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February 21, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

FILED/ACCEPTED

FEB 22 2012

Federal Communications Commission  
Office of the Secretary

**Re: Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI  
Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses  
WT Docket No. 12-04 12-4**

Dear Ms. Dortch:

On behalf of the Rural Telecommunications Group, Inc. ("RTG"), and in accordance with the Second Protective Order, DA 12-51 (rel. January 17, 2012) issued in this proceeding, please a copy of RTG's redacted Petition to Deny. Please contact us if you have any questions or concerns.

Respectfully submitted,

/s/ Caressa D. Bennet

By: \_\_\_\_\_

Caressa D. Bennet

Counsel for the Rural Telecommunications Group, Inc.

Cc: Sandra K. Danner

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

**FILED/ACCEPTED**  
**FEB 22 2012**  
Federal Communications Commission  
Office of the Secretary

In re Applications of )  
 )  
SPECTRUMCO, LLC, Transferor )  
COX TMI WIRELESS, LLC, Transferor )  
 )  
and )  
 )  
CELLCO PARTNERSHIP D/B/A )  
VERIZON WIRELESS, Transferee )  
 )  
for Consent to the Assignment of AWS-1 )  
Licenses )

WT Docket No. 12-4

To: The Commission

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

**RURAL TELECOMMUNICATIONS  
GROUP, INC.**

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Its Attorneys

Date: February 21, 2012

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**SUMMARY**

The Rural Telecommunications Group, Inc. (“RTG”) petitions the Federal Communications Commission (“FCC” or “Commission”) to deny the proposed assignment of licenses from SpectrumCo, LLC (“SpectrumCo”) and Cox TMI Wireless, LLC (“Cox”) to Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) (collectively, the “Applicants”) in order to protect rural consumers and to ensure that the availability, price and quality of communications services provided to all consumers is not threatened or harmed by the proposed anticompetitive transaction.

As a threshold matter, RTG requests that the Commission perform a thorough review of the proposed deals 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 deals are significant. Verizon Wireless 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 Advanced Wireless Services licenses in the hands of Verizon Wireless will also make it harder for rural carriers to properly compete as the industry settles into a world of 4G services with no new FCC auctions on the horizon. Furthermore, the proposed assignment of licenses from the cable companies to Verizon Wireless will effectively remove all of the companies from ever becoming viable, facilities-based nationwide competitors to Verizon Wireless, which in turn will leave all other competing operators dependent upon a dwindling number of options for nationwide roaming coverage. Verizon Wireless has amplified this very real public interest harm by actively trying to overturn the Commission’s recent order to extend roaming obligations for data services and stonewalling the Commission’s attempts to institute rules that would obligate

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interoperability for mobile devices. 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 Wireless divest spectrum below 2.3 GHz so that it does not hold more than 110 megahertz in any county involved in this transaction.

Verizon Communications, Inc. (“Verizon”), through Verizon Wireless, is in violation of Section 572(c) of the Communications Act of 1934, as amended, which prohibits any cable franchise and local exchange carrier operating in the same market from entering into any type of joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within that market [START HIGHLY CONFIDENTIAL

INFORMATION] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

RTG urges the Commission to investigate various commercial agreements entered into among the parties which will shed further light on the public interest harms that would result from approval of the proposed transactions. [START HIGHLY CONFIDENTIAL

INFORMATION] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL**

**INFORMATION]** RTG concludes that these transactions are not in the public interest. Because the applicants have failed to demonstrate that their proposed transactions are necessary to achieve their claimed public interest benefits and substantial and material issues of fact exist with respect to whether the proposed transactions are likely to cause anticompetitive harm and yield any public interest benefits, the FCC cannot find the transactions to be in the public interest either and must conduct an evidentiary hearing under Section 309(e) of the Communications Act.

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

In re Applications of )  
)  
SPECTRUMCO, LLC, Transferor )  
COX TMI WIRELESS, LLC, Transferor )  
)  
and ) WT Docket No. 12-4  
)  
CELLCO PARTNERSHIP D/B/A )  
VERIZON WIRELESS, Transferee )  
)  
for Consent to the Assignment of AWS-1 )  
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 captioned applications.

**I. INTRODUCTION**

The applications in these proposed transactions consist of two separate transfers of licenses. In the first proposed transaction, SpectrumCo, LLC (“SpectrumCo”) has agreed to sell to Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) 122 Advanced Wireless

<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 two deals proceed, the proposed sale of spectrum 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 12-67, “*Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*,” WT Docket No. 12-4, Pleading Cycle Established (released January 19, 2012) (“*Public Notice*”).

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Services (“AWS”) licenses.<sup>3</sup> In the second proposed transaction, Cox TMI Wireless, LLC (“Cox”) has agreed to sell to Verizon Wireless 30 AWS licenses.<sup>4</sup> The applications of Verizon Wireless, SpectrumCo and Cox (together, the “Applicants”) have been consolidated by the Commission in WT Docket No. 12-4 and placed on the same pleading cycle as a proposed transaction between Leap Wireless International, Inc. (“Leap”) and Verizon Wireless.<sup>5</sup>

It should be noted upfront that Comcast, Time Warner, Bright House Networks and Cox Cable (together, the “Cable Companies”) are major players in the consumer markets for video, broadband and voice services. Indeed, Comcast, Time Warner and Cox Cable are the three largest cable companies in the United States. Comcast has 22,360,000 video subscribers, 17,811,000 broadband subscribers and 9,196,000 voice subscribers.<sup>6</sup> Time Warner has 12,061,000 video subscribers, 10,344,000 broadband subscribers and 4,704,000 voice subscribers.<sup>7</sup> Cox Cable and Bright House Networks, which are both privately-held companies and therefore do not generally report subscriber metrics, are estimated to have well over six

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<sup>3</sup> On December 2, 2011, Verizon Wireless and 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. Comcast and Time Warner, respectively, are the largest and second largest cable companies in the country.

<sup>4</sup> On December 16, 2011, Verizon Wireless and Cox announced that Cox would sell to Verizon Wireless 30 AWS-1 licenses in 29 major markets for \$315 million. Cox TMI Wireless, LLC is a subsidiary of Cox Communications, Inc. (“Cox Cable”). Cox is the third largest cable company in the country.

<sup>5</sup> On December 1, 2011, Verizon Wireless and Leap announced that Verizon Wireless will acquire from Leap (and two of its majority-owned ventures) various Personal Communications Service (“PCS”) and AWS licenses for a combined \$360 million. In return, Verizon Wireless is selling to Leap its Lower 700 MHz A Block license in the Chicago-Gary-Kenosha metropolitan area (“BEA064”) for \$204 million. Concurrently herewith, RTG is filing a petition to deny these applications.

<sup>6</sup> Comcast Corporation Quarterly Report, Form 10-Q (filed November 2, 2011), <http://www.cmcsk.com/secfiling.cfm?filingID=1193125-11-292853> (last visited February 21, 2012).

<sup>7</sup> Time Warner Cable, Inc. Fourth Quarter 2011 and Full Year Results (released January 26, 2012), <http://ir.timewarnercable.com/phoenix.zhtml?c=207717&p=irol-newsArticle&ID=1652945&highlight=> (last visited February 21, 2012).

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million video subscribers<sup>8</sup>, four million broadband subscribers<sup>9</sup>, and three million voice subscribers<sup>10</sup> combined. Verizon Communications, Inc. (“Verizon”), the country’s largest telecommunications company, has 4,173,000 video subscribers, 8,670,000 broadband subscribers, and 24,137,000 voice subscribers.<sup>11</sup> Verizon also happens to be the majority owner of Verizon Wireless, which is the country’s largest mobile wireless operator with 108,667,000 subscribers.<sup>12</sup> As will be explained in more detail below, the proposed transactions involve much more than the sale of spectrum by a few FCC licensees - - they include a complex web of additional business agreements that create a concerted oligopoly consisting of the most powerful communications companies in the United States. As a threshold matter, the Commission needs to ensure that sufficient information regarding these additional business arrangements is made available to petitioning parties to allow them to analyze and comment on the impact of these arrangements on the transactions at issue in this proceeding.

In both the *SpectrumCo Public Interest Statement* and the *Cox Public Interest Statement*, Verizon Wireless informs the Commission that “[u]nlike a merger or other transaction involving consolidation of operating businesses and customers, the only assets being transferred are AWS

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<sup>8</sup> “*Top 25 Multichannel Video Programming Distributors as of September 2011*”, National Cable and Telecommunications Association, <http://www.ncta.com/Stats/TopMSOs.aspx> (last visited February 21, 2012).

<sup>9</sup> “*3.4 Million Added Broadband from Top Cable and Telephone companies in 2010*”, Leichtman Research Group, Inc. (released March 2, 2011), <http://www.leichtmanresearch.com/press/030211release.html> (last visited February 21, 2012).

<sup>10</sup> “*VoIP Subscribers 2Q10 ~ 3Q11*”, The Bridge by MediaCensus© MediaBiz, (released December, 2011), <http://www.mediabiz.com/thebridge/> (last visited February 21, 2012).

<sup>11</sup> Verizon Communications, Inc. Investor Quarterly: Fourth Quarter 2011 (released January 26, 2012), [http://www22.verizon.com/idc/groups/public/documents/adacct/2011\\_4q\\_quarterly\\_bulletin.pdf](http://www22.verizon.com/idc/groups/public/documents/adacct/2011_4q_quarterly_bulletin.pdf) (last visited February 21, 2012).

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

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licenses that are not currently in commercial use.”<sup>13</sup> While this statement is technically true in the narrowest sense, the proposed sale of AWS licenses from the Cable Companies to Verizon Wireless is just one of many transactions contemplated between the Applicants. Specifically, the Cable Companies have entered into various “business arrangements” including agreements that will “enable them to offer wireless services to their customers.”<sup>14</sup> These business arrangements also include “agency agreements”<sup>15</sup> as well as the creation of a joint venture for the purpose of developing innovative technology to better integrate wired video, voice, and high-speed Internet with wireless technologies.<sup>16</sup> The Applicants’ public interest statements do not provide the Commission with any information about these arrangements beyond one paragraph briefly mentioning the newly-formed joint venture, the contracts providing for the sales of FCC licenses, and the other business arrangements (together, “Commercial Agreements”) between the Applicants. Verizon Wireless and the Cable Companies have gone so far as to say that the Commercial Agreements “are not subject to Commission review” and that no serious inquiry is warranted.<sup>17</sup> RTG strenuously disagrees. The existence of the Commercial Agreements amplifies the need for an all-encompassing Commission review.

When the Applicants first filed their applications with the Commission on December 21, 2011, they willfully refrained from submitting to the Commission any information regarding the

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<sup>13</sup> *In the Matters of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses, Description of the Transaction and Public Interest Statement*, WT Docket No. 12-4 (filed December 16, 2011) (“*SpectrumCo Public Interest Statement*”) at p. 3; *In the Matters of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses, Description of the Transaction and Public Interest Statement*, WT Docket No. 12-4 (filed December 21, 2011) (“*Cox Public Interest Statement*”) at p.4.

<sup>14</sup> *SpectrumCo Public Interest Statement* at p. 23; *Cox Public Interest Statement* at p.20.

<sup>15</sup> *Id.*

<sup>16</sup> *SpectrumCo Public Interest Statement* at p. 24, FN 71; *Cox Public Interest Statement* at p.20, FN 62.

<sup>17</sup> *SpectrumCo Public Interest Statement* at p. 23; *Cox Public Interest Statement* at p.20.

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Commercial Agreements beyond the vague paragraph discussed above. After the Commission released its *Public Notice* on January 11, 2012, public interest groups such as Free Press and Public Knowledge urged the Commission to compel the Applicants to submit additional information regarding the Commercial Agreements.<sup>18</sup> Eventually, on January 18, 2012, the Applicants submitted the Commercial Agreements,<sup>19</sup> but under the condition that the contents of the Commercial Agreements be classified as either “Confidential” or “Highly Confidential” under protective orders issued by the Commission.<sup>20</sup> Parties to this proceeding who signed the necessary protective orders were eventually able to view the Commercial Agreements<sup>21</sup>, subject

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<sup>18</sup> See *Ex Parte* Letter from Joel Kelsey, Political Advisor of Free Press, *et. al.* to Julius Genachowski, Chairman, Federal Communications Commission (filed January 11, 2012) (“*Ex Parte of Free Press*”); *Ex Parte* Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed January 12, 2012) (“*Ex Parte of Public Knowledge*”). See also *Ex Parte* Letter from Caressa D. Bennet, General Counsel, Rural Telecommunications Group, Inc. *et. al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed February 8, 2012) (“*Ex Parte of RTG*”).

<sup>19</sup> See *Ex Parte* Letter from J.G. Harrington, Counsel, Dow Lohnes, PLLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed January 18, 2012) (“*Ex Parte of Cox*”); *Ex Parte* Letter from Michael H. Hammer, Counsel, Wilkie Farr & Gallagher, *et. al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed January 18, 2012) (“*Ex Parte of SpectrumCo*”).

<sup>20</sup> *In the Matters of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*, Protective Order, WT Docket No. 12-4, DA 12-50 (released January 17, 2011); *In the Matters of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*, Second Protective Order, WT Docket No. 12-4, DA 12-51 (released January 17, 2011).

<sup>21</sup> The Commercial Agreements consist of fourteen separate agreements amongst and between the Applicants: (1) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Cox Communications, Inc. dated December 16, 2011; (2) Cox Agent Agreement between Cox Communications, Inc. and Cellco Partnership d/b/a Verizon Wireless, dated December 16, 2011; (3) Reseller Agreement for Cox Communications, Inc. between Cellco Partnership d/b/a Verizon Wireless and Cox Communications, Inc.; (4) Limited Liability Company Agreement of Joint Operating Entity, LLC dated December 2, 2011; (5) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Comcast Cable Communications, dated December 2, 2011; (6) Comcast Agent Agreement between Comcast Cable Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, dated December 2, 2011; (7) Reseller Agreement for Comcast Cable Communications, LLC between Cellco Partnership d/b/a Verizon Wireless and Comcast Cable Communications, LLC; (8) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Time Warner Cable Inc., dated December 2, 2011; (9) TWC Agent Agreement between Time Warner Cable Inc. and Cellco Partnership d/b/a Verizon Wireless, dated December 2, 2011; (10) Reseller Agreement for Time Warner Cable Inc. between Cellco Partnership d/b/a Verizon Wireless and Time Warner Cable Inc.; (11) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Bright House Networks, LLC, dated December 2, 2011; (12) BHN Agent Agreement between Bright House Networks, LLC and Cellco Partnership d/b/a Verizon Wireless, dated December 2, 2011; (13) Reseller Agreement for Bright House Networks, LLC between Cellco Partnership d/b/a Verizon Wireless and Bright House Networks, LLC; and (14) MSO

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to the Commission’s protective orders, despite the fact that some portions of the Commercial Agreements have continued to remain redacted (even in copies made available to the Commission’s staff). The Applicants claim that matters involving, among other things, pricing, compensation, and marketing strategies are too highly sensitive for release, despite the protections afforded by the protective orders. RTG and numerous other parties who have signed the Commission’s protective orders are unable to fully analyze critical components of the Commercial Agreements and are at a disadvantage in filing comments and petitions in this proceeding. Without a full sense of what the Cable Companies and Verizon Wireless (and Verizon) are trying to accomplish and how these complex arrangements will impact the wireless, wireline, video and broadband sectors, it is difficult to assess the impact of these arrangements on the transactions at issue in this proceeding. At a minimum, the redacted information must be made available to the parties who have filed petitions to deny and who have signed the Commission’s protective orders. Without allowing such parties to access these documents, the Commission will be forced to examine these transactions without a full and complete record.

As an additional 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 foreseeable future.<sup>22</sup> As will be discussed in greater detail below, specific market conditions

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Agreement between C Spectrum Investment, LLC, Time Warner Cable LLC, and BHN Spectrum Investments, dated December 2, 2011.

<sup>22</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.

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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 Wireless' 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 GHz.<sup>23</sup> Accordingly, any approval should be conditioned on Verizon Wireless divesting itself of more than 110 megahertz of spectrum below the 2.3 GHz band in each county where it would otherwise hold more than 110 megahertz.

The Commission is faced with the monumental task of reviewing what essentially amounts to the sale of precious AWS spectrum (that stretches across the entire nation) from the Cable Companies to Verizon Wireless while at the same time assessing the relevancy and importance of over a dozen business agreements between the Cable Companies and Verizon Wireless that will intricately tie the various parties in the sale of wireless, wireline, broadband

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<sup>23</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) ("*RTG Petition for Rulemaking*").

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and video services to all Americans, including rural consumers. As discussed below, not only is the sale of spectrum from the Cable Companies to Verizon Wireless against the public interest, and thus should be denied outright, but the Commercial Agreements between the Cable Companies and Verizon Wireless are anticompetitive in both their intent and outcome, and violate both antitrust laws and the laws governing the relationships that are allowed among cable companies and telecommunications companies.

**II. APPROVAL OF THE PROPOSED TRANSACTIONS 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 transactions will serve the public interest, convenience, and necessity.<sup>24</sup> In making this assessment, the Commission first assesses whether the proposed transactions comply with the specific provisions of the Communications Act of 1934, as amended (the “Act”), other applicable statutes and the Commission’s rules.<sup>25</sup> Assuming the proposed transactions do not violate any statute or rules, the Commission next considers whether the proposed transactions “could result in public interest harms.”<sup>26</sup> If the Commission finds that the transactions 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>27</sup> In all instances, it is the Applicants who “bear the burden of proving,

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<sup>24</sup> 47 U.S.C. §§ 214(a), 310(d); *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 ¶ 23.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”<sup>28</sup> As discussed below, the Applicants 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.

**A. The Proposed Transactions Place Too Much Spectrum in the Hands of Verizon Wireless.**

Spectrum is the lifeblood of the mobile wireless industry, and RTG agrees with the Applicants that “the Government has not made additional spectrum blocks available for mobile wireless services through spectrum auctions since the 700 MHz auction – which was held nearly four years ago.”<sup>29</sup> However, the lack of new spectrum sources becoming available for the industry as a whole is even more of a reason why the FCC should prevent the incumbent mobile wireless operators from hoarding what little spectrum remains available in the secondary marketplace. Spectrum scarcity has caused the prices of “accessible” secondary market spectrum to increase to the point where market entry by prospective operators is all but impossible. It has been oft discussed how nationwide operators benefit the most from spectrum hyper-consolidation because it allows them to limit, or even abstain from, roaming and rely less on small or rural operators, who alternatively do need national roaming from the nationwide operators. Public interest harms arise because consumers, who have come to expect nationwide coverage, the highest generation level of services, and the most up-to-date mobile devices often choose to subscribe to the service offerings of the nation’s largest carriers, especially Verizon and AT&T Wireless. They choose these national operators, in part, because small, rural and regional operators are stymied from obtaining mobile devices offered exclusively through the

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<sup>28</sup> *Id.*

<sup>29</sup> *SpectrumCo Public Interest Statement* at p. 18; *Cox Public Interest Statement* at p.17.

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largest carriers or with steep price tags that the larger carriers often can afford to subsidize. Additionally, the small, rural and regional operators have fewer nationwide roaming choices, and the roaming rates, terms and conditions in the agreements that they enter into make it unprofitable to offer “all you can eat” voice and data services, or alternatively, make the pass-through costs of those roaming services to the end consumer greater than those passed through to consumers by the national operators. This harm is compounded further when those licensees that *are* selling their spectrum stakes (such as the Cable Companies) are completely retreating from facilities-based operator marketplace and instead concocting a scheme to divide-and-conquer the quadruple-play needs of consumers.

The enormity of the proposed transactions between the Applicants, from a geographical perspective is best understood when viewed from the county level. Verizon Wireless seeks to purchase AWS spectrum in 2,579 counties across the country.<sup>30</sup> By comparison, there are “only” 3,141 counties or county-equivalents in the United States. By adding the spectrum of the Cable Companies and Leap Wireless to its portfolio, Verizon Wireless will increase its spectrum stockpile in over 80 percent of the counties in this country. Verizon Wireless already boasts that it has an *average* spectrum depth nationwide of 88 MHz<sup>31</sup>, and that value is significantly higher in the more populated areas of the country impacted by this deal. Indeed, in many of the counties in the Minneapolis market area, Verizon Wireless already exceeds its national average spectrum holdings by *63 percent!*<sup>32</sup>

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<sup>30</sup> See generally *SpectrumCo Spectrum Aggregation Chart and Cox Spectrum Aggregation Chart*.

<sup>31</sup> *SpectrumCo Public Interest Statement* at p. 15; *Cox Public Interest Statement* at p.14.

<sup>32</sup> *SpectrumCo Spectrum Aggregation Chart* at p. 1.

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It should also be noted that Verizon Wireless claims that because SpectrumCo is not operating on its AWS spectrum it would be in the public interest to put this spectrum to good use by allowing Verizon Wireless to acquire it. However, it is also widely known in the industry that Verizon Wireless, unlike other mobile operators, has not deployed 3G or 4G services on any of the same AWS spectrum that Verizon Wireless acquired via FCC auction over six years ago!<sup>33</sup> Viewing this deal purely from the perspective of spectrum concentration and spectrum utilization, it is fair to say that the public interest will be harmed because Verizon Wireless cannot and will not put the acquired spectrum to immediate use. For this reason alone the applications must be denied outright. In addition, as discussed below, these transactions will prevent four potential facilities-based market operators from competing head-to-head with Verizon Wireless.

**B. The Proposed Transactions Remove the Cable Companies as Potential Market Competitors to Verizon Wireless for Facilities-Based Services.**

Both SpectrumCo and Cox have stated for the record that they have no intention of ever becoming facilities-based mobile wireless operators and instead will rely on Verizon Wireless to offer wireless services for their existing customers.<sup>34</sup> By removing themselves completely as potential facilities-based mobile wireless competitors, the Cable Companies place even greater negotiating power in the hands of Verizon Wireless with respect to all remaining facilities-based

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<sup>33</sup> Seifert, Dan, "Verizon, Leap Wireless Apply for Spectrum Swap", *Mobile Burn*, November 30, 2011, <http://www.mobileburn.com/17731/news/verizon-leap-wireless-apply-for-spectrum-swap> (last viewed February 21, 2012); Churchill, Sam, "Verizon and Cricket Swap Spectrum", *DailyWireless.org*, November 30, 2011 <http://www.dailywireless.org/2011/11/30/verizon-and-cricket-swap-spectrum/> (last viewed February 21, 2012).

<sup>34</sup> *In re Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*, Declaration of Robert Pick at p. 5 ("SpectrumCo and its owners were not able to reach agreements or find solutions before entering into the agreement with Verizon Wireless that satisfied their business objectives. Accordingly, SpectrumCo and its owners came to a business decision to sell the AWS-1 spectrum to Verizon Wireless."); Declaration of Suzanne Fenwick at pp. 2-3 ("Cox Wireless has not added any new wireless customers since November 16, 2011, and all existing customers will be transitioned to other providers by March 30, 2012, pursuant to the company's transition plan.")

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operators and mobile virtual network operators (“MVNOs”) in this country who need nationwide wholesale or roaming services in order to operate effectively.

A Verizon Wireless 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>35</sup> Verizon Wireless’ apparent unwillingness to allow its customers to use the networks and services of competitors (and even non-competitors) is not very surprising. Because Verizon Wireless holds nationwide Upper 700 MHz Block C licenses (Band Class 13), and Verizon Wireless’ devices will not utilize additional Band Classes supported by other 700 MHz licensees (*i.e.*, Band Classes 12, 17), Verizon Wireless is engaging in a *de facto* policy of not engaging in outbound roaming for LTE services. It is precisely this type of isolationism that creates an imbalance of power in roaming negotiations, especially for 4G/LTE services. This imbalance then leads to commercially unreasonable roaming rates, terms and conditions. SpectrumCo has recognized the difficulties inherent in orchestrating nationwide roaming agreements.<sup>36</sup> If large, well-financed communications companies with spectrum holdings nationwide (such as the Cable Companies) find it difficult to even *try* competing in today’s mobile wireless marketplace, how are small and rural operators expected to survive with exceedingly smaller subscriber bases, revenue streams and coverage footprints?

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

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<sup>35</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 8, 2012).

<sup>36</sup> *In re Applications of Celco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*, Declaration of Robert Pick at p. 5 (“Finally, securing roaming agreements posed another complicating factor. Wireless consumers expect service coverage wherever they travel. No carrier – and especially not a new entrant – can provide service in all areas, which necessitates that it obtain roaming agreements with other carriers. SpectrumCo would have been especially dependent upon roaming agreements in the early phases of deployment because wireless networks are built in stages. Securing these roaming agreements would impose further costs and business uncertainty.”).

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interoperability is added to the equation, the harm experienced by rural consumers is even greater. As noted above, these transactions should not be viewed in isolation; Leap Wireless is also selling its future ability to provide facilities-based 4G/LTE roaming in dozens of markets across the country. The sad truth is that financially stable enterprises like the Cable Companies (and even regional operators such as Leap) were up until now seen as the white knights that would ride into town and help bring choice and competition to American consumers. Should these transactions be approved, not only would the entrance of new competitors be unlikely, if not impossible, the environment for the remaining small and rural operators would become that much more difficult because each of them would be even more reliant upon the nationwide operators for roaming access while those same national roaming partners could use the uneven playing field to hold a competitive advantage in the retail marketplace in order to attract and retain subscribers. If the rural carriers fail, the Obama Administration's goal of bringing 4G to rural America will fail.

**III. THE EXPECTED PUBLIC INTEREST HARMS RESULTING FROM THESE PROPOSED TRANSACTIONS WARRANT A THOROUGH REVIEW BY THE COMMISSION.**

Verizon Wireless contends that the Commission's review of these applications "under Section 310(d) of the Act, and under applicable precedent, should be limited."<sup>37</sup> Verizon Wireless also argues in both of its public interest statements that:

"The Commission previously has determined that applicants which demonstrate on their face that a transaction meets the public interest, and will neither violate the Act or Commission rules, nor undermine Commission policies, do not require extensive review or merit expenditures of scarce Commission resources. Indeed, no detailed showing of benefits is required for transactions where there are no anti-competitive effects. The Commission has determined that, where a transaction will not reduce competition and the acquiring party possesses the requisite qualifications to control the licenses in question, a 'demonstration that

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<sup>37</sup> *SpectrumCo Public Interest Statement* at p. 4; *Cox Public Interest Statement* at p.5.

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benefits will arise from the transfer is not...a prerequisite to our approval, provided that no foreseeable adverse consequences will result from the transfer.”<sup>38</sup>

However, the support Verizon Wireless cites for past Commission action under Section 310(d) is taken completely out of context. In two of the orders that Verizon Wireless cites as precedent to stop short of an extensive review, the Commission *declined* to bypass that extensive review.<sup>39</sup>

While the Commission may, in its discretion, forgo an extensive review, in both instances relied upon by Verizon Wireless the Commission did in fact proceed to analyze the potential public interest harms. Verizon Wireless is simply unable to cite any substantially similar large merger or transaction where further analysis was deemed unwarranted.

Furthermore, Verizon Wireless’ contention that it need not quantify the public interest benefits to be derived from the proposed deals is misplaced because it makes two huge and unsubstantiated assumptions; the first is that the 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. The excessive spectrum aggregation by Verizon Wireless and the removal of well-financed Cable Companies as potential facilities-based competitors are but two foreseeable adverse

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<sup>38</sup> *Id.*

<sup>39</sup> See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc., Transferor, to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3170 (released February 18, 1999) (“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 (released October 8, 1999) (“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.”).

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consequences of the proposed spectrum assignments and are contrary to the public interest. Accordingly, because the harms that will result from these proposed transactions are far from unlikely, Verizon cannot escape its obligation to precisely quantify the public interest benefits that it believes will result from the transactions.<sup>40</sup>

As RTG explained in detail above, it is the explicit role of the Commission under Section 310(d) of the Act to determine whether the Applicants have demonstrated that the proposed assignments, among other things, will serve the public interest. Additionally, the Commission is tasked by law to consider whether the proposed assignments could result in public interest harms and it is the Applicants who bear the burden of proving that, on balance, the proposed transactions will serve the public interest. Verizon Wireless makes the erroneous assumption that the proposed transactions somehow have no bearing on marketplace competition and thus produce no anti-competitive effects. This petition provides more than enough examples of the public interest harms that compel the Commission to scrutinize the transactions like it has other large-scale assignments of spectrum in the recent past and not simply rely on Verizon Wireless' baseless justification for skipping crucial steps that protect consumers and the public interest.

**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 Wireless acquiring copious amounts of AWS spectrum from the Cable Companies. 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

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<sup>40</sup> See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21315 (released October 23, 1998) (“We need not ascertain the exact magnitude of the benefits of the proposed merger because ‘where, as here, potential harms are unlikely, Applicants’ demonstration of potential benefits need not be as certain.’”).

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Wireless proposes) is necessary. Verizon Wireless would like the Commission to forgo an extensive review of the proposed transactions, in part, because the spectrum screen is either “not triggered in any affected markets”,<sup>41</sup> or “not triggered in the vast majority of affected markets, and in the limited areas where it is triggered, the small overage raises no competitive concerns.”<sup>42</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>43</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>44</sup> The Commission has also pledged to monitor technological and market-driven developments in the industry and adjust the spectrum screen appropriately. The proposed spectrum deals with the Cable Companies, combined with the proposed Leap deal, represent a monumental shift of precious spectrum from regional players (*e.g.*, Leap) and well-financed potential players (*e.g.*, Comcast, Time Warner, and Cox Cable) 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.

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<sup>41</sup> *Cox Public Interest Statement* at p.6.

<sup>42</sup> *SpectrumCo Public Interest Statement* at p. 5.

<sup>43</sup> *AT&T-Qualcomm Order* at ¶ 42.

<sup>44</sup> *Id.*

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This “second look” at the spectrum screen 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 provides those fortunate operators with prime spectrum holdings competitive advantages such as less expensive cell site configurations, less expensive equipment purchases due to lower economies of scale and scope, and early access to market-ready devices used on the premium bands. These advantages due to spectrum holdings perpetuate an uneven playing field. When only a few licensees control a disproportionate share of those bands that have traditionally been used to provide mobile wireless services (*e.g.* Cellular, PCS, AWS and 700 MHz), it produces downstream public interest harms. At best it forces aspiring market entrants, at great expense, to acquire alternative spectrum with less desirable propagation characteristics. Moreover, because many of these entrants are likely to be on the bleeding edge of deploying services in these new bands (not just domestically, but even internationally) there is no guaranteed market for network equipment and devices on the same technologies used in the prime bands below 2.3 GHz. At worst, it altogether prevents aspiring licensees from even entering the market as facilities-based competitors. 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.

While RTG believes that the precise spectrum screen employed in each county ultimately depends upon the amount of unencumbered spectrum that is widely developed in the North American market and protected by interoperability obligations for all devices operating in a specific band, RTG believes that at a minimum a spectrum cap not to exceed 110 megahertz

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should be implemented for spectrum below 2.3 GHz. Under such a spectrum cap, Verizon Wireless' determined bid for new spectrum will warrant additional scrutiny in numerous markets including 48 of the Top 100 most populated CMAs.<sup>45</sup>

**V. THE COMMISSION SHOULD REQUIRE VERIZON TO DIVEST ALL SPECTRUM EXCEEDING RTG'S PROPOSED SPECTRUM CAP.**

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 licenses from the Cable Companies to Verizon Wireless should be granted, it should do so only on the condition that Verizon Wireless 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* 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.<sup>46</sup> In its *Petition for Rulemaking*, RTG documented a steady erosion of competition in the mobile wireless sector since at least 2001.<sup>47</sup> The trend of operator consolidation, and the resulting loss of effective marketplace competition, has been formally recognized in the two most recent industry competition reports. In each of these reports, the Commission was unable to affirm that the mobile wireless industry is effectively competitive.<sup>48</sup> RTG is not alone in its support of a common sense spectrum cap. Fifteen of the twenty-one

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<sup>45</sup> See *SpectrumCo Aggregation Chart and Cox Aggregation Chart*.

<sup>46</sup> See *RTG Petition for Rulemaking*.

<sup>47</sup> *Id.* at pp. 8-13.

<sup>48</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*”).

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parties filing comments in the spectrum cap rulemaking proceeding have expressed unconditional support for RTG's proposal. A common sense spectrum cap is also necessary at this moment in time because by Verizon Wireless' own admission "there is no imminent spectrum auction" being planned by the Commission in the near term, and that even if new, additional spectrum was "allocated for mobile use in 2012, several years (based on past history) may be needed to bring it to auction."<sup>49</sup> Perhaps when additional spectrum is allocated by the Commission and brought to auction a spectrum cap could eventually be lifted, but until such time, current mobile wireless operators and prospective mobile wireless operators must make efficient use of those bands already licensed. Were Verizon Wireless allowed to corner the market for spectrum licenses below 2.3 GHz in the secondary market while simultaneously preventing three well-financed licensees from ever realizing their potential as facilities-based competitors, it will perpetuate the circumstances that prevent small and rural operators from offering truly competitive services to Americans living, working and traveling in rural areas.

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

Verizon Wireless' acquisition of additional AWS spectrum across much of the country while simultaneously preventing two current licensees from ever becoming facilities-based competitors to Verizon Wireless 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.

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<sup>49</sup> *SpectrumCo Public Interest Statement* at p. 18; *Cox Public Interest Statement* at p.17.