

**Before the
Federal Communications Commission
Washington, DC 20554**

In re Applications of)	
)	
ATLANTIS HOLDINGS LLC, Transferor,)	
)	
and)	WT Docket No. 08-95
)	
CELLCO PARTNERSHIP D/B/A)	
VERIZON WIRELESS, Transferee)	
)	
for Consent to the Transfer of Control of)	File Nos. 0003463892, <i>et al.</i>
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	
Communications Act)	
)	

**PETITION TO DENY
OF THE
RURAL TELECOMMUNICATIONS GROUP, INC.**

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Summary

The Rural Telecommunications Group, Inc. (“RTG”) opposes the proposed merger between Alltel and Verizon because it will destroy the availability of Commercial Mobile Radio Service in rural America. The decisions by the FCC and the Department of Justice to allow merger after merger in the wireless sector have had a detrimental effect on rural wireless carriers and in turn on the rural consumers they serve. Merger mania must stop and RTG demands the highest level of scrutiny and care from the Commission before it takes any action on the captioned applications.

The merged Verizon entity will hold a substantial and excessive spectrum interest in markets throughout the United States. In applying its public interest test under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“the Act”), the FCC employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest. Under this test, Alltel and Verizon bear the burden of proving that the proposed transaction, on balance, serves the public interest. If they are unable to so demonstrate, or if the record presents a substantial and material question of fact, Section 309(e) of the Act requires that the FCC designate the application for hearing. Alltel and Verizon have not met this burden. The record will also reflect the real parties in interest will differ materially on the facts. Accordingly, the application must be designated for hearing.

The proposed merger by the applicants poses a grave threat to the already tenuous status of the domestic roaming market, despite the limited protections offered in the FCC’s *Roaming Order*, and certainly despite the rosy arguments put forth by the applicants as to why their

merger is in the public interest. A post-merger Verizon would hold the unique and dubious distinction of being not just the country's largest mobile operator, but quite possibly the only CMRS provider in the United States upon which every other CMRS provider is dependent if they wish to offer truly nationwide service. In other words, a combined Alltel/Verizon will have such clout that it will become *indispensible* to any and all mobile operators who seek to offer truly nationwide roaming, regardless of air interface technology. The combination of the merged entity's spectrum holdings with its resulting market power in the domestic roaming arena will cause substantial harm to the public interest, and Alltel and Verizon have failed to meet their burden of proving that the proposed transaction, on balance, serves the public interest.

Any merger between the applicants must be conditioned. First, the Applicants must agree to divest spectrum in areas where the merged entity would hold a concentration of more than 55 megahertz of spectrum below 1 GHz at the county level. Second, consistent with RTG's Petition for Rulemaking filed with the FCC on July 16, 2008, for spectrum below 2.3 GHz the Applicants must agree to divest spectrum in excess of 110 MHz. In addition, the Applicants must agree to keep the GSM network operational or divest it to a third party who will. The post-merger Verizon entity must also agree to be subject to long term regulatory oversight with respect to its roaming agreements (including future agreements at the 3G and 4G level). Verizon should also be prohibited from receiving any level of USF support for its wireless holdings. Verizon should not be allowed to enter into exclusive handset agreements or, alternatively, should be required to make such exclusive handsets obtained through those agreements available to Tier III carriers in rural areas so that rural consumers can have handset parity with their urban counterparts.

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PETITION TO DENY

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Public Notice of the Federal Communications Commission (“FCC” or “Commission”) released June 25, 2008¹ and the subsequent Order extending the period of time for filing petitions to deny,² hereby petitions the FCC to deny the captioned applications or in the alternative to place significant conditions to protect rural consumers and the wireless carriers that

¹ FCC Public Notice, DA 08-1481, *Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and De Facto Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership*, WT Docket No. 08-95, *Pleading Cycle Established* (released June 25, 2008) (“Public Notice”).

² *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Wireless LLC For Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Order, WT Docket No. 08-95, DA 08-1733 (rel. July 24, 2008); Motion for Extension of Time, filed by the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (Filed July 23, 2008). (Petitions to Deny extended to August 11, 2008).

provide service to them to ensure that the availability, price and quality of service provided by rural wireless carriers to rural consumers is not threatened or harmed.

RTG is a 501(c)(6) trade association whose members consist of rural and small wireless carriers and licensees that depend upon the availability of spectrum, roaming services, universal service support and competitive handsets to attract and serve their rural subscribers. The proposed merger will harm RTG's members and its member subscribers; accordingly, RTG, through its members, is a real party in interest in the above-captioned proceeding and has standing to file the instant petition.³

I. THE PROPOSED MERGER SHOULD BE DENIED BECAUSE IT WILL DESTROY THE AVAILABILITY OF COMMERCIAL MOBILE RADIO SERVICES IN RURAL AMERICA.

The proposed merger is the final anticompetitive straw that will break the proverbial camel's back. Since the implementation of the Omnibus Reconciliation Act of 1993, rural wireless carriers have been participating in the FCC's rulemaking proceedings to obtain fair access to spectrum consistent with Sections 309(j)(3) and (4) of the Communications Act of 1934, as amended, ("the Act") in order to provide services to rural America.⁴ For the past eight years rural wireless carriers have been seeking fair and reasonable roaming conditions⁵ and

³ 47 U.S.C. §309(d)(1) and 47 C.F.R. §1.939.

⁴ 47 U.S.C. §§309(j)(3) and (4).

⁵ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking (FCC-07-147, rel. August 16, 2007) ("*Roaming Order*"); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Comments of the Rural Telecommunications Group, Inc. and the Organization for the Promotion and Advancement of Small Telecommunications Companies (dated November 6, 2007); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Comments of the Rural Telecommunications Group, Inc. and the Organization for the Promotion and Advancement of Small Telecommunications Companies (dated October 29, 2007);

access to universal service support to provide wireless services to the rural consumers in their licensed areas.⁶ In addition, rural carriers have struggled in the marketplace to obtain competitive handsets to provide rural consumers with the same degree of service offered by large carriers to urban consumers.⁷ Providing service to sparsely populated rural America without the support of millions of urban customers to counter these high-cost areas is more than challenging, yet RTG's member companies who live and work in these communities get up each day and work toward ensuring that rural Americans (as well as those living in urban and suburban America who travel to rural America using their mobile phones) have wireless service thereby fulfilling one of the fundamental purposes of the Act.⁸ Unfortunately, the increasing allowance by the FCC and the Department of Justice to allow merger after merger in the wireless sector has had a detrimental effect on rural wireless carriers and in turn on the rural consumers they serve.

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 05-160 (rel. August 31, 2005) (“*Roaming MO&O and NPRM*”); *Ex Parte* Notification Letter from Caressa D. Bennet, Counsel for Rural Telecommunications Group, Inc., FCC, WT Docket No. 00-193, (dated February 9, 2005); *Ex Parte* Notification Letter from Caressa D. Bennet, Counsel for Rural Telecommunications Group, Inc., FCC, WT Docket No. 00-193, (dated January 31, 2005); *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Petition for Commission Action (dated November 1, 2004); *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Notice of Proposed Rulemaking, FCC 00-361 (rel. November 1, 2000).

⁶*In re High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45.

⁷*In re Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by Rural Cellular Association, RM-____ (filed May 22, 2008) (“*Handset Petition*”).

⁸ 47 U.S.C. §§151 and 307(b).

Merger mania must stop and RTG demands the highest level of scrutiny and care from the Commission before it acts on the above-captioned applications.

A. The Proposed Merger Will Harm Competition Because It Will Concentrate Too Much Spectrum In the Hands of Verizon.

The Commission has established as a fundamental tenet of its public interest review that a transaction that creates or enhances significant market power is unlikely to serve the public interest.⁹ In considering whether there is a likelihood that a proposed merger will result in anticompetitive effects, the FCC has established a threshold test for conducting an in depth competitive analysis in a particular market. Under this test, applied most recently by the Commission in its order addressing the merger of AT&T Inc. (“AT&T”) and Dobson Communications Corporation (“Dobson”)¹⁰ and the merger of Verizon Wireless (“Verizon”) and Rural Cellular Corporation (“RCC”)¹¹, the FCC now gives particular scrutiny to markets in

⁹ See *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, File Nos. 0003155487, et al., WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 at par. 43 (rel. August 1, 2008) (“*Verizon/RCC Merger Order*”); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0003092368 et al., WT Docket No. 07-153, Memorandum Opinion and Order, FCC 07-196 at par. 15 (rel. November 19, 2007) (“*AT&T/Dobson Merger Order*”); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0001656065, et al., WT Docket No. 04-70; and *Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent to Assignment and Long-Term De Facto Lease of Licenses*, File Nos. 0001771442, 0001757186, and 0001757204, WT Docket No. 04-254; and *Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses*, File Nos. 0001808915, 0001810164, 0001810683, and 50013CWAA04, WT Docket No. 04-323, Memorandum Opinion and Order, FCC 04-255 at par. 68 (rel. October 26, 2004) (“*AT&T/Cingular Merger Order*”).

¹⁰ *AT&T/Dobson Merger Order* at par. 30.

¹¹ *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and*

which, post-transaction, the applicants would have 95 MHz or more in at least part of the market. Because the proposed acquisition of Alltel Corporation (“Alltel”) by Cellco Partnership d/b/a Verizon Wireless will result in Verizon holding 95 MHz or more of spectrum in many markets throughout the country, the proposed transaction clearly requires the Commission’s most heightened scrutiny.¹²

The merged Verizon entity will hold a substantial and excessive spectrum interest in markets throughout the United States. In applying its public interest test under Sections 214(a) and 310(d) of the Act, the FCC employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.¹³ Under this test, Verizon and Alltel bear the burden of proving that the proposed transaction, on balance, serves the public interest.¹⁴ If they are unable to so demonstrate, or if the record presents a substantial and

Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310 (b)(4), File Nos. 0003155487, et al., WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181, (rel. August 1, 2008) (“Verizon/RCC Order”).

¹² The parties argue that the 95 MHz spectrum screen utilized by the Commission should be modified to include Broadband Radio Service/Educational Broadband Service (“BRS/EBS”) 2.5 GHz spectrum, Advanced Wireless Services (“AWS”) spectrum, and Mobile Satellite Service (“MSS”) providers with Ancillary Terrestrial Component (“ATC”) authority. *Public Interest Statement* at pp. 33-42. There is no basis at this time for expanding the spectrum screen. BRS/EBS spectrum is encumbered spectrum, and licensees in the 2.5 GHz band will not be able to use such spectrum to provide competitive commercial high mobility wireless services in the foreseeable future. AWS spectrum has not been fully cleared and there remains uncertainty as to whether it will ever be fully deployed. MSS relies on bulky, expensive handsets and is not a comparable service.

¹³ *AT&T/Dobson Merger Order* at par. 10.

¹⁴ *Id.*

material question of fact, Section 309(e) of the Act requires that the FCC designate the application for hearing.¹⁵

Verizon and Alltel argue that approval of the proposed merger will serve the public interest because it will bring Alltel customers “the benefits of a seamless national network; award winning Verizon Wireless-quality services; and rapid access to broadband services.”¹⁶ These arguable benefits do not outweigh the competitive harms that would result from approval of the merger. The FCC has recognized that “combining assets may allow a merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.”¹⁷ Indeed, in the AT&T/Dobson merger proceeding, the Commission found that while that transaction was likely to result in transaction-specific public interest benefits, on balance, such benefits were not sufficiently large or imminent to outweigh the potential harms the FCC had identified in certain individual markets.¹⁸ Likewise, in the Verizon/RCC merger, the FCC determined that certain markets would be negatively impacted by a Verizon/RCC merger and required divestiture of those markets.¹⁹

Any public interest benefits that may result from the proposed Alltel/Verizon merger are more than outweighed by the likely harm to the public interest that would result from approval of

¹⁵ 47 U.S.C. §309(d)(e).

¹⁶ “Description of Transaction, Public Interest Showing and Related Requests and Demonstrations,” filed June 13, 2008 (“*Public Interest Statement*”) at Summary.

¹⁷ *AT&T/Dobson Merger Order* at par. 13.

¹⁸ *Id.* at par. 84.

¹⁹ *Verizon/RCC Merger Order* at par. 79.

such merger. Over the past seven years, the wireless industry has experienced unprecedented consolidation.²⁰ This consolidation has had an anticompetitive effect on the wireless market. As noted by RTG in its recently filed petition seeking reimposition of a spectrum cap, as a result of this consolidation, larger carriers have even greater market power and they have been exerting this power to the detriment of small, rural carriers and their consumers.²¹ In its *Petition for Rulemaking*, RTG reminds the Commission of the inability of small carriers to compete resulting from this consolidation. This consolidation is driving the smaller carriers out of business. Also in its *Petition for Rulemaking*, RTG cites to several recent examples of small, rural wireless carriers selling their assets and transferring their license to large nationwide carriers, reducing consumer choice and diversity.²² Herfindahl-Hirschman Indices (“HHI”) data confirms that the CMRS market is becoming substantially less competitive.²³ Recent spectrum auction results confirm that this trend is continuing.²⁴ Essentially, the market for commercial mobile wireless services has reached a “tipping point”. While each previous merger may have been justifiable

²⁰ More than a dozen mergers or acquisitions have occurred since 2001 involving wireless carriers. Some of the major mergers or acquisitions have included NextWave Personal Communications, Inc. with Cingular Wireless LLC, Cingular Wireless Corp. with AT&T Wireless Services, Inc., Alltel with Western Wireless Corp., Nextel Communications with Sprint Corp., AT&T Inc. with BellSouth Corporation, AT&T Inc. with Dobson Communications Corporation, T-Mobile with SunCom Wireless, and AT&T and Aloha Partners. *See In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Petition for Rulemaking, filed July 16, 2008 (“*Spectrum Cap Petition*”) at pp. 8-9. Further, Verizon has acquired numerous Tier III wireless carriers since 2001. *Id.*

²¹ *Spectrum Cap Petition* at pp. 10-11.

²² *Id.*

²³ *Id.* at pp. 12-13.

²⁴ *Id.* at pp. 13-14.

based on a more limited impact on competition, the cumulative impact of these mergers has created an environment where further consolidation, particularly consolidation on such a massive scale as the proposed merger, which would create the nation's largest wireless carrier, is no longer defensible. As a result of this spectrum concentration, the fewer (and larger) carriers in each market have the ability and incentive to use their market power to the detriment of small carriers and their rural customers. Rural consumers will end up paying more for roaming service because the services will be controlled by one carrier in many parts of the country if the merger is allowed to proceed unless the terms and rates associated with the use of these facilities by other carriers is regulated by the Commission. To date, the FCC has refused to regulate roaming rates.²⁵ In addition to higher prices, all consumers will lose the other benefits of competition, including the ability of small, rural carriers to build out the most rural parts of their license area so that all Americans can have mobile services anytime, anywhere. As RTG notes in its *Spectrum Cap Petition*, in many cases, rural carriers are the only carriers willing to serve sparsely populated rural regions outside of the towns and highways.²⁶ This commitment to serve outside of populated areas and heavily traveled areas is unique to RTG's membership base and must be thoroughly considered by the Commission when determining whether the merger should be approved.

Verizon and Alltel have failed to meet their burden of proving that the proposed transaction, on balance, serves the public interest. Accordingly, the Commission should deny the Applications. At a minimum, the record presents a substantial and material question of fact as to

²⁵ See *Roaming Order* at par. 18.

²⁶ *Id.* at p. 19.

whether the proposed merger serves the public interest, and pursuant to Section 309(e) of the Act, the FCC should designate the applications for hearing.

B. The Proposed Merger Will Allow Verizon To Engage In Anticompetitive Roaming Behavior At the Drop of a Hat.

The ability for CMRS consumers throughout the United States to roam is more important now than ever before. Roaming has been defined by the Commission as the ability of a customer from one CMRS operator to use the facilities of another CMRS operator when they are outside of their home service area.²⁷ The Commission has recognized that CMRS consumers are not just increasingly more reliant on mobile telephony services overall, but that those same consumers reasonably expect to use those mobile telephony services when outside their home service area.²⁸ The need for governmental oversight to protect such off-network access was strong enough that the Commission first initiated a rulemaking proceeding,²⁹ and then reiterated its automatic roaming rules, which stipulated in part that because roaming is a common carrier service, CMRS operators must “provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act.”³⁰

1. Alltel-Verizon Will Hold Too Much Control of All Nationwide Roaming.

The proposed merger by the applicants poses a grave threat to the already tenuous status of mobile telephony roaming in this country, despite the limited protections offered in the

²⁷ See *Roaming Order* at par. 5.

²⁸ *Id* at par. 3.

²⁹ *Roaming MO&O and NPRM*.

³⁰ *Roaming Order* at par. 1.

Roaming Order, and certainly despite the rosy arguments put forth by the applicants as to why their merger is in the public interest. Alltel holds a distinct place in the domestic CMRS roaming marketplace because they own and operate two distinct networks. In addition to their primary CDMA network, used by their retail customers but also available to inbound CDMA roaming customers, Alltel also provides inbound roaming on their GSM/GPRS/EDGE network acquired from Western Wireless Corporation in 2005.³¹ Furthermore, Alltel has commercial, roaming relationships with both CDMA and GSM providers in the United States. For the most part, these separate camps have evolved along parallel tracks with little, if any, interaction between them due to their differing air interface technologies. Many operators, both GSM and CDMA, have required access to Alltel's roaming networks in order to get additional wireless coverage around the country. What tempered Alltel's ability to use this almost universal dependency by other CMRS providers on its roaming networks was the simple fact that Alltel itself needed roaming access in both urban and rural markets, and thus, it entered into fair and reasonable roaming agreements with not just CDMA providers, but GSM providers as well. A takeover of both the CDMA and GSM networks by Verizon would set off a chain reaction of events that is detrimental to the competitive roaming marketplace.

A post-merger Verizon would hold the unique and dubious distinction of being not just the country's largest mobile operator, but quite possibly the only CMRS provider in the United States upon which every other CMRS provider is dependent upon if they wish to offer truly nationwide service. This point is important and is worth repeating and emphasizing: a combined Alltel-Verizon will have such clout that they will become *indispensible* to any and all mobile

³¹ *Applications of Western Wireless Corporation, and Corporation For Consent to Transfer Control of Licenses and Authorizations, File Nos. 0002016468, et.al, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138 (rel. July 19, 2005).*

operators who seek to offer truly nationwide roaming, regardless of air interface technology. In other words, in a post-merger CMRS landscape, if a GSM operator wants to maximize its nationwide GSM roaming coverage, it would have to enter into a roaming agreement with Verizon to do so. Similarly, if a CDMA operator wants to maximize its nationwide CDMA roaming coverage, it too would have to enter into a roaming agreement with Verizon to do so. This situation does not exist today, but only because Verizon is itself dependent upon Alltel for CDMA roaming to offer its own nationwide footprint. By having the four largest nationwide operators dependent upon Alltel, and reciprocally, Alltel dependent upon Sprint and Verizon, there exists a relative state of harmony in the domestic roaming marketplace. Were Verizon to acquire all assets of Alltel without any restrictions or divestitures, they would become the proverbial “gateway” to truly ubiquitous nationwide coverage upon the deal closing, because all domestic GSM operators suddenly become dependent upon Verizon for nationwide access, just as all CDMA operators are today. The fact that all CMRS providers currently offering nationwide service through roaming rely on Verizon and/or Alltel in geographically distinct markets is irrelevant; what matters is that each company will now be utterly dependent upon a single company: Verizon.

A quick run-down of facilities-based mobile operators in the United States, from largest to smallest, whether measured by customer count, licensed POPs or covered square miles, and regardless of their air interface technology, shows that each will be dependent upon a combined Alltel-Verizon. AT&T, Sprint-Nextel, T-Mobile, and all other CMRS providers down the list to the smallest RTG member, will each need the roaming services of a combined Alltel-Verizon. Again, so long as a company wishes to offer truly nationwide service through roaming, that company must go through Alltel-Verizon if the merger is approved. If this fact alone does not

give pause, then perhaps the inverse to this argument works just as effectively: with very few exceptions (those being remote areas of the country like Alaska, where Alltel and Verizon do not have a network today), a post-merger Verizon will not be dependent on any other CMRS providers for any type of domestic roaming, and thus, it will hold considerable leverage in the negotiations of each of those *indispensible* roaming agreements. If nothing else, Verizon's recent public statements regarding its domestic roaming plans post-merger should be viewed with skepticism, primarily because Verizon has nothing to lose but everything to gain from restricting roaming access to other CMRS providers in order to gain a competitive advantage in the retail marketplace.

2. Nationwide Roaming is Extremely Important if a CMRS Provider Wishes to Survive in the Future, and Verizon is Monopolizing the Marketplace for Access to Those Roaming Networks.

Verizon, through its own filings, makes reference to the notion that offering nationwide service is very important if an operator wishes to remain competitive in the CMRS marketplace.³² In fact, Verizon all but dismisses the small operator community when it states that “the wireless business today is increasingly national in scope with four major national providers.”³³

First, with that statement, Verizon seems to imply that small and or rural operators need to partner with an operator (or operators) of size in order to compete effectively in the retail space, and by virtue of this proposed merger, Verizon is now removing one of those larger roaming partners from the competitive marketplace. Furthermore, because Sprint, AT&T and T-Mobile all rely on Alltel for roaming today, Verizon will now have a tremendous “leg-up” on

³² Verizon Wireless Application for Merger, Exhibit 1, Public Interest Statement pp. iii, 29, 31.

³³ *Id* at p. 29.

what it considers to be its main competitors, while Verizon itself needs nothing of T-Mobile, Sprint or even AT&T in return. This speaks nothing of the dozens and dozens of small operators, again, both CDMA and GSM, who will overnight become dependent upon a single company for nationwide roaming, or risk losing money and customers because they cannot be “national in scope.” Additionally, the prospect that Alltel could have grown into a viable “third choice” to either the current CDMA duopoly of Verizon and Sprint, or the GSM duopoly of AT&T and T-Mobile, will forever be lost if the merger is allowed to go through.

Second, and perhaps more ominously, Verizon states that the mobile marketplace is increasingly “national in scope,”³⁴ which seems to implicitly envision that there is not a future whatsoever for small or rural operators in the CMRS landscape, and that only four, or perhaps fewer nationwide operators will suffice for a competitive marketplace. The argument that recent spectrum auctions for AWS-1 and 700 MHz will someday generate future competition is spurious at best, because either those licenses are heavily encumbered by the government, or mobile operators and the network and device vendors they depend upon do not yet have equipment and handsets ready for deployment. Either way, the theoretical prospect for “future” competition does not help actual roaming customers today.

If the future of CMRS retail service is truly “national in scope,” then that means small and rural operators must be able to secure fair and reasonable roaming agreements with the country’s nationwide operators in order to remain competitive. The Commission has not only recognized that small and rural operators are finding it hard to do business if their customers are unable to find mobile service outside their home markets, it has also recognized the public safety

³⁴ *Id* at p. 31.

and even homeland security benefits for having nationwide access.³⁵ However, the consolidation of Alltel and Verizon will definitely ensure one thing, and that is make every CMRS provider be at the mercy of Verizon in order to gain access to the much needed roaming markets.

3. Verizon Will Likely Remove Roaming Coverage in the Future to Strengthen its Position in the Marketplace.

Ignoring for a moment the impending threat that all CMRS providers with national ambition are now dependent upon Verizon for roaming, the next logical question to ask is “under what terms would Verizon offer such nationwide roaming access?” Conspicuously absent in Verizon’s Statement of Interest is any detailed explanation of what would happen to the dozens of roaming agreements currently being managed by Alltel, whether they be GSM or CDMA, except for the brief statement that Verizon “will honor Alltel’s existing roaming agreements with other carriers, ensuring continuity for customers of those carriers.”³⁶ Perhaps sensing a lack of transparency on the matter, on July 22, 2008, Verizon filed an *ex parte* to allegedly elaborate on this point.³⁷ Essentially, Verizon has agreed to two things for the purported benefit of small and regional CMRS providers. For those CMRS providers who currently have a roaming agreement with just Alltel, Verizon has agreed to keep whatever rates are in force through the original termination date of that agreement. For those CMRS providers who have a roaming agreement with both Verizon and Alltel, Verizon is allowing the roaming partner to elect which of those two agreements will govern the relationship after the merger. There are many concerns with

³⁵ *Roaming Order*, Statement of Commissioner Deborah Taylor Tate at p. 72.

³⁶ Verizon Wireless Application for Merger, Exhibit 1, Public Interest Statement at p. iii.

³⁷ *Ex Parte* Notification Letter from John T. Scott, Verizon Wireless, WT Docket No. 08-95 (filed July 22, 2008).

these vague statements by Verizon, and one of several scenarios may play out when all is said and done.

First, in all CDMA markets where Alltel and Verizon are currently competing, including such major markets as Phoenix, Cleveland and Charlotte, once Alltel's CDMA roaming agreements expire, there is no requirement, and definitely no financial or strategic incentive, for Verizon to extend the same terms for a longer period. Thus, out of market CMDA consumers who roam in these currently competitive markets will have one less choice, and in some cases in rural markets, no choice at all for CDMA roaming. This is, of course, in addition to the fact that local CMRS consumers in those currently competitive retail markets will also have one less CMRS provider of choice.

Second, it is entirely possible that Verizon might decide to prematurely terminate one or more of those existing roaming agreements, whether CDMA or GSM, based on a re-interpretation of terms and conditions within a particular commercial roaming agreement, and do so without violating the *Roaming Order*.³⁸ Verizon maintaining roaming access for a definitive period of time after the deal is closed and Verizon turning off roaming access soon after the deal is closed (based on a re-interpretation of Alltel's commercial roaming agreements) are mutually exclusive options. Either way, Alltel's current roaming partners, and especially all CMRS consumers who currently roam on Alltel, are left wondering when or if this might happen.

Third, in an attempt to remain consistent with the *Roaming Order* but still seek a competitive advantage, Verizon can discontinue GSM roaming for AT&T, T-Mobile and dozens

³⁸ See generally, *RCR Wireless News* "VZW Could Give Up 15% of Alltel Customers Through Proposed Mergers" p. 1, 21 (July 28, 2008).

of small and rural GSM operators, including many RTG members, as soon as the current Alltel roaming agreements lapse. There is no requirement that CMRS providers operate two parallel networks with different air-interface technologies. Verizon can quite easily mothball Alltel's GSM roaming network at some date known only to them, leaving millions of GSM roamers stranded, and still not be in violation of the *Roaming Order* so long as they offer a similar-sized CDMA footprint.

Fourth, even if Verizon decides to extend Alltel's GSM roaming agreements for many years, they have made no mention of making network upgrades to the GSM/GPRS/EDGE (2G/2.5G) network Alltel currently maintains. In fact, all Verizon and Alltel public statements, including their application with the Commission, have discussed deployment plans only for EvDO Rev A and LTE, and have made no mention of supporting UMTS for the country's scores of current GSM operators, nor for those operators planning on offering UMTS with their newly acquired AWS-1 licenses.³⁹ By "starving" the former Alltel GSM network of funds and upgrades, and perhaps even spectrum/bandwidth, Verizon will knowingly diminish the roaming experience of millions of GSM customers, regardless of their CMRS provider, and make them naturally reconsider switching their retail service to a CDMA provider, of which Verizon will be the largest. This is certainly a strategic option, but hardly a boon to the public interest.

The fifth concern, and most likely prospect of what will become of Alltel's GSM network, is based squarely on Verizon's recent history with acquired GSM operations, and that is the imminent threat that Verizon will shut down the Alltel GSM roaming network as soon as possible, and do so without violating the *Roaming Order*. In February 2007, Verizon agreed to purchase Key Communications, LLC d/b/a West Virginia Wireless ("West Virginia Wireless").

³⁹ Verizon Wireless Application for Merger, Exhibit 1, Public Interest Statement at pp.12-13.

West Virginia Wireless owned and operated a GSM 1900 MHz network in central and southern West Virginia. According to Verizon's own press release, Verizon converted the newly acquired GSM network into a CDMA system, and promptly suspended inbound GSM roaming from other domestic GSM operators.⁴⁰ Today, AT&T is the only other GSM operator offering roaming services in Charleston, WV, the state capitol, Huntington, WV, and dozens of other cities and towns in the state. If this action by Verizon is any indication of what it plans on doing once it is done "honoring" the Alltel roaming agreements, then hundreds of thousands of square miles of GSM roaming coverage, this time without an alternative operator such as AT&T or T-Mobile, could be turned off forever. Entire states and regions, including much of North and South Dakota, southern Utah, West Texas, and southern Illinois, have only one GSM network for roaming, and that is Alltel's.

The July 22, 2008 *ex parte* filing by Verizon also mentions that Verizon has identified the preliminary markets that it is willing to divest in order to get approval from the Commission and the Department of Justice. While Verizon does list 85 Cellular Market Areas, both MSAs and RSAs across 18 states that it is willing to divest property, it makes no mention of how much spectrum would be divested, what assets, if any, would be divested, and how many customers, if any, would be divested. Furthermore, it makes no mention of who the likely acquirer would be in these 85 markets. By not including the divestiture of the Alltel GSM roaming network in their *ex parte*, Verizon does nothing to minimize the very realistic threat that a severely

⁴⁰ See Press Release, Verizon Wireless, Verizon Wireless Purchases West Virginia Wireless (February 14, 2007), available at: <http://news.vzw.com/news/2007/02/pr2007-02-14.html>.

anticompetitive roaming paradigm is ready to be unleashed upon the closing of the transaction. Additionally, if licenses, subscribers or network assets in any of these “suspect” markets are sold to AT&T, then this merely shifts the problem from one large operator to another.⁴¹

In sum, approval of the Alltel/Verizon merger will have a detrimental effect on the domestic roaming market and place too much concentration of market power in the hands of Verizon. The combination of spectrum holdings with the resulting market power in the domestic roaming arena highlight that Alltel-Verizon have failed to meet their burden of proving that the proposed transaction, on balance, serves the public interest and therefore must be denied.

II. ANY MERGER BETWEEN THE APPLICANTS MUST BE CONDITIONED ON DIVESTITURE OF SPECTRUM AND PORTIONS OF THE ALLTEL NETWORK AND CUSTOMER BASE, LONG TERM REGULATORY OVERSIGHT OVER ROAMING AGREEMENTS, DENIAL OF USE SUPPORT TO VERIZON AND ELIMINATION OF HANDSET EXCLUSIVITY AGREEMENTS.

The sheer market dominance that Verizon will hold if this merger is allowed to proceed is astronomical. It is RTG’s sincere belief that the FCC should not allow the merger to proceed because of the resulting market power in both the wholesale roaming and retail markets.

However, if Verizon is allowed to go forward with the Alltel acquisition, the Commission must impose specific conditions to ensure that Verizon does not stifle competition or use its market

⁴¹ RTG has performed its own analysis of the 85 markets that Verizon has pledged to divest if the merger is approved and has determined that AT&T is the most likely candidate to acquire the divested assets. In these markets, a combined Alltel/Verizon would hold over 50% market share. Verizon has publicly stated that it intends to close on the transaction by the end of the year. AT&T is not approaching the 110 MHz spectrum cap that RTG has proposed the FCC implement in its *Petition for Rulemaking* to impose spectrum caps below the 2.3 GHz band. Even though AT&T is a hearty competitor throughout most of the United States, AT&T has very little market share in these 85 markets and AT&T has the capital resources to purchase all of the divested assets with relative ease. While there is a tidal wave of interest among rural carriers in these 85 markets (and many other markets that Verizon has not yet offered to sell), Verizon would likely have to do multiple deals with rural carriers versus one deal with AT&T to get the properties divested if it has any hope of closing on this merger under this current Commission.

power to harm consumers, especially those consumers living and traveling in rural America. In addition to the volume of CMRS spectrum Verizon will hold in the merged markets, the control over the roaming network and the amount of universal service support Verizon would stand to obtain, the Commission must look at the market power that Verizon will hold in the handset marketplace and place strict conditions and regulatory oversight over each of these aspects of the merged entity. To forego conditions on any one of these areas will prove irreparably detrimental to mobile wireless competition and will cause severe harm to the mobile wireless marketplace.

A. Verizon Should Be Required to Divest Excessive Spectrum Holdings.

As discussed above, a merged Verizon entity would hold an excessive concentration of spectrum in many markets across the United States. In recognition of the fact that it would hold excessive amounts of spectrum in many markets throughout the nation, Verizon has already agreed to at least a partial divestiture of its interests in 85 cellular markets.⁴² In addition, the FCC should require Verizon to divest: (1) all spectrum in excess of 55 megahertz in the bands below 1 GHz; and (2) all spectrum in excess of 110 megahertz in the bands below 2.3 GHz.⁴³ These conditions should also be made to apply to any of the remaining top three largest wireless carriers who purchase any divested spectrum from Verizon (i.e., AT&T, Sprint and T-Mobile).

⁴² *Ex Parte* Notification Letter from John T. Scott, Verizon Wireless, WT Docket No. 08-95, (filed July 22, 2008).

⁴³ The Commission has this information readily available in its Universal Licensing System (ULS) database and can determine the appropriate markets for divestiture under RTG's proposed spectrum cap.

Requiring Verizon to divest spectrum in excess of 55 megahertz below 1 GHz will ensure that Verizon will not hold a virtual monopoly on “beachfront” RF real estate.⁴⁴ Over half of such prime spectrum -- comprised of two 25 MHz cellular licenses and 58 MHz of 700 MHz spectrum usable for Frequency Division Duplex, two way CMRS – should not be controlled in a market by a single entity. Requiring Verizon (and the other three large carriers to whom they may seek to divest) to have a spectrum cap of 55 MHz below 1 GHz is consistent with the FCC’s 1999 decision to impose a 55 MHz cap on ownership of cellular, PCS and SMR spectrum.⁴⁵

Requiring divestiture of spectrum in excess of 110 megahertz in spectrum below 2.3 GHz is also consistent with the public interest. Such a divestiture requirement is consistent with the approach taken by the FCC in its *Cingular/AWS Order*⁴⁶, in which the FCC conditioned the grant of the transfer of control of licenses from AT&T Wireless to Cingular upon the completion of

⁴⁴ RTG considers spectrum below 1 GHz “beachfront” RF real estate because of the dynamic propagation characteristics associated with the spectrum in the lower bands. From a technical perspective these spectrum bands allow the use of fewer cell sites spaced further apart which allows a significant cost saving especially in rural areas. This spectrum is generally more expensive as well. *See*, “Statement by FCC Commissioner Robert M. McDowell before the Subcommittee on Telecommunications and the Internet Committee on Energy and Commerce United States House of Representatives” (April 15, 2008) (700 MHz referred to as ‘beach front’ quality”); *See also*, Remarks of Commissioner Deborah Taylor Tate to FCC Consumer Advisory Committee (April 4, 2008)(“Because of the 700 MHz band’s excellent propagation characteristics, some have referred to this as ‘beachfront’ property, and with winning bids totaling almost \$19 billion, it is obviously quite valuable.”)

⁴⁵ *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers; Cellular Telecommunications Industry Association’s Petition for Forbearance From the 45 MHz CMRS Spectrum Cap; Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap; Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, WT Docket No. 98-205; WT Docket No. 96-59; GN Docket No. 93-252, Report and Order, 15 FCC Rcd 9219 (1999).

⁴⁶ *See In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 04-70, et al., FCC 04-255 (rel. October 26, 2004) (“*Cingular/AWS Order*”).

divestitures in certain markets that would reduce Cingular's holdings in those counties to no more than 80 megahertz of cellular and broadband PCS spectrum. Such a condition is also consistent with the 110 megahertz cap on spectrum ownership under 2.3 GHz proposed by RTG in its *Spectrum Cap Petition*.

B. Roaming Conditions Must Be Placed on Verizon If the Merger Is Allowed to Proceed.

RTG strongly opposes the merger of Alltel and Verizon and believes that it will be difficult for the FCC to protect consumers from abuses of power in the domestic roaming market if the merger occurs. This merger is of such magnitude, that a comprehensive review of its impact on the roaming marketplace is warranted. The Commission should gauge not merely the merger's impact on the public interest, but it should also analyze how the loss of Alltel's roaming network will impact the very communities that the Commission is trying to protect from unchecked harms on the competitive mobile marketplace.⁴⁷ In the very recent past, the Commission has instituted complete divestitures of entire operational business units in mergers of this size and scope in the CMRS marketplace in order to make sure that the public interest is truly being served.⁴⁸ Should the Commission proceed with the merger, there are at a minimum

⁴⁷*AT&T/Dobson Order*, Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Dissenting in Part, at p. 58. ("Of course, a merger like this requires a thorough public interest review to ensure that we do not inadvertently disadvantage the very communities we are trying to protect. An unchecked merger could harm the competitive environment in some communities in ways that the market is unlikely to overcome. So while I appreciate the Commission staff's analysis of the markets affected by the merger and fully support our decision to require divestiture in the markets identified in our Memorandum Opinion and Order, I am concerned that some markets have fallen through the cracks.")

⁴⁸*AT&T/Dobson Order*, Statement of Commissioner Michael J. Copps, Concurring in Part, Dissenting in Part, at p. 56. ("The Order does condition the transaction on divestitures of business units in four markets in which, post-transaction, there would be fewer than three facilities-based providers. I would prefer our remedies to be more extensive, and I am convinced

certain conditions that must be placed on Verizon to ensure that Verizon does not abuse its dominant place in the roaming market.

1. The Commission Should Abstain from Granting the Merger Until the In-Market Roaming and Data Roaming Issues are Favorably Resolved.

Several salient issues remain open-ended following the release of the *Roaming Order*, namely, the status of the home-market roaming exclusion and the exclusion of data (“information services”) roaming as a common carrier service. The Commission took the steps to initiate proceedings on both of these critical topics, yet they remain unaddressed today. The home-market roaming exclusion is untenable for a variety of reasons, but most importantly because it will nurture an environment where market incumbents, such as Verizon, will discriminate and take advantage of new entrants, and stifle competition in the process. Furthermore, the Commission’s ongoing encouragement of universal broadband deployment, along with the fact that mobile data services will soon eclipse traditional mobile voice services, compels the need for data roaming to be included as part of the automatic roaming requirements. Accordingly, until these two matters are resolved, RTG respectfully requests that the Commission deny or suspend the applications for license transfer under consideration.⁴⁹ However, in order to

that our statutory obligation to ensure that mergers are in the public interest provides ample authority for the Commission to go further than it did.”)

⁴⁹ RTG notes the Commission recently announced it would decide the in-market roaming matter at its August 22, 2008 Open Meeting. *See* FCC News Release (August 4, 2008). RTG believes it would be premature for the Commission to render a decision on the petitions for reconsideration until it has had the opportunity to digest fully the information provided by the parties who are opposed to the Alltel/Verizon merger and fully consider the merger impact on the roaming market place. Accordingly, RTG strongly advises the Commission to postpone action on the petitions until a full examination of the impact on roaming in light of the Alltel/Verizon merger is taken into consideration. Once the Commission has had the opportunity to examine the impact, it will be in a position to make a more informed decision on the roaming issue and then decide whether the Alltel/Verizon merger is in the public interest.

safeguard the public interest, the Commission should condition the proposed merger to require the following conditions:

- (a) Verizon should be required to provide to all requesting parties automatic roaming, regardless of the requesting party's spectrum rights, and,
- (b) Verizon should be required to provide to all requesting parties automatic both voice and data roaming (both 3 G and 4 G) until such time that there are at least three nationwide carriers offering compatible air interfaces for nationwide automatic roaming.

2. In Lieu of Denying the Merger, the Commission Should Require Pro-Consumer Conditions in Order to Remedy the Proposed Acquisition's Anti-Competitive Effects.

A review of the application for merger between Alltel and Verizon demonstrates that purely for its impact on the domestic roaming market alone, it is not in the public interest. RTG respectfully requests that the Commission fully consider the impact the proposed transaction has on rural CMRS consumers and deny or suspend the application. However, in order to safeguard the public interest, the Commission should condition the proposed merger to require the following conditions:

- (c) Verizon should be required to divest the entire Alltel GSM network currently owned and operated by Alltel, along with sufficient spectrum in both the Cellular and PCS bands on which to operate that GSM network, to a competitor offering GSM service; or alternatively,

- (d) Verizon should be required to divest those portions of the Alltel GSM network in markets where there are no other GSM roaming operators, along with sufficient spectrum in both the Cellular and PCS bands on which to operate that GSM network to a competitor offering GSM service, and provided that the acquiring party is allowed to continue operations of the Alltel Mobile Network Code of 310-590,⁵⁰ so as to offer continuous GSM roaming operations; or alternatively,
- (e) Verizon, at the very minimum, should be required to maintain automatic roaming services on the Alltel GSM network for all current and future roaming partners for a period of five (5) years, and further require that any future sale of the GSM network, along with sufficient spectrum in both the Cellular and PCS bands on which to operate that GSM network, be conditioned upon the acquiring party being required to maintain automatic roaming services under the terms expressed above.

C. The Commission Must Condition the Alltel/Verizon Merger on Verizon Foregoing Any Universal Service Support Currently Received By Alltel.

The Commission's recent decisions concerning high-cost support for competitive carriers, discussed *infra*, dictate that it is in the public interest to deny Alltel's high-cost universal

⁵⁰ All GSM operators have a unique Mobile County Code-Mobile Network Code (MCC-MNC) which is a key element in the testing of GSM roaming services. Alltel's MCC-MNC is 310-590. Any GSM assets potentially divested that are not attached to a familiar MCC-MNC which has already undergone bilateral testing might not be able to support inbound roaming subscribers.

service support to Verizon after it acquires Alltel. Verizon is simply too large and too urban to be receiving federal subsidies for its newly-acquired properties. Verizon, a company that has generally eschewed high-cost support, should not be allowed to devour its competitors in order to collect their high-cost support.

1. Verizon has a poor track record when it comes to serving rural America.

According to Verizon, its total 2007 revenue was \$93.5 billion, an increase of \$5.3 billion over 2006.⁵¹ With its proposed acquisition of Alltel, Verizon will be approaching \$100 billion a year in revenue. Based on Alltel's 2007 Securities and Exchange Commission ("SEC") filings, it is eligible to receive approximately \$80 million per quarter in high-cost support for an annual total of about \$320 million.⁵² This figure represents the bulk of high-cost funds that flow to competitive eligible telecommunications carriers ("CETCs") and denying such support to Verizon would dramatically reduce pressure on the high-cost fund and would benefit consumers of interstate and international telecommunications. Further, Alltel's support, now capped,⁵³ represents only 0.32 percent of Verizon's eventual \$100 billion in annual revenues and should be easily absorbed by Verizon's shareholders who are poised to realize additional profits with the acquisition of Alltel and the elimination of a regional competitor. Verizon has been able to capitalize on its colossal economies of scale in order to offer approximately \$28 billion to

⁵¹ See Press Release, Verizon Wireless, Verizon Caps Successful Year With Strong 4Q Results (January 28, 2008), available at <http://newscenter.verizon.com/press-releases/verizon/2008/verizon-caps-successful-year.html>.

⁵² See, e.g., Alltel Corporation, First Quarter 2007 10-Q, available at <http://sec.edgaronline.com/2007/05/08/0000065873-07-000059/Section9.asp>.

⁵³ *In re Applications of Alltel Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-128, Memorandum Opinion and Order, FCC 07-185 (October 26, 2007.)

swallow up another competitor. Such a behemoth is in no position to claim that it needs federal subsidies to provide service in its non-urban markets.

If Verizon believes it is too costly to serve rural markets, it should divest its rural properties and allow rural carriers to utilize the USF support currently flowing to Alltel to serve these truly high-cost areas. Small, rural wireless carriers with the expertise and history of providing robust wireless service in rural areas are anxious to provide wireless services in Alltel's high-cost markets thereby allowing Verizon to concentrate on its more profitable urban markets. In the event Verizon is able to convince the Commission to maintain Alltel's robust levels of high-cost support, paid for by the American consumer, then Verizon needs to guarantee this support will flow to the rural infrastructure rather than to Verizon shareholders. Verizon has a history of divesting high-cost properties in order to concentrate on more lucrative properties⁵⁴ and should have no problem divesting high-cost rural wireless properties to those willing to serve them.⁵⁵ As discussed below, any FCC approval of Verizon's acquisition of Alltel should take into account Verizon's historical commitment, *or lack thereof*, to universal service and the FCC should implement appropriate conditions.

⁵⁴ See, e.g., *in re Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, FCC 07-226 (January 9, 2008).

⁵⁵ Any Alltel properties divested to Tier III providers should continue to receive high-cost support since rural Tier III providers typically do not serve urban areas and therefore, support is targeted solely toward high-cost areas. The Commission defines Tier III service providers as non-nationwide Commercial Mobile Radio Service ("CMRS") providers with no more than 500,000 subscribers as of the end of 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) ("*Non-Nationwide Carriers Order*").

2. An FCC decision to deny Alltel's high-cost support to the merged Verizon entity is consistent with the FCC's recent approach to high-cost support.

Specifically, the Commission's recent *USF Cap Order*⁵⁶ creates a state-by-state approach to the distribution of high-cost support and mandates the use of carriers' own costs to determine high-cost support. Therefore, even if Verizon were to seek high-cost support for its new Alltel properties, following these recent USF trends, the Commission should ensure that Verizon's level of support is nominal at best. If Verizon desires support, it should be required to prove its own costs, *on a state-by-state basis*. Because Verizon dominates every state in which it serves, especially the most profitable urban and suburban areas, Verizon's low cost areas make its high-cost areas statistically insignificant. Accordingly, Verizon should be required to either internally average its plentiful low-cost areas with its few rural properties, or divest these properties and the USF support associated with them. Verizon's size and ability to buyout its competitors that serve profitable markets makes USF support for an ever-growing Verizon unneeded.

Denying Alltel Verizon's high-cost support is consistent with the Commission's treatment of Alltel's universal service support in the past. In its *Alltel/Atlantis Order*, the Commission recognized that "Alltel is currently the largest beneficiary of competitive ETC funding and accounts for approximately 29 percent of all high cost fund payments to ETCs."⁵⁷

⁵⁶ See *in re Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, *High-Cost Universal Service Support*, CC Docket No. 96-45, *Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, FCC 08-122 (May 1, 2008).

⁵⁷ See *in re Applications of Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent To Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-128, Memorandum Opinion and Order, FCC 07-185 at ¶ 9 (October 26, 2007) (footnote omitted).

With CETCs collecting approximately \$800 million per year in high-cost subsidies,⁵⁸ eliminating Alltel's \$320 million take from this equation will single-handedly relieve the pressure on the ever-ballooning high-cost universal service fund. Now that Verizon is planning on acquiring Alltel, it is time for the FCC to impose further USF restrictions on the merged entity in recognition of the deleterious impact Alltel has had on the universal service fund. Likewise, it is also in the public interest to forbid Verizon from seeking competitive eligible telecommunications carrier status once it acquires Alltel.

D. The Commission Must Condition the Alltel/Verizon Merger on the Elimination of Handset Exclusivity Agreements, or Alternatively, on Verizon Developing a Handset Program To Allow Rural and Small Size Carriers Access to Handsets So That Rural Consumers Can Be on Par With Their Urban Counterparts.

As previously noted, the Alltel/Verizon merger will make Verizon the largest wireless carrier in the United States. Its market power and dominance will allow it to control the handset market place to the further demise of small and rural carriers who are unable to obtain popular handsets for their customers. The inability to provide these handsets puts these smaller and rural carriers at a significant competitive disadvantage. On May 20, 2008, the Rural Cellular Association ("RCA") filed a Petition for Rulemaking with the FCC to seek regulatory help with the anticompetitive concerns associated with handset exclusivity deals between the largest wireless carriers and handset manufacturers.⁵⁹ RTG implores the Commission to put the *Handset Petition* out for notice and comment prior to making a decision on the Alltel/Verizon

⁵⁸ Kevin W. Caves and Jeffrey A. Eisenach, The Effects of Providing Universal Service Subsidies to Wireless Carriers, attached to Ex Parte Letter, from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 05-337, at 18-19 (filed June 13, 2007) (analyzing year 2006 data).

⁵⁹ See *Handset Petition*.

merger so that the wireless industry can fully vet the issues surrounding handset exclusivity deals and the impact on competition in the wireless marketplace. Alternatively, RTG insists that the Alltel/Verizon merger include conditions to mandate that Verizon make its exclusive handsets available to Tier III rural carriers so they can be made available to Tier III rural subscribers.

1. Exclusive agreements among large carriers and handset manufacturers are anticompetitive and harm the public interest.

Congress made clear that its priority is for there to be equitable service across the United States. Section 151 of the Act requires the Commission to regulate interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination, a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.⁶⁰ Section 307(b) of the Act further directs the Commission to develop rules with the goal of providing “a fair, efficient, and equitable distribution of radio service” to all states. In that regard, the Commission has repeatedly stated that it is committed to establishing policies and rules that will promote telecommunications service to all regions in the United States, particularly to traditionally underserved areas.⁶¹ However, the exclusivity arrangements between Verizon and handset manufacturers are at odds with these core Commission responsibilities and objectives.

⁶⁰ 47 U.S.C. §151.

⁶¹ See generally, *In re High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; See also, 47 C.F.R. § 25.148(c) (formerly 47 C.F.R. §100.53) and *The Establishment of Policies and Service rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Bands*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 8842, ¶ 47 (2005) (“*BSS Report and Order*”).

The Act does not support policies and rules that treat Americans living in rural areas differently than those living in urban areas. For example, handsets like LG's Voyager™ which is offered exclusively by Verizon and its soon-to-be launched RIM Thunder,™ a touch screen version of RIM's Blackberry® device (slated to be released in 3Q 2008),⁶² are unique products for which there are no readily available substitutes. These Verizon-only handsets are not available to millions of rural Americans because Verizon does not provide localized service in many of the rural communities served by RTG's members and in most instances do not have a retail presence. Because of the exclusive agreements that Verizon has with the handset manufacturers, these handsets are not available to RTG's members to provide to their rural customers. Accordingly, rural consumers are denied features and functionality that their urban counterparts take for granted. Surely, this is not what was envisioned when Congress established the Act.

As commercial wireless services move to 3G and 4G, and broadband mobility becomes the norm, the FCC is essentially reinforcing the "digital divide" between urban and rural consumers by continuing to allow these exclusive arrangements. Absent these exclusivity arrangements, these innovative handsets could be made available to rural consumers through dozens of other outlets, including Tier III carriers who serve these rural areas with their networks. It is imperative that the FCC investigate and assist rural consumers with access to handsets that are capable of providing the robust features that urban consumers enjoy prior to Verizon being allowed to merge with Alltel. Eliminating handset exclusivity agreements will resolve the rural/urban dichotomy currently in play.

⁶² See *BlackBerry With Touch Screen Planned*, The Wall Street Journal Online, Sara Silver and Cassell Bryan-Low (May 16, 2008).

2. Alternatively, Verizon must agree to develop a handset program and work with Tier III carriers so that rural consumers will be able to have access to the same handsets Verizon provides to urban and suburban consumers.

The Commission must ensure that there is handset parity in urban and rural markets by conditioning the approval of the Alltel/Verizon merger on Verizon making premium handsets available to Tier III carriers in rural markets who, in turn, can make them available to their rural customers. This program would not be difficult to implement. Currently, there are several handset distribution companies through which Tier III carriers purchase handsets.⁶³ These handsets are often last year's models that are no longer flying off the shelves. By conditioning the Alltel/Verizon merger on a set quota of these handsets being made available to Tier III carriers in rural markets (*e.g.*, the Rural Service Areas that define a Cellular Market Area) the Commission will go a long way to meeting its statutory mandate to ensure parity of service across the United States.

CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission deny the above-captioned application or alternatively designate the application for hearing pursuant to

⁶³ For example, Brightpoint, Inc. (www.brightpoint.com); Brightstar Corp. (www.brightstarcorp.com); and Aerovoice Corp. (www.aerovoice.com) all distribute handsets through fulfillment agreements with rural and small carriers. RTG also notes that Brightpoint recently announced that it is the fulfillment contractor for Verizon Wireless agents and resellers (<http://cell.client.shareholder.com/releasedetail.cfm?releaseid=318359>) and believes that it would not be difficult for Verizon and Brightpoint to work together to produce unbranded handsets for Tier III rural wireless carriers' subscribers.

309(e) so that it may obtain the requisite information necessary to impose the appropriate conditions on the grant of the application to ensure that the public interest is served.

Respectfully submitted,

The Rural Telecommunications
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August 11, 2008

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Petition to Deny of the Rural Telecommunications Group, Inc. was served on August 11, 2008, by first-class United States mail, postage prepaid, unless indicated otherwise, on those listed below:

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