



**advocate for rural wireless telecommunications providers  
Washington, DC**

February 27, 2012

**Via Electronic Delivery**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, TW-A325  
Washington, DC 20554

**Re: Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a  
Spectrum Aggregation Limit on All Commercial Terrestrial Wireless  
Spectrum Below 2.3 GHz  
RM-11498**

Dear Ms. Dortch:

On Tuesday, February 21, 2012, the Rural Telecommunications Groups, Inc. (“RTG”) filed the attached *Petition to Deny* in reference to the Verizon Wireless-Leap Wireless proceeding currently before the Commission.<sup>1</sup> We are associating this *Petition to Deny* with the above referenced proceeding and application because RTG relies heavily on the arguments made in its above-referenced Petition for Rulemaking. RTG urges the FCC to institute a rulemaking immediately to review its current spectrum screen and consider imposing a spectrum cap.

Should you have any questions or require additional information, please do not hesitate to contact me.

Respectfully submitted,

**Rural Telecommunications Group, Inc.**

By: /s/ Caressa D. Bennet  
Caressa D. Bennet  
General Counsel

Attachment

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<sup>1</sup> *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Leap Wireless International, Inc. Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses, Petition to Deny*, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596 and 0004949598 (filed February 21, 2012) (“*Petition to Deny*”).

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

In re Applications of	)	
	)	
Cellco Partnership d/b/a Verizon Wireless	)	
and Leap Wireless International, Inc.	)	ULS File Nos. 0004942973, 0004942992,
Seek FCC Consent to the Exchange of	)	0004952444, 0004949596 and 0004949598
Lower 700 MHz Band A Block, AWS-1,	)	
and Personal Communications Service	)	
Licenses	)	

To: The Commission

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

**RURAL TELECOMMUNICATIONS  
GROUP, INC.**

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Date: February 21, 2012

**TABLE OF CONTENTS**

**SUMMARY .....i**

**I. INTRODUCTION.....2**

**II. APPROVAL OF THE PROPOSED TRANSACTION IS CONTRARY TO THE PUBLIC INTEREST.....5**

**A. A Post-Transaction Leap Ceases to be a Regional Player or an Effective Competitor to AT&T and Verizon.....7**

**B. A Post-Transaction Leap Removes Itself As a Future 4G Roaming Alternative to AT&T and Verizon in Non-Urban Markets.....10**

**C. Capacity Starved Rural Operators Will Be Prevented From Acquiring New Spectrum.....12**

**III. THE APPLICANTS MISSTATE AND MISCHARACTERIZE THE PUBLIC INTEREST BENEFITS OF THE TRANSACTIONS.....13**

**IV. THE COMMISSION SHOULD REVIEW THE APPLICATIONS WITH A MORE APPROPRIATE, LOWER SPECTRUM SCREEN.....17**

**V. THE COMMISSION SHOULD CONDITION ANY GRANT ON A SPECTRUM CAP OF 110 MEGAHERTZ AT THE COUNTY LEVEL FOR ALL SPECTRUM HOLDINGS BELOW 2.3 GHZ.....19**

**VI. THE HARMS RESULTING FROM THE PROPOSED TRANSACTION OUTWEIGH ANY PUBLIC INTEREST BENEFITS.....22**

**VII. CONCLUSION.....23**

## SUMMARY

The Rural Telecommunications Group, Inc. (“RTG”) petitions the Federal Communications Commission (“FCC” or “Commission”) to deny the proposed assignment of licenses between Leap Wireless International, Inc (“Leap”), Savary Island License A, LLC and Savary Island License B, LLC (collectively, “Savary”), and Cellco Partnership d/b/a Verizon Wireless (“Verizon”), (collectively, the “Applicants”), or in the alternative, to condition any such grant in a manner that will protect rural consumers and ensure that the availability, price and quality of service provided by rural wireless carriers to rural consumers is not threatened or harmed. The deal between the Applicants has been promoted by the Applicants, and further portrayed by the trade press, as a simple “spectrum swap.” In reality, the deal is nothing more than a lopsided license trade that will lead to the marginalization of Leap as an effective competitor (and prospective nationwide mobile wireless carrier) and the furthering of Verizon as a spectrum warehouser.

As a threshold matter, RTG requests that the Commission performs a thorough review of the proposed deal and apply a lowered spectrum screen when doing so. The purported public interest benefits advocated by the Applicants are suspect at best and the likely public interest harms that will result from approval of the deal are significant. Verizon is unable to substantiate benefits to the general public, and instead reiterates the tired old arguments about how more spectrum will help solely its own subscribers. The concentration of additional Personal Communications Service and Advanced Wireless Services licenses in the hands of Verizon will also make it harder for rural carriers to properly compete as the industry settles into a world of 4G services but with no new FCC auctions on the horizon. If the Commission ultimately determines that approval of the deal is warranted, RTG respectfully requests that the Commission condition the grant to require that Verizon divest spectrum below 2.3 GHz so that it does not hold more than 110 megahertz in any county involved in this transaction.

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

In re Applications of )  
)  
Cellco Partnership d/b/a Verizon Wireless )  
and Leap Wireless International, Inc. ) ULS File Nos. 0004942973, 0004942992,  
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Lower 700 MHz Band A Block, AWS-1, )  
and Personal Communications Service )  
Licenses )

To: The Commission

**PETITION TO DENY**

The Rural Telecommunications Group, Inc. (“RTG”)<sup>1</sup>, by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Federal Communications Commission (“FCC” or “Commission”) *Public Notice* released January 19, 2012<sup>2</sup>, hereby petitions the FCC to deny the above-captioned applications. FCC approval of this transaction would harm the public interest by allowing further concentration of spectrum in the hands of a wireless duopolist. It would also prohibit a smaller operator from being able to expand its coverage to compete more robustly with the Big Two national operators: Verizon Wireless and AT&T Mobility, LLC (“AT&T”). Reduction in competition through this combination of transactions will harm the public interest by reducing the potential for robust competition.

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<sup>1</sup> RTG is a 501(c)(6) trade association whose members consist of rural and small wireless carriers and licensees who serve less than 100,000 subscribers. In addition to the numerous anticompetitive public interest harms that will impact all Americans should the deal proceed, the proposed deal will specifically harm RTG’s members and its members’ subscribers; accordingly, RTG, through its members, is a real party in interest in the above-captioned proceeding and has standing to file the instant petition.

<sup>2</sup> FCC Public Notice, DA 12-69, “*Verizon Wireless and Leap Wireless Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses,*” ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598, Pleading Cycle Established (released January 19, 2012) (“*Public Notice*”).

## I. INTRODUCTION

The proposed transfer of licenses between Leap Wireless International, Inc (“Leap”), Savary Island License A, LLC and Savary Island License B, LLC (collectively, “Savary”), and Cellco Partnership d/b/a Verizon Wireless (“Verizon”), (each referred to individually as an “Applicant” or collectively as the “Applicants”) has been promoted by the Applicants, and further portrayed by the trade press, as a simple “spectrum swap.”<sup>3</sup> In reality, the deal is nothing more than the country’s largest mobile operator forcing the hand of a much smaller regional operator and effectively limiting its smaller adversary from ever growing into a national, facilities-based competitor or remaining a viable, regional competitor. This deal is part of a pattern whereby Verizon is attempting to fatally injure its largest potential competitors by means of spectrum acquisition. For example, Verizon is simultaneously attempting to purchase all of the Advanced Wireless Services (“AWS”) spectrum licenses controlled by the country’s three largest cable companies<sup>4</sup>, all but preventing those already well-financed telecommunications operators from ever launching within this country their own competing, facilities-based mobile broadband networks. Verizon is taking unparalleled steps to nip future “nationwide” competition in the bud by acquiring vast quantities of Personal Communications Service (“PCS”)

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<sup>3</sup> See *RCR Wireless News* “Verizon Wireless, Leap Push for Spectrum Swap” December 1, 2011, <http://www.rcrwireless.com/article/20111201/carriers/verizon-wireless-leap-push-for-spectrum-swap/> (last checked February 21, 2012).

<sup>4</sup> On December 2, 2011, Verizon Wireless and SpectrumCo, LLC (“SpectrumCo”), a joint venture among subsidiaries of Comcast Corp. (“Comcast”), Time Warner Cable Inc. (“Time Warner”), and Bright House Networks, LLC, (“Bright House Networks”) announced that the cable companies would sell to Verizon Wireless 122 AWS-1 licenses covering 120 major markets for \$3.6 billion. On December 16, 2011, Verizon Wireless and Cox Communications, Inc. (“Cox”) announced that Cox would sell to Verizon Wireless 30 AWS-1 licenses in 29 major markets for \$315 million. Those separate applications have been consolidated by the Commission in WT Docket No. 12-4 and are on the same pleading cycle as the present applications between Verizon Wireless and Leap Wireless. Concurrently herewith, RTG is filing a petition to deny those applications.

and AWS spectrum from three separate licensees in one fell swoop. If once is an event, and twice is a coincidence, then three times is a disturbing pattern to eliminate competition.

Verizon goes to great lengths in its public interest statements to obfuscate the “big picture” of what licenses Leap will retain should this transaction be approved, and more importantly, what licenses Verizon will have acquired when all is said and done. While the various license assignments are described in more detail below, the bottom line is that Verizon is purchasing from Leap and Savary PCS and AWS licenses covering over 37.9 million people. Meanwhile, Leap is purchasing a single Lower 700 MHz Block A license. To call these combined transactions a “spectrum swap” is farcical on its face. The term “swap” typically connotes an exchange of assets with somewhat equal value, either with respect to the size of the licenses at stake, the dollar value of those licenses, or the covered POPs of those licenses. These transactions in tandem will result in Verizon walking away with far more spectrum than its so-called trading partners.

In the proposed transaction between Verizon and Leap, Verizon will acquire from Leap 23 PCS licenses and 13 AWS licenses in full, disaggregated portions of one PCS license and one AWS license, and partitioned portions of three AWS licenses, for \$188 million. In return, Verizon is selling to Leap its Lower 700 MHz A Block license in the Chicago-Gary-Kenosha metropolitan area (“BEA064”) for \$204 million.<sup>5</sup> Meanwhile, in the proposed transaction

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<sup>5</sup> While it may appear that Verizon and Leap are swapping licenses of roughly equal dollar value, this appearance is a mere façade. Although Leap does not trumpet the fact, Leap in fact owns an 85% interest in Savary. 2010 Annual Report of Leap Wireless International, Inc. at p. 2. (“In addition, we own an 85% non-controlling membership interest in Savary Island Wireless, LLC, or Savary Island, which holds wireless licenses and a related spectrum lease covering the upper Midwest portion of the U.S. outside of our Chicago and Southern Wisconsin operating markets.”). While Leap and Savary are separate legal entities, Leap has repeatedly stated that it jointly “owns” the licenses controlled by Savary. *Id.* (“As of December 31, 2010, we and Savary Island owned wireless licenses covering an aggregate of approximately 184.6 million POPs.”); (“The licenses we and Savary Island own provide 20 MHz of coverage.”) Moreover, for the purposes of Leap’s quarterly financial statements, the Savary licenses and Leap licenses are consolidated. “*Leap Reports Third Quarter Results*,” News Release (released October 31, 2011) at pp. 14-15 (“The condensed consolidated financial statements and the tables of results and operating and financial

between Verizon and Savary, the license assignments are going in only one direction: from Savary to Verizon. Specifically, Verizon will acquire from Savary large, partitioned portions of Savary's Great Lakes ("REA003") AWS D Block license for \$172 million.<sup>6</sup> Thus, viewing the two separate transactions together, it is highly misleading to refer to the entire deal as a simple "spectrum swap."

When all is said and done, Verizon is poised to acquire spectrum covering over 37.9 million POPs in 29 states. Meanwhile, Leap stands to add merely one 12 megahertz ("MHz") license in the Chicago market, covering only 11 million POPs. What is most disturbing about this proposed deal is that, should it be approved in its entirety, Leap will overnight turn into a mere shadow of its former self. Specifically, Leap will shrink from having over 625 million MHz-POPs nationwide and an average of 12 megahertz of spectrum in each market *pre-transaction* to approximately 341 million MHz-POPs and less than 6 megahertz in each market *post-transaction*. A grant of these applications would cut Leap's spectrum holdings roughly in half while at the same time enriching Verizon with excess spectrum.

As a threshold matter, RTG requests that going forward from this point in time, the Commission review all pending assignments of mobile wireless spectrum (including the above-captioned applications) with a revised "spectrum screen" that adequately reflects not just the relative dearth of existing spectrum in the secondary marketplace but also the sober reality that no additional and commensurate spectrum will be ready for auction by the FCC in the

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metrics included at the beginning of this release include the operating results and financial position of Leap and its wholly-owned subsidiaries and consolidated joint ventures. The Company consolidates its non-controlling interest in Savary Island Wireless, LLC."). Accordingly, when viewed in tandem, the dollar value of the exchanged licenses, not to mention the license size and POPs covered, are far from equal.

<sup>6</sup> Specifically, Verizon Wireless is acquiring 10 MHz from REA003 in the following Basic Economic Areas ("BEAs"): BEA009, BEA048, BEA051, BEA054, BEA055, BEA056, BEA057, BEA058, BEA059, BEA060, BEA061, BEA062, BEA066, BEA100, BEA103, BEA105, BEA108, BEA109, BEA110, BEA111, BEA112, BEA113, BEA114, BEA116 and BEA117.

foreseeable future.<sup>7</sup> As will be discussed in greater detail below, specific market conditions present today in the mobile wireless sector necessitate a lower spectrum screen. By adopting a lower spectrum screen, the Commission will give closer scrutiny to the harms likely to occur in *all* markets, not just those with the most substantial public interest concerns. Only by examining the markets triggered by a reduced spectrum screen will the Commission be able to conduct the public interest analysis required in this proceeding.

Once a thorough review of Verizon’s bid to acquire significant amounts of new spectrum in markets where it is already spectrum-deep is complete, the Commission should eventually conclude that the proposed spectrum acquisition will likely result in numerous public interest harms. As a result of these public interest harms, RTG respectfully requests that the Commission deny the above-captioned applications. However, if the Commission does approve the applications, RTG requests that any assignment of licenses be conditioned upon compliance with a reinstated spectrum aggregation limitation (“spectrum cap”), which has been previously proposed by RTG, which limits licensees in any given county to possessing no more than 110 megahertz in the bands below 2.3 gigahertz (“GHz”).<sup>8</sup>

## **II. APPROVAL OF THE PROPOSED TRANSACTION IS CONTRARY TO THE PUBLIC INTEREST**

The standard of review employed by the Commission to determine whether to approve transactions such as those proposed here by the Applicants is whether approval of the

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<sup>7</sup> *In the Matter of Application of AT&T Inc. and QUALCOMM Incorporated for Consent to Assign Licenses and Authorizations*, Order, WT Docket No. 11-18, FCC 11-188 (released December 22, 2011) (“*AT&T-Qualcomm Order*”) at ¶ 42.

<sup>8</sup> *In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking To Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Rural Telecommunications Group, Inc. Petition for Rulemaking (filed July 16, 2008) (“*Petition for Rulemaking*”).

transactions will serve the public interest, convenience, and necessity.<sup>9</sup> In making this assessment, the Commission first assesses whether the proposed transaction complies with the specific provisions of the Communications Act of 1934, as amended (the “Act”), other applicable statutes and the Commission’s rules.<sup>10</sup> Assuming the proposed transaction does not violate any statute or rules, the Commission next considers whether the proposed transaction “could result in public interest harms.”<sup>11</sup> If the Commission finds that the transaction could result in public interest harms and benefits, the Commission must “employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”<sup>12</sup> In all instances, it is the Applicants who “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”<sup>13</sup> As discussed below, Verizon and Leap have failed to meet their burden of proving that the proposed transactions are in the public interest, and all record evidence clearly demonstrates that the public interest will be harmed by the proposed transactions.

This disproportionate “spectrum swap” is a catalyst to various public interest harms that will be amplified by both the removal of Leap as a prospective competitor and the ascension of Verizon as a spectrum hoarder in numerous markets, including many rural markets. Among the public interest harms likely to occur should this proposed transaction receive regulatory approval are the following: (A) Leap can no longer be considered a regional player, let alone a regional

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<sup>9</sup> 47 U.S.C. §§ 214(a), 310(d). See *AT&T-Qualcomm Order* at ¶ 23.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

<sup>13</sup> *Id.*

powerhouse, and its negotiating and marketing clout will be drastically diminished; (B) Leap will be marginalized as a potential EvDO or LTE roaming partner in non-urban markets due to its sale of spectrum, and this in turn will reinforce AT&T's and Verizon's dominant positions in the wholesale roaming marketplace thereby harming rural consumers; and (C) rural operators that are truly capacity constrained for 3G and 4G service will be unable to acquire new spectrum.

**A. A Post-Transaction Leap Ceases to be a Regional Player or an Effective Competitor to AT&T and Verizon**

While Leap has the potential today to become a nationwide or at least near-nationwide facilities-based mobile operator, the decision by Leap to sell what it considers “excess spectrum” in dozens of markets across the country, including the complete sale of all spectrum in certain markets, means that Leap will no longer be considered a potential nationwide player should these deals be approved. Moreover, there remains a legitimate question as to whether Leap and the Cricket Communications brand can even still be considered a “regional” player following the sale of these PCS and AWS licenses. While the potential downsizing and trimming down of Leap might be a necessary move to help improve its financial stature and the bottom line, it does not benefit the *public interest*. Similarly, the addition of more valuable spectrum to the already sizeable inventory of Verizon is a potential benefit solely to the company's balance sheet and is harmful to competition. The proposed assignment, while beneficial to Verizon and Leap, in no way conveys a public interest benefit. To the contrary, a severely slimmed down Leap caps the “upside” and market power of what until today has been an admirable and feisty market player in the mobile voice and broadband marketplace.

One year before the Applicants filed the present applications with the Commission, Verizon submitted comments on the FCC's Fifteenth Annual Competition Report citing Leap as a player with “a significant role in shaping the competitive industry”, in part because its licenses

“cover at least 186 million people.”<sup>14</sup> Should this deal be allowed to proceed, Leap’s covered POPs will decrease significantly. In its comments, Verizon also states that Leap “owns an expanding network” by virtue of its “significant spectrum holdings.”<sup>15</sup> The support Verizon cites to demonstrate that Leap is a competitor is eliminated in one fell swoop if this deal is approved. In order to appreciate the degree to which Leap is capping its future growth potential, it is helpful to view a snapshot of Leap’s spectrum holdings today compared to a snapshot of what Leap will hold if the proposed transaction with Verizon Wireless is approved. Map A (below) depicts the spectrum footprint and spectrum depth of Leap and Savary today while Map B (below) depicts Leap’s spectrum position were the transactions to be approved in full.<sup>16</sup> The differences between Map A and Map B are appreciable. Leap is abandoning either all or most of its spectrum position in states in the Rocky Mountain, upper Midwest, and Great Lakes regions. Furthermore, the majority of these markets are in rural CMAs. Not only is Leap removing itself as a future facilities-based competitor (as are Comcast, Time Warner, Bright House Networks, and Cox) from these markets, rural operators in these same markets are now unable to acquire additional spectrum for expansion or capacity-growth.

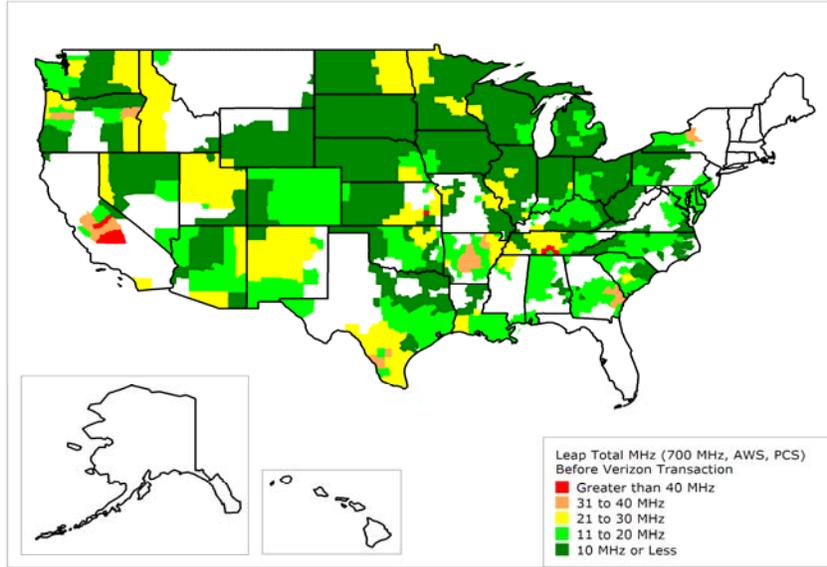
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<sup>14</sup> *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Comments of Verizon Wireless, WT Docket No. 10-133 (filed July 30, 2010) (“*Verizon Comments*”) at p. 15.

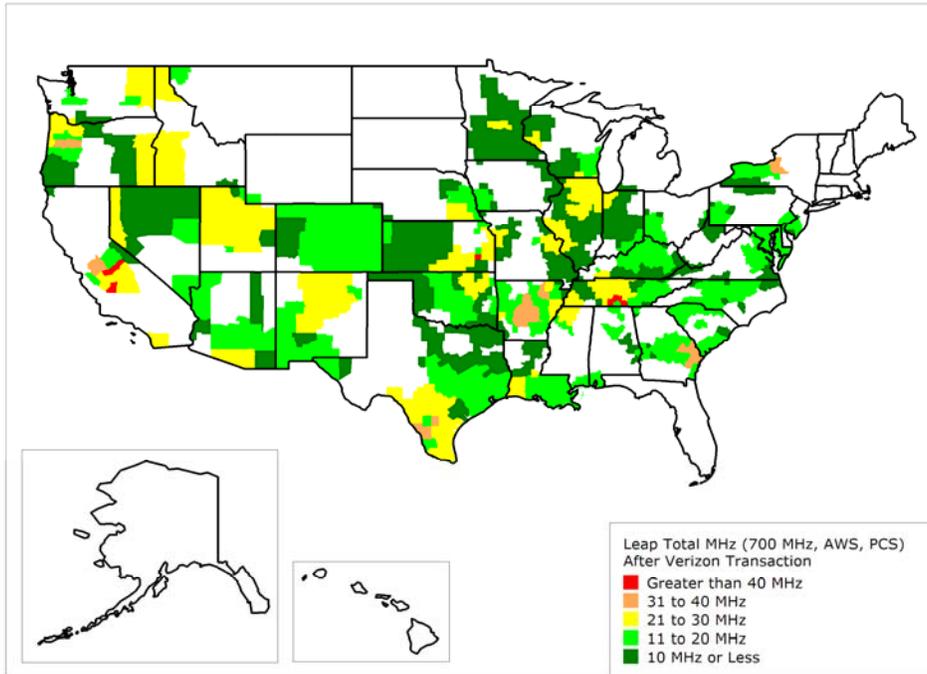
<sup>15</sup> *Verizon Comments* at p. 17.

<sup>16</sup> Maps were created based on publicly available information.

**Map A**



**Map B**



A diminished Leap is harmful to the public interest. By foregoing a national or even near-national spectrum footprint, Leap will become more reliant on Verizon for roaming services, especially in non-urban markets, including all of those rural markets where it is

attempting to sell its entire spectrum holdings. Up until now, the regional players were touted by Verizon (and AT&T) as prime examples of just how robust the mobile wireless marketplace is. The argument that the mobile wireless industry is adequately competitive, whether measured at the county level, market level or national level, is refuted outright when those operators providing competition today, such as Leap, must resort to downsizing and in the process become more dependent upon their former nationwide competitors.

**B. A Post-Transaction Leap Removes Itself As a Future 4G Roaming Alternative to AT&T and Verizon in Non-Urban Markets**

Small and rural operators need access to spectrum and commercially reasonable roaming agreements in order to serve rural consumers in the contemporary mobile marketplace. Consumers, including those consumers living, working and traveling in rural America, expect nationwide coverage as well as the newest and most desirable mobile devices performing at the most technologically available speeds, whether on the home operator's network or a roaming partner's network. In its comments on the FCC's Sixteenth Annual Competition Report, Leap noted the chronic problems facing non-nationwide mobile operators, particularly the inability to obtain commercially reasonable roaming agreements.<sup>17</sup> In its comments to the FCC's Sixteenth Annual Competition Report, Leap Wireless pointedly noted that it is the Commission's responsibility "to continue to monitor wireless competition at a granular level, including analysis of critical wholesale inputs such as spectrum and data roaming."<sup>18</sup> Leap pointed out that the *Data Roaming Order*<sup>19</sup> did not "ensure[] that the market for data roaming is fully competitive."<sup>20</sup>

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<sup>17</sup> *In the Matter of Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Reply Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., WT Docket No. 11-186 (filed December 20, 2011) ("*Leap Wireless Reply Comments*").

<sup>18</sup> *Id.* at p. 2.

Leap agreed with RTG that “[t]he largest nationwide carriers continue to have diminished incentives to enter into data roaming agreements, and they continue to have much greater bargaining power relative to small and midsized carriers.”<sup>21</sup> Finally, Leap steadfastly reminded the Commission that “roaming negotiations may become even more problematic for 4G LTE data roaming.”<sup>22</sup>

By removing itself as a potential facilities-based LTE competitor in dozens of markets across the country, Leap places even greater negotiating power in the hands of Verizon. A Verizon spokesperson confirmed a long-running industry suspicion that the mobile devices sold to its 4G customers will not “be compatible on other LTE networks in the U.S.”<sup>23</sup> Verizon’s apparent unwillingness to allow its customers to use the networks and services of competitors (and even non-competitors) is not very surprising. Because Verizon holds nationwide Upper 700 MHz Block C licenses (Band Class 13), and Verizon’s devices will not utilize additional Band Classes supported by other 700 MHz licensees (Band Classes 12, 17), Verizon is engaging in a *de facto* policy of not engaging in outbound roaming for LTE services, with the possible exception of its arrangements with those operators who partake in Verizon’s limited LTE in Rural America program which only utilizes Band Class 13. It is precisely this type of isolationism that creates an imbalance of power in roaming negotiations, whether for 1xRTT,

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<sup>19</sup> See *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265, FCC 11-52 (released April 7, 2011) (“*Data Roaming Order*”).

<sup>20</sup> *Leap Wireless Reply Comments* at p. 5.

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

<sup>22</sup> *Id.* at p. 6.

<sup>23</sup> Segan, Sascha, “Verizon LTE Phones Probably Incompatible with AT&T”, PC Mag Online, July 14, 2011, <http://www.pcmag.com/article2/0,2817,2388526,00.asp> (last viewed February 21, 2012).

EvDO or LTE services. This imbalance then leads to commercially unreasonable roaming rates, terms and conditions. The fewer facilities-based providers there are in this country, especially outside of urban markets, the fewer choices there will be for American consumers. When the issue of device interoperability is added to the equation, rural consumers are harmed even further. As noted above, this transaction should not be viewed in isolation; SpectrumCo and Cox are also selling their future abilities to provide facilities-based 4G/LTE roaming services nationwide. As also noted above, Leap is voluntarily “capping” its future growth plans as an operator and retail competitor vis-à-vis Verizon, AT&T and other operators, but this plan has the downstream ripple effect of also limiting the number of potential LTE roaming partners at a time when Verizon is actively fighting against the very existence of data roaming obligations<sup>24</sup> and a groundswell of support for LTE device interoperability to the detriment of rural wireless consumers.

### **C. Capacity Starved Rural Operators Will Be Prevented From Acquiring New Spectrum**

By far the biggest public interest harm perpetuated by this proposed transaction is the concentration of even more spectrum below 2.3 GHz in the hands of the country’s largest mobile operator. As recently as December 2011, Leap acknowledged that “a significant amount of scarce spectrum is in the hands of the largest carriers, and consolidation in the industry has, at the same time, resulted in consolidation of spectrum.”<sup>25</sup> Leap added that “in the next few years, spectrum availability will continue as a ‘zero sum’ game in which *access in the aftermarket* will

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<sup>24</sup> See generally *Cellco Partnership d/b/a Verizon Wireless, Appellant, v. Federal Communications Commission, Appellee*, USCA Case #11-1135 (Court of Appeals for the District of Columbia Circuit).

<sup>25</sup> *Leap Wireless Reply Comments* at p. 7.

be the *only* avenue available to small and midsized players.”<sup>26</sup> RTG agrees whole-heartedly with this observation. RTG and numerous other parties agree with Leap that unless and until the Commission releases more spectrum in the primary (auction) market, it will remain incredibly scarce in the secondary market. Proposed transactions such as this one only exacerbate the gap between the nationwide operators and everyone else.

### **III. THE APPLICANTS MISSTATE AND MISCHARACTERIZE THE PUBLIC INTEREST BENEFITS OF THE TRANSACTIONS**

The Commission must be keenly focused on the public interest harms that will likely impact American consumers of mobile broadband services as it evaluates the Leap and Savary spectrum deals. In both the *Verizon-Leap Public Interest Statement*<sup>27</sup> and the *Verizon-Savary Public Interest Statement*<sup>28</sup> Verizon has made numerous over-simplifications or even mischaracterizations concerning the two transactions and how the Commission should review the accompanying applications. First and foremost, Verizon states that the markets involved in both transactions “cover a relatively small number of people”<sup>29</sup> and “a relatively small population.”<sup>30</sup> RTG supposes that to an operator like Verizon, with over 100 million subscribers nationwide, a deal involving wireless licenses covering 37.9 million people (or 13% of the country’s population) might seem like small potatoes, but to RTG’s operator members and to the rural

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<sup>26</sup> *Id.* (emphasis added).

<sup>27</sup> *In the Applications of Verizon Wireless and Leap Wireless Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses*,” Description of the Transaction and Public Interest Statement, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598 (filed November 23, 2011) (“*Verizon-Leap Public Interest Statement*”).

<sup>28</sup> *In the Applications of Verizon Wireless and Leap Wireless Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses*,” Description of the Transaction and Public Interest Statement, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598 (filed November 23, 2011) (“*Verizon-Savary Public Interest Statement*”).

<sup>29</sup> *Verizon-Leap Public Interest Statement* at p. 1, FN 1.

<sup>30</sup> *Verizon-Savary Public Interest Statement* at p.1 FN 1.

mobile consumers living in these markets coast-to-coast, this is anything but small. Furthermore, these applications must be reviewed in the context of the SpectrumCo and Cox deals which also add nearly nationwide AWS licenses to the Verizon fold. So even if the Commission agreed with the characterization that the Leap and Savary license assignments were “small”, how they fit into the larger picture of Verizon attempting to accumulate spectrum from three potential rivals simultaneously makes them anything but small.

Verizon also argues in both of its public interest statements that the Commission’s review of these applications under Section 310(d) of the Act “need not be extensive”<sup>31</sup> and that “[n]o detailed showing of benefits is required for transactions where there are no anti-competitive effects.”<sup>32</sup> However, the support Verizon cites for past Commission action under Section 310(d) is taken completely out of context. In the two orders that Verizon cites, the Commission *declined* to bypass an extensive review.<sup>33</sup> While the Commission may, in its discretion, forgo an extensive review, in both instances relied upon by Verizon, the Commission did in fact proceed to analyze the potential public interest harms. Verizon is simply unable to cite any substantially similar large merger or transaction where further analysis was deemed unwarranted. Furthermore, Verizon makes two huge and unsubstantiated assumptions; the first is that the

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<sup>31</sup> *Verizon-Leap Public Interest Statement* at p.6; *Verizon-Savary Public Interest Statement* at p.4.

<sup>32</sup> *Id.*

<sup>33</sup> See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160, 3170 (“This merger, although ultimately we judge it permissible, is not so simple. Parties have raised non-frivolous issues about whether this merger creates incentives or opportunities for the merged firm to violate or frustrate Commission rules and policies. We analyze the potential public interest harms and benefits of this merger in our next section.”); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, Memorandum Opinion and Order, 14 FCC Rcd at 14740-41 (“Such cases do not require extensive review and expenditure of considerable resources by the Commission and interested parties. This is not the case with respect to this proposed transaction. We analyze the potential public interest harms and benefits of this proposed merger, absent conditions, in the next sections.”).

public interest benefits touted by the Applicants are in fact real and can only come about as a result of the proposed transactions, and the second is that there are no underlying anticompetitive effects that will result from the proposed transactions. As discussed extensively herein, neither of these assumptions is correct.

Verizon claims that the Lower 700 MHz Block A license it is selling to Leap will allow the smaller operator “to supplement the 10 MHz of spectrum on which Cricket currently operates in the Chicago area” and “enable Cricket to deploy LTE technology and thereby expand its service offerings.”<sup>34</sup> However, for several years now, Verizon has reminded the Commission that LTE deployment by any operator on the Lower 700 MHz Block A “presents technical challenges.”<sup>35</sup> One of the alleged technical obstacles that Verizon cites to underscore this point is “the potential for mobile systems operating at 700 MHz to cause interference to a DTV receiver operating on channel 51.”<sup>36</sup> As RTG and numerous other parties have stated, these issues are overstated, and comments have been filed with the Commission supporting the promulgation of rules requiring that mobile devices in the 700 MHz Band be “interoperable” across the entire 700 MHz band.<sup>37</sup> Interoperability regulations are needed because without them, all 700 MHz licensees except Verizon and AT&T would be physically unable to engage in nationwide roaming for LTE services. Verizon and AT&T are immune from this problem today

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<sup>34</sup> *Verizon-Leap Public Interest Statement* at p. 7.

<sup>35</sup> *In the Matter of 700 MHz Mobile Equipment Capability, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Bands*, Comments of Verizon Wireless, RM-11592 (filed March 31, 2010) (“*Verizon 700 MHz Comments*”) at p. 8.

<sup>36</sup> *Id.* at p. 9.

<sup>37</sup> *In re Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, Ex Parte of Cellular South, Inc. 700 MHz; Interoperability – Claims and Facts, RM 11592 (filed June 15, 2011) (“As demonstrated repeatedly in the FCC docket on 700 MHz interoperability, proper engineering, innovation and network architecture can mitigate interference concerns. Engineering experts at a recent FCC workshop on 700 MHz interoperability identified no technical obstacles, including interference, which would prevent interoperability in the 700 MHz band.”).

and in the future because they will be able to roam on custom-created 700 MHz Band Classes, especially Verizon's Upper C Block (Band Class 13). Nonetheless, Verizon has steadfastly maintained that were the proposed interoperability rules to be adopted by the Commission, "instead of consumers having access to innovative, faster, more robust mobile broadband services *within the next year*, consumers would be forced to wait *two or three years longer*."<sup>38</sup> What this means for Leap and numerous other 700 MHz licensees is that until interoperability regulations are instituted, it will take many years for them to enjoy the benefits of nationwide LTE build-out, irrespective of the fate of data roaming obligations remaining intact. Accordingly, the public interest benefits that Leap anticipates achieving as a result of the proposed transaction will not be achieved for many years.

If Verizon still believes that Lower 700 MHz Block A licensees (including itself) are indeed facing hurdles due to interference from neighboring Channel 51 digital television broadcasters, then this further erodes the dubious proposition that the entire Leap/Savary deal is a "spectrum swap". Channel 51 in the Chicago metropolitan market is currently occupied by WPWR-TV, which is owned by Fox Television Stations, Inc. and broadcasts on digital channel 51. WPWR-TV operates on a channel immediately adjacent to BEA064. RTG will not speculate as to why Leap agreed to buy a license that the seller believes faces "technical

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<sup>38</sup> *In the Matter of 700 MHz Mobile Equipment Capability, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Bands*, Reply Comments of Verizon Wireless, RM-11592 (filed April 30, 2010) ("*Verizon 700 MHz Reply Comments*") at p. 2. Verizon Wireless' statements in the *Verizon-Leap Public Interest Statement* concerning the ability of Leap Wireless to leverage its newly acquired BEA064 license to support LTE are blatantly contradicted by Verizon Wireless' earlier statements that interoperability across the entire 700 MHz band can only come after significant delays and higher costs to consumers. Again, Verizon Wireless cannot have it both ways. Either Leap Wireless can utilize this spectrum for LTE in the short term or Leap Wireless must wait several years to actually benefit from its acquisition of BEA064 and get mobile devices that allow its customers to roam nationwide. If Verizon Wireless believes that the technical, logistical and economic problems with mandating interoperability are overstated, and the license it is selling to Leap Wireless is poised for immediate LTE development, then it should help support the multitude of operators and licensees pushing for the Commission to initiate a rulemaking requiring interoperability of all devices across the 700 MHz Band Plan.

challenges” in order to be properly utilized for its intended purposes, but at the very least, this diminishes not just the perception that the deal is a fair-trade “spectrum swap” but also the argument that there are public interest benefits associated with Leap inheriting this license and that those benefits somehow outweigh the public interest harms identified by RTG and supported by Verizon in earlier statements.

#### **IV. THE COMMISSION SHOULD REVIEW THE APPLICATIONS WITH A MORE APPROPRIATE, LOWER SPECTRUM SCREEN.**

RTG has identified numerous public interest harms that are likely to result from Verizon acquiring copious amounts of PCS and AWS spectrum from a shrinking Leap. These harms by themselves warrant denial of the applications. However, there are additional justifications for why a more in-depth competitive review (and certainly more comprehensive than what Verizon proposes) is necessary. Verizon would like the Commission to forgo an extensive review of the transactions, in part, because the Applicants “will remain under the applicable initial spectrum screen post-closing.”<sup>39</sup> However, the Commission, in its most recent review of a large-scale spectrum transfer, has determined that the time is ripe to lower the applicable initial spectrum screen.<sup>40</sup> At the very least, the Commission has determined that a decrease in the attributable amount of Specialized Mobile Radio (“SMR”) spectrum included in the spectrum screen is likely appropriate.<sup>41</sup> The Commission has also pledged to monitor technological and market-driven developments in the industry and adjust the spectrum screen appropriately. The Leap and Savary spectrum deals, combined with the SpectrumCo and Cox deals, represent a monumental shift of

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<sup>39</sup> *Verizon-Leap Public Interest Statement* at p. 6-7; *Verizon-Savary Public Interest Statement* at p.5.

<sup>40</sup> *AT&T-Qualcomm Order* at ¶ 42.

<sup>41</sup> *Id.*

precious spectrum from regional players (*e.g.*, Leap) and well-financed potential players (*e.g.*, Comcast, Time Warner, and Cox) to the coffers of the country's largest mobile operator. These four simultaneously proposed transactions are indicative of a reality that is completely market-driven: without new FCC spectrum auctions to look forward to, the country's largest carriers will go to great lengths to acquire as much spectrum as possible on the secondary market, even if it means extinguishing competitors, limiting competitors' future growth plans, or making it impossible for potential competitors to even get off the ground.

The Commission's active consideration of a lowered spectrum screen is further evidence of several facts. First, this "second look" by the Commission acknowledges the fact that not all spectrum is created equal. Generally speaking, spectrum at lower bands propagates further than spectrum at higher bands. A hyper-concentration of the best spectrum in the hands of a shrinking group of market players will provide those fortunate operators with competitive advantages such as less expensive cell site configurations (due to better propagation characteristics), less expensive equipment purchases (due to lower economies of scale and scope), and early access to market-ready devices (due to device manufacturers not wanting to develop devices for higher bands not heavily used, or with many existing customers). Through a combination of having more existing subscribers and entrenchment in bands that have been in use longer for commercial mobile wireless services, incumbent operators reap significant operational advantages compared to new market entrants in newer spectrum bands. These advantages due to spectrum holdings perpetuate an uneven playing field. Accordingly a lower spectrum screen that triggers a heightened level of review will allow the Commission to take into consideration other relevant factors besides the amount of spectrum held by licensees to see whether further concentration will compound threats to market competition.

Another justification for a lower spectrum screen is the fact that some spectrum bands currently included in the pool of potential bands are simply not adequately developed or commercially-ready and therefore should not be considered within the calculations for any new spectrum screen values going forward. More often than not, these bands do not have a sufficient amount of core equipment, network equipment or mobile devices available for immediate purchase, and as a result of these conditions, the spectrum bands can in no way be considered adequate substitutes for those bands now considered market-ready (*e.g.* Cellular, PCS, 700 MHz Band and AWS). By including only those spectrum bands truly ready for prime time in the potential pool of frequencies considered in the applicable spectrum screen, the Commission must also naturally lower the actual spectrum screen triggering a heightened review.

While RTG believes that the precise spectrum screen employed ultimately depends upon the amount of unencumbered spectrum in each county that is widely developed in the North American market as well as protected by interoperability obligations for all devices operating in a specific band, at the very least that trigger should be no greater than 110 megahertz. As a result of lowering the applicable spectrum screen in the present transaction to at least 110 megahertz, Verizon's determined bid for new spectrum will warrant additional scrutiny in numerous markets including seven of the Top 100 most populated CMAs.<sup>42</sup>

**V. THE COMMISSION SHOULD CONDITION ANY GRANT ON A SPECTRUM CAP OF 110 MEGAHERTZ AT THE COUNTY LEVEL FOR ALL SPECTRUM HOLDINGS BELOW 2.3 GHZ.**

As RTG explained in detail above, the proposed transactions are clearly fraught with likely public interest harms. Nonetheless, if the Commission determines that an assignment of

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<sup>42</sup> In CMA 15 (Minneapolis), Verizon Wireless currently holds between 99 and 124 megahertz per county. In CMA016 (Cleveland), CMA048 (Toledo), CMA052 (Akron), CMA064 (Grand Rapids), CMA078 (Lansing), CMA087 (Canton), and CMA094 (Saginaw), Verizon Wireless already holds at least 114 megahertz in each county.

licenses from Leap and Savary to Verizon should be granted, it should do so on the condition that Verizon is prohibited from holding more than 110 megahertz of spectrum below the 2.3 GHz band in any one county. The rationale for such a spectrum cap was first raised by RTG in its *Petition for Rulemaking*<sup>43</sup> which was filed soon after the FCC conducted Auction 73 for the 700 MHz Band, the last significant auction of new spectrum intended for mobile broadband providers. In its *Petition for Rulemaking*, RTG documented a steady erosion of competition in the mobile wireless sector since at least 2001.<sup>44</sup> The trend of operator consolidation, and the resulting loss of effective marketplace competition, has been formally recognized by the two most recent industry competition reports in which the Commission was unable to affirm that the mobile wireless industry is effectively competitive.<sup>45</sup> RTG is not alone in its support of a common sense spectrum cap. Fifteen of the twenty-one parties filing comments in the rulemaking proceeding, including Leap, expressed unconditional support for RTG's proposal.<sup>46</sup> In fact, Leap correctly noted that today's mobile industry "has been permitted to merge its way to a lopsided balance that favors a few dominant carriers that have an unprecedented ability to

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<sup>43</sup> *Petition for Rulemaking* at pp. 20-22 .

<sup>44</sup> *Id.* at pp. 8-13.

<sup>45</sup> *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 Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, FCC 10-81 (released May 20, 2010) ("*Fourteenth Annual Competition Report*"); *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 Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, WT Docket No. 10-133, FCC 11-103 (released June 27, 2011) ("*Fifteenth Annual Competition Report*").

<sup>46</sup> *In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking To Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Comments of Leap Wireless International, Inc., RM-11498 (filed December 2, 2008) ("*Leap Spectrum Cap Comments*").

foreclose market entry to potential competition” and that a spectrum cap “should be part of the solution to restore the wireless marketplace to a level playing field.”<sup>47</sup>

RTG’s proposed spectrum cap of 110 megahertz, per-county, for any bands below 2.3 GHz is also consistent with Verizon’s own admission that it holds what it considers “excess spectrum” in all portions of BEA064, including the heavily populated city of Chicago, Illinois. Verizon holds no greater than 89 megahertz in any given county in BEA064 and it has publicly stated that it considered the 10 megahertz it was selling in BEA064 as “excess spectrum.” Additionally, even if Verizon were to contend that its proposed sale of spectrum in BEA064 was done with the premature *expectation* that it would soon try to acquire new AWS spectrum from SpectrumCo in those same counties in Illinois, Indiana and Wisconsin, the spectrum cap of 110 megahertz still makes sense. Assuming the Commission was to approve the assignment of 20 megahertz of AWS spectrum from SpectrumCo to Verizon in all of the counties where Verizon is selling Lower 700 MHz spectrum to Leap, it still would not exceed 110 megahertz in the BEA064 market, so Verizon could not claim that a spectrum cap of 110 megahertz would impact it in this particular market. However, it strains credulity for Verizon to argue that in cities and rural markets much smaller than Chicago (and with less need for capacity in the future) more than 110 megahertz below 2.3 GHz is somehow necessary. For all of these reasons, should the Commission determine that a grant of the applications is necessary, then it should only do so with the condition that Verizon be required to divest spectrum below 2.3 GHz so that it does not hold more than 110 megahertz in any county involved in this transaction.

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<sup>47</sup> *Leap Spectrum Cap Comments* at p. 10.

## **VI. THE HARMS RESULTING FROM THE PROPOSED TRANSACTION OUTWEIGH ANY PUBLIC INTEREST BENEFITS.**

Verizon's acquisition of additional PCS and AWS spectrum across significant portions of the country, while simultaneously preventing a current licensee and operator from ever being a viable nationwide facilities-based competitor, is clearly against the public interest. In applying its public interest testing under sections 214(a) and 310(d) of the Act, the FCC employs a balancing test weighing any potential public interest harms of the proposed transactions against any potential public interest benefits to ensure that, on balance, the proposed transactions will serve the public interest. Under this test, the Applicants bear the burden of proving that the proposed transactions, on balance, serve the public interest. As discussed above, the applicants have failed to meet this burden.

Verizon spends considerable space in its public interest statements explaining how Verizon can better serve its customers' growing appetite for more broadband by utilizing additional spectrum from Leap and Savary. RTG has never disputed the fact that all mobile operators can benefit from additional spectrum when they operate their networks and provide services to their customers, and that Verizon could gain operational efficiencies with more spectrum.<sup>48</sup> By that same logic, Verizon can help satisfy growing customer demand by purchasing all Cellular, PCS, AWS and 700 MHz spectrum in the secondary marketplace today and leave none for all other mobile operators. Yet this absurd scenario is what the industry could devolve into if the Commission were to mistakenly equate Verizon's private business interests with the public interest. It is wholly irrelevant whether Verizon, or even its subscriber base, would benefit from these deals getting approved; the question before the Commission is whether

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<sup>48</sup> *In re Applications of Deutsche Telekom AG, Transferor, and AT&T, Inc., Transferee, for Consent to Assign or Transfer Control of Licenses and Authorizations*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 11-65 (filed May 31, 2011) ("RTG Petition to Deny") at p 19.

the few (if any) public interest benefits stemming from these proposed transaction are outweighed by the litany of public interest harms chronicled by RTG. As discussed herein, these benefits to Verizon are greatly outweighed by the numerous public interest harms that would result from Commission approval of these transactions.

## **VII. CONCLUSION**

When exploring their options for mobile wireless services, American consumers, including those who work, live or travel in rural communities, expect at a minimum a choice in the number of providers, competitive rates, and the availability of the most sophisticated devices available. Sadly, this seemingly mundane expectation remains unmet for many consumers. Knowing full well that it cannot buy-out its fellow nationwide rivals to increase its spectrum stake or reduce retail competitors, Verizon has resorted to entering into an alleged “spectrum swap” with Leap that is nothing more than a lopsided transaction that will increase Verizon’s spectrum depth significantly and reduce Leap’s so that it cannot ever hope to grow into a legitimate nationwide threat. If allowed to proceed, this transaction will only benefit Verizon

and will have no positive impact on the public interest. Accordingly, RTG requests that the above-captioned applications be denied, or in the alternative, be granted on the condition that Verizon divest spectrum below 2.3 GHz so that it does not hold more than 110 megahertz in any county involved in this transaction.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP, INC.**

By: */s/ Caressa D. Bennet*

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February 21, 2012

**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 21<sup>st</sup> day of February, 2012, via electronic mail, unless otherwise indicated, on those listed below:

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