



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

August 3, 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: 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**

Dear Ms. Dortch:

The Federal Communications Commission's ("FCC" or "Commission") informal 180 day "shot clock" for concluding the above-captioned proceeding will soon draw to a close, and it is the understanding of the Rural Telecommunications Group, Inc. ("RTG") that the Commission will soon circulate a draft order regarding this complex and anticompetitive transaction. RTG, along with many other parties, filed a petition to deny the various applications between SpectrumCo, LLC, Cox TMI Wireless, LLC (together, the "Cable Companies") and Cellco Partnership dba Verizon Wireless ("Verizon") (collectively, the "Applicants").<sup>1</sup> The *RTG Petition* concludes that Verizon and the Cable Companies fail to adequately demonstrate that their proposed transaction is in the public interest and that numerous public interest harms will result if the applications are approved without sufficient conditions or denied outright. At the very least, RTG and the various petitioners and commenters raise substantial and material questions of fact concerning the agreements between Verizon and the Cable Companies that these companies have failed to sufficiently address or rebut in the last six months. There is simply not enough information in the record for the Commission to make the determination that Verizon and the Cable Companies have met their burden of demonstrating that the transactions are in the public interest. Accordingly, RTG requested that the applications be "designated for hearing"<sup>2</sup> pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act").<sup>3</sup>

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<sup>1</sup> *In re Applications of SpectrumCo, LLC, and Cox TMI Wireless, LLC, Transferors, and Cellco Partnership d/b/a Verizon Wireless, Transferee, for Consent to the Assignment of AWS-1 Licenses*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 12-4 (filed February 21, 2012) ("*RTG Petition*"). Additionally, RTG filed petitions to deny in the following proceedings: *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Leap Wireless International, Inc. Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses*, Petition to Deny of the Rural Telecommunications Group, Inc., ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596 and 0004949598 (filed February 21, 2012); *In re the Applications of Cellco Partnership d/b/a Verizon Wireless and T-Mobile License, LLC Seek FCC Consent to the Assignment of Advanced Wireless Service Licenses*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 12-175 (filed July 10, 2012).

<sup>2</sup> *Id.* at p. 31.



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Section 309(e) stipulates that if “a substantial and material question of fact is presented” in an application before the Commission, or if the Commission “*for any reason* is unable to make the finding” that the public interest, convenience or necessity will be served by the granting of the application, then “it *shall* formally designate the application for hearing.”<sup>4</sup> The Commission has taken such action in the very recent past. In November, 2011, after a thorough review of the proposed merger between AT&T, Inc. (“AT&T”) and T-Mobile USA, Inc. (“T-Mobile”), the Commission released an order calling for an administrative hearing after its staff concluded that those two applicants “failed to satisfy their burden of demonstrating that the transaction is in the public interest.”<sup>5</sup> The applications filed by Verizon and the Cable Companies are merely one small part of a much larger transaction, parts of which have already been implemented by the parties. While the assignment of AWS licenses and removal of the Cable Companies as potential market competitors causes great concern by itself, what is even more troubling are the associated commercial deals that have already turned these once fierce competitors in the voice and broadband marketplaces into loyal allies – going so far as to jointly sell and market their services. While the AT&T and T-Mobile proposed merger was generally seen as a “four to three” reduction in competition for mobile wireless services at the national level, the aggregated transactions between Verizon and the Cable Companies can truly be called a “three to one” reduction in the offering of broadband services.

The Commission has the undisputed authority to conduct a Section 309(e) hearing in order to determine whether it should deny the applications outright, approve the applications in full, or, if it so chooses, gather more information in order to propose conditions that would make the applications congruent with the public interest, convenience and necessity.<sup>6</sup> To this last point, RTG supports the designation of the applications for an administrative hearing presided over by an Administrative Law Judge (“ALJ”) who will then determine through a public and transparent hearing process whether this transaction would be in the public interest if certain conditions are met, establish procedures and processes for ensuring that the conditions that may be adopted are in the public interest and enforceable, and establish penalties if they are violated. An important part of this hearing process will be to establish judicial or administrative oversight over a period of time until it can be established that Verizon and the Cable Companies are not engaging in activities that would thwart competition or harm the public interest.

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<sup>3</sup> 47 U.S.C. § 309(e).

<sup>4</sup> *Id.* (emphasis added)

<sup>5</sup> *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&T-DT Order”) at ¶¶ 2-3

<sup>6</sup> *Applications of Echostar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations); (Transfers) and Echostar Communications Corporation (a Delaware Corporation); (Transferee)*, Hearing Designation Order, CS Docket No. 01-348, 17 FCC Rcd 20559, 20574 at ¶ 25 (2002).



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The administrative hearing should be used to establish conditions that Verizon and the Cable Companies must agree to comply with in order for these transactions to be approved. In addition, the hearing should be used to establish penalties in the event the conditions are violated and provide third parties an avenue for quickly dealing with any harms or potential harms that will result should the conditions imposed be violated. The conditions that should be explored in a hearing include, but not be limited to, conditions that address those issues raised by RTG and the other parties opposing these transactions. Specifically, the FCC should condition the transactions on: (1) Verizon complying with the FCC's data roaming mandate regardless of the outcome of Verizon's appeal in *Cellco Partnership d/b/a Verizon Wireless v. Federal Communications Commission*<sup>7</sup>; (2) the Cable Companies complying with a data roaming mandate for Wi-Fi data roaming as articulated by MetroPCS in its July 10, 2012 comments<sup>8</sup> and fully supported by RTG in its July 19, 2012 *Ex Parte*<sup>9</sup>; (3) Verizon and any of the other parties acquiring spectrum through the series of transactions contemplated in WT Docket Nos. 12-4, 12-175 and ULS Nos. 0004942973, 0004942992, 0004952444, 0004949596 and 0004949598, divesting spectrum in the event that the FCC adopts a lowered spectrum screen in these series of transactions or adopts a spectrum aggregation limit in a future rulemaking proceeding<sup>10</sup>; (4) Verizon extending to all requesting parties wholesale access, resale opportunities, and voice and data roaming rates at terms no less favorable than those that are offered to the Cable Companies; (5) the Applicants not engaging in any behavior that would limit device interoperability across any spectrum bands; (6) the Applicants not engaging in exclusive dealings with one another to sell each other's products and services; and (7) the Applicants not entering into arrangements to jointly patent technology.

Upon the conclusion of the administrative hearing the Applicants could enter into an agreement or consent decree; and the ALJ should have the delegated authority to either remain in place or appoint a special master to provide oversight of any conditions that are decided upon at the conclusion of the hearing process. RTG believes that any conditions stemming from an administrative hearing (and ultimately placed upon Verizon and/or the Cable Companies) must be accompanied by the appointment of an ongoing, impartial special master whose sole objective

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<sup>7</sup> *Cellco Partnership d/b/a Verizon Wireless, Appellant/Petitioners, v. Federal Communications Commission, Appellee/Respondent*, USCA Case # 11-1135, D.C. Cir.

<sup>8</sup> *In re Applications of SpectrumCo, LLC, and Cox TMI Wireless, LLC, Transferors, and Cellco Partnership d/b/a Verizon Wireless, Transferee, for Consent to the Assignment of AWS-1 Licenses*, Comments of MetroPCS Communications, Inc., WT Docket No. 12-4 (filed July 10, 2012) at pp. 20-22.

<sup>9</sup> *In re Applications of SpectrumCo, LLC, and Cox TMI Wireless, LLC, Transferors, and Cellco Partnership d/b/a Verizon Wireless, Transferee, for Consent to the Assignment of AWS-1 Licenses*, Ex Parte of the Rural Telecommunications Group, Inc., WT Docket No. 12-4 (filed July 19, 2012).

<sup>10</sup> RTG has a Petition for Rulemaking on file requesting the FCC initiate a rulemaking to impose spectrum aggregation limits. See generally *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*, Petition for Rulemaking of the Rural Telecommunications Group, Inc., RM-11498 (filed July 16, 2008).



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is to monitor compliance by the Verizon and the Cable Companies. By entering into an agreement or consent decree with Verizon and the Cable Companies and having an FCC appointed special master oversee the enforcement of all applicable conditions, the FCC will minimize the risk that the Applicants will violate the conditions. Similarly, aggrieved parties who may be impacted by the violation of any conditions should have available to them an expedited process and special tribunal for handling claims if the conditions are violated.

The designation of a special master to audit the Applicants' ongoing performance is absolutely crucial. Earlier this week, after conducting an investigation into Verizon's alleged violation of "C-Block rules," the Commission released an order that adopted a consent decree regulating Verizon's conduct for a specified period of time.<sup>11</sup> The FCC investigation was prompted not just by reports that Verizon "had successfully requested that a major application store operator block Verizon's customers from accessing tethering applications from its online market" but also by an informal complaint alleging that Verizon "had violated the FCC's C Block rules by making such a request."<sup>12</sup> Verizon's stated opposition to concepts embraced by the vast majority within the wireless community -- such as mobile device interoperability and the right to enter into data roaming agreements without undue delay and at commercially reasonable rates -- is further proof that the FCC cannot rely on self-policing by the country's largest carrier.

It is not enough to have rules or conditions in place. If the FCC is going to preserve the public interest on an ongoing basis, it must set up fair conditions that are easily enforced and that come with penalties if they are not adhered to by the Applicants. Any conditions ordered by the Commission must preserve competition and ensure that consumers (including those living, working and traveling in rural America) are not harmed. Accordingly, RTG respectfully requests that the Commission conduct an administrative hearing pursuant to Section 309(e) of the Act in order to determine the conditions and penalties that would need to be in place to serve the public interest should this transaction be approved.

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<sup>11</sup> *In the Matter of Cellco Partnership d/b/a Verizon Wireless*, Order, File No.: EB-11-IH-1351, Acct. No.: 201232080028, FRN: 0003735230 (released July 31, 2012) ("*Consent Decree*").

<sup>12</sup> "Verizon Wireless to Pay \$1.25 Million to Settle Investigation Into Blocking of Consumers' Access to Certain Mobile Broadband Applications," FCC News Release (released July 31, 2012).



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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

cc (via e-mail): Chairman Julius Genachowski  
Commissioner Robert McDowell  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Charles Mathias  
Angela Giancarlo  
Louis Peraertz  
Paul Murray  
Courtney Reinhard  
Ruth Milkman  
Jim Bird  
Joel Taubenblatt  
Sandra Danner  
Lisa Gelb  
Martha Heller  
Rick Kaplan  
Paul Lafontaine  
Sean Lev  
Joel Rabinowitz  
Jim Schlichting  
Marius Schwartz  
Susan Singer  
Peter Trachtenberg  
Sarah Whitesell