

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. 0002668775 and 0002668830
Carolina, Inc., Debtor-in-Possession, to Cellco)	
Partnership d/b/a Verizon Wireless)	

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 2006

Released: December 29, 2006

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us two 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 assignment of six broadband Personal Communications Services (“PCS”) licenses (the “Applications”).¹ Each of the Applications also includes a request for waiver of sections 1.2111 and 24.714 of the Commission’s rules² to the extent necessary to allow for consummation of the assignment of licenses from Urban Comm to Verizon Wireless.³ As discussed fully below, pursuant to our review under Section 310(d) of the Communications Act of 1934, as amended (the “Communications Act”), we conclude that approval of the Applications will serve the public interest, convenience, and necessity.⁴ In addition, we grant to Urban Comm a limited waiver of the full payment provisions of section 1.2111 of the Commission’s rules,⁵ as described herein. We also find that a waiver of full payment provisions and timing requirements of section 24.714 of the Commission’s rules is not necessary to consummate the proposed transaction.⁶

¹ ULS File Nos. 0002668775 and 0002668830. Both applications were filed on June 30, 2006. Because the exhibits to both applications are identical, we refer to both collectively as the Applications. Specifically, Verizon would acquire 10 megahertz of broadband PCS C and F block spectrum in the following BTAs: Raleigh-Durham, NC (BTA368), Charlottesville, VA (BTA075), Fredericksburg, VA (BTA156), Harrisonburg, VA (BTA183), Richmond-Petersburg, VA (BTA374), and Roanoke, VA (BTA376). See Applications, Exhibit 1 at 3-4.

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 10-12.

⁴ 47 U.S.C. § 310(d).

⁵ 47 C.F.R. § 1.2111.

⁶ The ten MHz of spectrum remaining in KNL372 is being assigned to Verizon in this transaction. The original 30 MHz C block license, KNL372, was disaggregated in two earlier transactions. Ten MHz of the spectrum, call sign WQDD240, was assigned to Verizon. See ULS file no. 0001994620. Another ten MHz was assigned to Cricket Licensee (Reaction), Inc., call sign WQGE359. See ULS file no. 0002526701.

II. BACKGROUND

A. Description of the Applicants

2. Urban Comm was the winning bidder of ten broadband PCS C block licenses in Auction No. 5,⁷ and thirteen broadband PCS F block licenses in Auction No. 11.⁸ Urban Comm financed payment for these licenses through the Commission's installment payment program.⁹ 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").¹⁰ In 1998, Urban Comm, Urban Comm MA, and Urban Comm LP (collectively, the "Debtors") initiated Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court").¹¹ These bankruptcy proceedings remain pending.¹²

⁷ Call Signs KNL372, KNL373, KNL374, KNL375, KNL376, KNL377, KNL378, KNL379, KNL380, KNL381. The Commission conditionally granted these broadband PCS C block licenses to Urban Comm on 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).

⁸ Call Signs KNL239, KNL707, KNL708, KNL709, KNL710, KNL711, KNL712, KNL713, KNL714, KNL715, KNL716, KNL717, and KNL718. 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).

⁹ 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).

¹⁰ See Applications, Exhibit 1 at 1.

¹¹ 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).

¹² Prior to the current Application, Urban Comm filed four other applications for Commission consent as part of its bankruptcy reorganization. One application sought Commission consent to a *pro forma* transfer of control of Urban Comm from Urban Comm MA to Urban Comm LP, through merging Urban Comm MA into Urban Comm. The Commission granted its consent to this *pro forma* transfer of control on June 3, 2005. A second application sought Commission consent to the full or partial assignment of ten broadband PCS licenses from Urban Comm to Verizon Wireless. The Wireless Telecommunications Bureau ("Bureau"), acting under delegated authority, granted consent to the assignment of licenses from Urban Comm to Verizon Wireless on June 2, 2005. The parties consummated the assignment of licenses to Verizon Wireless on July 13, 2005. On March 20, 2006, Urban Comm and Cricket Licensee (Reauction), Inc. ("Cricket") filed two applications for the full or partial assignment of thirteen PCS C and F block licenses. The Bureau, acting under delegated authority, granted consent to the assignment of licenses from Urban Comm to Cricket on September 19, 2006. The parties consummated the assignment of licenses to Cricket on November 30, 2006.

3. Celco 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.¹³ 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.¹⁴ According to the Applicants, Vodafone continues to hold the same indirect ownership interests in Verizon Wireless that it held when the Commission approved its interest as a foreign corporation.¹⁵ In addition, the Applicants state that, under the proposed assignment of licenses, Verizon Wireless would hold 45 megahertz or less in the six Basic Trading Areas (“BTAs”) in which it will acquire spectrum from Urban Comm.¹⁶

B. Proposed Transaction

4. Urban Comm and Verizon Wireless entered into an Agreement to Purchase FCC Licenses, dated June 16, 2006 (“Purchase Agreement”).¹⁷ On August 9, 2006, the Bankruptcy Court approved the Purchase Agreement.¹⁸ 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 six broadband PCS C and F block licenses, free and clear of any encumbrances.¹⁹ Consequently, Urban Comm and Verizon Wireless filed the Applications seeking Commission consent to the assignment of six C and F block licenses.

5. On March 14, 2005, the Debtors entered into an agreement with the Commission regarding the installment payment obligations incurred by Urban Comm with respect to its PCS C and F block licenses (“Settlement Agreement”).²⁰ The Bankruptcy Court approved the Settlement Agreement on April 4, 2005.²¹ The Settlement Agreement obligates Urban Comm to require that the purchaser (in this case Verizon Wireless) deliver to the Commission a portion of the purchase price in satisfaction of the Commission’s claims related to the licenses.²² Specifically, under the Settlement Agreement, which contemplates that Urban Comm would seek the Commission’s regulatory approval to assign its licenses to a third party, Verizon Wireless will pay directly to the Commission a mutually agreed-to amount defined as an “Alternative Cash Payment.”²³ On August 9, 2006, as required by the terms of the

¹³ See Applications, Exhibit 1 at 2-3 and Exhibit 2.

¹⁴ 47 U.S.C. § 310(b)(4). See Applications, Exhibit 1 at 2, citing, e.g., Northcoast Communications, LLC and Celco Partnership d/b/a Verizon Wireless, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd 6490 (CWD 2003) (“Northcoast Order”).

¹⁵ Applications, Exhibit 1 at 3. See also Applications, Exhibit 2.

¹⁶ Applications, Exhibit 1 at 10-11. See also Applications, Exhibit 4.

¹⁷ Applications, Exhibit 1 at 3.

¹⁸ Applications, Exhibit Bankruptcy Court Order.

¹⁹ Applications, Exhibit 1 at 4.

²⁰ A copy of the Settlement Agreement and the exhibits to the Settlement Agreement are attached to ULS file no. 0002668775.

²¹ 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).

²² Applications, Exhibit 1 at 4; Settlement Agreement at ¶ 4(d) and Exhibit B to the Settlement Agreement.

²³ The Applications refer to the negotiated payment amount as the “FCC Direct Payment.” Applications, Exhibit 1 at 4 and 10-12. The Settlement Agreement refers to the negotiated payment amount as the “Alternative Cash Payment.” Settlement Agreement at ¶ 1(e), Exhibit B. As explained in the Applications and the Settlement Agreement, the amount of the Alternative Cash Payment is established by the terms of the Settlement Agreement

(continued....)

Settlement Agreement, the Bankruptcy Court issued an Order approving the sale of certain licenses from Urban Comm to Verizon Wireless, subject to the necessary Commission regulatory approvals.²⁴

6. In the Applications, the Applicants argue that the assignment of spectrum from Urban Comm to Verizon Wireless is in the public interest and will not adversely affect competition in the markets subject to the assignment of licenses.²⁵ Moreover, the Applicants request that the Commission, as part of 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."²⁶ The Applicants acknowledge that Verizon Wireless does not qualify for installment financing and that 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.²⁷ Therefore, the Applicants request a waiver of section 1.2111 to the extent that the Alternative Cash Payment does not completely satisfy Urban Comm's payment obligation.²⁸

7. With respect to the one C block license in the proposed transaction, the Applicants acknowledge that in transactions involving disaggregation, 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).²⁹ Therefore, the Applicants request a limited waiver of section 24.714 to the extent the Alternative Cash Payment may be less than the required payment. In addition, 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 Alternative Cash 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

8. The Bureau placed the Applications on public notice on August 23, 2006.³³ No oppositions or other comments were filed in response to the public notice.

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and represents a negotiated payment amount owed for each license as well as a per diem interest rate for each license accruing from and including January 1, 2005 through and including the Date of the Closing of the transaction. *Id.* We will refer to this amount herein as the Alternative Cash Payment.

²⁴ 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. August 9, 2006) (approving and authorizing terms and conditions of the proposed transaction).

²⁵ Applications, Exhibit 1 at 5-10.

²⁶ *Id.* at 11.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* At 11-12.

³¹ 47 C.F.R. § 24.714(c)(2)(ii).

³² Applications, Exhibit 1 at 11-12.

³³ See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event (continued....)

III. DISCUSSION

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

9. In considering an application for an assignment of licenses, the Commission must determine, pursuant to Section 310(d) of the Communications Act, whether the Applicants have demonstrated that the proposed assignments will serve the public interest, convenience, and necessity.³⁴ 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.³⁵ If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³⁶ The Commission then employs a balancing test weighing any 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.³⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.³⁸

10. As a threshold matter, the Commission must determine whether the parties meet the

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Applications Accepted for Filing, *Public Notice*, Report No. 2625 (rel. Aug. 23, 2006).

³⁴ 47 U.S.C. § 310(d).

³⁵ See, e.g., Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-96, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 06-167, at 9-10 ¶13 (rel. Nov 13, 2006) (“*DoCoMo-Guam Cellular Order*”); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, FCC 06-146, at 10 ¶ 16 (rel. Oct. 2, 2006) (“*ALLTEL-Midwest Wireless Order*”); Nextel Partners, Inc. and Sprint Nextel Corporation Applications for Approval of Transfer of Control, File Nos. 0002444650, *et al.*, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) (“*Sprint-Nextel-Nextel Partners Order*”); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶16 (2005) (“*SBC-AT&T Order*”); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442-43 ¶ 16 (2005) (“*Verizon-MCI Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶20 (2005) (“*Sprint-Nextel Order*”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶17 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542-43 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

³⁶ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 10 ¶ 13; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶16; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

³⁷ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 10 ¶ 13; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

³⁸ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 10 ¶ 13; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 10 ¶16; *Sprint-Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43, ¶ 40.

requisite qualifications to hold and assign licenses under Section 310(d) of the Communications Act and the Commission's rules.³⁹ As a general rule, the Commission does not re-evaluate the qualifications of assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing.⁴⁰ As a required part of our public interest analysis, however, Section 310(d) obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.⁴¹ 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, as assignee. Thus, we find no reason to reevaluate the qualifications of Verizon at this time.⁴²

11. 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.⁴³ 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

³⁹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *DoCoMo-Guam Cellular Order*, FCC 06-167, at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁴⁰ See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. 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., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 11 ¶ 14; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 11 ¶17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁴² 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.

⁴³ See e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, at 12 ¶ 18; *ALLTEL-Midwest Wireless Order*, FCC 06-146, at 12 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd. at 13064-5 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41; *GM-News Corp. Order*, 19 FCC Rcd at 483-84 ¶ 16; *Nextel-WorldCom Order*, 19 FCC Rcd at 6244 ¶ 29; see also 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, *Report and Order*, 16 FCC Rcd 22668, 22696 ¶ 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)).

switched telephone network via terrestrial systems.⁴⁴ These services are currently provided by cellular, broadband PCS, and Specialized Mobile Radio licensees.⁴⁵

12. As noted above, the Applicants propose the assignment of six C and F block broadband PCS licenses. Specifically, Verizon Wireless is to acquire: 10 megahertz of broadband PCS C and F block spectrum in the following BTAs: Raleigh-Durham, NC (BTA368), Charlottesville, VA (BTA075), Fredericksburg, VA (BTA156), Harrisonburg, VA (BTA183), Richmond-Petersburg, VA (BTA030), and Roanoke, VA (BTA376).⁴⁶ Verizon Wireless currently holds spectrum in all of the BTAs listed above⁴⁷ and maintains that, post-transaction, it will hold 45 MHz or less in each of the BTAs.⁴⁸

13. The Applicants state that this transaction will serve the public interest in four principal ways.⁴⁹ First, it will give Verizon Wireless the spectrum capacity it needs to provide voice service to new and existing subscribers.⁵⁰ Second, the additional spectrum will enable Verizon Wireless to deploy its wireless broadband data service more rapidly and more broadly.⁵¹ Third, the transaction will enable Verizon Wireless to operate more efficiently.⁵² Fourth, the transaction will increase the spectrum used to provide wireless services to consumers and will facilitate the successful resolution of bankruptcy proceedings involving Urban Comm, Urban Comm MA, and Urban Comm LP.⁵³ The Applicants further argue that the “transaction will add a new competitor in nine counties in two BTAs.”⁵⁴ We do not find that this transaction will result in any competitive harm 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

14. 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.⁵⁵ Therefore, we grant Urban Comm a limited waiver of the full

⁴⁴ 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*”).

⁴⁵ 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.

⁴⁶ See Applications, Exhibit 1 at 3-4.

⁴⁷ Applications, Exhibit 4.

⁴⁸ Applications, Exhibit 1 at 9.

⁴⁹ *Id.* at 5.

⁵⁰ *Id.* at 5-6.

⁵¹ *Id.* at 6.

⁵² *Id.* at 7.

⁵³ *Id.* at 7-8.

⁵⁴ *Id.* at 8.

⁵⁵ 47 C.F.R. § 1.925.

payment provisions of section 1.2111 so that the Applicants may consummate the proposed transaction as set forth in the Applications.⁵⁶ We also find that this transaction does not require a waiver of section 24.714 of the Commission's rules.⁵⁷

15. 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.⁵⁸ The Applicants argue that a waiver of these rules may be necessary because the Commission is not receiving full payment of the installment debt, which includes the outstanding principal, unpaid interest, and late fees, on the licenses that would be assigned to Verizon Wireless.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

16. No waiver of section 24.714 is required for this transaction. The C block license in the proposed transaction includes the remaining 10 MHz of spectrum for that license. On September 19, 2006, the Commission consented to the partial assignment of the C block license, KNLF372, to Cricket Licensee (Reaction), Inc.⁶¹ While the Applications were pending, on December 7, 2006, Urban Comm and Cricket Licensee (Reaction), Inc. filed a notice of consummation for that transaction.⁶² Consequently, the assignment of the remaining 10 MHz of license, KNLF372, is a full assignment to Verizon Wireless in this transaction. Therefore, a waiver of section 24.714 is not necessary to consummate this transaction.

17. Under section 1.2111, Urban Comm is required to pay the full amount of the remaining debt, the accrued interest, and any late fees.⁶³ We note that the Alternative Cash Payment as set forth in the Settlement Agreement is sufficient to fully satisfy Urban Comm's outstanding principal for the six licenses it proposes to assign under section 1.2111. However, what remains of the Alternative Cash Payment thereafter is insufficient to fully pay the accrued interest and any late fees that Urban Comm owes under section 1.2111. Thus, if we are to approve the assignment of licenses to Verizon Wireless as described in the Applications, we must grant Urban Comm a limited waiver of the full payment provisions in section 1.2111 with respect to a portion of accrued interest and any late fees.

⁵⁶ 47 C.F.R. § 1.2111.

⁵⁷ 47 C.F.R. § 24.714.

⁵⁸ 47 C.F.R. §§ 1.2111, 24.714.

⁵⁹ Application, Exhibit 1 at 11-12.

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 See ULS file no. 0002526701. See also Applications for Assignment of Licenses of Urban Comm-North Carolina, Inc., Debtor-in-Possession, to Cricket Licensee (Reaction) Inc., WT Docket No. 05-169, File Nos. 0002526701 and 0002526699, *Memorandum Opinion and Order*, DA 06-1883, 2006 WL 2689662 (WTB rel. Sep. 19, 2006).

⁶² See ULS file no. 0002840642.

⁶³ 47 C.F.R. § 1.2111.

18. 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.⁶⁴ The Applicants request, however, that the Commission either "explicitly state that delivery of the FCC Direct Payment ... 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.⁶⁵

19. We deny the Applicants' request that the Commission should simply find that the amount of the payment negotiated as a matter of settlement 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.⁶⁶ Rather, in circumstances where the implementation of a settlement agreement results in a departure from the Commission's rules, the Commission must apply the legal standard in section 1.925 of its rules to determine whether it should grant any necessary waivers. Thus, if we are to approve the assignment of licenses to Verizon Wireless as described in the Applications, we must grant Urban Comm a limited waiver of the full payment provisions of section 1.2111 pursuant to section 1.925 of the Commission's rules.

20. 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 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.⁶⁷ 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 in 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 subject to FCC regulatory review and approval, 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.⁶⁸

21. Moreover, we believe that granting a limited waiver of section 1.2111 to Urban Comm is consistent with the Commission's statutory obligations under Section 309(j) of the Communications Act and Commission precedent.⁶⁹ As the Applicants argue, the proposed transaction will promote the

⁶⁴ Applications, Exhibit 1 at 11-12.

⁶⁵ *Id.* at 12.

⁶⁶ *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).

⁶⁷ 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).

⁶⁸ *See* Applications, Exhibit 1 at 6-9.

⁶⁹ 47 U.S.C. § 309(j).

efficient use of spectrum and the rapid deployment of services for the benefit of the public.⁷⁰ 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.⁷¹ We are also mindful that the recovery of the Alternative Cash Payment 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."⁷² As the Commission found in the *NextWave-Cingular Order*, continued litigation will only hinder the Commission's ability to recover such value.⁷³ 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.⁷⁴ 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.⁷⁵

22. 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 of preference policies" that the Commission's anti-trafficking rules were designed to prevent.⁷⁶ While we recognize that the acceptance of the Alternative Cash 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.⁷⁷

23. 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. 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 Alternative Cash 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 regarding those obligations. The Alternative Cash Payment satisfies at least a portion of the interest and any late fees owed by Urban Comm under sections 1.2111. The grant of a limited waiver of Urban Comm's obligation to render the full payment owed under section 1.2111 allows the transaction described in the Applications 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

⁷⁰ Applications, Exhibit 1 at 6-9.

⁷¹ 47 U.S.C. § 309(j)(3)(A)-(B).

⁷² 47 U.S.C. § 309(j)(3)(C). Applications, Exhibit 1 at 4; Settlement Agreement at ¶ 1(e), Exhibit B.

⁷³ *NextWave-Cingular Order*, 19 FCC Rcd at 2589-90 ¶ 45.

⁷⁴ *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.*

⁷⁵ 47 U.S.C. § 309(j)(3)(C).

⁷⁶ 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).

⁷⁷ *NextWave-Cingular Order*, 19 FCC Rcd at 2590 ¶ 46.

licenses included in the proposed assignment. As the Commission noted in the *NextWave-Cingular Order*, such action has significant benefits to the public.⁷⁸

IV. CONCLUSION

24. 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.⁷⁹ In addition, we grant Urban Comm a waiver of the full payment provision of sections 1.2111 of the Commission's rules, as described herein.

V. ORDERING CLAUSES

25. 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 and F block licenses from Urban Comm to Verizon Wireless are GRANTED conditioned upon the Commission's receipt of the Alternative Cash Payment specified by the Settlement Agreement.

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

27. 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

⁷⁸ *Id.*

⁷⁹ 47 U.S.C. § 310(d).