

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

In the Matter of)
)
Policies Regarding Mobile Spectrum Holdings) WT Docket No. 12-269
)
)

To: The Commission

COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP, INC.

**RURAL TELECOMMUNICATIONS
GROUP, INC.**

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SUMMARY

The Rural Telecommunications Group, Inc. (“RTG”) remains committed to the implementation of a bright line spectrum aggregation limit. Specifically, RTG proposes the adoption of a bright line limit that prohibits an entity from holding more than 25% of “suitable and available” mobile telephony/broadband services spectrum at the county level. This will ensure that American consumers in all markets benefit from the competitive presence of at least four carriers. Such a presence should help prevent the competitive harms experienced by American consumers since the FCC’s transition from a spectrum cap to a case-by-case analysis. To further level the playing field for competitive carriers, and ensure the consequent benefits for consumers, RTG also proposes that any individual licensee be prohibited from holding more than 40% of suitable and available “beachfront” spectrum (below 1 GHz) at the county level. These proposed bright line percentage caps will apply to all mobile operators, regardless of whether the county is in a rural or urban market, and will remain intact even as new spectrum in additional bands becomes available via auction. Under RTG’s proposal, once new spectrum aggregation percentage rules are promulgated, licensees exceeding the caps will have 18 months to divest themselves of excess spectrum, or alternatively, keep the excess spectrum on a “grandfathered” basis provided the following three conditions are adhered to: (1) offering data roaming at commercially reasonable terms and conditions; (2) offering mobile devices that are fully interoperable; and (3) (for Tier I carriers) offering Tier II and III carriers access to the same devices they sell to their own customers. This combination of divestitures and grandfathering will help ensure that the benefits of the proposed spectrum aggregation limits are experienced by consumers both immediately and in the future.

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The Rural Telecommunications Group, Inc. (“RTG”)¹, by its attorneys, hereby responds to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.² RTG has long advocated before the Commission for a change in the Commission’s policies regarding mobile spectrum holdings. In 2008, RTG filed a petition for rulemaking seeking the imposition of a spectrum cap that would apply to all commercial terrestrial wireless spectrum below 2.3 Gigahertz (GHz).³ RTG’s Spectrum Cap Petition chronicled the consolidation that had occurred in the commercial mobile wireless marketplace since the elimination of the previous spectrum cap in 2003 and the resulting harm to rural wireless carriers and their customers in terms of higher roaming rates and reduced service options.⁴ Since the filing of RTG’s Spectrum Cap Petition (seeking a cap of 110

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.

² *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking (rel. September 28, 2012).

³ *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*, RM No. 11498 (filed July 16, 2008) (“Spectrum Cap Petition”).

⁴ Spectrum Cap Petition pp. 8-11; See also *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, File Nos. 0001656065, et al.*,

megahertz on spectrum below 2.3 GHz), numerous other large transactions were approved by the FCC.⁵ Currently, two large transactions remain pending.⁶ Only one large transaction was not approved and was subsequently withdrawn by the parties.⁷

WT Docket No. 04-70, FCC 04-255 (released October 26, 2004); *In the Matter of Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to subsidiaries of Cingular Wireless LLC*, Memorandum Opinion and Order, WT Docket No. 03-217, FCC 04-26 (released February 11, 2004); *In the Matter of Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 05-50, FCC 05-138 (released July 11, 2005); *In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 05-63, FCC 05-148 (released August 3, 2005); *In re AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74, FCC 06-189 (released March 26, 2007); *In the Matter of Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, File Nos. 0003092368 et al.*, Memorandum Opinion and Order, WT Docket No. 07-153, FCC 07-196 (released November 19, 2007); *In the Matter of Applications of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent for Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 07-265, FCC 08-26, (released February 4, 2008); and *In the Matter of Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 07-237, FCC 08-46 (released February 8, 2008).

⁵ See *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, File Nos. 0003155487, et al.*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (released August 1, 2008); *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258 (released November 10, 2008) (“*Verizon-ALLTEL Order*”); *In re Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, WT Docket No. 08-246, FCC 09-97 (released November 5, 2009); *In the Matters of Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, WT Docket No. 09-104, FCC 10-116 (released June 22, 2010); *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); and *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*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket Nos. 12-4, 12-175, FCC 12-95 (released August 23, 2012).

⁶ See *AT&T Seeks FCC Consent to the Assignment and Transfer of Control of WCS and AWS-1 Licenses*, Public Notice, WT Docket No. 12-240 (released August 31, 2012); and *Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc. Seek FCC Consent to the Transfer of Control of PCS Licenses and Leases, One 700 MHz License, and International 214 Authorizations Held by MetroPCS Communications, Inc. and by T-Mobile USA, Inc. to Deutsche Telekom AG*, Public Notice, WT Docket No. 12-301 (released October 26, 2012).

⁷ *In re Applications of Deutsche Telekom AG, Transferor, and AT&T Inc., Transferee, for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, WT Docket No. 11-65, DA 11-1955 (released November 29, 2011).

I. RTG SUPPORTS A BRIGHT LINE SPECTRUM AGGREGATION LIMIT

The NPRM correctly notes that further consolidation in the commercial mobile wireless marketplace has occurred since the filing of RTG's Spectrum Cap Petition, particularly in connection with the "Twin Bells" (*i.e.*, AT&T and Verizon Wireless), which heightens the need for the adoption of further regulatory checks on unbridled spectrum aggregation.⁸ RTG continues to advocate for the adoption of a bright line spectrum aggregation limit, but in these Comments refines its previous spectrum cap proposal to account for further marketplace developments in the last four years. Specifically, RTG proposes the adoption of a bright line limit that prohibits an entity from holding more than 25% of suitable and available mobile telephony/broadband services spectrum at the county level and more than 40% of suitable and available "beachfront" spectrum (below 1 GHz) at the county level. RTG also proposes that any licensee currently exceeding one or both of these spectrum aggregation limits be given the option to divest enough spectrum to bring it under the proposed limits within 18 months of the release of an FCC order adopting a spectrum aggregation limit, or remain "grandfathered" and keep all of its spectrum provided that the licensee commits to several conditions related to data roaming, device interoperability and device exclusivity as discussed below.

The Commission's reliance on a case-by-case analysis since 2003 has failed to achieve the Commission's aim of preventing competitive harms. Other than the egregious case of AT&T's failed attempt to take over T-Mobile, the Commission has never attempted to block a wireless carrier from acquiring another wireless carrier. By relying on its case-by-case analysis in lieu of a spectrum cap, the FCC's repeated approvals of medium and large scale spectrum

⁸ See NPRM at ¶14 (citing reduction in number of nationwide wireless carriers from six to four, the exiting of numerous regional and rural carriers from the marketplace, and a number of significant spectrum-only transactions). The NPRM also correctly recognizes that the transition of the wireless industry from voice to data highlights the need for additional spectrum in order for smaller wireless carriers to compete with larger, spectrum-dominant carriers. NPRM at ¶¶11-13.

acquisitions has led directly to the dearth of mobile broadband competition the United States is currently experiencing.⁹ Most notably, in applying its case-by-case analysis to Verizon Wireless's proposed acquisition of ALLTEL, the FCC authorized the elimination of a key player that provided true competition to the Twin Bells.¹⁰ ALLTEL was once the fifth largest mobile operator in the United States. It also had the unique distinction of supporting inbound roaming traffic from both GSM and CDMA operators, including AT&T and Verizon Wireless. Once Verizon Wireless was allowed to take over ALLTEL (and subsequently sell the vast majority of its divestiture markets to AT&T), not only did the former ALLTEL cease to exist as a stable competitor to the Twin Bells, but all other competitors to the Twin Bells ceased to be able to utilize ALLTEL for roaming coverage on commercially reasonable terms and conditions (including rates). Small and rural mobile operators immediately became *more* dependent upon AT&T and Verizon Wireless for their own access to either GSM or CDMA nationwide roaming and did not have the bargaining power to negotiate commercially reasonable terms and conditions. The negative ripple effect of this transaction five years ago can still be felt by small and rural mobile operators to this day. In short, the loss of ALLTEL triggered the downfall of wireless competition in the United States and cleared the way for a Twin Bell duopoly.

While there is nothing inherently wrong with a case-by-case approach in theory, the practical application of this analysis makes clear that such an approach will only work if based on criteria limiting spectrum aggregation in a manner sufficient to preclude the anticompetitive

⁹ In its last two mobile wireless competition reports, the FCC has failed to find that there is effective competition in the wireless industry. *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 (Terminated), FCC 11-103 (released June 27, 2011); *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 (Terminated), FCC 10-81 (released May 20, 2010).

¹⁰ See generally *Verizon-ALLTEL Order*.

harms that have resulted and will continue to result from an analysis that is not aggressive enough to correct past harm nor transparent enough to prevent gamesmanship. Accordingly, RTG supports a bright line spectrum cap based on a percentage of suitable and available spectrum in a given county.

II. IT IS CRITICAL FOR THE FCC TO ADOPT SPECTRUM HOLDINGS POLICIES THAT PROMOTE COMPETITION

The NPRM seeks comment on eight distinct factors influencing spectrum holdings policy. It is critical that the FCC adopt spectrum holdings policies that promote competition. RTG addresses each of the eight factors under consideration below.

A. Relevant Product Market

RTG agrees with the Commission that the relevant product market should continue to be “mobile telephony/broadband services.” RTG interprets this to mean spectrum used to provide mobile voice and data services by mobile carriers to consumers.

B. Suitable and Available Spectrum

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).

RTG anticipates that the following bands should be considered suitable and available in the near future:

- AWS-4 (2000-2020 MHz, 2180-2200 MHz) (40 megahertz total).
- AWS-2 (1915-1920 MHz, 1995-2000 MHz) (10 megahertz total).
- AWS-3 (2155-2180 MHz) (at least 35 megahertz available).
- DTV Channels 14-51 (470-698 MHz) (up to 228 megahertz available, depending on outcome of the incentive auction).¹¹

The Commission should adopt a process that will allow it to add newly allocated spectrum bands to its list of suitable and available spectrum on a timely basis. Such spectrum should be announced as suitable and available when long-form applications are due for the auction of such spectrum.

C. Relevant Geographic Market Area

Regardless of whether the Commission adopts brightline limits or a case-by-case analysis, it should use the same geographic markets. While the Commission has previously relied largely on Cellular Market Areas (“CMAs”) as the local geographic markets in which to address spectrum concentration, these areas are too large and do not constitute the local markets where consumers “live, work and shop.”¹² RTG notes that every county has a county seat and that consumers identify with a county or a county equivalent with respect to where they live, work, pay taxes, vote and shop.¹³ Accordingly, the FCC should treat counties (or their equivalent) as the relevant local geographic market and examine spectrum concentration at the county level. By examining spectrum aggregation at the county level, the Commission will help ensure that *all* local markets are afforded the same protection against anticompetitive spectrum aggregation.

¹¹ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, GN Docket No. 12-268, FCC 12-118 (released October 2, 2012).

¹² See NPRM at ¶31.

¹³ “States, Counties and Statistically Equivalent Entities,” Chapter 4, U.S. Census Bureau; see <http://www.census.gov/geo/www/GARM/Ch4GARM.pdf>.

D. Applicable Spectrum Threshold

The applicable spectrum threshold for a bright line aggregation limit should be one-fourth of the total spectrum suitable and available for mobile telephony/broadband services. No entity should be allowed to hold more than 25% of such spectrum at the county level. This will ensure that American consumers benefit from the competitive presence of at least four carriers. Both the Commission¹⁴ and the U.S. Department of Justice¹⁵ have recognized the competitive harms that result from a degree of spectrum concentration that would result in less than four nationwide carriers. The concept of a minimum of four carriers per market should remain the same regardless of whether it is applied in a rural or urban area. Lowering the threshold in rural areas would harm those who work, live and travel in rural America by denying them the benefits of competition brought about by the presence of at least four spectrum enriched carriers. Ensuring the competitive presence of at least four carriers in a market is critical to maintaining competition in the market. Allowing fewer than four carriers in a market diminishes the possibility of carriers other than the Twin Bells -- Verizon Wireless and AT&T -- developing a nationwide footprint that will allow them to truly compete with these spectrum behemoths. It also handicaps smaller carriers, including RTG members, by eliminating pressure on those nationwide carriers to maintain reasonable roaming rates and fair competition. There is no justifiable reason for exposing rural America to these public interest harms, while protecting only urban America from the consequences of an anticompetitive wireless market.

¹⁴ *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>.

¹⁵ 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>.

E. Making Distinctions Among Bands

In establishing spectrum aggregation limits, the FCC should make a distinction between spectrum below 1 GHz and spectrum at or above 1 GHz. As the Commission recognizes, spectrum below 1 GHz allows for better coverage across larger geographic areas.¹⁶ The value of such spectrum derived from its inherent technical superiority is enhanced further by the relative scarcity of such spectrum.¹⁷ RTG proposes that the Commission adopt a separate bright line spectrum aggregation threshold for spectrum below 1 GHz. Specifically, an entity should be allowed to hold no more than 40% of all suitable and available spectrum below 1 GHz (so-called beachfront spectrum) on a county basis. Today, the spectrum bands below 1 GHz which should be considered suitable and available for mobile telephony and broadband services are the Cellular band, most blocks within the Lower and Upper 700 MHz Band, and the SMR band. In most counties, there are 134 megahertz of available and usable spectrum below 1 GHz, consisting of 50 megahertz in the Cellular band, 70 megahertz in the Lower and Upper 700 MHz Bands, and approximately 14 megahertz in the SMR band.

Unlike the spectrum aggregation limit discussed in the previous section, this limit on beachfront spectrum is not aimed at an existing problem, but rather solely to prevent future anticompetitive aggregation of prime radiofrequency real estate. While RTG has not done a full analysis, the country's largest mobile operators, Verizon Wireless, AT&T, Sprint and T-Mobile would be affected to varying degrees. Generally speaking, Verizon Wireless holds 22 megahertz of Upper 700 MHz Band spectrum nationwide and holds one of the two Cellular licenses. In addition, Verizon Wireless is the licensee of several Lower 700 MHz Band licenses that it has

¹⁶ NPRM at ¶35.

¹⁷ *See Id.* (“[T]here currently is significantly more spectrum above 1 GHz potentially available for mobile broadband services than spectrum below 1 GHz.”).

committed to sell in the secondary marketplace and is in the process of doing so.¹⁸ As a result, in most counties, after such sale, Verizon Wireless will control a combined 47 megahertz of spectrum below 1 GHz, which is approximately 35% of the available and usable 134 megahertz of spectrum below 1 GHz.

AT&T has more spectrum below 1 GHz because it generally holds a Cellular license, the Lower 700 MHz B and C Block licenses, and the non-paired Lower 700 MHz D Block license, and has a small holding of non-paired Lower 700 MHz E Block licenses. While its spectrum holdings vary from county to county, AT&T currently exceeds the 40% spectrum cap in less than one-quarter of the counties when considering current suitable and available spectrum. Sprint's presence in sub-1 GHz spectrum bands is limited to just the SMR Band (approximately 10% to 13% nationwide) and T-Mobile holds almost no beachfront spectrum.

It is important to note that the spectrum aggregation limits proposed by RTG would not be hard numerical caps, but rather an ever changing amount of spectrum based on the suitable and available spectrum available at any given point in time. The limit on the percentage of suitable and available spectrum that is available to any single carrier would be fixed at 25% overall and would allow a carrier to hold up to 40% of the spectrum below 1 GHz without exceeding the overall 25% cap. Placing a limit on the percentage of both lower band and overall spectrum that an individual operator can hold in a given county does not outright prohibit such operators from acquiring new spectrum -- either at auction or in the secondary marketplace. All the percentage limitation does is keep the percentage of spectrum capped. A hard-and-fast percentage cap will help all parties when it comes to future incentive auctions for those frequencies in the DTV Band. Operators such as AT&T and Verizon Wireless will not be

¹⁸ "Loop Capital Named Co-Advisor for Verizon Wireless Spectrum Sale Process," Verizon Wireless News Release (released May 21, 2012); see <http://news.verizonwireless.com/news/2012/05/pr2012-05-21.html>.

restricted from participating in the auction process for this spectrum. Every potential bidder will know the precise amount of spectrum allowed under a percentage cap and make strategic decisions about whether to participate in a spectrum auction accordingly.

Adoption of a spectrum aggregation limit for spectrum below 1 GHz will advance the FCC's goals of promoting wireless competition, innovation, investments and broadband deployment in rural areas. Limiting the amount of beachfront spectrum held by the big four nationwide carriers in individual rural markets will enhance opportunities for smaller rural carriers to compete by offering the most technologically advanced and innovative mobile broadband services to their customers.

F. Attribution Rules

RTG supports retention of current attribution standards. Attributing non-controlling interests of 10 percent or more and lesser interests where such ownership confers *de facto* control is sufficient to ensure proper attribution of spectrum holdings.

G. Remedies

In reviewing initial license or assignment or transfer of control applications, the Commission may impose remedies, such as requiring divestitures of certain licenses, to address potential public interest harms. The NPRM seeks comment on what remedies, including divestitures, would be appropriate for the Commission to require in order to prevent competitive harm. Short of preventing spectrum acquisition that exceeds the thresholds proposed by RTG above, divestiture is the primary remedy to prevent competitive harm. Requiring divestiture of spectrum to bring the acquiring entity's spectrum holdings within the limits proposed by RTG should, once effectuated, protect the public against the harms discussed above. Other remedies that will help protect against competitive harm include mandating commitments regarding roaming availability and rates, handset availability and interoperability, and imposing buildout

performance requirements on licensees so that spectrum warehousing and hoarding does not occur. These remedies should be applied as discussed below.

H. Transition Issues - Divestiture of Spectrum and Grandfathering of Spectrum With Conditions

RTG disagrees with the Commission's preliminary conclusion in the NPRM that spectrum holders who currently hold spectrum that would exceed new aggregation limits adopted by the Commission be grandfathered and allowed to keep excessive spectrum without any added conditions. Rather, the FCC should apply its new rules to such spectrum holders and allow for divestiture of excessive spectrum within 18 months or grandfathering of the spectrum provided certain conditions are met as discussed below. The full public interest benefits of the adoption of a bright line spectrum aggregation limit cannot be achieved if such limits are only applied on a prospective basis. A grandfathering approach without any conditions would severely minimize the competitive benefits of competitive carriers being able to obtain warehoused spectrum from spectrum gluttons and would prevent RTG members and other small rural carriers from having a fair opportunity to acquire the spectrum necessary to competitively provide mobile wireless broadband services to their rural customers.

RTG recognizes the need for a transition period, however, so that existing spectrum holders that exceed the new limits can come into compliance with the new requirements. RTG proposes that such spectrum holders electing not to be grandfathered under the new rules with accompanying conditions be given 18 months to divest spectrum in each county that exceeds the new aggregation limit.

RTG proposes that any carrier that exceeds the spectrum cap aggregation limit be grandfathered and allowed to keep its current spectrum inventory, provided the carrier agrees to certain conditions. In other words, any licensee that exceeds the 25% overall spectrum cap and/or the 40% spectrum cap below 1 GHz upon promulgation of the new rules would be

allowed to keep the entirety of its spectrum holdings, provided that the carrier agrees to certain conditions regardless of the outcome of the Verizon Wireless appeal of the Commission's order on data roaming.¹⁹ First, the carrier must continually offer data roaming to any requesting carrier at commercially reasonable rates, terms and conditions. Second, the carrier must 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 that carrier offers service). Finally, any Tier I carrier exceeding the spectrum caps must work to ensure that mobile devices it sells to its own customers are available on a non-exclusive basis to Tier II and III carriers who utilize the same technology as the Tier I carrier.

For the foregoing reasons, RTG requests that the Commission adopt a bright line spectrum aggregation limit as set forth above.

Respectfully submitted,

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¹⁹ *Cellco Partnership d/b/a Verizon Wireless, Appellant/Petitioner, v. Federal Communications Commission, Appellee/Respondent*, On Petition for Review of an Order of the Federal Communications Commission, D.C. Cir., Nos. 11-1135, 11-1136.