

DESCRIPTION OF THE TRANSACTION AND PUBLIC INTEREST STATEMENT

By this Application, and pursuant to Section 310(d) of the Communications Act of 1934, as amended (“Act”), Cellco Partnership d/b/a Verizon Wireless (“Cellco” or “Verizon Wireless”) and SpectrumCo, LLC (“SpectrumCo”) request the consent of the Federal Communications Commission (“FCC” or “Commission”) to the assignment of 122 Advanced Wireless Services (“AWS”)¹ licenses from SpectrumCo to Verizon Wireless. As discussed in more detail below, the proposed license assignments – which involve transferring only spectrum and no other assets, facilities, or customers – will serve the public interest. In particular, the transaction will move spectrum that is not currently being used to serve consumers to a provider that will make efficient use of that spectrum to serve the public. The transaction will enable Verizon Wireless to add network capacity to meet growing demand, so that customers will continue to enjoy the high-quality, high-speed services that state-of-the-art wireless broadband technology can provide.

I. DESCRIPTION OF THE TRANSACTION

This transaction involves only assignments of spectrum and does not include the transfer of any other assets, facilities, or customers. SpectrumCo will assign to Verizon Wireless its 122 AWS licenses in full, which are listed in the attached Form 603. These licenses include 121 Basic Economic Area (“BEA”) licenses and one Regional Economic Area (“REA”) license (Hawaii). The 122 licenses cover 120 markets because in two markets, SpectrumCo holds two AWS licenses. In each market, SpectrumCo has 20 MHz of spectrum, except in Houston, where it has 30 MHz of spectrum. Because SpectrumCo is not currently using the licenses to provide

¹ “AWS” refers to the 1710-1755/2110-2155 MHz bands.

service to customers, the assignment will not create any customer transition issues nor any discontinuance, reduction, or impairment of service to customers. There are also no international Section 214 authorizations that will be assigned.²

II. DESCRIPTION OF THE APPLICANTS

A. SpectrumCo

SpectrumCo, the licensee of the AWS licenses to be assigned to Verizon Wireless in this transaction, was created in 2006 as a joint venture among subsidiaries of Comcast Corp. (“Comcast”), Time Warner Cable Inc. (“Time Warner Cable”), Cox Communications, Inc. (“Cox”), Bright House Networks, LLC (“Bright House”), and Sprint Nextel Corporation (“Sprint”). SpectrumCo was the successful bidder for 137 wireless spectrum licenses in the Commission’s AWS auction, which concluded in September 2006. In 2007, Sprint withdrew from SpectrumCo, and the SpectrumCo members purchased Sprint’s interests for an amount equal to Sprint’s capital contribution to the joint venture. In 2009, Cox also withdrew from SpectrumCo, taking with it the share of the AWS spectrum to which it was entitled under the SpectrumCo LLC agreement.³ Today, SpectrumCo is owned by Comcast (63.6 percent), Time Warner Cable (31.2 percent), and Bright House (5.3 percent).⁴

² SpectrumCo has two spectrum leases in effect with equipment vendors to test devices on its AWS spectrum and one spectrum lease in effect with Cox TMI Wireless, LLC. The required Commission filings for these leases previously were made. Because SpectrumCo intends to terminate the leases at or prior to closing, they are not being assigned to Verizon Wireless.

³ See *Wireless Telecommunications Bureau Assignment of License Authorization Applications Actions Taken*, Report No. 4726, Public Notice (rel. Feb. 11, 2009).

⁴ Press Release, Comcast Corp., Comcast, Time Warner Cable, and Bright House Networks Sell Advanced Wireless Spectrum to Verizon Wireless for \$3.6 Billion; The Companies Also Announce Commercial Agreements That Will Deliver Mobile Products To Consumers (Dec. 2, 2011), <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1134>. The ownership percentages have been rounded.

B. Verizon Wireless

Cellco is a general partnership, which is ultimately owned and controlled by Verizon Communications Inc. and Vodafone Group Plc. (“Vodafone”). Additional information as to Cellco’s ownership is provided in its Form 602, which is on file with the Commission.

Vodafone’s interest in the partnership, and its qualifications as a foreign corporation to hold indirect ownership interests in common carrier licenses, have been previously authorized by the Commission under the Act.⁵ Since that time, there have not been changes in Cellco’s foreign ownership information required to be submitted to the Commission.⁶

III. THE TRANSACTION WARRANTS PROMPT REVIEW.

This application seeks the Commission’s consent to assign spectrum licenses – and no more. Unlike a merger or other transaction involving consolidation of operating businesses and customers, the only assets being transferred are AWS licenses that are not currently in commercial use. The transaction will not combine the Applicants’ businesses, does not involve the acquisition of any non-spectrum assets, facilities, or customers, and will not reduce the number of choices for wireless services that consumers have in each of the licensed areas. What

⁵ See *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 and Petition for Declaratory Ruling*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (rel. Nov. 10, 2008) (“*Verizon Wireless-ALLTEL Order*”); *Applications of Vodafone AirTouch Plc and Bell Atlantic Corporation, for Consent to the Transfer of Control or Assignment of License and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16507, 16514 (¶ 19) (IB and WTB rel. Mar. 30, 2000); *International Authorizations Granted, Public Notice*, DA 99-3033 at 1 (IB rel. Dec. 30, 1999); *AirTouch Communications, Inc., Transferor, and Vodafone Group, Plc., Transferee, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 9430, 9434 ¶ 9 (WTB rel. June 22 1999); *International Authorizations Granted, Public Notice*, DA 06-2366 (IB rel. Nov. 24, 2006).

⁶ See *Exhibit 2* concerning Verizon Wireless’ foreign ownership.

it will accomplish is to supply Verizon Wireless with additional spectrum resources to respond to customers' accelerating use of broadband applications and features. In short, it will help ensure that consumers can continue to enjoy high-quality, high-speed wireless services.

The Commission's review of this application under Section 310(d) of the Act, and under applicable precedent, should be limited. The Commission previously has determined that applications which demonstrate on their face that a transaction meets the public interest, and will neither violate the Act or Commission rules, nor undermine Commission policies, do not require extensive review or merit expenditures of scarce Commission resources.⁷ Indeed, no detailed showing of benefits is required for transactions where there are no anti-competitive effects.⁸ The Commission has determined that, where a transaction will not reduce competition and the acquiring party possesses the requisite qualifications to control the licenses in question, a "demonstration that benefits will arise from the transfer is not . . . a prerequisite to our approval, provided that no foreseeable adverse consequences will result from the transfer."⁹

⁷ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3170 ¶ 16 (rel. Feb. 18, 1999); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14740-41 ¶ 54 (rel. Oct. 8, 1999).

⁸ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from; Southern New England Telecommunications Corporation, Transferor To SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21315 ¶ 45 (rel. Oct. 23, 1998).

⁹ *Applications of Pacific Telesis Group Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2627 ¶ 2 (rel. Jan. 31, 1997); see also *Applications of Comcast Cellular Holdings, Co., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10608-09 ¶ 10 (WTB rel. July 2, 1999).

The instant application meets this standard of limited review and should be granted expeditiously. The spectrum transfers comply with all Commission rules, require no waivers, and will not result in any violation of the Communications Act or any other applicable statutory provision. The acquiring entity, Verizon Wireless, is plainly qualified to hold the licenses, and the Commission repeatedly has found this to be the case.¹⁰ The license assignments also raise no competitive concerns. Because only spectrum is being transferred, and not an operating entity, the proposed transaction will not result in any diminution in competition. Moreover, the spectrum screen is not triggered in the vast majority of affected markets, and in the limited areas where it is triggered, the small overage raises no competitive concerns because there will be no loss in the number of competitors. Consumers will continue to have all of the same choices among wireless providers that they do today. Finally, because none of the licenses currently is subject to any installment financing, bidding credits, or restrictions on ownership based on designated entity status, approval of this application will not result in any unjust enrichment concerns.¹¹ In short, the assignments will not frustrate or impair the Commission's implementation of the Act, and will in fact further the public interest as discussed below.

IV. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST BY TRANSFERRING CURRENTLY UNUSED SPECTRUM TO MEET GROWING CONSUMER DEMAND FOR BROADBAND SERVICES.

The transaction will serve the public interest by enabling Verizon Wireless to obtain spectrum that will help the company meet the growing demands of its customers. As

¹⁰ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17465 ¶ 33; *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, and Petitions for Declaratory Ruling*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12477-78 ¶ 27 (rel. Aug. 1, 2008).

¹¹ See 47 C.F.R. § 1.2111.

demonstrated below, with skyrocketing demand for wireless broadband, carriers increasingly require more spectrum to keep up with their customers' needs. The spectrum obtained through this transaction will help provide necessary capacity for Verizon Wireless to continue to provide state-of-the-art wireless service that meet consumers' demand. This application will move currently unused spectrum to a provider that will make efficient and effective use of it – the very type of transaction the Commission's secondary markets policies were designed to facilitate.

A. The Public's Demand for Wireless Services – and for Spectrum Capacity To Meet that Demand – Is Growing Rapidly.

The benefits of additional spectrum – and the critical need for it – are well-established. In a Presidential Memorandum, President Obama stated that “[e]xpanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans' lives,” but that “[t]his new era in global technology leadership will only happen if there is adequate spectrum available to support the forthcoming myriad of wireless devices, networks, and applications that can drive the new economy.”¹² Further, Chairman Genachowski has noted the connection between spectrum availability and broadband adoption, particularly for minority and low-income groups.¹³ Put simply, “the cost of not securing enough spectrum may

¹² President Barack Obama, “Unleashing the Wireless Broadband Revolution” (June 28, 2010), <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution>.

¹³ Julius Genachowski, Chairman, Federal Communications Commission, Remarks As Prepared For Delivery, CTIA Wireless 2011 at 9 (March 22, 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.pdf (“This would hurt our economy broadly. It would also have a disproportionate impact on minority and low-income groups who are more likely than the average American to access the Internet through a mobile device.”) (“Genachowski CTIA Remarks”).

be higher prices, poorer service, lost productivity, loss of competitive advantage and untapped innovation.”¹⁴

Consumer demand for broadband services across the wireless industry is exploding. Commission staff reported a year ago that, “[a]s smartphones, laptops, and other devices become increasingly integral to consumers’ mobile experiences, mobile data demand is expected to grow between 25 and 50 times current levels within 5 years.”¹⁵ Cisco estimates that global mobile traffic will increase 26-fold between 2010 and 2015.¹⁶ CTIA reports that data usage on wireless networks more than doubled during 2010,¹⁷ and that the average user’s data usage grew 132 percent to over 350 megabytes per month.¹⁸ CTIA recently filed data with the Commission for the first half of 2011, which again shows a doubling of customers’ data usage over the previous year. Wireless carriers in the United States “currently transmit the equivalent of two times the entire Library of Congress book collection every hour of every day; that equated to 388 billion

¹⁴ Federal Communications Commission, *Connecting America: The National Broadband Plan* at 85 (2010) (“*National Broadband Plan*”).

¹⁵ See Federal Communications Commission, MOBILE BROADBAND: THE BENEFITS OF ADDITIONAL SPECTRUM 5 (Oct. 2010) (“MOBILE BROADBAND TECHNICAL PAPER”), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302324A1.pdf.

¹⁶ Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2015* at 2 (Feb. 1, 2011) (“*Cisco 2010-2015 Forecast*”), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf.

¹⁷ ROBERT F. ROCHE AND LIZ DALE, CTIA’S WIRELESS INDUSTRY INDICES 10 (May 2011) (providing year-end 2010 results) (“Wireless carriers reported carrying 226.5 billion MB of data traffic in the last six months of 2010, up 110 percent from 107.8 billion MB in the last half of 2009.”); see Robert Roche, *Wireless Data Traffic Grew 110% from 2009-2010*, CTIA: THE WIRELESS ASSOCIATION® BLOG, May 31, 2011, <http://blog.ctia.org/2011/05/31/wireless-data-traffic-grew-110-from-2009-2010> (finding 110 percent growth rate year-over-year from 2009 to 2010).

¹⁸ CTIA’S WIRELESS INDUSTRY INDICES at 227-28.

megabytes in all of 2010 and more than 341 billion megabytes in just the first half of 2011.”¹⁹

2011 wireless data consumption is once again on track to double the previous year’s level of traffic. CTIA reported the following industry-wide customer data usage for the last four six-month periods:

July-December 2009	109 billion MB
January-June 2010	161 billion MB
July-December 2010	227 billion MB
January-June 2011	341 billion MB ²⁰

Smartphone adoption continues to surge, driving up data consumption: 59 percent of mobile handsets sold in the United States in the third quarter of 2011 were smartphones,²¹ and currently 43 percent of all U.S. mobile phone subscribers own a smartphone.²² As consumers experience higher speeds through the use of smartphones, they consume more data.²³ Today,

¹⁹ Comments of CTIA-The Wireless Association, WT Docket No. 11-186, 51(filed Dec. 5, 2011) (emphasis in original).

²⁰ *Id.* at 52.

²¹ Aaron Baar, *NPD: Smartphone Prices Are Dropping*, MEDIAPOSTNEWS MARKETINGDAILY (Nov. 14, 2011), <http://www.mediapost.com/publications/article/162325/npd-smartphone-prices-are-dropping.html>.

²² Generation App: 62 percent of Mobile Users 25-34 own Smartphones, NIELSENWIRE (Nov. 3, 2011) http://blog.nielsen.com/nielsenwire/online_mobile/generation-app-62-of-mobile-users-25-34-own-smartphones/.

²³ *See, e.g., National Broadband Plan* at 84 (“More bandwidth begets more data-intensive applications which begets a need for more bandwidth. Indeed, it is this virtuous cycle that has made broadband an innovation growth engine over the past decade – but also makes forecasting difficult.”); Rysavy Research, *THE SPECTRUM IMPERATIVE: MOBILE BROADBAND SPECTRUM AND ITS IMPACTS FOR U.S. CONSUMERS AND THE ECONOMY, AN ENGINEERING ANALYSIS 4* (Mar. 16, 2011), <http://www.mobilefuture.org/page/-/rysavy-spectrum-effects-301611.pdf> (“As mobile devices become more powerful, as device resolution increases, as users employ more applications and as connectivity increasingly is embedded in virtually every manner of machine, this flow of bits is increasing at a dramatic rate.”); *MOBILE BROADBAND TECHNICAL PAPER* at 9 (“Devices with enhanced functionality tend to consume more data.”).

smartphones use 24 times more spectrum capacity than traditional phones.²⁴ According to public estimates, the average smartphone will generate 1.3 GB of traffic per month in 2015 (a 16-fold increase over the 2010 average), and aggregate smartphone traffic in 2015 will be 47 times greater than it is today.²⁵ Similarly, the rapid adoption of tablets places even more demand on spectrum resources. Tablets use approximately 120 times the capacity of traditional phones.²⁶ In 2015, it is projected that mobile-connected tablets alone will generate as much traffic as the entire global mobile network in 2010.²⁷

These trends mean that carriers will increasingly require more spectrum to meet the needs of their customers as more and more customers increase their reliance on wireless for their broadband needs, buy more devices that access the Internet, use those devices more hours each day, and download more applications that require large amounts of bandwidth. The link between the growing demand for wireless broadband services and the need for a greater supply of spectrum to meet that demand is well-established. The Commission predicts that, if additional spectrum is not made available in the near-term, mobile data demand will likely exceed capacity by 2014, resulting in a broadband spectrum deficit of nearly 300 MHz.²⁸

²⁴ Genachowski CTIA Remarks at 5.

²⁵ *Cisco 2010-2015 Forecast* at 3.

²⁶ Genachowski CTIA Remarks at 5.

²⁷ *Cisco 2010-2015 Forecast* at 2.

²⁸ *See, e.g., MOBILE BROADBAND TECHNICAL PAPER* at 17 (stating that “we estimate that an additional 275 MHz of spectrum will be required to meet mobile data demand in 2014”); *National Broadband Plan* at 84 (“In order to meet growing demand for wireless broadband services, and to ensure that America keeps pace with the global wireless revolution, 500 megahertz should be made newly available for mobile, fixed and unlicensed broadband use over the next 10 years.... Of this amount, 300 megahertz between 225 MHz and 3.7 GHz should be made available for mobile flexible use within five years.”); Genachowski CTIA Remarks at 5-6

While the SpectrumCo licenses will help meet the growth in Verizon Wireless customers' demand for wireless broadband for some period of time, the company fully expects that it will need additional spectrum in the longer term. Verizon Wireless has thus strongly supported the Government's target of identifying and licensing 500 MHz of additional spectrum over the next ten years. Making available substantial amounts of spectrum to meet growing demands for the industry broadly is essential to ensure the public can continue to benefit from state-of-the-art wireless services.

B. Consumers' Accelerating Wireless Broadband Use on Verizon Wireless' Network Is Driving the Need for Additional Spectrum.

The industry trends discussed above directly impact Verizon Wireless as well. As Bill Stone, Verizon Wireless' Executive Director of Network Strategy, explains in his Declaration, the company must constantly assess whether it has sufficient and suitable spectrum to meet the needs of its customers, both in the short run and in the longer term, because spectrum is the raw material for all of its services.²⁹ The spectrum to be obtained through this transaction will help provide necessary capacity for future growth in demand in many markets. The explosion in customers' use of wireless data services over the past several years shows no signs of abating and is in fact accelerating. This is because of the following trends, which compound one another and contribute to the fast-escalating demand for data:

("The bottom line: mobile broadband is being adopted faster than any computing platform in history, and could surpass all prior platforms in their potential to drive economic growth and opportunity. But there's a catch. This explosion in demand for mobile services places unsustainable demands on our invisible infrastructure – spectrum. Spectrum is the oxygen that allows all of these mobile innovations to breathe. . . . This explosion in demand for spectrum is putting strain on the limited supply available for mobile broadband, leading to a spectrum crunch.").

²⁹ Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, attached as *Exhibit 3* ("Stone Declaration") at ¶ 17; *see also id.* at ¶ 26.

First, the volume of traffic on Verizon Wireless’ network is growing and, in the case of data, that growth is accelerating – what Mr. Stone refers to as the “hockey stick” of data growth.³⁰ While voice and text usage have both continued to increase, the accelerating amount of data usage (growing at double-digit figures each quarter) has the most significant impact on the network due to the greater bandwidth demands of data. Indeed, over the past two years that rate of growth has more than doubled each year.³¹ Reports indicate, moreover, that in the first half of 2011 Verizon Wireless smartphone users consumed more data on average than the preceding six months – and had the biggest percent increase in data consumption among the major carriers.³²

Second, there are many more devices using the Verizon Wireless network, and that figure is growing even faster than the growing number of individual customers, because more customers are using multiple devices.³³ Many customers have two, three, or even more devices, which can include a data card for connecting laptops or PCs, a smartphone, a netbook, a tablet, and/or a mobile hotspot that provides WiFi connections for multiple devices. The company typically reports total “connections,” which represents the number of devices that customers own and use to access the network. That number has grown steadily every year. At the end of 3Q11, the company served 107.7 million connections, an increase of 6.5 percent over 3Q10, consisting

³⁰ *Id.* at ¶ 6.

³¹ *Id.*

³² *See, e.g.,* Marguerite Reardon, CNET NEWS, *The very hungry smartphone data user* (Aug. 17, 2011), http://news.cnet.com/8301-30686_3-20093446-266/the-very-hungry-smartphone-data-user/.

³³ *See* Stone Declaration at ¶ 6.

of 90.7 million retail and 17.0 million wholesale and other connections.³⁴ Verizon Wireless serves more customers and has more connections than any other provider, and this growth alone puts increasing demand on the Verizon Wireless network and its spectrum resources.

Third, the mix of devices is shifting toward more bandwidth-intensive smartphones and other broadband-capable devices, driving even more data usage.³⁵ Customers are changing their preferences for devices in favor of smartphones and other broadband capable devices. While 24 percent of the company's postpaid customers had smartphones as of 3Q10, that percentage grew dramatically in just the next year, reaching 39 percent in 3Q11, and Verizon Wireless expects that more than 50 percent of its customers will have smartphones relatively soon.³⁶ Verizon Wireless sold 5.6 million smartphones in 3Q11 alone, and fully 60 percent of postpaid phone sales were smartphones. And, as customers have more devices, they are spending an increasing amount of time connected to the network, also driving network usage, as they use their devices more often to check Internet sites, watch sports or entertainment, or send email.³⁷

Fourth, the types of data usage are shifting toward more spectrum-intensive uses. While several years ago accessing static, text-based web sites was the predominant form of data usage, today many web sites are dynamic, featuring bandwidth-intensive video and other features.³⁸ And, an increasing number of customers use their devices to access video programming and VoIP applications with video capability, and they are constantly downloading feature-rich

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

applications which themselves place sizeable capacity demands on the network. Such applications can consume anywhere from five to ten times as much bandwidth as accessing a web site.³⁹

Moreover, with data, unlike with voice or text messaging, speeds are an increasingly important consideration for customers. Carriers continually strive to achieve (and regularly promote) the speeds at which customers can access the Internet and run applications. Speed and capacity, however, are directly related: high-speed services demand substantial bandwidth. Verizon Wireless engineers its network not only to provide customers with connections, but also with speeds through those connections that are designed to achieve the goals set for data services – for Ev-DO, typical download speeds of 600 kbps-1.4 Mbps and upload speeds of 500-800 kbps; for Long Term Evolution (“LTE”), typical download speeds of 5-12 Mbps and upload speeds of 2-5 Mbps.⁴⁰ Despite the spectral efficiencies and enhanced throughput provided by LTE technology, maintaining these typical speeds across the network, particularly as customers use more and more bandwidth-intensive applications, will require additional spectrum resources, part of which can be met by this transaction.

C. Securing Spectrum Resources Today Is Essential to Building a Network that Meets Consumers’ Needs over the Long Term.

While Verizon Wireless has sufficient spectrum to meet its immediate needs, and generally to meet increased demands in many areas until 2015, the company will need to acquire and deploy considerable additional spectrum in the interim to meet projected future demand.

Verizon Wireless cannot wait to acquire spectrum until it is needed, because, once spectrum is

³⁹ *Id.*

⁴⁰ *Id.* at ¶ 8.

obtained, it can take a period of years to put that spectrum to use.⁴¹ And, based on current projections, as that date approaches, Verizon Wireless may begin to experience some capacity constraints that will increasingly have an effect on customers in various markets covered by the spectrum in this transaction. It thus needs to secure spectrum today to engage in the engineering, investment, and deployment necessary to meet its customers' future needs.

Verizon Wireless must respond to spectrum needs not merely on a short-term (1-2 years) time frame but also on a longer term (3-7 years) time frame.⁴² Forward-looking, long-term spectrum planning is essential because long lead times are needed to complete the many steps that can be required before new spectrum is put to work. The company typically must complete some or all of the following actions: (1) complete the RF design, which essentially determines the most efficient way to deploy cell sites and antennas on those sites to cover the desired area with the desired signal level, (2) work with network infrastructure vendors to design and build base station equipment and antennas, (3) work with original equipment manufacturers to design and produce mobile devices, (4) negotiate with landlords to acquire space on existing towers or to acquire new sites, (5) complete the zoning process which is necessary for almost every site, even when it involves merely collocating additional antennas or replacing existing antennas – a process which often consumes six months or more, (6) deploy the equipment at the sites, (7) obtain and install backhaul facilities to connect new sites to the Verizon Wireless core network, which can require additional zoning approvals and negotiations with backhaul providers, and (8)

⁴¹ *Id.* at ¶ 12.

⁴² *Id.*

test and fine-tune the network to ensure it performs optimally and meets the company's performance specifications.⁴³

While Verizon Wireless constantly looks for ways to use spectrum in the most efficient manner, it is already pursuing most if not all of the benefits it can achieve from more efficient use. It already serves more customers per MHz than other national carriers.⁴⁴ It has a national average spectrum depth of 88 MHz, which serves 107 million connections, or more than 1.2 million connections for every one MHz. This spectrum efficiency is the direct result of Verizon Wireless investing billions of dollars in deploying more advanced radio technologies and optimizing network design. It has invested in and expanded the capabilities of its network, making huge investments in successive wireless technologies – CDMA, Ev-DO Rev. A, and now LTE – each of which has brought major improvements in spectral efficiency. New technologies and network design, however, can increase capacity only so far. While Verizon Wireless can sometimes use cell splitting to meet increased demand, the benefits of that technology are limited. As more sites are placed close together, the benefits of additional sites decline, particularly relative to the zoning, equipment, construction, and other expenses necessary to deploy more sites. Moreover, the costs of deploying additional sites are substantial. Finally, LTE is the most spectrum-efficient air interface technology available today. In short, techniques to enhance the efficient use of the spectrum the company currently holds cannot alone meet the accelerating demand for more network capacity.⁴⁵

⁴³ *Id.* at ¶ 13.

⁴⁴ *Id.* at ¶ 14.

⁴⁵ *Id.*

Further, projections of future spectrum need must also take into account that previous projections have often understated actual growth in traffic; slight variations between projected and actual use can have a substantial impact on spectrum needs. Because there could be adverse impacts on customers whenever the desired usage exceeds the available capacity, spectrum planning needs to build in some flexibility to account for higher-than-projected demand. For example, Verizon Wireless' 4Q11 data traffic volume will be approximately double what its 2009 projection was; similarly, the company's most recent projections for data traffic in 4Q15 are now approximately seven times higher than the company's 2009 projection.⁴⁶ The spectrum included in this transaction will help meet part of the expected spectrum needs in the covered markets in the years ahead, by assigning the spectrum to a provider who will best put it to use.

D. The Commission Has Encouraged Carriers To Use the Secondary Market To Put Spectrum to Better Use.

This application involves precisely the type of transaction that the Commission's secondary market policies are designed to facilitate. Beginning with its 2000 *Policy Statement* on secondary markets,⁴⁷ the Commission launched an ongoing effort to promote transfers of spectrum to those who can put the spectrum to better use:

In this new effort, we seek to significantly expand and enhance the existing secondary markets for spectrum usage rights to permit spectrum to flow more freely among users and uses in response to economic demand, to the extent consistent with our other statutory mandates and public interest objectives. ... Our goal in this effort is to promote the operation of competitive markets for the sale and lease of spectrum usage rights by licensees, and thereby facilitate both the transfer of the right to use spectrum for existing services to new, higher valued uses, and the availability of unused and underutilized spectrum to those who would use it for providing services.⁴⁸

⁴⁶ *Id.* at ¶ 25.

⁴⁷ *Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, Policy Statement, 15 FCC Rcd 24178 (rel. Dec. 1, 2000).

⁴⁸ *Id.* at 24178 ¶ 1, 24185-86 ¶ 18.

This transaction represents a “higher valued” use for the AWS licenses in light of the determination by SpectrumCo’s owners that they cannot justify undertaking the substantial costs and risks involved in constructing and operating a standalone, facilities-based wireless network.

Over the years, the Commission has adopted policies to foster secondary markets that have helped achieve the goal of “permit[ting] spectrum to flow more freely among users and uses in response to economic demand.”⁴⁹ Today, a robust secondary market in spectrum is ever more critical as wireless service providers strive to meet skyrocketing capacity demands for mobile broadband. As Chairman Genachowski remarked, “The explosive growth in mobile communications is outpacing our ability to keep up.... We need to focus on the spectrum crunch and employ all our levers to unleash the opportunities of mobile.”⁵⁰ The Chairman has further noted that incentive auction authority is one track to repurpose spectrum, but “pursuing other creative ideas for optimizing spectrum use, such as secondary markets and sensing technology, are a test of whether our country can act strategically in today's fast-moving and vibrant economy.”⁵¹

⁴⁹ *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for Our Future*, Notice of Inquiry, 24 FCC Rcd 11322, 11331 n.27 (rel. Aug. 27, 2009); see also *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503, 17505 ¶ 1 (rel. Sept. 2, 2004).

⁵⁰ Julius Genachowski, Chairman, Federal Communications Commission, Prepared Remarks: Unleashing America’s Invisible Infrastructure, FCC Spectrum Summit at 3 (Oct. 21, 2010), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302331A1.pdf.

⁵¹ Julius Genachowski, Chairman, Federal Communications Commission, Op-Ed., Building Better wireless networks, WASH. POST, Oct. 28, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/28/AR2010102806031.html?sub=AR>.

As recognized in the National Broadband Plan (the “Plan”), “[s]econdary markets provide a way for some network providers to obtain access to needed spectrum for broadband deployment.”⁵² Moreover, secondary markets provide a crucial means to transition spectrum to more efficient use, as “existing licensees may not fully utilize or plan to utilize the entire spectrum assigned to them...”⁵³ The Plan suggests that “the pressing spectrum requirements of broadband necessitate the need for a second look” at new incentives for secondary markets.⁵⁴ In this case, the Commission’s existing secondary markets policy and procedures for approving spectrum-only transactions will put this AWS spectrum in the hands of a licensee that will put it to use to meet the needs of consumers.

Secondary market transactions such as this are especially important because the Government has not made additional spectrum blocks available for mobile wireless services through spectrum auctions since the 700 MHz auction – which was held nearly four years ago. Although the Government has recognized that demand for wireless networks has been rapidly growing, it has not brought any “new” spectrum to market. Moreover, there is no imminent spectrum auction that Verizon Wireless can look to as an alternative path to meet its growing spectrum needs. Even were additional suitable spectrum allocated for mobile use in 2012, several years (based on past history) may be needed to bring it to auction. With many potential

⁵² *National Broadband Plan* at 83 (Recommendation 5.7). *See also 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, 26 FCC Rcd 9664, 9828 ¶ 282 (2011) (“*Fifteenth Report*”) (“The Commission’s secondary market policies allow existing licensees to obtain additional spectrum capacity and expand their coverage areas to better meet the needs of their customers....”).

⁵³ *National Broadband Plan* at 83.

⁵⁴ *Id.*

blocks of such spectrum, significant issues would need to be resolved to clear incumbent users.⁵⁵

In short, the growing demands of Verizon Wireless customers necessitate that Verizon Wireless acquire additional spectrum resources through the secondary market – action that Commission policies fully support.

* * *

In sum, Verizon Wireless' acquisition of SpectrumCo's AWS licenses will advance the public interest by supplementing the spectrum on which Verizon Wireless currently relies in offering services to its subscribers. Commission approval of the license assignments will benefit consumers by enabling the company to expand the capacity of its network to address increasing consumer demand and deliver high quality, high-speed state-of-the-art services. Approval of the application will thus enable Verizon Wireless to continue fulfilling the Commission's and the Administration's goals of mobile broadband innovation, deployment, and adoption.

V. THE TRANSACTION WILL NOT HARM COMPETITION.

This transaction will not diminish competition or consumer choice in any of the 120 markets where SpectrumCo is assigning the AWS spectrum to Verizon Wireless, for the reasons explained below.

A. Because Verizon Wireless Is Acquiring Only Spectrum, There Is No Market Consolidation and No Reduction in Competition or Consumer Choice.

This is a spectrum-only transaction. Verizon Wireless is acquiring only AWS licenses that are not currently being used to serve consumers. The company is not acquiring an operating business or any customers, or any assets other than the AWS licenses. The Commission thus does not face any issues in this application relating to the competitive impacts of a consolidation

⁵⁵ See Stone Declaration at ¶ 15.

of two operating entities or their customers, as it does in mergers or other combinations of carriers that both provide service. Rather, because only spectrum is involved, and because SpectrumCo is not currently using the spectrum to serve customers, the transaction does not reduce the number of local or national competitors.

As explained in the accompanying Declaration of Robert Pick, Chief Executive Officer of SpectrumCo, since its successful auction bids in 2006, SpectrumCo has taken multiple steps to develop its AWS spectrum.⁵⁶ For example, SpectrumCo has invested more than \$20 million to clear microwave links in the geographic area covered by its AWS licenses, which has helped to make the spectrum ready for commercial use, thus improving the spectrum's utility and enhancing its value.⁵⁷ SpectrumCo also has undertaken substantial efforts to test different 4G technologies and equipment for use with the AWS spectrum, such as WiMAX, Ultra Mobile Broadband ("UMB"), and LTE.⁵⁸ After conducting those tests between 2007 and 2009, working with a group of leading wireless equipment manufacturers, SpectrumCo concluded that LTE was the right choice for 4G deployment in the AWS band.⁵⁹

Notwithstanding the significant time, effort, and investment that SpectrumCo put into clearing the AWS spectrum and conducting technology tests, SpectrumCo has determined as a business matter, based on a variety of marketplace factors in combination, that constructing and

⁵⁶ See Declaration of Robert Pick, Chief Executive Officer of SpectrumCo, LLC, attached as *Exhibit 4* ("Pick Declaration").

⁵⁷ *Id.* at ¶ 3.

⁵⁸ *Id.* at ¶¶ 4-5.

⁵⁹ *Id.* at ¶¶ 7-8.

operating a standalone facilities-based wireless network with that spectrum would not provide a return that would warrant incurring the substantial costs and risks involved.⁶⁰

First, the financial resources required to build a wireless network are enormous. While acquiring spectrum is essential to entering the market, it is only a limited part of the financial equation. SpectrumCo estimated that, depending upon how such a network would be deployed, “the capital expenditures and cumulative negative net operating costs would be approximately \$10 - \$11 billion.”⁶¹ This is consistent with the Commission’s recognition that the cost of building a wireless network is significant.⁶² There are substantial risks associated with SpectrumCo building a wireless network, and there is no assurance of a return on the investment, particularly given the competitive nature of the wireless business and other marketplace factors described below.

Second, a variety of other marketplace factors also affected SpectrumCo’s decision. For example, as SpectrumCo assessed the possibility of market entry with the 20 MHz of spectrum it had won at auction, SpectrumCo concluded that this might be sufficient to *initially* deploy an LTE wireless network. SpectrumCo concluded that, if it were successful in attracting a significant number of customers (including from its owners’ base of cable customers), it

⁶⁰ *Id.* at ¶ 10.

⁶¹ *See* Pick Declaration at ¶ 11. *See also* Statement of Michael J. Angelakis, CFO & EVP, Comcast Corporation, Goldman Sachs Communacopia Conference, at 5, Sept. 16, 2009 (describing the build-out of the AWS-1 spectrum into a robust network as “a huge economic investment, which we’re uncomfortable there’s a real return for.”).

⁶² *See Fifteenth Report*, 26 FCC Rcd at 9716-17 ¶ 63 (“A new entrant would ... need to invest tens or hundreds of millions of dollars in capital expense for a regional network (depending on the size of the regions) and billions of dollars for a national network.”).

ultimately would have to incur further costs to acquire additional spectrum to serve those customers and their rapidly expanding demand for mobile services in a sustainable way.⁶³

The conclusion that SpectrumCo ultimately would need to acquire more spectrum was informed by trends that emerged after SpectrumCo acquired the spectrum, including consumers' increasing desire for sophisticated mobile devices which require additional spectrum.⁶⁴ In June 2007, just seven months after SpectrumCo acquired the AWS licenses, the first iPhone became available to consumers, with the iPad following in 2010.⁶⁵ The first Android-powered phone became commercially available in late 2008.⁶⁶ As addressed above, the increasing use of these and other data intensive devices has led to skyrocketing capacity demands.

In addition, SpectrumCo concluded that entering as a facilities-based provider would involve other costs and complexities. For example, to be competitive with other providers, SpectrumCo would need to purchase from manufacturers the devices most attractive to consumers at cost-effective prices, and would need to incur the cost of providing a sufficient

⁶³ See Pick Declaration at ¶ 12. As the Commission has acknowledged, other industry players have reached the same conclusion: "operators, regulators and others have attempted to forecast the amount of spectrum that will be needed. Given current trends and future uncertainty, virtually all the major players in the wireless industry have stated on the record that more spectrum is needed. Estimates range from 40 to 150 megahertz *per operator*." *National Broadband Plan* at 84.

⁶⁴ See Pick Declaration at ¶ 12.

⁶⁵ See Press Release, Apple, *iPhone Premieres This Friday Night at Apple Retail Stores* (June 28, 2007), <http://www.apple.com/pr/library/2007/06/28iPhone-Premieres-This-Friday-Night-at-Apple-Retail-Stores.html>; Press Release, Apple, *Apple Launches iPad* (Jan. 27, 2010), <http://www.apple.com/pr/library/2010/01/27Apple-Launches-iPad.html>.

⁶⁶ See Google, *The first Android-powered phone* (Sept. 23, 2008), <http://googleblog.blogspot.com/2008/09/first-android-powered-phone.html>.

subsidy for any such devices.⁶⁷ In addition, SpectrumCo would need to secure nationwide roaming agreements.⁶⁸

For all of these reasons, SpectrumCo's owners have previously stated that, as a business matter, SpectrumCo will not become a standalone, facilities-based wireless provider.⁶⁹ Instead, SpectrumCo's owners have decided to pursue other, separate business arrangements that will enable them to offer wireless services to their customers. In particular, Comcast, Time Warner Cable, and Bright House (collectively, the "cable companies") have each entered into separate commercial agreements with Verizon Wireless, which are not subject to Commission review, that include agency agreements under which the cable companies and Verizon Wireless will sell each other's services on a market-standard commission basis, with the new subscribers becoming customers of the other service provider (i.e., wireless customers signed up by the cable companies would become customers of Verizon Wireless, and cable customers signed up by

⁶⁷ See Pick Declaration at ¶ 13.

⁶⁸ See *id.* at ¶ 14.

⁶⁹ See, e.g., Statement of Michael J. Angelakis, CFO & EVP, Comcast Corporation, Goldman Sachs Communacopia Conference, at 5, Sept. 16, 2009 ("We have 20 megahertz of spectrum, clearly not enough to do what we really want to do. We don't want to be the seventh competitor in a market that we think is mature from the voice side. And it's a huge economic investment, which we're uncomfortable there's a real return for."); Statement of Michael J. Angelakis, CFO & EVP, Comcast Corporation, Goldman Sachs Communacopia Conference, at 8, Sept. 20, 2011 ("We have no desire to own a wireless network, we have no desire to write large checks, but we would like to find a way where we can offer that kind of mobility for our products in a strategic way that makes sense and that we can enhance value of those products for our customers."); Statement of Michael J. Angelakis, CFO & EVP, Barclays Capital Investor Conference, at 9, May 26, 2010 ("[W]e look at wireless as an extension of [our core] services again. We don't need to own the [wireless] network. We don't actually want to operate the [wireless] network.").

Verizon Wireless would become customers of the cable companies).⁷⁰ The agreements also provide the cable companies with the future option of transitioning to resale of Verizon Wireless services, offering unique, branded wireless services.⁷¹

B. In Most Markets, Verizon Wireless Will Not Exceed the Spectrum Screen, Eliminating the Need for Further Commission Review.

An analysis using the screens that the Commission typically applies confirms that this transaction is consistent with the public interest. As an initial matter, because the transaction would effect no change in market share, two of the three screens the Commission uses to identify markets where there may be potential competitive harm –which both pertain to changes to the post-transaction Herfindahl-Herschman Index (“HHI”) – simply do not apply. The only other screen the Commission uses to determine whether to conduct a competitive analysis, the “spectrum screen,” is not triggered in 105 of the 120 markets included in the transaction – or

⁷⁰ These types of agency relationships are nothing new. It is common today for communications companies to sell each other’s products; for example, DirecTV and AT&T just announced a three-year renewal of their agreement to market and sell each other’s services. See Press Release, DIRECTV, Inc., *AT&T and DIRECTV Sign Three-Year Extension Agreement to Deliver AT&T / DIRECTV to AT&T Customers* (Nov. 3, 2011), <http://investor.directv.com/releasedetail.cfm?ReleaseID=620738>. Best Buy, Radio Shack, and numerous other retailers are prominent examples of agents that sell the wireless service of unaffiliated providers like AT&T, Sprint, T-Mobile, and Verizon Wireless.

⁷¹ The Commission has found that such resale arrangements can have a pro-competitive impact. *Fifteenth Report*, 26 FCC Rcd at 9699-701 ¶¶ 33, 36. The Commission has identified more than 50 wireless resellers or mobile virtual network operators (“MVNOs”) in the marketplace. *Id.* at 9925 (App. C, Table C-6). Verizon Wireless and the cable companies also announced a separate agreement to create a new joint venture in which they will collaborate to develop innovative technology and intellectual property that will integrate wired video, voice and high-speed Internet with wireless technologies. The joint venture will work to create a seamless environment in which consumers can enjoy multiple services across multiple communications platforms.

more than 87 percent of the BEAs.⁷² The screen is 145 MHz in nearly all markets nationally,⁷³ and Verizon Wireless would remain below this level in 2,230 of the 2,276 of the counties covered by the SpectrumCo licenses – or in 97.7 percent of the covered counties. Where the spectrum screen is not exceeded (and where the HHI screen is also not triggered), the Commission has held that no further competitive inquiry is conducted, because there is “clearly no competitive harm.”⁷⁴ Thus, no further review is appropriate under Commission precedent for nearly all of the licenses being assigned.

⁷² Consistent with informal guidance from Commission staff in other recent transactions, attached as *Exhibit 5* is a chart depicting Verizon Wireless’ CMRS spectrum holdings in each of the subject markets both before and subsequent to consummation of the license assignments. *Exhibit 5* assumes the consummation of other pending transactions involving Verizon Wireless, and thus the columns listing current spectrum holdings incorporate those transactions. Also attached as *Exhibit 6* is a chart depicting the identity of the various terrestrial-based wireless licensees holding spectrum in each market.

⁷³ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53 (noting that the screen includes those spectrum bands designed for cellular, PCS, SMR and 700 MHz services, as well as AWS-1 and BRS spectrum). For markets in which AWS-1 and BRS spectrum is available, the screen is 145 MHz; for markets in which AWS-1 is available but BRS is not available, the screen is 125 MHz; for markets in which BRS available but AWS-1 is not available, the screen is 115 MHz; and, for markets in which neither BRS nor AWS-1 is available, the screen is 95 MHz. *Id.* at 17477-78 ¶ 64. As *Exhibit 5* depicts, while there are a small number of markets where the screen is either 115 MHz or 125 MHz, Verizon Wireless would still remain below those lower screens.

⁷⁴ See, e.g., *Sprint Nextel Corporation and Clearwire Corporation, Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17601 ¶ 76 (2008) (“*Sprint-Nextel/Clearwire Order*”) (“[T]he purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today’s generally competitive marketplace”); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20317 ¶ 39 (2007) (“*AT&T/Dobson Order*”); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21568-69 ¶¶ 106-109 (2004) (“*AT&T/Cingular Order*”).

C. In the Remaining Few Markets, the Screen Overages Are Minor and There Are Numerous Existing and Potential Competitors.

Even in the relatively few BEAs where the spectrum screen is triggered, the transaction does not adversely affect competition in those areas. As the Commission has emphasized, the screen is merely a tool to determine when to undertake an inquiry as to the effect of a transaction in a particular market. It is not a cap and does not give rise to any presumption that spectrum holdings in excess of the screen are inherently problematic. The Commission likewise has emphasized that the screen is “designed *to be conservative* and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis.”⁷⁵ That analysis shows that there is no basis for competition-related issues or concerns in the remaining SpectrumCo markets. Where Verizon Wireless exceeds the initial screen, the overage is generally small in amount (as little as 2 MHz in some of these markets) and/or confined to only one or a handful of counties in the market, the number of competitors providing service is not reduced, and all other providers continue to hold the same amounts of spectrum post-transaction which they can use to enter the market.

The Commission typically applies the spectrum screen on a CMA basis and, where the screen is exceeded, it looks at (1) the total spectrum available for mobile telephony use; (2) the particular applicant’s portion of available spectrum; (3) licensees in the market and their spectrum holdings; (4) licensees currently providing service in the market; (5) whether current service providers, who may be capacity constrained in the near-term, can access additional spectrum in the market either through auction or on the secondary market; and (6) licensees

⁷⁵ *AT&T/Dobson Order*, 22 FCC Rcd at 20312-13 ¶ 30 (emphasis added).

currently holding spectrum that could enter the market to provide service.⁷⁶ In a number of cases, this analysis has led the Commission to approve spectrum acquisitions in certain markets where the applicable spectrum screen was triggered.⁷⁷ It has done so even in transactions that involved the combination of customers and other assets as well as spectrum and thus potentially raised concerns as to competitive harms from the consolidation.⁷⁸ In contrast, the SpectrumCo-Verizon Wireless transaction presents no customer or asset consolidation and no such potential concerns.

Exhibit 7 supplies information as to the above factors for each of the 15 Basic Economic Areas, which include 18 CMAs where Verizon Wireless' post-transaction spectrum holdings would exceed the initial spectrum screen. (There are more CMAs than BEAs because four BEAs include all or parts of more than one CMA.) In all of these areas, the applicable screen is 145 MHz. This analysis demonstrates that the spectrum screen overages are insubstantial, and that Verizon Wireless will continue to face numerous existing operational competitors as well as potential future competitors in each market:

⁷⁶ See, e.g., *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, 23 FCC Rcd 2234, 2237 ¶ 12 (2008) (“*Aloha/AT&T*”); *Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12497 ¶ 70 (2008).

⁷⁷ *Aloha/AT&T*, 23 FCC Rcd at 2237 ¶ 12 (allowing AT&T to exceed the screen by up to 12 MHz in various markets); *Sprint-Nextel/Clearwire Order*, 23 FCC Rcd at 17604 ¶ 83 (allowing Sprint to acquire 37 percent of available spectrum in the Honolulu market, well above the screen); *AT&T/Cingular Order*, 19 FCC Rcd at 21607-08 ¶¶ 226-27 (allowing AT&T to exceed the screen by up to 10 MHz in various markets).

⁷⁸ *Sprint-Nextel/Clearwire Order*, 23 FCC Rcd at 17603-04 ¶¶ 81-83; *AT&T/Cingular Order*, 19 FCC Rcd at 21579 ¶ 147.

1. The amount of spectrum by which the screen is exceeded in these markets is small.

In eight of the 18 CMAs, the overage for the counties exceeding the screen is four MHz or less above the 145 MHz screen (or less than three percent). In six other CMAs, the overage is between five and nine MHz. In only four CMAs is the screen exceeded by more than 10 MHz – and in these the overage is less than 20 MHz.

2. The number and proportion of counties exceeding the screen is small. Out of the 2,276 total counties covered by SpectrumCo’s licenses, only 46 (0.3 percent) exceed the screen. Verizon Wireless would hold less than 145 MHz in more than half the counties comprising the 18 CMAs (63 of 109 counties). In ten of the 18 CMAs, Verizon Wireless would exceed the screen in only one or two counties.

3. There are multiple facilities-based providers offering service in all CMAs. In 17 of the 18 CMAs, there are at least four facilities-based providers offering wireless service; of course all of those providers will continue to compete. The Commission has pointed to the presence of at least three remaining competing providers as a reason to find no competitive harm in transactions involving a reduction in the number of competitors; here, of course, there is no diminution in the number of providers.⁷⁹

4. Numerous other licensees hold spectrum that the Commission treats as currently available for providing CMRS in these markets. In addition to those companies already offering wireless service, numerous other companies hold spectrum that the Commission has

⁷⁹ See *Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14011 ¶ 119 (2005) (“[W]e find that competitive harm is unlikely as well. In many of these markets, post-merger there will be a reduction from four to three in the number of firms fully built out and able to offer national pricing plans.”).

determined is currently available and suitable for CMRS. The Commission has pointed to timely future entry in a market as a relevant component in its competition analysis.⁸⁰

5. Additional spectrum potentially can be used to provide wireless services in these areas, further lessening any concerns. The Commission has determined that, while other spectrum is not yet fully available for the provision of CMRS so as to be included in the spectrum screen, that spectrum should be considered in assessing potential future competition. Here, too, the presence of licensees in the 18 markets holding licenses for such services further underscores the lack of any potential competitive harm from this transaction.⁸¹ Under the Commission's spectrum competition policies, spectrum is considered as part of a competition analysis if, within two years, it will be "suitable" for the provision of mobile telephony or broadband service – meaning it is capable of supporting mobile service, has been licensed for mobile use, and is not committed to a use that precludes mobile operations. Under such an

⁸⁰ See *AT&T/Dobson Order*, 22 FCC Rcd at 20313 ¶ 31 & n. 117 (citing DOJ/FTC Merger Guidelines § 3.2 for assertion that there could be "significant market impact" from market entry within two years).

⁸¹ Indeed, if all spectrum were considered that is either currently used or could be used within the next two years (e.g., by late 2013) for terrestrial mobile service, any overages would be eliminated. For example, the existing initial screen considers only 55.5 MHz of the 194 MHz BRS/EBS band, and does not include the 90 MHz of MSS ATC spectrum identified by the Commission for mobile broadband use, 25 MHz of WCS spectrum, or the 10 MHz "G Block" on which Sprint Nextel plans to deploy LTE beginning in 2012. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17477 ¶ 63 ("includ[ing] 55.5 MHz of contiguous BRS spectrum ... in a market-specific initial spectrum screen"); *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz, 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Report and Order, 26 FCC Rcd 5710, 5710 ¶ 2 (2011) ("*MSS Order*") (adding co-primary Fixed and Mobile allocations to the MSS 2GHz Band to provide greater flexibility for use of the spectrum); *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710 (2010) (changing technical rules to enable licensees to provide mobile broadband service in 25 MHz of the WCS band); Press Release, Sprint, Sprint Accelerates Deployment of Network Vision and Announces National Rollout of 4G LTE (Oct. 7, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=2064.

approach, BRS/EBS, MSS/ATC, WCS, and PCS G Block spectrum at a minimum should be taken into account in any competition analysis of the 18 CMAs. And the availability of this spectrum, in addition to the other factors addressed above, further lessens any potential concerns.

BRS/EBS Spectrum. Though the Commission has declined to include either EBS spectrum or more than 55.5 MHz of the BRS spectrum as part of the initial spectrum screen, in fact most of the licensed BRS band, and much EBS spectrum (leased to commercial entities), is being put to use to provide competitive mobile telephony/broadband services. Both bands should therefore be included in the Commission's market-specific competitive analysis.

The Commission recognized in the *Fifteenth Report* that Clearwire's use of BRS/EBS spectrum "introduce[s] new competitive constraints at the regional or national level."⁸² Specifically, the *Fifteenth Report* noted that (i) the transition to the new BRS/EBS band plan was nearly complete and (ii) Clearwire was "deploying mobile broadband services using this spectrum in various markets across the country."⁸³ As of September 30, 2011, Clearwire offered 4G mobile broadband service in more than 70 markets covering approximately 133 million people and had approximately 9.5 million wholesale and retail customers.⁸⁴ These deployment statistics indicate that mobile broadband services over BRS/EBS should no longer be considered nascent services. Furthermore, Sprint is currently offering 4G service using the Clearwire network in more than 70 markets across the United States, including but not limited to Atlanta, Boston, Chicago, Dallas, Denver, Houston, Los Angeles, Miami, New York City, San Francisco

⁸² *Fifteenth Report*, 26 FCC Rcd at 9718-19 ¶¶ 67-68

⁸³ *Id.* at 9824 ¶ 273.

⁸⁴ See Sprint Nextel, Annual Report (Form 10-K), at F-41 (Feb. 24, 2011); Press Release, Clearwire, Clearwire Reports Third Quarter 2011 Results (Nov. 2, 2011), <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=620322>.

and Washington, D.C.⁸⁵ In light of the widespread use of BRS/EBS spectrum in providing mobile telephony/broadband services, these bands should be included as “suitable” spectrum in the Commission’s competitive analysis.

MSS/ATC Spectrum. In its most recent assessment on mobile services competition, the *Fifteenth Report*, the Commission recognized that MSS ATC services “could potentially enhance competition in the provision of mobile terrestrial wireless services.”⁸⁶ In another proceeding, the Commission explained the competition MSS ATC services will provide:

As Globalstar, SkyTerra/Harbinger, and other MSS providers realize their plans to offer high-speed broadband services to consumers using terrestrial networks under their ATC authority, *the services they offer have the potential to expand the services offered in the overall market of mobile terrestrial wireless services and enhance competition in this larger mobile marketplace.*⁸⁷

Its subsequent Order in that proceeding added co-primary terrestrial Fixed and Mobile allocations to the 2 GHz band and applied spectrum leasing policies to MSS ATC leasing arrangements “[i]n contemplation of [MSS] spectrum being used for wireless services.”⁸⁸ The Commission found that “recent and planned near-term developments in the use of MSS/ATC spectrum for the provision of terrestrial services are increasing the potential that these services

⁸⁵ See News Release, Sprint Nextel, Another Industry First: Sprint Becomes First U.S. Wireless Carrier to Make 4G Available to Wholesale Customers (Aug. 2, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1996.

⁸⁶ *Fifteenth Report*, 26 FCC Rcd at 9702 ¶ 39.

⁸⁷ *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5- 1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, 25 FCC Rcd 9481, 9490-91 ¶ 21 (2010) (emphasis added).

⁸⁸ *MSS Order*, 26 FCC Rcd at 5710 ¶ 1 (emphasis added).

will become sufficiently similar to the services offered in the overall market of mobile terrestrial wireless services to enhance competition in this larger mobile marketplace.”⁸⁹

WCS Spectrum. WCS spectrum has been licensed to providers for service areas covering each of the 18 CMAs. It is suitable to provide competition with mobile services. The Commission amended the WCS rules in 2010 to “*immediately* make 25 megahertz of spectrum available for mobile broadband services.”⁹⁰ The Commission took these steps to “*promote broadband competition* and facilitate the development and provision of innovative broadband services, *including mobile broadband services*, to the American public in the 2305-2320 and 2345-2360 MHz bands allocated to WCS.”⁹¹ The Commission also established aggressive buildout requirements that require WCS licensees providing mobile services to serve 40 percent of a license area’s population within 42 months, and 75 percent within 72 months.⁹² Thus, according to the Commission, WCS spectrum is suitable to provide, and has the potential to compete with, mobile services – as the *Fifteenth Report* recognizes.⁹³

G Block Spectrum. The PCS G block was awarded on a nationwide basis to Nextel in 2004. The *Fifteenth Report* specifically identified the PCS G Block spectrum held by Sprint

⁸⁹ *Id.* at 5716 ¶ 14.

⁹⁰ News Release, FCC, FCC Unleashes 25 MHz of Spectrum for Mobile Broadband Use at 1 (May 20, 2010) (emphasis added), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298308A1.pdf.

⁹¹ *Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710, 11725 ¶ 36 (2010) (emphasis added), *recon. pending*.

⁹² *Id.* at 11713 ¶ 3.

⁹³ *Fifteenth Report*, 26 FCC Rcd at 9825 ¶ 276 (stating that the revised rules “will enable WCS licensees to offer mobile broadband services”).

Nextel as spectrum “[p]otentially [u]sable” for mobile wireless services, along with cellular, broadband PCS, AWS, 700 MHz, 2.5 GHz (which includes BRS/EBS) and WCS spectrum, among others.⁹⁴ In fact, Sprint Nextel will deploy 4G LTE in mid-2012, and “initial LTE deployment will be in the G-Block of the 1900 MHz band, where Sprint has a nationwide 5x5 MHz block of spectrum.”⁹⁵ As a result, the Commission should consider Sprint’s nationwide 10 MHz PCS G Block as suitable spectrum and a relevant input for competitive analysis.

Accordingly, BRS/EBS, MSS ATC, WCS and PCS G Block spectrum should be included in the Commission’s overall analysis of spectrum available in the 18 CMAs, further demonstrating that considerable spectrum suitable for mobile services is available in each of these markets.

VI. CONCLUSION

For the foregoing reasons, grant of this application is consistent with the Act and the Commission’s rules, the Commission’s actions in prior license assignments, and the public interest. Accordingly, the Applicants respectfully request that the Commission expeditiously approve the application.

⁹⁴ *Id.* at 9825 Table 26.

⁹⁵ Phil Goldstein, FIERCEWIRELESS, *Sprint to launch LTE on 1900 MHz spectrum by mid-2012* (Oct. 7, 2011), <http://www.fiercewireless.com/story/sprint-launch-lte-1900-mhz-spectrum-mid-2012/2011-10-07>.