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

In the Matter of	)	
	)	
AT&T, Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC Seek FCC Consent to the Assignment of Advanced Wireless Services and Lower 700 MHz Band B Block Licenses and to Long Term De Facto Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Services and Lower 700 MHz Band B Block Licenses	)	WT Docket No. 13-56

To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. ("RTG")[1], by its attorneys, hereby responds to the Federal Communications Commission's ("FCC" or "Commission") public notice ("*Public Notice*") regarding the above-captioned applications.[2] RTG has long advocated that the Commission change its policies regarding mobile spectrum holdings so that no single carrier can hold more than 25 percent of all the suitable and available commercial mobile radio service ("CMRS") spectrum available in any given county and no more than 40 percent of all of the

[1] RTG is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RTG's members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG's member companies serves less than 100,000 subscribers.

[2] *In the Matter of AT&T, Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC Seek FCC Consent to the Assignment of Advanced Wireless Services and Lower 700 MHz Band B Block Licenses and to Long-Term De Facto Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Services and Lower 700 MHz Band B Block Licenses*, Public Notice, WT Docket No. 13-56, DA 13-354 (released March 5, 2013) ("*Public Notice*").

suitable and available CMRS spectrum below one Gigahertz ("GHz") in any given county.[3] AT&T, Inc. ("AT&T"), Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), Grain Spectrum, LLC and Grain Spectrum II, LLC (together, "Grain") seek the Commission's consent to enter into a transaction that will allow AT&T and Verizon Wireless to increase their suitable and available CMRS spectrum holdings in various counties in the states of Arkansas, Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Montana, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee Texas, Utah, Virginia, Washington, and Wyoming. If this potential assignment of spectrum is approved in full, in some counties AT&T stands to control not just up to one-third of all suitable and available CMRS spectrum, but nearly 60 percent of all suitable and available CMRS spectrum below 1 Gigahertz (GHz). Similarly, in some counties post-closing, Verizon Wireless stands to control over 38 percent of all suitable and available spectrum and over 62 percent of all beachfront spectrum below 1 GHz. Spectrum holdings of this size in any county make it extremely difficult for at least four mobile wireless service providers to effectively compete, regardless of whether they are nationwide providers or smaller local or regional providers. Until the Commission concludes its review of spectrum holdings in WT Docket No. 12-269 with an eye towards bright line spectrum aggregation limits (*i.e.*, a spectrum cap), it should review any proposed spectrum transactions in the interim (including the one entered into

[3] *See generally In the Matter of Policies Regarding Mobile Spectrum Holdings*, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 12-269 (filed November 28, 2012) ("*RTG Comments*"); *In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum*, Petition for Rulemaking of the Rural Telecommunications Group, Inc., RM No. 11498 (filed July 16, 2008). RTG sought to impose a spectrum cap of 110 megahertz on all spectrum below 2.3 GHz. RTG's petition was dismissed following the Commission's review of spectrum holdings in WT Docket No. 12-269 (See *In the Matter of Petition of Rural Telecommunications Group, Inc. to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Order, RM 11498 (Terminated), DA 12-1702 (released October 23, 2012).

between AT&T, Verizon Wireless and Grain) with a reduced spectrum screen and an analysis that fosters the existence of at least four separate carriers with sufficient spectrum in every affected county.

I. ALLOWING FEWER THAN FOUR CARRIERS IN A MARKET HARMS COMPETITION.

The record shows that both the Commission[4] and the U.S. Department of Justice[5] have recognized the competitive harms stemming from spectrum concentration resulting in less than four nationwide carriers. Such competitive harm results from spectrum concentration resulting in *any* market with fewer than four carriers, regardless of whether those carriers are nationwide or not. Ensuring the competitive presence of at least four carriers in a market is critical to maintaining competition in the market. Failure to do so does two things. First, it further entrenches the Twin Bells -- Verizon Wireless and AT&T – and the two smaller nationwide carriers (Sprint and T-Mobile), and makes it exceedingly difficult for other competitive, regional or start-up carriers to develop a nationwide footprint that will allow them to truly compete with these spectrum behemoths. Second, it handicaps smaller carriers, including RTG members, by eliminating competitive pressure on those nationwide carriers to maintain reasonable roaming rates and compete fairly. The only way to absolutely ensure that four carriers can not only survive, but thrive, in a market is to cap the overall amount of spectrum each can hold at 25 percent of all suitable and available spectrum. To the extent that one of the four nationwide carriers does not approach this 25 percent cap, this leaves more spectrum for a fifth or sixth

---

[4] *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, WT Docket No. 11-65, DA 11-1955 (released November 29, 2011) at ¶ 3; *see* http://transition.fcc.gov/transaction/DA-11-1955.pdf .

[5] United States of America, Department of Justice, Antitrust Division, et. al., vs. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG, Amended Complaint, Civil Action No. 11-01560 (ESH) at ¶36; *see* http://www.justice.gov/atr/cases/f275100/275128.pdf.

competitive presence in the market. To the extent a carrier already controls more than 25 percent of suitable and available spectrum in a market, the Commission should allow this preexisting, disproportionate level of spectrum aggregation to remain but impose conditions (discussed in Section III below) that limit the pernicious effects of reduced competition on those carriers precluded from accessing more spectrum (and their customers). The need for a minimum of four carriers per market is urgent in both rural and urban areas. Allowing AT&T, Verizon Wireless and other carriers to continue amassing spectrum holdings that exceed 25 percent of all suitable and available spectrum in a market harms those who work, live and travel in rural America by denying those consumers the benefits of competition brought about by the presence of at least four spectrum enriched carriers.

II. AT&T AND VERIZON WIRELESS'S SPECTRUM POSITIONS POST-CLOSING THREATEN TO REDUCE MEANINGFUL COMPETITION.

In order to foster competition between no fewer than four separate carriers in each market, the FCC should continue to consider spectrum based on its suitability and availability for mobile telephony/broadband services. "Suitable and available spectrum" should include at this time the following spectrum:

- Cellular (824-849 MHz, 869-894 MHz) (50 megahertz total).
- Personal Communications Service (PCS) (1850-1915 MHz, 1930-1995 MHz) (130 megahertz total).
- Specialized Mobile Radio (SMR) (817-824 MHz, 862-869 MHz) (14 megahertz total).
- 700 MHz Band (698-757 MHz, 776-787 MHz) (70 megahertz total).
- Advanced Wireless Services-1 (AWS-1) (1710-1755 MHz, 2110-2155 MHz) (90 megahertz total).
- Broadband Radio Service (BRS) (2618-2673.5 MHz) (55.5 megahertz total).
- Wireless Communications Service (WCS) (2305-2315 MHz, 2350-2360 MHz) (20 megahertz total).

The transaction proposed by AT&T and Verizon Wireless (and Grain) contemplates the Twin Bells essentially swapping AWS-1 and Lower 700 MHz spectrum in various (but not

necessarily overlapping) markets. In all but a handful of the counties in these markets there currently exists 429.5 megahertz of spectrum in the seven bands considered by the Commission to be suitable and available for mobile telephony/broadband services.[6] Any carrier holding one quarter (25 percent) of this suitable and available spectrum would control just over 107 megahertz ("MHz") of total spectrum from those seven bands while any carrier holding forty percent of the suitable and available Cellular, SMR and 700 MHz Band spectrum would control just over 53 megahertz of these "lower three" bands.

AT&T already holds more than 25 percent of the suitable and available spectrum (*i.e.*, more than 107 megahertz) in 16 Cellular Market Areas (CMAs) (consisting of 41 counties) included in this proposed transaction.[7] Assuming this transaction proceeds as initially proposed by the applicants, AT&T will control excessive amounts of spectrum – whether in total or just low-band -- in no fewer than 35 CMAs, including over 100 individual counties in 20 states.[8]

---

[6] The seven bands with potentially suitable and available spectrum are: Cellular, PCS, SMR, 700 MHz, AWS-1, BRS and WCS. In those counties where either AWS-1 or BRS spectrum (or both) is not deemed suitable and available, the total amount of attributable spectrum is less than 429.5 megahertz.

[7] When factoring in just those spectrum bands below 1 GHz, AT&T today already controls over 40 percent of the suitable and available spectrum (*i.e.*, more than 54 megahertz) in at least four CMAs (consisting of over a dozen counties). These include such major markets as Miami, FL, Phoenix, AZ and West Palm Beach, FL.

[8] These CMAs include Los Angeles, CA (CMA 002), Chicago, IL, (CMA 003), Miami (CMA 012), Cincinnati, OH (CMA 023), Rochester, NY (CMA 034), Memphis, TN (CMA 036), Oklahoma City, OK (CMA 045), Greensboro –Winston-Salem, NC (CMA 047), Charlotte, NC (CMA 061), Youngstown, OH (CMA 066), Raleigh-Durham, NC (CMA 071), West Palm Beach, FL (CMA 072), Waco, TX (CMA 194), Lake Charles, LA (CMA 197), Ft. Collins, CO (CMA 210), Bradenton, FL (CMA 211), Tyler, TX (CMA 237), Texarkana, TX (CMA 240), Billing, MT (CMA 268), Rapid City, SD (CMA 289), Colorado 4 – Park (CMA 351), Louisiana 1 – Claiborne (CMA 454), Louisiana 2 – Morehouse (CMA 455) Louisiana 3 – De Soto (CMA 456), Montana 3 – Beaverhead (CMA 530), Montana 9 – Carbon (CMA 531), South Dakota 1 – Harding (CMA 634), Texas 18 – Edwards (CMA 669), Utah 1 – Box Elder (CMA 673), Utah 4 – Beaver (CMA 676), Utah 5 – Carbon (CMA 677), Utah 7 – Piute (CMA 678), Virginia 10 – Frederick (CMA 690) and Washington 2 – Okanogan (CMA 694). AT&T would also hold 93 megahertz of spectrum in Lea County, NM (CMA 557), which is greater than 25 percent of all suitable and available spectrum in that county due to AWS-1 spectrum being unavailable.

Despite the fact that Verizon Wireless is transferring to AT&T a significant amount of Lower 700 MHz Band spectrum (which will reduce its overall percentage of beachfront spectrum nationwide), its spectrum holdings post-closing illustrate two very important points: (1) Verizon Wireless will still control greater than 40 percent of sub 1 GHz spectrum in numerous markets; and (2) Verizon Wireless will add to its overall suitable and available spectrum holdings by adding AWS-1 spectrum, including in counties and CMAs where it is shedding off low-band spectrum. Verizon Wireless' spectrum positions, even before entering this proposed transaction with AT&T and Grain, put it in control of excessive amounts of spectrum, similar to AT&T, whether below 1 GHz or overall. In fact, in 12 CMAs (covering 39 counties in six states), Verizon Wireless already holds greater than 25 percent of all suitable and available spectrum available to CMRS operators. When considering just its current spectrum holdings below 1 GHz, Verizon Wireless controls greater than 40 percent of the suitable and available spectrum in dozens more counties. Should the transaction close as contemplated, Verizon Wireless will hold greater than 25 percent of all suitable and available spectrum (or greater than 40 percent of all suitable and available spectrum below 1 GHz) in 17 CMAs covering 56 counties.[9]

Post-transaction, when viewed together, AT&T and Verizon Wireless will hold excessive amounts of spectrum in over 50 CMAs across the country covering nearly 200 counties. If the FCC were to approve the proposed transaction, it is questionable whether those impacted CMAs

[9] These CMAs include Los Angeles, CA (CMA 002), Phoenix, AZ (CMA 026), Fresno, CA (CMA 074), Albuquerque, NM (CMA 086), Arizona 4 – Yuma (CMA 321), Arizona 6 – Graham (CMA 323), Arkansas 9 – Polk (CMA 332), California 4 – Madera (CMA 339), California 12 – Kings (CMA 347), New Mexico 3 – Catron (CMA 555), New Mexico 4 – Santa Fe (CMA 556), Oklahoma 8 – Jackson (CMA 603), Texas 5 – Hardeman (CMA 656), Texas 6 – Jack (CMA 657), Texas 7 – Fannin (CMA 658), Texas 9 – Runnels (CMA 660), Texas 10 – Navarro (CMA 661), Texas 11 – Cherokee (CMA 662) and Texas 15 – Concho (CMA 666).

could support even three healthy carriers (*i.e.*, each with enough spectrum resources to remain viable), much less four.

III. IF THE COMMISSION APPROVES THE APPLICATIONS, IT MUST REQUIRE DIVESTITURE OF SPECTRUM IN CERTAIN MARKETS OR ALTERNATIVELY GRANDFATHER AT&T AND VERIZON WIRELESS AND REQUIRE CONDITIONS TO PRESERVE COMPETITION.

AT&T and Verizon Wireless' collective control of over half of all suitable and available spectrum in the marketplace today in 28 CMAs included in this transaction is not in the public interest. Accordingly, with respect to these markets where spectrum concentration is already an issue, the FCC should require AT&T and Verizon Wireless to divest or lease spectrum exceeding the 25 percent or 40 percent thresholds to an independent third party within an 18 month period. Alternatively, if the FCC does not order the spectrum to be divested or leased in these counties, the Commission should only approve the transaction with the conditions set forth below. Until the Commission completes its review of spectrum holdings in WT Docket No. 12-269, all case-by-case reviews of spectrum holdings in the secondary marketplace should be conducted with an eye towards supporting a competitive environment for mobile telephony/broadband services wherein no fewer than four licensees/operators have access to a sufficient amount of spectrum to remain competitively viable. If AT&T and/or Verizon Wireless desire to hold spectrum positions that exceed 25 percent of all suitable and available spectrum in a county (or exceed 40 percent of that same spectrum below 1 GHz), then they should only be allowed to do so if also committing to satisfy conditions that protect consumers.

In its comments filed in the FCC's proceeding on spectrum holdings, RTG urged the Commission to impose rules that require all carriers to divest excess spectrum within 18 months of the new rules coming into effect. While a typical divestiture of excess spectrum is the most efficient manner in which to allow competitors access to an otherwise scarce resource, RTG is

now proposing an alternative to spectrum divestiture: long-term spectrum leasing. Specifically, RTG proposes that carriers such as AT&T and Verizon Wireless who may have excess spectrum in certain counties be permitted to enter into long-term spectrum leases with independent third parties at established market rates, provided that such third parties do not themselves exceed either of the applicable caps. Allowing for long-term spectrum leases in lieu of license divestitures avoids spectrum remaining fallow and permits the licensee to re-utilize the spectrum at a later date once the 25 or 40 percent cap permits the acquisition of more spectrum due to an increase in the amount of suitable and available spectrum.

Should the Commission allow AT&T and Verizon Wireless to retain spectrum that exceeds the spectrum threshold discussed herein 18 months after RTG's proposed rules have gone into effect, the Commission should require both carriers to accept certain conditions in exchange for being allowed to keep more than 25 percent of suitable and available spectrum in that market (or forty percent of all suitable and available spectrum below 1 GHz). In this particular instance, AT&T will hold excess spectrum in 35 CMAs where it is acquiring Lower 700 MHz Band licenses from Verizon Wireless and Verizon Wireless will hold excess spectrum in 17 CMAs where it is acquiring AWS-1 spectrum from AT&T. Because this spectrum aggregation by the Twin Bells will diminish competition, such spectrum consolidation should only be allowed if AT&T and Verizon Wireless agree to certain conditions. Specifically, in those markets where either AT&T or Verizon Wireless will hold 25 percent of the suitable and available spectrum, or more than 40 percent of the suitable and available spectrum below 1 GHz, the affected company or companies must: (1) offer data roaming to any requesting carrier at commercially reasonable rates, terms and conditions; (2) offer to its own customers devices that are fully interoperable (*i.e.*, the mobile device must work on all spectrum that is available and usable in that particular spectrum band, as well as any other spectrum band where the carrier

offers service); and (3) work to ensure that mobile devices it sells to its own customers are available on a non-exclusive basis to Tier II and Tier III carriers who utilize the same technology as either AT&T or Verizon Wireless.

IV. CONCLUSION

For the foregoing reasons, RTG urges the Commission to review the proposed swap of licenses between AT&T and Verizon Wireless in a manner that ensures future competition between no fewer than four carriers in any given county. The best means to effectuate this policy, before the Commission promulgates new rules industry-wide pertaining to spectrum holdings, is to: (1) require both companies to divest or lease excess spectrum, or (2) permit both companies to hold greater than 25 percent (or 40 percent) of all suitable and available spectrum in any given market, but only if those same companies agree to support commercially reasonable data roaming with requesting roaming partners, sell fully-interoperable mobile devices, and take the necessary steps to ensure that all of the mobile devices it sells to their own customer base are also available on a non-exclusive basis to Tier II and Tier III carriers who utilize the same technology as either AT&T or Verizon Wireless.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: */s/ Caressa D. Bennet*

Caressa D. Bennet
Daryl A. Zakov
Bennet & Bennet, PLLC
6124 MacArthur Boulevard
Bethesda, MD 20816-3210
(202) 371-1500
Its Attorneys

April 4, 2013