Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of	)	
	)	
ATLANTIS HOLDINGS LLC, Transferor,	)	
	)	
and	)	WT Docket No. 08-95
	)	
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, Transferee,	)	
	)	
for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act	)	

JOINT OPPOSITION TO PETITIONS FOR RECONSIDERATION

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Dated: December 22, 2008

SUMMARY

The Petitions for Reconsideration filed in response to the Commission's approval of the Verizon Wireless/ALLTEL transaction merely reiterate arguments that were previously considered and rejected by the Commission. It is well-established that petitions for reconsideration that do not present new facts or changed circumstances, or that fail to show a material error or omission in the original order, will be dismissed as repetitious. Accordingly, the Petitioners' attempts here to revisit facts and arguments that were fully analyzed and rejected by the Commission should be denied.

As detailed herein, the Petitioners have treated the reconsideration round as a post-grant comment period. They attempt to renew their pre-grant positions concerning roaming, the spectrum aggregation screen, exclusive handset arrangements, net neutrality, foreign ownership and market-specific conditions. However, the record in this proceeding fully supports the Commission's competitive analysis and conclusion to reject their demands. In many cases, the Commission rejected the *exact* demand re-offered now on reconsideration, and petitioners fail to even address the grounds for dismissal articulated in the *Grant Order*. In other cases, the issues raised by Petitioners are already being considered in industry-wide proceedings, and Petitioners offer no arguments as to why that is not the appropriate place to address those issues. Moreover, the Commission expressly found that the conditions it adopted were sufficient to protect consumers, and that, with those conditions, the transaction served the public interest. None of the petitioners offer any arguments that undermine those findings.

Finally, several petitions also seek reconsideration to "clarify" what they assert are "ambiguities" in conditions adopted in the *Grant Order*. But the conditions speak for

themselves and do not require further elucidation. There is nothing to clarify and the petitions provide no basis for disturbing these determinations.

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In re Applications of ATLANTIS HOLDINGS LLC, Transferor And CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, Transferee For Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act	)	WT Docket No. 08-95

JOINT OPPOSITION TO PETITIONS FOR RECONSIDERATION

Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and Atlantis Holdings LLC ("Atlantis Holdings"), by their attorneys, hereby submit their joint opposition to the Petitions for Reconsideration filed in response to the Commission's Memorandum Opinion and Order and Declaratory Ruling approving the above-captioned transaction ("*Grant Order*").[1] There were seven petitions filed – six of which repeat arguments made by the Petitioners in their petitions to deny and a seventh filed by a new party who has surfaced seeking to expand the

[1] *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 Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, WT Docket No. 08-95 (Nov. 10, 2008) ("*Grant Order*").

scope of a voluntary commitment.[2] As detailed herein, these petitions provide no basis for reconsideration.

I. THE PETITIONS PROVIDE NO BASIS FOR RECONSIDERATION.

It is well-established that to warrant reconsideration a petitioner must do more than simply repeat the same arguments that the Commission has already considered and rejected. Rather, the Commission has emphasized that "[r]econsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters."[3] A petition for reconsideration that fails to rely on new facts or changed circumstances may be dismissed by the Commission as repetitious.[4] Further, "[a] petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied."[5] In past

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[2] Petition for Reconsideration of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed Dec. 10, 2008) ("RTG Petition"); MetroPCS Communications, Inc. and NTELOS Inc. Petition for Limited Reconsideration, WT Docket No. 08-95 (filed Dec. 10, 2008) ("MetroPCS/NTELOS Petition"); Petition for Reconsideration, or in the Alternative, Clarification of United States Cellular Corporation, Carolina West Wireless, Inc., and NE Colorado Cellular, Inc., d/b/a Visero Wireless, WT Docket No. 08-95 (filed Dec. 10, 2008) ("U.S. Cellular *et al.* Petition"); Petition for Clarification or Reconsideration of Leap Wireless International, Inc., WT Docket No. 08-95 (filed Dec. 10, 2008) ("Leap Petition"); Petition for Reconsideration of Public Service Communications, Inc., WT Docket No. 08-95 (filed Dec. 10, 2008) ("PSC Petition"); Petition for Reconsideration of the Public Interest Spectrum Coalition, WT Docket No. 08-95 (filed Dec. 10, 2008) ("PISC Petition"); Petition for Reconsideration of Chatham Avenue Park Community Council, WT Docket No. 08-95 (filed Dec. 10, 2008) ("CAPCC Petition").

[3] *General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority To Transfer Control*, Order on Reconsideration, 23 FCC Rcd 3131, ¶ 4 (2008) ("*General Motors Order*").

[4] 47 C.F.R. § 1.106(b)(3).

[5] *One Mart Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 9910, ¶ 5 (2008). *See also GTE Corporation, Transferor, And Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorization and 310*

proceedings, the Commission has thus denied petitions for reconsideration where a party "simply recites the issues raised in its Petition to Deny" and "fails to offer any additional argument or evidence in support thereof."[6]

With limited exceptions, Petitioners have raised no new facts or arguments in support of their proposed conditions. Instead, they have ignored the Commission's reconsideration standards and treated the reconsideration round as a post-grant comment period. As explained below, Petitioners have for the most part merely revisited arguments fully analyzed and rejected by the Commission in the *Grant Order* and restated facts previously presented. In no case have the Petitioners shown a material error or omission in the original order, as required to warrant reconsideration. In those few instances where Petitioners have presented facts or arguments not previously addressed, such facts or arguments could have been raised before the *Grant Order*'s adoption and thus Petitioners have no excuse for their untimeliness.[7] Such petitions plainly do not meet the Commission's well-established standards for reconsideration.

While several of the Petitioners style their request for reconsideration as one seeking clarification, the need for further elucidation is difficult to discern. The conditions are

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Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Order on Reconsideration, 18 FCC Rcd 24871, ¶ 5 (2003).

[6] *General Motors Order*, ¶ 11. *See also AVR, L.P.*, Memorandum Opinion and Order, 16 FCC Rcd 1247, ¶ 3 (2001) ("TDS's petition essentially repeats the same arguments it relied upon in the comments and reply comments it filed . . . [t]he Commission rejected these arguments in the *Hyperion Preemption Order*.").

[7] *See* 47 C.F.R. § 1.106 (c) ("a petition for reconsideration which relies on facts not previously presented to the Commission . . . may be granted only under the following circumstances: (1) The facts fall within one or more of the categories set forth in 1.106(b)(2) ["facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters" or "facts unknown to the petition until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity"]; or (2) The Commission . . . determines that consideration of the facts relied on is required in the public interest.").

unambiguous on their face and do not require further explanation. To the extent the Petitioners now seek to expand a condition adopted by the Commission, the agency has already considered and approved the sufficiency of these conditions. The Petitioners have not provided any changed facts or material error by the Commission that would warrant reconsideration of voluntary conditions offered by the applicants and approved by the Commission based on an ample record. The Petitions must accordingly be promptly dismissed or denied.

A. Petitioners' Requests for Roaming Conditions Reiterate Arguments Considered and Rejected in the *Grant Order*.

The Commission should reject Petitioners' requests for roaming relief as repetitious of requests considered and rejected in the *Grant Order*. One Petitioner's request for GSM roaming conditions is a verbatim reiteration of previously proposed conditions. Conditions the Commission imposed regarding the extension of existing roaming contracts are clear and unambiguous – Petitioners seek only to expand them. Petitioners' remaining proposals – as the *Grant Order* notes – have either already been addressed or are the subject of open proceedings. The Petitioners' reconsideration requests concerning roaming issues should therefore be denied.

With respect to the GSM conditions proposed by the Rural Telecommunications Group ("RTG"),[8] the Commission has repeatedly rejected proposed conditions that would dictate a wireless carrier's technology choices. In the *Grant Order*, the Commission again refused to adopt additional GSM roaming conditions proposed by commenters,[9] and specifically

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[8] RTG asks the Commission to require Verizon Wireless to keep the GSM network open until Verizon Wireless and AT&T have built out LTE to at least half of their networks. RTG Petition at 8.

[9] *See, e.g.*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95, at 23-24 (filed Aug. 11, 2008) ("RTG Petition to Deny") (Verizon Wireless should be required to divest the ALLTEL GSM network and sufficient spectrum to operate that network to a competitor offering GSM service; or divest the GSM network and sufficient spectrum in markets where Verizon Wireless is the only GSM provider; or commit to maintaining the GSM

"decline[d] to condition . . . approval of the transaction on . . . a requirement to maintain ALLTEL's GSM network for a specified period of time."[10] Similarly, in the *Verizon Wireless/RCC Order* and the *AT&T/Dobson Order*, the Commission stressed that "it is a long-standing principle of the Commission not to dictate licensees' technology choices."[11] RTG has provided no changed facts or material error by the Commission that would warrant reconsideration of this issue and reversal of consistent agency precedent. The Commission should accordingly again reject RTG's request that Verizon Wireless be required to operate the ALLTEL GSM network until LTE achieves a particular level of deployment.[12]

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roaming network for five years.); Petition to Deny of Palmetto MobileNet, L.P., WT Docket No. 08-95, at 24-26 (filed Aug. 11, 2008) ("Palmetto Petition to Deny") (mirroring conditions proposed in the RTG Petition).

[10] *Grant Order*, ¶ 179.

[11] *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181, ¶ 89, n. 284 (Aug. 1, 2008) ("*Verizon Wireless/RCC Order*") ("We emphasize, however, that the need for divestiture in this CMA, as well as the other markets identified in our competitive analysis, is based on the potential for the transaction to cause competitive harm due to a reduction in the number of competitors in general, and not on any potential for the transaction to have an adverse effect on roaming arrangements, in particular through its impact on GSM roaming rates, the continuation of the GSM network, or the quality of GSM service."); *Applications of AT&T Inc. and Dobson Communications Corp. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, ¶ 66, n.196 (2007) ("*AT&T/Dobson Order*").

[12] Petitioners' claims about the timeframes for LTE deployment are, in any event, pure speculation. *See* MetroPCS/NTELOS Petition at 17 (arguing that LTE will not be substantially deployed until at least seven years from now). Dick Lynch, chief technology officer of Verizon Communications, recently explained that "Verizon Wireless expects to begin deploying next-generation LTE wireless broadband within a year." *See* Stephen Lawson, "Verizon Aims for LTE Deployment in 2009," PC World (Dec. 9, 2008), http://www.pcworld.com/article/155240/.html?tk=rss_news. Petitioners' assertion that LTE deployment is many years off is thus without factual basis.

In any event, Verizon Wireless' commitment to operate the network for an "indefinite" period does not mean the network may be shut down tomorrow. Contrary to the assertions of RTG,[13] existing roaming agreements and the conditions in the *Grant Order* – including the condition requiring Verizon Wireless to maintain roaming rates for a defined period post-closing – address concerns regarding operation of the GSM network for the foreseeable future. Moreover, Verizon Wireless has a strong economic incentive not to degrade or abandon the GSM roaming network. As explained previously, ALLTEL generates significant revenue from GSM roaming, and migrating customers off the ALLTEL GSM network would be a pure revenue loss and erode the value of acquired assets.[14] Furthermore, following the merger, RTG's members will continue to have multiple alternatives for GSM roaming partners. As Verizon Wireless previously explained, in close to 99 percent of the combined Verizon Wireless/ALLTEL GSM footprint, both AT&T and T-Mobile either compete or hold the spectrum assets to compete. In the remaining 1 percent of the combined company's GSM footprint, either AT&T or T-Mobile (but not both) hold spectrum resources.[15] RTG's suggestions that Verizon Wireless is on the verge of "pulling the plug" on the ALLTEL GSM network and that GSM carriers suffer from a lack of roaming alternatives thus have no basis in fact.

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13 RTG Petition at 5-6.

14 *See* Joint Opposition to Petitions to Deny and Comments of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95, at 52 (filed Aug. 19, 2008) ("Joint Opposition").

15 *Id.*

Regarding RTG's and Leap Wireless International, Inc.'s ("Leap") request[16] to clarify Verizon Wireless' commitment not to "*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,"[17] the terms of the condition speak for themselves and are not in any way ambiguous. While certain roaming partners may select either their Verizon Wireless or ALLTEL roaming agreement to govern all traffic with the merged company, this condition plainly requires only that the *roaming rate* be honored for a period of the term of the agreement, or four years after closing, whichever is longer. Petitioners' request that this commitment be "clarified" to extend to the entire roaming agreement, not just the rates, should sound familiar. Petitioners previously requested exactly the expanded condition they request now – requiring Verizon Wireless to honor the entire agreement for its term or four years after closing – and it was rejected by the Commission. In fact, in the *Grant Order*, the Commission stated: "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."[18] The Commission then went on to deny the proposed alteration to the Applicant's proffered condition. Accordingly, RTG's and Leap's suggestion that the terms of this condition are somehow ambiguous conflicts with the record.[19]

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16 *See* Leap Petition at 3-4; RTG Petition at 11-12.

17 *See Grant Order*, ¶ 178 (emphasis added).

18 *See id.*, ¶ 176, n.608 (citing Reply Comments of Leap Wireless International, Inc., WT Docket No. 08-95, at 24 (filed Aug. 26, 2008); Reply to Opposition to Petition to Deny of the *Ad Hoc* Public Interest Spectrum Coalition, WT Docket No. 08-95, at 5 (filed Aug. 26, 2008)).

19 *See* Leap Petition at 3-4; RTG Petition at 11-12.

Petitioners' other requests with regard to the extended roaming agreements merely reiterate – with no new facts or changed circumstances – requests for more generous conditions that the Commission has already rejected. Requests for the agreements to be extended for seven years and to spectrum bands and service areas in which Petitioners may operate in the future[20] is within the scope of arguments that have been raised previously[21] and rejected by the Commission. The Commission was clear that nothing more than the roaming conditions contained in the *Grant Order* is necessary to satisfy the public interest and to ensure viable retail competition for consumers: "With regard to the additional roaming concerns raised in the record or in the *ex parte* letter filed by MetroPCS and other commenters, . . . we find that the package of divestitures . . . along with the roaming conditions described above [are] sufficient."[22]

Petitioners' remaining roaming requests not only have been specifically considered and rejected, but the Commission has either already provided relief or has open dockets considering the issues raised.[23] Concerns that new entrants will be refused roaming and requests for guarantees that rates will be just, reasonable, and not unreasonably discriminatory have already

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20 *See* MetroPCS/NTELOS Petition at 16-17; Leap Petition at 4.

21 *See, e.g., Ex Parte* Letter from Jean L. Kiddoo, Counsel, Bingham McCutchen LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, at Attachment (Oct. 28, 2008) ("MetroPCS *et al.* Roaming *Ex Parte* Letter") (arguing that the Commission should alter Verizon Wireless' commitment to extend for seven years).

22 *Grant Order*, ¶ 179.

23 *See* PSC Petition at 11, 13 (Verizon should be required to: (1) enter into intercarrier roaming agreements with any rural carriers offering wireless services at prices that are just, reasonable, and non-discriminatory; and (2) offer home and data roaming); MetroPCS Petition at 19-21 (requesting data roaming conditions).

been addressed by the Commission's *2007 Roaming Order*.[24] As the Commission reminded parties in the *Grant Order*, wireless carriers must provide roaming service to a requesting carrier with a compatible air-interface on terms that are just, reasonable, and not unreasonably discriminatory.[25] A requesting carrier that is unable to obtain roaming on these terms may file a Section 208 complaint with the Commission.[26] Likewise, as the Commission explained in the *Grant Order*, requests for home-market and data roaming are not merger specific and therefore are properly addressed in the open roaming docket.[27] For these reasons, Petitioners have not provided any basis for reconsideration or clarification of roaming conditions and the Commission should promptly deny the Petitions seeking such relief.

B. Petitioners Fail to Identify Error or Present New Facts Justifying Reversal of the Commission's Decision to Include BRS in the Spectrum Screen.

Petitioners RTG, Public Service Communications ("PSC"), and the Public Interest Spectrum Coalition ("PISC") merely repeat and restate arguments regarding the inclusion of Broadband Radio Service ("BRS") spectrum in the spectrum screen that were raised previously and rejected by the Commission in its *Grant Order*. Specifically, Petitioners urge the Commission to reconsider the inclusion of BRS spectrum within the spectrum screen, arguing

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[24] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, ¶ 23 (2007) ("*2007 Roaming Order*").

[25] *Grant Order*, ¶ 178; *see also 2007 Roaming Order*, ¶ 23.

[26] *Grant Order*, ¶ 178; *see also 2007 Roaming Order*, ¶ 30.

[27] *Grant Order*, ¶ 180 ("We will address the concerns about roaming raised in the record in this transaction in other, more appropriate proceedings. 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, including services that have been classified as information services. Any decisions reached or rules adopted in either of those roaming proceedings will apply with equal force to Verizon Wireless.").

that BRS spectrum and associated services will not be operational soon enough to be considered part of the competitive marketplace and therefore the Commission should exclude it from competitive analysis.[28] However, the Commission specifically found in the *Grant Order* that progress made in the BRS transition and the upcoming May 1, 2011 substantial service deadline justified inclusion of BRS spectrum "in a market-specific spectrum screen in those markets where the transition has been completed."[29] Petitioners identify no new facts or material omission that would warrant reversal of the Commission's sound judgment based on the record.

The Commission has previously adjusted its spectrum screen in the course of CMRS license transfer proceedings.[30] New bands have been added to the total amount of spectrum available for CMRS use based on a Commission determination that particular spectrum is "suitable" for providing mobile telephony/broadband services, resulting in an increase in the spectrum screen.[31] After fully considering arguments raised on both sides of the issue – including the same arguments Petitioners raise again now – the Commission concluded in the *Grant Order* that, where the BRS transition in a particular market is complete, 55 MHz of BRS spectrum is suitable for mobile telephony/broadband services and should be included in the input market.[32] While Verizon Wireless continues to believe that the screen should be enlarged to

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28 *See* RTG Petition at 15; PISC Petition at 3. *See also* PSC Petition at 9. RTG and PISC made nearly identical arguments in the comment round in their Petition to Deny and Reply to Opposition to Petition to Deny, respectively. *See* Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95, at n.12 (filed Aug. 12, 2008); Reply to Opposition to Petition to Deny of the Ad Hoc Public Interest Spectrum Coalition, WT Docket No. 08-95, at 2-3 (filed Aug. 26, 2008).

29 *Grant Order*, ¶ 65.

30 *See AT&T/Dobson Order*, ¶¶ 28-31.

31 *Id*., ¶ 26.

32 *Grant Order*, ¶ 65.

account for more than 55 MHz of BRS and EBS spectrum, for the purposes of this transaction, the Commission was correct that the inclusion of at least 55 MHz of BRS spectrum in the spectrum screen served the public interest.[33]

Further, Petitioners' arguments fly in the face of the representations of Sprint and Clearwire, who stated in their recently granted transfer application that BRS and EBS spectrum can be rapidly and effectively used to compete in the CMRS marketplace.[34] Indeed, Sprint and Clearwire's application, as well as these companies' statements made to investors and the Securities and Exchange Commission, asserted that New Clearwire will compete head-to-head with the 4G services of AT&T and Verizon Wireless and touted the speed with which the proposed network would be deployed. Specifically, the companies stated that "New Clearwire's wireless broadband network will cover almost one half of the United States population in roughly thirty-six months" and that New Clearwire plans "to cover up to 140 million people in

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[33] PISC speculates – without providing any evidence – that including BRS in the spectrum screen somehow advantages carriers without BRS spectrum holdings. *See* PISC Petition at 4-5. This is at odds with the sophistication of the FCC's case-by-case methodology in which the Commission looks beyond the merged entity's spectrum holdings. Indeed, in the Verizon Wireless/ALLTEL merger, many of the markets that Verizon Wireless will have to divest would not have exceeded the revised spectrum cap.

[34] Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, Lead File No. 0003462540, Description of Transaction and Public Interest Statement, at 16-17 (filed June 6, 2008, amended June 24, 2008 and October 31, 2008) ("Clearwire Public Interest Statement") ("New Clearwire will focus exclusively on the rapid deployment of the world's first nationwide WiMAX network. . . . New Clearwire will compete head-to-head against the soon-to-be-launched 4G offerings of Verizon Wireless and AT&T."). Sprint's argument that the FCC erred in including 55 MHz of BRS spectrum in the spectrum screen is properly viewed as an effort to impose constraints on competitors, rather than as a considered comment on the suitability of BRS spectrum for mobile telephony/broadband services. *See* Sprint Nextel Corporation Opposition and Reply to PISC Petition for Reconsideration, WT Docket No. 08-94, at 5-6 (filed Dec. 18, 2008).

the United States by the end of 2010."[35] The Commission affirmed these representations in its Memorandum Opinion and Order approving the Sprint-Clearwire transaction, noting the progress made in readying 2.5 GHz spectrum for deployment.[36] It follows, then, that the Commission properly added BRS spectrum to the input market in the *Grant Order*, and Petitioners have offered no basis for a contrary conclusion.

C. The Commission Properly Considered and Rejected Petitioners' Handset Exclusivity Proposals as Inappropriate in the Transfer of Control Context.

PSC and RTG seek a condition prohibiting Verizon Wireless from having exclusive arrangements with any manufacturer or, alternatively, requiring that the combined company create an exception to its exclusivity agreements to allow Tier III wireless carriers to purchase those handsets for consumers in rural markets.[37] These same proposed conditions and associated arguments were made by Petitioners in their petitions to deny the merger applications. These arguments were fully considered by the Commission and rejected in the *Grant Order*. Specifically, the Commission found that the proposed conditions "are not narrowly tailored to prevent a transaction-specific harm and are more appropriate for a rulemaking proceeding."[38] In

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35 Clearwire Public Interest Statement at 20. *See also* Clearwire CEO Ben Wolff, Sprint Nextel/Clearwire Conference Call (May 7, 2008), *available at* http://www.sec.gov/Archives/edgar/data/101830/000119312508106229/d425.htm ("We estimate that the new Clearwire service area will cover as much as 120 million to 140 million people in the US by the end of 2010, with the opportunity ultimately to reach more than 200 million people beyond 2010.").

36 *Sprint Nextel Corporation and Clearwire Corporation Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, FCC 08-259, ¶ 65 (Nov. 2008) ("As Sprint Nextel and Clearwire recognize, they have made great progress in the last three years since release of the Sprint-Nextel Merger Order in terms of transitioning to the new band plan, finalizing the WiMAX standards, developing equipment, and formulating their plans for using the 2.5 GHz band to provide service.").

37 RTG Petition at 17-18; PSC Petition at 15.

38 *Grant Order*, ¶ 185.

that regard, the Commission indicated that "the Rural Carriers Association has filed a petition asking the Commission to review exclusive handset arrangements on an industry-wide basis" and that "the harms alleged by the commenters in the proceeding are more appropriately addressed in that general proceeding."[39]

Petitioners have neither offered new facts nor demonstrated a material error or omission in the Commission's original decision. To the extent that Petitioners have slightly recast their proposed conditions,[40] the revised Petitioners' minor revisions do nothing to affect the Commission's sound finding that the harms the conditions seek to address are not transaction-specific and thus that conditions on exclusive handset arrangements of any type are inappropriate here.[41] And, contrary to PSC's assertion, the imposition of an exclusive handset condition would in no way "preserve[] the status quo."[42] Rather, it would saddle Verizon Wireless with an obligation imposed on no other carrier that would hamper its current ability to compete in the marketplace.[43] For this reason, too, the adoption of exclusive handset conditions on Verizon Wireless alone would be contrary to the public interest.

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39 *Id*., ¶ 185.

40 RTG, for example, proposed in its Petition to Deny that the Commission condition approval on a set quota of exclusive handsets being made available to Tier III carriers in rural markets, while in its Petition for Reconsideration it proposed a blanket exception to exclusivity for Tier III carriers in rural markets. *Compare* RTG Petition to Deny at 31 *with* RTG Petition at 17-18.

41 Further, there was no constraint on Petitioners raising these minor variations to their prior proposals before the *Grant Order* was adopted. As such, they are now untimely. 47 C.F.R. § 1.106(c).

42 PSC Petition at 15.

43 *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Twelfth Report, 25 FCC Rcd 2241, ¶ 188 (2008) ("*12th Annual Competition Report*") ("Providers have been attempting to differentiate themselves through exclusive arrangements to reduce churn. While the quality of voice service and price are still paramount, wireless carriers

It also should be noted that CTIA and the Rural Cellular Association ("RCA") recently requested that the Commission postpone action on RCA's proposed handset exclusivity rulemaking to allow time for an industry-wide working group to develop consensus recommendations,[44] a request the Commission has granted.[45] In such respect, RTG's and PSC's attempt to renew their general industry interests in the context of a specific merger proceeding are even more incongruous and inappropriate. Imposing a condition applicable only to Verizon Wireless, as Petitioners request, could thwart this industry effort by reducing the incentives of Verizon Wireless' competitors to participate in that process. For these reasons, Petitioners have provided no basis for reconsideration on this issue.

D. Petitioners Identify No Pre- or Post-Merger Harm That Requires Imposition of Net Neutrality Conditions.

PISC has reiterated its arguments that the Commission impose open network conditions or "clarify how it incorporated the four principles of the Internet Policy Statement into its adjudication of the merger."[46] The Commission definitively rejected these conditions in the *Grant Order*, stating that "[w]e 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

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are hoping that exclusive access to content and desirable handsets will help them retain and attract customers.").

[44] Rural Cellular Association and CTIA – The Wireless Association® Joint Request for Extension of Comment and Reply Comment Deadlines, RM-11497 (filed Nov. 20, 2008).

[45] *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, Order, DA 08-2576 (Nov. 26, 2008). Notably, although RCA proposed conditions on exclusive handset arrangements in this proceeding, it did not seek reconsideration and is seeking relief within the docket opened to consider the issue.

[46] PISC Petition at 7-9.

open."[47] Further, the Commission noted that "[i]n previous cases where conditions based on the *Internet Policy Statement* were made a condition for approval of a transaction, the transactions involved service providers who had voluntarily agreed to the condition in question."[48]

The Commission must once more reject PISC's arguments, as PISC has again failed to demonstrate – or even allege – a specific harm warranting such a remedy. Instead, PISC asserts that Verizon Wireless' acquisition of the 700 MHz C Block in Auction 73, its announcement of the Open Development Initiative, and its proposed acquisition of ALLTEL obligate the Commission to revisit its decision in the *700 MHz Second Report and Order* to limit the open access requirement to the C Block (notwithstanding the fact that the deadline for reconsideration of the *Second Report and Order* has long since passed).[49] PISC goes on to speculate that "Verizon will use its increased market power to force equipment manufacturers to forgo the open C Block in favor of more closely controlled aspects of the Verizon-Alltel network."[50] This statement is sheer speculation and does not alter the Commission's previous conclusion that "[n]othing in the record demonstrates that this transaction will harm consumers by making Verizon Wireless's network either more or less open."[51] Because PISC has again failed to demonstrate a specific harm that would warrant imposition of its proposed net neutrality conditions, its repetitious petition for reconsideration should be rejected.

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47 *Grant Order*, ¶ 188.

48 *Id.*, ¶ 191.

49 PISC Petition at 7.

50 *Id.*, 7-8.

51 *Grant Order*, ¶ 188.

E. The Commission Properly Considered and Rejected Chatham Avalon Park Community Council's Assertion that Verizon Wireless' Foreign Ownership Showing Is Inadequate.

The Commission unequivocally stated in the *Grant Order* that Verizon Wireless' non-U.S. ownership survey methodology sufficiently demonstrated its compliance with its existing Section 310(b)(4) declaratory ruling.[52] In doing so, the Commission rejected Chatham Avalon Park Community Council's ("CAPCC") arguments that Verizon Wireless' methodology is inadequate or inconsistent with the Commission's foreign ownership policy.[53] CAPCC nonetheless rehashes identical arguments in its request for reconsideration. CAPCC's request is repetitious and should be denied.

CAPCC's Petition is mistakenly premised on the argument that the Commission has "expressly, definitively, and consistently rejected" the type of foreign ownership methodology employed by Verizon Wireless and that Verizon Wireless' showing conflicts with the *América Móvil Order*.[54] These arguments are simply untrue, and the Commission recognized as much in the *Grant Order*. Indeed, the *Grant Order* provides several examples in which the Commission approved of using shareholder addresses to demonstrate compliance with the foreign ownership requirements.[55] The *Grant Order* also specifically concludes that "Chatham misconstrues the methodology that Verizon Wireless has used to demonstrate compliance with its section

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52 *See id.*, ¶¶ 228-229.

53 *See id.*, ¶ 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.").

54 CAPCC Petition at i, 7.

55 *See Grant Order*, ¶ 228, n.793.

310(b)(4) ruling."[56] Going further, the Commission distinguishes the methodology used by Verizon Wireless from the approach rejected by the Commission in *América Móvil*:

> Verizon Wireless has provided the Commission with aggregate information regarding the addresses of record of nearly 100% of the beneficial owners of Verizon and Vodafone stock. Thus, in contrast to the foreign ownership 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."[57]

CAPCC's arguments and reliance on the *América Móvil Order* were without merit when they were first considered and rejected by the Commission. Because circumstances have not changed in the interim, CAPCC's request for relief should be dismissed as repetitious.[58]

F. The Commission's Competitive Market-by-Market Review Demonstrates That the Six Additional Divestitures Proposed By Public Service Communications Are Not Necessary.

The Commission should reject PSC's repetitious request for the divestiture of six CMA markets[59] that the Commission already has reviewed, and found competitive, as part of its granular competitive analysis of the transaction. The Commission conducted an exhaustive

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56 *Id*., ¶ 228.

57 *Id*. The Commission also "reject[ed] as unsupported and without merit" CAPCC's suggestion – which it raises again here – that the FCC's conclusions in the recent *Diversification of Ownership Order* are relevant to determining whether Verizon Wireless used reasonable means to demonstrate compliance with its section 310(b)(4) ruling. The Commission explained: "In [the *Diversification of Ownership Order*] 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. 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)." *Id*., n.795.

58 CAPCC's request that other parties be permitted to utilize the same methodology for purposes of demonstrating foreign ownership under different factual scenarios in other proceedings is not an appropriate issue for this proceeding.

59 PSC Petition at 6.

market-by-market review which, by its very design, is intended to be overly inclusive.[60] The review identified a number of markets for divestiture, and the markets identified by PSC were not among them. The additional divestitures suggested by PSC – as well as the concept of packaging smaller divestiture markets with adjacent population centers[61] – were considered and rejected by the Commission. Moreover, the Commission's competitive review has been validated by two other federal competition regulators – the Department of Justice and the Federal Trade Commission.

The *Grant Order* reflects competitive analysis of the Georgia/Alabama and Idaho markets identified by PSSC, as well as the Commission's judgment about the state of competition in those markets. PSC seeks divestitures in the following markets:

- CMA 153 Columbus, GA MSA
- CMA 311 AL 5 – Cleburne RSA
- CMA 314 AL 8 – Lee RSA
- CMA 375 GA 5 – Haralson RSA
- CMA 392 ID 5 – Butte RSA
- CMA 393 ID 6 – Clark RSA[62]

As in other wireless mergers, the Commission identified markets for further review through the use of an initial screen to "eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace."[63] This approach is designed "to be conservative and ensure that [the Commission] do[es] not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists."[64] The

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60 *Grant Order*, ¶ 75.

61 PSC Petition at 10.

62 *Id*. at 6.

63 *Grant Order*, ¶ 75.

64 *Id*.

initial screen flagged for further review seven of the eight CMAs identified for divestiture in Petitioner's pre-grant comments.[65] In two of those markets – CMA 261 Albany, GA MSA and CMA 376 GA 6–Spalding RSA – the Commission ordered divestitures.[66] With respect to the six remaining markets where Petitioner continues to seek divestitures, one did not trip the initial screen and five others were subject to market-by-market analysis resulting in a Commission finding that "competitive harm is unlikely."[67] Petitioner provides no grounds for overturning the Commission's judgment regarding the competitiveness of these markets, or the parallel and consistent approvals of the Department of Justice[68] and the Federal Trade Commission.

The Commission also considered – and rejected – proposed conditions requiring that, in markets where the Commission ordered divestitures, those divestitures be packaged in a manner

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65 *Grant Order*, Appendix C ("Markets Identified by the Initial Screen"). Consistent with the initial screen methodology, the fact that CMA 311 AL 5 – Cleburne RSA was not identified indicates that "clearly [there is] no competitive harm relative to today's generally competitive marketplace." *Id*., ¶ 75.

66 *Id*., Appendix B ("Markets to be Divested Voluntarily by Verizon Wireless").

67 *Id*., ¶ 98. PSC's attempt to identify shortcomings in Verizon Wireless' market-by-market analysis is itself in error. Petitioner states that "in the case of CMAs 314 and 376, it appears that the analysis contains errors" and then argues that Verizon Wireless' finding that there will be four carriers in CMA 314 post-merger is incorrect because "when Verizon Wireless and ALLTEL are subtracted, this leaves only *three* operational carriers to compete with the merged entity." PSC Petition at 8-9. However, Verizon Wireless' analysis states "applicants' data show[s] five operational carriers including Verizon Wireless and ALLTEL." Joint Opposition, at Attachment 2: CMA-by-CMA Analysis, 25. Only ALLTEL is leaving the market, leaving a total of four competitors. PSC offers no explanation of how Verizon Wireless allegedly erred in its analysis of CMA 376.

68 While PSC requests that the transfer of control proceeding be re-opened and held in abeyance pending public comment on the Department of Justice proposed settlement, *see* PSC Petition at 15-17, it failed to request a stay and could not satisfy the Commission's stay standard if it had. Moreover, it is ordinary course processing for transactions to close during the period allowed for public comment on a proposed settlement under the Tunney Act.

that would make them attractive to certain favored buyers.[69] The rejected conditions are identical to those petitioners PSC and CAPCC propose now without any variance in reasoning or justification.[70] As the Commission stated: "[w]e decline to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer, or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer [sic]."[71] As the Commission noted, rejection of these proposed conditions imposes no limitation on future acquirers of the divestiture properties. Instead, "the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission's consent to the transfer or assignment of the Divestiture Assets."[72] This reliance on market forces to determine third party buyers of divested assets is fully consistent with precedent.[73]

Petitioners provide no basis for reconsidering this sound decision of the Commission or overturning established caselaw. They do not offer a single fact or argument not already fully considered and rejected in the merger review and decision. Accordingly, the request for additional divestitures must be denied.

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69 *Grant Order*, ¶ 160 (specifically considering conditions relating to the packaging of divestiture properties and preferences for potential acquirers).

70 *See* PSC Petition at 10; CAPCC Petition at 3-6.

71 *Grant Order*, ¶ 162.

72 *Id.*

73 *See, e.g., AT&T/Dobson Order*, ¶¶ 88-89; *Verizon Wireless/RCC Order*, ¶ 113.

G. The Commission Should Deny U.S. Cellular *et al.*'s Request to Constrain Verizon Wireless' Flexibility in Reducing its ETC Payments.

In its petition, United States Cellular Corporation, Carolina West Wireless, Inc., and NE Colorado Cellular, Inc., d/b/a Viaero Wireless ("U.S. Cellular *et al.*") seek revision of Verizon Wireless' voluntary commitment to reduce its Eligible Telecommunications Carrier ("ETC") Universal Service Fund ("USF") receipts by 20 percent annually over the next five years to advance the Commission's objective of controlling high cost USF growth. Specifically, U.S. Cellular *et al.* request that the Commission "clarify" that, as of the effective date of the *Grant Order*, Verizon Wireless' federal high cost support should be fixed on a state-by-state basis and reduced by 20 percent; on each anniversary thereafter, the support should be reduced by an additional 20 percent.[74]

U.S. Cellular *et al.* express concern that, without a state-by-state freeze in the amount of support, Verizon Wireless might implement this 20 percent reduction unevenly across its states, yielding significant reductions in certain states and no reductions or even increases in other states. U.S. Cellular *et al.* theorize that this could have adverse effects on competitive ETCs, including a possible reduction in support to such entities.[75] However, U.S. Cellular *et al.* provide no basis to show that reductions conducted in the hypothesized manner are contrary to the FCC's goal of stabilizing USF high cost support by minimizing CETC access to funding.

The voluntary commitment made by Verizon Wireless is unambiguous and requires no further clarification. It does not contain any reference to freezing Verizon Wireless' support on a state-by-state basis, nor does the Commission's discussion of this commitment in the *Grant*

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74 U.S. Cellular *et al.* Petition at 5-6.

75 *Id. at* 5.

Order impose any such limitation.[76] In contrast, the *Grant Order* makes quite clear the Commission's objective in imposing the condition – to control the size of the USF by reducing CETC access to funding. As the *Grant Order* notes: "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 support disbursements to competitive ETCs."[77] These concerns previously led the Commission to adopt an interim, emergency cap on the USF funding available to all competitive ETCs.[78] In adopting the ETC condition, the Commission stated that:

> The proposed transaction constitutes a merger . . . with another wireless company that is the largest recipient of [] high-cost competitive ETC support. Such unique facts . . . 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.[79]

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[76] Should there be any doubt that neither Verizon Wireless nor the Commission intended to "fix" Verizon Wireless' high cost support "on a state-by-state basis," as U.S. Cellular *et al.* contend, one need only compare this merger condition to the Commission's statements in the *CETC Cap Order*, where the Commission made clear that the "interim cap . . . limits the annual amount of high-cost support that competitive ETCS can receive *for each state* to the amount competitive ETCs were eligible to receive *in that state* during March 2008, on an annualized basis." *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd 8834, ¶ 7 (2008) ("*CETC Cap Order*") (emphases added). In contrast, neither Verizon Wireless' voluntary commitment nor the *Grant Order* makes any mention of "capping" Verizon Wireless' high-cost support by "state."

[77] *Grant Order*, ¶ 192.

[78] *See CETC Cap Order*.

[79] *Grant Order*, ¶ 197.

To the extent competitor interests were mentioned at all, it was only to note Verizon Wireless' concern that its competitors not gain a windfall from Verizon Wireless' voluntary commitment to forego a percentage of its ETC funding.[80]

Moreover, while Verizon Wireless' voluntary commitment was introduced on the day the *Grant Order* was adopted, USF issues were raised early in the proceeding, including the concept of reducing or eliminating the merged firm's ETC payments.[81] The Commission specifically considered and rejected proposed conditions, akin to U.S. Cellular *et al.*'s proposal, that were more onerous to Verizon Wireless and generous to competitors. Like U.S. Cellular *et al.*, some commenters sought conditions that would make it more difficult for Verizon Wireless to collect ETC payments in particular states by requiring state-by-state cost showings as a condition of receiving USF.[82] The Commission declined to impose an onerous state-by-state cost showing. Instead, it adopted a narrow condition focused on reducing Verizon Wireless' overall ETC receipts in regular intervals over five years, holding that: "Verizon Wireless' voluntary commitment to phase down competitive ETC high cost support over five years is sufficient to relieve commenters concerns."[83]

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80 *See Grant Order*, ¶ 196 ("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 ETC.").

81 *See* Petition to Deny of the National Telecommunications Cooperative Association, WT Docket No. 08-95, at 7 (filed Aug. 11, 2008); Palmetto Petition to Deny at 26-28; Petition to Condition Transaction Approval of the Rural Carriers, WT Docket No. 08-95, at 18-19 (filed Aug. 11, 2008) ("Rural Carriers Petition").

82 *See* Palmetto Petition to Deny at 28; Rural Carriers Petition at 19; RTG Petition to Deny at 27; Petition to Condition Transaction Approval of the South Dakota Telecommunications Association, WT Docket No. 08-95, at 7, 18 (filed Aug. 11, 2008).

83 *Grant Order*, ¶ 197.

In sum, the *Grant Order imposes* no limits on Verizon Wireless' flexibility in implementing the staged ETC funding reductions. The Commission's judgment in this regard is consistent with the flexibility afforded to all other carriers in the competitive CMRS market to make judgments about whether or not to seek ETC funding in particular markets based on dynamic market conditions. U.S. Cellular *et al.* has provided no basis for revisiting this decision.

II. CONCLUSION.

For the foregoing reasons, the petitions for reconsideration should promptly be dismissed or denied.

Respectfully submitted,

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