

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	
)	
ATLANTIS HOLDINGS LLC, Transferor,)	
)	
and)	
)	
CELLCO PARTNERSHIP D/B/A)	WT Docket No. 08-95
VERIZON WIRELESS, Transferee)	DA 08-1481
)	
For Consent to Transfer Control of Licensees,)	
Authorizations, and Spectrum Manager and)	
<i>De Facto</i> Transfer Leasing Arrangements)	
)	
File Nos. 0003464996 <i>et al.</i>)	

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

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SUMMARY

The competitive effects of the proposed merger are of particular concern to Rural Cellular Association's ("RCA") membership because the proposed transaction is intended to serve as Verizon Wireless' entrée into the rural center of the country where it currently lacks facilities. Unless Verizon Wireless' entry into rural cellular market areas ("CMAs") is properly "screened" by the Commission, the competitive harms caused by such entry will far outweigh its competitive benefits. The Commission mistakenly believes that its 95 MHz screen is sufficient to identify all markets in which spectrum aggregation poses a potential for competitive harm. In reality, there is a hole in the screen so large as to allow Verizon Wireless to gain control all 50 MHz of cellular spectrum in numerous CMAs without having been scrutinized by the Commission for competitive harm. The problem with the Commission's approach is that 700 MHz, cellular, broadband PCS, and SMR spectrum may all be "suitable" for mobile telephony, but the acquisition of a second block of cellular spectrum comes with substantial competitive advantages that currently do not accompany 700 MHz, broadband PCS or SMR spectrum. Whereas 700 MHz spectrum may in the near-term become "ideally suited" in many respects for the provision of mobile services, 800 MHz band cellular spectrum is ideally suited for mobile telephony in all respects right now.

All wireless spectrum is not equal and should not be treated as fungible by the Commission. Cellular spectrum provides wider coverage, better signal penetration in buildings, and suffers less attenuation from variable terrain, trees, foliage, hills, and other obstacles. And, as the Commission has recognized, with wider coverage comes lower infrastructure costs for the licensee, especially in rural areas. With the acquisition of cellular spectrum comes a fully developed cellular system, an existing customer base, and all the other benefits that accrued from

the competitive “first-mover advantages” that the initial cellular provider enjoyed. By acquiring cellular spectrum, Verizon Wireless will gain control of mature systems at least one of which has been in operation since 1984. RCA submits that the public interest would be served if the Commission prohibits the nation’s largest wireless provider from acquiring a local cellular monopoly in any rural market. The Commission should expand on the DOJ’s list of markets that must be divested to include every RSA (or every county within an RSA) in which Verizon Wireless would otherwise control all cellular spectrum. In the alternative, RCA asks that the Commission treat Verizon Wireless’ acquisition of a local cellular monopoly as presumptively anticompetitive and place a heavy burden to overcome that presumption.

If the Commission finds that an Alltel – Verizon combination is permissible, with conditions, RCA submits that the elimination of Alltel as a near-nationwide competitor warrants a fresh look at how Verizon Wireless should be obligated to respond to requests for interoperability and automatic roaming with other wireless carriers. With interoperability, calls in progress are handed off from one network to the other seamlessly. This is not just a matter of convenience for customers. It is an important relationship between carriers that serves to promote healthy competition for wireless services and, of critical importance, public safety.

RCA petitioned the Commission to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers, and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest. While the petition remains pending the proposed Alltel – Verizon merger has brought to the forefront an urgent need for the Commission to act immediately through a condition on grant of the Merger Application so that millions of consumers are not denied the benefits of latest innovations in handset technology.

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COMMENTS OF THE RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”), by its attorneys and pursuant to the Commission’s Public Notice, DA 08-1481, 2008 WL 2549846 (June 25, 2008), hereby submits its comments on the above-captioned applications of Atlantis Holdings, LLC (“Atlantis”) and Cellco Partnership d/b/a/ Verizon Wireless, with its wholly-owned subsidiary AirTouch Cellular (collectively “Verizon Wireless”) for the Commission’s consent to the transfer control of the various radio station authorizations and spectrum leases held by ALLTEL Corporation (“ALLTEL”).¹

INTRODUCTION

RCA is an association representing the interests of approximately 80 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA’s

¹ The deadline to comment on the subject applications (collectively “Merger Application”) was extended by the Wireless Telecommunications Bureau (“WTB”) to August 11, 2008. *See Applications of Verizon Wireless and Atlantis*, DA 08-1733, 2008 WL 2877487, at *1 (WTB July 24, 2008).

wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but one or two of RCA's members serve fewer than 500,000 customers. As an association of small, rural wireless carriers, RCA has an interest in protecting its members from the competitive harm that is threatened by the proposed merger of Verizon Wireless, the nation's largest wireless carrier, and ALLTEL.

COMMENTS

I. VERIZON WIRELESS SHOULD NOT BE ALLOWED TO MONOPOLIZE ALL 800 MHZ BAND CELLULAR SPECTRUM IN ANY RURAL MARKET

Verizon Wireless is the biggest of the so-called "Big 5" wireless carriers. With nearly 69 million subscribers,² Verizon Wireless claims to have "the largest number of retail customers in the industry and is the most profitable wireless company in the U.S."³ If the Commission consents to the proposed merger, ALLTEL will become an indirect wholly-owned subsidiary of Verizon Wireless. At that point, Verizon Wireless will become the biggest of the "Big 4" wireless carriers.

The competitive effects of the proposed merger are of particular concern to RCA's membership, because the proposed transaction is intended to serve as Verizon Wireless' entrée into the rural center of the country where it currently lacks facilities.⁴ The transaction is billed as a merger of a "national carrier" (Verizon Wireless) with a "regional carrier" (ALLTEL),⁵ albeit one that serves over 13 million customers in small and mid-sized cities and rural areas in 34 states and presents a "wireless license footprint" that encompasses 125 Metropolitan Statistical

² Verizon Wireless ended the second quarter with 68.7 million customers, after attracting 1.5 million new customers during the period. Of its total subscriber base, 66.7 million are retail customers.

³ Verizon Wireless, Facts-at-a-Glance (visited July 24, 2008), <<http://aboutus.vzw.com/ataglance.html>.

⁴ See Merger Application, at 9.

⁵ See *id.*, at 9.

Areas (“MSAs”) and 265 Rural Service Areas (“RSAs”).⁶ At least until Verizon Wireless’ discussions with the Department of Justice (“DOJ”), during which it offered to “accept divestiture requirements” in 85 CMAs,⁷ the merger would have enabled Verizon Wireless to enter 11 new RSAs and parts of 43 other RSAs.⁸ Unless Verizon Wireless’ entry into rural CMAs is properly “screened” by the Commission, the competitive harms caused by such entry will far outweigh its competitive benefits.

The Commission’s “input market for spectrum” includes spectrum in particular bands that is “suitable” for the provision of mobile telephony services. *E.g., AT&T Inc. and Dobson Communications Corp.*, 22 FCC Rcd 20295, 20311 (2007) (“*AT&T-Dobson*”).⁹ To date, the Commission has found 280 MHz of spectrum suitable for mobile telephony.¹⁰

Having identified its input screen for spectrum, the Commission arbitrarily decided that one-third of that spectrum or 95 MHz would be an effective “spectrum aggregation screen.” *Id.*, at 20313. The Commission mistakenly believes that its 95 MHz screen is sufficient to identify all markets in which spectrum aggregation poses a potential for competitive harm. *See id.* In reality, there is a hole in the screen so large as to allow Verizon Wireless to gain control all 50

⁶ *See id.*, at 4.

⁷ Letter from John T. Scott, III to Marlene H. Dortch 1 (July 22, 2008).

⁸ *See* Merger Application, at 10 & nn. 21, 22.

⁹ The Commission determines “suitability” by examining whether the spectrum is: (1) capable of supporting mobile service given its physical properties and the state of equipment technology; (2) licensed with a mobile allocation and corresponding service rules; and (3) committed to another use that effectively precludes its uses for mobile telephony. *See AT&T-Dobson*, 22 FCC Rcd at 20311.

¹⁰ The Commission’s input screen for spectrum is comprised of 80 MHz in the 698-806 MHz frequency band (“700 MHz spectrum”), two 25 MHz blocks (Blocks A and B) of 800 MHz spectrum for cellular service, approximately 25 MHz in the 800 and 900 MHz bands for Specialized Mobile Radio (“SMR”), and 125 MHz in the 1850-1990 MHz frequency band for Broadband PCS. *See AT&T-Dobson*, 22 FCC Rcd at 20311-13.

MHz of cellular spectrum in a cellular market area (“CMA”) without having been scrutinized by the Commission for competitive harm. *See infra* p. 8.

A. Low-Band Spectrum Is Superior And Provides A Competitive Advantage

The problem with the Commission’s approach is that 700 MHz, cellular, broadband PCS, and SMR spectrum may all be “suitable” for mobile telephony, but the acquisition of a second block of cellular spectrum comes with substantial competitive advantages that currently do not accompany 700 MHz, broadband PCS or SMR spectrum. Whereas 700 MHz spectrum may in the near-term become “ideally suited” in many respects for the provision of mobile services,¹¹ 800 MHz band cellular spectrum is ideally suited for mobile telephony in all respects right now.

All wireless spectrum is not equal and should not be treated as fungible by the Commission. Compared to 1.7, 1.9 and 2.1 GHz (“High-Band”) PCS and AWS spectrum, the propagation characteristics of 700 MHz and 800 MHz (“Low-Band”) spectrum provide wider coverage, better signal penetration in buildings, and suffer less attenuation from variable terrain, trees, foliage, hills, and other obstacles. And, as the Commission has recognized, with wider coverage comes lower infrastructure costs for the licensee, especially in rural areas.¹² Because of its superior propagation characteristics, Low-Band spectrum is considered more valuable than High-Band spectrum by the wireless industry.¹³

With the acquisition of cellular spectrum comes a fully developed cellular system, an existing customer base, and all the other benefits that accrued from the competitive “first-mover

¹¹ *AT&T-Dobson*, 22 FCC Rcd at 20313.

¹² *Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19126-28 (2004) (“*Rural Spectrum Access Order*”).

¹³ *See Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, 15117 (2004).

advantages” that the initial cellular provider enjoyed.¹⁴ By acquiring cellular spectrum, Verizon Wireless will gain control of mature systems at least one of which has been in operation since 1984.¹⁵ And the acquisition of additional cellular spectrum offers the benefits of equipment and network compatibility, expeditious system integration, and expanded network coverage. All these advantageous attach to cellular spectrum and not necessarily to “suitable” 700 MHz, SMR, and broadband PCS spectrum.

The DOJ has recognized that 800 MHz band cellular operations are “more efficient in serving rural areas than 1900 MHz band PCS spectrum” and afford the licensee the competitive advantage of being able to “provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum.”¹⁶ Rural wireless carriers have made the same point to the Commission in opposition to mergers proposing the consolidation of cellular providers in the same market.¹⁷ However, the Commission has not addressed the issue as part of its competitive analysis of a proposed horizontal transaction. RCA asks that the Commission do so in this case.

B. A Proposed Local Cellular Monopoly Warrants Heightened Scrutiny

The substantial threat to competition posed by common ownership of both cellular licensees in a market has been recognized by the Commission since the dawn of the cellular era.¹⁸ The Commission adopted a cellular cross-ownership ban in 1991 in order to “guarantee

¹⁴ 2000 Biennial Regulatory Review Spectrum Aggregation Limits for CMRS, 16 FCC Rcd 22668, 22708 (2001) (“*Spectrum Cap Sunset Order*”).

¹⁵ Verizon Wireless proposes to acquire ALLTEL’s cellular system in the Minneapolis-St. Paul MN-WI MSA (CMA015), which was first licensed on August 16, 1984.

¹⁶ Complaint, at 7, *United States v. AT&T Inc.*, No. 1:07-CV-01952 (D.D.C. filed Oct. 30, 2007) (“DOJ Complaint”).

¹⁷ See *AT&T-Dobson*, 22 FCC Rcd at 20326.

¹⁸ See, e.g., *Cellular Communications Systems*, 86 FCC Rcd 469, 491-92 (1981).

the competitive nature of the cellular industry.”¹⁹ That rule essentially prohibited a cellular licensee from having an ownership interest in the other cellular licensee in the same market.²⁰ The cellular cross-ownership rule remained intact until 2001, when the Commission eliminated the rule in the MSAs based on the belief that cellular carriers in those markets no longer enjoyed “significant first-mover advantages.” *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22670. However, the rule survived in the RSAs because the Commission found that, unlike in urban markets, rural cellular providers enjoy first-mover advantages and “dominate” the CMRS marketplace. *See id.*, at 22708.

In 2001, the Commission saw that potential entry by new competitors was likely to be difficult in the RSAs due to the economics of serving rural areas. *See id.*, at 22709. The Commission examined CMRS market conditions and concluded that a combination of interests in cellular licensees in the RSAs would likely “result in a significant reduction in competition.” *Id.* It decided to continue to forbid one cellular licensee in an RSA from holding an attributable interest in the other cellular licensee. *See id.* The Commission reasoned that “the likelihood of approving a cellular consolidation between two providers in the same market was small and that it would be more efficient and less costly for [it] to maintain a prophylactic rule and to entertain waiver requests for the small subset of transactions in RSAs where competition was more robust.”²¹

¹⁹ *Amendment of Part 22 of the Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 6 FCC Rcd 6185, 6228 (1991).

²⁰ *See id.* *See also* 47 C.F.R. § 22.902(i)(A)(5) (1992).

²¹ *Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19116 (2004) (“*Rural Spectrum Access Order*”). The WTB granted a waiver of the rule to permit ALLTEL to obtain a cross-ownership interest in the Lafayette, Louisiana MSA (CMA174), but the interest was non-controlling. *See CenturyTel Wireless, Inc.*, 18 FCC Rcd 1260, 1265 (WTB 2003).

In its 2004 *Rural Spectrum Access Order*, the Commission recognized that the cellular cross-ownership rule had served as a safeguard “against the possibility of significant additional consolidation of control over cellular spectrum in rural areas and the attendant serious anticompetitive effects.” 19 FCC Rcd at 19115. Nevertheless, the Commission eliminated the per se cellular cross-ownership restriction in the RSAs in favor of the case-by-case review of cellular transactions. *See id.* To review cross interests of cellular spectrum in rural areas, the Commission imposed a requirement that a cellular licensee must report the acquisition of a non-controlling ownership interest of more than 10 percent in the other cellular licensee. *See id.*, at 19117-18. *See also* 47 C.F.R. § 1.919(c).

Although it lifted the cellular cross-ownership ban, the Commission noted that “a concentration of interests between the two cellular licensees in rural areas would more likely result in a significant reduction in competition than an aggregation of additional CMRS spectrum by such licensees.” *Rural Spectrum Access Order*, 19 FCC Rcd at 19118. The Commission clearly did not envision approving a merger of the two cellular licensees in a CMA:

Although economic theory dictates that there is not a static threshold by which a reduction in competition results in anticompetitive harm, a consolidation in a local cellular market from duopoly to monopoly status provides consumers with less choice and potentially less benefits from competition. *The likelihood of the Commission approving a cellular consolidation between two providers in such conditions remains small.*²²

As late as March 2007, the Commission expressed the view that there was little likelihood that it would approve the consolidation of two cellular providers in the same market. *See E.N.M.R. Telephone Cooperative*, 22 FCC Rcd 4512, 4513-14 n.13 (WTB 2007). It appears from the Merger Application that at some point the Commission began approving the creation of

²² *Rural Spectrum Access Order*, 19 FCC Rcd at 19115 n.204 (emphasis added).

local cellular monopolies. ALLTEL seeks the Commission's consent to transfer control of cellular systems that operate on all 50 MHz of cellular spectrum in one MSA and five RSAs.²³

Research shows that ALLTEL's acquisition of local cellular monopolies in the Lincoln Nebraska MSA and three RSAs was not subject to a competitive analysis in any reported decision of the Commission. However, the transfer of control of the cellular system in CMA492 Minnesota 11 – Goodhue was subjected to a case-by-case review in *Midwest Wireless Holdings, L.C.C. and ALLTEL Communications, Inc.*, 21 FCC Rcd 11526,1559-60 (2006) and the transfer of the system in CMA658 Texas 7 – Fanin was reviewed *Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13098 (2005). In neither case did the Commission note that ALLTEL would control all the cellular spectrum in any part of RSA, much less that ALLTEL would have a cellular monopoly in Minnesota 11²⁴ and in six of the fifteen counties in Texas 7.²⁵

When it decided to maintain the cellular cross-ownership rule in effect for the RSAs in 2001, the Commission promised to reassess the need for the rule in the RSAs as part of its next biennial review in 2002, when it expected to have access to “more comprehensive information regarding the state of competition in rural markets.” *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22708. However, when it finally reassessed the cellular cross-ownership rule in 2004, the Commission simply repealed it “on reconsideration of the *Spectrum Cap Sunset Order*” and on the basis of rulemaking comments. *Rural Spectrum Access Order*, 19 FCC Rcd at 19114. It explicitly found that there was no need for it to make any determination as to the “level of

²³ See Merger Application, Ex. 4, at 4 (CMA172 Lincoln Nebraska), 19 (CMA492 Minnesota 11 – Goodhue), 20 (CMA512 Missouri 9 – Bates), 28 (CMA599 Oklahoma 4 – Nowata), 32 (CMA658 Texas 7 – Fannin), 34 (CMA686 Virginia 6 – Highland).

²⁴ Compare *id.* at 19 with *Midwest Wireless*, 21 FCC Rcd at 1559-60.

²⁵ Compare Merger Application, Ex. 4, at 32 with *Western Wireless*, 20 FCC Rcd at 13098.

economic competition in rural markets.” *Rural Spectrum Access Order*, 19 FCC Rcd at 19114 & n.200. The Commission represented that it would maintain the protection afforded by the cellular cross-ownership rule during its case-specific review process. *See id.*, at 19116-17. However, the review process in *Midwest Wireless* and *Western Wireless* afforded no such protection.

The DOJ shares RCA’s concern that the consolidation of control over cellular spectrum in rural areas will have serious anticompetitive effects. *See DOJ Complaint*, at 7-8. Inasmuch as the Commission promised to replace the cellular cross-ownership rule with a case-specific review of cross-interests in cellular spectrum in rural areas, *see Rural Spectrum Access Order*, 19 FCC Rcd at 19117, RCA respectfully requests the Commission to finally assess the state of competition in rural markets before it acts on the Merger Application or, in the alternative, afford a much higher degree of scrutiny to the anticompetitive effects that are likely to result if Verizon Wireless obtains local cellular monopolies as a result of its merger with ALLTEL. To that end, RCA has attached a table listing the 57 MSAs and 110 RSAs in which Verizon Wireless proposed to acquire control over all 50 MHz of cellular spectrum in all or part of the market. *See infra* Table 1.

RCA submits that the public interest would be served if the Commission prohibits the nation’s largest wireless provider from acquiring a local cellular monopoly in any rural market. The Commission should expand on the DOJ’s list of markets that must be divested to include every RSA (or every county within an RSA) in which Verizon Wireless would otherwise control all the cellular spectrum. In the alternative, RCA asks that the Commission treat Verizon Wireless’ acquisition of a local cellular monopoly as presumptively anticompetitive and place a heavy burden on the applicants to overcome that presumption.

II. CARRIER-TO-CARRIER INTEROPERABILITY, INCLUDING AUTOMATIC ROAMING FOR 3G, 4G AND BEYOND, SHOULD BE AVAILABLE FOR CONSUMER SATISFACTION, COMPETITION AND PUBLIC SAFETY

A. Interoperability is Needed if a Near-Nationwide Competitor is Lost

If the Commission finds that an Alltel – Verizon combination is permissible, with conditions, RCA submits that the elimination of Alltel as a near-nationwide competitor warrants a fresh look at how Verizon Wireless should be obligated to respond to requests for interoperability with other wireless carriers.

First, it is important to recognize that consumers expect to make use of their wireless devices as they travel beyond the license areas of their own wireless carriers. Consumers are not typically aware of license area boundaries and understandably are concerned only with the availability, quality and cost of services they utilize. Where available, automatic roaming agreements among wireless carriers facilitate customer use of networks of other carriers by allowing calls to be placed and received without the customer needing to make direct arrangements with multiple carriers.²⁶ But automatic roaming alone, as important as it is to consumers and wireless carriers, does not do enough to provide consumers with continuous service as they travel between wireless carriers' service areas.

Calls in progress too frequently are dropped and need to be re-initiated after consumers cross the boundary of carrier license areas. Without the frequency planning that supports interoperability large carriers are known to create “moats” around their service areas such that calls attempted by customers of other carriers near the edge of a license area are not completed

²⁶ In August 2007 the Commission amended Section 20.12 of the rules to clarify responsibilities of wireless carriers when they receive a reasonable request for automatic roaming agreements from other technologically compatible carriers. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

or are not sustained. The result is that consumers often need to try and retry calls that are dropped until they enter an area that is comfortably within the next carrier's license area, miles down the road from where calls were attempted unsuccessfully or service was disrupted.

With interoperability, calls in progress are handed off from one network to the other seamlessly. This is not just a matter of convenience for customers. It is an important relationship between carriers that serves to promote healthy competition for wireless services and, of critical importance, public safety.

An increasingly important aspect of interoperability involves location-based services that can be provided by wireless carriers.²⁷ It is intuitive that customers have a greater need for location-based services when they travel beyond familiar areas. In a roaming context, location-based services take on special significance to customers. If a customer's home carrier cannot obtain an interoperability agreement with Verizon Wireless, for example, that customer probably will not have the benefit of a location-based service exactly when it is most needed. The result will be a disappointed customer. RCA does not suggest that carriers should be obligated to provide roaming services of this nature without a charge to one another, but if a carrier is not willing to enter into interoperability agreements on reasonable terms and conditions, when technically feasible, it is a disservice to the public and it will impact competition among carriers in the marketplace.

B. Interoperability Stimulates Competition

Competition is promoted through interoperability because it allows small and regional wireless carriers to offer the public a service that is not interrupted by unsuccessful inter-carrier

²⁷ Location-based services provide the customer with information useful for navigation and for locating points of interest. Many such services are applications of "global positioning satellite" services.

handoffs, and because consumers can make full use of their wireless devices regardless of which carrier is their serving carrier whenever the networks are technically compatible.²⁸ Absent interoperability, small and regional carriers that provide excellent service in their license areas are relegated to a marginal competitive position by nationwide carriers that refuse to provide seamless service even when the same network technology is deployed. When a large carrier has the power, unilaterally and intentionally, to cause a competitor to disappoint and alienate consumers with a disruption in service as they leave a smaller sized license area, competition in the market is diminished. The Commission as regulator needs to act where the marketplace fails in order to safeguard and enhance competition in local markets.

C. Interoperability Furthers Public Safety

Public safety is an extremely important benefit of interoperability agreements between wireless carriers. E911 Phase II location accuracy is more likely to be available if a subscriber's home carrier and the away-from-home, serving carrier have an interoperability agreement in place. At a time when funding to upgrade Public Safety Answering Points ("PSAPs") to Phase II capability is a high priority for local, state and federal governments, and when carriers are investing in equipment to provide improved location accuracy information to PSAPs, the safety benefits that result from carrier interoperability agreements should be recognized by the Commission and carriers should be required to cooperate with one another to pursue those agreements when systems are technologically compatible. As the Commission reviews a consolidation proposal that rivals the largest ever presented for approval it should not miss this

²⁸ Not only will calls be handed off seamlessly but interoperability allows consumers to use important features of their handsets when travelling beyond their home carrier's license area. For example, consumer access to voice mail can be standardized from carrier to carrier. Consumers will not see a "roaming light" on their handsets and be confused about billing rates if carriers have coordinated their billing and service plans. And, as already explained, location-based services can be offered to roamers when interoperability agreements are in place.

opportunity to promote public safety goals by conditioning consent upon an obligation that Verizon Wireless enter into interoperability agreements with other wireless carriers when a reasonable request is made and networks are technologically compatible.

D. Lack of Automatic Roaming Harms Consumers

A key component of interoperability is automatic roaming that allows consumers to roam automatically on other technologically compatible networks and make maximum use of their wireless devices for voice and data services at all levels, including Third Generation (“3G”), Fourth Generation (“4G”) and the more advanced digital networks that are sure to follow. Consolidation in the wireless industry necessarily means fewer surviving national or near-national networks and the result is an increasing need for access to those networks by customers of other carriers. While the Commission may prefer to resolve such issues in the context of a rulemaking proceeding,²⁹ the Commission should not miss the opportunity when major transactions are proposed to improve prospects for consumer access to compatible wireless networks.

Fewer remaining wireless networks will only heighten the need for automatic roaming agreements between wireless carriers whose networks are technically compatible. Consumers expect more than voice services as they travel. The availability of broadband access, in addition to voice and narrowband data, is of great importance to consumers when they leave the license areas of smaller market carriers.

The Commission may take official notice of the fact that data services have become indispensable to many users of wireless services. Access to email and to broadband services is increasingly important – indeed it is essential -- to many wireless customers as they travel from

²⁹ See *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 05-265, 22 FCC Rcd 15817 (2007).

one community to another, or from one state to another. Consumers cannot distinguish between services that are available as the result of connection through the Public Switched Telephone Network (“PSTN”), and services that have been classified by government as “information service.” The consumer has a basic need: continuous service both inside and outside the home carrier’s license area.

To an ever increasing extent, Americans want to be connected to their businesses and families regardless of where they travel in the United States, and they want access to the Internet for business, educational and personal information. Consumer acceptance of technological innovation has been rapid. When new wireless devices make it possible to communicate or access information in a new or better way, customers have adopted the enhancements. They purchase new wireless devices that make it possible to benefit from the new technology and expect to use those devices as they travel within the United States and possibly beyond.

The Commission has the opportunity immediately at hand to improve public access to the expanding Verizon Wireless network by conditioning approval of the transaction upon a requirement that Verizon Wireless offer interoperability, including automatic roaming agreements for voice, data and broadband services, on reasonable terms and conditions when another carrier makes a reasonable request and can be technologically compatible.³⁰

III. EXCLUSIVE HANDSET AGREEMENTS WITH SUPPLIERS MUST BE PROHIBITED

RCA petitioned the Commission to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset

³⁰ The Commission must not allow Verizon Wireless to include terms in interoperability or automatic roaming agreements that limit a smaller carrier’s ability to market its services to the public. Terms must be reasonable and nondiscriminatory.

manufacturers, and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest.³¹ While the petition remains pending the proposed Alltel – Verizon merger has brought to the forefront an urgent need for the Commission to act immediately through a condition on grant of the Merger Application so that millions of consumers are not denied the benefits of latest innovations in handset technology.

A. Consumers are Harmed When Carriers Restrict Sale and Overprice Innovative Handsets

As RCA explained, the “Big 5” carriers – *i.e.*, AT&T, Verizon Wireless, Sprint Nextel, T-Mobile and Alltel Wireless³² – enter into exclusive arrangements with handset manufacturers for what appears to be a variety of reasons, including unilateral control over the features, content and design of a particular handset, sole control over the marketing of a particular handset, monopolistic control over the sale price of a particular handset, and absolute control over the market availability of a particular handset. For many consumers, the end result of such exclusive arrangements is being channeled to purchase wireless service from a carrier that has monopolistic control over the desired handset, paying higher prices for the services and accessories available with the desired handset, having to agree to unusual (and undesirable) terms and conditions of service, and having to pay a premium price for the handset because the market is void of any competition for the particular handset.³³

³¹ *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by RCA, May 20, 2008 (“Handset Petition”).

³² Collectively, as of Dec. 31, 2006, the Big 5 carriers accounted for approximately 92% of all wireless telephone subscribers in the U.S. *CMRS Competition 12th Report*, ¶ 18, Chart 1: YE2006 Mobile Telephone Subscribers by Company. Verizon Wireless and AT&T collectively accounted for approximately 53% of all wireless telephone subscribers in the U.S. The top three carriers – AT&T, Verizon Wireless and Sprint Nextel – accounted for over 75% of all wireless telephone subscribers in the U.S. *Id.*

³³ Handset Petition at 2.

However, consumers who are forced to sign up for service with the one carrier with rights to the desired handset and pay a premium price for the handset and its capabilities are not the only ones harmed by these exclusive arrangements. Americans living in rural areas who cannot get any coverage from the carriers benefiting from these exclusive arrangements are also harmed, since they are denied the technological benefits of many of the most popular handsets available today.

B. Competition is Harmed and Consumers Suffer as the Result of Exclusive Agreements

For carriers able to command these exclusive arrangements, the end result is a significant and unfair advantage over competitors.³⁴ By way of example, RCA members continue to encounter significant obstacles in attempting to provide prospective and current customers with the most popular handsets made by Samsung and LG. Despite repeated attempts to secure additional handset offerings, the two manufacturers still only offer a paltry number of handsets to RCA members. Moreover, the handsets that have been made available to RCA members are basic, low-end handsets without many of the cutting-edge features customers covet. As a result, the ability of RCA member carriers to compete effectively with the products and services offered by the largest carriers is significantly and unfairly diminished due to their limited handset selection, thereby further enhancing the remaining Big 4's dominant market power.³⁵

³⁴ Of course, Tier II and Tier III carriers are further challenged in their ability to compete with the remaining Big 4 not only because they are unable to get access to wireless handsets that are comparable in function and style to the high-end exclusive handsets, but also because they are unable to command the same volume discounts from vendors as the Big 4 – creating a wireless marketplace bordering on oligopsony. The stranglehold held by the country's two largest carriers – Verizon Wireless and AT&T -- on the U.S. CMRS marketplace was never more apparent than in the recently concluded 700 MHz auction in which the two companies spent a combined \$16.3 billion on 700 MHz licenses out of the total \$19.592 billion collected by the U.S. Treasury.

³⁵ Handset Petition at 3-4. As the FCC also acknowledges in the *CMRS Competition 12th Report*, “market structure is only a starting point for a broader analysis of the status of competition based on the totality of

The harms resulting from exclusive handset agreements will only get worse if the proposed transaction is permitted to proceed without a solution that allows millions of rural Americans to obtain the latest models of handsets that Verizon Wireless will offer. Likewise, customers of other carriers should have the opportunity to roam on the Verizon Wireless network by use of handsets that will function on the networks of compatible carriers. If the Commission is otherwise prepared to consent to the Merger Application it should condition the grant upon a termination of existing handset exclusivity agreements and a prohibition on new agreements of the same nature.

CONCLUSION

The Commission should not approve the proposed merger without a careful review of the spectrum accumulation by Verizon Wireless and a requirement for divestiture of licenses and business units in all areas where Verizon Wireless would hold both the Block A and Block B cellular licenses in the market. Further, the Commission has the opportunity immediately at hand to improve public access to a near-national wireless network by conditioning approval of the transaction upon a requirement that Verizon Wireless offer interoperability, including automatic roaming agreements for voice, data and broadband services, when another carrier makes a reasonable request and can be technologically compatible.³⁶ Without such a condition, the Merger Application should be denied. The Commission should also prohibit, as a condition to

circumstances, including the pattern of provider conduct, consumer behavior, and market performance...” See *CMRS Competition 12th Report*, ¶ 110. As highlighted in the Handset Petition, a deeper analysis demonstrates that while there are multiple competitors in most rural areas and most small, rural providers might offer wireless packages that “they feel are competitive with those offered by nationwide providers,” few, if any, small, rural providers can provide the variety of handsets and handset features offered by the surviving Big 4. *Id.*

³⁶ The Commission must not allow Verizon Wireless to include terms in interoperability or automatic roaming agreements that limit a smaller carrier’s ability to market its services to the public. Terms must be reasonable and nondiscriminatory.

consent, exclusive handset agreements between Verizon Wireless and its suppliers. Exclusive agreements for the best and most innovative handsets will deny their availability to millions of consumers who are not in the Verizon Wireless license areas and limit the choice of service providers for consumers that are in the Verizon Wireless markets.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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TABLE 1

**MARKETS IN WHICH VERIZON WIRELESS PROPOSED
TO CONTROL 50 MHZ OF CELLULAR SPECTRUM**

(Verizon Wireless has agreed to divest overlapping properties in the Cellular Market Areas (“CMAs”) identified by asterisk below. In partitioned CMAs, only counties in which Verizon proposed to control 50 MHz of cellular spectrum are identified by name.)

CMA	STATE	MARKET	COUNTY
15	MN	Minneapolis	
16	OH	Cleveland	
26	AZ	Phoenix	
43	NC/VA	Norfolk-Virginia Beach-Portsmouth	
47	NC	Greensboro-Winston Salem-High Point	
48	OH/MI	Toledo	
52	OH	Akron	
59	VA	Richmond	
61	NC	Charlotte-Gastonia-Rock Hill	
64	MI	Grand Rapids	
65	IA/NE	Omaha	
67	SC	Greenville-Spartanburg	
71	NC	Raleigh-Durham	
78	MI	Lansing-East Lansing	
81	TX	El Paso	
85	TN/VA	Johnson City-Kingsport-Bristol	
86	NM	Albuquerque	
87	OH	Canton	
90	SC	Charleston-North Charleston	
94	MI	Saginaw-Bay City-Midland	
95	SC	Columbia	
104	VA	Newport News-Hampton	
108	GA/SC	Augusta	
136	OH	Lorain-Elyria	
139	AL	Montgomery	
149	NC	Fayetteville	
153	GA/AL	Columbus	
155	GA	Savannah	
158	OH	Lima*	
166	NC	Hickory	
172	NE	Lincoln	
181	MI	Muskegon	
221	ND/MN	Fargo-Moorhead*	
227	SC	Anderson	

CMA	STATE	MARKET	COUNTY
231	OH	Mansfield*	
235	VA	Petersburg-Colonial Heights-Hopewell	
241	CO	Pueblo	
246	AL	Dothan	
253	IA/NE	Sioux City	
261	GA	Albany	
262	VA	Danville*	
264	SC	Florence	
267	SD	Sioux Falls*	
268	MT	Billings*	
276	ND	Grand Forks*	
280	NC	Burlington	
283	FL	Panama City	
285	NM	Las Cruces	
289	SD	Rapid City*	
297	MT	Great Falls*	
298	ND	Bismarck*	
299	WY	Casper*	
310	AL	AL RSA 4 – Bibb	
311	AL	AL RSA 5 – Cleburne	Chambers
			Coosa
			Tallapoosa
313	AL	AL RSA 7 – Butler	
314	AL	AL RSA 8 – Lee	
319	AZ	AZ RSA 2 – Coconino	
321	AZ	AZ RSA 4 – Yuma	
322	AZ	AZ RSA 5 – Gila	
323	AZ	AZ RSA 6 – Graham	
341	CA	CA RSA 6 – Mono*	
342	CA	CA RSA 7-Imperial	
351	CO	CO RSA 4 – Park*	
352	CO	CO RSA 5 – Elbert*	Cheyenne*
			Kit Carson*
			Lincoln*
353	CO	CO RSA 6 – San Miguel*	
354	CO	CO RSA 7 – Saguache*	Arculeta*
			Alamosa*
			Mineral*
			Rio Grande*
			Saguache*
355	CO	CO RSA 8 – Kiowa*	Bent*
			Crowley*
			Otero*
			Powers*

CMA	STATE	MARKET	COUNTY
356	CO	CO RSA 9 – Costilla*	Baca*
			Huerfano*
			Las Animas*
375	GA	GA RSA 5 – Haralson	
376	GA	GA RSA 6 – Spalding	
377	GA	GA RSA 7 – Hancock*	
378	GA	GA RSA 8 – Warren*	
379	GA	GA RSA 9 – Marion *	
380	GA	GA RSA 10 – Bleckley*	
382	GA	GA RSA 12 – Liberty*	
383	GA	GA RSA 13 – Early*	
389	ID	ID RSA 2 – Idaho*	Adams*
			Gem*
			Payette*
			Valley*
			Washington*
390	ID	ID RSA 3 – Lemhi*	
392	ID	ID RSA 4 – Butte	
393	ID	ID RSA 6 – Clarke	
401	IL	IL RSA 8 – Washington*	
402	IL	IL RSA 9 – Clay*	Edwards*
			Gallatin*
			Hardin*
			Saline*
			Wabash*
			White*
			Hamilton*
			Wayne*
			Pope*
419	IA	IA RSA 8 – Monona	
428	KS	KS RSA 1 – Cheyenne*	
429	KS	KS RSA 2 – Norton*	
433	KS	KS RSA 6 – Wallace*	
434	KS	KS RSA 7 – Trego*	
438	KS	KS RSA 11 – Hamilton*	
439	KS	KS RSA 12 – Hodgeman*	
440	KS	KS RSA 13 – Edwards*	
482	MN	MN RSA 1 – Kittson*	
483	MN	MN RSA 2 – Lake of the Woods	Clearwater
			Mahnomen
			Norman
			Lake of the Woods
488	MN	MN RSA 7 – Chippewa*	
489	MN	MN RSA 8 – Lac qui Parle*	

CMA	STATE	MARKET	COUNTY
490	MN	MN RSA 9 – Pipestone*	
491	MN	MN RSA 10 – Le Sueur*	
492	MN	MN RSA 11 – Goodhue	
512	MO	MO RSA 9 – Bates	St. Clair
			Cedar
523	MT	MT RSA 1 – Lincoln*	
524	MT	MT RSA 2 – Toole*	Chouteau*
			Hill*
			Liberty*
			Toole*
526	MT	MT RSA 4 – Daniels*	Dawson*
			Richland*
			Wibaux*
527	MT	MT RSA 5 – Mineral*	
528	MT	MT RSA 6 – Deer Lodge*	
529	MT	MT RSA 7 – Fergus*	
530	MT	MT RSA 8 – Beaverhead*	
531	MT	MT RSA 9 – Carbon*	
532	MT	MT RSA 10 – Prairie*	
544	NV	NV RSA 2 – Lander*	
546	NV	NV RSA 4 – Mineral	
547	NV	NV RSA 5 – White Pine*	White Pine*
553	NM	NM RSA 1 – San Juan*	
555	NM	NM RSA 3 – Catron	
556	NM	NM RSA 4 – Santa Fe	Los Alamos
			Santa Fe
557	NM	NM RSA 5 – Grant*	
558	NM	NM RSA 6 – Lincoln	Otero
			Lincoln
566	NC	NC RSA 2 – Yancey	Caldwell
568	NC	NC RSA 4 – Henderson	Cleveland
			Lincoln
569	NC	NC RSA 5 – Anson*	
579	NC	NC RSA 15-Cabarrus	
580	ND	ND RSA 1 – Divide*	
581	ND	ND RSA 2 – Bottineau*	
582	ND	ND RSA 3 – Barnes*	
583	ND	ND RSA 4 – McKenzie*	
584	ND	ND RSA 5 – Kidder*	
586	OH	OH RSA 1 – Sandusky*	
587	OH	OH RSA 3 – Ashtabula*	
589	OH	OH RSA 5 – Hancock*	
590	OH	OH RSA 6 – Morrow*	
599	OK	OK RSA 4 – Nowata	Adair

CMA	STATE	MARKET	COUNTY
			Cherokee
			Delaware
			Delaware
625	SC	SC RSA 1 – Oconee*	
626	SC	SC RSA 2 – Laurens*	
627	SC	SC RSA 3 – Cherokee*	
630	SC	SC RSA 6 – Clarendon	
631	SC	SC RSA 7 – Calhoun*	
632	SC	SC RSA 8 – Hampton	
633	SC	SC RSA 9 – Lancaster	
634	SD	SD RSA 1 – Harding*	
635	SD	SD RSA 2 – Corson*	
636	SD	SD RSA 3 – McPherson*	
637	SD	SD RSA 4 – Marshall*	
638	SD	SD RSA 5 – Custer*	
639	SD	SD RSA 6 – Haakon*	
640	SD	SD RSA 7 – Sully*	
641	SD	SD RSA 8 – Kingsbury*	
642	SD	SD RSA 9 – Hanson*	
646	TN	TN RSA 4 – Hamblen	
650	TN	TN RSA 8 – Johnson	
658	TX	TX RSA 7 – Fannin	Franklin
			Titus
			Camp
			Morris
			Red River
			Cass
675	UT	UT RSA 3 – Juab*	
676	UT	UT RSA 4 – Beaver	
677	UT	UT RSA 5 – Daggett*	Grand*
			Carbon*
			Emery*
678	UT	UT RSA 6 - Piute*	
681	VA	VA RSA 1 – Lee*	
684	VA	VA RSA 4 – Bedford	Bedford
686	VA	VA RSA 6 – Highland	
688	VA	VA RSA 8 – Amelia*	
689	VA	VA RSA 9 – Greensville	
718	WY	WY RSA 1 – Park*	
719	WY	WY RSA 2 – Sheridan*	
720	WY	WY RSA 3 – Lincoln	
721	WY	WY RSA 4 – Niobrara*	
722	WY	WY RSA 5 - Converse*	

CERTIFICATE OF SERVICE

I, David L. Nace, hereby certify that on this 11th day of August, 2008, copies of the foregoing COMMENTS were e-mailed, in pdf format, to:

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