

**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.

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

To: The Commission

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 Reply to the Opposition to Petitions to Deny and Comments (“Opposition”) filed by Cellco Partnership d/b/a Verizon Wireless (“VZW” or “Verizon Wireless”) and Rural Cellular Corporation (“RCC”) on February 21, 2008.¹

¹ VZW and RCC assert that the Joint Petition is procedurally defective because the factual allegations in the petition are not supported by an “affidavit of a person or persons with personal knowledge thereof” citing 47 C.F.R. §1.939(d). Opposition, p.2 n.2. Inasmuch as all of the factual allegations contained in the Joint Petition are “those of which official notice may be taken” (the application and comments in the record in this proceeding, Commission precedent, and the applicants’ websites), the affidavit requirement is plainly inapplicable. 47 C.F.R. §1.939(d). Should the Commission disagree with Joint Petitioners’ interpretation of the rule, we ask that the Petition to Deny be accepted as informal comments.

Joint Petitioners continue to believe that the Applicants have failed to meet “the burden of proving, by a preponderance of evidence, that the proposed transaction, on balance, serves the public interest.”²

It has now been nearly six months since the captioned applications were filed, and nearly four months since Senator Bernard Sanders first wrote to Chairman Martin identifying consumer concerns regarding the proposed merger.³ Senator Sanders raised several issues, including preservation and expansion of GSM coverage, the availability of equivalent handsets and rates for subscribers and roamers. Over the ensuing months, numerous consumers (many of them RCC subscribers) filed informal comments in this docket expressing these and other concerns, including poor experiences with Verizon Wireless CDMA coverage and customer service.

Expansion of Coverage. A cardinal principle of merger proceedings is that public interest benefits must be verifiable. Verizon Wireless has not yet provided any details on how or when existing and future Verizon Wireless customers, particularly those in rural areas, might expect to enjoy the benefits of expanded network coverage and new wireless broadband services. Although Verizon Wireless objects to the condition first proposed by Senator Sanders (100% geographic coverage in Vermont within 30 months), it has not offered any evidence that it will make any incremental investment in infrastructure in rural areas, either in Vermont or in any of the RCC territories. As evidenced by informal comments filed by several dozen consumers, there are many rural areas with little or no wireless coverage, more than two decades after the first cellular licenses were awarded. The spur of competition among carriers has not worked in the past, and Verizon Wireless

² *Applications of AT&T Inc and Dobson Communications Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007)(“*AT&T/Dobson Order*”) ¶ 10.

³ Letter, dated October 29, 2007, from Senator Bernard Sanders to Chairman Kevin Martin.

has provided no evidence that it will suffice in the future to spur infrastructure investment.

Preservation of the GSM Network and CETC Status. In the Joint Petition, we noted that RCC had received more than \$125 million in USF funding, and that the GSM network was an important public resource, to which the public should have continued access. In the Opposition, the Applicants cite the Commission's *AT&T/Dobson Order* in support of their position that Section 214(e) gives the states primary authority for ETC designation, including the accompanying requirements, and that there is no basis for the Commission to broadly assert itself into the process. That much is true, but the Applicants have not submitted any information in the record of this proceeding concerning whether (and, if so, where), consumers will continue to have access to the services currently offered by RCC as a CETC following the consummation of the proposed merger.

GSM to CDMA Conversion Issues. In the Opposition, for the first time in the nearly six-month course of this proceeding Verizon Wireless took the first steps to address some consumer concerns regarding the proposed conversion. Verizon Wireless has now committed, for the first time, to “adopt appropriate consumer policies to ensure a smooth transition for the former RCC GSM customers to CDMA” including the following:

- “a multi-month educational campaign about the transition”
- “the provision of a free comparable handset or a discounted higher-end CDMA handset to RCC customers”
- “a several month period in which they can select such handsets”
- “the honoring of RCC customers' existing contracts for the remaining term of the contract” and
- “the option for RCC customers to opt out for the remainder of the contract without any early termination fee.”

Opposition at 17-18.

The Commission should require Verizon Wireless to provide additional details on how it has handled, and is handling, the customer conversion process in other acquired markets, and how the conversion process in the RCC markets will benefit from Verizon Wireless' "vast experience" in such conversions. In particular, the Commission should ask Verizon Wireless to provide details of the GSM-to-CDMA conversion in the Charleston and Huntington WV markets following the acquisition last year of West Virginia Wireless.⁴ During the transition in West Virginia, consumers are being offered a variety of handsets, including two Motorola models and two Samsung models with "tri-mode" CDMA/AMPS capability. This offering is of potential significance to consumers in the RCC GSM markets. As we noted in our Petition, urging that Verizon Wireless be obligated to maintain analog service until it has completed CDMA buildout, RCC's analog subscribers have been assured that RCC will not "begin turning down the TDMA/Analog network [until] May 20, 2008" whereas Verizon Wireless has reiterated its intent to shut off analog service nationwide as of February 18, 2008. Verizon Wireless should be required to explain whether continuation of analog service during the CDMA buildout is part of its customer conversion program in West Virginia, and if so, why Vermont and other RCC markets will be treated differently.

The Commission should also require Verizon Wireless to clarify certain aspects of its newly-proposed customer conversion plan, including the following:

1. What plans will be made available to current RCC customers on "no-contract" plans during the transition period?
2. How does Verizon Wireless propose to provide customer service that meets the unique needs of former RCC customers during the transition period (*e.g.*, by maintaining existing RCC outlets and customer service staff, through a separate toll-free number, or otherwise)?

⁴ "Verizon Wireless Purchases West Virginia Wireless" Press Release dated February 13, 2007, available at <http://www.westvirginiawireless.com/aboutus/news.htm> (last visited February 28, 2008).

3. Does the offer of a comparable device apply to former RCC subscribers who have been using analog/TDMA or GSM equipment at fixed locations (*i.e.*, as a wireless local loop)? If not, what provisions are being made to transition those subscribers?

Roaming Issues. In response to Joint Petitioners' request that Verizon Wireless be required to provide automatic roaming services at reasonable rates to other GSM and CDMA carriers, Verizon Wireless committed to comply with the Commission's recently revised automatic roaming rules, which were published in the Federal Register a week before the captioned applications were filed (72 FR 50073, Aug. 30, 2007) and which did not become effective until October 29, 2007. Verizon Wireless recognizes its obligation to provide common carrier automatic roaming service on reasonable and nondiscriminatory terms and conditions, and the statutory requirement that any rates charged be reasonable and nondiscriminatory.

Complete Divestiture of Vermont 2 – Addison CMA680 (Vermont RSA2). In the Joint Petition, we urged the Commission to consider requiring a full divestiture of RCC cellular spectrum and GSM operations in all of the Vermont 2 – Addison CMA. Verizon Wireless proposes to retain RCC's cellular operations in the Southern Vermont Counties of Bennington and Windham, and the part of Windsor County south of State Route 4. Verizon Wireless is already offering CDMA service using PCS spectrum in much of that area. We observed that requiring full divestiture would eliminate the need for the Commission to define and monitor the end of the obligation to maintain the GSM network, currently couched in such ambiguous terms as "when a GSM operator begins to offer service there." A complete divestiture of RCC's cellular spectrum and GSM operations in Vermont 2 – Addison and any other similar "non-cellular overlapping areas" would help ensure the integrity and longevity of the GSM network, while permitting VZW to con-

tinue to build out CDMA coverage using its own spectrum. Verizon Wireless has not responded to that recommendation.

Conclusion

Joint Petitioners, representing the interests of consumers, respectfully request that the Commission either deny the captioned applications or, in the alternative, condition approval of the proposed merger in accordance with the recommendations contained in the Joint Petition and this Reply.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing “Reply to Opposition to 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 28th day of February, 2008 via first class United States mail, postage prepaid, to the following:

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