

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

In the Matter of)
Applications for Consent to the Assignment of) WT Docket No. 05-169
Licenses Pursuant to Section 310(d) of the)
Communications Act from Urban Comm-North) File Nos. 0001994620 and 0002007683
Carolina, Inc., Debtor-in-Possession, to Cellco)
Partnership d/b/a Verizon Wireless)

MEMORANDUM OPINION AND ORDER

Adopted: June 2, 2005

Released: June 2, 2005

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us two related applications filed by Urban Comm-North Carolina, Inc., Debtor-in-Possession ("Urban Comm") and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (collectively, the "Applicants") seeking Commission consent to the full or partial assignment of ten broadband Personal Communications Services ("PCS") licenses (the "Applications").

II. BACKGROUND

A. Description of the Applicants

2. Urban Comm was the winning bidder of ten broadband PCS C block licenses in Auction No. 5, and thirteen broadband PCS F block licenses in Auction No. 11.

1 ULS File Nos. 0001994620 and 0002007683. Both applications were originally filed on January 14, 2005, and both applications were amended on January 18, 2005, March 21, 2005, and April 5, 2005. Because the exhibits to both applications are identical, we refer to both collectively as the Applications.

2 47 C.F.R. § 1.2111 (requirements for unjust enrichment payments for assignment or transfer of control of licenses subject to installment payments); § 24.714 (requirements for unjust enrichment payments for partial assignment or transfer of broadband PCS licenses subject to installment payments).

3 See Applications, Exhibit 1 at 12-14.

4 47 U.S.C. § 310(d).

5 47 C.F.R. §§ 1.2111, 24.714.

6 Call Signs KNLF372, KNLF373, KNLF374, KNLF375, KNLF376, KNLF377, KNLF378, KNLF379, KNLF380, KNLF381. The Commission conditionally granted these broadband PCS C block licenses to Urban Comm on

for these licenses through the Commission's installment payment program.⁸ Urban Comm is a wholly-owned subsidiary of Urban Comm Mid-Atlantic, Inc., Debtor-in-Possession ("Urban Comm MA"), which is wholly owned by Urban Communicators PCS Limited Partnership, Debtor-in-Possession ("Urban Comm LP").⁹ In 1998, Urban Comm, Urban Comm MA, and Urban Comm LP initiated Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court").¹⁰ These bankruptcy proceedings remain pending, and the assignment of licenses proposed in the Applications is one part of a plan to successfully terminate those proceedings.

3. Cellco Partnership d/b/a Verizon Wireless is a general partnership that is jointly owned by Verizon Communications, Inc. and Vodafone Group Plc ("Vodafone"), a foreign corporation.¹¹ The Applicants state that the Commission has previously approved Vodafone's indirect, non-controlling interest in Verizon Wireless, as well as Vodafone's qualifications to hold indirect ownership interests in common carrier licenses, pursuant to Section 310(b)(4) of the Communications Act.¹² According to the Applicants, Vodafone continues to hold the same indirect, non-controlling interest in Verizon Wireless that it held when the Commission approved its interest as a foreign corporation.¹³ In addition, the Applicants state that, under the proposed assignment of licenses, Verizon Wireless would hold between 10 megahertz and 55 megahertz in the ten Basic Trading Areas ("BTAs") in which it will acquire spectrum from Urban Comm.¹⁴

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September 17, 1996. See "FCC Announces Grant of Broadband Personal Communications Services Entrepreneurs' C Block BTA License, Final Down Payment Due by September 24, 1996," *Public Notice*, 11 FCC Rcd 11316 (1996).

⁷ Call Signs KNLG239, KNLH707, KNLH708, KNLH709, KNLH710, KNLH711, KNLH712, KNLH713, KNLH714, KNLH715, KNLH716, KNLH717, and KNLH718. These PCS F Block licenses were conditionally granted on April 28, 1997. See "FCC Announces Grant of Broadband Personal Communications Services D, E, F Block BTA Licenses Balance of Winning Bids (D and E Block) and Final Down Payment (F Block) Are Due by May 12, 1997," *Public Notice*, 13 FCC Rcd 1286 (1997).

⁸ See 47 C.F.R. §§ 1.2110, 24.711, 24.716 (1999). In 1997, the Commission suspended installment payments for broadband PCS licenses pending resolution of requests filed by certain licensees to restructure their installment payment obligations. See *Installment Payments for PCS Licenses*, *Order*, 12 FCC Rcd 17325 (1997). Shortly thereafter, the Commission determined that installment payments will not be used in the immediate future as a means of financing small business participation in our auction program. See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 397 ¶ 38 (1997).

⁹ See Applications, Exhibit 1 at 2-3.

¹⁰ Urban Comm, Urban Comm MA, and Urban Comm LP are debtors and debtors-in-possession under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.*, as amended (the "Bankruptcy Code"), having commenced cases under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on October 28 and November 5, 1998. See *In re Urban Communicators PCS Limited Partnership, et. al.*, Nos. 98-B-47996 (REG), 98-B-47997 (REG), and 98-B-10086 (REG), jointly administered (Bankr. S.D.N.Y. 1998).

¹¹ See Applications, Exhibit 1 at 3.

¹² 47 U.S.C. § 310(b)(4). See Applications, Exhibit 1 at 3, citing, *e.g.*, Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd 6490 (CWD 2003) ("*Verizon-Northcoast Order*").

¹³ Applications, Exhibit 1 at 3. See also Applications, Exhibit 2.

¹⁴ Applications, Exhibit 1 at 10-11. See also Applications, Exhibit 4.

B. Proposed Transaction

4. Urban Comm and Verizon Wireless entered into an Agreement to Purchase FCC Licenses, dated as of December 22, 2004 (“Purchase Agreement”). Pursuant to the Purchase Agreement, Urban Comm is to assign to Verizon Wireless, subject to all appropriate Commission and Bankruptcy Court approvals, Urban Comm’s rights and interests in seven disaggregated broadband PCS C block licenses and three full broadband PCS C block licenses, free and clear of any encumbrances.¹⁵ Consequently, Urban Comm and Verizon Wireless filed the Applications seeking Commission consent to the partial assignment by disaggregation of 20 megahertz of five C block licenses and 10 megahertz of two C block licenses and the full assignment (i.e., 30 megahertz) of three C block licenses. As noted earlier, this proposed assignment of licenses is part of the bankruptcy reorganization of Urban Comm, Urban Comm MA and Urban Comm LP.

5. Urban Comm has filed two other applications for Commission consent as part of its bankruptcy reorganization. One application seeks Commission consent to a *pro forma* transfer of control of Urban Comm MA, so that, if granted, Urban Comm MA will merge with Urban Comm.¹⁶ The other application seeks Commission consent to the transfer of control of Urban Comm from Urban Comm LP to SunCom Wireless, Inc. (“SunCom”), a wholly-owned indirect subsidiary of Triton PCS Holdings, Inc. (“SunCom Application”).¹⁷ This second application is premised on the successful consummation of the assignment of licenses from Urban Comm to Verizon Wireless, as proposed in the Applications, and, if approved, will result in SunCom acquiring the remaining spectrum currently held by Urban Comm, i.e., spectrum not included in the present proposed assignments to Verizon Wireless.¹⁸ The Commission will address the *pro forma* transfer of control application and the SunCom Application in the near future.

6. On March 14, 2005, Urban Comm, Urban Comm MA, and Urban Comm LP entered into an agreement with the Commission regarding the installment payment obligations incurred by Urban Comm with respect to its C and F block licenses (“Settlement Agreement”).¹⁹ The Bankruptcy Court approved the Settlement Agreement on April 4, 2005.²⁰ The Settlement Agreement, in conjunction with the Purchase Agreement, provides, in relevant part, that Verizon Wireless will deliver to the Commission a portion of the purchase price in satisfaction of the Commission’s claims related to the licenses. Specifically, under the Settlement Agreement, Verizon Wireless will pay directly to the Commission a total of \$43,676,775.09, plus per diem interest accruing from and including January 1, 2005, through closing or June 7, 2005, whichever is later (“FCC Direct Payment”).²¹

7. In the Applications, the Applicants argue that the assignment of spectrum from Urban Comm to Verizon Wireless is the public interest and will not adversely affect competition in the markets subject to the assignment of licenses.²² Moreover, the Applicants request that the Commission, as part of

¹⁵ Applications, Exhibit 1 at 4-5.

¹⁶ ULS File No. 0001978620 (filed Dec. 20, 2004).

¹⁷ ULS File No. 0001978782 (filed Dec. 20, 2004) (“SunCom Application”).

¹⁸ *Id.*

¹⁹ A copy of the settlement agreement between Urban Comm, Urban Comm MA, and Urban Comm LP and the Commission is included with the Applications as Exhibit 8 (“Settlement Agreement”).

²⁰ *See In re Urban Communicators PCS Ltd. Partnership, et al.*, Nos. 98 B 47996, 98 B 47997, 98 B 10086 (REG) (Bankr. S.D.N.Y. Apr. 4, 2005) (approving and authorizing terms and conditions of the proposed settlement agreement with the Commission).

²¹ Applications, Exhibit 1 at 12. *See also* Settlement Agreement at ¶ 3.

²² Applications, Exhibit 1 at 6-12.

its approval of the Applications, either grant waivers of sections 1.2111 and 24.714 of the Commission's rules or "explicitly state that delivery of the FCC Direct Payment as contemplated in the [Purchase Agreement] ... constitutes full payment, and satisfies all conditions, required under Sections 1.2111 and 24.714."²³ The Applicants acknowledge that, because Verizon Wireless does not qualify for installment financing, the Commission's rules require that the outstanding balance, unpaid interest, and any late fees be paid in full by the licensee prior to assignment of the licenses to non-eligible entities.²⁴ Specifically with regard to the three 30 megahertz C block licenses to be assigned to Verizon Wireless, the Applicants request a waiver of section 1.2111 to the extent that the FCC Direct Payment does not satisfy Urban Comm's payment obligation.²⁵

8. With respect to the partial assignment (i.e., disaggregation) of the remaining seven licenses in the proposed transaction, the Applicants acknowledge that, under section 24.714, the outstanding balance – including principal, unpaid interest, and late fees – owed for licenses under installment financing is apportioned between the licensee (i.e., Urban Comm) and the disaggregatee (i.e., Verizon Wireless).²⁶ The Applicants argue that application of the FCC Direct Payment to the outstanding balance for the seven disaggregated licenses should fully satisfy the Applicants' payment obligations under section 24.714.²⁷ On this basis, the Applicants claim that no waiver of the full payment provisions of that rule is necessary.²⁸ Nonetheless, in the event that the Commission determines that the FCC Direct Payment does not satisfy the payment obligations of both Verizon Wireless and Urban Comm for the disaggregated spectrum, the Applicants request a limited waiver of section 24.714.²⁹

9. In addition to the request for waiver of sections 1.2111 and 24.714 with regard to the Applicants' payment obligations, the Applicants also request a waiver of the timing provisions in section 24.714(c) of the Commission's rules so that they may consummate the proposed transactions as set forth in the Purchase Agreement.³⁰ Section 24.714(c)(2)(ii) requires a partitionee or disaggregatee to pay its apportioned payment obligation within 30 days of the public notice conditionally granting the partial assignment application.³¹ The Applicants request that the Commission waive the timing provision in section 24.714(c)(2)(ii) to allow for the FCC Direct Payment to be made on the date of consummation, which, under the Purchase Agreement, will occur beyond the 30 days required under the rule.³²

10. The Wireless Telecommunications Bureau placed the Applications on public notice on April 8, 2005.³³ No oppositions or other comments were filed in response to the public notice.

²³ *Id.* at 12.

²⁴ *Id.* at 12-13.

²⁵ *Id.* at 13.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ 47 C.F.R. § 24.714(c)(2)(ii).

³² Applications, Exhibit 1 at 13.

³³ "Urban Comm-North Carolina, Inc., SunCom Wireless, Inc., and Cellco Partnership Seek FCC Consent to the Transfer of Control and Assignment of Broadband Licenses," WT Docket No. 05-169, *Public Notice*, 20 FCC Rcd 7652 (WTB 2005). The public notice also sought comment on the SunCom Application. *Id.*

III. DISCUSSION

A. Public Interest Determination in Accordance with Section 310(d)

11. In considering an application for the assignment of licenses, the Commission must determine, pursuant to Section 310(d) of the Communications Act, whether the Applicants have demonstrated that the proposed assignment of licenses will serve the public interest, convenience, and necessity.³⁴ The legal standards that govern our public interest analysis require that we weigh the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.³⁵ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act, the Commission's rules, and federal communications policy.³⁶ Our public interest analysis considers the likely competitive effects of the proposed transaction and whether such assignments raise significant anticompetitive concerns.³⁷ In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed assignment of the licenses.³⁸

12. As a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and assign licenses under Section 310(d) of the Act and the Commission's rules.³⁹ As a general rule, the Commission does not re-evaluate the qualifications of assignors unless

³⁴ 47 U.S.C. § 310(d).

³⁵ See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21543 ¶ 40 (2004) ("*Cingular-AT&T Wireless Order*"); 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, WT Docket 03-217, *Memorandum Opinion and Order*, 19 FCC Rcd 2570, 2580-81 ¶ 24 (2004) ("*NextWave-Cingular Order*"); General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, MB Docket No. 03-124, *Memorandum Opinion and Order*, 19 FCC Rcd 473, 483 ¶ 15 (2004) ("*GM-News Corp. Order*"); WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26492 ¶ 12 (2003) ("*WorldCom Order*"); VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9789 ¶ 17 (2001) ("*Deutsche Telekom-VoiceStream Order*"); Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, 14046 ¶ 22 (2000) ("*Bell Atlantic-GTE Order*"); Applications to Assign Wireless Licenses from WorldCom Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., WT Docket No. 03-203, *Memorandum Opinion and Order*, 19 FCC Rcd 6232, 6241 ¶ 23 (WTB, MB 2004) ("*Nextel-WorldCom Order*"); Global Crossing LTD. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, IB Docket No. 02-286, *Order and Authorization*, 18 FCC Rcd 20301, 20315 ¶ 17 (IB, WTB, WCB 2003) ("*Global Crossing Order*").

³⁶ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40; *NextWave-Cingular Order*, 19 FCC Rcd at 2581 ¶ 24; *GM-News Corp. Order*, 19 FCC Rcd at 484 ¶ 16; *Nextel-WorldCom Order*, 19 FCC Rcd at 6241 ¶ 23; Applications of TeleCorp PCS, Inc., Tritel, Inc., and Indus, Inc., WT Docket No. 00-130, *Memorandum Opinion and Order*, 16 FCC Rcd 3716, 3721-22 ¶ 12 (WTB 2000) ("*TeleCorp-Tritel Order*").

³⁷ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544-45 ¶ 42; *NextWave-Cingular Order*, 19 FCC Rcd at 2581 ¶ 24; *WorldCom Order*, 18 FCC Rcd at 26492 ¶ 12; *Nextel-WorldCom Order*, 19 FCC Rcd at 6241 ¶ 23; *Global Crossing Order*, 18 FCC Rcd at 20315-16 ¶ 17.

³⁸ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶¶ 40-41; *NextWave-Cingular Order*, 19 FCC Rcd at 2581 ¶ 24; *WorldCom Order*, 18 FCC Rcd at 26492-93 ¶ 12; *Nextel-WorldCom Order*, 19 FCC Rcd at 6241-42 ¶ 23; *Global Crossing Order*, 18 FCC Rcd at 20316 ¶ 17.

³⁹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44; *NextWave-Cingular Order*, 19 FCC Rcd at 2581 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd at 26493 at ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd at 9790 ¶ 19; *Nextel-*

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issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁴⁰ As a required part of our public interest analysis, however, Section 310(d) requires the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.⁴¹ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁴² as well as conduct that takes place outside of the Commission.⁴³

13. As stated above, the Commission normally does not re-evaluate the qualifications of an assignor. Here, the qualifications of the assignor have not been challenged, and we see no reason to reevaluate the qualifications of Urban Comm in this proceeding. Similarly, no issues have been raised with respect to the basic qualifications of Verizon Wireless, as assignee. Thus, we find no reason to reevaluate the qualifications of Verizon Wireless at this time.⁴⁴

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WorldCom Order, 19 FCC Rcd at 6242 at ¶ 24; *Global Crossing Order*, 18 FCC Rcd at 20316 ¶ 18; *Verizon-Northcoast Order*, 18 FCC Rcd 6490, 6492 ¶ 5.

⁴⁰ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44; *NextWave-Cingular Order*, 19 FCC Rcd at 2581-82 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd at 26493-94 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd at 9790 ¶ 19; Applications of SBC Communications Inc. and BellSouth Corporation, WT Docket No. 00-81, *Memorandum Opinion and Order*, 15 FCC Rcd 25459, 25465 ¶ 14 (2000) (“*SBC-BellSouth Order*”); *Nextel-WorldCom Order*, 19 FCC Rcd at 6242 at ¶ 24; *Global Crossing Order*, 18 FCC Rcd at 20316 ¶ 18; *Verizon-Northcoast Order*, 18 FCC Rcd at 6492 ¶ 5; *TeleCorp-Tritel Order*, 18 FCC Rcd at 6492 ¶ 5. See also Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee’s basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

⁴¹ See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44; *NextWave-Cingular Order*, 19 FCC Rcd at 2582 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd at 26494 ¶ 13; *SBC-BellSouth Order*, 15 FCC Rcd at 25465 ¶ 14; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14227 ¶ 429; *Nextel-WorldCom Order*, 19 FCC Rcd at 6242 at ¶ 24.

⁴² See *WorldCom Order*, 18 FCC Rcd at 26494 ¶ 13. The Commission will consider any violation of any provision of the Act, or of the Commission’s rules or policies, as predictive of an applicant’s future truthfulness and reliability and, thus, as having a bearing on an applicant’s character qualifications. *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14227-28, ¶ 429; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

⁴³ See *WorldCom Order*, 18 FCC Rcd at 26494 ¶ 13. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd at 14227-28 ¶ 429.

⁴⁴ The indirect, non-controlling interest of Vodafone, a United Kingdom company, in Verizon Wireless has been previously approved by the Commission under Section 310(b)(4) of the Communications Act. See *Vodafone AirTouch, Plc, and Bell Atlantic Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16514 ¶ 19 (WTB and IB 2000); International Authorizations Granted, *Public Notice*, Rpt. No. TEL-00174, 15 FCC Rcd 116 (IB 1999); *AirTouch Communications, Inc. and Vodafone Group, Plc., Memorandum Opinion and Order*, 14 FCC Rcd 9430, 9434 ¶ 9 (WTB 1999). The Applicants state that no changes have occurred in Verizon Wireless’s foreign ownership since the Commission issued these rulings. See Applications, Exhibit 1 at 3. Accordingly, we find that the Applications raise no new foreign ownership issues and extend the previous rulings to the licenses being assigned here. See *Verizon-Northcoast*, 18 FCC Rcd at 6492 n.15.

14. When evaluating the likely competitive effects and public interest benefits of a proposed transaction, the Commission performs a case-by-case review of the transaction in order to fulfill the Commission's statutory mandate to promote and enhance competition in the relevant market, ensure diversity of license holdings, accelerate private sector deployment of advanced services, and manage the spectrum in the public interest.⁴⁵ In this case, we analyze the effects of the transaction on the mobile telephony services product market. We define the mobile telephony services product market as consisting of all commercially available two-way, mobile voice and data services providing access to the public switched telephone network via terrestrial systems.⁴⁶ These services are currently provided by cellular, broadband PCS, and Specialized Mobile Radio licensees.⁴⁷

15. As noted above, the Applicants propose the partial or full assignment of ten C block broadband PCS licenses. Specifically, Verizon Wireless is to acquire: 10 megahertz of broadband PCS spectrum in the Burlington, NC BTA (BTA062) and Raleigh-Durham, NC BTA (BTA368); 20 megahertz of broadband PCS spectrum in the Goldsboro-Kinston, NC BTA (BTA165), Greenville-Washington, NC BTA (BTA176), New Bern, NC BTA (BTA316), Roanoke Rapids, NC BTA (BTA377), and Rocky Mount-Wilson, NC BTA (BTA382); and 30 megahertz of broadband PCS spectrum in the Fayetteville-Lumberton, NC BTA (BTA141), the Jacksonville, NC BTA (BTA214), and the Wilmington, NC BTA (BTA478).⁴⁸ Verizon Wireless currently holds spectrum in the Burlington, Fayetteville-Lumberton, Greenville-Washington, Raleigh-Durham, Roanoke Rapids, and Rocky Mount-Wilson BTAs.⁴⁹ Verizon Wireless maintains that, post-transaction, it will hold between 10 megahertz and 55 megahertz of spectrum in the BTAs listed above.⁵⁰

16. The Applicants state that this transaction will serve the public interest in four principal ways.⁵¹ First, it will give Verizon Wireless the spectrum capacity it needs to provide voice service to new and existing subscribers.⁵² Second, the additional spectrum will enable Verizon Wireless to deploy its wireless broadband data service more rapidly and more broadly.⁵³ Third, the transaction will enable Verizon Wireless to operate more efficiently.⁵⁴ Fourth, the transaction will increase the spectrum used to

⁴⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41; *GM-News Corp. Order*, 19 FCC Rcd at 483-4 ¶ 16; *Nextel-WorldCom Order*, 19 FCC Rcd at 6244 ¶ 29; see also 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22696 ¶ 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)).

⁴⁶ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,553-64 ¶¶ 60-94; *NextWave-Cingular Order*, 19 FCC Rcd at 2583 ¶ 29; *CenturyTel Wireless, Inc. and CenturyTel, Inc.*, WT Docket No. 02-325, *Memorandum Opinion and Order*, 18 FCC Rcd 1260, 1263 ¶ 10 (2003) ("*CenturyTel Order*"); *Applications of Chadmoore Wireless Group, Inc. and Various Subsidiaries of Nextel Communications, Inc.*, WT Docket No. 01-193, *Memorandum Opinion and Order*, 16 FCC Rcd 21105, 21110 ¶ 14 (2001) ("*Nextel-Chadmoore Order*"); 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 Commercial Mobile Services, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597, 20611-12 ¶¶ 31-33 (2004) ("*Ninth Annual CMRS Competition Report*").

⁴⁷ See *Ninth Annual CMRS Competition Report* 19 FCC Rcd at 20611-12, 20632 ¶ 33, 86; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21553 ¶ 60; *NextWave-Cingular Order*, 19 FCC Rcd at 2584 ¶ 29; *CenturyTel Order*, 18 FCC Rcd at 1263 ¶ 10; *Nextel-Chadmoore Order*, 16 FCC Rcd at 21110 ¶ 14.

⁴⁸ See Applications, Exhibit 1 at 4-5.

⁴⁹ Applications, Exhibit 4.

⁵⁰ Applications, Exhibit 1 at 2, 10-11.

⁵¹ *Id.* at 6.

⁵² *Id.* at 6-7.

⁵³ *Id.* at 7-8.

⁵⁴ *Id.* at 8-9.

provide wireless services to consumers and will facilitate the successful resolution of bankruptcy proceedings involving Urban Comm, Urban Comm MA, and Urban Comm LP.⁵⁵ The Applicants further argue that the “transaction will have no countervailing adverse effect on competition.”⁵⁶ We do not find that this transaction will result in any competitive harms and further we find that the proposed transaction is in the public interest as it will allow Verizon Wireless to expand its footprint into new counties and enhance its offerings in those areas in which it already provides service.

B. Requests for Waiver

17. We next turn to our determination regarding the Applicants’ waiver requests. For the reasons articulated below, we find that the Applicants have satisfied the Commission’s standard for waiver to the extent described herein.⁵⁷ Therefore, we grant Urban Comm a limited waiver of the full payment provisions of sections 1.2111 and 24.714 of the Commission’s rules and we grant Verizon Wireless a waiver of the timing provisions of section 24.714 so that they may consummate the proposed transaction as set forth in the Purchase Agreement.⁵⁸

18. Sections 1.2111(c) and 24.714(c) of the Commission’s rules govern the assignment of broadband PCS licenses financed under the Commission’s installment payment program.⁵⁹ Although both rules are intended to prevent unjust enrichment, they impose the obligation to pay the outstanding debt on different parties depending on whether the assignment is full or partial (i.e., a partition of the market or disaggregation of spectrum). Under section 1.2111(c), the licensee must pay on or before consummation the entire outstanding installment debt associated with the licenses that it wishes to fully assign to non-eligible parties. Under section 24.714(c), the outstanding balance owed by the licensee (including accrued and unpaid interest) is apportioned between the licensee and the disaggregatee, with each party being responsible for its proportionate share.⁶⁰ As the Commission found in the *NextWave-Cingular Order*,⁶¹ section 24.714 does not anticipate that the disaggregatee will be responsible for paying more than its *pro rata* portion of the unpaid principal and two quarters of interest and late fees.⁶² Thus, in the instant transaction, in addition to its proportionate share of the entire outstanding principal obligation owed for the disaggregated licenses, Verizon Wireless is required to pay an apportioned share of two quarters of accrued and unpaid interest and late fees associated with that outstanding principal. All interest and any late fees above this amount which is owed to the Commission for the disaggregated spectrum that is assigned to Verizon Wireless remain the obligation of Urban Comm, and, as discussed in detail below, are included in the limited waiver of section 24.714 that we grant to Urban Comm. Accordingly, Verizon Wireless’s payment obligation for the seven disaggregated C block licenses

⁵⁵ *Id.* at 9.

⁵⁶ *Id.* at 9-10.

⁵⁷ 47 C.F.R. § 1.925.

⁵⁸ 47 C.F.R. §§ 1.2111, 24.714.

⁵⁹ 47 C.F.R. §§ 1.2111, 24.714.

⁶⁰ *NextWave-Cingular Order*, 19 FCC Rcd at 2568-69 ¶ 38. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area. See 47 C.F.R. § 24.714(c).

⁶¹ *NextWave-Cingular Order*, 19 FCC Rcd at 2568-69 ¶ 38.

⁶² *Id.* The Commission reached this conclusion based on the notion that section 24.714 did not contemplate that interest and late fees could accrue and go unpaid for longer than two quarters without the license automatically canceling for failure to pay under section 1.2110(g)(4)(iv). *Id.*

included in the Applications is at most \$20.1 million.⁶³ Thus, applying the FCC Direct Payment (which is approximately \$43.6 million) to this obligation fully satisfies Verizon Wireless' payment responsibilities. Therefore, we find that Verizon Wireless does not require a waiver of the full payment provision of section 24.714.

19. We now turn to Urban Comm's payment obligations. First, with respect to the seven disaggregated licenses, Urban Comm, as we noted above, is obligated pursuant to section 24.714 to pay all interest and any late fees beyond that owed by Verizon Wireless for the spectrum that is to be assigned to Verizon Wireless. Second, with respect to the proposed full assignment of the three licenses, Urban Comm is required by section 1.2111 to pay the full amount of the remaining debt, the accrued interest, and any late fees.⁶⁴ We note that, after subtracting from the FCC Direct Payment the maximum amount that Verizon Wireless could owe for the disaggregated C block licenses, the remainder (approximately \$23.5 million) is sufficient to fully satisfy Urban Comm's outstanding principal for the three licenses it proposes to assign under section 1.2111. However, what remains of the FCC Direct Payment thereafter (i.e., the amount left after subtracting the maximum amount Verizon Wireless could owe for the disaggregated C block licenses and Urban Comm's outstanding principal for the full assignments) is insufficient to fully pay the accrued interest and any late fees that Urban Comm owes under sections 1.2111 and 24.714. Thus if we are to approve the assignment of licenses to Verizon Wireless as described in the Purchase Agreement, we must grant Urban Comm a limited waiver of the full payment provisions in sections 1.2111 and 24.714 with respect to its portion of accrued interest and any late fees.

20. As noted above, the Applicants acknowledge that the Commission's rules require licensees participating in the Commission's installment payment program to satisfy their auction-related debt obligations in order to assign, disaggregate, or transfer control of a license that is subject to installment payments to an entity that is not eligible to participate in the installment payment program.⁶⁵ The Applicants request, however, that the Commission either "explicitly state that delivery of the FCC Direct Payment[s] ... constitutes full payment, and satisfies all conditions, required under Sections 1.2111 and 24.714," or waive those rules to the extent it finds waiver is necessary to consummate the proposed transactions.⁶⁶

21. We deny the Applicants' request that the Commission should simply find that the FCC Direct Payment satisfies the payment obligations arising from sections 1.2111 and 24.714 of the Commission's rules. Consistent with the Commission's finding in the *NextWave-Cingular Order*, the existence of the Settlement Agreement does not automatically relieve the Applicants of their obligations under the Commission's rules.⁶⁷ Thus, if we are to approve the assignment of licenses to Verizon Wireless as described in the Purchase Agreement, we must grant Urban Comm a limited waiver of the full payment provisions of sections 1.2111 and 24.714.

22. As a general matter, to obtain a waiver, a party must show either that: (i) the underlying purpose of the applicable rule would not be served, or would be frustrated by its application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) the unique facts and

⁶³ This calculation is an approximate amount and includes two quarterly payments of interest based on the original principal obligation, interest, and late fees based on those payment amounts. As stated below, *see infra* para. 25, we are not in this decision reaching any determination or waiving any of our rules regarding how long or how much interest or late fees have accrued for the licenses under sections 24.714 and 1.2111 of the Commission's rules.

⁶⁴ 47 C.F.R. § 1.2111.

⁶⁵ Applications at 12-13.

⁶⁶ *Id.* at 12.

⁶⁷ *NextWave-Cingular Order*, 19 FCC Rcd at 2588-89 ¶¶ 42-43 (Commission found that approval of the transaction required waiver of the unjust enrichment rules).

circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or the applicant has no reasonable alternative.⁶⁸ We agree with the Applicants that the unique facts and circumstances of the Urban Comm bankruptcy proceeding and the Settlement Agreement render a strict application of the installment payment unjust enrichment rules to the present circumstances to be contrary to the public interest. We recognize that, without a waiver of the unjust enrichment rules, the proposed transaction, which was approved by the Bankruptcy Court, will fail, and the licenses will remain subject to the continued uncertainties inherent in the bankruptcy process. On the other hand, approval of the proposed transaction and grant of a limited waiver to Urban Comm, as described herein, serves the public interest. Specifically, grant of a limited waiver will allow this spectrum to be put into immediate use for the benefit of consumers. In the markets in which Verizon Wireless does not currently hold spectrum, the transaction will add a new competitor. In markets where it is already providing service, grant of the transaction will allow it to expand its capacity and service offerings.⁶⁹

23. Moreover, we believe that granting a limited waiver of sections 1.2111 and 24.714 to Urban Comm is consistent with the Commission's statutory obligations under Section 309(j) of the Communications Act and Commission precedent.⁷⁰ As the Applicants argue, the proposed transaction will promote the efficient use of spectrum and the rapid deployment of services for the benefit of the public.⁷¹ Such an outcome is consistent with the Commission's statutory obligation in Section 309(j)(3)(A)-(B) to promote competition and to speed the deployment of services for the benefit of the public.⁷² We are also mindful that the recovery of \$43.6 million to the benefit of the U.S. Treasury is consistent with the intent of Section 309(j)(3)(C) of the Act, "to recover for the public a portion of the value of the public spectrum resource."⁷³ As the Commission found in the *NextWave-Cingular Order*, continued litigation will only hinder the Commission's ability to recover such value.⁷⁴ The proposed assignment of licenses from Urban Comm to Verizon Wireless is an important step in ending the uncertainty surrounding the licenses as a result of the Urban Comm bankruptcy proceedings. Here, as in the case of the *NextWave* bankruptcy, it is unclear how long it would take to achieve the recovery of a portion of the value of the public spectrum resource through the bankruptcy process.⁷⁵ We therefore believe that under these unique circumstances, granting a waiver is entirely consistent with the Commission's statutory obligations in Section 309(j)(3)(C) of the Communications Act.⁷⁶

24. Additionally, we do not believe that approval of the proposed transaction and grant of a limited waiver results in any unjust enrichment as contemplated by the Commission's rules. The approval of the proposed transaction is not the type of "rapid sale of licenses acquired through the benefit

⁶⁸ 47 C.F.R. § 1.925; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Thomas Radio Co. v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972) *cert. denied*, 409 U.S. 1027, 93 S.Ct. 461 (1972).

⁶⁹ See Applications, Exhibit 1 at 6-9.

⁷⁰ 47 U.S.C. § 309(j).

⁷¹ Applications, Exhibit 1 at 6-9.

⁷² 47 U.S.C. § 309(j)(3)(A)-(B).

⁷³ 47 U.S.C. § 309(j)(3)(C).

⁷⁴ *NextWave-Cingular Order*, 19 FCC Rcd at 2589-90 ¶ 45.

⁷⁵ See *id.* In the *NextWave-Cingular Order*, the Commission further noted that there was no guarantee that the value recovered through the bankruptcy process would ultimately be any greater than that which had been negotiated through the settlement reached in the Settlement Agreement, and it was entirely possible that it could be less and could take far longer to obtain. *Id.*

⁷⁶ 47 U.S.C. § 309(j)(3)(C).

of preference policies” that the Commission’s anti-trafficking rules were designed to prevent.⁷⁷ While we recognize that the acceptance of the FCC Direct Payment results in less than full payment under the Commission’s rules and would be otherwise impermissible under less unique circumstances, on balance, we conclude that the present circumstances are similar to those the Commission considered in the *NextWave-Cingular Order*, finding in favor of the grant of a limited waiver.⁷⁸

25. In granting this limited waiver, we follow the precedent set by the Commission in the *NextWave-Cingular Order*, and do not reach any determination regarding how long or how much interest or late fees have accrued under section 1.2111 or section 24.714. Instead, because the Department of Justice executed the Settlement Agreement, on the Commission’s behalf, and has exercised its discretion under the Debt Collections and Improvement Act to grant debt forgiveness for any monies owed above the FCC Direct Payment (subject to the Commission’s necessary regulatory approvals that we have provided herein), we need not define the specific amount of the interest and late fees owed for the licenses in order to determine that the public interest will be served by a grant of a limited waiver of the full payment provisions of sections 1.2111 and 24.714 regarding those obligations. The monies remaining of the FCC Direct Payment (after fully satisfying Verizon Wireless’s obligation under section 24.714 and Urban Comm’s obligation under section 1.2111 for the outstanding principal of the three fully assigned licenses) satisfy at least a portion of the interest and any late fees owed by Urban Comm under sections 1.2111 and 24.714. The grant of a limited waiver of Urban Comm’s obligation to render the full payment owed under sections 1.2111 and 24.714 allows the transaction described in the Purchase Agreement to be consummated as the Applicants and the United States Government intended. This in turn allows for resolution of longstanding litigation with respect to the licenses included in the proposed assignment. As the Commission noted in the *NextWave-Cingular Order*, such action has significant benefits to the public.⁷⁹

26. As a final matter, we grant to Verizon Wireless a waiver of the 30-day requirement in section 24.714, so that the timing provisions described in the Purchase Agreement may apply to this transaction. In the *NextWave-Cingular Order*, the Commission allowed the parties to make their payment obligations consistent with the plan worked out between the debtor and the Department of Justice because it found that it served the public interest to have finality in the transaction.⁸⁰ We find that the public interest would likewise be served in this case and, therefore, grant Verizon Wireless a limited waiver of the timing provision of section 24.714(c) of the Commission’s rules to allow the FCC Direct Payment to be made on the date of consummation of the sale in accordance with the Purchase Agreement.

IV. CONCLUSION

27. Pursuant to our review under Section 310(d) of the Communications Act, we find that approval of the Applications will serve the public interest, convenience, and necessity.⁸¹ In addition, we grant Urban Comm a waiver of the full payment provision of sections 1.2111 and 24.714 of the Commission’s rules, as described herein, and a waiver to Verizon Wireless of the timing requirements of section 24.714 in order to allow the transaction to be consummated as set forth in the Purchase Agreement.

⁷⁷ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-235, *Second Report and Order*, 9 FCC Rcd 2348, 2394 ¶ 258 (1994).

⁷⁸ *NextWave-Cingular Order*, 19 FCC Rcd at 2590 ¶ 46.

⁷⁹ *Id.*

⁸⁰ *Id.* at 2590-91 ¶ 47.

⁸¹ 47 U.S.C. § 310(d).

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to authority granted in Sections 4(i), 309(j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), 310(d), the applications seeking approval for the assignment of certain broadband PCS C block licenses from Urban Comm to Verizon Wireless are GRANTED.

29. Additionally, to the extent described herein, we GRANT a limited waiver to Urban Comm of the full payment provisions of sections 1.2111 and 24.714 of the Commission's rules, 47 C.F.R. §§ 1.2111, 24.714.

30. Additionally, to the extent described herein, we GRANT a limited waiver to Verizon Wireless of the timing requirements of section 24.714, 47 C.F.R. § 24.714, to permit the consummation of the assignment after the 30 days required under the rule.

31. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel
Acting Chief
Wireless Telecommunications Bureau