

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**PETITION FOR RECONSIDERATION
OF THE
RURAL TELECOMMUNICATIONS GROUP, INC.**

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TABLE OF CONTENTS

I. INTRODUCTION4

II. THE MERGER APPLICATIONS SHOULD NOT BE GRANTED UNLESS THE COMMISSION INCLUDES CONDITIONS REQUIRING THAT VERIZON SUPPORT ALLTEL’S GSM NETWORK TO THE SAME LEVEL IT SUPPORTS ITS COMPETING CDMA NETWORK.5

III. THE FCC MUST CLARIFY WHETHER ONLY “ROAMING RATES” OR ENTIRE “ROAMING AGREEMENTS” ARE TO BE HONORED BY VERIZON FOR FOUR YEARS.8

IV. THE FCC MUST HELP NEW MARKET ENTRANTS WHO DO NOT YET HAVE A ROAMING AGREEMENT WITH EITHER VERIZON OR ALLTEL OBTAIN A COMPETITIVE ROAMING AGREEMENT ON THEIR CDMA AND/OR GSM NETWORK.12

V. THE FCC MUST RECONSIDER ITS APPLICATION OF ITS SPECTRUM SCREEN TO VERIZON. .14

VI. THE FCC MUST PUT CONDITIONS IN PLACE TO RESTRAIN VERIZON FROM USING ITS MARKETPLACE DOMINANCE IN AN ANTICOMPETITIVE MANNER BY PROHIBITING VERIZON FROM ENTERING INTO EXCLUSIVE HANDSET AGREEMENTS WITH VENDORS.16

VII. CONCLUSION.....18

Summary

The Rural Telecommunications Group, Inc. (“RTG”) requests that the Federal Communications Commission (“Commission”) reconsider and/or clarify its *Memorandum Opinion and Order and Declaratory Ruling* (“*MO&O&DR*”) in the merger between ALLTEL and Verizon.

First, the roaming conditions placed on Verizon by the Commission neither reflect the agreement-in-principle discussed by the parties in the days leading up to the November 4, 2008 Open Meeting, nor do they make sense on their own due to the choice of terminology used in the *MO&O&DR*. This ambiguity affects all CMRS roaming partners of Verizon and ALLTEL, but especially those operating CDMA networks with two active roaming agreements.

Second, the Commission completely dismisses the important role the ALLTEL GSM/GPRS/EDGE roaming network plays in the viability of the majority of domestic GSM/UMTS operators. By granting Verizon the opportunity to shut-down the ALLTEL GSM network at a future date known only to it, the FCC ensured that GSM/UMTS subscribers across the country become captives to Verizon’s push to minimize the effective size of the aggregated, nationwide GSM/UMTS footprint (of which ALLTEL’s GSM network is a huge piece), and in the process, elevated the likelihood that disaffected wireless customers will choose Verizon retail service, in essence giving Verizon a double-victory.

Third, in its *MO&O&DR*, the Commission completely ignores the challenges faced by new market entrants when they attempt to secure a roaming agreement with larger operators. While the Commission went through the effort to auction AWS-1 and

700 MHz spectrum in recent years in order to encourage competition, any of those new operators choosing GSM/UMTS as their technology of choice will find it difficult to even get roaming coverage over vast parts of the country, thus limiting their marketing clout from Day One. Furthermore, those operators choosing CDMA/EVDO will now be forced to deal with Verizon (and Verizon alone), in order to cobble together a truly nationwide CDMA roaming footprint with a migration path to LTE. Verizon's argument that LTE is the 4G technology of choice of most global operators may be correct in theory, but that does not help CMRS operators today when looking for competitive roaming options.

Fourth, the Commission erred in including certain Broadband Radio Service ("BRS") spectrum in its "spectrum screen" applied to this transaction. By doing so, the Commission failed to give due scrutiny to the competitive market conditions in certain markets, resulting in a decision to approve the merger in certain markets not supported by the record.

Last, the Commission failed to impose any condition on Verizon to prevent it from entering into exclusive handset agreements with handset manufacturers even though Verizon upon closing of the merger will be a dominant nationwide wireless carrier with more market share than any other wireless carrier in the United States.

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for Consent to the Transfer of Control of FCC)	
Licenses and Authorizations Pursuant to Sections)	
214 and 310(d) of the Communications Act)	
To: Wireless Telecommunications Bureau		

PETITION FOR RECONSIDERATION

The Rural Telecommunications Group, Inc. (“RTG”)¹, by its attorneys and pursuant to Section 1.106 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby submits this Petition for Reconsideration (“Petition”) of the Commission’s decision to grant the applications (collectively, the “Merger Applications”) of Cellco Partnership d/b/a Verizon Wireless (“Verizon”) and Atlantis Holdings, LLC to transfer control of licenses and authorizations held by ALLTEL Corporation (“Alltel”) through various subsidiaries and partnerships.²

¹ RTG is a Section 501(c)(6) trade association representing rural wireless carriers who serve less than 100,000 subscribers. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s membership is comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing*

I. Introduction

On June 10, 2008, Verizon and ALLTEL filed Merger Applications seeking permission to transfer control of ALLTEL's licenses, authorizations, and leased spectrum rights to Verizon as part of Verizon's acquisition of Atlantis Holdings, LLC. RTG filed a Petition to Deny the Merger Applications on August 11, 2008, which, among other things, noted the potential anticompetitive effects of the proposed transaction on the CMRS wholesale and retail marketplace, and requested that the Commission impose conditions on Verizon designed to address these harms.³

While the Commission attempted to address the important topics of roaming, the future of ALLTEL's GSM network, the input markets for a spectrum screen, and the prohibition of exclusive handset agreements in its *MO&O&DR*, it fell short in drafting appropriate language that will provide smaller CMRS operators with the tools they need to ensure that the post-transaction Verizon will comply with the conditions the Commission has sought to impose in the *MO&O&DR*. Specifically, RTG is petitioning the Commission to reconsider its *MO&O&DR* and (1) require Verizon to support the GSM network for a set period of time, or until AT&T, Verizon or some other combination of two operators actually deploys LTE in a particular market, (2) require Verizon to enter into new roaming agreements with GSM/UMTS operators before LTE is fully deployed, (3) reconsider the application of its spectrum screen, and (4) prohibit Verizon from entering into any exclusive handset agreements. Additionally, RTG is petitioning the Commission to clarify its *MO&O&DR* to properly reflect that Verizon is

Arrangements, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95 (rel. Nov. 10, 2008) ("*MO&O&DR*").

³ Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed Aug. 11, 2008) ("*RTG Petition*").

required to honor for a period of four years all roaming agreements, and not just roaming rates.

II. The Merger Applications Should Not Be Granted Unless the Commission Includes Conditions Requiring That Verizon Support ALLTEL's GSM Network to the Same Level It Supports Its Competing CDMA Network.

By declining to require that Verizon maintain ALLTEL's GSM network for a definitive period of time for both existing and new roaming partners *after* the merger closes, the Commission is endorsing a *de facto* preference of one air-interface technology (CDMA) over another (GSM). The ALLTEL GSM network provides voice and data coverage to tens of thousands of roaming subscribers each month in over one dozen states covering hundreds of thousands of square miles, most of it rural. For years, this same GSM roaming network has covered National Parks, Tribal Lands, Federal Highways, Interstates and thousands of small American towns. Quite simply, the nation's GSM roaming "footprint" is heavily dependent upon the ALLTEL GSM network. The Commission has completely removed the ALLTEL GSM network from any merger conditions. Meanwhile, Verizon has only voluntarily agreed to keep the ALLTEL GSM roaming network operating "indefinitely."⁴ Only Verizon knows when that date will come. The Commission does not know the exact date of the network's demise, nor do ALLTEL's roaming partners, and certainly not the thousands of mobile customers who depend on its successful operation each and every day.

Limited only by bilateral roaming agreements (none of which were made part of this proceeding), Verizon now has the luxury of being able to shut down the ALLTEL GSM network on a whim. This unrestrained power by Verizon will have a ripple effect on the retail wireless marketplace that the Commission fails to recognize whatsoever in

⁴ Merriam-Webster Dictionary defines "indefinitely" as "not precise" or having "no exact limit."

the *MO&O&DR* in spite of the parties repeatedly bringing it to the Commission's attention. Network size is a key factor for subscribers when they choose their mobile service provider. Once the ALLTEL GSM network goes dark, any mobile subscriber who uses a GSM/UMTS device will face a coverage void that cannot be filled in the short or mid-term by any existing mobile operator, not even AT&T or T-Mobile. This potential for a nationwide coverage discrepancy between GSM and CDMA, *in the aggregate*, will push some untold number of mobile subscribers into choosing a CDMA operator as their retail provider (instead of a GSM operator) because that CDMA operator will have access to a larger nationwide footprint. Not surprisingly, Verizon is the one mobile operator who will benefit the most from the demise of the ALLTEL GSM network, not merely because it will be the largest mobile operator in terms of coverage area, but also because no amount of revenue from inbound roaming traffic will ever outweigh the benefit of driving new or migrating wireless subscribers to its retail product offerings. This complete lack of certainty as to when ALLTEL's GSM network will be turned off could be enough to compel wireless customers into choosing Verizon as their retail provider of choice.

The Commission erroneously relies on two oft-repeated statements by Verizon to not only justify its contention that this transaction is in the public's best interest, but to justify its unwillingness to attach conditions to ALLTEL's GSM network post-merger. The first promise by Verizon is that it will "maintain the GSM network consistent with the company's longstanding focus on network reliability and quality", and additionally "maintain the network to at least its current level of quality, including any necessary

upgrades and investments.”⁵ The second (and completely subjective) statement by Verizon is, as explained by the Commission, that “other opportunities will increase as the industry begins using LTE, reducing the importance of air-interface.”⁶ UMTS and EVDO, for all intents and purposes, are comparable “3G” standards, the former the natural evolution of the GSM air-interface technology and the latter the natural evolution of the CDMA air-interface technology. Verizon has only promised to maintain the ALLTEL GSM network at its current level so the blatant omission of any reference to UMTS is important. Even if Verizon were to maintain the GSM network for some “indefinite” period of time, it is unlikely to include UMTS. Again, Verizon inherits a win-win situation regardless of what transpires. For those GSM mobile subscribers lucky enough to get continued GSM roaming through their retail mobile provider, it will be at slower speeds than Verizon’s retail or roaming offering using CDMA. Frustrated mobile customers using GSM devices will have more of a reason to migrate sooner to a CDMA product. Verizon will still collect roaming revenue from those who continue to use GSM and do not migrate to a CDMA operator like Verizon.

The fact that Verizon will not have a commercial LTE network available until 2010 (at the earliest) is also important. By not supporting UMTS on the ALLTEL network, Verizon is essentially abandoning a whole segment of current mobile users. At best, existing GSM roamers on ALLTEL will be saddled with slower speeds for their data products. At worst, those GSM users will find a large portion of the GSM network turned off at some future date with no warning.

⁵ Letter from Kathleen Q. Abernathy, Counsel for Atlantis Holding LLC, and Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 11 (September 17, 2008) (“Information Request Response”).

⁶ *MO&O&DR* at para. 175.

RTG reminds the Commission that LTE is an all-Internet Protocol (IP) based air-interface “4G” standard. This means that there will be no bright line distinctions between voice and data services in a 4G environment. Under the current roaming rules data roaming is not mandated as a common carrier service that must be supported by all common carriers capable of providing it.⁷ Verizon has not committed to allow LTE roaming, or for that matter, it has been opposed to allowing 3G data roaming (i.e. EVDO). At the very least, RTG seeks access for GSM/UMTS operators to roam on the ALLTEL GSM network until data roaming is required, or several carriers offer LTE roaming so that the wholesale roaming market becomes more competitive once again. RTG once again implores the Commission to impose a commitment on Verizon to keep the GSM network operating for a set duration. Specifically, RTG requests that the Commission require Verizon to commit to keeping the GSM network operating until Verizon and AT&T have built out LTE to at least half of its network.

III. The FCC Must Clarify Whether Only “Roaming Rates” Or Entire “Roaming Agreements” Are To Be Honored By Verizon For Four Years.

Prior to the drafting of the *MO&O&DR*, and as the record of the merger docket reflects, numerous companies and organizations, including RTG, petitioned the FCC to include various “roaming conditions” on this transaction. Before the Commission’s open meeting on Tuesday, November 4, 2008, where it approved the *MO&O&DR*, the general consensus among all of the parties who filed petitions, comments and *ex partes* was that a post-merger Verizon would be required to adhere, at the very least, to three conditions:

(a) Verizon will permit each regional, small and/or rural operator that has a roaming

⁷ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-625, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143 (released September 17, 2008) (“*Roaming Order*”).

agreement with both Verizon and ALLTEL to select one of those roaming agreements to “govern” all roaming traffic between the operators, (b) Verizon will honor all existing ALLTEL roaming agreements, and (c) Verizon will honor all roaming agreements for a period of four years. Verizon had already agreed to the first two of these conditions in its earlier *ex parte* filings and answers to Commission questions, and RTG is not looking for the Commission to readdress those commitments as they were correctly articulated in the *MO&O&DR*. Instead, RTG requests that the Commission clarify the language in the *MO&O&DR* to reflect the general consensus on the third condition.

There exists a small, but very important discrepancy between what many parties involved in the process believed they had secured in their dialogues with FCC staff, and what eventually was released in the final *MO&O&DR*. Specifically, many of the parties petitioning the Commission believe that the FCC intended to include a condition that would require Verizon to honor existing *roaming agreements* with regional, small and/or rural operators for the full duration of that roaming agreement, or a period of at least four years from the transaction closing, whichever is later. In essence, it was seen as a compromise.

Unfortunately, the consensus agreement does not appear to be reflected in the terms of the *MO&O&DR*. The various roaming conditions to the transaction are included in paragraph 178 of the *MO&O&DR*, the relevant portion of which follows:

“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. 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. 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. **We further condition our approval on Verizon Wireless's commitment that it will not adjust upward the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, whichever occurs later.**"

(emphasis added). The highlighted language creates an ambiguity with respect to the precise nature of Verizon's obligation under this condition - specifically, what terms of an existing roaming agreement, if terminated by Verizon prior to the end of the four year period, carry on to a new roaming agreement. The language implies that the four year duration of the condition applies only to the restriction on the upward adjustment of *roaming rates* rather than a commitment to honor the terms of the entire *roaming agreement* for a period of four years.

While Chairman Kevin J. Martin did not discuss the particulars of roaming in his prepared statement accompanying the *MO&O&DR*, the plain meaning of the text of paragraph 178 is echoed by Commissioner Robert M. McDowell in his prepared statement accompanying the *MO&O&DR*:

"With respect to roaming obligations, I am pleased by Verizon Wireless's commitment to keep in place for four years its current roaming rates. The company has also agreed to keep the rates set forth in Alltel's existing agreements with each non-nationwide carrier for the full term of a current agreement, or for four years from the closing date of this transaction, whichever occurs later."

Conversely, three of the other Commissioners also released statements that evidence an understanding that appears to contradict this concept of "upward rate-only" guarantees:

“Most notably, Verizon Wireless will honor the existing roaming agreements –whether contracted with them or Alltel – for four years.” (Statement by Commissioner Deborah Taylor Tate).

“And while I appreciate that this item incorporates the commitment to extend the duration of Alltel and Verizon agreements for up to four years, this commitment alone is inadequate.” (Statement by Commissioner Jonathan S. Adelstein).

“The main conditions we secure today are a commitment by Verizon Wireless to extend existing roaming contracts for four years and to maintain Alltel’s existing GSM network ‘indefinitely.’” (Statement by Commissioner Michael J. Copps).

RTG recognizes that the FCC Commissioners’ Statements are *dicta* and are not part of the *MO&O&DR* -- just commentary to it. However, a plain reading of paragraph 178 and the various Statements demonstrates that three of the Commissioners have an understanding of what was actually adopted that is fundamentally inconsistent with the *MO&O&DR* itself, because *roaming rates* are but a small component of *roaming agreements*. In addition, paragraph 178 does not reflect what the parties believed to be the consensus opinion of the Commission before the open meeting commenced and before the *MO&O&DR* was released. The haste with which the *MO&O&DR* was drafted, combined with the stated opinions of three of the Commissioners, combined also with the *ex parte* dialogue prior to the open meeting, strongly suggests that a reconsideration or clarification is required to remove any ambiguity surrounding this condition.

While roaming rates are important, there are numerous other equally important terms and conditions inherent in mobile roaming agreements, whether GSM or CDMA. These other terms and conditions include topics as far ranging as Service Level Agreements, coverage area guarantees, in-market roaming assurances, data roaming

requirements, and other commercial, legal and technical particulars. It is not clear from the *MO&O&DR* whether Verizon is obligated to support roaming rates for four years, refrain from increasing roaming rates for four years, support entire roaming agreements for four years, or something completely different. RTG therefore petitions the Commission to clarify that paragraph 178 of the *MO&O&DR* reflects the understanding that Verizon, as a condition of merger, must honor all roaming agreements for a minimum period of at least four years from the time the transaction closes.

IV. The FCC Must Help New Market Entrants Who Do Not Yet Have A Roaming Agreement With Either Verizon Or ALLTEL Obtain A Competitive Roaming Agreement On Their CDMA And/Or GSM Network.

As discussed in Section II above, the Commission is not requiring that Verizon support the ALLTEL GSM network, nor upgrade it to UMTS. This decision does more than harm existing GSM operators who depend upon nationwide GSM roaming to compliment their retail offering. It also severely impacts any operator who wishes to launch mobile service using UMTS in the next few years. RTG is now requesting that the Commission reconsider its decision in its *MO&O&DR* and compel Verizon to support roaming access on the ALLTEL's GSM network for any new market entrants.

The Commission ignored RTG's argument, raised in the RTG Petition, requiring Verizon to negotiate, enter into, and support new roaming agreements.⁸ Dozens of new market entrants won AWS-1 and 700 MHz licenses in the most recent FCC auctions. Many of these new market entrants bid on those expensive FCC licenses with the completely reasonable expectation of utilizing UMTS as their 3G air-interface technology of choice, and with ALLTEL as a completely independent GSM roaming provider at the time of those auctions. Since UMTS is the dominant global air-interface technology for

⁸ RTG Petition, 22-24.

3G, a decision by a new entrant to enter those recent FCC auctions was an otherwise prudent choice. However, with no guarantees of roaming access on ALLTEL's GSM network (which is feasible given its ability to be "backwards compatible" to UMTS), these new market entrants are now faced with the prospect of a large service hole in the center of the country; alternatively, they must re-evaluate their build out plans altogether. Again, at the very least, new GSM/UMTS operators will be at a competitive disadvantage relative to their CDMA/EVDO competitors due to the lack of GSM roaming conditions to provide certainty and the ability to obtain a roaming agreement as a new entrant with Verizon. At worst, new entrants might revise, delay or even abandon their choice to enter into the mobile marketplace, which in turn reduces the level of competition, which after all is the express reason why the FCC auctioned AWS-1 and 700 MHz spectrum in the first place. The Commission erred by failing to consider such arguments in its *MO&O&DR*.

None of Verizon's promises regarding roaming access were intended for *new* mobile operators, only those mobile operators with existing roaming relationships with ALLTEL. The Commission's tacit approval of this public stance is a classic example of the law of unintended consequences. The Commission's absolute refusal to approve the merger with conditions involving the ALLTEL GSM network, which RTG raised in its Petition to Deny, provides more evidence of a *de facto* preference for the CDMA technology, whether intended or not. The *Roaming Order* provides that mobile operators are only allowed out-of-network roaming access when they request it.⁹ However, Verizon has no obligation to provide GSM roaming access, even if used only for voice service, because it is "backwards compatible" with UMTS. If forced to provide roaming

⁹ *Roaming Order* at para 60.

access to new market entrants, Verizon will likely do so only on its CDMA/EVDO network.¹⁰ This likely series of events will in turn create a scenario where similar parties (i.e. new market entrants) are treated differently, solely because of their network's air-interface technology of choice. By extension, the Commission is enabling this behavior. In our country's legal system, dissimilar treatment of similarly situated classes is deemed abhorrent, and in some cases, it is outright unconstitutional; ideally, the Commission should strive to treat those AWS-1 and 700 MHz license winners who utilize or plan to deploy GSM/UMTS equally by giving them a fighting chance to compete when they enter the marketplace, if for no other reason than to provide American consumers with more retail choices when they purchase mobile service. Verizon has made no positive overtures to enter into new GSM roaming agreements with existing or future GSM/UMTS mobile operators, and the Commission turning a blind eye to this intended and obvious exclusion is wrong. RTG respectfully requests that the Commission allow all new entrants the ability to opt into roaming agreements with Verizon regardless of air interface technology.

V. The FCC Must Reconsider its Application of its Spectrum Screen to Verizon.

The FCC erroneously included certain BRS spectrum in its spectrum screen applied to this transaction. As a result of the inclusion of such spectrum in its screen, certain markets with competitive concerns that should have been caught by the screen were not, and the Commission thereby failed to subject such markets to additional case-by-case scrutiny as required.

¹⁰ Likewise, new entrants that choose to deploy CDMA with a migration path to LTE should be given the opportunity to opt into existing CDMA roaming agreements. No new entrants, regardless of technology choice, should be denied the ability to obtain fair and nondiscriminatory roaming agreements with Verizon.

The Commission bases its determination to include BRS spectrum (excluding BRS spectrum associated with the Middle Band Segment channels, BRS Channel, and the J and K guard bands) in the screen on “significant additional progress” which has been made since release of the *AT&T-Dobson Order* in completing the transition of BRS spectrum to the new band plan.¹¹ Specifically, it states that the transition has been completed in 337 out of 493 BTAs. While this is a true statement, it is also virtually meaningless as an indicator of such licenses being used to provide actual CMRS competition. Due to the lack of compatible equipment, these BTAs are years away from commercial mobile deployment. There is currently no mobile equipment that has been deployed in these bands, and end user handsets are difficult, if not impossible to find. Licenses in the vast majority of the transitioned BTAs are unlikely to be constructed for commercial mobile (as opposed to fixed broadband use) until the May 1, 2011 substantial service deadline.¹² Absent the necessary equipment and with construction of the vast majority of mobile systems years away, there is no basis for the Commission to reverse its finding in the *AT&T/Dobson* order that BRS spectrum will not be available on a nationwide basis for new mobile uses soon enough to be treated as a factor affecting current behavior nationwide.¹³

Accordingly, it remains premature to include BRS spectrum in the spectrum screen. For purposes of the instant transaction, the Commission should exclude such spectrum from its screen, and accordingly apply its heightened case-by-case scrutiny to

¹¹ *MO&O&DR* at par. 65.

¹² The Commission is correct that the substantial service deadline “should” accelerate completion of the transition. However, the existence of a regulatory requirement designed to ensure construction of CMRS systems three years from now has no bearing on the actual deployment of BRS licenses prior to May 1, 2011.

¹³ *AT&T/Dobson* order at par. 34.

the additional markets that fall within such screen. By continuing to utilize its current approach, the Commission will ensure that it is properly examining all markets with potential competition issues, while also ensuring that markets where sufficient CMRS competition – including competition from BRS licenses – exists are subject to divestiture conditions.¹⁴

VI. The FCC Must Put Conditions In Place To Restrain Verizon From Using Its Marketplace Dominance In An Anticompetitive Manner By Prohibiting Verizon From Entering Into Exclusive Handset Agreements With Vendors.

The Commission erroneously failed to impose conditions on Verizon to prohibit Verizon from entering into exclusive handset contracts.¹⁵ The Commission reasoned that the parties opposing the merger had not narrowly tailored their request for such a condition on a transaction-specific harm. Then the Commission determined that the more appropriate way to deal with the handset exclusivity issue would be through a rulemaking proceeding where all interested parties have an opportunity to file comments.¹⁶ RTG submits that allowing Verizon to continue entering into exclusive arrangements while the Commission decides whether to conduct a rulemaking on handset exclusivity arrangements allows the horse to escape the barn, get across the north forty and into the next state before the Commission even has time to get out of the pickup truck to have a “looksee” at the horse. Meanwhile, the “transaction-specific” harm of Verizon continuing to enter into exclusive handset agreements will continue to take place and RTG’s members and the rural consumers they serve have no guarantee that the

¹⁴ While excluding it from its spectrum screen, the Commission currently includes BRS spectrum as part of its market specific analysis of competitive harm that might result through spectrum aggregation when BRS spectrum is available in a particular market. While such market specific analysis should focus on markets where BRS is actually deployed rather than the spectrum merely being available, RTG is not requesting that the Commission reverse its prior policy applied in the *AT&T/Dobson* order.

¹⁵ *MO&O&DR* at para. 185.

¹⁶ *Id.*

Commission will timely resolve the handset exclusivity issue through a protracted rulemaking that may not even come to fruition.¹⁷

Once the transaction closes, Verizon will be the largest wireless carrier in the United States boasting over 84 million subscribers and will wield a monopsony power over the CDMA handset industry. Likewise, the huge disparity in purchasing power between the merged Verizon and smaller wireless providers is equivalent to a feather being weighed against an elephant. It is not in the public interest for the Commission to ignore the transaction-specific harms that will take place once the merger closes, specifically the merged Verizon's monopsony power to purchase CDMA handsets and the disparity in purchasing power between the merged Verizon and smaller wireless providers that will allow Verizon to demand exclusive arrangements for handsets that will prevent smaller and rural wireless providers from providing those handsets to rural consumers. While a future rulemaking may eventually address the exclusive handset agreements issue from an industry-wide perspective, immediate action is needed to prohibit Verizon from using its monopsony power to continue to enter into exclusive handset agreements. The trade-off for allowing Verizon to become the largest CDMA handset purchaser in the United States should be to allow the smaller wireless carriers to obtain the exclusive handsets for use in their markets. RTG requests the Commission to reexamine its position and find that as the largest purchaser of CDMA handsets in the United States, Verizon should not be permitted to have exclusive agreements with any handset manufacturer. Alternatively, the merger should be conditioned on Verizon

¹⁷ The FCC has already delayed the filing of comments in its handset exclusivity proceeding. *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, Order*, DA 08-2576 (rel. Nov. 26, 2008). Comments, originally due on December 2, 2008, are now due February 2, 2009.

making an exception on exclusivity so that Tier III wireless carriers are able to purchase exclusive handsets for consumers in their rural markets.

VII. Conclusion

The Commission must reexamine its position with respect to application of its spectrum screen, as well as its failure to place adequate conditions on Verizon as they relate to roaming, the upkeep of the ALLTEL GSM network, and handset exclusivity. As discussed herein, rural consumers and the rural wireless carriers who serve them are relying on the Commission to reevaluate the *MO&O&DR* and correct the injustices contained therein, whether inadvertent or purposeful, consistent with the arguments advanced in this *Petition for Reconsideration*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Petition for Reconsideration of the Rural Telecommunications Group, Inc. was served on December 10, 2008, by first-class United States mail, postage prepaid, unless indicated otherwise, on those listed below:

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