

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Application of)	
)	
CELLCO PARTNERSHIP d/b/a)	
VERIZON WIRELESS, Transferor)	
)	
and)	
)	WT Docket No. 09-104
AT&T INC., Transferee)	
)	
for Consent to the Transfer of Control of)	File Nos. 0003840313, <i>et al.</i>
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	
Communications Act)	

**PETITION TO DENY OF
THE RURAL TELECOMMUNICATIONS GROUP, INC.**

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July 20, 2009

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SUMMARY

Before approving the proposed transaction between AT&T, Inc. and Verizon Wireless, the FCC must closely examine the transaction and determine whether it is truly in public interest. Over the past few years, the applicants have created a duopoly within the domestic commercial mobile radio service industry that has stifled competition and reduced consumer choice. The purchase of ALLTEL Communications by Verizon Wireless, and now the sale of divested assets by Verizon Wireless to AT&T, is a case of two large operators working in tandem to remove strategic competitors and then divide the assets of their conquered foe. The proposed transaction is not in the public interest and the applications should be denied.

AT&T and Verizon have the market power and incentive to raise retail prices. Due to a dearth of effective competition in many of the states involved in this transaction, an increase in retail rates by both the applicants would go unchecked. In those markets where there are three or more mobile operators, AT&T and Verizon will have the luxury of reducing prices to artificial levels in order to entice customers. When combined with the applicants' existing anticompetitive practices of denying automatic data and in-market roaming to partners, and restricting competing mobile service providers from offering popular handsets to their customers due to handset exclusivity agreements with mobile device manufacturers, allowing AT&T and Verizon additional market power sets the stage for small and rural operators to inevitably fail while the duopoly of AT&T and Verizon continues to gain unhealthy strength, market share, and control of consumer choice.

Because AT&T and Verizon have not yet demonstrated that the proposed transaction is in the public interest, and because questions of fact remain unanswered, RTG respectfully

requests that the FCC designate the applications for hearing, or alternatively, compel the applicants to furnish additional information to support their public interest claims.

Should the Commission proceed with the proposed transaction, RTG requests that certain conditions be placed on both parties upon closing. Specifically, AT&T and Verizon Wireless must: (1) agree to support automatic voice and data roaming by requesting operators at fair and reasonable rates in all markets, including those markets where the requesting operator has licenses or spectrum management rights; and (2) terminate all handset exclusivity agreements with mobile device manufacturers and agree to refrain from entering into any such agreements in the future.

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PETITION TO DENY

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Public Notice of the Federal Communications Commission (“FCC” or “Commission”) released June 19, 2009¹, hereby petitions the FCC to deny the captioned applications (“Applications”) or, in the alternative, to place significant conditions on any grant to ensure that the availability, price and quality of service provided by rural wireless carriers to rural consumers is not threatened or harmed.

RTG is a 501(c)(6) trade association whose members consist of rural and small wireless carriers and licensees that depend upon the availability of spectrum, roaming services and competitive handsets to attract and serve their rural subscribers. The proposed transaction

¹ *AT&T, Inc. and Cellco Partnership DBA Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, Pleading Cycle Established*, FCC Public Notice, DA 09-1350 (released June 19, 2009 (“Public Notice”).

between AT&T Inc. (“AT&T”) and Verizon Wireless (“Verizon”) (together, the “Applicants”), involves predominantly rural markets and will harm RTG’s members and its member subscribers. As discussed below, the Applicants have failed to show that the Applications would be consistent with the public interest, convenience and necessity. The 79 Cellular Market Areas (CMAs) involved in this proposed transaction and that comprise the Applications consist of predominantly rural areas of the Great Plains and Rocky Mountains where RTG members operate CMRS facilities. As discussed below, if the Applications are granted, Applicants will operate as a duopoly in many of these markets, and RTG members operating in these markets will not be able to effectively compete in these markets due to the ability and incentive of AT&T and Verizon to leverage their duopolistic power to behave in an anticompetitive manner. Accordingly, RTG, through its members, is a real party in interest in the above-captioned proceeding and has standing to file the instant petition.²

I. THE PROPOSED TRANSACTION SHOULD BE DENIED BECAUSE IT PERPETUATES A DUOPOLISTIC COMMERCIAL MOBILE RADIO SERVICES INDUSTRY AND HARMS CONSUMERS IN RURAL AMERICA.

The proposed transaction is intended by the Applicants to be the final chapter in a saga that began just over one year ago when Verizon announced its intent to purchase ALLTEL Communications, Inc. (“ALLTEL”),³ the country’s largest, and arguably strongest, Commercial Mobile Radio Service (“CMRS”) competitor outside of the “Big Four” at that time.⁴ In its

² 47 U.S.C. §309(d)(1) and 47 C.F.R. §1.939.

³ See generally Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and De Facto Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, DA 08-1481 (released June 25, 2008) (“Verizon-ALLTEL Public Notice”).

⁴ The “Big Four” are generally considered the four “nationwide” mobile operators of the United States. Together, AT&T and Verizon, along with Sprint Nextel and T-Mobile USA, Inc. control approximately 90% of the domestic mobile marketplace based on EOY 2008 figures. Including former ALLTEL subscribers, over 60% of the domestic mobile marketplace is controlled by just the Applicants.

petition to deny the ALLTEL-Verizon merger, RTG correctly predicted that the divested assets were likely to be purchased by none other than AT&T.⁵ Unfortunately for all mobile consumers, RTG's prediction was rather easy to make given that the CMRS industry has been sliding towards a *de facto* duopoly over the last five years. By approving the Applications, the Commission will contribute further to an environment that reduces consumer choice and prevents small and rural operators from realistically competing on the national stage, let alone in their own backyards.⁶

The standard of review employed by the Commission to determine whether to approve transactions such as the one proposed here by AT&T and Verizon is whether approval of the transaction “will serve the public interest, convenience, and necessity.”⁷ As part of the public interest evaluation, the Commission must look to the “broad aims of the Communications Act” which include, among other things, “a deeply rooted preference for preserving and enhancing

⁵ *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorization, 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*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed August 11, 2008) (“RTG Petition to Deny”) at 18.

⁶ While the bulk of the divestiture assets that are part of these Applications are destined for AT&T, the remaining six states are to be sold (subject to applicable governmental consents) to Atlantic Tele-Network, Inc., a relative newcomer to the domestic marketplace. *Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations*, Public Notice, WT Docket No. 09-119, DA 09-1515, *Pleading Cycle Established* (released July 9, 2009). While Atlantic Tele-Network does operate a limited “roam-only” CMRS network in the United States via Commnet Wireless, and modest retail mobile networks overseas, it is for all intents and purposes an irrelevant player in the domestic CMRS marketplace. The FCC and the United States Department of Justice (DOJ) are obligated, and have gone out of their way, to mandate that the divested assets be sold in such a manner as to preserve their integrity and marketplace viability. Specifically, the DOJ stipulated that “[t]he Divestiture Assets...shall be divested together to a single Acquirer, provided that it is demonstrated to the sole satisfaction of the plaintiff United States...that the Divestiture Assets will remain viable and the divestiture of such assets will remedy competitive harm alleged in the complaint.” *United State, et. al. vs. Verizon Communications, Inc. and ALLTEL Corporation*, Final Judgment, No.: 1:08-cv-01878 (EGS), United States District Court for the District of Columbia (filed March 5, 2009) at 12. By selling to an entity with zero domestic retail operational experience, Verizon is ensuring that those assets not purchased by AT&T end up in the hands of a company that is perhaps least capable of effectively competing against it, and certainly less capable than other established small and rural carriers with operational experience in the same markets where those assets are located.

⁷ 47 U.S.C. §§ 214(a), 310(d)(1).

competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.”⁸

Furthermore, horizontal transactions such as that proposed by the Applicants inevitably “raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices.”⁹ Additionally, the Commission has recognized that in transactions similar to this one involving markets “where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions” and “one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.”¹⁰

Finally, a fundamental tenet adhered to by the Commission in its review of horizontal transactions is that “absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.”¹¹ According to the Commission, “market power” includes the ability

⁸ *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorization, 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, WT Docket No. 08-95, FCC 08-258 (released November 10, 2008) (“Verizon-ALLTEL Order”) at ¶27.

⁹ Verizon-ALLTEL Order at ¶40.

¹⁰ Verizon-ALLTEL Order at ¶88.

¹¹ Verizon-ALLTEL Order at ¶40.

of sellers to raise prices above competitive levels, and reduce competition on dimensions other than price, including innovation and service quality.¹²

In the Applications, AT&T and Verizon assert that “a sufficient number of competitors operate and provide service in every CMA affected by the transaction to guard against unilateral exercise of market power.”¹³ That is simply not true. In states such as Montana, North and South Dakota, and Wyoming, which make up a huge portion of the Great Plains and Rocky Mountains, there are three or less CMRS competitors total in those markets (including AT&T and Verizon), and in many Census Blocks, there will only be two competitors remaining: AT&T and Verizon.¹⁴ There are inherent problems with either situation. Where, after the transaction is complete, the stage is set for competition only among the two largest nationwide CMRS operators (AT&T and Verizon), there is an increased risk that the Applicants will tacitly coordinate their actions, especially on price, when there is no third operator to offer a viable alternative. In these situations, mobile consumers face the unquestionable specter of reduced choice and the Applicants have the luxury and an incentive to adjust their prices *upwards* on both existing customers and new mobile consumers.

Alternatively, in any of the 79 markets where there is a third CMRS competitor already present, the operators will have the ability to temporarily, and artificially, adjust their prices *downwards* in order to cannibalize third-operator customers and debilitate competition from

¹² *Id.* at footnote 191.

¹³ *In the Matter of Cellco Partnership DBA Verizon Wireless and AT&T, Inc. for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, Description of Transaction, Public Interest Showing and Related Demonstrations, FCC Form 603 Exhibit 1, *WT Docket No. 09-104* (filed June 5, 2009) (“Applicants’ Public Interest Statement”).

¹⁴ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, *WT Docket No. 08-27, DA 09-54* (released January 16, 2009) (“Thirteenth Report”) at 4.

outside the duopoly. This situation is possible because of anticompetitive conditions already present due to a lack of a spectrum cap, the existence of handset exclusivity agreements between mobile device vendors and CMRS operators, and roaming regulations that allow both AT&T and Verizon to deny “in market” roaming and automatic data roaming. Sprint Nextel and T-Mobile, both of whom are urban-centric, are noticeably absent from many of these 79 markets. In such markets, the only potential competition to AT&T and Verizon after this transaction would be small and rural operators such as RTG members who are unable to offer their customers data roaming, the latest handsets, and the ability to roam on a nationwide operator in adjacent markets. RTG has stated in the past that non-price factors such as network size, home-network Quality of Service (QoS), customer care, restrictions on roaming services and overall product offerings hugely influence consumer behavior.¹⁵ Some factors, such as network QoS and customer care are completely in the control of smaller CMRS operators, but are not considered valuable enough to lure or retain customers. The only way small and rural CMRS operators could realistically compete would be to lower retail prices without the benefit of the economies of scope and scale enjoyed by AT&T and Verizon.¹⁶

Should embattled small and rural operators decide to lower prices in an attempt to save or attract customers, they do so at their own peril, for such a move would inevitably risk their financial stability and long-term viability and could lead to their exit from the CMRS

¹⁵ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Reply Comments of the Rural Telecommunications Group, Inc., WT Docket No. 08-27 (filed July 13, 2009) (“RTG CMRS Competition Report Reply Comments”) at 15.

¹⁶ The biggest benefit of having a truly nationwide, facilities-based CMRS network is that the revenue generated from more densely populated areas subsidizes the build-out and operational expenses in more sparsely populated areas. Small and rural operators simply do not have this luxury of dollar-cost averaging their expenses on a national level.

marketplace. Finally, because the existing data roaming and in-market roaming regulations are heavily tilted against new market entrants and small and rural CMRS operators in the absence of spectrum caps, those disadvantaged operators would be unable to survive.¹⁷ Once the CMRS marketplace reverts to duopolistic control, the Applicants would then be free to artificially adjust their rates *upwards*. The ability of AT&T and Verizon to tacitly coordinate their actions and remove effective competition through a combination of market power and reliance upon anticompetitive roaming regulations is clearly not in the public interest. The Commission has a duty to preserve and enhance competition in relevant markets and the risk here of collusion is high.

Before approving or denying the Applications, the Commission must weigh the potential public interest benefits of the proposed transaction against any potential public interest harms. The Applicants must demonstrate that on balance, and by a preponderance of the evidence, that the proposed transaction will serve the public interest.¹⁸ The Applicants have clearly not proved, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest. Furthermore, as discussed below, material questions of fact are not addressed or are glossed over by the Applicants.

¹⁷ Just as price is a major factor considered by consumers, so too is the ability for a CMRS operator to offer a nationwide network with data services offered throughout. AT&T and Verizon do not voluntarily offer in-market roaming or data roaming at the highest-possible access speeds to all small and rural operators. The lack of these crucial offerings would force small and rural operators to compete on price alone, undermining their business plan to the point of insolvency.

¹⁸ Verizon-ALLTEL Order at ¶26.

II. THE COMMISSION SHOULD REQUEST MORE INFORMATION FROM THE APPLICANTS AND DESIGNATE THE APPLICATIONS FOR HEARING IN ORDER TO RESOLVE MATERIAL ISSUES OF FACT.

In the Applicants' Public Interest Statement, many questions of fact are left unanswered. AT&T spends a considerable amount of time discussing the alleged benefits of the transaction to the customers it would inherit from Verizon and to its own subscribers outside of the affected markets, but it does not discuss the impact of the transaction on customers dependent upon either the GSM or CDMA roaming networks that serve the 79 markets. Will AT&T support the same level of service currently offered to roamers in the 65 former ALLTEL markets, the 11 former Rural Cellular Corporation markets, and the three former Verizon markets that make up the 79 CMAs involved in this transaction?¹⁹ What terms and conditions will dictate the usage of those networks? What is AT&T's technology migration plan concerning those various networks? From a public safety perspective, will AT&T provide E-911 Phase II services? Will AT&T even build out in the vast unserved and rural areas or continue to hold the areas hostage by letting the spectrum lie fallow while rural carriers are unable to access the spectrum to build out these areas and provide much needed coverage?

As discussed above, Verizon and AT&T bear the burden of proving that the proposed transaction, on balance, serves the public interest.²⁰ If the Applicants are unable to so demonstrate, or if the record presents a substantial and material question of fact, Section 309(e)

¹⁹ Of the 79 CMAs, the 65 CMAs that are former ALLTEL markets include assets in the states of Alabama, Arizona, California, Colorado, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Dakota, South Dakota, Tennessee, Utah, Virginia and Wyoming. The 11 CMAs that are former Rural Cellular Corporation markets include assets in the states of Kansas and Minnesota. The three CMAs that are former Verizon markets include assets in the states of Michigan, Minnesota and Nebraska. CMA488 (Minnesota RSA-7) was a joint venture between Rural Cellular Corporation and Verizon.

²⁰ *Id.*

of the Act requires that the FCC designate the Applications for hearing.²¹ Additionally, the Commission is authorized to compel the Applicants to furnish additional information regarding the purported public interest benefits stemming from the Applications,²² just as the Commission requested in the merger that eventually spawned this transaction - - the purchase of ALLTEL by Verizon.²³ Because the Applicants have so far not met their burden of proof, the Commission must designate the Applications for hearing, or in the alternative, compel the Applicants to furnish additional information regarding the purported public interest benefits. Such requested information should include, at the very least, the status of roaming agreements on the former ALLTEL, Verizon and Rural Cellular Corporation CMAs AT&T is purchasing (i.e., how AT&T intends to support such roaming going forward), and the future of both CDMA and GSM roamers on those divested networks; the rates, terms and conditions offered to roaming partners; assurances of network quality; and a timeline regarding network migration paths.

III. ANY APPROVAL OF THE APPLICATIONS MUST BE CONDITIONED ON OVERSIGHT OF ROAMING AGREEMENTS INVOLVING THE PURCHASED ASSETS AND ELIMINATION OF HANDSET EXCLUSIVITY AGREEMENTS.

The sheer market dominance that Verizon and AT&T will hold after they scavenge the carcass of ALLTEL is unprecedented. While Verizon has already convinced the Commission that the anticompetitive harms resulting from its assumption of control of ALLTEL in numerous rural markets are outweighed by perceived, but yet to materialize, benefits, it is still possible for those remaining assets slated for divestiture to be sold to an entity other than AT&T. Just as it asserted in its Petition to Deny the Verizon-ALLTEL merger, RTG again urges the Commission

²¹ 47 U.S.C. § 309(d)(e).

²² 47 U.S.C. § 308(b).

²³ Verizon-ALLTEL Order at ¶11.

not to allow the transaction to proceed because of the resulting market power in both the wholesale roaming and retail markets. However, if AT&T and Verizon are allowed to go forward with the transaction, the Commission should impose specific conditions to ensure that both AT&T and Verizon do not stifle competition or use their ever increasing market power to harm consumers, especially those consumers living and traveling in rural America.

The Commission has the authority to “impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.”²⁴

Additionally, the Commission has the ability to prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act and that are not inconsistent with law.²⁵ Should the Commission permit the transaction to proceed, there are at a minimum certain conditions that must be placed on both AT&T and Verizon to ensure that the Applicants do not abuse their already dominant place in the roaming and retail marketplace. These conditions include requiring both AT&T and Verizon to support data roaming for all requesting operators at fair and reasonable rates, requiring the Applicants to support roaming in all markets including those markets where the requesting operator has licenses or spectrum management rights, and prohibiting both Applicants from continuing the use of handset exclusivity agreements between themselves and mobile device manufacturers.

²⁴ Verizon-ALLTEL Order at ¶29.

²⁵ 47 U.S.C. § 303(r).

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

Since the release of the Commission's *Roaming Order*²⁶, several important issues related to roaming remain unresolved, namely, the status of the in-market (or "home") roaming exclusion²⁷ and the status of the exclusion of data ("information services") roaming from treatment as a common carrier service.²⁸ The Commission took steps to initiate proceedings on both of these critical topics, yet they remain unaddressed today. The home-market roaming exclusion is untenable for a variety of reasons, but most importantly because its retention will nurture an environment where market incumbents, such as the Applicants, will discriminate and take advantage of new entrants, and stifle competition in the process.²⁹ Furthermore, the Commission's ongoing encouragement of universal broadband deployment, along with the fact that mobile data services will soon eclipse traditional mobile voice services, compels the need for data roaming to be included as part of the automatic roaming requirements. Accordingly, until these two matters are resolved, RTG respectfully requests that the Commission deny the Applications for license transfer under consideration. However, should the Commission refuse

²⁶ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking (FCC-07-147, rel. August 16, 2007) ("*Roaming Order*").

²⁷ *Roaming Order* at ¶ 77-81.

²⁸ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Public Notice, *Petitions for Reconsideration of Action in Rulemaking Proceeding* (released October 12, 2007).

²⁹ *In the Matter of Fourteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service*, WT Docket No. 09-66, Comments of the Rural Telecommunications Group, Inc. (filed June 15, 2009). If new market entrants are unable to build-out a network comparable to their competitors in every corner of their licensed area, they are at an immediate disadvantage. With no guarantee of even a "ramp up" period, new entrants are discouraged from building-out or from even acquiring licenses in the first place.

to deny the Applications, in order to safeguard the public interest, the Commission should condition any grant on a requirement that the Applicants provide both automatic voice and data roaming to all requesting parties, regardless of the requesting party's spectrum rights, in all markets where the Applicants provide service. As part of this requirement, AT&T and Verizon should be required to provide automatic data roaming at speeds commensurate with the technology utilized by the requesting operator and at fair and reasonable rates.

B. The Commission Should Condition the Transaction so that AT&T and Verizon are Prohibited From Entering Into or Maintaining Handset Exclusivity Agreements.

The inability of small and rural operators to sell to their subscribers handsets that are subject to handset exclusivity agreements puts these smaller and rural carriers at a significant competitive disadvantage. On May 20, 2008, the Rural Cellular Association ("RCA") filed a Petition for Rulemaking with the FCC seeking a prohibition on handset exclusivity deals between the country's largest wireless carriers and handset manufacturers.³⁰ RTG requests that as a condition to the transaction, AT&T and Verizon make all of their handsets available to all Tier III rural wireless carriers throughout the United States so that they can be made available to their subscribers.

IV. CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission deny the above-captioned Applications or alternatively designate the Applications for hearing pursuant to Section 309(e). If the Commission chooses to grant the Applications, RTG requests that the

³⁰ *In re Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by Rural Cellular Association, RM-11497 (filed May 22, 2008).

Commission condition the grant of the Applications as requested to ensure that the public interest is served.

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 to Deny of the Rural Telecommunications Group, Inc. was served on this 20th day of July, 2009, by email on those listed below:

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