

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 )

**OPPOSITION TO  
PETITIONS TO DENY AND COMMENTS**

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Dated: February 21, 2008

## SUMMARY

As clearly stated in the Applications, Cellco Partnership d/b/a Verizon Wireless' ("Verizon Wireless") proposed acquisition of Rural Cellular Corporation ("RCC") will result in substantial benefits for consumers. RCC's customers will benefit from Verizon Wireless' recognized superior service quality, a wider variety of handsets, seamless national coverage, improved customer care, a broader menu of service plans post-consummation, as well as new, high speed wireless broadband services. The transaction will also expand Verizon Wireless' coverage into all or portions of 30 new cellular market areas, providing customers with more continuous coverage throughout the United States (and, in particular, rural areas), while enabling Verizon Wireless to become a stronger competitor in the CMRS marketplace.

The filers in this proceeding do not challenge these benefits, but rather assert that the transaction be denied or conditioned in a variety of ways. None of these arguments have merit as the proposed transaction will plainly not result in competitive harms, particularly in light of Verizon Wireless' divestiture commitments. Significantly, the Commission's initial spectrum concentration screen is not triggered in any of the markets for which transfer authority is being sought. While the filers focus on the situation in Vermont, Verizon Wireless has committed to divesting network operations and customers throughout the majority of the state, which would result in no change in HHI. In the small part of Vermont where Verizon Wireless would retain RCC's cellular spectrum, any change in HHI from this transaction would be insignificant.

The filers' concerns about Verizon Wireless being in a position to set monopoly roaming or service rates for the GSM platform in Vermont or stranding GSM customers are also wildly overstated. As an initial matter, Verizon Wireless' acquisition of RCC's operations does not change the competitive landscape as Verizon Wireless would simply be stepping into the shoes

of RCC. Moreover, Verizon Wireless has committed to divest RCC's GSM systems in most of Vermont and has already filed applications to transfer them to AT&T, a strong national GSM operator. In the small region in Vermont in which Verizon Wireless would retain RCC's GSM system, it has committed to provide GSM service until another GSM carrier is operational and offering service there and, towards that end, will grant AT&T access to tower sites in the area. These commitments adequately address the filers' remaining concerns over the future of GSM in Vermont. The requested condition that Verizon Wireless maintain RCC's existing GSM network for 6 years or more is thus wholly unnecessary. It is also contrary to the public interest and to the Commission's consistent policy not to mandate the use of a particular technology or platform.

Finally, the remaining conditions sought by the filers are not appropriate as they are not specific to the transaction – or harms arising out of the transaction – in any way. Whether pertaining to geographic build-out, maintenance of RCC rate plans, automatic roaming or analog service, such conditions are simply not germane to this transaction. Commission precedent is clear that proposed conditions that do not address merger-specific harms are not appropriate and will not be entertained.

Accordingly, the filers have failed to raise any basis for denying the transaction or imposing conditions beyond those the Applicants have already proffered. Especially given the extraordinarily long period of time the Applications have been pending to date, the Commission should move swiftly to recognize the benefits associated with the proposed transaction and grant the Applications.

**TABLE OF CONTENTS**

**Page**

I. PROMPT ACTION ON THE APPLICATIONS IS HIGHLY WARRANTED ..... 2

II. THE PROPOSED TRANSACTION WILL GENERATE SUBSTANTIAL PUBLIC BENEFITS..... 4

III. THE PROPOSED TRANSACTION WILL NOT RESULT IN ANY COMPETITIVE HARMS..... 7

    A. The Transaction Does Not Trigger Any Need for Competitive Review, Particularly in Light of Verizon Wireless' Divestiture Commitments..... 7

    B. The Transaction Does Not Create or Enable a GSM Monopoly and the Hypothetical Concerns Are Unwarranted and Ill-Founded ..... 11

    C. Filers' Demands That Verizon Wireless Maintain GSM Service Are in Conflict with Settled FCC Precedent and Are Unwarranted ..... 13

IV. THERE IS NO BASIS IN LAW OR PUBLIC POLICY FOR THE IMPOSITION OF ANY OF THE CONDITIONS ON THE TRANSACTION SOUGHT BY THE FILERS ..... 18

V. CONCLUSION..... 25

DECLARATIONS

ATTACHMENTS: Congressional Letters

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re Applications of )  
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RURAL CELLULAR CORP., Transferor, )  
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and ) WT Docket No. 07-208  
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CELLCO PARTNERSHIP d/b/a VERIZON )  
WIRELESS, Transferee )  
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for Consent to the Transfer of Control of )  
Commission Licenses and Authorizations )  
Pursuant to Sections 214 and 310(d) of the )  
Communications Act )

To: Chief, Wireless Telecommunications Bureau

**OPPOSITION TO  
PETITIONS TO DENY AND COMMENTS**

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Rural Cellular Corporation (“RCC” and, collectively, “Applicants”) hereby submit their Opposition to the petitions to deny and comments opposing, or seeking that conditions be imposed upon, the above-captioned transaction. As made plain in the Applications,<sup>1</sup> the proposed transaction will result in substantial benefits for consumers in the areas served by RCC. Further, commitments made by Verizon Wireless in the record of this proceeding satisfactorily address any reasonable

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<sup>1</sup> Applications of Rural Cellular Corp., Transferor, and 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, WT Docket No. 07-208, Lead File No. 0003155487, Description of Transaction, Public Interest Showing and Related Requests and Demonstrations (filed Sept. 4, 2007) (“Public Interest Statement”).

basis for any of the concerns or conditions raised or proposed by the filers.<sup>2</sup> Given the benefits to consumers, the commitments Verizon Wireless has made to strengthen competition, and the commitments Verizon Wireless has made to ensure a smooth transition for RCC's GSM customers and GSM roamers, the Commission should move forward promptly to grant the Applications.

**I. PROMPT ACTION ON THE APPLICATIONS IS HIGHLY WARRANTED**

The Commission's review of the instant transaction has already been subject to extraordinary regulatory delay. The Applications were filed on September 4, 2007. They have now been pending for almost 180 days, the targeted processing timeframe for major transactions. The bulk of this delay has been due to the unprecedented quadrupling of the standard 30-day public comment period for this transaction.<sup>3</sup> In contrast, the Commission has recently acted on three wireless transactions very similar to the instant one in far less time than the Applications have already been pending:

- The Commission approved AT&T Inc.'s ("AT&T's") acquisition of Dobson Communications Corporation in 125 days from the date the applications were filed;<sup>4</sup>
- The Commission approved AT&T's acquisition of Aloha Spectrum Holdings Company LLC in 89 days from the date the applications were filed;<sup>5</sup> and

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<sup>2</sup> The Applicants note that Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group, and Vermont Public Interest Research Group (the so-called "Joint Petitioners") have failed to meet the requirement in Section 1.939(d) of the Commission's Rules, 47 C.F.R. §1.939(d), that factual allegations in a petition to deny be supported by an "affidavit of a person or persons with personal knowledge thereof." *See* Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group, and Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Feb. 11, 2008) ("Filing of Joint Petitioners"). Accordingly, the Filing of Joint Petitioners should be dismissed as procedurally defective or, alternatively, treated as informal comments.

<sup>3</sup> *See Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corp.*, Order, 22 FCC Rcd 19799 (2007).

<sup>4</sup> *See Applications of AT&T Inc. and Dobson Communications Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007) ("AT&T/Dobson Order").

- The Commission approved T-Mobile USA, Inc.'s acquisition of SunCom Wireless Holdings, Inc. in 130 days from the date the applications were filed.<sup>6</sup>

The extraordinary regulatory delay to which this transaction has been subject to date has achieved nothing other than to postpone the many benefits of the transaction to consumers throughout the country.<sup>7</sup> As echoed in the several Congressional letters to the FCC regarding Verizon Wireless' acquisition of RCC,<sup>8</sup> the protracted comment period for the Applications is impeding the development of enhanced competition, deferring investment and expanded

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<sup>5</sup> See *Application of Aloha Spectrum Holdings Co. LLC (Assignor) and AT&T Mobility II LLC (Assignee)*, Memorandum Opinion and Order, FCC 08-26, WT Dkt. No. 07-265 (Feb. 4, 2008) (“AT&T/Aloha Order”).

<sup>6</sup> See *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.*, Memorandum Opinion and Order, FCC 08-46, WT Dkt. No. 07-237 (Feb. 8, 2008).

<sup>7</sup> Notwithstanding statements in the Vermont Public Interest Research Group's original extension request to the effect that “[a]nalysis of this merger requires sophisticated economic analysis of several Regions,” the arguments in the record today regarding the transaction are largely those that were in the record at the time the original 30-day comment period expired. See Motion for Extension of Time of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 9, 2007). The Joint Petitioners have provided no economic data at all to support their arguments.

<sup>8</sup> See Letter from U.S. Representatives Cliff Stearns, Terry Everett, and Fred Upton to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Feb. 12, 2008) (“we would request that the FCC move quickly toward conclusion of the matter. Both the parties and the public have an interest in expeditious consideration of business before the Commission.”); Letter from U.S. Senators Richard Shelby and Jeff Sessions to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Feb. 7, 2008) (“it is our hope that, consistent with all applicable laws and regulations, the FCC will review the merits of this merger in a timely manner to ensure that consumers have access to wireless broadband services as soon as possible”); Letter from U.S. Senators Pat Roberts and Sam Brownback and U.S. Representative Jerry Moran to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Feb. 7, 2008) (“further delay [of the proposed transaction] will only harm employees, shareholders, and rural consumers in need of advanced mobile broadband services”); Letter from U.S. Senators Tim Johnson, John Thune and U.S. Representative Stephanie Herseth Sandlin to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Jan. 30, 2008) (“In order to ensure that consumers in our state have access to these wireless broadband services as soon as possible and that employees and consumers in these areas are not negatively impacted by a delay in this transaction, we encourage you to quickly turn to the merits of this merger and avoid prolonging the already significant FCC approval process.”). All are attached.

infrastructure deployment, and generally preventing consumers from enjoying the benefits of the transaction. Nothing in the various petition or comment filings provides any basis for further delay. Indeed, Verizon Wireless' commitments satisfactorily address any reasonable basis for conditions raised by the filers. Accordingly, given the delay to date, the Commission should accelerate its review of the Applications and move promptly to grant them without conditions other than the commitments already made by the Applicants.

**II. THE PROPOSED TRANSACTION WILL GENERATE SUBSTANTIAL PUBLIC BENEFITS**

The proposed transaction clearly will provide substantial benefits for existing RCC customers and existing and future Verizon Wireless customers. It will also lead to the formation of a stronger competitor in the Commercial Mobile Radio Service ("CMRS") marketplace, benefiting all wireless consumers. The filers opposing the transaction make no reasonable arguments to undercut these substantial public interest benefits.

As detailed in the Applications, RCC's customers will benefit from Verizon Wireless' widely recognized superior service quality, seamless national coverage, improved customer care, and a broader menu of service plans post-consummation.<sup>9</sup> RCC's customers also will enjoy new, high speed wireless broadband services.<sup>10</sup> As detailed in the Applications, RCC's customers will additionally gain access to a wider variety of handsets. RCC currently offers 11 phones, one smartphone and one PC card; after the transaction, RCC's customers will be able to choose from among Verizon Wireless' 42 models of phones, 11 PDA/smartphones or Blackberry devices and

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<sup>9</sup> See Public Interest Statement at 10-19.

<sup>10</sup> In the Public Interest Statement, Applicants indicated that RCC had "recently announced plans to upgrade its network to EDGE technology." Public Interest Statement at 13. The Applicants hereby clarify that RCC has deployed this technology. The maximum data rate of EDGE technology, however, is 473.6 kbit/s. By deploying EvDO Rev. A, Verizon Wireless will offer RCC's customers data rates up to 3.1 Mbit/s. Accordingly, the deployment of EvDO Rev. A will still result in a substantial benefit for RCC customers.

7 PC cards.<sup>11</sup> Many of these take advantage of the higher bandwidth and resulting faster data transfer speeds provided by EvDO Rev. A enhancements. As aptly noted by Senators Richard Shelby and Jeff Sessions of Alabama, “[b]y merging with Verizon Wireless, . . . RCC will have the resources and the technology to provide state of the art services already available in the rest of the country to Alabama residents.”<sup>12</sup> In sum, the transaction will enable Verizon Wireless to bring its technical and management expertise – as well as its experience with state of the art technology – to bear for the benefit of RCC customers.

The proposed transaction also will yield extensive benefits for existing and future Verizon Wireless customers.<sup>13</sup> The transaction will expand Verizon Wireless’ coverage area into all or portions of 30 new cellular market areas, providing customers with more continuous coverage throughout the United States and, in particular, in rural areas. In addition, Verizon Wireless may deploy new wireless broadband services in the mostly rural areas where it previously lacked adequate spectrum. Operational synergies include roaming expense savings, elimination of redundant CDMA facilities (cell sites), and savings from sales and general administrative costs.

Moreover, the proposed merger will result in the formation of a stronger competitor in today’s highly competitive CMRS market.<sup>14</sup> The transaction will strengthen Verizon Wireless as the major CDMA carrier and, as described below, will also serve to improve the footprint of the major competing GSM technology carrier with no harm to customers or roamers, thus ensuring continued vibrant technology development and competition in the United States. National

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<sup>11</sup> Public Interest Statement at 17-18.

<sup>12</sup> Letter from U.S. Senators Richard Shelby and Jeff Sessions to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Feb. 7, 2008).

<sup>13</sup> See Public Interest Statement at 19-24.

<sup>14</sup> See *id.* at 24-26.

coverage has proven critical to attracting customers. As detailed in the Application, this transaction will increase the number of national carriers available to customers and potential customers from zero to one in five markets, from one to two in eight markets, and from two to three in eight markets.<sup>15</sup> Not only will more competition be introduced in these areas, but Verizon Wireless will be a stronger and more efficient competitor due to greater coverage and additional service offerings. In turn, other wireless providers will be encouraged to offer better service quality, more choices, and lower prices.

As noted in Verizon Wireless' written *ex parte* presentation in this docket dated December 5, 2007,<sup>16</sup> Verizon Wireless and AT&T have entered into a definitive agreement for the exchange of certain wireless licenses and related authorizations and assets. As part of that agreement and subject to regulatory approvals, Verizon Wireless will divest to AT&T all of the cellular operations of RCC that overlap with Verizon Wireless' own cellular operations, including all such overlaps in the state of Vermont. Applications for this exchange of licenses with AT&T were filed with the Commission commencing February 8, 2008.<sup>17</sup> The transaction will extend AT&T's GSM coverage in Vermont, New York and Washington, permitting customers in those markets to gain access to the nation's largest digital voice and data network. In those areas, consumers will benefit from two much larger competitors – the two largest

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<sup>15</sup> *Id.* at 20, 25.

<sup>16</sup> Letter from John T. Scott, III, Vice President & Deputy General Counsel - Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-208 (filed Dec. 5, 2007) (“Dec. 5 Letter”).

<sup>17</sup> *See* Applications of AT&T Corp. and Cellco Partnership d/b/a Verizon Wireless for Consent to the Assignment and Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, Lead File No. 0003264825 *et al.* (filed Feb. 8, 2008).

national wireless providers – competing head-to-head, offering state of the art CDMA and GSM services and devices, as well as the benefits of their national networks.

None of the filers seriously disputes the public benefits of the proposed Verizon Wireless/RCC transaction. Particularly in light of Verizon Wireless' commitments, the public benefits of the transaction are manifest. Indeed, VT DPS acknowledges that the transaction will have some “cognizable public interest benefits” for RCC’s customers.<sup>18</sup>

**III. THE PROPOSED TRANSACTION WILL NOT RESULT IN ANY COMPETITIVE HARMS**

**A. The Transaction Does Not Trigger Any Need for Competitive Review, Particularly in Light of Verizon Wireless' Divestiture Commitments**

As the Applicants noted in the Public Interest Statement, the RCC licenses largely cover areas where Verizon Wireless has no cellular or PCS spectrum. In fact, the proposed transaction will enable Verizon Wireless to enter eight new cellular market areas (“CMAs”),<sup>19</sup> and parts of twenty-two other CMAs,<sup>20</sup> where RCC is licensed and Verizon Wireless holds no cellular or

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<sup>18</sup> VT DPS Petition at 2.

<sup>19</sup> These markets include Kansas 2 – Norton (CMA429); Kansas 7 – Trego (CMA434); Kansas 11 – Hamilton (CMA438); Kansas 12 – Hodgeman (CMA439); Kansas 13 – Edwards (CMA440); Minnesota 3 – Koochiching (CMA484); Minnesota 9 – Pipestone (CMA490); and South Dakota 4 – Marshall (CMA637).

<sup>20</sup> These markets include Alabama 3 – Lamar (CMA309); Alabama 4 - Bibb (CMA310); Alabama 5 - Cleburne (CMA311); Alabama 7 – Butler (CMA313); Georgia 14 – Worth (CMA384); Kansas 1 - Cheyenne (CMA428); Kansas 6 - Wallace (CMA433); Maine 2 - Somerset (CMA464); Minnesota 2 - Lake of the Woods (CMA483); Minnesota 5 - Wilkin (CMA486); Minnesota 6 - Hubbard (CMA487); Minnesota 7 - Chippewa (CMA488); Minnesota 8 - Lac qui Parle (CMA489); Minnesota 10 - Le Sueur (CMA491); Mississippi 2 - Benton (CMA494); Mississippi 3 - Bolivar (CMA495); Mississippi 4 - Yalobusha (CMA496); Mississippi 6 - Montgomery (CMA498); Mississippi 7 – Leake (CMA499); Mississippi 10 - Smith (CMA502); Oregon 3 - Umatilla (CMA608); and Wisconsin 2 - Bayfield (CMA709). RCC is operational in all of these expansion areas except the counties in Mississippi 7 – Leake.

PCS spectrum.<sup>21</sup> Even in those areas where licensed coverage between the two carriers does overlap, the FCC's initial spectrum concentration screen for initiating competitive review is not triggered in any market. Particularly when coupled with Verizon Wireless' divestiture commitments, it is clear the transaction does not raise competitive concerns and that no competitive review is necessary or warranted.

A notable development following the filing of the Applications was the issuance of the Commission's *AT&T/Dobson Order*. As the Applicants argued, and as the FCC itself had previously presaged, the *AT&T/Dobson Order* reviewed the 70 MHz "initial screen" and concluded that it should "revise the spectrum aggregation screen to 95 MHz, approximately one-third of the 280 MHz of the spectrum suitable for mobile telephony today."<sup>22</sup> The Commission further explained that "setting this screen at approximately one third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis."<sup>23</sup>

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<sup>21</sup> The map contained in Attachment 2 to the Public Interest Statement highlights the new market areas that Verizon Wireless will enter following the proposed transaction.

<sup>22</sup> *AT&T/Dobson Order* at 20313 (¶ 30); see also *Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 08-26, WT Docket No. 07-265, ¶¶ 10-13 (Feb. 4, 2008) (applying 95 MHz screen to AT&T acquisition of Aloha spectrum).

<sup>23</sup> *AT&T/Dobson Order* at 20313 (¶ 30). While the Commission's new screen was formulated based on the availability of 280 MHz of spectrum, the Applicants note that the *12<sup>th</sup> Annual Competition Report* identified no less than 643 MHz of spectrum potentially available for terrestrial CMRS. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Twelfth Report, FCC 08-28, WT Docket No. 07-71, ¶ 77 (Feb. 4, 2008) ("*12<sup>th</sup> Annual Competition Report*").

As the Applicants discussed in the Public Interest Statement, the transaction exceeded the old 70 MHz screen in only a handful of counties and, in each of those markets, substantial competition existed and would continue to exist following the proposed transaction.<sup>24</sup> Yet, even counties exceeding the old 70 MHz screen fall clearly below the revised initial screen of 95 MHz.<sup>25</sup> While VT DPS is correct that the 95 MHz screen is but one of several screening thresholds, its conclusion that “[t]he remaining two tests, based on HHI indexes – which are extremely high across Vermont markets, would likely result in the Commission performing a case-by-case analysis of all Vermont CMAs that remain part of the Transaction” is both illogical and incorrect. Verizon Wireless has committed to divesting network operations and customers throughout the overwhelming majority of the state, resulting in no change in HHI due to this transaction.<sup>26</sup> And, the only areas where Verizon Wireless would acquire and retain cellular spectrum are in areas where it does not currently operate a cellular system and has only a small

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<sup>24</sup> The Joint Petitioners attempt to create a factual issue regarding whether AT&T does or does not offer service in Vermont, based on the Applicants’ statements in the initial Public Interest Statement and statements made in the applications to assign certain of the RCC systems from Verizon Wireless to AT&T. The statements that the Applicants believed AT&T operated network facilities in Vermont in the initial Public Interest Statement were based upon reports by the RCC field personnel, ULS filings and press reports. The statements in the Verizon Wireless/AT&T applications were made by and certified to by AT&T, which clearly has the most accurate information regarding the network facilities it operates. In any event, given the proposed divestitures, the point is moot.

<sup>25</sup> There are 27 counties in which the transaction meets or exceeds the old 70 MHz screen and falls below the 95 MHz screen. However, taking into account the follow-on transaction with AT&T, there will only be 5 counties in which the transaction would cause Verizon Wireless to meet or exceed 70 MHz. These counties are located in Fargo-Moorehead, ND-MN (CMA221), Grand Forks, ND-MN (CMA276), and North Dakota 3 – Barnes (CMA582).

<sup>26</sup> Indeed, the pending transfer of these systems to AT&T would replace RCC with a stronger competitor in each of these markets.

market share. In those few counties, the change in HHI will be insignificant. Accordingly, there is no basis for invoking heightened local market review for any market in this transaction.<sup>27</sup>

VT DPS tries to make the novel argument that the Commission should delay consideration of this transaction until after the conclusion of the ongoing 700 MHz auction to allow the Commission to include in its market analysis any spectrum Verizon Wireless might acquire.<sup>28</sup> Even absent the already staggering delays in the processing of this transaction, VT DPS's argument is illogical and would constitute a substantial departure from FCC precedent. Given that the spectrum being auctioned is unconstructed greenfield spectrum, the auction results will not alter the market shares of participants in any market and thus cannot change the HHI index.<sup>29</sup> Further, whether Verizon Wireless will acquire spectrum in the auction in one or more of the RCC markets is entirely speculative at this time. For this reason, the Commission has chosen not to delay action on other transactions pending the outcome of Auction No. 73 or other auctions.<sup>30</sup>

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<sup>27</sup> Notably, none of the filers in any way challenged the competitive analysis provided in the Applications.

<sup>28</sup> VT DPS Petition at 9.

<sup>29</sup> Indeed, the Commission declined to act on a request by Frontline Wireless, LLC to impose a 95 MHz post auction screen prior to the 700 MHz auction. *See* Supplemental Comments of Frontline Wireless, LLC, AU Docket No. 07-157 (filed Sept. 21, 2007).

<sup>30</sup> *See, e.g., AT&T/Dobson Order* at 20313 (¶ 39); *AT&T/Aloha Order* at ¶ 12; *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15383-85 (¶¶ 256-59) (2007) (“700 MHz Order”).

**B. The Transaction Does Not Create or Enable a GSM Monopoly and the Hypothetical Concerns Are Unwarranted and Ill-Founded**

A recurrent theme in the Joint Petitioners and VT DPS filings is that the proposed transaction somehow creates a GSM monopoly in Vermont.<sup>31</sup> This makes no sense since, through this transaction, Verizon Wireless is merely stepping into the shoes of RCC and will have no more market power than RCC currently has.<sup>32</sup> Moreover, as discussed below, several other carriers—several of which are identified as committed to the GSM platform—hold spectrum in Vermont and could enter the market at any time.

The allegations that the transaction would permit Verizon Wireless to be in a position to set monopoly roaming or service rates for the GSM platform in Vermont are simply not realistic. First, Verizon Wireless's acquisition of RCC's GSM network and operations does not change the competitive landscape. Verizon Wireless is merely replacing RCC as the operator of these systems, and will have no more power to set anticompetitive rates than RCC currently possesses. Given that the filers seem to be indicating that RCC's current rates and the current roaming situation in Vermont are laudable,<sup>33</sup> empirical evidence suggests strongly that—even absent any divestitures—Verizon Wireless would not have been able to exert market power.

Second, as Verizon Wireless has already informed the Commission, it has committed to the Department of Justice that it will divest RCC's GSM systems where they overlap with

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<sup>31</sup> Filing of Joint Petitioners at 4, 9; VT DPS Petition at 5-7; Supplement to Petition to Condition Approval or Deny of the Vermont Department of Public Service, WT Docket No. 07-208, at 3 (filed Feb. 11, 2008) (“VT DPS Supplement Petition”).

<sup>32</sup> Indeed, given Verizon Wireless' commitments to divest systems in Vermont that overlap with its existing cellular operations, the petitioners' arguments—to the extent they carry any weight—are applicable to only a tiny fraction of the state.

<sup>33</sup> See, e.g., Filing of Joint Petitioners at 6.

Verizon Wireless' existing cellular operations.<sup>34</sup> Specifically, Verizon Wireless has committed to divest RCC's cellular licenses and systems in the Burlington, VT MSA, the Vermont 1 – Franklin RSA, and in the northern half of the Vermont 2 – Addison RSA. As at least one of the filers recognized, beginning February 8, 2008, Verizon Wireless and AT&T submitted applications to the FCC to effect the divestiture of the overlapping systems to AT&T.<sup>35</sup> Once those divestitures are completed, Verizon Wireless will not be an exclusive provider of GSM services in the overwhelming majority of the state. Indeed, Verizon Wireless will retain RCC's GSM operations in only two and a half counties in southern Vermont.

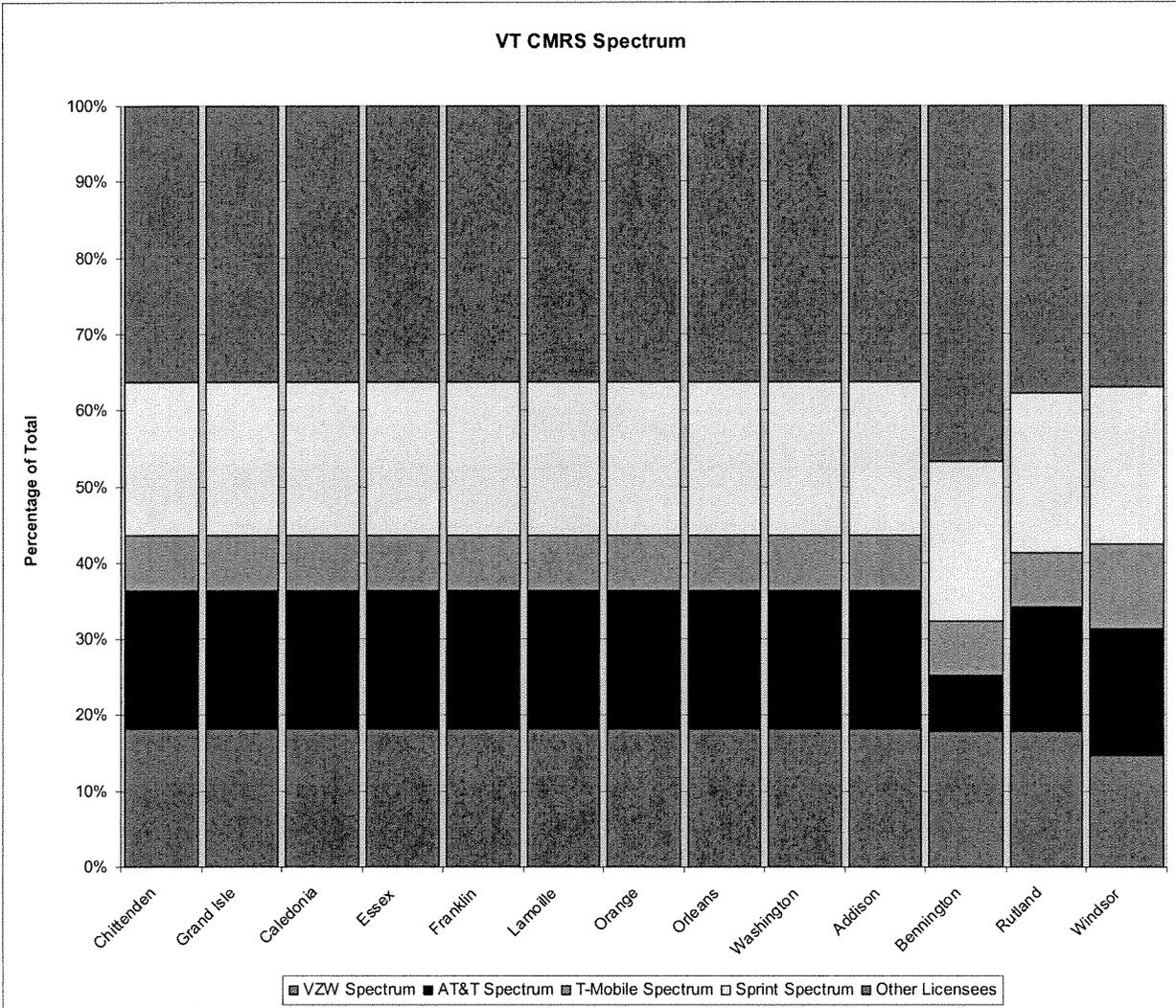
The filers' arguments also ignore the likelihood of new entry in Vermont. As shown in the graph below, which gives effect to the proposed divestitures, a substantial amount of spectrum for CMRS exists and much of that spectrum is licensed to AT&T and T-Mobile – entities identified as national GSM operators.<sup>36</sup>

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<sup>34</sup> Petition for Reconsideration of Verizon Wireless and RCC, WT Docket No. 07-208, at 1-2 (filed Nov. 16, 2007) (“Petition for Reconsideration”).

<sup>35</sup> Filing of Joint Petitioners at 3.

<sup>36</sup> Notably, given that RCC has deployed both GSM and CDMA technologies in different markets, the repeated characterization of RCC as a GSM operator by the filers is also factually incorrect. Public Interest Statement at 13.



Accordingly, not only are there no barriers to GSM systems, but the fact that spectrum is already in the hands of GSM carriers in Vermont suggests that the entry of additional GSM competitors is imminent.

**C. Filers’ Demands That Verizon Wireless Maintain GSM Service Are in Conflict with Settled FCC Precedent and Are Unwarranted**

Several of the filers assert that, since Verizon Wireless utilizes primarily a CDMA technology platform and plans to overlay the RCC systems with CDMA, the transaction will have the effect of stranding RCC’s customers and customers of other GSM carriers who roam on

RCC's GSM network.<sup>37</sup> These filers would seek to have Verizon Wireless divest all of RCC's GSM systems to a GSM carrier who will maintain them, or else require Verizon Wireless to maintain the GSM networks for 6 years or indefinitely.<sup>38</sup> These ill-founded arguments ignore that the Commission has repeatedly declined to stipulate the use of particular technology platforms and disregard Verizon Wireless' specific commitments to ensure a smooth transition for GSM users in RCC territories.

As an initial matter, the Commission has consistently and steadfastly maintained that it is not appropriate for the agency to mandate the use of a particular technology.<sup>39</sup> Indeed, the Commission has specifically recognized that its refusal to stipulate the technology platform for commercial wireless services has benefited consumers by providing an added dimension of competition in this industry sector:

The Commission has adopted flexible licensing policies instead of mandating any particular technology or network standard. Mobile telephone service providers have the flexibility to deploy the network technologies and services they choose as long as they abide by certain technical parameters designed to avoid radiofrequency interference with adjacent licensees. In contrast, the European Community mandated a single harmonized standard for second-generation mobile telecommunications services (GSM), and has also adopted a single standard for third-generation services (WCDMA). As a result of the flexibility afforded by the Commission's market-based approach, different U.S. providers have chosen to deploy a variety of different technologies with divergent technology migration paths, and competition among multiple incompatible standards has emerged as an important dimension

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<sup>37</sup> Filing of Joint Petitioners at 4; VT DPS Petition at 3-4.

<sup>38</sup> Filing of Joint Petitioners at 8; VT DPS Petition at 14-15.

<sup>39</sup> *See, e.g., Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services*, Notice of Proposed Rulemaking and Order, 16 FCC Rcd 596, 606 (¶ 21) (2001) ("The Commission traditionally has taken a flexible approach to standards and generally does not mandate a particular type of technology, leaving such an outcome to the marketplace. As an example, there are several standards being used for PCS, such as CDMA, TDMA, and GSM. We anticipate that a similar approach would occur with the onset of advanced wireless services.").

of non-price rivalry in the U.S. mobile telecommunications market and a distinctive feature of the U.S. mobile industry model.<sup>40</sup>

In several prior transactions, the Commission has specifically rejected attempts by opponents to require the preservation of a particular technology platform for roaming and other purposes.<sup>41</sup>

There is no basis for the Commission to stray from that sound precedent here.

The filers' suggestion that Verizon Wireless be required to maintain the GSM platform in this area for 6 or more years would clearly be contrary to the public interest. As the Commission is well aware, technology changes and other improvements in the CMRS industry occur with lightening speed, and national GSM carriers have already begun to transition their systems to the next wideband CDMA standard in the GSM evolutionary path.<sup>42</sup> Locking in a technology that is sure to become outdated over time not only makes no sense, but would severely disadvantage customers in this region.

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<sup>40</sup> *12<sup>th</sup> Annual Competition Report* at ¶ 125.

<sup>41</sup> See, e.g., *Applications of ALLTEL Corp., Transferor, and Atlantis Holdings LLC, Transferee*, Memorandum Opinion and Order, 22 FCC Rcd 19517, 19518-19, n. 26 (¶¶ 4-6) (2007) (rejecting proposed condition citing agency's long-standing principle not to dictate licensees' technology choices); *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580, 13601-02 (¶¶ 34-36) (2006) (rejecting request indicating that "CDMA customers can also use dual-mode CDMA/GSM handsets to roam . . . using the local GSM networks").

<sup>42</sup> The *12<sup>th</sup> Annual Competition Report* summarized the GSM/TDMA evolutionary path succinctly: "For GSM/TDMA providers, the first step in the migration to next-generation network technologies is General Packet Radio Service ("GPRS" or "GSM/GPRS"), a packet-based data-only network upgrade that allows for faster data rates by aggregating up to eight 14.4 kbps channels. Beyond GPRS, many U.S. GSM/TDMA providers have deployed Enhanced Data Rates for GSM Evolution ("EDGE") technology, which offers average data speeds of 100-130 kbps. Wideband CDMA ("WCDMA," also known as Universal Mobile Telecommunications System, or "UMTS") is the next migration step for GSM providers beyond EDGE and allows maximum data transfer speeds of up to 2 Mbps and average user speeds of 220-320 kbps. Finally, deployment of WCDMA with HSDPA (High Speed Data Packet Access) technology allows average download speeds of 400-700 kbps with burst rates of up to several Mbps." *12<sup>th</sup> Annual Competition Report* at ¶ 130. The report also notes that "AT&T has expanded its WCDMA/HSDPA network to more than 160 markets, including most of the top 100 cities in the United States." *Id.* at ¶ 137.

In any event, as noted above, Verizon Wireless has already committed to divest RCC's GSM systems where they overlap with Verizon Wireless' existing cellular licenses and has filed applications to effect these divestitures to AT&T. Once those applications are granted and the exchange of licenses between AT&T and Verizon Wireless is complete, the divested GSM systems will be held by an exceedingly strong GSM operator – one who unquestionably has the capability and incentive to maintain and expand the infrastructure to meet customer needs.<sup>43</sup>

By divesting those RCC properties that overlap with its existing cellular network, Verizon Wireless will retain the southern portion of Vermont 2 where it does not currently have cellular operations. However, this should not result in any reasonable concerns about stranding GSM customers. Verizon Wireless has already committed on the record to provide GSM service in this area until a GSM carrier is operational and offering service there.<sup>44</sup> Contrary to the unsupported allegations of the filers,<sup>45</sup> during this transition period Verizon Wireless has no incentive to allow the GSM network to atrophy. First, Verizon Wireless is acquiring RCC's GSM customer base that it will continue to serve and it will continue to add new GSM customers while it deploys a dual CDMA network. It thus will have naturally arising business and appropriate economic incentives to provide quality GSM service to these customers until it is prepared to transition them. Verizon Wireless will want to retain as many of its GSM customers as possible during the transition period by keeping them happy and meeting their needs. Allowing service quality to deteriorate is not consistent with this goal. Second, RCC derives

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<sup>43</sup> This outcome appears to be exactly what many of the filers hoped for. *See* Filing of Joint Petitioners at 4. *See also*, VT DPS Petition at 14-15; VT DPS Supplement Petition at 4 (seeking divestiture of RCC GSM properties).

<sup>44</sup> Petition for Reconsideration at 1-2; Dec. 5 Letter at 3.

<sup>45</sup> VT DPS Petition at 5-7; VT DPS Supplement Petition at 3, 5; Filing of Joint Petitioners at 4.

significant GSM roaming revenues from its Vermont properties. It is not in Verizon Wireless' economic interest to reduce this revenue stream by allowing the GSM network to fall into disrepair.<sup>46</sup>

Moreover, as part of the agreement regarding the exchange of wireless licenses and related assets with AT&T, Verizon Wireless has committed to grant AT&T access to tower sites that Verizon Wireless owns in the retained portion of Vermont 2 to help speed AT&T's GSM build-out.<sup>47</sup> AT&T already has spectrum in this area. It has applications pending to acquire from Verizon Wireless the RCC cellular systems in the rest of Vermont. Accordingly, AT&T is going to have strong incentives to build out the southern portion of Vermont 2 to offer services to customers in other parts of the state.<sup>48</sup> Pre-arranged access to Verizon Wireless' transmitter sites in this area should facilitate and speed this process.

Further, Verizon Wireless has had vast experience converting customers in acquired markets, many involving a technology change, and will adopt appropriate customer policies to ensure a smooth transition for the former RCC GSM customers to CDMA. Among these will be a multi-month education campaign about the transition, the provision of a free comparable handset or a discounted higher-end CDMA handset<sup>49</sup> to RCC customers; a several month period in which they can select such handsets; the honoring of RCC customers' existing contracts for the

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<sup>46</sup> Further, decisions to maintain GSM roaming are not made on a cellsite or license basis, but rather over the entire area of a switch (for example Verizon Wireless operates two switches in its northeast cluster).

<sup>47</sup> See Dec. 5 Letter at 3.

<sup>48</sup> This is especially true inasmuch as AT&T already offers service in New York to the west and Massachusetts to the south.

<sup>49</sup> These CDMA handsets will be comparable or better than the GSM handsets they are replacing, especially in the area of data services. RCC's GSM network is a 2G technology, whereas the CDMA network that Verizon Wireless will deploy will offer true 3G broadband data services using EvDO Rev. A.

remaining term of the contract; and the option for RCC customers to opt out of the remainder of their contract without any early termination fee. Again, because Verizon Wireless wants to retain these customers, it is in the company's interests to ensure their transition to CDMA is not only smooth and painless, but something these customers will want to undertake. Since Verizon Wireless has committed to retain the former RCC GSM system until another carrier launches GSM operations in the area, there will be at least one GSM competitor up and operating if Verizon Wireless decides to cease operating the GSM network. Customers will have the option to switch to that GSM carrier, or any CDMA carrier, if they do not feel Verizon Wireless provides an equivalent or better value proposition.

For these reasons, there is no basis for imposing a requirement for Verizon Wireless to maintain the GSM platform for 6 years or indefinitely, as some filers suggest. Commitments already made by Verizon Wireless, as well as common sense business incentives, will ensure that GSM customers continue to receive good quality service throughout the transition period. Further, when the time comes to overlay the system in the southern portion of Vermont 2 with CDMA, marketplace forces will ensure that these customers experience a smooth and painless transition to CDMA.

**IV. THERE IS NO BASIS IN LAW OR PUBLIC POLICY FOR THE IMPOSITION OF ANY OF THE CONDITIONS ON THE TRANSACTION SOUGHT BY THE FILERS**

Those entities opposing the transaction urge the Commission to impose a variety of conditions if the agency proceeds to grant the Applications. Several of these are designed to address alleged competitive harms – for example, certain filers seek broader divestiture requirements than the Applicants have already committed to. As discussed above, the initial spectrum concentration screen is not triggered in any county affected by the transaction and Verizon Wireless' proffered divestitures will avoid one entity owning

both cellular licenses in a geographic area and ensure that any change in HHI is insignificant. As such, there are no competitive harms arising out of this transaction and the competitive conditions suggested are wholly unwarranted. Similarly, as discussed above, conditions designed to avoid stranding GSM users and to facilitate customer transition to Verizon Wireless' CDMA network are completely unnecessary. Between marketplace incentives and the commitments already made by Verizon Wireless, no such conditions are needed.

The remaining conditions proposed by the filers are not appropriate as they are not specific to the transaction – or harms arising out of the transaction – in any way, shape or form. Commission precedent is clear that proposed conditions that do not address merger-specific harms are not appropriate and will not be entertained.<sup>50</sup>

For example, one of the proposed conditions is that the Commission impose an enforceable commitment that Verizon Wireless provide 100 percent geographic coverage in Vermont within a period of no more than 30 months.<sup>51</sup> There is nothing specific to this transaction that would provide any basis for geographic build-out requirements. Such a condition is unprecedented in the merger context and more appropriately handled through a rulemaking proceeding, if at all.<sup>52</sup> Moreover, the Commission has had in place

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<sup>50</sup> See e.g., *Application of AT&T Inc. and Bellsouth Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5692 (¶ 56 n.154) (2007); *AT&T/Dobson Order* at 20336 (¶ 87); *Applications of Verizon Communications, Inc. (Assignor) and Fairpoint Communications, Inc. (Assignee)*, Memorandum Opinion and Order, FCC 07-226, WC Docket No. 07-22, ¶ 39 (Jan. 9, 2008).

<sup>51</sup> Letter from U.S. Senator Bernard Sanders to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, at 2 (Oct. 29, 2007).

<sup>52</sup> Even in the recent *700 MHz Order*, where the Commission imposed its strictest ever build-out requirements, the agency did not require any licensees to meet a 100% geographic standard. *700 MHz Order* at 15349-52 (¶¶ 157-164), 15445-47 (¶¶ 437-443). The proposed

numerous build-out rules for cellular and PCS licenses, which the Applicants have met – and the filers do not argue to the contrary. Both companies have provided extensive build-out in the state of Vermont.<sup>53</sup> The transaction, along with the secondary transaction with AT&T, will serve to increase competition in the state of Vermont by pitting the two largest national carriers against each other in the market for wireless customers in that state. Since service coverage is a major source of competitive advantage, Verizon Wireless and AT&T, as well as other competitors in Vermont, will have strong incentives to expand their service footprints. For these reasons, this proposed condition must be rejected.

Similarly, the Joint Petitioners' assertion that Verizon Wireless must be required to preserve RCC's GSM network because RCC has previously received CETC funding<sup>54</sup> has nothing to do with this transaction and is wholly without basis. As this Commission has explicitly found in a similar context, Section 214(e) provides that the individual states have primary authority for ETC designation, including the accompanying requirements, and thus there is no basis for the Commission to broadly insert itself into this process.<sup>55</sup> This is particularly true here, where there is no merger-specific harm

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condition is thus at odds with this recent determination by the Commission as to what build-out requirements serve the public interest.

<sup>53</sup> See, e.g., Verizon Wireless Further Expands Voice and Wireless Broadband Service Across Vermont, Press Release, Jan. 24, 2008, available at <http://news.vzw.com/news/2008/01/pr2008-01-23.html> (announcing expansion of the company's wireless broadband service to nearly 60 additional Vermont communities across 14 counties. The year-end cell site enhancements and activations also expanded voice service into 10 more towns, within Bennington and Windham Counties.).

<sup>54</sup> Filing of Joint Petitioners at 5-8.

<sup>55</sup> *AT&T/Dobson Order* at ¶ 69. The FCC has refused to impose carrier of last resort obligations on wireless carriers. See *Federal State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6388 (¶ 38) (2005).

arising out of this transaction that would warrant attaching this unprecedented obligation to Verizon Wireless. Indeed, the FCC has never imposed such an obligation on any other acquirer of a CETC.

Proposed conditions that Verizon Wireless be required to maintain RCC's customer rate plans are likewise unnecessary and unwarranted.<sup>56</sup> Again, such a condition is not designed to address any specific harms likely to arise out of the merger. The filers' unsupported and unsound allegations that Verizon Wireless will raise prices in the RCC regions certainly provide no basis for such requested relief.<sup>57</sup> Further, imposing such a condition would reverse the Commission's longstanding policy of presuming rates set in a competitive market are just and reasonable.<sup>58</sup> Indeed, the Commission has a long history of refraining from economic regulation in the wireless sector.<sup>59</sup> Not surprisingly, such a condition has never been imposed in any other CMRS

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<sup>56</sup> Specifically, the Joint Petitioners seek a condition to the effect that Verizon Wireless “must commit to continuing to provide service . . . 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.” Filing of Joint Petitioners at 9.

<sup>57</sup> Section 332 of the Communications Act expressly states that “no State or local government shall have any authority to regulate . . . the rates charged by any commercial mobile service.” Yet, the Joint Petitioners seek a condition that would confer upon the “relevant state Commission” the authority to enforce rates for a period of six years in their sole discretion. Because Joint Petitioners’ proposed condition directly contravenes the preemption in Section 332 of the Communications Act, imposition of such a condition would be unlawful. And, absent a demonstrated market failure, no basis for rate regulation exists.

<sup>58</sup> See, e.g., *12<sup>th</sup> Annual Competition Report* at ¶ 112 (noting that “[t]he continued rollout of differentiated pricing plans also indicates a competitive marketplace”); *Petition of ACS Anchorage, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16330-31 (¶ 58) (finding that rate regulation is not necessary to ensure just and reasonable rates because of the significant competition faced by the carrier).

<sup>59</sup> See, e.g., *Orloff v. Vodafone AirTouch Licenses LLC*, Memorandum Opinion and Order, 17 FCC Rcd 8987, 8998 (¶ 24) (2002) (stating that “the Commission has regulated CMRS through competitive market forces, declining to impose specific cost-based regulations on CMRS providers”); *Kiefer v. Paging Network, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 19129, 19131 (¶ 5) (2001); *Southwestern Bell Mobile Systems, Inc., Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by*

merger. Moreover, as a policy matter, freezing rates may actually work to the detriment of Vermont subscribers, given the substantial decreases in rates over the past six years.<sup>60</sup> In any event, Verizon Wireless has a variety of rate plans that offer customers comparable or better overall value to what RCC offers its customers today.<sup>61</sup>

Further, Joint Petitioners' proposed condition that Verizon Wireless should be required to provide automatic roaming services at reasonable rates to other GSM and CDMA carriers<sup>62</sup> has no relevance to this transaction or any harms potentially arising out of it. The Commission has established roaming rules applicable to all CMRS providers, with which Verizon Wireless will

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*CMRS Providers when Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments*, Memorandum Opinion and Order, 14 FCC Rcd 19898, 19902 (¶ 9) (1999) (“We agree that, as a matter of Congressional and Commission policy, there is a ‘general preference that the CMRS industry be governed by the competitive forces of the marketplace, rather than by governmental regulation,’ and we grant Southwestern’s petition in this respect.”) (footnote omitted).

<sup>60</sup> The Commission’s policies regarding competitive rate setting have been vindicated. As described in the *12<sup>th</sup> Annual Competition Report*, notwithstanding a 15.3 percent increase in the Consumer Price Index (“CPI”) since 2001, the cellular CPI has—in the past six years—gone from 68.1 to 64.6. *12<sup>th</sup> Annual Competition Report* at Table 13. In that same period, average revenue per subscriber has dropped from \$0.12/minute to \$0.07/minute, and customer bills have, on average, dropped almost 10%. *Id.* at Table 14. Against this backdrop, a proposal to freeze rates would clearly be contrary to the public interest and disserve the citizens of Vermont.

<sup>61</sup> For example, comparably priced Verizon Wireless rate plans offer larger calling areas, free unlimited nights and weekend minutes, free in-network (mobile-to-mobile) calling and text messaging among Verizon Wireless’ over 65 million customers anywhere in the US (vs. regional portions of RCC’s 700 thousand customers only while on RCC’s network), 50% lower charge for additional “family share plan” lines, 24-7 customer care, 24-hour online self-serve account management and upgrading, and the Verizon Wireless Worry-Free Guarantee (including among other benefits, a 30-day Drive Test and “New Every Two” handset upgrade programs). Particularly important to extending the benefits of wireless telecommunications to more first time customers, Verizon Wireless’ entry level \$34.99 plan offers more value through unlimited night and weekend minutes.

<sup>62</sup> Filing of Joint Petitioners at 9.

comply.<sup>63</sup> There is no basis here for imposing any additional requirements and the Commission has rejected attempts to do so in the merger context in the past.<sup>64</sup>

Additionally, Joint Petitioners suggest that Verizon Wireless be required to commit “consistent with principles of platform openness and neutrality” that, for as long as GSM and CDMA networks remain in operation, RCC subscribers will have the opportunity to use the network and technology platform of their choosing.<sup>65</sup> Such a condition is also unnecessary, inappropriate and inconsistent with precedent. As noted previously, the Commission has repeatedly declined to dictate what technologies carriers must use or give customers access to.<sup>66</sup> Although Joint Petitioners point to “principles of platform openness and neutrality” as providing the foundation for their request, there are no such principles applicable to the RCC licenses that would provide any basis for the condition sought.

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<sup>63</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007). These rules require the provision of automatic roaming on reasonable and non-discriminatory terms and conditions, but these requirements do not apply to areas where the requesting carrier holds a wireless license or spectrum usage rights. In adopting these rules, the Commission expressly declined to impose rate regulation on automatic roaming agreements, finding that “better course, as established in this Report and Order, is that the rates individual carriers pay for automatic roaming services be determined in the marketplace through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory.” *Id.* at 15832 (¶ 37).

<sup>64</sup> See, e.g., *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13093 (¶ 108) (2005) (rejecting calls for extensive roaming conditions and instead noting that “if a roaming partner believes that ALLTEL is charging unreasonable roaming rates, it can always file a complaint with the Commission”); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14011-12 (¶¶ 125-126) (2005) (rejecting proposed conditions that would require the merged entity to enter into reasonable, non-discriminatory, roaming agreements and finding that “roaming issues raised by these parties do not raise substantial and material questions of fact regarding the proposed merger before us”).

<sup>65</sup> Filing of Joint Petitioners at 9.

<sup>66</sup> See, *supra*, at 13-14.

In its *700 MHz Order*, the Commission specifically rejected broad application of “openness and neutrality” principles, determining instead to impose a limited subset of such requirements on just one block of spectrum – the 700 MHz C Block currently being auctioned. Indeed, the fact that the spectrum had not yet been licensed was central to the Commission’s determination to adopt the limited C Block openness requirements in the *700 MHz Order*. Moreover, it cautioned that any expansion of those limited requirements “may have unanticipated drawbacks,” particularly on investment.<sup>67</sup> The proposed “openness and neutrality” requirement also conflicts with the Commission’s *Wireless Broadband Internet Ruling* because the Commission rejected this type of regulation of wireless broadband networks in that Order.<sup>68</sup> Similarly, it would violate the express goals of sections 706 and 230(b)(2) of the Act.<sup>69</sup> Accordingly, the proposed condition would clearly be inconsistent with clear and direct precedent declining to impose broad “openness and neutrality” requirements. In any event, it is wholly unnecessary given the vigorous competition in the CMRS marketplace.<sup>70</sup>

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<sup>67</sup> *700 MHz Order* at 15366 (¶ 205).

<sup>68</sup> *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, 5916 (¶41) (2007).

<sup>69</sup> Congress emphasized a deregulatory message in Section 230(b)(2) declaring that “the policy of the United States” is “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2). Congress gave the Commission specific direction, in Section 706 of the 1996 Act, to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability” – defined as the ability to send and receive “high-quality voice, data, graphics, and video telecommunications using *any technology*” – by adopting a policy of “regulatory forbearance” and other measures to “remove barriers to infrastructure investment.” Pub. L. No. 104-104, § 706, 110 Stat. 153 (emphasis added); *see also* Letter from John C. Scott III, Vice President and Deputy General Counsel Regulatory Law, Verizon Wireless, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-150 (filed July 24, 2007).

<sup>70</sup> *See, e.g.*, Verizon Wireless Introduces New Unlimited Plans That Are as Worry Free as the Guarantee, Press Release, Feb. 20, 2008, available at

Finally, the proposed condition that Verizon Wireless be required to maintain analog service within the RCC markets has absolutely nothing to do with this transaction<sup>71</sup> and is plainly contrary to the public interest. Joint Petitioners' request amounts to no more than a very untimely filed petition for reconsideration of the 2002 Biennial Review Order setting the sunset date for the analog service requirement.<sup>72</sup> In that order, the Commission found that “in many instances, the analog requirement harms competition by imposing unnecessary operating costs and impeding the spectral efficiency of the two cellular providers in the market.”<sup>73</sup> In fact, as recently as June of 2007, the FCC rejected a request to extend the requirements beyond the sunset date.<sup>74</sup> To the extent that the Joint Petitioners believe that maintenance of the analog requirement is in the public interest, those arguments have been addressed—and rejected—on numerous occasions by the FCC. No basis exists for reviving those arguments in this context.

## V. CONCLUSION

For the foregoing reasons, the filers have failed to raise any basis for denying the transaction or imposing conditions beyond those the Applicants have already proffered.

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<http://news.vzw.com/news/2008/02/pr2008-02-19.html>. Within 24 hours of this announcement, several other CMRS carriers announced comparable plans.

<sup>71</sup> RCC has already advised its customers that RCC intends to retire the analog and TDMA portions of its network. That announcement is not related to whether or not the transaction closes.

<sup>72</sup> *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, Report and Order, 17 FCC Rcd 18401 (2002).

<sup>73</sup> *Id.* at 18408 (¶ 12).

<sup>74</sup> *Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters*, Memorandum Opinion and Order, 22 FCC Rcd 11243 (2007).

Especially given the regulatory delays to date, the Commission should move swiftly to recognize the public benefits associated with the proposed transaction and grant the Applications.

Respectfully submitted,

**CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS**

**RURAL CELLULAR CORPORATION**

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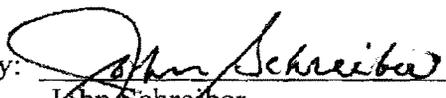
David L. Nace  
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*Counsel to Rural Cellular Corporation*

February 21, 2008

**DECLARATION OF JOHN SCHREIBER**

I, John Schreiber, hereby declare under penalty of perjury that the facts contained in the foregoing Opposition related to the proposed transaction, Cellco Partnership d/b/a Verizon Wireless, and the combined company's operations post-consummation and about which official notice may not be taken are true and correct to the best of my knowledge, information, and belief.

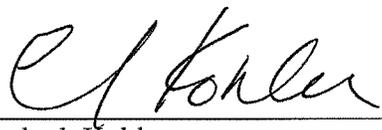
Executed on February 21, 2008.

By:   
John Schreiber  
Executive Director – Property  
Planning & Acquisitions  
Verizon Wireless  
One Verizon Way  
Basking Ridge, NJ 07920  
Phone: 908-559-5412

**DECLARATION OF ELIZABETH KOHLER**

I, Elizabeth Kohler, hereby declare under penalty of perjury that the facts contained in the foregoing Opposition related to the proposed transaction, Rural Cellular Corporation, and the company's existing operations and about which official notice may not be taken are true and correct to the best of my knowledge, information, and belief.

Executed on February 21, 2008.

By:   
Elizabeth Kohler  
Vice President, Legal Services  
Rural Cellular Corporation  
302 Mountain View Drive  
Suite 200  
Colchester, VT 05446  
Phone: (802) 654-5093

## **ATTACHMENTS**

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

February 12, 2008

Chairman Kevin Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Dear Chairman Martin:

We request that the Federal Communications Commission turn to the merits of the merger between Verizon Wireless and Rural Cellular Corp. and allow the pleading cycle to run its course without further delay. We are concerned that opponents are using delay as a way to thwart the merger.

The FCC's Wireless Bureau issued a public notice Oct. 11, 2007, establishing the typical pleading cycle, with petitions to deny due Nov. 13, 2007, oppositions due Nov. 23, 2007, and replies due Nov. 30, 2007.

On Nov. 13, 2007, the FCC took the extraordinary step of extending the deadline for petitions to deny to Feb. 11, 2008; extending to Feb. 21, 2008, the deadline for oppositions; and extending to Feb. 28, 2008, the deadline for replies. The cumulative effect has been to extend the pleading cycle for an additional 90 days, nearly tripling the total time for comments. Interested parties and the public seem to have had an adequate period in which to file oppositions and make their views known. As evidence, the FCC has received more than 60 filings on the matter. It appears that the FCC has already compiled a robust record.

We note in particular that the FCC concluded its entire consideration of the similar AT&T-Dobson merger in less than 120 days. In contrast, this proceeding will have been pending more than 120 days before the pleading cycle has even closed. Once the deadline is reached, we would request that the FCC move quickly toward conclusion of the matter. Both the parties and the public have an interest in expeditious consideration of business before the Commission. Thank you for your consideration in this matter. With kind regards, we are

Sincerely,

  
Cliff Stearns  
U.S. Representative

  
Terry Everett  
U.S. Representative

  
Fred Upton  
U.S. Representative

# United States Senate

WASHINGTON, DC 20510

February 7, 2008

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street Southwest  
Washington, D.C. 20554

Dear Chairman Martin:

We are writing with respect to the proposed merger of Verizon Wireless and Rural Cellular Corp. (RCC), which is now pending before the Federal Communications Commission (FCC).

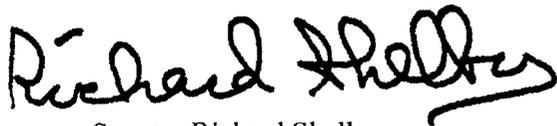
We understand that RCC, which has a significant presence in our home state of Alabama, does not provide high speed internet service to its wireless subscribers. Many of our constituents are thus unable to benefit from the advantages of this increasingly sought-after technology.

By merging with Verizon Wireless, we are told that RCC will have the resources and the technology to provide state of the art services already available in the rest of the country to Alabama residents in the areas of Lamar, Bibb, Cleburne, Butler, Dothan, and Enterprise. Specifically, if this merger is approved, Verizon Wireless has advised us that it will convert RCC's antiquated 2G network now in place in Alabama, with no internet service, to its much faster 3G network, offering mobile broadband service to 827,000 Alabamians for the first time.

The initial public comment period regarding this merger has already been extended by 90 days to allow for additional input. Any further extension appears to be unwarranted, and could delay the benefits for the people of Alabama now served by RCC.

We want every Alabamian to have access to the same cutting edge technology available elsewhere. Therefore, it is our hope that, consistent with all applicable laws and regulations, the FCC will review the merits of this merger in a timely manner to ensure that consumers have access to wireless broadband services as soon as possible.

Sincerely,



Senator Richard Shelby



Senator Jeff Sessions

Congress of the United States  
Washington, DC 20515

February 7, 2008

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Mr. Chairman:

We write regarding the application for the proposed merger between Verizon Wireless and Rural Cellular Corporation, which has been pending before the Commission since October 11, 2007.

The deployment of advanced broadband networks is a national goal that is receiving increased emphasis from Congress and the administration. Despite considerable gains, rural areas continue to trail the rest of the nation when it comes to broadband availability.

The proposed merger may hold substantial promise in expanding the availability and affordability of mobile broadband to thousands of rural consumers across fifteen states through advanced, third generation (3G) wireless networks. Indeed, 3G mobile networks represent the most efficient method of providing broadband to large swaths of rural, less densely populated areas.

The deadline for public comment on the merger has already been extended for an additional ninety days beyond the standard comment period. This timeline for comment and consideration is consistent with mergers of similar scope that the Commission has already dispensed with.

While we appreciate the need for the Commission to thoroughly review such applications, further delay will only harm employees, shareholders, and rural consumers in need of advanced mobile broadband services. We ask that the Commission conclude its work and that the merits of the proposed merger be given every appropriate consideration.

Sincerely,



Pat Roberts  
United States Senator



Sam Brownback  
United States Senator



Jerry Moran  
United States Congressman

Congress of the United States  
Washington, DC 20510

January 30, 2008

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12th Street Southwest  
Washington, DC 20554

Dear Chairman Martin:

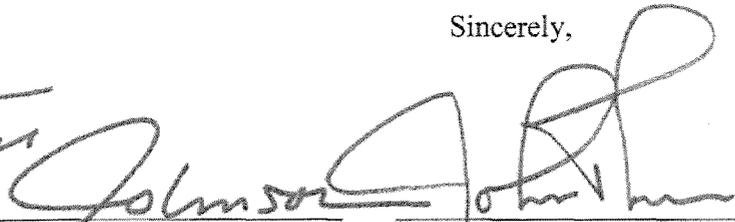
We request that the Federal Communications Commission (FCC) deny any further extensions of the comment period in the review of the applications of Rural Cellular Corp. (RCC) and Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless).

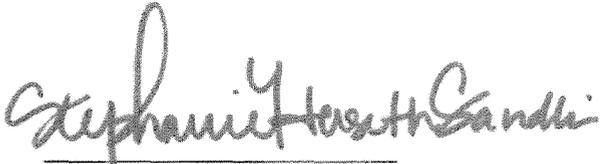
In addition to the U.S. Department of Justice review process, the RCC-Verizon Wireless merger has received extensive FCC oversight and public comment. Specifically, this merger has been subject to 30 days of public comment as part of the FCC review process, which has been extended by an additional 90 days for further comment. Upon regulatory approval of the merger, this network conversion to broadband may still require up to 18 months to complete. We are concerned that any further postponement of the FCC approval process would slow new investment and wireless broadband deployment in rural areas. Continued inaction would also impede network upgrades, delay introduction of new devices, and prolong customer service and employee uncertainty.

In order to ensure that consumers in our state have access to these wireless broadband services as soon as possible and that employees and consumers in these areas are not negatively impacted by a delay in this transaction, we encourage you to quickly turn to the merits of this merger and avoid prolonging the already significant FCC approval process. We thank you for your consideration of this request.

Sincerely,

  
Tim Johnson  
United State Senator

  
John Thune  
United States Senator

  
Stephanie Herseth Sandlin  
United States Representative

CC: Commissioner Copps, Commissioner Adelstein, Commissioner Taylor Tate,  
Commissioner McDowell

## CERTIFICATE OF SERVICE

On this 21st day of February, 2008, I, Barbara Pomeroy, hereby certify that I caused the foregoing "Opposition to Petitions to Deny and Comments" to be served, via First Class mail, postage pre-paid, upon:

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Barbara Pomeroy

\* Denotes service by email as well