

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

In the Matter of)	
)	
Union Telephone Company)	File No. 0003371176
)	
Cellco Partnership d/b/a Verizon Wireless)	File Nos. 0003382435, 0003382444
)	
Applications for 700 MHz Band Licenses, Auction)	
No. 73)	

MEMORANDUM OPINION AND ORDER

Adopted: November 4, 2008

Released: November 13, 2008

By the Commission: Chairman Martin and Commissioner Tate issuing separate statements; Commissioners Copps and Adelstein approving in part, concurring in part, and issuing a joint statement; and Commissioner McDowell approving in part, concurring in part, and issuing a separate statement.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order (“Order”), we review the Auction 73 Form 601 applications of Union Telephone Company (“Union Telephone”) and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and, for the reasons stated below, we find that the public interest would be served if these applications are granted, subject to effectuation of a voluntary divestiture by Verizon Wireless, as discussed below. In addition, as explained below, we grant in part a Petition to Condition

Grant (“Petition”) of Verizon Wireless’s application for seven 700 MHz C Block spectrum licenses¹ filed by Google Inc. and Google Airwaves Inc. (collectively, “Google”),² by placing the following condition on all C Block licenses: “This authorization is conditioned upon compliance with section 27.16 of the Commission’s rules.”³ In light of our actions in this Order, we direct the Wireless Telecommunications Bureau to process the above-referenced Auction 73 applications consistent with this Order and the Commission’s rules.⁴

II. BACKGROUND

A. Auction 73

2. Auction 73 offered 1,099 licenses in the 700 MHz band, involving a total of 62 megahertz located in the 698-806 MHz spectrum. The 700 MHz band licenses may be used for flexible fixed, mobile, and broadcast uses, including fixed and mobile wireless commercial services; fixed and mobile wireless uses for private, internal radio needs; and mobile and other digital new broadcast operations. These uses may include two-way interactive, cellular, and mobile television broadcasting services. The licenses offered in Auction 73 included: 176 Economic Area (“EA”) licenses (12 megahertz each) in the A Block; 734 Cellular Market Area (“CMA”) licenses (12 megahertz each) in the B Block; 176 EA licenses (6 megahertz each) in the E Block; 12 Regional Economic Area Grouping (“REAG”) licenses (22 megahertz each) in the C Block; and one nationwide license of 10 megahertz, to be used as part of the 700 MHz Public/Private Partnership, in the D Block.

3. Auction 73 began on January 24, 2008.⁵ The auction ended on March 18, 2008, with 101 bidders winning a total of 1090 licenses.⁶ The Commission released an accepted for filing public notice

¹ File No. 0003382444 (WU-REA001-C, WU-REA002-C, WU-REA003-C, WU-REA004-C, WU-REA005-C, WU-REA006-C, and WU-REA008-C) (filed April 2, 2008, amended April 14, 2008).

² Google Inc. and Google Airwaves Inc. Petition to Condition Grant (filed May 2, 2008) (“Petition”).

³ In addition to Verizon Wireless, Club 42 CM Limited Partnership, Triad 700 LLC, and Small Ventures USA, L.P. each filed a Form 601 application for C Block licenses, which are currently pending. *See* File Nos. 0003383873 (WU-REA009-C and WU-REA011-C) (filed April 3, 2008, amended April 17 and June 6 and 9, 2008); 0003382992 (WU-REA007-C and WU-REA010-C) (filed April 3, 2008, amended April 17, May 14 and 22, and July 17, 2008); and 0003382264 (WU-REA012-C) (filed April 2, 2008, amended April 10, 2008), respectively.

⁴ Verizon Wireless also filed a petition for declaratory ruling under Section 310(b)(4) of the Communications Act, as amended, 47 U.S.C. § 310(b)(4), seeking approval of the same level of indirect foreign ownership in the 700 MHz licenses for which it was the high bidder in Auction 73 as the Commission previously approved for Verizon Wireless’s other common carrier licenses. *See* File No. ISP-PDR-20071129-00016. We direct the International Bureau to process Verizon Wireless’s petition in accordance with the Commission’s foreign ownership rules and policies under Section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310.

⁵ *See* Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, AU Docket No. 07-157, *Public Notice*, 22 FCC Rcd 18141 (WTB 2007).

⁶ Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008). One of the winning bidders was a consortium, and two of its members filed individual applications as required under our rules, resulting in 102 applicants.

listing applications filed by 100 of the 102 applicants on April 22, 2008.⁷ On June 26, 2008, the Commission granted applications filed by 64 of the applicants.⁸

B. Description of Applicants

1. Union Telephone

4. Union Telephone is incorporated under Wyoming law.⁹ Union Telephone initiated its cellular division in 1990 under the name Union Cellular.¹⁰ Today, Union Cellular covers over 123,611 square miles with over 200 cell sites throughout Wyoming, Northwestern Colorado, and parts of Utah.¹¹

2. Verizon Wireless

5. Verizon Wireless, which is a general partnership headquartered in Basking Ridge, New Jersey, is the largest wireless company in the United States based on revenues¹² and the second largest wireless company based on subscribership.¹³ For fiscal year 2007, Verizon Wireless had revenues of approximately \$43.9 billion.¹⁴ Verizon Wireless provides wireless voice and data services and equipment sales across the United States.¹⁵ Verizon Wireless serves approximately 68.7 million customers throughout the United States on its wireless voice and data network.¹⁶ Verizon Wireless utilizes Code Division Multiple Access (“CDMA”) technology, along with 1xRTT, Evolution-Data Optimized (“EvDO”) and EvDO Revision A (“EvDO Rev. A”) technology for wireless broadband services,¹⁷

⁷ Wireless Telecommunications Bureau Announces That Applications for 700 MHz Band Licenses Are Accepted for Filing, *Public Notice*, 23 FCC Rcd 6722 (WTB 2008).

⁸ Wireless Telecommunications Bureau Grants 700 MHz Band Licenses, *Public Notice*, 23 FCC Rcd 10134 (WTB 2008).

⁹ See Union Telephone Company Customer Service – About Us, *available at* <http://www.unionwireless.com/CustomerService.aspx?page=Customer-Service&subpage=About-Us> (last visited Oct. 2, 2008).

¹⁰ *Id.*

¹¹ Union Wireless, *available at* <http://www.unionwireless.com/Cellular.aspx?page=Cellular> (last visited Oct. 2, 2008).

¹² Verizon Communications Inc., Form 10-Q, at 1 (filed Jul. 29, 2008) (“Verizon 10-Q”), *available at* <http://www.secinfo.com/d14D5a.t4sHk.htm> (last visited Oct. 2, 2008).

¹³ See 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, *Twelfth Report*, 23 FCC Rcd 2241, 2256 Chart 1 (2008) (“*Twelfth Competition Report*”) (providing a chart of 2006 subscriber information).

¹⁴ See Verizon Communications, 2007 Annual Report, at 2, 20 (“Verizon Annual Report”), *available at* http://investor.verizon.com/financial/quarterly/pdf/07_annual_report.pdf (last visited Oct. 2, 2008); Verizon Wireless, Press Kit, at 2 (Aug. 17, 2008) (“Verizon Wireless Press Kit”), *available at* http://news.vzw.com/pdf/Verizon_Wireless_Press_Kit.pdf (last visited Oct. 2, 2008); Verizon Wireless, About Us, Overview, <http://aboutus.vzw.com/aboutusoverview.html> (“Verizon Wireless Overview”) (last visited Oct. 2, 2008); Verizon, Investor Relations, Business Units, Domestic Wireless, <http://investor.verizon.com/business/wireless.aspx> (“Verizon Domestic Wireless”) (last visited Oct. 2, 2008).

¹⁵ Verizon Domestic Wireless.

¹⁶ See Verizon Wireless Press Kit at 2; Verizon Domestic Wireless at 1; Verizon Wireless Overview.

¹⁷ Verizon Wireless provided service using analog technology, but it terminated its analog AMPS cellular service on February 18, 2008. See http://support.vzw.com/faqs/Wireless%20Issues/analog_retirement.html (last visited Oct. 2, 2008).

operating on 800 MHz cellular and 2 GHz Personal Communications Services (“PCS”) spectrum.¹⁸ Its digital network covers a total aggregate population (“POPs”) of approximately 265 million¹⁹ and provides service in 49 of the top 50 markets in the United States.²⁰

6. Verizon Wireless is ultimately owned by Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”), each through a series of intermediate companies.²¹ Verizon and Vodafone hold a 55 and 45 percent indirect interest, respectively, in the partnership.²² Verizon Wireless’s Board of Representatives is comprised of nine members – five designated by Verizon and four by Vodafone.²³ Verizon holds majority control of the Board and has affirmative control of Verizon Wireless and its subsidiaries.²⁴

C. Petition to Condition Grant

7. On May 2, 2008, Google filed its Petition, requesting that the Commission issue an order specifying that, under section 27.16 of the Commission’s rules²⁵ (the “open platform” rule), Verizon Wireless, which was a winning bidder for seven of the 12 C Block licenses offered in Auction 73, is not able to limit applications on any devices to be used on licensed C Block spectrum, including those that Verizon Wireless provides to its own customers for use on the company’s C Block spectrum.²⁶ Google further requests that we require Verizon Wireless to acknowledge and agree to comply with the terms of

¹⁸ As of the end of the second quarter of 2008, an enhanced version of EvDO – EvDO Rev A – was available to more than 256 million POPs. Verizon Wireless Press Kit at 3.

¹⁹ Verizon Wireless Press Kit at 3. Recently, Verizon Wireless entered into an agreement to acquire ALLTEL Corporation. See News Release, Verizon Wireless to Acquire ALLTEL; Will Expand Nation’s Most Reliable Wireless Network (June 5, 2008), available at <http://investor.verizon.com/print.aspx?pg=http://investor.verizon.com/news/view.aspx?NewsID=923> (last visited Oct. 2, 2008). The applications seeking consent to the transfer of control of licenses, spectrum manager and *de facto* transfer leasing arrangements, and authorizations from Atlantis Holdings LLC, which is the parent company of ALLTEL Corporation, to Verizon Wireless and requesting a declaratory ruling on foreign ownership have been filed and public comment has been sought. See Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (WTB 2008); 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 that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Order*, 23 FCC Rcd 11210 (WTB 2008) (extending pleading cycle).

²⁰ Verizon, Corporate History, Recent Verizon History, <http://investor.verizon.com/profile/history/index.aspx?tabId=1> (last visited Oct. 6, 2008).

²¹ Cellco Partnership, FCC Form 602, File No. 0003464689, Attachment – Ownership of Cellco Partnership at 1 (filed June 6, 2008) (“Cellco Form 602”); Verizon Wireless, Investors, <http://news.vzw.com/investor/index.html> (last visited Oct. 2, 2008) (stating that Verizon Wireless is not currently a reporting company under the Securities Exchange Act of 1934, does not make filings with the Securities and Exchange Commission, and does not announce earnings or other financial performance information, but instead Verizon includes information about Verizon Wireless in its earnings announcements).

²² Cellco Form 602, Attachment – Ownership of Cellco Partnership at 1; Verizon Annual Report at 26.

²³ Cellco Form 602, Attachment – Ownership of Cellco Partnership at 1.

²⁴ *Id.*

²⁵ 47 C.F.R § 27.16.

²⁶ Petition at 1, 6.

such an order as a condition of the grant of its application for seven 700 MHz Band C Block licenses.²⁷ Google claims that such a condition will ensure that Verizon Wireless understands and “stands ready” to meet its open platform obligations upon grant of its C Block licenses.²⁸ The Public Interest Spectrum Coalition (“PISC”) filed comments in support of the Petition.²⁹ Verizon Wireless filed an opposition to the Petition on May 9, 2008.³⁰ Google filed its reply on May 16, 2008.³¹

D. Voluntary Commitment of Divestiture

8. In CMA551 New Jersey 2-Ocean, grant of the Verizon Wireless Auction 73 applications would result in Verizon Wireless holding 111 megahertz of cellular, PCS, Specialized Mobile Radio (“SMR”), and 700 MHz spectrum throughout the CMA.³² Verizon Wireless has voluntarily agreed to divest ten megahertz of licensed spectrum in this CMA, and to file the necessary transfer application within six months of the Commission’s final action on the above-referenced 700 MHz applications of Verizon Wireless.³³

III. DISCUSSION

A. Competitive Analysis

9. We note that, in the context of reviewing potential competitive effects of proposed wireless transactions affecting the mobile telephony market,³⁴ the Commission’s practice is first to define the relevant product and geographic markets, then to apply an initial screen to the spectrum holdings of the applicants, and then to conduct a market-by-market analysis of the markets captured by the initial screen. Although we do not apply this standard competitive analysis to the instant auction applications of Verizon Wireless and Union Telephone, we note that we intend to apply prospectively our standard competitive analysis to spectrum acquired via auction as well as via transactions. In that regard, we find

²⁷ Petition at 1. See FCC File No. 0003382444 (WU-REA001-C, WU-REA002-C, WU-REA003-C, WU-REA004-C, WU-REA005-C, WU-REA006-C, and WU-REA008-C).

²⁸ Petition at 5.

²⁹ Comments of the Public Interest Spectrum Coalition (filed May 9, 2008) (“PISC Comments”).

³⁰ Opposition of Cellco Partnership d/b/a Verizon Wireless to Google Inc.’s Petition to Condition Grant (filed May 9, 2008) (“Opposition”).

³¹ Google Inc. and Google Airwaves Inc. Reply to Opposition of Cellco Partnership d/b/a Verizon Wireless (filed May 16, 2008) (“Reply”).

³² CMA551 New Jersey 2-Ocean is comprised of a single county.

³³ See Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Oct. 14, 2008). See 47 C.F.R. § 1.1204(a)(10).

³⁴ See, e.g., Application of AKD Holdings, LLC, Alaska DigiTel, LLC, and GCI, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-10, *Memorandum Opinion and Order*, DA 08-1882, at ¶ 14 (WTB rel. Aug. 8, 2008) (“*GCI-Alaska DigiTel II Order*”); Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12481-82 ¶ 31 (2008) (“*Verizon-RCC Order*”), *recon. pending*; Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations, WT Docket No. 07-265, *Memorandum Opinion and Order*, 23 FCC Rcd 2234, 2236-37 ¶ 10 (2008) (“*AT&T-Aloha Order*”); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20306 ¶ 15 (2007) (“*AT&T-Dobson Order*”).

it instructive to note that our standard competitive analysis, if applied, would evidence that competitive harm is unlikely in the mobile telephony markets that would be affected if the Commission grants these applications, subject to effectuation of a voluntary divestiture by Verizon Wireless as discussed below. We describe this analysis below.

10. We also note that we accept the voluntary commitment of Verizon Wireless to file an application to effectuate the divestiture of ten megahertz of licensed spectrum in CMA551 New Jersey 2-Ocean within six months of the date on which the above-referenced applications of Verizon Wireless are granted,³⁵ and we condition the grant of the above-referenced applications of Verizon Wireless on its compliance with this commitment.

1. Market Definition

11. *Product Market Definition.* If we were to review the above-referenced Auction 73 applications under our standard competitive analysis, we would adopt the same product market definition as applied by the Commission in recent transactions involving the mobile telephony market. Previously, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services.³⁶ Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.³⁷ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.³⁸

³⁵ We find that Verizon Wireless's commitment to implement its voluntary divestiture of spectrum in six months represents a reasonable time period. In certain recent wireless transaction orders, we have required the final divestiture of business units, with spectrum, within 120 days of consummation – a date set by the parties – with an opportunity for a 60-day extension. See, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12514 ¶ 116; *AT&T-Dobson Order*, 22 FCC Rcd at 20339 ¶ 96. Because those divestitures have involved operating business units, we required divestiture to a Management Trust – an interim step not required here where only spectrum need be divested.

³⁶ See *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14876 ¶ 25 (2006) (“*GCI-Alaska DigiTel I Order*”); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-76, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13594 ¶ 19 (2006) (“*DoCoMo-Guam Order*”); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11541 ¶ 26 (2006) (“*ALLTEL-Midwest Wireless Order*”); Applications of Nextel Communications, Inc. and Sprint Corp., WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13983 ¶ 38 (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, 13068 ¶ 28 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations, Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corp. For Consent to Assignment and Long-Term De Facto Lease of Licenses, and Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion & Order*, 19 FCC Rcd 21522, 21558 ¶ 74 (2004) (“*Cingular-AT&T Wireless Order*”).

³⁷ See *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

³⁸ See *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-* (continued....)

12. *Geographic Market Definition.* In its recent wireless transaction orders, the Commission applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, are larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.³⁹ The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).⁴⁰ Because these two sets of geographic areas come from different sides of the equation – demand in the case of CEAs, supply in the case of CMAs – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.⁴¹ We accordingly would use CEAs and CMAs as well if we were to apply our standard competitive analysis to the instant applications.

13. *Input Market for Spectrum.* Consistent with the Commission’s recent wireless transaction orders, we also would examine the instant applications in light of the input market for spectrum associated with the provision of mobile telephony services. In particular, the Commission has made a determination to include in its evaluation of potential competitive harm spectrum in particular bands that is “suitable” for the provision of mobile telephony services.⁴² In recent orders, the Commission has found that spectrum “suitable” for the provision of mobile telephony services includes approximately 200 megahertz of cellular, broadband PCS, and SMR spectrum as well as 80 megahertz of 700 MHz band spectrum (in the 698-806 MHz band) throughout the nation, which brings the total amount

(Continued from previous page) _____

Midwest Wireless Order, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

³⁹ See *Verizon-RCC Order*, 23 FCC Rcd at 12484 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶¶ 34-35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

⁴⁰ The Commission has chosen CEAs and CMAs for its data analysis because both are consistent in order of magnitude with its local market definition and because each brings a different consideration to the analysis. CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped the mobile telephony market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *Verizon-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876-77 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

⁴¹ See, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

⁴² See, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12486 ¶ 42.

of spectrum suitable for mobile telephony services on a nationwide basis to approximately 280 megahertz.⁴³

14. *Market Participants.* In its recent wireless transaction orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, SMR, and 700 MHz facilities-based service providers, and excluded satellite service providers, wireless Voice over Internet Protocol (“VoIP”) providers, mobile virtual network operators (“MVNOs”), and resellers from consideration.⁴⁴ If we were to apply our standard competitive analysis to the instant applications, we would continue to observe that mobile telephony services offered by facilities-based providers using cellular, PCS, SMR, and 700 MHz spectrum and employing various technologies offer the same basic voice and data functionality and are indistinguishable to the consumer.⁴⁵ In addition, in the context of the above-referenced applications and consistent with our approach in recent transactions orders, we would consider AWS-1 and BRS providers market participants in our in-depth analysis of individual local markets not eliminated by our initial screen to the extent that they provide mobile telephony services.⁴⁶

2. Initial Screen

15. When examining the effect of proposed transactions, the Commission generally applies a two-part initial “screen” that identifies those local markets in which there is no competitive harm arising from the transaction or spectrum acquisition. One part of the screen utilizes the post-transaction

⁴³ See *Verizon-RCC Order*, 23 FCC Rcd at 12486 ¶ 43; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31.

⁴⁴ See *Verizon-RCC Order*, 23 FCC Rcd at 12487-88 ¶ 48; *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. See GlobalCom, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Oct. 2, 2008); GlobalStar Satellite Phone Services - New Lower Pricing Plans, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited Oct. 2, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

⁴⁵ See, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12487-88 ¶ 48; *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

⁴⁶ See, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33, 12488 ¶ 48; *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35.

Herfindahl-Hirschman Index (“HHI”) of market concentration in conjunction with the change in the HHI, which is calculated based on providers’ subscriber market shares.⁴⁷ Since the acquisition of “greenfield” spectrum at auction does not result in service overlaps, the HHI screen would not be triggered in any of the markets associated with the licenses for which Union Telephone or Verizon Wireless was the highest bidder in Auction 73.

16. The second part of this screen examines the input market for spectrum available for the provision of mobile telephony services.⁴⁸ Under recent orders, the second part of the screen, if applied to these applications, would identify the markets in which these applications would result in spectrum aggregation in amounts of 95 megahertz or more out of a total of 280 megahertz of spectrum suitable for the provision of mobile telephony service.⁴⁹ While we would not include AWS-1 and BRS spectrum in the initial spectrum screen for the purpose of evaluating the above-referenced applications,⁵⁰ we would consider the extent to which AWS-1 or BRS licenses are in fact available *locally*, and would include the spectrum associated with them in the local spectrum input market in our detailed, case-by-case analysis of markets caught by the initial screen.⁵¹

17. Applying the 95 megahertz screen to Union Telephone’s and Verizon Wireless’s Auction 73 applications would result in 18 CMAs that require further competitive review. Specifically, one market for Union Telephone would require further review⁵² and 17 markets for Verizon Wireless would require further competitive review.⁵³

⁴⁷ See, e.g., *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12482 ¶ 32, 12489-90 ¶ 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15.

⁴⁸ See, e.g., *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12482 ¶ 32, 12489-90 ¶ 52; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16.

⁴⁹ See, e.g., *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33, 12489-90 ¶ 52; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31. This initial spectrum aggregation screen of 95 megahertz is approximately one-third of the 280 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum suitable for mobile telephony. See *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14 n.61; *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33, 12489-90 ¶ 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20312-13 ¶¶ 30-31. We note that the Commission today adopted a somewhat less stringent spectrum screen in orders addressing the Sprint Nextel Corporation-Clearwire Corporation and Verizon Wireless-Atlantis Holdings LLC transactions. We do not believe there would be a different result if we instead were to apply this revised analysis.

⁵⁰ See *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20314-15 ¶¶ 32-34.

⁵¹ See *Verizon-RCC Order*, 23 FCC Rcd at 12483 ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35.

⁵² The following is the CMA that would be triggered by the 95 megahertz initial screen and the range of spectrum holdings for Union Telephone on a county-by-county basis: CMA720 Wyoming 3-Lincoln (37 to 99 MHz).

⁵³ The following is a list of the 17 CMAs that would be triggered by the 95 megahertz initial screen and the range of spectrum holdings for Verizon Wireless on a county-by-county basis: CMA001 New York, NY (99 MHz), CMA042 Bridgeport, CT (99 MHz), CMA062 New Brunswick, NJ (99 MHz), CMA070 Long Branch, NJ (99 MHz), CMA114 Orange County, NY (99 MHz), CMA 198 St. Cloud, MN (99 MHz), CMA221 Fargo-Moorehead, ND-MN (102 MHz), CMA357 Litchfield, CT (99 MHz), CMA469 Maryland 3-Frederick (101 MHz), CMA486 Minnesota 5-Wilkin (69 to 99 MHz), CMA487 Minnesota 6-Hubbard (57 to 99 MHz), CMA550 New Jersey 1-Hunderdon (99 MHz), CMA551 New Jersey 2-Ocean (111 MHz), CMA552 New Jersey 3-Sussex (99 MHz), CMA563 New York 5-Otsego (62 to 99 MHz), CMA582 North Dakota 3-Barnes (72 to 102 MHz), CMA690 Virginia 10-Frederick (71 to 101 MHz).

3. Market-by-Market Analysis

18. If we were to apply further competitive review of each of these 18 CMAs, including the voluntary commitment to divestiture by Verizon Wireless described above, we would find that it is unlikely that the grant of the applications of Union Telephone or Verizon Wireless for licenses associated with Auction 73 would result in competitive harm in the 18 CMAs identified by the initial screen. Consistent with our recent wireless transaction orders, further competitive review of each of these CMAs would include, among other things, the determination of: (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 currently holding spectrum that could enter the market to provide service.⁵⁴ For these 18 CMAs, upon evaluation of this data and similarly to the conclusions we reached in the *AT&T-Aloha Order* regarding the unlikelihood of competitive harm resulting from that transaction,⁵⁵ we would find that in each of these markets there are at least two, and as many as four, other providers that currently have sufficient market share and spectrum throughout the CMA to compete in the provision of mobile telephony services.⁵⁶ Further, several additional firms currently hold sufficient spectrum that would enable them either to expand their provision of services or to enter the market and begin providing services.⁵⁷ Finally, if a current provider in any of these markets is capacity constrained, or if a new entrant would like to enter these markets, then there is sufficient unused spectrum available that could be obtained in the secondary market.⁵⁸ We specifically note that in none of these 18 markets – including CMA551 New Jersey 2-Ocean when considered after implementation of Verizon Wireless's voluntary divestiture commitment – would the spectrum aggregation exceed the spectrum screen triggering levels found acceptable in the *AT&T-Aloha Order* and the *AT&T-Dobson Order*. Accordingly, given our adoption of the voluntary divestiture in CMA551 as a condition of the grant of the applications of Verizon Wireless, we would find that it is unlikely that the grant of the applications of Union Telephone or Verizon Wireless for licenses associated with Auction 73 would result in competitive harm in the 18 CMAs identified by the initial screen.

B. Petition to Condition Grant

19. In its Petition, Google requests that we issue an order specifying that under section 27.16 (the open platform rule),⁵⁹ Verizon Wireless is not able to limit applications on any devices intended for use on C Block spectrum, including those devices that Verizon Wireless provides to its own customers for use on the company's C Block network.⁶⁰ Further, Google requests that we require Verizon Wireless to acknowledge and agree to comply with such obligations as a condition on its C Block licenses. As

⁵⁴ See, e.g., *Verizon-RCC Order*, 23 FCC Rcd at 12497 ¶ 70; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 12; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 63.

⁵⁵ See *AT&T Aloha Order*, 23 FCC Rcd at 2237 ¶ 12.

⁵⁶ If we were to make this determination for these markets, we would not consider or rely on information contained in the Numbering Resource Utilization and Forecast reports filed by, or disaggregated carrier-specific local number portability data related to, certain wireless telecommunications carriers with insufficient market share throughout the CMA to have a material effect on our market-by-market analysis.

⁵⁷ See *AT&T Aloha Order*, 23 FCC Rcd at 2237 ¶ 12.

⁵⁸ See *id.*

⁵⁹ 47 C.F.R. § 27.16.

⁶⁰ Petition at 3-4, 7.

explained below, we dismiss these portions of Google's Petition as beyond the scope of our review of Verizon Wireless's Auction 73 C Block application. However, to underscore the importance of adhering to the open platform requirements, we will grant the Petition, in part, by placing a condition on all C Block licenses that are issued, regardless of which entity might be granted such a license. We also reiterate below the Commission's commitment to ensure compliance with the open platform requirements.

20. The Commission adopted open platform requirements for the 700 MHz C Block in the *700 MHz Second Report and Order*,⁶¹ which are codified in section 27.16.⁶² In the *700 MHz Second Report and Order*, the Commission declared that C Block licensees "will not be allowed to disable features or functionality in handsets where such action is not related to reasonable network management and protection, or compliance with applicable regulatory requirements."⁶³ The Commission explained further that "[s]tandards for third-party applications or devices that are more stringent than those used by the provider itself would likewise be prohibited."⁶⁴ Section 27.16 provides that a C Block licensee "shall not deny, limit, or restrict the ability of their customers to use the devices and applications of their choice on the licensee's C Block Network," unless reasonably necessary for network management or protection, or to comply with applicable law.⁶⁵ The rule also prohibits C Block licensees from "disabl[ing] features on handsets" that they provide to their customers (*e.g.*, locking handsets to prevent their transfer from one system to another).⁶⁶

21. Google claims that Verizon Wireless has taken a public position contrary to the open platform rule, which, according to Google, proscribes a C Block licensee from selling handsets to customers that hinder those customers' abilities to use applications of their choice.⁶⁷ Google argues that Verizon Wireless's position is contrary to the plain meaning of the rule and to public interest findings and policy objectives articulated in the *700 MHz Second Report and Order*.⁶⁸ According to Google, the

⁶¹ See generally Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289, 15358-72 ¶¶ 189-225 (2007) ("*700 MHz Second Report and Order*").

⁶² 47 C.F.R. § 27.16.

⁶³ *700 MHz Second Report and Order*, 22 FCC Rcd at 15370-71 ¶ 222.

⁶⁴ *Id.*

⁶⁵ 47 C.F.R. § 27.16(b)(1), (2).

⁶⁶ 47 C.F.R. § 27.16(e).

⁶⁷ Petition at 3.

⁶⁸ *Id.* at 4. See also *700 MHz Second Report and Order*. Google claims that Verizon Wireless expressed its position orally and in writing several times after the open platform rule was adopted but before it became the high bidder on C Block licenses. Petition at 4 (listing *ex parte* communications from Verizon Wireless to the Commission). Verizon Wireless also petitioned the United States Court of Appeals for the D.C. Circuit to vacate the open platform conditions, but withdrew its petition for review after the court denied its request for expedited review. *Id.* at 5. Verizon Wireless also intervened in a similar proceeding initiated by CTIA, which remains pending. *Id.*

language of section 27.16 is unambiguous and consistent with the language in the *700 MHz Second Report and Order*, which states that C Block licensees “will not be allowed to disable features or functionality in handsets.”⁶⁹ Google asserts that this requirement means that the C Block network must be open “for the use of any device, and for the use of any application on any device,” regardless from whom the device is obtained.⁷⁰ Google claims that Verizon Wireless interprets this requirement to mean that it must allow “any application, except on Verizon [Wireless’s] devices.”⁷¹

22. According to Google, Verizon Wireless’s interpretation of the open platform requirements would result in a “‘two-door’ exception swallowing the rule.”⁷² Thus, Google claims, Verizon Wireless believes that it may force customers with devices not purchased from Verizon Wireless to access the open platform through “Door No. 1,” while allowing customers with Verizon Wireless-provided devices to go through “Door No. 2.”⁷³ To address this concern, Google requests that we issue an order requiring the company to acknowledge and agree to comply with its obligations under section 27.16 as specified by the Commission.⁷⁴ Failure to issue such an order, Google claims, would foster uncertainty and delay and effectively allow Verizon Wireless to preclude other potential licensees from having to meet the “any applications, any devices” requirement.⁷⁵ PISC, which filed comments in support of Google’s Petition, argues that the Commission should grant the Petition or it will risk that the open platform rule will be significantly undermined.⁷⁶

23. In its Opposition, Verizon Wireless argues that the Petition is meaningless, procedurally infirm, and speculative, and should therefore be rejected.⁷⁷ First, Verizon Wireless argues the requested condition is meaningless because it “seeks no more than a restatement of the open platform rules that apply to C Block licenses and a statement by Verizon Wireless . . . that it will comply with these rules.”⁷⁸ Such request, Verizon Wireless argues, is frivolous, a waste of the Commission’s time and resources, and contrary to Commission precedent.⁷⁹ Second, Verizon Wireless argues that the Petition could be interpreted as an improper attempt to reopen the 700 MHz proceeding and “restart debate around the substance of the C Block service rules or the enforcement mechanisms put in place by the Commission.”⁸⁰ Verizon Wireless claims that in response to a petition to deny an auction Form 601 application, the Commission is permitted only to grant or deny the application or designate it for a hearing.⁸¹ Third,

⁶⁹ Petition at 6 (quoting *700 MHz Second Report and Order*, 22 FCC Rcd at 15370 ¶ 222).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 3-4.

⁷⁴ *Id.* at 7.

⁷⁵ *Id.*

⁷⁶ PISC Comments at 2-4.

⁷⁷ Opposition at 2.

⁷⁸ *Id.* at 3.

⁷⁹ *Id.*

⁸⁰ *Id.* at 4. Google denies this allegation. See Reply at 4 n.15.

⁸¹ Opposition at 5-6; see also 47 C.F.R. § 1.2108. Google disputes Verizon Wireless’s contention that the Commission lacks the authority to condition the grant of its licenses. See Reply at 6.

Verizon Wireless argues that Google's assumption that Verizon Wireless will not comply with the open platform rule because it had previously challenged the rule pursuant to the Administrative Procedure Act is speculative and unsubstantiated, as well as contradicted by Verizon Wireless's track record as a Commission licensee.⁸²

24. We consider the open platform rule embodied in section 27.16 to be an important element of our 700 MHz C Block regulatory structure. To underscore the importance of the open platform requirements and to ensure that it is clear to interested parties that the Commission will vigorously enforce this rule, we conclude that the grant of Verizon Wireless's application relating to C Block licenses should be conditioned upon compliance with section 27.16.⁸³ Specifically, the following special condition will be placed on all Verizon Wireless C Block licenses granted by the Commission: "This authorization is conditioned upon compliance with section 27.16 of the Commission's rules." This condition will serve to highlight the fact that Verizon Wireless, by accepting the grant of the Auction 73 C block licenses, is committing to comply with all applicable Commission rules,⁸⁴ including section 27.16. If a violation of section 27.16 occurs, the Commission stands ready to take enforcement action against the licensee, including but not limited to imposition of a forfeiture penalty pursuant to Section 503 of the Communications Act, as amended.⁸⁵ To the extent that Google seeks relief in the Petition beyond the license condition we adopt, we find that Google's request goes beyond the scope of review of the Verizon Wireless Auction 73 C Block license application, and therefore dismiss the remaining issues raised in the Petition.

25. In addition to Verizon Wireless, we note that three other parties—Club 42 CM Limited Partnership, Triad 700 LLC, and Small Ventures USA, L.P.—have each filed Auction 73 Form 601 applications for C Block licenses, which are currently pending.⁸⁶ Consistent with our actions above, we

⁸² Opposition at 6-9.

⁸³ See *P&R Temmer v. FCC*, 743 F.2d 918, 928 (D.C. Cir. 1984) ("An FCC licensee takes its license subject to the conditions imposed on its use. These conditions may be contained in both the Commission's regulations and in the license."). Verizon Wireless mistakenly asserts that the Commission may only grant or deny the application or designate it for a hearing at this juncture. Section 303(r) of the Communications Act of 1934, as amended, and section 1.945(e) of the Commission's rules clearly permit Commission action to impose conditions. See 47 U.S.C. § 303(r) (stating that the Commission shall "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act ...") (*emphasis added*); 47 C.F.R. § 1.945(e) (stating that the Commission "may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type") (*emphasis added*).

⁸⁴ It is well established that by accepting a license, each licensee commits to complying with all applicable Commission Rules. *E.g.*, International Authorizations Granted, *Public Notice*, 19 FCC Rcd 4079, 4080 ¶ 2 (2004) (stating that "Iridium Satellite, LLC's request to impose a condition that the Applicants comply with the outcome of the BIG LEO Bands Rulemaking is unnecessary because all Commission licensees must adhere to all applicable Commission rules and policies"). See also *Verizon Communications, Inc., Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6208 ¶ 29 (2007) (refusing to impose conditions on a grant of application because "many requested conditions would simply require América Móvil to comply with TELPRI's existing legal obligations... América Móvil will be subject to those existing legal obligations as well as other generally applicable regulatory requirements imposed on incumbent LECs."); *Application of Puerto Rico Telephone Authority and GTE Holdings, LLC, Memorandum Opinion and Order*, 14 FCC Rcd 3122, 3134 ¶ 28 (1999) (stating that the requested conditions are not necessary because they "would simply require PRTC to comply with its existing legal obligations").

⁸⁵ 47 U.S.C. § 503(b); see also 47 C.F.R. §§ 1.80 (forfeiture proceedings), 27.16(f) (burden of proof for alleged violations of the open platform rule).

⁸⁶ See *supra* note 3.

hereby require, on our own motion, that the special condition discussed above pertaining to Verizon Wireless be placed on each C Block license granted to any other entity by the Commission. This approach will ensure uniform regulatory treatment of all C Block licensees, while highlighting the unique significance of the open platform requirements.

IV. CONCLUSION

26. For the reasons stated above, we find that the public interest would be served if the above-referenced Auction 73 applications of Union Telephone and Verizon Wireless are granted, subject to the implementation of the voluntary divestiture by Verizon Wireless as discussed above. We further find that the public interest would be served by the imposition on all Auction 73 C Block authorizations of the following condition: "This authorization is conditioned upon compliance with section 27.16 of the Commission's rules." We accordingly direct the Wireless Telecommunications Bureau to process the above-referenced Auction 73 applications of Union Telephone and Verizon Wireless in accordance with the provisions of this Order and the Commission's rules.

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, the Petition to Condition Grant filed by Google Inc. and Google Airwaves Inc. on May 2, 2008, IS GRANTED IN PART and IS OTHERWISE DISMISSED.

28. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, that the Wireless Telecommunications Bureau SHALL PROCESS File No. 0003371176, filed by Union Telephone Company on March 28, 2008, and amended on April 10, May 28 and 29, 2008, consistent with this Order and the Commission's rules.

29. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, that the Wireless Telecommunications Bureau SHALL PROCESS File Nos. 0003382435 and 0003382444, filed by Cellco Partnership d/b/a Verizon Wireless on April 2, 2008, and amended on April 14, 2008, consistent with this Order and the Commission's rules.

30. IT IS FURTHER ORDERED that any grant of File Nos. 0003382435 and 0003382444, filed by Cellco Partnership d/b/a Verizon Wireless on April 2, 2008, and amended on April 14, 2008, shall be conditioned upon the implementation of the divestiture in CMA551 New Jersey 2-Ocean as described above.

31. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(b)(4), and sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, that the International Bureau SHALL PROCESS the petition for declaratory ruling filed by Cellco Partnership d/b/a Verizon Wireless, File No. ISP-PDR-20071129-00016, in accordance with the Commission's foreign ownership rules and policies under Section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310.

32. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, File Nos. 0003462540, et al., WT Docket No. 08-94; 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 that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, File Nos. 0003463892, et al., WT Docket No. 08-95; Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73, File Nos. 0003371176, et al.

Broadband and the advanced applications that it enables have become increasingly critical drivers of both economic and social development. With these three items, we take significant steps to advance the roll out of wireless broadband Internet access to consumers across the country, and promote long term investment in broadband infrastructure that will support increased innovation, expanded services and economic growth in the future. These items also advance networks that are more open to devices and applications, as we implement the open platform requirements of the 700 MHz C Block and approve a transaction that will advance the promises of New Clearwire to allow applications and devices of the consumers' choice on these networks. Taken together with our action today approving the use of the television "white spaces" for unlicensed wireless use, the future of wireless broadband is indeed bright.

These transactions will provide significant benefits to wireless consumers. Specifically Verizon will now be able to fill in holes in its coverage area and provide a more robust national wireless service to its customers. Notably, Verizon is required to divest overlapping areas, numbering more than 100.

With respect to roaming, the commitment proposed by Verizon Wireless to extend its roaming obligations provides added certainty to small and rural carriers. In addition, Verizon Wireless has made additional commitments with respect to continuing the Alltel GSM network and allowing carriers to choose which roaming agreement to continue. This should all help smaller, rural and regional carriers providing roaming to their consumers.

Consumers are also beneficiaries of a new entrant into the wireless market, Clearwire. This provider will enhance competition and solidify wireless as an additional broadband platform. Moreover, Clearwire committed to embrace more open networks, one open to all applications and devices. This approach will spur innovation and give greater choice and improved services to consumers.

I am also very pleased with the voluntary commitments made by Sprint Nextel and Verizon Wireless with respect to the Universal Service Fund and E911 location accuracy. With respect to E911, these companies have taken a leadership role in the industry and are following through on their promises to meet E911 location accuracy obligations at the county-level. This is an issue that is critical to consumers and first responders, and an issue that has been a priority to me as Chairman. This commitment will allow first responders to reach those in need more quickly, and find callers more consistently. This is clearly in the public interest.

With respect to USF, the phase-out of high-cost competitive ETC funding to these carriers will provide significant benefits to the fund, while also providing certainty to the carriers. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal USF. In 2001, high-cost universal service support totaled approximately \$2.6 billion. By 2007, the amount of high-cost support had grown to approximately \$4.3 billion per year. In recent years, this growth has been due mostly to increased support provided to competitive ETCs, which receive high-cost

support based not on their own costs, but on the per-line support of the incumbent LECs. Competitive ETC support, since 2001, has grown from under \$17 million to over \$1.18 billion—an annual growth rate of over 100 percent. The offers made by the carriers here provide certainty for the carriers, while reducing the pressure on the fund over time.

Finally, I note that the industry has made considerable progress with respect to the issue of openness of devices and applications. With the issuance of Verizon Wireless's 700 MHz licenses the open platform obligations we imposed on the C Block become a step closer to implementation. The availability of third party handsets with the capability of downloading the applications of the user's choice will provide substantial opportunities and competitive pressure to ensure that the benefits of open platforms are realized. Moreover, coupled with the considerable openness plans that New Clearwire intends to include as it rolls out its new network and our action today on making available the white spaces, there is a ripe field for wireless innovation and growth.

**JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN
APPROVING IN PART AND CONCURRING IN PART**

Re: Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73, File Nos. 0003371176, et al.

Until today, the Commission applied its spectrum screen to licenses obtained via merger or acquisition, but not to licenses acquired via auction. As we have stated before, this double standard makes no sense. Accordingly, we are pleased that today's item announces that, from now on, the Commission will apply its spectrum screen to both forms of spectrum acquisition.

We do limit ourselves to concurrence in the second portion of today's item, which declines to provide clarification about the openness conditions that apply to the C-Block in our recent 700 MHz auction. When we voted to establish service rules for that spectrum, we both expected that the C-Block winner would observe the openness rules for its own devices as well as those sold by third parties. And we believe today that the language in the Commission's rules establishes this legal requirement. However, to the extent that any parties believe the language is not clear enough, we would have preferred that the Commission dispel any potential confusion by making this point directly in today's item.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73, File Nos. 0003371176, et al.

This order provides needed resolution of a few items related to Auction 73, which made available a significant portion of the commercial spectrum in the 700 MHz band. Specifically, the item identifies 17 CMAs for Verizon Wireless and one CMA for Union Telephone in which the licensee would exceed the 95 megahertz screen, and grants the Auction 73 Form 601 applications of both Union Telephone and Verizon Wireless, subject to the divestiture of spectrum in one market by Verizon Wireless.

In addition, this item clarifies that section 27.16 of the Commission's rules applies to recently auctioned licenses in the 700 MHz C Block. Specifically, section 27.16 states that "[l]icensees offering service on spectrum subject to this section shall not deny, limit, or restrict the ability of their customers to use the devices and applications of their choice on the licensee's C Block network." While I support this clarification, I do not support its expansion beyond the plain meaning of the Commission's rules. I viewed the open access conditions imposed on the 700 MHz C Block as a limited experiment designed to promote additional access to devices and applications that do not harm a provider's network. This does not mean – and section 27.16 should not be interpreted so expansively as to let it mean – that a C Block licensee with hundreds of devices must make every phone it sells consistent with this rule.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART AND CONCURRING IN PART**

Re: Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73, File Nos. 0003371176, et al.

I am voting to support this order, which resolves two pending Auction 73 applications. I am pleased that we have refrained from introducing a wholly new competitive analysis, which would have been procedurally deficient given the lack of notice or opportunity for public comment.

Nonetheless, I am concurring with respect to the condition imposed upon Verizon Wireless, which states that Section 27.16 of the Commission's rules applies to the company as the winning bidder of the 700 MHz C Block spectrum. While I do not oppose outright this condition given its narrowness, I continue to question the substance and meaning of this rule in the first place.