

**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
PALMETTO MOBILENET, L.P.**

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SUMMARY

Due to the harmful competitive impact of the substantial and excessive spectrum holdings of a merged Verizon Wireless in South Carolina and throughout the nation, and Verizon's dominant market share in South Carolina, the FCC should deny its consent to the proposed transfer of control of various ALLTEL authorizations to Verizon. At a minimum, the Commission should apply heightened scrutiny to South Carolina markets and designate the applications for hearing. Should the Commission choose to grant the applications, it should condition grant on Verizon divesting: (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. These conditions would require divestiture of excessive spectrum ownership interests in the following markets in South Carolina: CMA 67, CMA 90, CMA 95, CMA 108, CMA 227, CMA 264, CMA 625, CMA 626, CMA 627, CMA 630, CMA 631, CMA 632 and CMA 633.

Any public interest benefits claimed by Verizon and ALLTEL are greatly outweighed by the competitive harms that would result from approval of the transaction. Wireless spectrum concentration nationwide has reached a "tipping point", and allowing the merger of two of the five largest wireless providers, to become the largest wireless provider in the country, will give Verizon sufficient market power to disadvantage rivals in anticompetitive ways, to the ultimate detriment of wireless consumers in rural areas and nationwide.

FCC approval of the proposed merger would have an anticompetitive effect on roaming. Each facilities-based wireless provider, regardless of size or air interface technology, would be completely dependent on Verizon for roaming, while Verizon

would not be dependent on any other CMRS providers for any type of domestic roaming. Based on the leverage such conditions would give Verizon in negotiating roaming agreements, Verizon will have the ability to dictate all roaming rates, terms and conditions to its competitors. The FCC should abstain from approving the proposed merger until pending in-market roaming and data roaming issues are resolved. If the Commission ultimately chooses to approve the merger, it should require Verizon to provide automatic roaming to all requesting parties, and voice and data roaming until such time that there are at least three nationwide carriers offering compatible air interfaces for nationwide automatic roaming.

The Commission should condition any grant on Verizon foregoing any universal service support currently received by ALLTEL. The Commission should also condition any grant on Verizon developing a handset program that will ensure rural and small carriers access to handsets comparable to those available to urban consumers.

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Cellco Partnership d/b/a)	File Nos. 0003463892, <i>et al.</i>
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Licenses and Authorizations Pursuant to Sections)	
214 and 310(d) of the Communications Act)	

To: Wireless Telecommunications Bureau

PETITION TO DENY

Palmetto MobileNet, L.P. (“PMN”), by its attorneys and pursuant to Section 1.939 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby petitions the FCC to deny the grant of the above-referenced applications (“Applications”) or, in the alternative, impose the conditions on the grant of such applications requested herein.

I. Statement of Interest

PMN was formed in 1990 as a South Carolina limited partnership for the purpose of participating in the cellular telephone business in South Carolina. The partners are incumbent local exchange carriers currently providing local exchange service in South Carolina. To complement its ownership interests in eight of the nine RSAs in South Carolina, the Company in 1998 acquired interests in two North Carolina RSAs. Through general partnerships with Alltel Communications, Inc. (the family of Alltel Companies

collectively referred to hereinafter as “ALLTEL”) and its predecessors, PMN provided cellular service in North and South Carolina from 1990 through 2006.

During this time period, the principal assets of the Company were 50-percent general partnership interests in these 10 RSA partnerships doing business in North and South Carolina. The Company did not independently operate these businesses, but rather relied on the services of a manager. Since 2001, ALLTEL has managed all 10 partnerships. On or about March 15, 2006 ALLTEL purchased the Company’s interest in the RSA partnerships.

Since ALLTEL’s 2006 purchase of PMN’s partnership interests, PMN and its owners have been investigating ways to re-enter the wireless markets in South Carolina. As discussed below, grant of the Applications will result in competitive harm to PMN. Allowing the proposed merger to occur will virtually eliminate any opportunity of PMN or its partners to provide competitive wireless service in South Carolina and surrounding states. Accordingly, PMN is a party in interest with standing to file the instant petition.¹

II. Denial of the Applications is in the Public Interest

The FCC should deny the Applications to prevent the harm to the public that would result from allowing the merger of the two of the five largest wireless carriers in the United States. As discussed below, the concentration of spectrum in the hands of the merged entity would harm competition and allow Verizon to engage in anticompetitive roaming behavior.

¹ See *In Re Applications of PCS 2000, L.P. For Broadband Block C Personal Communications Systems Facilities*, File Nos. 00414-CW-L-96 *et al.*, Memorandum Opinion and Order, FCC 97-15 at par. 10 (rel. January 22, 1997).

A. The Proposed Merger Will Harm Competition

1. Initial Screen: Market Share and Excessive Spectrum Holdings

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.² In considering whether there is a likelihood that a proposed merger will result in anticompetitive effects, the FCC has constructed a screening procedure whereby markets that fall below certain thresholds do not merit additional scrutiny, while markets exceeding those thresholds merit deeper analysis of competitive factors. The Commission most recently applied this screening procedure in its order addressing the merger of Cellco Partnership d/b/a Verizon Wireless (“Verizon”) and Rural Cellular Corporation, stating that the following post-merger markets will be subject to heightened scrutiny: (1) markets in which the Herfindahl-Hirschman Index (“HHI”)³ would be greater than 2,800 and the change in HHI would be 100 or greater; (2) any market in which the change in HHI would be 250 or greater, regardless of the level of the

² 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., ITC-T/C-20070904-00358, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 at par. 31 (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*”).

³ The HHI, a commonly accepted measure of market concentration, is calculated by squaring the market share of each firm competing in a market, and then summing the resulting numbers. The higher the HHI, the more concentrated the industry is.

HHI; and (3) markets in which the applicants would have a 10 percent or greater ownership interest in 95 MHz or more of cellular, PCS, SMR and 700 MHz spectrum in at least part of the market.⁴

2. The HHI Data Indicates Necessity for Close Scrutiny of South Carolina CMAs

The proposed acquisition of ALLTEL by Verizon will require heightened scrutiny of the South Carolina markets. PMN does not have direct access to market share data for all wireless providers in each South Carolina CMA; thus, it cannot offer a precise calculation of base HHI across the state's CMAs. However, based on information and belief derived from PMN's extensive experience as a South Carolina wireless service provider and from its previous relationship with ALLTEL, it appears likely that most, if not all, CMAs in South Carolina will be captured by the first screening criterion (2,800 HHI and change in HHI of 100 or greater). Further, PMN is confident that the combined Verizon/ALLTEL entity will possess a market share exceeding 50 percent in each county in South Carolina, possibly achieving a market share as great as 90 percent in some areas where the two companies' holdings are particularly concentrated. Of the remaining wireless carriers in each South Carolina market, it appears that only one (AT&T) might have greater than a 10% market share. Assuming that either Verizon or ALLTEL holds at least a 10-percent market share in each of the CMAs in question, the change in HHI resulting from the merger would be, at minimum, 820, a figure almost *3.3 times* the FCC's stated threshold of 250. In markets where the two companies hold an estimated

⁴ *Verizon/RCC Merger Order* at par. 52.

90-percent market share, the change in HHI could conceivably reach a maximum of 4,050, or *16.2 times* the figure the FCC considers worthy of close scrutiny.⁵

3. The Merged Entity's Excessive Spectrum Holdings Warrant Heightened Scrutiny

In addition, because the proposed acquisition will result in Verizon holding 95 MHz or more of spectrum in many markets throughout the country (including many markets in South Carolina), the proposed transaction as a whole warrants the Commission's heightened scrutiny.⁶

The merged Verizon entity will hold a substantial and excessive spectrum interest in markets throughout the state of South Carolina. Specifically, in a state known for its beaches, Verizon would hold 72 MHz of "beachfront" cellular and 700 MHz spectrum in 38 of the state's 46 counties, approximately two thirds of the total available beachfront spectrum. Verizon would be far and away the largest holder of spectrum in each South Carolina market, holding almost twice as much cellular, PCS, ESMR and 700 MHz spectrum usable for Frequency Division Duplex, two-way CMRS as their closest competitor in many markets.

⁵ The minimum stated change in HHI was calculated assuming a 51-percent post-merger market share with a 41/10 ratio of pre-merger market shares, while the maximum change in HHI was calculated assuming a 90-percent post-merger market share with the companies having equal market shares pre-merger.

⁶ 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. In fact, rather than increasing the amount of spectrum subject to the spectrum screen, two FCC Commissioners have expressed support for the continued deployment of the 70 MHz spectrum screen previously utilized by the Commission by eliminating 700 MHz spectrum from the screen. *See Verizon/RCC Merger Order*, Statement of Commissioner Michael J. Copps, Approving in Part, Dissenting in Part, and Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Concurring in Part.

The Commission has recognized that a merger which results in an imbalance in the availability of spectrum would cause other carriers to be more spectrum-constrained than the merged entity at a later point in the deployment of next-generation services, and thereby cause harm to the public.⁷ Accordingly, it considers spectrum holdings as part of its market-by-market analysis of local areas identified by its initial screen.⁸ With the advent of 4G services approaching, such an analysis assumes particular importance. Indeed, the Commission has stated that “the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.”⁹ The excessive spectrum holdings that a merged Verizon would hold in South Carolina clearly raise cause for concern. Such spectrum holdings are particularly worrisome given the relatively small spectrum holdings of Verizon’s competitors. As noted above, the merged Verizon would have almost twice the amount of CMRS spectrum as any of its South Carolina competitors, and, based on the small number of genuine competitors in South Carolina and their limited spectrum holdings, neither AT&T nor any other South Carolina competitor would have the ability to absorb all customers of the merged Verizon in a 3G or 4G environment should the merged Verizon attempt to raise prices or engage in another exercise of its market power.¹⁰ In its *AT&T/Cingular Merger Order*, the FCC indicated that it is only able to clearly find that harm to competition resulting from a

⁷ *AT&T/Cingular Merger Order* at par. 140.

⁸ *Id.* at par. 141.

⁹ *Id.* at par. 148.

¹⁰ See *AT&T/Cingular Merger Order* at par. 186 (“If rival carriers face binding capacity constraints, such as limited access to spectrum that cannot be overcome economically in a reasonably short period of time, then they likely will not be able to respond to the combined carrier’s price increase or other harmful conduct in a manner sufficient in the aggregate to make the action of the combined carrier unprofitable.”)

merger is not likely in “those markets in which there will be five or more genuine competitors in the market, post-transaction, each with a sufficiently built out network and sufficient bandwidth to discipline Cingular post-merger through the ability to attract customers away from Cingular should it attempt to increase price or reduce service.”¹¹ In addition, the Commission has found that “in any market in which the transaction would reduce the number of genuine competitors to four or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction.”¹² Accordingly, in many of the South Carolina markets, where there are at most two to three nationwide competitors, and none of which have a sufficiently built out network *and* sufficient bandwidth to discipline Verizon post-merger through the ability to attract customers away from Verizon should it attempt to increase price or reduce service, the Commission clearly must subject the proposed merger to the utmost degree of scrutiny.

By acquiring control of ALLTEL’s licenses, Verizon will bring not only its additional spectrum holdings to the combined entity – which will give the merged entity over one third of cellular, PCS, ESMR and 700 MHz A, B and C block spectrum¹³ in South Carolina – but the competitive assets of its name recognition and marketing strength as well. Nationwide carriers generally conduct nationwide advertising that results in dissemination of their brand and rate plan information in areas where they do not currently provide service. The merged entity, therefore will not only hold almost all

¹¹ *AT&T/Cingular Merger Order* at par. 191.

¹² *Verizon/RCC Merger Order* at par. 78.

¹³ In analyzing spectrum availability, PMN has excluded the 700 MHz D and E block spectrum because these unpaired bands are not suitable for the provision of FDD, two-way CMRS.

of the market share in South Carolina, it will also have Verizon's marketing clout. To allow such an entity to also have 80% more spectrum than AT&T, the next largest spectrum holder in the state, gives the merged entity more than enough capability to engage in competitive harm.

The Commission has found "especially worrisome" markets in which the total number of providers – or the total numbers of providers of nationwide service – is low, and markets in which providers are present but are constrained from repositioning and expanding output for some reason such as incomplete footprint or inadequate spectrum bandwidth."¹⁴ In over one third of the counties in South Carolina, Verizon would face only three competitors. Such markets are prime examples of markets with a small number of providers, each constrained by inadequate bandwidth, and the same applies to many of the remaining South Carolina markets. "[A]lso worrisome are markets in which the combined market share of the merged entity is very high."¹⁵ Each South Carolina market meets this description. For the reasons discussed above, the proposed acquisition poses a significant threat to competition in South Carolina, and allowing the merged Verizon entity the ability to exert its new market power will not serve the public interest. At a minimum, therefore, the Commission should designate the Applications for hearing.¹⁶

¹⁴ *AT&T/Cingular Merger Order* at par. 149.

¹⁵ *Id.*

¹⁶ *See* 47 U.S.C. § 309(e); *AT&T/Cingular Merger Order* at par. 40.

4. Verizon's Excessive Spectrum Holdings and Dominant Market Share Would be Contrary to the Public Interest

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.¹⁷ Under this test, Verizon and ALLTEL bear the burden of proving that the proposed transaction, on balance, serves the public interest.¹⁸ 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.¹⁹

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.”²⁰ 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.”²¹

¹⁷ *AT&T/Dobson Merger Order* at par. 10.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ “Description of Transaction, Public Interest Showing and Related Requests and Demonstrations,” filed June 13, 2008 (“*Public Interest Statement*”) at Summary.

²¹ *AT&T/Dobson Merger Order* at par. 13.

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.²²

Any public interest benefits that may result from the proposed Verizon/ALLTEL transaction are more than outweighed by the likely harm to the public interest that would result from approval of such transaction. Over the past seven years, the wireless industry has experienced unprecedented consolidation.²³ This consolidation has had an anticompetitive effect on the wireless market. As noted by the Rural Telecommunications Group, Inc. (“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.²⁴ RTG states that the inability of small carriers to compete resulting from this consolidation is driving the smaller carriers out of business, and 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

²² *Id.* at par. 84.

²³ 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 and ALLTEL have acquired numerous Tier III wireless carriers since 2001. *Id.*

²⁴ *Spectrum Cap Petition* at pp. 10-11.

diversity.²⁵ HHI data confirms that the CMRS market is becoming substantially less competitive.²⁶ Recent spectrum auction results confirm that this trend is continuing.²⁷ Essentially, the market for commercial mobile wireless services has reached a “tipping point.” While each previous merger may have been justifiable 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 – and Verizon if the proposed merger is allowed -- have the ability and incentive to use their market power to the detriment of small carriers and their customers by, among other actions, raising prices, lowering quality, reducing innovation, and restricting deployment of new technologies or services. As discussed below, consumers end up paying more for roaming service. In addition to higher prices, consumers will lose the other benefits of competition, including the ability of small, rural carriers to build out their licenses into the most rural parts of their license areas. 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.²⁸

Verizon, in the Public Interest Statement annexed to its FCC filing, states that “The transaction will particularly benefit customers in rural America.... The transaction will enable Verizon Wireless to bring its considerable technical expertise and

²⁵ *Id.*

²⁶ *Id.* at pp. 12-13.

²⁷ *Id.* at pp. 13-14.

²⁸ *Id.* at p. 19.

commitment to deploying cutting-edge, high speed broadband technology to these areas, many of which do not have any alternatives for wireless broadband service today.”²⁹

Verizon’s seeming benevolence regarding its rural acquisitions starkly contrasts with its actions in South Carolina both prior to and subsequent to the merger announcement. Historically, ALLTEL’s success in South Carolina has been attributable to its offer of robust cellular service in the state’s most rural areas—a winning strategy because its larger competitors, including Verizon, concentrated services along interstate highways and the state’s MSAs.

Shortly after Verizon’s Public Interest Statement, Verizon offered up South Carolina CMAs 625, 626, 627 and 631 for divestiture to assuage the Department of Justice’s competition concerns.³⁰ It appears to be no coincidence that the CMAs contain a disproportionate measure of South Carolina’s poorest counties.³¹

Undoubtedly, a combined Verizon/ALLTEL would have an excessive market share in each of the CMAs offered for divestiture, as well as spectrum holdings in several counties that would be captured under any conception of FCC initial screening procedures. Thus, Verizon can articulate a valid regulatory concern for its offerings.

However, one or both of these concerns exist for Verizon across all CMAs in South Carolina. For example, Verizon has not offered to divest CMA 633 (South

²⁹ *Public Interest Statement* at 11.

³⁰ *Ex parte* letter from John T. Scott, Verizon Wireless, WT Docket No. 08-95, filed July 22, 2008 (“*Verizon Ex Parte*”).

³¹ For example, the South Carolina Department of Commerce (“SCDOC”) annually publishes a ranking of the level of economic development for each county in the state, separating the counties into five categories. According to the SCDOC 2008 Jobs Tax Credits Rankings, 12 of the 17 counties offered by Verizon for divestiture qualify as “Distressed” or “Least Developed,” the *worst* two classifications in terms of unemployment and economic development prospects. None of the counties qualified as “Developed,” SCDOC’s best rating.

Carolina RSA-9) or CMA 95 (Columbia, SC MSA) despite admitted excessive spectrum and apparently excessive market share in both areas. There is no coincidence in the fact that these two CMAs encompass three of the seven most developed and most affluent counties in South Carolina.

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 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.

The ability for CMRS consumers to roam throughout the United States is critical in today's world.³² 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.³³ The need for governmental oversight to protect such off-network access was strong enough that the Commission adopted automatic roaming rules, which require CMRS operators to "provide roaming services to other carriers upon reasonable

³² 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. 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) (2007) ("*Roaming Order*"), Page 3, ¶ 5.

³³ *Id.* at p. Page 3, ¶ 3.

request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Act.”³⁴

1. Verizon/ALLTEL Will Hold Too Much Control of All Nationwide Roaming.

The proposed merger poses a threat of grave harm to mobile telephony roaming in this country. ALLTEL holds a distinct place in the domestic CMRS roaming marketplace because it owns and operates two distinct networks. In addition to ALLTEL’s primary CDMA network, used by its retail customers but also available to inbound CDMA roaming customers, ALLTEL also provides inbound roaming on its GSM/GPRS/EDGE network acquired from Western Wireless Corporation in 2005.³⁵ 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 abuse 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

³⁴ 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) (2005), Page 2, ¶ 1.

³⁵ *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).

Verizon would set off a chain reaction of events that is detrimental to the competitive roaming marketplace.

A post-merger Verizon would hold the 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. A combined Verizon/ALLTEL 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. 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, it would become the proverbial "gateway" to truly ubiquitous nationwide coverage upon the deal closing, because all domestic GSM operators would suddenly become dependent upon Verizon for nationwide access, just as all CDMA operators are today.

Each facilities-based mobile operator in the United States, regardless of size or air interface technology, will now be utterly dependent upon a single company: Verizon.

From AT&T, Sprint-Nextel, and T-Mobile down to the smallest of mobile operators, each will need the roaming services of Verizon. Because a post-merger Verizon will not be dependent on any other CMRS providers for any type of domestic roaming, it will hold considerable leverage in the negotiations of each of those *indispensible* roaming agreements.

Verizon states that the mobile marketplace is increasingly “national in scope,”³⁶ implying that there is no future for small or rural operators in the CMRS landscape, and that only four, or perhaps fewer, nationwide operators will suffice for a competitive marketplace. 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, but it has also recognized the public safety and even homeland security benefits for having nationwide access.³⁷ Unfortunately for wireless customers everywhere, the consolidation of Verizon and ALLTEL will place every CMRS provider at the mercy of Verizon in order to gain access to the much needed roaming markets.

2. Verizon Will Likely Remove Roaming Coverage In the Future To Strengthen Its Position In the Marketplace

With all CMRS providers now dependent upon Verizon for roaming in a post-merger environment, Verizon can dictate the terms under which it would offer nationwide roaming access. Conspicuously absent in Verizon’s Statement of Interest is

³⁶ *Public Interest Statement* at p. 29.

³⁷ *Roaming Order*, Statement of Commissioner Deborah Taylor Tate, Page 72, ¶ 2.

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.”³⁸ In an attempt to clarify, Verizon provided additional detail in its July 22, 2008 *ex parte* letter.³⁹

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. Implementation of these vague commitments may result in several scenarios.

First, in all CDMA markets where Verizon and ALLTEL are currently competing, including such major markets as Phoenix, Cleveland and Charlotte, once ALLTEL’s CDMA roaming agreements expire, there is no requirement, and no financial or strategic incentive, for Verizon to extend the same terms for a longer period. Thus, out-of-market CDMA consumers who roam in these currently competitive markets will have one less choice, and in some 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

³⁸ Verizon Wireless Application for Merger, Exhibit 1, Public Interest Statement, Pages ii, 29.

³⁹ *Verizon Ex Parte*.

re-interpretation of terms and conditions within a particular commercial roaming agreement, and do so without violating the *Roaming Order*.⁴⁰ Nothing is stopping Verizon from terminating month-to-month roaming agreements or terminating term-specific roaming agreements under its “for cause” option.

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 of small and rural GSM operators, 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 put to rest ALLTEL’s GSM roaming network at some date known only to it, leaving millions of GSM roamers stranded, and still not be in violation of the *Roaming Order* so long as it offers a similar-sized CDMA footprint.

Fourth, even if Verizon decides to extend ALLTEL’s GSM roaming agreements for many years, it 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.⁴¹ By declining to fully maintain and upgrade the former ALLTEL GSM

⁴⁰ See RCR Wireless News “VZW Could Give Up 15% of Alltel Customers Through Proposed Mergers” p. 1, 21 (July 28, 2008): http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520035061.

⁴¹ Public Interest Statement at pp. 12-13.

network, 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.

The fifth, and most likely fate of ALLTEL's GSM network is that, based on Verizon's recent history with acquired GSM operations, Verizon will shut down the ALLTEL GSM roaming network as soon as possible, and do so without violating the *Roaming Order*. For example, after purchasing Key Communications, LLC last year, Verizon converted the newly acquired GSM network into a CDMA system, and promptly suspended inbound GSM roaming from other domestic GSM operators.⁴² Such actions would cause considerable harm to roaming coverage through the country. 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.

Verizon's *Ex Parte* also states that Verizon has identified the preliminary markets that it is willing to divest in order to obtain approval from the Commission and the Department of Justice. While Verizon does list 85 cellular markets, both MSAs and RSAs across 18 states, in which 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, the filing makes no mention of who the likely acquirer would be in these 85 markets. By not addressing the divestiture of the ALLTEL GSM roaming network in its *ex parte*, Verizon does nothing to minimize the very realistic threat that the merger will result in a severely anticompetitive roaming environment.

⁴² <http://news.vzw.com/news/2007/02/pr2007-02-14.html>

Within the state of South Carolina, for all practical purposes, there are three major CDMA operators providing both retail and roaming service: Verizon, ALLTEL and Sprint-Nextel. ALLTEL, being a large, incumbent operator with cellular spectrum, provides a larger network than either Verizon or Sprint-Nextel, and its coverage includes many rural portions of the state of South Carolina not covered by either of the other two CDMA operators. Thus, for any small operators wishing to offer mobile service throughout South Carolina, those operators would need ALLTEL as a roaming partner if they wish to provide ubiquitous regional service. In its *Ex Parte*, Verizon listed four separate RSAs as possible areas for divestiture in the state of South Carolina.⁴³ However, Verizon's willingness to sell some yet-to-be-determined portion of its spectrum does not in any way impact the marketplace for roaming services in the state of South Carolina, because it appears that Verizon has no intention of divesting any portion of either CDMA legacy network, whether in urban or rural markets of South Carolina. This acquiescence does not alter the fact that one major market competitor is disappearing, nor does it prevent the harm that will be caused to South Carolina's wireless market necessarily resulting from Verizon's control of the bulk of CDMA coverage in the state.

Verizon's acquisition of ALLTEL will allow it to become the largest operator in South Carolina, both in terms of size of coverage and mobile subscribers. In the process, the merger will remove any need Verizon currently has for the roaming services of regional, rural or upstate CDMA operators. Thus, any future commercial roaming agreements Verizon enters into for CDMA roaming with small or rural operators will be one-sided, because it will only be for inbound service, and any rural operator will be at

⁴³ *Verizon Ex Parte*. Markets include RSA 1 (CMA625), RSA 2 (CMA626), RSA 3 (CMA627), and RSA 7 (CMA631).

the mercy of the terms dictated by Verizon. The merger will have a profound and negative impact on the roaming marketplace in South Carolina, and it is not in the public interest.

In sum, as discussed in Section II.A *supra* and herein, approval of the Verizon/ALLTEL 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 further demonstrate that Verizon and ALLTEL have failed to meet their burden of proving that the proposed transaction, on balance, serves the public interest.

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

There still remain several salient issues left 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 has initiated rulemaking proceedings on both of these critical topics, yet the issues remain unaddressed to date. 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 are likely to discriminate and take advantage of new entrants, stifling competition in the process. 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, PMN respectfully requests that the Commission deny or defer action on the Applications.

III. Any Grant of the Applications Should be Conditioned.

The FCC's public interest authority enables the Commission to impose and enforce conditions to ensure that a proposed transaction will, overall, serve the public interest.⁴⁴ In the event, the FCC does not deny the Applications, it should condition grant of the Applications on Verizon satisfying each of the conditions set forth herein.

A. Verizon Should Be Required to Divest Excessive Spectrum Holdings in South Carolina

As discussed above, a merged Verizon entity would hold an excessive concentration of spectrum in many South Carolina markets. 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, including four South Carolina markets (SC RSA 1, SC RSA 2, SC RSA 3, and SC RSA 7).⁴⁵ 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. These conditions should be made to apply to any purchaser of spectrum from Verizon.

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. 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 divestiture of such

⁴⁴ See, e.g., *AT&T/Dobson Merger Order* at par. 14.

⁴⁵ *Verizon Ex Parte*.

spectrum held in excess of 55 MHz is consistent with the FCC's 1999 decision to impose a 55 MHz cap on ownership of cellular, PCS and SMR spectrum.⁴⁶

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*,⁴⁷ in which the FCC conditioned the grant of the transfer of control of licenses from AT&T Wireless to Cingular upon the completion of 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*.

Pursuant to these proposed conditions, Verizon would be required to divest excessive spectrum ownership interests in the following markets in South Carolina: CMA 67, CMA 90, CMA 95, CMA 108, CMA 227, CMA 264, CMA 625, CMA 626, CMA 627, CMA 630, CMA 631, CMA 632 and CMA 633. PMN appreciates Verizon's expressed willingness to divest some of its spectrum in CMAs 625, 626, 627 and 631 (as noted above, four of its least valuable markets in the state), but divestiture in additional markets is clearly necessary to sustain a competitive CMRS marketplace.

⁴⁶ 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 98-205; WT Docket No. 96-59; GN Docket No. 93-252, Report and Order, 15 FCC Rcd 9219 (1999).

⁴⁷ 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*").

B. Roaming Conditions

It will be difficult for the FCC to protect consumers from abuses of power in the domestic roaming market if the merger occurs. Should the Commission decide to approve the merger, there are at minimum certain conditions that must be placed on Verizon to ensure that Verizon does not abuse its dominant place in the roaming market. In order to safeguard the public interest, the Commission should condition the proposed merger to require the following:

- (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 voice and data roaming (both 3G and 4G) until such time that there are at least three nationwide carriers offering compatible air interfaces for nationwide automatic roaming.
- (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.

In the alternative:

- (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 310-590,⁴⁸ so as to offer continuous GSM roaming operations so that customers in South Carolina are able to have competitive roaming options when outside the state;
or
- (e) Verizon, at a 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 years, and further require that any future sale of the GSM network should be conditioned upon the sale of sufficient spectrum in both the Cellular and PCS bands on which to operate that GSM network and upon the acquiring

⁴⁸ 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.

party being required to maintain automatic roaming services under the terms expressed above.

C. The Commission Should Condition Any Grant On Verizon Foregoing Any Universal Service Support Currently Received By Alltel.

Consistent with the FCC's recent decisions concerning high-cost support for competitive carriers, the Commission should deny ALLTEL's high-cost universal 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 acquire one of its chief competitors simply in order to collect its 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 2006.⁴⁹ With its proposed acquisition of ALLTEL, Verizon will be approaching \$100 billion per 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.⁵⁰ 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

⁴⁹ See January 28, 2008 *Verizon News Release* at <http://newscenter.verizon.com/press-releases/verizon/2008/verizon-caps-successful-year.html>.

⁵⁰ See, e.g., Alltel Corporation First Quarter 2007 10-Q at <http://sec.edgaronline.com/2007/05/08/0000065873-07-000059/Section9.asp>.

capped,⁵¹ represents only .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 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 ALLTEL's rural markets, it should divest its rural properties. Small, rural wireless carriers with the expertise and a history of providing robust wireless service in rural areas are anxious to provide additional wireless services in high-cost markets and let Verizon concentrate on its more profitable urban markets. Should Verizon be able to convince the Commission to maintain ALLTEL's robust levels of high-cost support, paid for by the American consumer, there is no guarantee that this support will flow to rural infrastructure rather than to Verizon shareholders. Any FCC approval of Verizon's acquisition of ALLTEL should take into account Verizon's historical commitment, *or lack thereof*, to universal service.

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.

The FCC's recent *USF Cap Order*⁵² 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, if Verizon desires support, it should be required to prove

⁵¹ *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.)

⁵² *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).

its own costs, *on a state-by-state basis*, since Verizon basically 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. Verizon should be required either to internally average its plentiful low-cost areas with its few rural properties, or it should be required to divest.

Denying Verizon ALLTEL'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."⁵³ With CETCs collecting approximately \$800 million per year in high-cost subsidies,⁵⁴ eliminating ALLTEL's \$320 million take from this equation will single-handedly relieve the pressure on the ever-ballooning high-cost universal service fund.

D. The Commission Should Condition Any Grant 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 proposed merger will make Verizon the largest wireless carrier in the United States. Its market power and dominance will allow it to control the handset marketplace to the further detriment of small and rural carriers who are unable to obtain popular handsets for their customers. The inability to provide these handsets puts

⁵³ 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).

⁵⁴ 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 Jun. 13, 2007) (analyzing year 2006 data).

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.⁵⁵ PMN asks the Commission to put the Petition out for comment so that the wireless industry can fully vet the issues surrounding handset exclusivity deals and the impact on competition in the wireless marketplace. In addition, any merger approval should include conditions to mandate that Verizon make its exclusive handsets available to Tier III carriers.

1. Exclusive Agreements Among Large Carriers and Handset Manufacturers Are Anticompetitive and Harm the Public Interest.

In enacting Sections 1 and 307 of the Act, Congress made clear that its priority is for there to be equitable service across the United States. Section 1 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 worldwide wire and radio communication service with adequate facilities at reasonable charges.⁵⁶ 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

⁵⁵ See RCA Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless carriers and Handset Manufacturers, filed May 20, 2008 (RM - _____) (“*Handset Petition*”).

⁵⁶ 47 U.S.C § 151.

United States, particularly to traditionally underserved areas.⁵⁷ However, the exclusivity arrangements between Verizon and handset manufacturers are at odds with these core Commission responsibilities and objectives. 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 Wireless and Verizon's soon-to-be launched RIM Thunder™, a touch screen version of RIM's Blackberry® device (slated for availability in 3Q 2008)⁵⁸ 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 rural communities. Because of the exclusive agreements that Verizon has with the handset manufacturers, these handsets are not available to rural carriers to provide to their rural customers. Accordingly, rural consumers are denied features and functionality that their urban counterparts take for granted.

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

⁵⁷ 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*”).

⁵⁸ See *BlackBerry With Touch Screen Planned*, The Wall Street Journal Online, Sara Silver and Cassell Bryan-Low (May 16, 2008).

rural areas with their networks. The FCC should 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.

2. 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 should ensure that there is handset parity in urban and rural markets by conditioning the approval of the proposed 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 such as Brightpoint or Aerovoice through which Tier III carriers purchase handsets. These handsets are often last year's models that are no longer flying off the shelves. By conditioning the Verizon/ALLTEL 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.

IV. CONCLUSION

Based on the foregoing, PMN respectfully requests that the Commission deny the above-referenced Applications or, in the alternative designate the Applications for Hearing. Alternatively, PMN requests that the Commission impose upon any grant of such Applications each of the Conditions set forth herein.

Respectfully submitted,

PALMETTO MOBILENET, L.P.

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August 11, 2008

DECLARATION OF H.J DANDRIDGE III

**I, H.J. DANDRIDGE III, DO HEREBY DECLARE UNDER PENALTY OF
PERJURY THE FOLLOWING:**

1. I am the Chief Executive Officer of Palmetto MobileNet, L.P.
2. I have read the foregoing "Petition to Deny." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.


H.J. Dandridge III

August 11, 2008
Date

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 Palmetto MobileNet, LP 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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