after 18 months and an involuntary exchange of existing GSM phones for free (but “basic”) CDMA handsets, it does not completely resolve the concerns expressed by RCC subscribers regarding continued availability of existing rate plans, local customer service and maintenance and expansion of the GSM network in those areas where VZW proposes to retain RCC’s cellular spectrum.

Should the Commission decide to allow VZW to retain RCC’s cellular spectrum in areas where RCC is providing basic local telephone service, the obligation should ex-

tend for a sufficient period to allow for an orderly transition of all customers, including RCC's CETC customer base. Joint Commenters support the recommendation of the Vermont Department of Public Service that, absent full divestiture, VZW be required to maintain the GSM network for a period of six years.

D. Promptly Discontinuing Analog Service Will Harm Consumers.

Discontinuance of analog service is likely to have a significant and disproportionate adverse impact on wireless customers in rural and remote areas. Several times throughout the application, VZW notes its intention to discontinue provision of analog service on February 18, 2008. VZW presumably intends to "retire" the RCC analog system as soon as the merger closes. RCC/Unicel, acknowledging that customers coverage "will not be exactly the same as it is today"¹⁴ has advised its subscribers that it will "begin turning down the TDMA/Analog network on May 20, 2008." Informal comments submitted to the Commission by a number of RCC's rural customers indicate that they can only receive analog signals. Discontinuing analog service immediately following the merger or a short time thereafter would impose a disproportionate burden on analog subscribers, who would be obligated to acquire a GSM handset to continue to receive service (even assuming coverage exists at their location), only to have to change to CDMA when VZW completes the CDMA buildout in 18 months. VZW should be required to maintain analog service until it has completed the CDMA buildout throughout RCC's composite analog/digital coverage area.

¹⁴ http://www.unicel.com/support/faq_list/21 (last visited on Feb. 9, 2008).

E. If the Commission Does Not Deny the Transaction, Pro-Consumer Conditions May Sufficiently Remedy the Proposed Acquisition's Anticompetitive and Anti-Consumer Effects.

If the Commission approves the applications, it should only do so subject to basic consumer protections. These protections include:

- where VZW would control the only GSM network: VZW should be required to (a) divest the GSM network (including both spectrum and network assets) to a competitor offering GSM service or (b) VZW must agree to maintain, upgrade, and expand the GSM service for as long as competitors and roamers could use it, or six years, whichever is longer;
- VZW should be required to commit to provide automatic roaming services at reasonable rates to other GSM and CDMA carriers;
- when VZW migrates RCC's current consumers to VZW's CDMA network, rendering the consumers' GSM handsets useless, it should be required to provide each consumer with a voucher for the list price of the GSM handset being retired, so that the consumers can purchase a comparable device compatible with the VZW CDMA network;
- VZW must commit, consistent with the principles of platform openness and neutrality, that for as long as GSM and CDMA networks remain in operation (under the consumer protection provisions described above), legacy RCC subscribers will not be required to exchange GSM handsets and service for CDMA handsets and service, but will have the opportunity to use the network and technology platform of their choosing.
- VZW must not discontinue analog service in the RCC service territories until 24 months after ubiquitous digital coverage is available to subscribers and roamers throughout those areas, or until the completion of VZW's transition of RCC's legacy customers from GSM to CDMA, whichever is later.
- VZW, or in the case of divestiture of GSM properties, its assignee or transferee, must commit to continuing to provide service as a CETC at the same rates, and under the same terms and conditions as currently offered by RCC/Unicel, for at least six years or such date as the relevant state Commission authorizes discontinuance, whichever is later.

III. CONCLUSION

Joint Petitioners, representing the interests of consumers, urge the Commission to conclude that the acquisition of RCC by VZW is contrary to the public interest and that the application must be denied. If the Commission does approve the acquisition, the interests of consumers require that approval be subject to specific, enforceable conditions including those described herein.

Respectfully submitted,

CONSUMER FEDERATION OF AMERICA
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Dated: February 11, 2008

Certificate of Service

I hereby certify that copies of the foregoing "Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont Public Interest Research Group" were sent this 11th day of February, 2008 via first class United States mail, postage prepaid, to the following:

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