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

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

REPLY OF RURAL CELLULAR ASSOCIATION TO JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS

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SUMMARY

In Comments on the merger applications RCA observed that the propagation characteristics of 700 MHz and 800 MHz ("Low-Band") spectrum make it better suited for the provision of wireless telecommunications services. In their opposition Verizon Wireless, Atlantis, and ALLTEL (jointly "Applicants") do not dispute the technical superiority of Low-Band spectrum, nor do they dispute that competitive advantages attach to 800 MHz cellular spectrum. In view of the fact that a consolidation of control over cellular spectrum can substantially lessen competition, especially in rural areas, the Commission should find that the anticompetitive effect of placing all 50 MHz of cellular spectrum under Verizon Wireless' control in 79 Cellular Market Areas ("CMAs") will be exacerbated by its access to between 55 and 65 percent of the 700 MHz spectrum in those same CMAs.

RCA asks the Commission to honor its promise that its case-by-case review of wireless mergers would maintain the protection against anticompetitive harm that had been provided by its former cellular cross-ownership ban. The Commission should conclude in this instance, as it has on other occasions, that the relevant geographic market is local and that CMAs define the relevant local market. It follows that cellular monopolies can substantially lessen competition within CMAs.

The Applicants failed to establish that the cellular spectrum aggregation/concentration that they propose is immune from scrutiny for anticompetitive harm both under § 7 of the Clayton Act and §§ 309 and 310 of the Communications Act. If it subjects the proposed merger of two of the nation's five largest wireless carriers to such scrutiny, the Commission will conclude that a full hearing is necessary to determine whether or not the effect of the merger will

be to substantially lessen competition in too many local markets to permit a finding that the public interest would be served if the merger goes forward.

Regarding automatic roaming availability, the promises by Verizon Wireless are inadequate and the remedy put forward for all issues and obstacles that arise is impractical. The subscribers served by regional and small wireless carriers need efficient access to the Verizon Wireless network for voice, data and broadband traffic when roaming outside home market areas. Other carriers should not need to file a formal complaint with the Commission, and the Commission should not need to devote its resources to handling of formal complaints, to deal with each complication that arises. The loss of ALLTEL as a roaming partner presents a unique circumstance if it is to be absorbed by Verizon Wireless which, already, is the country's largest CDMA carrier. Carrier-to-carrier interoperability will allow traffic to be handed off from one network to the other seamlessly. The Commission may be as explicit as need be in its decision to explain that Verizon Wireless must cooperate with other carriers, when it receives a reasonable request, to make arrangements for automatic roaming access on its network and carrier-to-carrier interoperability on reasonable terms and conditions when there is a reasonable request received and there is technological compatibility.

Finally, the Commission should act to stop the practice of carriers, including Verizon Wireless, of entering into exclusive agreements for the sale of wireless handsets. An important first step would be to prohibit Verizon Wireless from entering into new handset exclusivity agreements while the Commission examines the issue on a comprehensive basis. RCA's petition asking the Commission to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers

should be listed on public notice and comments invited on proposed rules that encompass all wireless carriers.

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REPLY OF RURAL CELLULAR ASSOCIATION TO JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS

Rural Cellular Association ("RCA"), by its attorney, hereby submits its comments in reply to the Joint Opposition to Petitions to Deny and Comments ("Opposition") filed with respect to the above-captioned applications by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), Atlantis Holdings LLC ("Atlantis"), and ALLTEL Corporation ("ALLTEL").

I. VERIZON WIRELESS' ATTEMPT TO ACCUMULATE LOW-BAND SPECTRUM SHOULD RECEIVE A HEIGHTENED LEVEL OF SCRUTINY

A. The Applicants Do Not Dispute That Access to Low-Band Spectrum Will Provide a Material Competitive Advantage to Verizon Wireless

In support of its request that the Commission not consent to Verizon Wireless' acquisition of local cellular monopolies, RCA expressed the view it shares with the Department of Justice ("DOJ") that a licensee operating on 800 MHz band cellular spectrum has material

competitive advantages over competitors operating in the higher frequency bands.[1] Verizon Wireless, Atlantis, and ALLTEL (jointly "Applicants") do not dispute that competitive advantages attach to 800 MHz cellular spectrum.

RCA also argued that the propagation characteristics of 700 MHz and 800 MHz ("Low-Band") spectrum make it better suited for the provision of wireless telecommunications services.[2] Again, the Applicants do not dispute the technical superiority of Low-Band spectrum.[3] Indeed, Verizon Wireless' engineering expert, Dr. Jackson, agrees with RCA's assessment of 700 MHz spectrum:

> Aside from the guardband spectrum, the 700 MHz spectrum is well suited for CMRS. The frequencies are near the well-developed cellular frequencies. This 80 MHz of CMRS spectrum together with the adjacent public safety spectrum is large enough to permit economies of scale in equipment production. Standards organizations are working to support the 700 MHz band. Manufacturers have announced the availability of 4G hardware for this band. In addition, QUALCOMM has deployed its MediaFLO product in these bands.[4]

Based on the pleadings, the Commission should agree with the DOJ that the consolidation of control over cellular spectrum can substantially lessen competition, especially in rural areas.[5] It should also find that the anticompetitive effect of placing all 50 MHz of cellular spectrum under Verizon Wireless' control in 79 CMAs will be exacerbated by its access to between 55 and 65 percent of the 700 MHz spectrum in those same CMAs.[6]

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[1] *See* Comments of the Rural Cellular Association, WT Docket No. 08-95, at 4-5 (Aug. 11, 2008) ("Comments").

[2] *See id*.

[3] In arguing against the 95 MHz spectrum screen, economics Professor Katz contends that the difficulty in basing predictions as to competition on spectrum holdings is illustrated by the "ongoing arguments" over whether spectrum in one band should be given more or less weight in a competitive analysis than spectrum in another band. *See* Opposition, Attachment 1, at 6. He does not speak to the question of whether a concentration of Low-Band spectrum is likely to result in competitive harm.

[4] *Id.*, Attachment 4, at 4-5 (footnotes omitted).

[5] *See* Comments, at 9.

[6] The Applicants have disclosed that there were errors in the spectrum aggregation data provided in the

B. The Commission Must Find That the Creation of Local Cellular Monopolies May Substantially Lessen Competition

The Applicants advance two arguments to bolster their claim that the Commission has rejected RCA's argument that a "cellular monopoly" can occur. Opposition, at 39. The first is the contention that the elimination of the Commission's cellular cross-ownership ban precludes the argument that cellular cross-ownership is "banned or unlawful." *See id.*, at 38-39. The second is that the Commission "implicitly" rejected the notion that a cellular monopoly is possible by defining the product market as the combined market for mobile telephony. *See id.*, at 39.

The short answer to the Applicants' first contention is that RCA did not argue that cellular cross-ownership is currently banned or unlawful. Rather, it asked the Commission to honor its promise that its case-by-case review of wireless mergers would maintain the protection against anticompetitive harm that had been provided by its former cellular cross-ownership ban.[7] RCA reminded the Commission of its failure to detect that ALLTEL was acquiring local cellular monopolies during the course of its "case-by-case review of any cellular consolidation"[8] in two previous cases.[9] Now that ALLTEL is attempting to hand over control of those cellular monopolies to Verizon Wireless, the Commission should perform a more searching review of

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their applications. *See* Opposition, Attachment 2, at 1 n.2. At this point, the Applicants have only revealed that Verizon Wireless will gain access to all 50 MHz of cellular spectrum in CMA89 Wichita, Kansas. Thus, Verizon Wireless now stands to gain at least 79 local cellular monopolies. *See* Reply of Cellular South, Inc. to Joint Opposition to Petitions to Deny and Comments, WT Docket No. 08-95, at 16, Ex. 6 (Aug. 26, 2008).

[7] *See* Comments, at 8-9 (citing *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19116-17 (2004) ("*Spectrum Cap Sunset Order*")).

[8] *Id.*, at 19117 n.215.

[9] *See id.*, at 8 (citing*Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, 21 FCC Rcd 11526, 11559-60 (2006) ("*Midwest Wireless-ALLTEL*") and Western *Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13098 (2005) ("*Western Wireless-ALLTEL*")).

Verizon Wireless' acquisition of a "monopoly status" in these cellular markets than the lax level of scrutiny applied in *Midwest Wireless-ALLTEL* and *Western Wireless-ALLTEL*.[10]

Needless to say, the elimination of the cellular cross-ownership ban did not eliminate the recognized likelihood that a "consolidation in a local cellular market from duopoly to monopoly status" will result in anticompetitive harm. *Spectrum Cap Sunset Order,* 19 FCC Rcd at 19115 n.204. Indeed, the Commission recognized that a monopoly in a "local cellular market" gives consumers "less choice and potentially less benefits from competition" *after* it eliminated the cellular cross-ownership ban, *see id.*, and most recently more than two years after the ban was replaced by the current case-by-case review of any cellular consolidation. *See E.N.M.R. Telephone Cooperative,* 22 FCC Rcd 4512, 4513-14 n.13 (WTB 2007).

By defining the product market as the combined market for mobile telephony, the Commission may have "implicitly" rejected the argument that a "cellular monopoly" could occur that would violate § 7 of the Clayton Act. But the Commission also found that the relevant geographic market is local and that CMAs — cellular market areas — may be used to define the relevant local market. *See, e.g., AT&T-Dobson,* 22 FCC Rcd at 20309. By so doing, the Commission implicitly recognized that cellular monopolies can substantially lessen competition within CMAs. *See Spectrum Cap Sunset Order,* 19 FCC Rcd at 19115 n.204; *E.N.M.R. Telephone,* 22 FCC Rcd at 4513-14 n.13.

[10] The Applicants should take no comfort from the "numerous instances" where the Commission approved the consolidation of two cellular providers in the same market. Opposition, at 39 n.117. RCA is aware of only one instance when the Commission issued a reported decision in which it waived the cellular cross-ownership ban to allow a wireless carrier to acquire the cellular Block A licenses in eleven CMAs when it held the cellular Block B licenses in parts of the same CMAs. *See AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21625-26 (2004). The Commission's lax review in *Midwest Wireless-ALLTEL* and *Western Wireless-ALLTEL* explains two of the six instances in which cellular consolidation was "approved." In the remaining instances, no decisions can be found to shed light on how ALLTEL ended up with 50 MHz of cellular spectrum in four CMAs. Perhaps no one saw fit to raise the cellular concentration issue.

It is significant that the Applicants do not dispute that the DOJ employs an enforcement standard under which it requires divestiture if a proposed merger would otherwise give one carrier access to all 50 MHz of cellular spectrum in a single CMA. Instead, they find it significant that the "DOJ has not yet requested divestiture or further proceedings" with respect to the 26 CMAs where Verizon Wireless will have access to all 50 MHz of that spectrum. Opposition, at 39 n.118. The Applicants suggest that "[i]f the DOJ permits Verizon Wireless to hold cellular overlaps, the correct conclusion is that cellular overlaps are not a *per se* problem." *Id.* RCA submits that the Applicants' refusal to disclose whether or not the "cellular/cellular overlaps" in the 26 CMAs presents a problem to the DOJ supports the inference that the DOJ has not permitted Verizon Wireless to hold the "cellular overlaps" and the matter is still the subject of their ongoing discussions. And it appears that the DOJ may not be aware that Verizon Wireless stands to acquire access to 50 MHz of cellular spectrum in four additional CMAs, bringing its total to 79 "problem" CMAs.[11]

The Applicants failed to establish that the cellular spectrum aggregation/concentration that they propose is immune from scrutiny for anticompetitive harm both under § 7 of the Clayton Act and §§ 309 and 310 of the Act. If it subjects the proposed merger of two of the nation's five largest wireless carriers to such scrutiny, the Commission will conclude that a full

[11] From the very little that the Applicants disclosed in their pleading, it is possible that the DOJ is not aware of the remaining cellular overlaps. There is also the possibility that the spectrum aggregation data that was supplied to the DOJ was inaccurate. That possibility exists in light of the disclosure that Exhibit 4 to the Lead Application contained errors relating to ALLTEL's cellular coverage. *See* Opposition, Attachment 2, at 1 n.2. It now appears that Verizon Wireless will gain access to all 50 MHz of cellular spectrum in CMA89 Wichita, Kansas. *See id.* Verizon Wireless will also gain access to yet-unspecified spectrum in CMA318 Arizona 1 – Mohave and CMA370 Florida 11 – Monroe. *See id.* The Applicants apparently intended to provide the Commission with a "Supplement A" containing new information concerning CMA318 and CMA370. *See id.* However, no such supplemental information was provided.

hearing is necessary to determine whether or not the effect of the merger will be to substantially lessen competition in too many local markets to permit a finding that the public interest would be served if the merger goes forward.

II. THE COMMISSION SHOULD CONDITION ANY CONSENT TO ASSURE AUTOMATIC ROAMING AND INTEROPERABILITY UPON REASONABLE REQUEST

A. Automatic Roaming

Claiming that conditions on Commission consent that are not "merger specific" are unnecessary, the Applicants suggest that they have done more than enough to lay to rest concerns over the availability of automatic roaming by promising to "…keep the rates set forth in ALLTEL's existing [automatic roaming] agreements…for the full term of the agreement or for two years from the closing date, which ever occurs later."[12] The Applicants state that carriers that "…view themselves as being subjected to unjust and unfair roaming practices may avail themselves of the Section 208 complaint process."[13]

Respectfully, the commitment made by Verizon Wireless is inadequate and the remedy they put forward for all issues and obstacles that cannot be resolved through voluntary negotiation is impractical to the extent that the time lost while formal complaints are pursued would threaten the ongoing economic viability of regional and small carriers that are RCA members. Starting with the Verizon Wireless commitment, it should be recognized that their wireless network will be the largest CDMA network in the U.S. and serve as the backbone for carriage of CDMA roaming traffic for more than 50 other CDMA carriers in the country. Those smaller wireless carriers and their millions of customers depend upon access to the Verizon

[12] Opposition at 46 and 56.

[13] Opposition at 56 referring to 47 U.S.C. § 208.

Wireless network as a complement to the smaller license areas of non-nationwide carriers. The loss of ALLTEL as a roaming partner presents a unique circumstance if it is to be absorbed by Verizon Wireless which, already, is the country's largest CDMA carrier. A condition on consent to the transaction that explicitly requires Verizon Wireless to provide automatic roaming access on its network on reasonable terms and conditions is not too much for RCA and numerous petitioners to ask at this time.

The availability of the formal complaint process under Section 208 provides minimal comfort to regional and small carriers. The cost of pursuing a formal complaint is an initial obstacle. Beyond cost, the time required for preparation of pleadings, discovery, and deliberation by the Commission staff is a matter of months even if a complaint is processed under the Enforcement Bureau's Accelerated Docket procedure.[14] During that time, regional and small carriers very well could see customer defections to Verizon Wireless or other nationwide carriers and experience the loss of a critical mass of customers that undermines the economic viability of the business. It is more than plausible that customers would leave a regional or small carrier if they could not make use of their handsets while traveling to nearby cities or other states.

The economic vitality of dozens of RCA members is dependent upon automatic roaming agreements with Verizon Wireless on reasonable terms. These carriers warrant protection from anticompetitive practices because they fill an important role in serving the public in rural and small metropolitan areas. When offered a choice, the public often selects service from an RCA member rather than a nationwide provider based upon reasons that include (i) local service quality, (ii) innovative rate plans, (iii) access to public safety services in areas not served by large

[14] See 47 C.F.R. §1.730. If the Bureau does not accept the complaint under the accelerated procedure it could be a year or more for the process to unfold.

carriers and (iv) local management and technical support that provide customer service and network repair efficiencies.[15] The Commission needs to employ a heightened level of scrutiny to transactions that threaten the survivability of regional and small carriers such as RCA members.

Survival of non-nationwide carriers requires a business plan that meets customer needs and produces a reasonable return on investment for the carrier. If an RCA member builds a network that is compatible with the Verizon Wireless network it needs to maintain an automatic roaming agreement with Verizon Wireless for an unlimited period of time. The agreement must allow for exchange of all voice and data/broadband traffic on mutual terms that are reasonable. There can be no interruptions in service except those that that are unintentional or mutually agreeable. RCA members must assure their lenders that they have the necessary roaming agreements in place so that lenders will continue to make the financial commitments RCA members need to upgrade network equipment and maintain services at a level that is competitive and will allow for customer retention and growth.

An absorption of most ALLTEL property (all that is not divested) into the Verizon Wireless network calls for immediate assurance, if the consent is granted, that Verizon Wireless will make automatic roaming available for voice, data and broadband services on reasonable terms and conditions to all wireless carriers with technological compatibility, *without any*

[15] For example, RCA member Cellular South was uniquely recognized and commended in a resolution by the Mississippi legislature for its response in restoring wireless services in the aftermath of Hurricane Katrina. The proximity of the carrier's headquarters and critical support team to damaged towers and equipment was extremely helpful when emergency conditions required a rapid response. State disaster recovery officials and volunteers made effective use of the Cellular South network in the aftermath of the storm, and victims made emergency calls at an unprecedented number. Cellular South experienced a 470% increase in minutes of use on its network during that time, in large part because other carriers' networks were not rebuilt as quickly. Cellular South's wireless network was 60% operational one day after Katrina landed, and service was fully restored in ten days. *See*, Petition to Deny of Cellular South, Inc. in WT Docket No. 08-95 at fn. 51.

expiration date and without regard to the specific generation of network deployment. The commitment offered by Verizon Wireless to honor rates in existing ALLTEL roaming agreements for at least two years is a start, but the Commission should recognize that the Verizon Wireless network will become the CDMA backbone of the nation's wireless infrastructure and do more to safeguard reasonable access to that backbone by the customers of all compatible carriers.

The Applicants repeatedly ask the Commission to avoid adding conditions on the transaction consent that are "not merger-specific" and that can otherwise be examined in the course of rulemaking proceedings.[16] Viewed in historical context, this is not another routine acquisition by a large wireless carrier. The acquisition of the fifth largest carrier by the second largest carrier that would then become the nation's new number one wireless carrier is among the largest transactions ever presented to the Commission for approval in the field of wireless communications. If approved, it will radically change the competitive balance among wireless carriers serving rural America where RCA members are concentrated. If the Applicants are not agreeable to "merger-specific" conditions to safeguard public interest concerns they should wait for the Commission to complete its rulemaking proceeding on automatic roaming issues and re-file their applications for transaction consent after the Commission thoroughly reviews the issues and new rules binding upon the entire industry are effective. The Applicants elected to bring their transaction to the Commission for approval before the rulemaking proceeding is complete and, having done so, they should be prepared to accept reasonable conditions on transaction approval that guard against harm while the Commission considers important issues that affect the public's access to the Verizon Wireless network by customers of other carriers.

[16] Opposition at pp. 42-45, 60 and 72.

B. Interoperability

In their Opposition the Applicants plead for avoidance of a condition that would require carrier-to-carrier "interoperability" because there is no specific definition of the term.[17] In any event Verizon Wireless would prefer to avoid interoperability obligations until the Commission completes pending proceedings.[18]

It is not difficult to understand the concept of carrier-to-carrier interoperability and the Commission may be as explicit as need be in its decision to explain that Verizon Wireless must cooperate with other carriers, when it receives a reasonable request, to make arrangements for voice and data traffic to be handed off from one network to the other seamlessly.

C. Condition Suggested

In view of the special and unique circumstances that make this transaction so important to rural market customers and RCA members, RCA respectfully suggests that the Commission require Verizon Wireless, as a condition to any consent that may be granted, to ***negotiate in good faith for automatic roaming and interoperability agreements for voice, data and broadband services, on reasonable terms and conditions, when a reasonable request is made and where implementation of such agreements is technically feasible.***

[17] Opposition at 60.

[18] Applicants apparently refer to the ongoing proceeding announced in the *Report and Order and Further Notice of Proposed Rulemaking* in WT Docket No. 05-265, 22 FCC Rcd at 15845-47 (paras. 77-81) (2007).

III. THE COMMISSION SHOULD NOT ALLOW VERIZON WIRELESS TO ENTER INTO NEW EXCLUSIVE HANDSET AGREEMENTS UNTIL A RULEMAKING ON THE ISSUE IS COMPLETED

In May of this year RCA filed a petition to request that the Commission initiate a rulemaking to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest.[19] That petition documented the extent to which exclusive agreements are used by large carriers, including Verizon Wireless, to limit the availability of the newest and most innovative wireless handsets in the U.S. RCA explained that large carriers use the market power derived from their status as near-nationwide FCC licensees to obtain those exclusive agreements, and how that practice is detrimental to millions of rural area residents who are not served by the carrier with a particular handset and to regional and small wireless carriers that cannot obtain and sell the products that are subject to the exclusive agreements. RCA asked the Commission to issue a public notice to invite public comment on the issue, something that has not yet occurred.

Meanwhile, the Applicants presented their transaction proposal that, if completed, will advance Verizon Wireless to the number one ranking among wireless carriers in the U.S. and remove from the marketplace one of its two large CDMA competitors. As the number one wireless service provider in terms of the number of customers served Verizon Wireless would obtain the ultimate position among carriers and improve its ability to demand exclusive sale rights on the most innovative products that are brought to market. The anticompetitive effects of that practice must be reviewed before more harm is caused. To do so, RCA urges the

[19] *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by RCA, May 20, 2008.

Commission to condition any consent to the merger transaction so as to prohibit Verizon Wireless from entering into any new exclusive handset sale agreements while the Commission conducts a review of the issue and until any new rules take effect to govern the practice. This remedy is more moderate than one proposed by RCA in its initial comments on the merger transaction when RCA suggested that Verizon Wireless be directed to terminate existing exclusive agreements as a condition to transaction approval.[20]

In their Opposition the Applicants suggest that exclusive handset arrangements are "pro-consumer"[21] and yield "competitive benefits" as they try to defend a practice that has obvious anti-consumer effects and clearly harms regional and small wireless service providers. It defies logic to claim that exclusive agreements which inherently limit consumers to a single source for newly developed "high end" phones with broadband capabilities somehow benefits consumers. Most certainly the millions of consumers who reside in areas that are not served by Verizon Wireless will not benefit from the exclusive agreements under which Verizon Wireless markets handsets. And there is nothing "pro-consumer" about exclusive arrangements that allow Verizon Wireless alone to set retail prices for handsets that can be purchased only through Verizon Wireless.

In a last attempt to justify the practice, the Applicants suggest that smaller carriers, such as RCA members, have a comparable opportunity to join together "…to get the same kinds of

[20] If the Commission concludes that Verizon Wireless alone should not be subject to a ban on new exclusive handset agreements while a rulemaking proceeding is conducted it may issue an order binding upon all wireless carriers that prohibits new exclusive agreements pending completion of Commission review of the subject.

[21] Opposition at 73.

attention and exclusivity arrangements as larger carriers."[22] Even if that statement was accurate, which it is not, the practice would still be anticompetitive and should not be permitted by the Commission. Any contractual limitation that denies the public and competing wireless service providers access to a product is not in the public interest and should be prohibited. The Commission has the opportunity and, respectfully, the obligation to act to stop the practice of limiting availability of equipment that otherwise could be purchased for use on the networks of dozens of wireless carriers. An important first step would be to prohibit Verizon Wireless from entering into new handset exclusivity agreements while the Commission examines the issue on a comprehensive basis.

CONCLUSION

The Applicants do not dispute the technical superiority of Low-Band spectrum, nor do they dispute that competitive advantages attach to 800 MHz cellular spectrum. In view of the fact that a consolidation of control over cellular spectrum can substantially lessen competition, especially in rural areas, the Commission should find that the anticompetitive effect of placing all 50 MHz of cellular spectrum under Verizon Wireless' control in 68 CMAs will be exacerbated by its access to between 55 and 65 percent of the 700 MHz spectrum in those same CMAs.

As explained, the Commission should conclude as it has in other merger reviews that the relevant geographic market is local and that CMAs define the relevant local market. The cellular monopolies that would result from the Applicants' proposals can substantially lessen competition within CMAs. The Commission should conclude that a full hearing is necessary to determine whether or not the effect of the merger will be to substantially lessen competition in too many

[22] Opposition at 75.

local markets to permit a finding that the public interest would be served if the merger goes forward.

As RCA and others have explained in initial comments and petitions, the public and other wireless carriers will need to depend to a much greater extent on efficient access to the Verizon Wireless network as it will be expanded to encompass ALLTEL's competing network. There must be certainty that the nation's largest wireless carrier will make its network accessible for voice, data and broadband traffic on reasonable terms. Likewise, there must be assurance of cooperation on the part of Verizon Wireless that voice, data and broadband traffic will be handed off from one network to the other seamlessly. Issues this important cannot be left unresolved for another day. If the Commission grants consent to the transaction there is a critical need that such consent be tied to a condition that requires Verizon Wireless to enter into automatic roaming and carrier-to-carrier interoperability agreements when a reasonable request is made and where wireless systems are technologically compatible.

The Commission should not permit Verizon Wireless to enter into new exclusive handset agreements and compound the problem while the Commission reviews the issue as involving all wireless carriers. Exclusive handset agreements are anticompetitive and the Commission should order carriers to suspend the practice; at a minimum, the Commission should condition any approval of the proposed transaction on a *prohibition on any new exclusivity agreements* until the issue is reviewed and rules are adopted affecting all wireless carriers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David L. Nace, hereby certify that on this 26th day of August, 2008, copies of the foregoing REPLY OF RURAL CELLULAR ASSOCIATION TO JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS were e-mailed, in pdf format, to:

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