



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

March 13, 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 Monday, March 12, 2012, the Rural Telecommunications Groups, Inc. (“RTG”) filed a *Reply to Joint Opposition to Petitions to Deny* in reference to the Verizon Wireless-Leap Wireless proceeding before the Federal Communications Commission (“FCC” or “Commission”).<sup>1</sup> In its *Reply*, RTG continues to express the need for a spectrum cap and renews its request for the Commission to grant its above-captioned Petition for Rulemaking and conduct a Notice of Proposed Rulemaking (“NPRM”) to deal with imposition of a spectrum cap.

As discussed in its attached *Reply* which RTG seeks to be made part of the record in RM-11498, the time for a spectrum cap is at hand and the Commission must act promptly to issue an NPRM. Healthy competition in the CMRS marketplace requires no fewer than four operators per market, and each of those operators must have sufficient spectrum to offer next generation mobile broadband services. In its *Reply*, RTG reminds the Commission that the Department of Justice has recently concluded that a reduction in nationwide competitors from four to three “likely will lead to lessened competition due to an enhanced risk of anticompetitive coordination.”<sup>2</sup> RTG also notes that other advanced (but much smaller) countries such as the United Kingdom have not only endorsed the idea the idea that four or more mobile wireless operators is ideal,<sup>3</sup> but that a spectrum cap is the proper vehicle to maintain that competitive

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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*, Reply to Joint Opposition to Petitions to Deny by the Rural Telecommunications Group, Inc., ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596 and 0004949598 (filed March 12, 2012) (“*Reply*”).

<sup>2</sup> *Reply* at p. 10, citing *U.S. v. AT&T, In., T-Mobile USA, Inc. and Deutsche Telekom AG*, Case 1:11-cv-01560, Complaint (Dist. D.C. Aug. 31, 2011) at ¶ 56.

<sup>3</sup> *Reply* at p. 10, FN 22.



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balance.<sup>4</sup> Until such time that more spectrum is made available through auction, the FCC needs to impose a per-operator spectrum cap of no more than 110 megahertz per county below 2.3 GHz and no more than 50 megahertz per county below 1 GHz.

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

cc (w/attachment): Chairman, Hon. Julius Genachowski  
Commissioner Robert McDowell  
Commissioner Mignon Clyburn  
Rick Kaplan, Chief, Wireless Telecommunications Bureau  
Amy Levine, Senior Legal Advisor to Chairman Genachowski  
Angela Giancarlo, Senior Legal Advisor to Commissioner McDowell  
Louis Peraertz, Legal Advisor to Commissioner Clyburn

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<sup>4</sup> Reply at p. 14, FN 28.

**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

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

**RURAL TELECOMMUNICATIONS  
GROUP, INC.**

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Date: March 12, 2012

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## SUMMARY

The Rural Telecommunications Group, Inc. (“RTG”) continues to oppose the proposed sale of spectrum from Leap Wireless International, Inc (“Leap”), Savary Island License A, LLC and Savary Island License B, LLC (together, “Savary”) to Cellco Partnership d/b/a Verizon Wireless (“Verizon”), (all collectively, the “Applicants”). The Applicants fail to adequately refute the adverse impact on competition and the public interest that would result from Verizon acquiring Advanced Wireless Services and Personal Communications Service licenses throughout the country from Leap and Savary. Whatever limited public interest benefits that might occur as a result of the proposed transactions are strongly outweighed by the many public interest harms that will result should the deals proceed.

Approval of the applications will allow Verizon to exert substantially increased market power and use such power to prevent small and rural carriers from being able to realistically compete with Verizon, especially in those markets where Leap is selling all of its spectrum holdings. Leap’s downsizing and retreat from certain markets combined with Verizon’s acquisition of more spectrum further increases the harms to competition posed by the duopoly of Verizon and AT&T Inc. The Federal Communications Commission (“FCC” or “Commission”) must investigate thoroughly these competitive harms and do so in parallel with the contemporaneously proposed spectrum sales from SpectrumCo, LLC and Cox Communications, Inc. (*i.e.*, the cable companies) to Verizon. This heightened review should be performed based on a spectrum screen that has been adjusted downward. In order to maintain a competitive marketplace on a forward-moving basis, the Commission should begin a rulemaking proceeding that imposes a spectrum aggregation limit for all CMRS licensees.

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

In re Applications of )  
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Cellco Partnership d/b/a Verizon Wireless )  
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Licenses )

To: The Commission

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

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys and pursuant to 47 C.F.R. § 1.939 of the Federal Communications Commission’s (“FCC” or “Commission”) rules, hereby responds to the Joint Opposition of 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”) to Petitions to Deny (“*Opposition*”) filed by the Applicants on March 2, 2012.<sup>1</sup> The *Opposition* fails to adequately refute any of the public interest harms identified by RTG in its *Petition to Deny*<sup>2</sup>, and because those harms outweigh any alleged potential public interest benefits that might be derived from the assignment of licenses, the applications must be denied.

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<sup>1</sup> *In re 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*, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598, Joint Opposition to Petitions to Deny (filed March 2, 2012) (“*Opposition*”).

<sup>2</sup> *In re 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*, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598, Petition to Deny of the Rural Telecommunications Group, Inc. (filed February 21, 2012) (“*Petition to Deny*”).

## I. INTRODUCTION

In addition to ignoring completely certain issues raised by RTG in its *Petition to Deny*,<sup>3</sup> the Applicants' *Opposition* puts forth arguments that are wrong on their face. The Applicants assert that because the applications "demonstrate on their face that a transaction meets the public interest" they do not require "lengthy consideration" and "therefore should be approved unconditionally and without delay."<sup>4</sup> The assumption by the Applicants that the applications "on their face" demonstrate that the proposed transactions serve the public interest is incorrect. To the contrary, a deliberate, thorough review of the Applicants' proposed deals demonstrates only that the Applicants' private interests are served, and not those of the public. Moreover, the Commission has already determined that it is in the public interest to review these applications in tandem with Verizon's even larger proposed spectrum deals with the cable companies ("Cable Deals").<sup>5</sup> The Applicants also claim that regardless of whether the above-referenced applications are reviewed in coordination with the Cable Deals, the proposed transactions will not result in any "countervailing harms" and therefore should be promptly approved. As discussed further below, the public interest harms RTG first identified in its *Petition to Deny* will occur and these

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<sup>3</sup> In its *Petition to Deny*, RTG cited a number of instances where Leap expressed similar concerns to those raised by RTG in its *Petition to Deny*. In their *Opposition*, Applicants failed to address: Leap's statement in the FCC's 15<sup>th</sup> Annual Competition Report that the Commission must monitor input markets like data roaming and access to LTE (at pp. 10-11); Leap's stated concerns about access to interoperable LTE devices (at p. 11); and Leap's stated concerns about spectrum concentration in the hands of the country's largest mobile operators (at p. 12). Applicants also failed to cite precedent where a thorough review of major license assignments and/or mergers was bypassed (at p. 14).

<sup>4</sup> *Opposition* at p. 3.

<sup>5</sup> "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," Public Notice, Revised Pleading Cycle Established, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598 (released January 19, 2012) ("*Leap Public Notice*").

harms outweigh any so-called “public interest” benefits cited by Verizon and the rest of the Applicants.

The Applicants erroneously argue for the applicability of a generously elevated spectrum screen (that the Commission has already stated is ripe for downward adjustment<sup>6</sup>) in hopes of bypassing a more thorough review of the competitive harms that will result in each market that is included in the proposed transactions. Instead, the Commission should adopt a *lowered* spectrum screen as well as re-introduce a spectrum cap. These two measures are of paramount importance to the industry if there is to be true competition in the mobile wireless marketplace.

Verizon boldly asserts that RTG is attempting to prevent it from acquiring *any* spectrum in the secondary marketplace, and the Applicants assert that “the Commission must dismiss the petitions for failure to plead and establish standing.”<sup>7</sup> Neither assertion is true. Verizon’s numerous bids to purchase commercial mobile radio service (“CMRS”) licenses in the secondary marketplace are not being thwarted. Instead, RTG is asking for more than just a cursory review by the Commission (based solely on Verizon’s own self-serving statements). Once the Commission completes a thorough review, it will come to the conclusion that grant of the applications are contrary to the public interest. Furthermore, despite the Applicants’ assertions, RTG does indeed have standing to bring its *Petition to Deny* through its numerous members with CMRS licenses in the very same markets in which Verizon is attempting to purchase FCC licenses. The public interest harms that will result should the transactions be approved are well documented and will be prevented or redressed if the assignment of licenses is denied. The fact

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<sup>6</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 11-88 (released December 22, 2011) (“*AT&T-Qualcomm Order*”) at ¶ 42.

<sup>7</sup> *Opposition* at p. 6, FN 13.

that small and rural CMRS operators need to consolidate through their trade association in order to advocate should not be held against them nor should it diminish the validity of their standing or their arguments which have been presented with specificity and have shown the potential harm that will occur should the transactions be approved.

**II. THE PROPOSED TRANSACTIONS SHOULD NOT BE APPROVED UNTIL THE COMMISSION CONCLUDES ITS REVIEW OF VERIZON'S CONTEMPORANEOUS BIDS FOR CABLE COMPANY SPECTRUM.**

The Applicants argue repeatedly in their *Opposition* that the proposed spectrum deals between Leap, Savary and Verizon should be “promptly approved”<sup>8</sup> by the Commission and that any review of them should be done without consideration of the Cable Deals.<sup>9</sup> Verizon knows full well that the Commission has already determined that the public interest would be best served by aligning the comment cycle for the present applications with those of the Cable Deals.<sup>10</sup> Additionally, the Commission has indicated that it might still formally consolidate the present applications with the Cable Deals and “[t]hat determination will be made following a review of the record.”<sup>11</sup> This event has not yet occurred and consolidation is still possible. Verizon’s decision to enter into three large acquisitions of spectrum from three different licensees at essentially the same time is a predicament of its own making. An expedited review of the present applications in a vacuum and without consideration of the Cable Deals would be a

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<sup>8</sup> *Opposition* at p. 2.

<sup>9</sup> *Id.* at pp. 3-5.

<sup>10</sup> *In the Matter of Applications of Verizon Wireless and Leap Wireless for Commission Consent to the Exchange of 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses,*” Order, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598, DA 11-2096 (released December 30, 2011) (“*Order*”) at ¶ 6.

<sup>11</sup> *Id.* at ¶ 7.

reversal of the Commission's original intent and contrary to the public interest. Accordingly, Commission action on Verizon's request for approval of its transactions with Leap and Savary must be delayed until such time that the Commission completes its review of the Cable Deals and the impact on the public interest of both transactions is considered.

### **III. THE PUBLIC INTEREST HARMS IDENTIFIED BY RTG VASTLY OUTWEIGH ANY POTENTIAL PUBLIC INTEREST BENEFITS.**

The process by which the Commission reviews applications involving the assignment of CMRS licenses is well established and it has been chronicled in detail in RTG's *Petition to Deny*.<sup>12</sup> A crucial component of that Commission review process is a balancing of public interest benefits and harms when both are present in a proposed transaction.<sup>13</sup> RTG has never questioned the additional network capacity Verizon (or any other CMRS operator for that matter) might gain were it to secure access to new, additional spectrum in a market where there are already customers and an active mobile network. Yet, Verizon touts this same, tired example of expanding capacity - - not as the private commercial benefit that it is - - but as a public interest benefit. Gaining or keeping customers because of added capacity is self-serving to Verizon and does not benefit the public interest. Even accepting that added capacity is a public interest benefit, Verizon offers the Commission little else in the way of public interest benefits, and its *Opposition* completely ignores the plethora of public interest harms raised by RTG.

Verizon alleges that RTG has failed to put forth any market-specific harms that will result in direct injury to RTG or its members.<sup>14</sup> In fact, RTG presented at least two public interest

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<sup>12</sup> *Petition to Deny* at pp. 5-6.

<sup>13</sup> *Petition to Deny* at p. 6; see also *AT&T-Qualcomm Order* at ¶ 23.

<sup>14</sup> *Opposition* at p. 6, FN 13.

harms that will result directly either from Verizon acquiring more spectrum or Leap selling large swaths of spectrum. First, by removing itself as a licensee from numerous markets, Leap is abandoning any near-term or mid-term possibility of it becoming a facilities-based LTE competitor and roaming partner to other operators in those markets. Leap's absence in these markets means decreased competition, which in turn prevents consumer prices and services from being more competitive. Concentrating the spectrum in the hands of Verizon strengthens the "Twin Bell" duopoly and precludes any new operator from ever becoming a viable facilities-based competitor in those markets. So while Verizon steadfastly maintains that the proposed transactions do not decrease the number of existing competitors,<sup>15</sup> it does not mention that the proposed transactions prevents Leap or any other entity from ever becoming a facilities-based competitor in these predominantly rural markets. Second, by increasing its concentration of spectrum in the affected markets, Verizon is closing the door on the possibility of any other company acquiring more spectrum capable of being used to offer 3G or 4G services. Without new spectrum available for release in the immediate future, it will be virtually impossible for small and rural operators to add LTE mobile broadband services or increase their footprints into new markets.

This lack of future competition will directly impact consumers because residents of rural markets, or other Americans who work in or travel through these rural markets, will not be afforded any additional choice for a service provider or roaming network for their current provider of choice if they do not live in these markets. If the proposed applications represent competitors in a foot race to offering 4G service, Leap is essentially disqualifying itself at the starting block, and then giving Verizon a helpful push at the start of the race while restraining all

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<sup>15</sup> *Opposition* at p. 2 ("Second, the Spectrum Exchange does not reduce competition or consumer choice in any market.").

other competitors. Verizon is adamant that it needs Leap and Savary's additional AWS spectrum in order to effectively offer LTE services to Americans, yet completely lost in this argument is the fact that numerous other existing and potential competitors also want to *begin* offering LTE services but do not have access to the necessary spectrum. The threat of spectrum concentration in the hands of Verizon is indeed ominous (and is discussed at length below). So, just as in the laws of physics, for every action in the mobile industry (*i.e.*, Verizon gaining added network capacity), there is an opposite reaction (*i.e.*, Leap being downsized, competitors unable to access spectrum to offer competing LTE retail and roaming services). The question before the Commission is whether these identifiable public interest harms outweigh the alleged "public interest" benefits of Verizon gaining and maintaining customers by becoming even larger from a network capacity perspective. As RTG identified above, the public interest harms stemming from Verizon's actions to acquire even more spectrum are anticompetitive in nature, and what few facilities-based competitors remain (including RTG members) will be irreparably harmed and marginalized in the future.

#### **IV. THERE IS A PRESSING NEED TO REVIEW THE PROPOSED TRANSACTIONS WITH A LOWERED SPECTRUM SCREEN AND AN OVERALL NEED FOR THE COMMISSION TO ADOPT A SPECTRUM CAP.**

The Applicants argue that because Verizon will not exceed the FCC's *current* spectrum screen, the proposed transaction will not diminish competition in any area. However, the current spectrum screen does not adequately protect against the harms posed by the country's largest spectrum holders from warehousing and further consolidating additional spectrum and reducing competition in the process. The Applicants fail to dispute the fact that the Commission has stated a need to revisit the current spectrum screen. American consumers are relying upon the Commission to prophylactically maintain a minimum level of facilities-based competition in

each market across the country by acting to prevent an overconcentration of spectrum in the hands of a few carriers. RTG has proposed in a *Petition for Rulemaking* that the Commission impose a spectrum cap of 110 megahertz in each county for all bands below 2.3 GHz<sup>16</sup> and an additional hard spectrum cap of 50 megahertz in each county for all bands below 1 GHz.<sup>17</sup> RTG strongly urges the Commission to issue a Notice of Proposed Rulemaking separate and apart from this proceeding to determine whether a spectrum cap should be imposed in the current environment.

A lowered spectrum screen and a CMRS spectrum cap can co-exist harmoniously and Commission utilization of both of these tools will solidify competition from facilities-based competitors who yearn for additional spectrum in order to launch competitive 4G/LTE networks to compete against Verizon. However, regardless of whether and when the Commission may act to adopt a spectrum cap in response to the *Petition for Rulemaking*, the Commission must adjust its existing spectrum screen in connection with its consideration of this transaction. Specifically, RTG urges the Commission to lower the applicable spectrum screen to approximately 106 megahertz in each county for all CMRS bands, a value which corresponds to one-quarter of all spectrum available to CMRS providers for CMRS use. RTG is not alone in its support for use of a spectrum screen approximating 106 megahertz. In the proceeding concerning the Cable Deals

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<sup>16</sup> See *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*”). The FCC put RTG’s *Petition for Rulemaking* out for comment on October 10, 2008 (Public Notice, RM No. 11498, DA 08-2279).

<sup>17</sup> See *In the Matter of Application of AT&T Inc. and QUALCOMM Incorporated for Consent to Assign Licenses and Authorizations*, Reply to Joint Opposition to Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 11-18, FCC 11-88 (filed March 28, 2011) at p. 5.

currently before the Commission, several parties have filed petitions urging for a similarly revised spectrum screen.<sup>18</sup>

In the absence of a spectrum cap, spectrum screens were implemented by the Commission to ensure that the right markets are examined as the Commission considers whether a competitive environment will be adversely affected by a proposed transaction. Specifically, the Commission determined that “under the statutory regime set out by Congress, the Commission has an obligation, distinct from that of the Department of Justice (“DOJ”), to consider as part of the Commission’s public interest review the anticompetitive effects of acquisitions of CMRS spectrum, including those that occur in the secondary market.”<sup>19</sup> The spectrum screen is a tool that reinforces the Commission’s stated objective of discouraging anticompetitive behavior.<sup>20</sup> The Commission has a long-standing position of reviewing proposed transactions on a case-by-case basis and in the decade-plus time the spectrum screen has been utilized, the Commission has always had the discretion to adjust the megahertz value of the screen in order to accommodate the CMRS market at specific points in time.<sup>21</sup> Accordingly, the Commission has unquestionable authority to reduce the applicable spectrum screen on a case-by-case basis in order to promote competition and remove competitive harms.

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<sup>18</sup> See e.g., Petition to Deny of T-Mobile USA, Inc., WT Docket No. 12-4 (filed February 21, 2012) at p. 30; Petition to Condition or Otherwise Deny Transactions of RCA – The Competitive Carrier Association, WT Docket No. 12-4 (filed February 21, 2012) at p. 48.

<sup>19</sup> *In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, WT Docket No. 01-14, FCC 01-328 (released December 18, 2001) (“2000 Biennial Review”) at ¶ 62.

<sup>20</sup> *2000 Biennial Review* at ¶ 54.

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

The question before the Commission in these transactions as well as in the Cable Deals is “What is the proper spectrum screen applicable to the CMRS industry today?” The answer to that question can be found in both past and recent Commission and DOJ precedent. Significant consumer benefits stem from the presence of a fourth market competitor, and the Commission has recognized this fact for over a decade.<sup>22</sup> More recently, in its review of AT&T Inc.’s attempted takeover of T-Mobile USA, Inc., DOJ determined that “[t]he substantial increase in concentration that would result from this merger, and the reduction in the number of nationwide providers from four to three, likely will lead to lessened competition due to an enhanced risk of anticompetitive coordination.”<sup>23</sup> Given that the Commission has “an obligation to ensure that acquisitions of CMRS spectrum do not have anticompetitive effects that render them contrary to

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<sup>22</sup> *In the Matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, Report and Order, WT Docket No. 98-205, FCC 99-244 (released September 22, 1999) at ¶ 44 (“We believe that significant benefits of competition are unlikely to be exhausted with the entry of a third carrier.”) (“[W]e draw upon our experience in other telecommunications markets, where consumers generally have benefited from their ability to choose from among more than three firms to obtain the services they desire.”). Other countries have determined that four competitors at a bare minimum are needed to maintain effective competition. After a very lengthy review period, the government of the much smaller United Kingdom has recently determined as much. House of Commons, Culture, Media and Sport Committee, “*Spectrum: Government Response to the Committee’s Eight Report of Session, 2010-2012*” (released January 24, 2012) (“*UK Parliament Report*”) at ¶ 47 (“From the evidence we have heard, we believe that Ofcom’s proposal to secure at least four mobile network operators after the next spectrum auction is an adequate measure to safeguard plurality of mobile network operation. We are reassured that four is a minimum rather than a limit, as imposing such an artificial constraint on the number of operators in the market would inhibit competition.”) and ¶ 48 (“In its consultation Ofcom proposes that, after the auction, there should be at least four holders of a minimum spectrum portfolio that are “credibly capable of offering high quality data services in the future.”), <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcmds/1771/1771.pdf> (last viewed March 12, 2012).

<sup>23</sup> *U.S. v. AT&T, Inc., T-Mobile USA, Inc. and Deutsche Telekom AG*, Case 1:11-cv-01560, Complaint (Dist. D.C. Aug. 31, 2011) at ¶ 36.

the public interest”<sup>24</sup> and that a healthy CMRS industry should have at a minimum four competitors in each market, it is mathematically impossible to sustain a spectrum screen that passively endorses the aggregation of up to one-third of the spectrum in a given market, and in some cases, beyond that amount. Under the current spectrum screen, three of the country’s larger mobile operators could, piece-by-piece, aggregate up to one-third of the spectrum in each market without raising any red flags. This type of incremental consolidation will crowd-out a fourth, fifth or sixth competitor in these very same markets. Instead, the only possible way to maintain a functional spectrum screen and support at least four competitors in each market is to reduce the spectrum screen to approximately 106 megahertz, or one-quarter of the available CMRS spectrum in a given market. Under RTG’s proposed spectrum screen, operators such as Verizon could consolidate up to one-quarter of the available spectrum in a given market. This way, even if all four of the country’s nationwide operators pushed to aggregate as much spectrum as they could in any given market, when the dust settles, consumers will have at least four competitors to choose from.

The Commission’s migration from a hard spectrum cap of 45 megahertz, which at the time represented approximately one-quarter of all available CMRS spectrum in the marketplace, to a spectrum screen that was approximately one-third of all available spectrum in the marketplace, came about during its review of the AT&T Wireless-Cingular Wireless merger.<sup>25</sup> When explaining how it derived the newly applicable spectrum screen of 70 megahertz, the Commission noted:

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<sup>24</sup> *2000 Biennial Review* at ¶ 55.

<sup>25</sup> *In the Matter of Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 04-70, FCC 04-255 (released October 26, 2004) (“*AT&T-Cingular Merger Order*”).

By selecting 70 MHz as the threshold, we ensured that we subjected to further review any market in which the level of spectrum aggregation will exceed what is present in the marketplace today. As an initial matter, although 70 MHz represents a little more than one-third of the total bandwidth available for mobile telephony today, we emphasize that a market may contain more than three viable competitors where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today.<sup>26</sup>

In other words, the Commission determined that because no market player exceeded the one-third threshold at the time, it was a reasonable line in the sand. However, the commercial mobile wireless industry that existed in 2004 (and that the Commission was basing its analysis on) was dramatically different than today's industry in two very important respects. First, no mobile operator in 2004 had a genuine, facilities-based, *nationwide* network and corresponding coverage to offer its subscribers. Accordingly, even the country's largest mobile wireless operators (whether in terms of market share, spectrum-depth, or size of network) depended on roaming agreements at the regional or national level, especially from regional, small and rural operators scattered across the country. Therefore, the existence of potentially only three operators in any given market, whether urban or rural, was significantly less critical to competition within the market because *all* of those market players would be dependent upon other operators not in that same market for nationwide roaming. Quite simply, there was little chance those three players in a given market would be the *same* three players in each and every market across the country. That clearly is not the case today. Both Verizon and AT&T are omnipresent having successfully gobbled up larger regional players such as Dobson Cellular, Edge Wireless, Rural Cellular, Centennial Wireless and ALLTEL Communications, as well as dozens of small and rural operators over the years, and as a result have very little dependence on other carriers for roaming coverage today.

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<sup>26</sup> *AT&T-Cingular Merger Order* ¶ 109.

A second important difference between the mobile wireless marketplace then and the same marketplace today is the fact that consumer mobile data consumption has increased significantly as has the need for more spectrum. For example, the Commission notes that mobile operators in 2004, including Verizon, were able to offer simple voice and data services using thirty-five megahertz or less of spectrum.<sup>27</sup> The problem now is that these other regional players that offered roaming - like Dobson, Rural Cellular, and especially ALLTEL - are not only absent from the marketplace today, but the beneficiaries of their demise, such as Verizon, have increased their spectrum holdings incrementally through auction and secondary market purchases while the remaining few competitors have not had an opportunity to access new spectrum so that they can offer the latest new 3G and 4G services in order to compete against Verizon.

If the Commission ultimately approves the proposed sale of licenses from Leap and Savary to Verizon, then the Commission should adopt a lowered spectrum screen of approximately 106 megahertz so that it may also perpetuate the prospects for long-term competition of no fewer than four national market players. Hundreds of counties in no fewer than 36 CMAs will exceed the 106 megahertz screen in the combined Verizon-Leap and Verizon-Savary transactions. This is in addition to the 20 CMAs today where Verizon already holds in excess of 106 megahertz of spectrum. Verizon's spectrum holdings will increase significantly if the Cable Deals are added to this equation.

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<sup>27</sup> *Id.* (“For example, Verizon Wireless has recently launched EV-DO service in five markets in which it hold 30 MHz of bandwidth – Austin, Texas; Milwaukee, Wisconsin; and Miami, Tampa and West Palm Beach, Florida – and in most other locations where it has begun to offer EV-DO, it is doing so with 35 MHz of spectrum. Similarly, Dobson has recently announced launch of EDGE service throughout its 16-state territory, where it holds no more than 30 MHz of bandwidth in over 90 percent of the applicable counties.”)

The Commission should also move forward on the Rulemaking Petition. A hard cap of 50 megahertz per county below 1 GHz and 110 megahertz per-county below 2.3 GHz will establish a clearly identifiable standard for all parties engaging in spectrum assignment transactions on a forward-moving basis. Until such time as new CMRS spectrum is allocated and released at auction, the hard caps of 50 megahertz and 110 megahertz will provide market players with clear guidelines when negotiating future secondary market transactions, which in turn will streamline the review process of the Commission and leave less uncertainty for existing and prospective licensees. Other countries have identified the use of spectrum caps as highly appropriate for maintaining effective competition and promoting the public interest.<sup>28</sup>

As previously noted, the adoption of a new spectrum cap through a notice and comment cycle does not preclude the Commission from adjusting the spectrum screen in its case-by-case review of a specific transaction, and it should clearly do so as set forth above. The public interest harms resulting from Verizon's proposed purchase of AWS and PCS spectrum from Leap and Savary vastly outweigh any conceivable public interest benefits, especially when they are reviewed in the context of the even larger Cable Deals, and RTG urges the Commission to use a lowered 106 megahertz spectrum screen specifically for these transactions and to issue a Notice of Proposed Rulemaking to consider adoption of a new spectrum cap.

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<sup>28</sup> *UK Parliament Report* ¶ 55, Response to 5 & 6 (“The Committee’s assessment clearly articulates the difficulties faced by Ofcom. We also believe that Ofcom’s approach of a mix of spectrum floors and caps represents the most appropriate way forward to help address existing competitive tensions.”); *See also* Industry Canada, “Competition Principles: Promoting a Competitive Post-Auction Marketplace” (released March 2011) (“It is the view of Industry Canada that, when multiple licenses for the use of spectrum in a given geographic area are auctioned, and when these can be used to provide closely substitutable service, aggregation limits may be required on the amount of spectrum that any single bidder is allowed to acquire so as to ensure competitive markets.”), <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf01626.html#section4> (last viewed March 12, 2012).

## V. CONCLUSION

Verizon's proposed acquisition of large portions of PCS and AWS spectrum from Leap and Savary is presumptively anticompetitive and will generate numerous public interest harms. For the foregoing reasons, RTG respectfully requests the Commission deny the above-referenced applications outright. If the Commission elects instead to approve the applications, RTG requests that the Commission conduct a thorough review of the proposed transaction in concert with the Cable Deals, utilize a lower spectrum screen in its review of these and all other spectrum transactions in the secondary marketplace, and condition the grant of any license assignments so that Verizon would not hold more than 110 megahertz of spectrum below 2.3 GHz and no more than 50 megahertz of spectrum below 1 GHz should the Commission adopt such a spectrum cap after conducting a formal rulemaking.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP, INC.**

By: */s/ Caressa D. Bennet*

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March 12, 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 Reply to Joint Opposition to Petition to Deny of the Rural Telecommunications Group, Inc. was served on this 12<sup>th</sup> day of March, 2012, via electronic mail, unless otherwise indicated, on those listed below:

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