

outgoing call, to receive an incoming call, or to continue an in-progress call.<sup>578</sup> Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing “send.”

172. In the *Roaming Report and Order*,<sup>579</sup> the Commission determined that the automatic roaming obligation applies to real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls.<sup>580</sup> The Commission declined to extend the scope of the automatic roaming services definition to include non-interconnected services provided over enhanced digital networks, such as wireless broadband Internet access.<sup>581</sup> The Commission determined that automatic roaming, as a common carrier obligation, does not extend to services that are classified as information services or to other wireless services that are not CMRS.<sup>582</sup> Additionally, the Commission determined that when “a reasonable request is made by a technologically compatible [CMRS] carrier, a host [CMRS] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market . . .”<sup>583</sup> on reasonable and non-discriminatory terms and conditions.<sup>584</sup> The Commission also stated that if a carrier makes a reasonable request for automatic roaming, “then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.”<sup>585</sup> The Commission also found that it would serve the public interest to extend automatic roaming obligations to push-to-talk and Short Message Services (SMS), but declined to adopt a rule extending the automatic roaming obligation beyond that to offerings such as non-interconnected services or features.<sup>586</sup> Nevertheless, in the *Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers.<sup>587</sup> The Commission also maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their

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<sup>578</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20324 ¶ 59; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

<sup>579</sup> Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007) (“*Roaming Report and Order*” and “*Roaming Further Notice*” respectively).

<sup>580</sup> See *Roaming Report and Order*, 22 FCC Rcd at 15817, 15839 ¶¶ 1, 60.

<sup>581</sup> See *id.* at 15839 ¶ 60.

<sup>582</sup> See *id.* at 15818-19, 15839 ¶¶ 2, 60; see also *Wireless Broadband Internet Access Declaratory Ruling*, 22 FCC Rcd at 5906 ¶¶ 11-12.

<sup>583</sup> *Roaming Report and Order*, 22 FCC Rcd at 15818, 15831 ¶¶ 2, 33.

<sup>584</sup> *Id.* at 15826 ¶ 23.

<sup>585</sup> *Id.* at 15828 ¶ 28.

<sup>586</sup> See *id.* at 15839 ¶ 60.

<sup>587</sup> *Roaming Further Notice*, 22 FCC Rcd at 15845-46 ¶ 77-81.

networks.<sup>588</sup> The provision of roaming is subject to the requirements of sections 201, 202, and 208 of the Communications Act.<sup>589</sup>

173. Verizon Wireless states that it will honor ALLTEL's existing GSM and CDMA roaming contracts with other carriers.<sup>590</sup> Verizon Wireless voluntarily commits to provide regional, small, or and/or rural carriers that currently are roaming partners with ALLTEL the option of continuing their existing agreements. Verizon Wireless also commits to provide regional, small, and/or rural carriers that have preexisting roaming contracts with both Verizon Wireless and ALLTEL the choice of which contract will govern the ongoing roaming relationship.<sup>591</sup>

174. Several commenters request that the Commission impose conditions on this transaction that go beyond these commitments, such as providing roaming to any requesting party at reasonable rates,<sup>592</sup> the adoption of an expedited process for resolving roaming disputes,<sup>593</sup> the provision of automatic roaming in carriers' home markets,<sup>594</sup> and the provision of automatic data roaming at reasonable rates.<sup>595</sup> Some commenters also argue that the Commission should impose a condition on Verizon Wireless to "make its roaming agreements available to Requesting Carriers upon request," similar to most favored nation treatment currently required only for interconnection agreements.<sup>596</sup> Recently, several parties have also submitted *ex parte* filings on requested conditions.<sup>597</sup>

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<sup>588</sup> 47 C.F.R. § 20.12(c) provides:

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

<sup>589</sup> See generally *Roaming Report and Order*, 22 FCC Rcd at 15818, 15824 ¶¶ 1, 18.

<sup>590</sup> Application, Public Interest Statement at ii, 17; Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1-2; Information Request Response at 12.

<sup>591</sup> Verizon Wireless July 22, 2008 *Ex Parte* Filing at 2.

<sup>592</sup> See, e.g., NTCA Petition to Deny at 5-6; OPASTCO and RICA Petition to Deny at 3-7; Roaming Petitioners Petition to Deny at 2-3, 18-20; Rural Cellular Association Petition to Deny at 13-14; Rural Telecommunications Group Petition to Deny at 9-18; Rural Carriers Petition at 13-14; MetroPCS and NTELOS Petition to Deny at 7-9, 16, 20-22, 25-26; South Dakota Telecommunications Association Reply at 9-10.

<sup>593</sup> See, e.g., Leap Wireless Reply at 1-2.

<sup>594</sup> See, e.g., MetroPCS and NTELOS Petition to Deny at 24-25; Leap Wireless Petition to Deny at 20; OPASTCO and RICA Petition to Deny at 7, 9; PISC Petition to Deny at 9-10; South Dakota Telecommunications Association Petition to Deny at 13-14.

<sup>595</sup> See, e.g., NTCA Petition to Deny at 5-6; PISC Reply at 5; Petition to Dismiss or Deny of the North Dakota Network Co. at 9-10 (filed July 31, 2008) ("North Dakota Network Co. Petition to Deny"); MetroPCS and NTELOS Petition to Deny at 28-30; Rural Carriers Petition at 13-14; South Dakota Telecommunications Association Petition to Deny at ii, 10-14; Rural Telecommunications Group Petition to Deny at 22-23; Centennial Communications Corp. Petition to Deny at 4-8 (filed Aug. 11, 2008) ("Centennial Petition to Deny"); Roaming Petitioners Petition to Deny at 3, 8-10, 13, 17-18; Leap Wireless Petition to Deny at 20.

<sup>596</sup> See, e.g., MetroPCS and NTELOS Petition to Deny at 35-38; Rural Carriers Petition at 12-13; South Dakota Telecommunications Association Petition to Deny at 11-12.

<sup>597</sup> See, e.g., MetroPCS *et al.* *Roaming Ex Parte* Letter at 2; Consumers Union Comments at 2; Rural Carriers October 28, 2008 *Ex Parte* Filing at 1-3; Leap Wireless Comments at 7-9; *Ex Parte* Letter from Todd B. Lantor, Counsel to Rural Cellular Association to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1- (continued....)

175. Verizon Wireless first indicated that it would honor the rates in ALLTEL's existing roaming agreements with regional, small, and/or rural carriers for the term of the agreement or for two years from the closing date of the transaction, whichever is later.<sup>598</sup> In a more recent filing, Verizon Wireless volunteers to double the term of its commitment from two years to four years. Accordingly, it commits to honor the rates in ALLTEL's existing roaming agreements with each carrier for the full term of the agreement or for four years from the closing date, whichever occurs later.<sup>599</sup> The Applicants contend that any additional roaming issues are not transaction-specific and that either retail-level competitive markets will ensure that the merged entity will maintain reasonable roaming rates or potential roaming partners can use the Section 208 process.<sup>600</sup> The Applicants add that the Commission lacks authority under the Communications Act to impose a data-roaming obligation because data roaming is an information service and, in any event, the Commission should not impose data roaming restrictions on the merged entity different from those imposed on the rest of the industry.<sup>601</sup> They also point out that GSM and CDMA roaming opportunities will continue to exist after the transaction because Verizon Wireless plans to operate ALLTEL's GSM network indefinitely and that other opportunities will increase as the industry begins using LTE, reducing the importance of air-interface.<sup>602</sup> Verizon Wireless also claims that the transaction will allow both companies' customers to benefit from access to the same set of features – including advanced data services – while roaming on each others' networks that they access in their home markets.<sup>603</sup>

176. Commenters respond that the Commission does have authority to regulate data roaming because data services are often bundled with voice services,<sup>604</sup> that their proposed conditions for the transaction are narrowly tailored for this transaction, and that these issues will not be addressed in the roaming proceeding.<sup>605</sup> Commenters add that if the roaming issues can be resolved only through a separate rulemaking, as the Applicants suggest, then the Commission should postpone any action on this transaction until the roaming proceeding has been resolved.<sup>606</sup> Commenters also contend that, contrary to the Applicants' assertions, a separate market for wholesale roaming does exist and has been recognized

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2 (Oct. 6, 2008); *Ex Parte* Letter from Mark D. Schneider, Counsel to Contour Network to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 28, 2008).

<sup>598</sup> Joint Opposition at iii, 54.

<sup>599</sup> Verizon Wireless November 3, 2008 *Ex Parte* Filing at 2 (volunteering to extend their commitment to honor the rates in ALLTEL's roaming agreements for four years).

<sup>600</sup> Joint Opposition at 42-49, 56-57, 62-62.

<sup>601</sup> *Id.* at 60, 62-64.

<sup>602</sup> *Id.* at 46, 49-54; Information Request Response at 11-12.

<sup>603</sup> Information Request Response at 20-21.

<sup>604</sup> Rural Carriers Reply at 18, 21-22; South Dakota Telecommunications Association Reply at 10; Reply of MetroPCS Communications, Inc. and NTELOS Inc. to Joint Opposition to Petitions to Deny and Comments at 15-16 (filed Aug. 26, 2008) ("MetroPCS and NTELOS Reply").

<sup>605</sup> MetroPCS and NTELOS Reply at 9-11.

<sup>606</sup> Rural Carriers Reply at 20; *see also* Rural Cellular Association Reply at 9; Roaming Petitioners Petition to Deny at 9, 17-18; *see also* Rural Telecommunications Group Petition to Deny at 22; OPASTCO and RICA Petition to Deny at 7, 9; Leap Wireless Petition to Deny at 4; Leap Wireless Reply at 19-20.

The Rural Telecommunications Group also argues that material issues of fact remain for hearing about whether retail competitors will become dependent on Verizon for both GSM and CDMA roaming in numerous markets, and whether roaming prices have become a national market. Rural Telecommunications Group Reply at 12-16.

by the Commission.<sup>607</sup> Commenters further request that Verizon Wireless make clear that their roaming commitment apply to all terms of ALLTEL's existing contracts – not just the rates<sup>608</sup> – and that Verizon Wireless's commitments be extended for up to ten years.<sup>609</sup> With regard to Verizon Wireless's plans to continue operating ALLTEL's GSM network, the Rural Telecommunications Group asserts that these plans are inadequate because Verizon Wireless will not extend the network geographically or upgrade the network to 3G and because, in many markets, no other GSM network is currently built out.<sup>610</sup>

177. Additionally, commenters raise the issue of “interoperability”—which the Rural Cellular Association describes as the ability for one network to seamlessly transfer calls in progress to another network when a caller begins roaming—arguing that automatic roaming alone is not sufficient without interoperability.<sup>611</sup> In response, the Applicants argue that the Commission cannot impose interoperability because the Rural Cellular Association failed to adequately define that concept.<sup>612</sup> Finally, North Dakota Network Co. argues that Verizon Wireless is not qualified to take control of ALLTEL spectrum licenses because Verizon Wireless has not lived up to its CMRS obligations by negotiating for roaming services in good faith.<sup>613</sup> Verizon Wireless denies North Dakota Network Co.'s allegations that Verizon Wireless has not acted in good faith in negotiating their roaming contracts and argues that this proceeding is not the appropriate venue to resolve such an issue.<sup>614</sup>

178. *Discussion.* We condition our approval of this transaction on Verizon Wireless's commitment to honor ALLTEL's existing agreements with other carriers to provide roaming on ALLTEL's CDMA and GSM networks.<sup>615</sup> We additionally condition our approval on the option Verizon Wireless voluntarily offers to each regional, small, and/or rural carrier that has a roaming agreement with ALLTEL to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement.<sup>616</sup> We also condition our approval on each such regional, small, and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless having the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.<sup>617</sup> We further condition our approval on Verizon Wireless's commitment that it will not adjust upward the rates set forth in ALLTEL's existing

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<sup>607</sup> MetroPCS and NTELOS Reply at 18-20; Leap Wireless Reply at 17-20; South Dakota Telecommunications Association Reply at 9-10.

<sup>608</sup> Leap Wireless Reply at 24. PISC replies that the Applicants' roaming commitments serve only to “deflect attention” from their roaming practices and they should instead commit to provide voice and data roaming at just, reasonable, and non-discriminatory rates and terms. PISC Reply at 5.

<sup>609</sup> MetroPCS and NTELOS Reply at 11-12; Rural Telecommunications Group Reply at 15; MetroPCS *et al.* Roaming *Ex Parte* Letter at 2.

<sup>610</sup> Rural Telecommunications Group October 9, 2008 *Ex Parte* Letter at 2-3. Rural Telecommunications Group also asks the Commission to review Verizon Wireless's roaming contracts with Tier II, III, and IV carriers and require Verizon Wireless to enter roaming agreements with new market entrants. *Id.* at 3-4.

<sup>611</sup> Rural Cellular Association Petition to Deny at 10-11; Rural Cellular Association Reply at 10; Cellular South Reply at 27-29.

<sup>612</sup> Joint Opposition at 60.

<sup>613</sup> North Dakota Network Co. Petition to Deny at 6-8.

<sup>614</sup> Joint Opposition at 58-29.

<sup>615</sup> See Application, Public Interest Statement at ii.

<sup>616</sup> Verizon Wireless July 22, 2008 *Ex Parte* Filing at 2.

<sup>617</sup> *Id.*

agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, which ever occurs later.<sup>618</sup> We remind carriers that roaming is a common carrier service subject to the protections afforded by Sections 201, 202, and 208 of the Communications Act.<sup>619</sup> When a CMRS carrier receives a reasonable request for roaming, pursuant to Sections 201 and 202, that carrier is required to provide roaming on reasonable and non-discriminatory terms and conditions.<sup>620</sup> If a requesting carrier believes that particular acts or practices relating to roaming are unjust and unreasonable,<sup>621</sup> it may file a complaint with the Commission pursuant to Section 208.<sup>622</sup>

179. With regard to any additional roaming concerns raised in the record or in the *ex parte* letter filed by MetroPCS and other commenters,<sup>623</sup> as discussed elsewhere in this Memorandum Opinion and Order and Declaratory Ruling, we find that the package of divestitures on which we are conditioning our approval of this transaction, along with the roaming conditions described above, sufficient to prevent the significant competitive harm that this transaction would likely cause in certain geographic markets. Based on this finding that the divestitures, as well as Verizon Wireless's roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services. We note that our conclusion here is consistent with the Commission's prior findings that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.<sup>624</sup> Accordingly, we decline to condition our approval of the transaction on any additional special requirements relating to roaming rates or arrangements, including a requirement to maintain ALLTEL's GSM network for a specified period of time.

180. Furthermore, the commenters have failed to demonstrate that the transaction will cause the potential harms they purportedly seek to remedy. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.<sup>625</sup> We will address the concerns about roaming raised in the record of this transaction in other, more appropriate, proceedings.<sup>626</sup> We also are considering, in the context of the *Roaming Further Notice*, whether to extend the automatic roaming obligation to non-interconnected services or features,

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<sup>618</sup> Verizon Wireless November 3, 2008 *Ex Parte* Filing at 2.

<sup>619</sup> 47 U.S.C. §§ 201, 202, 208.

<sup>620</sup> See generally *Roaming Report and Order*, 22 FCC Rcd at 15818-19, 15824, 15826-29 ¶¶ 1-2, 18, 23-29.

<sup>621</sup> See generally *id.* at 15830-31 ¶¶ 33-35 (discussing reasonableness).

<sup>622</sup> See generally *id.* at 15818, 15829-30 ¶¶ 1, 30-32

<sup>623</sup> MetroPCS *et al.* *Roaming Ex Parte* Letter at 2.

<sup>624</sup> See *Verizon-RCC Order*, 23 FCC Rcd at ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13; see also *DoCoMo-Guam Order*, 21 FCC Rcd at 13602 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11563-64 ¶ 104. See also Rural Cellular Association Petition to Deny at 10-11; Rural Cellular Association Reply at 10; Cellular South Reply at 27-29.

<sup>625</sup> See, e.g., *Verizon-RCC Order* 23 FCC Rcd at 12480-81 ¶ 30; *AT&T Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order* 20 FCC rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint Nextel Order* 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>626</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

including services that have been classified as information services.<sup>627</sup> Any decisions reached or rules adopted in either of those roaming proceedings will apply with equal force to Verizon Wireless.

181. The Consumers Union also argues that the transaction could lead to increases in text messaging prices.<sup>628</sup> We find that the package of divestitures on which we are conditioning our approval of this transaction sufficient to prevent the significant competitive harm that this transaction would likely cause in certain geographic markets. As noted elsewhere in this order, based on our finding that the divestitures will protect competition at the retail level in those geographic markets, we conclude that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services and, therefore, will not lead to price increases for services, including text messaging.

### **B. Handset Availability and Exclusive Handset Agreements**

182. Several commenters express concern that the transaction will result in a large increase in the merged entity's alleged monopsony power to purchase handsets and the disparity in purchasing power between the merged entity and smaller wireless providers will allow the merged entity to demand exclusive arrangements for handsets that prevent smaller and rural wireless providers from providing those handsets for use on their networks.<sup>629</sup> Commenters argue that exclusive contracts for handsets are not in the public interest because without these arrangements, manufacturers have incentives to offer a broad range of devices to consumers rather than forcing consumers to sign with the network with their desired device.<sup>630</sup> Cellular South also argues that rural wireless providers' access to handsets may be hurt by the transaction because those wireless providers often use "generic" handset software designed for ALLTEL; Cellular South questions whether after the transaction handset manufacturers will have sufficient incentives to design generic software for rural wireless providers.<sup>631</sup> Commenters contend that the Commission has authority over the handset contracts under its broad authority to protect consumers from anti-competitive behavior and should exercise its authority by conditioning approval of the transaction on Verizon Wireless waiving any exclusivity agreements with handset manufacturers.<sup>632</sup>

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<sup>627</sup> *Id.*

<sup>628</sup> Consumers Comments at 1-2.

<sup>629</sup> Cellular South Petition to Deny at 19; Centennial Petition to Deny at 8-12; NTC A Petition to Deny at 8; OPASTCO and RICA Petition to Deny at 8; Palmetto Petition to Deny at 28-29; PISC Petition to Deny at 12; Rural Carriers Petition at 15-16; Rural Cellular Association Petition to Deny at 15-17; Rural Telecommunications Group Petition to Deny at 28-29; South Dakota Telecommunications Association Petition to Deny at 14; PISC Reply at 12-13; Rural Carriers Reply at 23; South Dakota Telecommunications Association Reply at 11; Cellular South Reply at 20-25; Rural Cellular Association Reply at 11-12.

<sup>630</sup> PISC Reply at 13; Rural Carriers Reply at 23; South Dakota Telecommunications Association Reply at 11; Cellular South Reply at 20; Rural Cellular Association Reply at 11-13.

<sup>631</sup> Cellular South Petition to Deny at 20. PISC further argues that it is not requesting generic phones operable on all networks, but only that new phones not be denied for rural carriers. PISC Reply at 13.

<sup>632</sup> Centennial Petition to Deny at 9; NTC A Petition to Deny at 8; OPASTCO and RICA Petition to Deny at 3, 8; Rural Carriers Petition at 15-16; Rural Cellular Association Petition to Deny at 15-17; Rural Telecommunications Group Petition to Deny at 28-30; South Dakota Telecommunications Association Petition to Deny at 14; Cellular South Reply at 23; *see also* Palmetto Petition to Deny at 29-31 (asking that the Commission require the merged entity to make handsets available for Tier III carriers); Rural Telecommunications Group Petition to Deny at 31 (same); PISC Petition to Deny at 12-13 (asking the Commission to give no weight to the Applicants' argument about availability of handsets for ALLTEL customers).

Cellular South suggests the merged entity should be required to terminate all exclusivity agreements or be prevented from entering new ones. Cellular South Reply at 20-25. Palmetto, PISC, and the Rural Cellular Association also urge the Commission to ask for comments on a Request for Rulemaking submitted by the Rural Carriers Association (continued....)

PISC also asserts that the loss of a major national wireless provider will mean fewer buyers for phone manufacturers, and an increased ability for those buyers to dictate “take it or leave it” terms to potential vendors, which may result in even fewer choices for subscribers across the entire wireless industry.<sup>633</sup> Several commenters note that the Rural Cellular Association recently filed a petition for a rulemaking addressing situations in which wireless providers negotiate with manufacturers to be the exclusive distributor of certain handsets.<sup>634</sup>

183. The Applicants assert that, because of Verizon Wireless’s large economies of scale, enhanced access to capital, and advanced technological software capabilities, ALLTEL’s customers will gain access to a wider variety of handsets.<sup>635</sup> Specifically, the Applicants assert that ALLTEL’s customers currently have access to only fifteen models of phones, nine personal digital assistants (“PDAs”)/Smartphones or Blackberry devices, and four PC cards,<sup>636</sup> while Verizon Wireless’s customers have access to 30 models of phones, thirteen PDAs/Smartphones or Blackberry devices, and 8 PC cards.<sup>637</sup> The Applicants points out that Verizon Wireless’s phones include devices that take advantage of the faster speeds on the EvDO Rev. A network.<sup>638</sup> The Applicants contend that, to the extent they use any contracts with manufacturers for exclusive access to certain handsets,<sup>639</sup> these contracts are beneficial for the public because they allow wireless providers to differentiate themselves and because, without them, handset manufacturers have no incentive to create new devices.<sup>640</sup>

184. The Applicants further argue that the Commission lacks authority under the Communications Act to impose conditions on handset contracts because these agreements are not agreements for the provision of communications or common carrier services.<sup>641</sup> The Applicants also assert that the proposed conditions – namely, preventing the merged entity from entering exclusive contracts with handset manufacturers – are not merger specific and will not prevent other wireless providers from entering exclusive agreements.<sup>642</sup> The Applicants contend the commenters’ desired goal of achieving “generic” phones available to all wireless providers is not possible because of technical differences between networks.<sup>643</sup> The Applicants therefore propose that rural wireless providers can

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addressing exclusivity arrangements for handsets. Palmetto Petition to Deny at 29; PISC Petition to Deny at 12; Rural Cellular Association Petition to Deny at 14-15.

<sup>633</sup> PISC Petition at 12.

<sup>634</sup> Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, filed by RCA, May 20, 2008.

<sup>635</sup> Application, Public Interest Statement at 20-21.

<sup>636</sup> *Id.* at 21.

<sup>637</sup> *Id.*

<sup>638</sup> *Id.*

<sup>639</sup> In their response to our Information Request, Verizon Wireless provides a list of its handset models and distribution numbers for the second quarter of 2008. *Id.* at Appendix B. [REDACTED]. *Id.* at 28. [REDACTED]. *Id.* Verizon Wireless does acknowledge that its handsets incorporate proprietary software and hardware governing the “look and feel” of the handset and that it sometimes uses handset colors that are exclusive for Verizon Wireless. *Id.*

<sup>640</sup> Joint Opposition at 73-74.

<sup>641</sup> *Id.* at 72.

<sup>642</sup> *Id.* at 74.

<sup>643</sup> *Id.*

address many of the issues they present by banding together, increasing their purchasing power and their ability to enter exclusivity arrangements of their own.<sup>644</sup>

185. *Discussion.* We find that the commenters' proposed conditions prohibiting exclusive handset contracts are not narrowly tailored to prevent a transaction-specific harm and are more appropriate for a rulemaking proceeding where all interested parties have an opportunity to file comments. As noted above, the Rural Carriers Association has filed a petition asking the Commission to review exclusive handset agreements on an industry-wide basis.<sup>645</sup> The harms alleged by the commenters in the proceeding are more appropriately addressed in that general proceeding. We therefore decline to condition the transaction on such a condition.

### C. Open Development Initiative (ODI)

186. PISC raises concerns regarding the merged entity's network openness and argues the transaction will provide Verizon Wireless unprecedented power over the equipment and application markets that the Commission must remedy.<sup>646</sup> It therefore urges the Commission to condition its approval of the transaction on requirements similar to those governing the development of the C Block from the 700 MHz auction to all its systems, including those acquired from ALLTEL.<sup>647</sup> PISC also suggests that the Commission mandate that Verizon Wireless extend ODI – Verizon Wireless's program in which it allows anyone to design devices or applications for Verizon Wireless's network so long as the device completes a certification process to ensure it meets certain technical specifications<sup>648</sup> – to all its services and that Verizon Wireless tie ODI to specific benchmarks.<sup>649</sup>

187. The Applicants respond that Verizon Wireless intends to comply with the requirements for the 700 MHz C Block, but that the Commission has already rejected requests to expand C Block requirements on other spectrum bands.<sup>650</sup> Moreover, the Applicants argue, expanding the C Block's requirements to this transaction would undermine the Commission's preference for relying on market forces to foster competition,<sup>651</sup> and, in any event, the industry is already moving towards more open platforms.<sup>652</sup> The Applicants also point out that ODI is a separate, voluntary program that will benefit ALLTEL customers<sup>653</sup> and is unrelated to the rules relating to the C Block.<sup>654</sup> In its reply to our

<sup>644</sup> *Id.* at 74-75. Cellular South argues that even if rural carriers were to work together to try to negotiate exclusive contracts, they still would not be able to amass as much purchasing power as the merged entity. Cellular South Reply at 24-25.

<sup>645</sup> See *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by RCA, May 20, 2008; *Wireless Telecommunications Bureau Seeks Comment On Petition For Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers And Handset Manufacturers*, *Public Notice*, DA 08-2278 (Oct. 10, 2008).

<sup>646</sup> PISC Reply at 5-6.

<sup>647</sup> See 27 C.F.R. §27.16.

<sup>648</sup> Information Request Response at 23.

<sup>649</sup> PISC Petition to Deny at 13-14; see also Consumers Union Comments at 2 (expressing concern that Verizon Wireless will not implement ODI by the end of 2008 as originally pledged); Comments of the Computer and Communications Industry Association at 1 (filed Oct. 27, 2008) (urging the Commission to adopt "openness conditions that promote portability of devices among wireless networks")

<sup>650</sup> Joint Opposition at 67.

<sup>651</sup> *Id.* at 67-68.

<sup>652</sup> *Id.* at 68-69.

<sup>653</sup> Application, Public Interest Statement at 10.

Information Request, Verizon Wireless explains that it plans to have devices designed under ODI run on the LTE platform in the 700 MHz spectrum band, thus increasing speeds and data throughput.<sup>655</sup>

188. *Discussion.* We do not believe that PISC has demonstrated that this transaction will cause the potential harms it seeks to remedy. Nothing in the record demonstrates that this transaction will harm consumers by making Verizon Wireless's network either more or less open. Moreover, ODI is a program that Verizon Wireless created voluntarily and is not affected by the transaction. We therefore decline to require Verizon Wireless to extend its existing ODI program to other services or to tie our approval of the transaction to benchmarks for the development of ODI. With regard to the open platform requirements set out for the C Block, we concluded in the *700 MHz Second Report and Order* that the 700 MHz auction was "an important opportunity to apply requirements for open platforms for devices and applications for the benefit of consumers," but we also stated our desire to avoid "unduly burdening existing services and markets."<sup>656</sup> PISC's suggestion that we extend these conditions to all of Verizon Wireless's spectrum holdings is not merger-specific and could undermine our goal of not unduly burdening existing services and markets.

#### D. Network Openness

189. The Applicants assert that the transaction will benefit rural customers by deploying high-speed wireless broadband technology to rural areas, many of which do not currently have access to this technology.<sup>657</sup> They contend that Verizon Wireless's use of EvDO Rev. A technology will allow ALLTEL customers in rural areas to download files by up to twenty times faster than customers of other wireless providers.<sup>658</sup> They also claim that the transaction will allow the merged entity to deploy LTE technology more quickly than ALLTEL could in rural areas.<sup>659</sup>

190. PISC suggests that, because extending mobile broadband services to ALLTEL customers is one of the Applicants' claimed public interest benefits of the transaction, the Commission should extend the principles in the Commission's *Internet Policy Statement*<sup>660</sup> to wireless broadband services.<sup>661</sup> PISC contends that the Commission should impose the principles in the *Internet Policy Statement* in this proceeding because they allow a granular examination of the relevant marketplace.<sup>662</sup> The Applicants respond that PISC's request for a "neutrality" requirement in this transaction, but not in the Sprint Nextel-Clearwire proceeding, demonstrates an attempt to manipulate the transaction process to hamper certain wireless providers in favor of its more preferred competitors.<sup>663</sup> The Applicants' further argue that "Network Neutrality" conditions are not specific to this transaction and that the *Internet Policy*

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<sup>654</sup> Joint Opposition at 67.

<sup>655</sup> Information Request Response at 22.

<sup>656</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, FCC 07-132, at ¶ 195 (2007) ("*700 MHz Second Report and Order*").

<sup>657</sup> Application, Public Interest Statement at 11-13.

<sup>658</sup> *Id.* at 12.

<sup>659</sup> *Id.* at 12-13.

<sup>660</sup> *Internet Policy Statement*, 20 FCC Rcd I4986 (2005).

<sup>661</sup> PISC Petition to Deny at 17-18.

<sup>662</sup> PISC Reply at 6-7. PISC adds that the Commission has already taken a similar action in the *AT&T-BellSouth Order*.

<sup>663</sup> Joint Opposition at 65-66.

*Statement* has never been—and should not be—applied to wireless broadband.<sup>664</sup> Finally, the Applicants argue that the concerns raised by PISC are more appropriately addressed in a rulemaking proceeding because otherwise, the merged entity will be unfairly constrained as opposed to the rest of the market.<sup>665</sup>

191. *Discussion.* We decline to impose the broader conditions as requested by PISC. In previous cases where compliance with the *Internet Policy Statement* was made a condition for approval of a transaction, the transactions involved service providers who had voluntarily agreed to the condition in question.<sup>666</sup> In this instance, we see no benefit associated with making compliance with the *Internet Policy Statement* a condition of approval of this transaction and PISC fails to cite any precedent for such a potentially sweeping review requirement.

### E. Universal Service Support

192. The Federal-State Joint Board on Universal Service (“Joint Board”) and the Commission have each recognized and addressed the need to control the explosive growth in high-cost universal service support disbursements to competitive ETCs.<sup>667</sup> Based on the recommendations of the Joint Board, on May 1, 2008, the Commission adopted an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive.<sup>668</sup> Specifically, as of August 1, 2008, total annual high-cost competitive ETC support for each state is capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis.<sup>669</sup> The Commission also adopted two limited exceptions from the specific application of the interim cap.<sup>670</sup> First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier.<sup>671</sup> Second, the Commission adopted a limited exception to competitive ETCs serving tribal lands or Alaska Native regions.<sup>672</sup> The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform, which is currently being considered in a pending rulemaking.<sup>673</sup>

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<sup>664</sup> *Id.* at 69-70.

<sup>665</sup> *Id.* at 71.

<sup>666</sup> See Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18509 ¶ 143 (2005); SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18368 ¶ 144 (2005).

<sup>667</sup> See Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 8998, 8998 ¶ 1 (Fed.-State Jt. Bd. 2007) ; see also *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19520 ¶ 8.

<sup>668</sup> High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Order*, 23 FCC Rcd 8834 (2008) (“*USF Interim Cap Order*”).

<sup>669</sup> A summary was published in the Federal Register on July 2, 2008, establishing an effective date of August 1, 2008. See 73 Fed. Reg. 37882 (July 2, 2008).

<sup>670</sup> *USF Interim Cap Order*, 23 FCC Rcd at 8834 ¶ 1.

<sup>671</sup> *Id.*

<sup>672</sup> *Id.*

<sup>673</sup> *Id.* The Commission is required by statute to act within one year after receiving a recommendation from the Joint Board. 47 U.S.C. § 254(a)(2). See also High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rule Making*, 23 FCC Rcd 1531 (2008) (“*Joint Board Recommended Decision NPRM*”); High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rule Making*, (continued....)

193. *Record.* Some commenters argue that the Commission should require Verizon Wireless, as a condition of the Commission's consent to the applications, to demonstrate costs of providing universal service on a state-by-state basis to receive high-cost support,<sup>674</sup> or to forgo it entirely.<sup>675</sup> They claim that such a condition is appropriate in light of the fact that the largest portion of competitive ETC high-cost universal service support is received by ALLTEL,<sup>676</sup> and also by the Applicants' estimate of \$10 billion in savings from the current transaction.<sup>677</sup> They further argue that Verizon Wireless, as the largest wireless provider with almost \$100 billion in annual revenues, is not in need of federal subsidies to serve low-density, high-cost markets.<sup>678</sup>

194. The Applicants disagree, stating that such conditions are not merger-specific but industry-wide and thus irrelevant to the Commission's review of the proposed transaction.<sup>679</sup> They point out that, to address the rapid growth of high-cost universal service disbursements to competitive ETCs, the Commission has already imposed an interim cap on all competitive ETC high-cost funding and is currently considering industry-wide reform of the assessment and distribution of high-cost ETC support.<sup>680</sup> They also claim that the state-by-state cost demonstration requirement that some commenters propose would establish an entirely new ETC designation process and reimbursement system, which, however, is the authority of the state, and should not, in any event, target only one entity.<sup>681</sup>

195. Some commenters respond that the suggested conditions are appropriate, considering the fact that the Commission previously imposed a cap on ALLTEL's high-cost support in a merger proceeding, despite the pendency of a rulemaking addressing the same issue.<sup>682</sup> They also state that the imposition of a cost demonstration requirement is not an entirely new ETC designation process outside the purview of the Commission, since the same requirement is currently being considered by the Commission in an ongoing rulemaking proceeding on comprehensive high-cost universal service reform.<sup>683</sup>

196. Despite its objections to the imposition of conditions regarding high-cost competitive ETC support, Verizon Wireless, in order to provide further assurance that the proposed transaction is in

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23 FCC Rcd 1467 (2008) ("*Identical Support NPRM*"); High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rule Making*, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions NPRM*") (collectively "*USF Reform NPRMs*").

<sup>674</sup> See Palmetto Petition to Deny at 28; Rural Carriers Petition at 19; Rural Telecommunications Group Petition to Deny at 27; South Dakota Telecommunications Association Petition at 7, 18.

<sup>675</sup> See NTCA Petition to Deny at 7; Palmetto Petition to Deny at 26-27; Rural Telecommunications Group Petition to Deny at 24-26.

<sup>676</sup> Some commenters state that even with the interim cap order, ALLTEL's high-cost support is likely to stay the same. See Rural Telecommunications Group Reply at 18.

<sup>677</sup> See Rural Carriers Petition at 17, 19; South Dakota Telecommunications Association Petition to Deny at 15, 17. We note that the Applicants have stated in the Application and Information Request Response that they expect the transaction to result in \$9 billion in savings. See discussion *supra* para. 147.

<sup>678</sup> See NTCA Petition to Deny at 7; Palmetto Petition to Deny at 26; Rural Telecommunications Group Petition to Deny at 25.

<sup>679</sup> See Joint Opposition at 43.

<sup>680</sup> See *id.* at 75-76.

<sup>681</sup> See *id.*

<sup>682</sup> See Rural Carriers Reply at 14; South Dakota Telecommunications Association Reply at 7-8.

<sup>683</sup> See Rural Carriers Reply at 25.

the public interest, has committed “to accept a phase down of competitive [ETC] high cost support, for any properties which Verizon Wireless retains, over a five year period following closing of the transaction.”<sup>684</sup> Specifically, Verizon Wireless commits to a five year transition during which Verizon Wireless’s competitive ETC high cost support would be phased out in equal increments,<sup>685</sup> as follows:

- Support would be reduced 20 percent beginning 30 days following the closing of the transaction, or no later than December 31, 2008, whichever is earlier. If the transaction does not close prior to December 31, 2008, support would be reduced 20 percent beginning the day after consummation.
- Support would be reduced in equal 20 percent increments annually thereafter, such that all competitive ETC high cost support would be phased out five years after the closing of the transaction.

With regard to this phase down of competitive ETC high cost support, Verizon Wireless states its understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs and that, if the Commission adopts a different transition mechanism or a successor mechanism to the currently capped equal support rule in a rulemaking of general applicability, then that rule of general applicability would apply instead.<sup>686</sup>

197. *Discussion.* The proposed transaction constitutes a merger of the largest wireless company in the United States, based on revenues,<sup>687</sup> as well as the number of retail customers,<sup>688</sup> with another wireless company that is the largest recipient of the high-cost competitive ETC support.<sup>689</sup> Such unique facts and large scope of this transaction compel us to condition our approval of the proposed transaction on Verizon Wireless’s commitment to phase down its competitive ETC high cost support over five years, as discussed herein. In light of Verizon Wireless’s voluntary commitment, we decline to impose a condition that, prior to receipt of such funding, Verizon Wireless demonstrate costs of providing universal service. We find that Verizon Wireless’s voluntary commitment to phase down competitive ETC high cost support over five years is sufficient to relieve commenters’ concerns. We also note that the Commission is currently considering this issue, along with others, in a rulemaking on comprehensive high-cost universal service reform.<sup>690</sup>

## F. E911

198. On November 20, 2007, the Commission released a Report and Order (“*Location Accuracy Order*”) requiring wireless licensees subject to section 20.18(h) of the Commission’s rules,<sup>691</sup> which specifies the standards for wireless Enhanced 911 (E911) Phase II location accuracy and reliability, to satisfy these standards at a geographical level defined by the coverage area of a Public

<sup>684</sup> Verizon Wireless November 3, 2008 *Ex Parte* Letter at 1.

<sup>685</sup> *Id.*

<sup>686</sup> *Id.* at 1-2.

<sup>687</sup> See Verizon Form 10-K at 7; Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

<sup>688</sup> See Verizon Form 10-K at 7; Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

<sup>689</sup> See *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521 ¶ 9.

<sup>690</sup> See *USF Reform NPRMs*, 23 FCC Rcd at 1531 ¶ 1, 23 FCC Rcd at 1468 ¶ 1, 23 FCC Rcd at 1496 ¶ 1. We also acknowledge that currently there is an interim cap imposed on ETC support for all USF recipients, including Verizon Wireless and ALLTEL, which superseded the interim cap adopted in the *ALLTEL-Atlantis Order*. *USF Interim Cap Order*, 23 FCC Rcd at 8837 n.21 (2008).

<sup>691</sup> 47 C.F.R. § 20.18(h).

Safety Answering Point (“PSAP”).<sup>692</sup> On March 25, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court) stayed the *Location Accuracy Order*.<sup>693</sup>

199. On July 14, 2008, the Association of Public-Safety Communications Officials – International (“APCO”) and the National Emergency Number Association (“NENA”) filed an *ex parte* letter addressing handset-based and network-based location accuracy criteria, stating that they “are now willing to accept compliance measurements at the county level” rather than at the PSAP level, and that “[p]ublic safety and wireless carriers are in current discussions on a number of other issues associated with E9-1-1.”<sup>694</sup> On July 31, 2008, the Commission filed with the Court a Motion for Voluntary Remand and Vacatur, which requested remand based on the proposals contained in the July 14, 2008 E911 *Ex Parte* Letter and “[i]n light of the public safety community’s support for revised rules.”<sup>695</sup> Following this filing with the Court, NENA, APCO, Verizon Wireless, Sprint Nextel, and AT&T Mobility submitted written *ex parte* letters with the Commission with proposed new wireless E911 rules.<sup>696</sup> Taken together, these proposals reflect agreement among those parties for new E911 accuracy requirements for both handset-based and network-based technologies, in order to achieve E911 accuracy compliance at the county-level.

200. On November 3, 2008, Verizon Wireless filed a letter committing to meet the improved wireless E911 location accuracy measures that it proposed jointly with NENA and APCO.<sup>697</sup> Verizon Wireless commits that:

- Two years after closing of the transaction, on a county-by-county basis, 67 percent of Phase II calls must be accurate to within 50 meters in all counties; 80 percent of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that a carrier may exclude up to 15 percent of counties from the 150 meter

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<sup>692</sup> Wireless E911 Location Accuracy Requirements, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling, 911 Requirements for IP-Enabled Service Providers, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, *Report and Order*, 22 FCC Rcd 20105 (2007) (“*Location Accuracy Order*”).

<sup>693</sup> *Rural Cellular Association and T-Mobile USA, Inc. v. Federal Communications Commission and the United States of America*, No. 08-1069, slip op. at 1 (DC Cir. Mar. 25, 2008) (per curiam).

<sup>694</sup> *Ex Parte* Letter from Willis Carter, President, APCO, and Ronald Bonneau, President, NENA, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC, PS Docket No. 07-114, (July 14, 2008), at 1-2 (“July 14, 2008 E911 *Ex Parte* Letter”).

<sup>695</sup> Motion of Federal Communications Commission for Voluntary Remand and Vacatur, *Rural Cellular Association and T-Mobile et al v. Federal Communications Commission and United States of America*, No. 08-1069 (D.C. Cir. July 31, 2008). On September 17, 2008, the Court granted the Commission’s request. Order Granting Mot. Rem. (Sept. 17, 2008).

<sup>696</sup> *Ex Parte* Letter from Brian Fontes, CEO, NENA, Robert M. Gurs, Director, Legal and Government Affairs, APCO, and John T. Scott, II, VP and Deputy General Counsel, Verizon Wireless to The Honorable Kevin Martin, Chairman, Federal Communications Commission, PS Docket No. 07-114, at 1 (Aug. 20, 2008); *Ex Parte* Letter from Brian Fontes, CEO, NENA, Robert M. Gurs, Director, Legal and Government Affairs, APCO, and Robert W. Quinn, Jr., Senior VP – Federal Regulatory, AT&T, to The Honorable Kevin Martin, Chairman, Federal Communications Commission, PS Docket No. 07-114, at 1 (Aug. 25, 2008). In addition, the parties pledged to convene, “within 180 days of the Commission’s order [adopting new location accuracy standards], an industry group to evaluate methodologies for assessing wireless E9-1-1 location accuracy for calls originating indoors and report back to the Commission within one year.” *Id.*

<sup>697</sup> See Verizon Wireless November 3, 2008 *Ex Parte* Letter at 2.

requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.

- Eight years after closing of the transaction, on a county-by-county basis, 67 percent for Phase II calls must be accurate to within 50 meters in all counties; 90 percent of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that a carrier may exclude up to 15 percent of counties from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.

201. In light of the important public safety benefits to be derived from improved E911 location accuracy requirements and Verizon Wireless's voluntary commitments in this proceeding, we condition our approval of this transaction on Verizon Wireless's compliance with the E911 location accuracy proposal set forth in the Verizon Wireless November 3, 2008 *Ex Parte* Letter.<sup>698</sup> We find that such condition will further ensure that consummation of the proposed transaction serves the public interest, convenience, and necessity.

### G. Radiofrequency Exposure

202. Pursuant to the National Environmental Policy Act of 1969 ("NEPA"),<sup>699</sup> the Commission has established guidelines for human exposure to radiofrequency ("RF") radiation.<sup>700</sup> The guidelines were designed to regulate the amount of RF radiation to which humans may be exposed by various transmitters regulated by the Commission.<sup>701</sup> The current, more restrictive, guidelines were finalized in 1997, based on the recommendations and advice of federal agencies and groups with expertise in health-related areas and in standards setting.<sup>702</sup> More recently, the Commission updated its procedures for measuring RF exposure from mobile and portable devices.<sup>703</sup> These procedures are based on the work and recommendations of an expert group of the Institute of Electrical and Electronics Engineers (IEEE).<sup>704</sup>

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<sup>698</sup> *See id.*

<sup>699</sup> 42 U.S.C. §§ 4321 *et seq.*

<sup>700</sup> 47 C.F.R. §§ 1.1307(b), 1.1310, 2.1091, 2.1093.

<sup>701</sup> Responsibility of the Federal Communications Commission to Consider Biological Effects of Radiofrequency Radiation when Authorizing the Use of Radiofrequency Devices; Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation on FCC-Authorized Communications Services and Equipment, *Report and Order*, 100 FCC 2d 543 (1985) ("*RF Report & Order*"); on reconsideration, FCC 85-467, 58 RR 2d 1128 (Aug. 22, 1985).

<sup>702</sup> Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, *Report and Order*, 11 FCC Rcd 15123 (1996); Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(V) of the Communications Act of 1934; Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, *Second Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 13494 (1997), *aff'd sub nom.* Cellular Taskforce v. FCC, 205 F.3d 82 (2d Cir. 2000).

<sup>703</sup> Office of Engineering and Technology Announces Release of Revised Supplement C to OET Bulletin 65, *Public Notice*, 16 FCC Rcd 21553 (OET 2001); Office of Engineering and Technology Announces a Transition Period for the Phantom Requirements of Supplement C to OET Bulletin 65, *Public Notice*, 17 FCC Rcd 11287 (OET 2002).

<sup>704</sup> The IEEE Standards Coordinating Committee 34, Subcommittee 2 is convened specifically to develop procedures for evaluating the Specific Absorption Rate of RF emissions from wireless handsets.

203. The RF limits for general population/uncontrolled exposure are set forth in Section 1.1310 of the Commission Rules.<sup>705</sup> When these limits are exceeded, licensees are required to cooperate with owners of transmitter sites and other licensees at the same location to take necessary steps to control access to such areas.<sup>706</sup>

204. *Background.* On August 8, 2008, the EMR Policy Institute (“EMRPI”) filed a petition to deny the applications until the current Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (ET 93-62) are updated in compliance with NEPA.<sup>707</sup> EMRPI argues that the current guidelines are obsolete and inadequately protect the general public as well as workers who perform their jobs near transmitter sites.<sup>708</sup> EMRPI states that the impact of long-term RF exposure on human health has not been addressed by the Commission.<sup>709</sup> EMRPI asks the Commission to conduct a thorough comprehensive research and study of the guidelines’ impact on human health using a biological approach as specified in its petition.<sup>710</sup> EMRPI claims that the Commission, in formulating the current guidelines, relied on a deficient research record.<sup>711</sup> Therefore, EMRPI requests that the Commission review the research studies cited in and attached to its petition before approving the proposed transaction.<sup>712</sup> Lastly, EMRPI requests that the Commission to deny the proposed transaction until Verizon Wireless “demonstrates that it has implemented an RF safety solution that protects the public and all categories of workers whose workplaces are found near [Verizon Wireless’s] antenna sites.”<sup>713</sup> EMRPI does not specifically claim that Applicants are not in compliance with the current rules on RF exposure.

205. The International Brotherhood of Electrical Workers (“IBEW”), on the other hand, requests that the Commission deny the applications claiming that the Applicants, while in compliance with the Commission’s RF guidelines with respect to their own employees, have not provided the same safeguards to third-party workers who perform their job tasks in the vicinity of the Applicants’ transmitters.<sup>714</sup>

206. In their Opposition, the Applicants state that EMRPI’s Petition should be denied because it raises an industry-wide, rather than transaction-specific, issue and is therefore better addressed in a

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<sup>705</sup> 47 C.F.R. §1.1310.

<sup>706</sup> *Id.* §1.1307(c).

<sup>707</sup> The EMR Policy Institute, Petition to Deny, at 1, 2 and 15 (filed Aug. 8, 2008) (“EMRPI Petition to Deny”).

<sup>708</sup> *See id.* at 2, 3.

<sup>709</sup> *See id.* at 1.

<sup>710</sup> *See id.* at 2, 3.

<sup>711</sup> *See id.* at 4.

<sup>712</sup> *See id.* at 15.

<sup>713</sup> *Id.*

<sup>714</sup> *See* Comments of the International Brotherhood of Electrical Workers at 2-3. In the alternative, IBEW requests that the Commission’s consent to the applications should be conditioned on “the merged company immediately adopt[ing] a nation-wide RF safety system that protects all workers.” *Id.* at 3. We note, however, that IBEW’s filing does not meet the requirements of a petition to deny set forth in Section 309(d)(1) of the Communications Act of 1934, as amended, because it is not supported by an affidavit of a person with personal knowledge of the specific allegations of fact. 47 U.S.C. § 309(d)(1). However, pursuant to Section 1.41 of the Commission’s Rules, we will treat the IBEW’s submission as an informal request for Commission action and consider arguments raised therein. 47 C.F.R. §1.41.

separate rulemaking proceeding on a revision of the current RF exposure rules.<sup>715</sup> They also raise EMRPI's previous unsuccessful attempt to challenge in court the Commission's denial to initiate a proceeding to gather information and opinion about the need to revise the rules.<sup>716</sup> In response to IBEW's allegations of noncompliance with the RF exposure requirements with respect to third-party workers, the Applicants explain that Verizon Wireless and ALLTEL have comprehensive programs under which each site is evaluated for compliance with RF exposure rules prior to activation or modification, including access restrictions, signage or entry barriers if RF limits are exceeded.<sup>717</sup> The Applicants further state that these safeguards are communicated to landlords who are instructed to contact the Applicants if access to restricted areas is needed.<sup>718</sup> Additionally, the Applicants state that third parties conduct audits to "monitor regional implementation of the program, compliance with FCC/Occupational Safety and Health Administration regulations, and overall effectiveness of the RF compliance program."<sup>719</sup>

207. *Discussion.* We agree with the Applicants that this is an inappropriate Commission proceeding to consider the issues raised by EMRPI. Possible revision of the RF standards, which apply broadly across the industry, is not an issue specific to this transaction. In addition, in 2001, the Office of Engineering and Technology denied EMRPI's request to initiate a proceeding to gather information and opinion about the need to revise the rules,<sup>720</sup> which was upheld by the Commission on review in 2003,<sup>721</sup> and affirmed by the United States Court of Appeals for the District of Columbia Circuit in 2005.<sup>722</sup> Finally, Commission staff continuously monitors scientific developments in this area, and coordinates with other federal agencies, such as the Food & Drug Administration, with expertise on the underlying health and safety issues involved with RF exposure.

208. When authorizing the use of radiofrequency devices, the Commission is obligated to ensure that applicable health and safety guidelines for RF exposure are followed and the general public, including all categories of workers who perform jobs near antenna sites, is adequately protected.<sup>723</sup> The Commission will continue to enforce the RF exposure rules where necessary and work closely with federal agencies and expert groups to review and revise the rules as appropriate. We are unpersuaded by IBEW's allegations that the Applicants are not in compliance with the current RF exposure rules with respect to third-party workers. In addition, to the extent that IBEW is asking the Commission to establish more specific requirements to protect third-party workers in the vicinity of base station transmitters hidden in such locations as church steeples, we find that is not specific to this particular transaction. Therefore we also deny IBEW's request to deny the applications or to condition the Commission's consent.

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<sup>715</sup> See Joint Opposition at 82.

<sup>716</sup> See *id.*; see also *EMR Network v. Federal Communications Commission*, 391 F.3d 269 (D.C. Cir. 2004), *cert. denied* 545 U.S. 1116 (2005).

<sup>717</sup> See Joint Opposition at 83.

<sup>718</sup> See *id.*

<sup>719</sup> *Id.*

<sup>720</sup> Letter from Bruce A. Franca to James R. Hobson, (Dec. 11, 2001).

<sup>721</sup> *EMR Network, Order*, 18 FCC Rcd 16,822 (2003).

<sup>722</sup> *EMR Network v. Federal Communications Commission*, 391 F.3d 269 (D.C. Cir. 2004), *cert. denied* 545 U.S. 1116 (2005).

<sup>723</sup> See *RF Report & Order*, 100 FCC 2d at 543 ¶¶ 1, 9.

## H. Violation of Anti-Trafficking Rules

209. Section 1.948(i) of the Commission's Rules states that "[a]pplications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations."<sup>724</sup> It defines trafficking or warehousing as "obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use."<sup>725</sup> The anti-trafficking rules provide that Commission review for the purposes of determining whether trafficking has occurred is discretionary.<sup>726</sup>

210. *Background.* Arkansas Limited Partners assert that Atlantis engaged in trafficking of the ALLTEL licenses and authorizations in violation of the Commission's Rules.<sup>727</sup> They claim that the timing of the proposed merger relative to the Commission's approval of Atlantis' acquisition of ALLTEL, evidences a "classic situation where trafficking is likely to have occurred."<sup>728</sup> Specifically, Arkansas Limited Partners state that "[a]s a practical matter, negotiations concerning a transaction as complex as the one involved in this proceeding most likely would have commenced very soon after – if not actually *before* – Commission approval of the Alltel acquisitions by Atlantis in late 2007."<sup>729</sup> They further state that there is a "strong *inference* of improper conduct [from] Atlantis' utter failure during the [period following Commission approval] to take any steps to reform company operations normally associated with acquisitions by private equity investors."<sup>730</sup>

211. The Applicants assert that these allegations are untrue and argue that Arkansas Limited Partners failed to meet the Commission's standard for grant of a petition to deny.<sup>731</sup> Moreover, they argue that the anti-trafficking rule is aimed at "preventing the speculative acquisition and abusive sale of *unbuilt* licenses *obtained via lotteries or using auction preferences*, such as set-asides, installment plans or bidding credits,"<sup>732</sup> and is thus inapplicable here.<sup>733</sup> Arkansas Limited Partners respond that the anti-

<sup>724</sup> 47 C.F.R. § 1.948(i).

<sup>725</sup> *Id.* § 1.948(i)(1). The Commission may require applicants to submit an affirmative showing demonstrating that the assignor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. *Id.* § 1.948(i)(2).

<sup>726</sup> *See id.* § 1.948(i) (stating that "[a]pplications for approval of assignment or transfer *may* be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations." (emphasis added)).

<sup>727</sup> Arkansas Limited Partners Petition to Deny at 5-6. Arkansas Limited Partners also request that the applications be designated for a hearing. *See id.* at 5.

<sup>728</sup> *Id.* at 5.

<sup>729</sup> *Id.* (emphasis in original).

<sup>730</sup> *Id.* at 5-6 (emphasis added).

<sup>731</sup> Joint Opposition at 84.

<sup>732</sup> *Id.* at 88-89 (emphasis in original) (citing Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc., Debtor in-Possession, to Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 21 FCC Rcd 15050, 15059 ¶ 22 (2006); Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703, n. 8 (2006); Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Report and Order*, 17 FCC Rcd 18401, 18346-48 (¶¶ 70-74) (2002)). The Applicants also state that all but one of the cellular and PCS licenses held by ALLTEL have been constructed. *See id.*

trafficking rule is not confined to speculative sales of unbuilt facilities or transactions by designated entities receiving bidding preferences.<sup>734</sup> It also claims that the Applicants' reliance of the legislative history of Section 309(j) of the Communications Act of 1934, as amended, is misplaced, because this section is relevant only to the Commission's authority to award licenses via competitive bidding.<sup>735</sup>

212. *Discussion.* We find Arkansas Limited Partners' allegations insufficient to support a petition to deny. Under section 1.939(d) of the Commission's rules, a petition to deny must "contain specific allegations of fact sufficient to make a *prima facie* showing that . . . a grant of the application would be inconsistent with the public interest, convenience and necessity."<sup>736</sup> Arkansas Limited Partners base their trafficking allegations solely on speculation that Atlantis must have commenced negotiations with Verizon Wireless very soon after – if not before – the Commission approved of Atlantis's acquisition of ALLTEL and on inferences from Atlantis's failure to reform ALLTEL's operations as anticipated.<sup>737</sup> Arkansas Limited Partners' allegations are too speculative to support its petition to deny.<sup>738</sup>

### I. Independent Resellers

213. Tom Dickson of North American Business Brokers, Inc. expressed a concern that due to a planned divestiture of ALLTEL's business units in parts of the state of Minnesota, dozens of independent ALLTEL resellers in rural Minnesota will be negatively impacted, unless the Commission ensures that "ALLTEL resellers have a major cell phone provider that they can competitively represent in the rural markets."<sup>739</sup> A related concern was voiced by the Wireless Business Owners Consortium ("WiBOC") which fears that, upon the completion of the proposed transaction, Verizon Wireless will be able to "indiscriminately close down independent ALLTEL resellers."<sup>740</sup> WiBOC requests that ALLTEL resellers should be afforded the opportunity to continue doing business with the merged entity under its like dealer program.<sup>741</sup>

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<sup>733</sup> Joint Opposition at 88-89.

<sup>734</sup> See Arkansas Limited Partners Reply at 10-13. Arkansas Limited Partners state that there is "no logical reason to confine the offense of trafficking to unbuilt stations, since . . . there is a longstanding public policy against treating licensed communications facilities as mere commodities to be bought and sold for profit." *Id.* at 10. Arkansas Limited Partners also assert that the applications should be denied because, based on the current record, Applicants failed to demonstrate that Atlantis will not realize any profit from the proposed transaction. *Id.* at 3, 12-14.

<sup>735</sup> See Arkansas Limited Partners Reply at 11.

<sup>736</sup> 47 C.F.R. § 1.939(d).

<sup>737</sup> Arkansas Limited Partners Petition to Deny at 5-6. We note that some of the documentation submitted by Arkansas Limited Partners fails to support a finding of authorization trafficking. See, e.g., Allie Winter, *Third time's a charm VZW to Acquire ALLTEL*, RCR WIRELESS, June 9, 2008, available at <http://www.rcrnews.com/article/20080609/SUB/905502577> (last visited October 10, 2008) (regarding investors' potential profit from sale of ALLTEL to Verizon Wireless "[i]t basically boils down to the equity investors making little or no more than what they paid for Alltel last year").

<sup>738</sup> See, e.g., Thomas K. Kurian RF Data, Inc., *et al.*, Order, 18 FCC Rcd 21949, 21954 ¶ 16 (PSPWD 2003) (denying commenters' trafficking allegation because of its "generalized, unfounded and speculative nature").

<sup>739</sup> Electronic message dated September 16, 2008 from Tom Dickson, North American Business Brokers, Inc. to Carl Kuhl, Constituent Policy Liaison, Office of Senator Norm Coleman.

<sup>740</sup> Letter from Mark Landiak, Executive Director, the Wireless Business Owners Consortium, to Erin McGrath, Mobility Division, and Susan Singer, Spectrum Competition and Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, at 1 (August 27, 2008).

<sup>741</sup> See *id.* at 2.

214. The divestiture of ALLTEL's business units in parts of Minnesota would involve a divestiture of its entire business in those markets, including reseller agreements.<sup>742</sup> The agreements will be a part of the assets purchased by an acquirer of a divested market. Verizon Wireless, or the acquirer of a divested market, will replace ALLTEL as a party in all ALLTEL's reseller agreements. To the extent and if the terms of such agreements are violated by either party, *i.e.*, a reseller, Verizon Wireless, or an acquirer (in case of reseller agreements in divested markets), such matters constitute private contractual disputes, that are best resolved by a local court of competent jurisdiction.<sup>743</sup> Therefore, we believe that the Commission is not the proper forum to consider the issues raised by Mr. Dickson and WiBOC. Moreover, we trust Verizon Wireless that it will ensure that the service to current ALLTEL's customers, including their ability to purchase new devices from resellers, will not be disrupted. For these reasons, we decline to impose the requested conditions.

#### J. Procedural Matters

215. *Initial Screen Rulemaking.* Leap Wireless and others also make a procedural argument, contending that the Commission should not change the spectrum screen except through a rulemaking proceeding.<sup>744</sup> These commenters argue that the Commission must consider a range of issues before changing the screen, namely, under what circumstances should new spectrum be added to the screen, whether the screen needs to be more generally revised to include a "hard cap" for spectrum, and whether the analysis should include a showing of efficient use of previously-owned spectrum.<sup>745</sup>

216. We reject Leap Wireless's argument that a rulemaking proceeding must be undertaken to revise the spectrum screen. As Leap Wireless itself recognizes, the Commission has broad authority to decide whether to proceed by adjudication or rulemaking.<sup>746</sup> We also have an established standard for determining whether a particular band should be included in the screen. As these transactions demonstrate, the facts concerning suitability of bands for mobile communications service are dynamic and can change over time. We find that the appropriate course is to review our screen on a transaction-by-transaction basis, review comments seeking changes to a screen, and make any changes that are appropriate when we consider a transaction.

217. *Commission Consideration of the Proposed Transaction and Amendments to Applications Based on DOJ Proceeding.* Cellular South claims that "the applications have become 'contingent' on the outcome of Verizon Wireless's discussions with the DOJ" regarding divestitures and

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<sup>742</sup> See generally discussion *supra* Part VII.A. In paragraph 159 above, we stated specifically that we will require the Applicants to divest all licenses, leases, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers, customers, all fixed assets, goodwill, and all spectrum associated therewith, of either Verizon Wireless or ALLTEL, in certain markets.

<sup>743</sup> See, e.g., A.L.Z. Broadcasting, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 23200, 23201 ¶ 3 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted); Verestar, Inc., *Memorandum Opinion, Order, and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (IB & WTB 2004) (declining to defer action on assignment applications pending resolution of litigation, noting it is "long-standing Commission policy not to involve itself with private contractual disputes") (citations omitted).

<sup>744</sup> Leap Wireless Petition to Deny at 5-6; Leap Wireless Reply at 11-12; see also Rural Carriers Reply at 6 (arguing that if "the current screen mechanism must be replaced, a matter so fundamental should be the subject of a rule making prior to any action on the instant merger petition."); Rural Telecommunications Group Reply at 8-9.

<sup>745</sup> Leap Wireless Petition to Deny at 5-6.

<sup>746</sup> *Id.* at 6 (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)).

argues that “no action can be taken until the DOJ review process concludes.”<sup>747</sup> Cellular South also states that the Commission “must accommodate the concurrent jurisdiction of the DOJ by deferring to the DOJ’s determination that the effect of [the] proposed merger may substantially lessen competition or tend to create a monopoly.”<sup>748</sup> Accordingly, Cellular South argues that the applications should be dismissed without prejudice until they can be resubmitted with the final details of the divestiture.<sup>749</sup> Cellular South further asserts that such an amendment would change the specific spectrum, operations, or assets to be transferred and thus would require 30 days public notice as a substantial amendment under section 309(b) of the Communications Act.<sup>750</sup> The Applicants respond that while some applications may require amendments, these types of amendments of pending applications are permitted and do not create a contingency warranting dismissal.<sup>751</sup>

218. The Commission’s statutory authority to review the proposed transaction under the Communications Act is not contingent upon the outcome of any negotiations between the Applicants and DOJ.<sup>752</sup> As discussed above, the Commission and DOJ each has independent authority to review the competitive impact of the proposed transaction and each has differing standards which govern that review.<sup>753</sup> Accordingly, the Commission may act on the proposed merger regardless of whether DOJ has taken any action in furtherance of its own, independent statutory review under section 7 of the Clayton Act.<sup>754</sup> We also note that any divestitures ultimately ordered by the Commission or DOJ would not require a major amendment of the Applications. Instead, as discussed above, we will require the Applicants to file applications for short-term *de facto* transfer spectrum leasing agreements for any assets that must be divested to a management trustee as a condition of our approval of the proposed merger.<sup>755</sup> We thus see no need to dismiss the applications without prejudice as suggested by Cellular South.

219. *Ex Parte Status of Proceeding.* In the June 25, 2008 Public Notice seeking comment on the proposed transaction, the Commission, pursuant to its authority under Section 1.1200(a) of the Commission’s Rules,<sup>756</sup> announced that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission’s Rules.<sup>757</sup> On September 24, 2008, Cellular South filed a letter asserting that on August 11, 2008, when Cellular South filed its petition to deny, the proceeding automatically became restricted.<sup>758</sup> It claims that once the petitions to deny are filed, the Commission is required “to make its public interest determination

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<sup>747</sup> Cellular South Petition to Deny at 6; *see also* Cellular South Supplement at 8-13 (arguing that the Applicants’ offer to divest an 15 additional markets created 15 more “contingent” applications).

<sup>748</sup> Cellular South Petition to Deny at 17-18.

<sup>749</sup> *Id.* at 5-6; Cellular South Reply at 3-7.

<sup>750</sup> Cellular South Petition to Deny at 6 n.20.

<sup>751</sup> Joint Opposition at 36 n.107.

<sup>752</sup> *See* 47 U.S.C. §§ 214(a), 310(d).

<sup>753</sup> *See supra* Part III.

<sup>754</sup> 15 U.S.C. § 18.

<sup>755</sup> *See supra* Part VII.B.

<sup>756</sup> 47 C.F.R. § 1.1200(a).

<sup>757</sup> *Id.* § 1.1206. *See also* Public Notice, 23 FCC Rcd at 10008-09.

<sup>758</sup> Letter from David L. Nace, Counsel for Cellular South, Inc. to James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission at 1, 3 (Sept. 24, 2008) (“Cellular South Letter”); *see also* Cellular South Supplement at 1.

‘on the basis of the application, the pleadings filed, or other matters which it may officially notice.’”<sup>759</sup> Cellular South argues that “the statute cannot be construed to permit the Commission to make a public interest determination on the basis of new information regarding the merits obtained in the course of *ex parte* presentations.”<sup>760</sup> Moreover, Cellular South argues that the Commission cannot consider newly submitted *ex parte* information unless it: “(1) placed the written statement in the record; (2) notified petitioners that the statement had been submitted; and (3) specified a reasonable deadline by which petitioners could respond to or rebut the facts alleged.”<sup>761</sup>

220. We disagree. The permit-but disclose status of a proceeding (and the *ex parte* status of a proceeding generally) continues until “the proceeding is no longer subject to administrative reconsideration or review or to judicial review.”<sup>762</sup> In applying this principle, there is no reason to distinguish between a proceeding that is designated permit-but-disclose by the rules or, as is the case here, by the staff under its authority to change the *ex parte* status of a proceeding pursuant to Section 1.1200(a).<sup>763</sup> Thus, the permit-but-disclose status continues through the entire course of this proceeding and any subsequent administrative or judicial review. We also note that all *ex parte* presentations have been made a part of the public record in this proceeding and commenters have had ample time to review and respond to all such filings if they chose to do so.<sup>764</sup> The Commission may consider all *ex parte* presentations made and appropriately filed with the Commission.

## IX. FOREIGN OWNERSHIP

221. Verizon Wireless requests a declaratory ruling, pursuant to section 310(b)(4) of the Communications Act, that the public interest would be served by extending its current foreign ownership ruling to encompass the ALLTEL Subsidiaries and Partnerships and their FCC licenses and spectrum leases.<sup>765</sup> We find, subject to the conditions specified herein, that the public interest would be served by extending the current foreign ownership ruling under section 310(b)(4), which the Commission issued to

<sup>759</sup> Cellular South Letter at 3; *see also* 47 U.S.C. § 309(d)(2).

<sup>760</sup> Cellular South Letter at 3; Cellular South Supplement at 7-8.

<sup>761</sup> Cellular South Supplement at 3.

<sup>762</sup> 47 C.F.R. § 1.1206(a).

<sup>763</sup> 47 C.F.R. § 1.1200(a) (“Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.”).

<sup>764</sup> Cellular South claims that the Applicants’ Information Request Response was only made publicly available in a “heavily redacted version” and could only be accessed if Cellular South agreed “to be bound by, the wholly unlawful and prejudicial terms of the anticipatory Protective Order issued by the WTB on July 29, 2008.” Cellular South Supplement at 5. Cellular South argues that contrary to section 0.459 of the Commission’s rules, 47 C.F.R. § 0.459, the Protective Order impermissibly removes the onus from the Applicants to demonstrate why certain information should be withheld from public inspection. Cellular South Letter at 3-4. We disagree. The Commission routinely adopts protective orders where it anticipates that it may seek documents that contain confidential or proprietary information. In adopting the Protective Order in this proceeding, the Commission specifically noted that the Protective Order did not “constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (“FOIA”) or otherwise.” Protective Order, 23 FCC Rcd at 11155 ¶ 2. Pursuant to the terms of the Protective Order, any party could seek access to confidential documents by signing the Acknowledgement of Confidentiality attached to the protective order. *Id.* at 11155 ¶ 3. Cellular South, like all parties in this proceeding, had the opportunity to access, comment on or rebut all *ex parte* presentations made in this proceeding.

<sup>765</sup> 47 U.S.C. § 310(b)(4). The petition for declaratory ruling is included in the narrative portion of the transfer of control applications and has been assigned File No. ISP-PDR-20080613-00012.

Verizon Wireless in the *Vodafone-Bell Atlantic Order*, to the ALLTEL Subsidiaries and Partnerships in which ALLTEL holds a *controlling* ownership interest and to their wireless licenses and spectrum leases.<sup>766</sup> We conclude, based on ownership information Verizon Wireless has submitted to the Commission, that its current foreign ownership complies with that section 310(b)(4) ruling. Lastly, we deny Chatham's petition to deny the requested declaratory ruling.<sup>767</sup>

#### A. Review of Foreign Ownership Issues

222. We review under section 310(b)(4) of the Communications Act and Commission rules and policies established in the *Foreign Participation Order*<sup>768</sup> the post-transaction foreign ownership of the remaining ALLTEL Subsidiaries and the Partnerships in which ALLTEL holds a controlling ownership interest. As part of our foreign ownership analysis under section 310(b)(4), we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed transfer of control.<sup>769</sup> Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees.<sup>770</sup> This section of the Communications Act also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>771</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>772</sup> Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."<sup>773</sup>

223. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.<sup>774</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.<sup>775</sup> Because the Commission has previously issued a foreign ownership ruling to

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<sup>766</sup> Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16514 ¶ 19 (WTB/IB 2000) ("*Vodafone-Bell Atlantic Order*").

<sup>767</sup> Chatham Petition to Deny at 22-31; Chatham Reply at 10-16.

<sup>768</sup> See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

<sup>769</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66. In assessing the public interest, we consider the record and accord the appropriate level of deference to Executive Branch expertise on these issues. See *id.*

<sup>770</sup> 47 U.S.C. § 310(b)(4).

<sup>771</sup> *Id.*

<sup>772</sup> See *BBC License Subsidiary*, 10 FCC Rcd 10968, 10973-74 ¶ 25.

<sup>773</sup> 47 U.S.C. § 310(b)(4).

<sup>774</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, 23940 ¶¶ 9, 50, 111-112.

<sup>775</sup> *Id.* at 23913, 23940 ¶¶ 50, 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that (continued....)

Verizon Wireless under section 310(b)(4), we consider in this proceeding whether Verizon Wireless remains in compliance with that ruling and, if so, whether it is appropriate to extend Verizon Wireless's current ruling to encompass the ALLTEL Subsidiaries and the Partnerships in which ALLTEL holds a controlling ownership interest and the wireless licenses and spectrum leases they will hold following the proposed transfer of control.

224. As discussed above, Verizon Wireless is a general partnership of which 55 percent is indirectly owned by Verizon and the remaining 45 percent is indirectly owned by Vodafone.<sup>776</sup> Verizon and Vodafone hold their partnership interests in Verizon Wireless through numerous intermediate subsidiaries organized under the laws of Luxembourg, the Netherlands, and the United Kingdom, all of which are WTO Member countries, and the United States.<sup>777</sup> Verizon is a widely held, publicly traded company organized in the United States. Vodafone is a widely-held, publicly-traded company organized in the United Kingdom.<sup>778</sup>

225. In the *Vodafone-Bell Atlantic Order* issued in 2000, the Commission authorized Verizon Wireless "to be indirectly owned by Vodafone in an amount up to 65.1 percent."<sup>779</sup> The Commission stated that Verizon Wireless "would need additional Commission authority under section 310(b)(4) before Vodafone could increase its investment above authorized levels"<sup>780</sup> and that "[a]dditional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest" in Verizon Wireless.<sup>781</sup> For purposes of calculating the additional, aggregate 25 percent amount, Verizon Wireless is required to include foreign ownership of Verizon and foreign ownership of Vodafone, other than ownership of Vodafone from the United States and the United Kingdom.<sup>782</sup>

226. We conclude on this record that current foreign ownership of Verizon Wireless is not inconsistent with the foreign ownership ruling issued in the *Vodafone-Bell Atlantic Order*. On April 8,

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do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.* at 23946 ¶ 131.

<sup>776</sup> *See* Application, Public Interest Statement at 53.

<sup>777</sup> *See* Cellco Partnership, Form 602, File No. 0003464689 (June 8, 2008) (providing the current ownership structure); Cellco Partnership, Form 602, File No. 0003467172 (June 10, 2008) (providing the post-transaction ownership structure).

<sup>778</sup> *See Verizon Wireless-RCC Order*, 23 FCC Rcd at 12523 ¶ 145. To support its requested ruling, Verizon Wireless relies on ownership information it submitted to the Commission in the *Verizon Wireless-RCC* proceeding. *See* Application, Public Interest Statement at 53 n.123 (citing Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 8, 2008) ("April 8, 2008 Letter")).

<sup>779</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19. The Commission has extended this ruling to cover the AWS services, *see* International Authorizations Granted, File No. ISP-PDR-20060619-00015, *Public Notice*, 21 FCC Rcd 13575 (IB 2006), and permitted Verizon Wireless to acquire ownership interests in other common carriers, *see, e.g., Verizon Wireless-RCC Order*, 23 FCC Rcd 12463; Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 18 FCC Rcd 6490, 6492 ¶ 6 & n.15 (CWD/WTB 2003); Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Cellco Partnership d/b/a Verizon Wireless, *Public Notice*, 16 FCC Rcd 7155 (WTB/IB 2001).

<sup>780</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19.

<sup>781</sup> *Id.*

<sup>782</sup> *See id.* at 16514 ¶ 19 n.34.

2008, Verizon Wireless submitted a detailed showing to the Commission in the Verizon Wireless-RCC proceeding to demonstrate that its foreign ownership remained within the parameters of its foreign ownership ruling.<sup>783</sup> The beneficial ownership information that Vodafone and Verizon gathered for that proceeding indicates that non-U.S., non-U.K. ownership of Vodafone (14.55 percent), together with non-U.S. ownership of Verizon (8.65 percent), is below the 25 percent aggregate allowance specified in the Verizon Wireless ruling for such ownership and, thus, complies with that ruling.<sup>784</sup> We find the beneficial ownership information that Verizon Wireless has submitted for Vodafone and Verizon sufficient to demonstrate compliance with its section 310(b)(4) ruling for the same reasons discussed in the *Verizon Wireless-RCC Order*.<sup>785</sup>

227. In its petition to deny, Chatham argues that Verizon Wireless has failed to establish that its foreign ownership permits a public interest determination under section 310(b)(4) because Verizon Wireless did not undertake a citizenship survey of Vodafone and Verizon shareholders but instead tabulated shareholder addresses for each company.<sup>786</sup> Relying on the *2007 América Móvil Order*, Chatham contends that the Commission has expressly rejected shareholder addresses as a valid means for applicants to ascertain the citizenship of shareholders for all purposes under section 310(b).<sup>787</sup> Chatham states that “the Commission traditionally expects that companies with widely dispersed shareholdings will conduct stock ownership surveys using a statistically valid sample of shares outstanding”<sup>788</sup> to determine the citizenship of shareholders. Chatham asserts that the Commission cannot accept the Verizon Wireless showing without (1) overruling longstanding policy and precedent rejecting shareholder addresses as a valid means for ascertaining citizenship under section 310(b); and (2) allowing all applicants subject to section 310(b) to adopt the “liberalized definition of ‘foreign ownership’ embodied in the Verizon Wireless approach.”<sup>789</sup>

228. We do not agree with Chatham that the public interest showing Verizon Wireless has submitted under section 310(b)(4) is inadequate or inconsistent with Commission policy. As a factual matter, we believe that Chatham misconstrues the methodology that Verizon Wireless has used to demonstrate compliance with its section 310(b)(4) ruling. Verizon Wireless has provided the Commission with aggregate information regarding the addresses of record of nearly 100 percent of the beneficial owners of Verizon and Vodafone stock.<sup>790</sup> Thus, in contrast to the foreign ownership

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<sup>783</sup> See April 8, 2008 Letter at 2-3. The beneficial ownership information for Vodafone is current as of February 29, 2008, and the beneficial ownership information for Verizon is current as of March 3, 2008. *See id.*

<sup>784</sup> See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 148 n.473.

<sup>785</sup> See *id.* at 23 FCC Rcd at 12525 ¶¶ 147-148.

<sup>786</sup> Chatham Petition to Deny at 22-31; Chatham Reply at 10-16. Chatham raises the same arguments in its petition for reconsideration of our decision in the *Verizon Wireless-RCC* proceeding. See Chatham Avalon Park Community Council Petition for Reconsideration, WT Docket No. 07-208 (filed Aug. 15, 2008).

<sup>787</sup> Chatham Petition to Deny at 24-26 (citing Verizon Communications, Inc., Transferor and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 07-43, 22 FCC Rcd 6195 (2007) (“*América Móvil Order*”)); Chatham Reply to Joint Opposition at 14.

<sup>788</sup> Chatham Petition to Deny at 23, 26, 29.

<sup>789</sup> See *id.* at 23-24; Chatham Reply at 16.

<sup>790</sup> See April 8, 2008 Letter at 2-4. As discussed in the *Verizon Wireless-RCC Order*, Vodafone obtained address of record information for the beneficial owners of its shares from UBS AG, an investment banking and securities firm. See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 147 & n.464 (citing April 8, 2008 Letter, WT Docket No. 07-208, at 2). Verizon obtained its beneficial owners’ address of record information from Broadridge Financial Solutions, Inc. (“Broadridge”), a firm that specializes in securities processing, clearing and outsourcing, (continued....)

information we rejected in the *América Móvil Order*, the Verizon Wireless data does not rely on “the addresses of custodian banks and brokers that hold shares for the more numerous owners that have chosen not to possess the stock certificates.”<sup>791</sup>

229. As a matter of policy, the Commission expects that licensees that are subject to the requirements of section 310(b) of the Act “will use reasonable methods to insure compliance with section 310(b).”<sup>792</sup> Corporate applicants and licensees with widely held securities traditionally have used random surveys to collect foreign ownership from their shareholders.<sup>793</sup> At the same time, the Commission has permitted public companies to use methods other than random surveys, including the collection of shareholder addresses, on a fact-specific, case-by-case basis.<sup>794</sup> Chatham has not provided, and we do not discern, any basis for concluding that the information Verizon Wireless has provided is inaccurate, cannot be relied on, or is insufficient for purposes of demonstrating compliance with its foreign ownership ruling under section 310(b)(4) of the Act.<sup>795</sup> We conclude, based on the information Verizon Wireless has submitted for the record, that there is no substantial or material question of fact as

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and in investor communications. *See Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 148 & n.470 (citing April 8, 2008 Letter, WT Docket No. 07-208, at 4).

<sup>791</sup> *América Móvil Order*, 22 FCC Rcd at 6222-23 ¶ 59. Information that América Móvil submitted in support of its section 310(b)(4) petition for declaratory ruling indicated that approximately 41.03% of its total capital stock was held in the form of Class L American Depositary Shares (“ADSs”) by custodian banks and brokers for which América Móvil obtained only the custodians’ street addresses. *See* Letter from Philip L. Verveer, Michael G. Jones, and Daniel K. Alvarez, Counsel to América Móvil, S.A.B. de C.V., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 26, 2007), IB Docket No. 06-113, at 4. An additional 0.85% of América Móvil’s total capital stock was held in the form of Class L ADSs by shareholders that had taken possession of their stock certificates and for which América Móvil obtained street address information. *See id.*

<sup>792</sup> *See WWOR-TV, Inc. For Transfer of Control of Station WWOR-TV, Licensee of Station WWOR-TV, Channel 9 Secaucus, New Jersey, Memorandum Opinion and Order*, 6 FCC Rcd 6569, 6572 ¶ 13 (1991) (“*WWOR-TV*”), *appeal dismissed sub nom. Garden State Broadcasting Ltd. Partnership v. F.C.C.*, 996 F.2d 386 (D.C. Cir. 1993)).

<sup>793</sup> *See WWOR-TV*, 6 FCC Rcd at 6572, ¶¶ 12-13; *see also* Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses, *Public Notice*, 19 FCC Rcd 22612, 22639-41 (Int’l Bur. 2004), *erratum*, 21 FCC Rcd 6484 (Int’l Bur. 2006).

<sup>794</sup> *See WWOR-TV*, 6 FCC Rcd at 6572 ¶ 13 (allowing publicly traded company to use shareholder mailing addresses to demonstrate foreign ownership below the 25% benchmark in section 310(b)(4)). *See also* Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC, WC Docket No. 06-106, *Memorandum Opinion and Order and Declaratory Ruling*, 21 FCC Rcd 10198, 10-216, ¶ 41 & n.114 (WTB, OET, Int’l Bur. 2006) (“*2006 MSV Order*”) (allowing applicant to use shareholder addresses to establish foreign ownership of Motient, a public company holding shares in the applicant); Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended, *Order and Declaratory Ruling*, 23 FCC Rcd 4436, 4461-462, Appendix B, ¶¶ 24-25 (2008) (“*2008 MSV Order*”) (following the Bureau-level decision in the *2006 MSV Order* and allowing applicant to use shareholder address information submitted in that proceeding for TerreStar (formerly, Motient)).

<sup>795</sup> We agree with Chatham to the extent it argues that, where a public company has reason to know the citizenship or principal places of business of particular beneficial owners, e.g., based on notifications made pursuant to federal securities regulations, the information should be included in the company’s citizenship calculations. *See* Chatham Petition to Deny at 29.

to whether Verizon Wireless's foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*.<sup>796</sup>

230. We therefore find that Verizon Wireless is entitled to a rebuttable presumption that, following consummation of the proposed transaction, the indirect foreign ownership in the ALLTEL Subsidiaries, and the Partnerships in which ALLTEL holds a controlling ownership interest, would not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we explained above, we find no basis to conclude that the proposed transaction is likely to harm competition.<sup>797</sup> In addition, we have received no opposition to or comment on the applications from the Executive Branch.<sup>798</sup> Accordingly, pursuant to section 310(b)(4) of the Communications Act and the rules and policies established in the *Foreign Participation Order*, we find that it is in the public interest to extend Verizon Wireless's section 310(b)(4) foreign ownership ruling to cover the ALLTEL Subsidiaries and the Partnerships in which ALLTEL holds a controlling ownership interest.

231. Additionally, the application states that, after consummation of the proposed transaction, ALLTEL Communications LLC ("ALLTEL Communications") will continue to hold a "minority, non-controlling general partnership interest[s]" in Illinois Valley, Northwest Missouri, and Pittsfield.<sup>799</sup> With regard to the indirect foreign voting interests in these partnerships, Verizon Wireless submitted a letter for the record committing that, "immediately upon the closing of [this] transaction, Verizon Wireless will place into a trust the voting rights associated with ALLTEL's interests in Illinois Valley, Northwest Missouri, and Pittsfield, thereby precluding Vodafone's interest in Verizon Wireless from any voting rights in the partnerships."<sup>800</sup> In order to ensure that the post-transaction foreign ownership of these partnerships complies with the requirements of section 310(b)(3), we grant the transfer application subject to Verizon Wireless's placing its voting rights in these partnerships in a voting trust with terms

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<sup>796</sup> We reject as unsupported and without merit Chatham's suggestion that our conclusions in the recent *Diversification of Ownership Order* are relevant to the determination whether Verizon Wireless has used reasonable means to demonstrate compliance with its section 310(b)(4) ruling. See Chatham Petition to Deny at 26-32 (citing [delete In re] Promoting Diversification of Ownership in the Broadcast Services, *Report and Order and Third Further Notice of Proposed Rulemaking*, MB Docket No. 07-294, 23 FCC Rcd 5922, 5949 (2008)). In that proceeding, we declined to adopt a proposal to permit non-controlling foreign investment in broadcast licensees under section 310(b)(4) as a means to promote diversification of ownership among broadcast licensees, including women and minorities. See *id.* at ¶ 77. Our decision had no bearing on the methodologies that applicants and licensees employ to ascertain their levels of foreign ownership under section 310(b)(4).

<sup>797</sup> See discussion paras. 157-158; see also *Foreign Participation Order*, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

<sup>798</sup> We note that Verizon Wireless is a party to an Agreement dated December 14, 1999, as amended March 27, 2008, between Verizon (formerly, Bell Atlantic Corporation), Vodafone, and Verizon Wireless, on the one hand, and the U.S. Department of Defense, the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security, on the other. See *Verizon Wireless-RCC Order* at ¶¶ 152-154.

<sup>799</sup> Application at 60; Section 310(b)(3) of the Communications Act prohibits foreign governments, individuals and corporations from owning more than 20% of the stock of a corporation holding a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license. 47 U.S.C. § 310(b)(3). The Commission has held that Section 310(b)(3) also prohibits a foreign government, individual or corporation from holding equity or voting interests in a corporate licensee through an intervening U.S.-organized holding company that itself holds non-controlling interests in the licensee. See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling*, 103 F.C.C. 2d 511, 520-522, ¶¶ 16-20, n.45 (1985) ("*Wilner & Scheiner*"), reconsidered in part, 1 FCC Rcd 12 (1986).

<sup>800</sup> Verizon Wireless October 14, 2008 Trust *Ex Parte* Letter.