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

In the Matter of	)	
	)	
Applications of Cellco Partnership d/b/a Verizon Wireless and E.N.M.R. Telephone Cooperative and Its Wholly-Owned Subsidiary Plateau Telecommunications, Incorporated For Consent To Assign Licenses and Authority	)	ULS File Nos. 0005034870, 0005034877, and 0005063051
	)	File No. ITC-ASG-20120420-00105

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 2012 **Released: October 4, 2012**

By the Chiefs, Wireless Telecommunications Bureau and International Bureau:

I. INTRODUCTION

1. In this Order, we grant the applications of Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and E.N.M.R. Telephone Cooperative ("E.N.M.R.") and its wholly-owned subsidiary Plateau Telecommunications, Incorporated ("Plateau," and together with Verizon Wireless and E.N.M.R., the "Applicants") for Commission consent to the assignment to Verizon Wireless of Cellular, Personal Communications Service ("PCS"), Advanced Wireless Service ("AWS-1"), and related point-to-point microwave licenses in Cellular Market Area ("CMA")[1] 558 – New Mexico 6-Lincoln – and partial assignment of international section 214 authority.[2] In so doing, we deny the Petition to Deny filed by Mescalero Apache Telecommunications, Inc. ("MATI") against the Applications. For the reasons discussed below, we find that Verizon Wireless's proposed acquisition of these licenses and authority is unlikely to cause competitive or other public interest harms and that it is in the public interest to grant the Applications.

II. BACKGROUND

2. Verizon Wireless is a general partnership ultimately owned by Verizon Communications Inc. ("Verizon") and Vodafone Group Plc, with Verizon holding a 55 percent controlling interest.[3] Verizon Wireless is one of the largest wireless service providers in the United States as measured by total number

[1] CMAs are the areas in which the Commission initially granted licenses for cellular service. *See* 47 C.F.R. § 22.90.

[2] *See* ULS File Nos. 0005034870, 0005034877, and 0005063051 and File No. ITC-ASG-20120420-00105 (the "Applications"). The Applications were filed on March 23, 2012, pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"). 47 U.S.C. §§ 214, 310(d). The Applicants amended the Applications on April 18, 2012.

[3] *See* Applications, Exhibit 1 – Description of Transaction and Public Interest Statement at 2; Verizon Communications Inc., SEC Form 10-K, at 2 (for the fiscal year ended Dec. 31, 2011), *available at* http://www.sec.gov/Archives/edgar/data/732712/000119312512077846/d257450d10k.htm (last visited Oct. 2, 2012).

of customers and revenue.[4] E.N.M.R. is a subscriber-owned rural telephone cooperative that, through Plateau, provides mobile wireless service in largely rural eastern New Mexico and western Texas.[5]

3. The licenses involved in the proposed transaction cover Chaves, Eddy, Lea, Lincoln, and Otero counties, which make up the entirety of the New Mexico 6-Lincoln CMA. In addition to obtaining these licenses and section 214 authority,[6] Verizon Wireless would acquire from Plateau existing customers using 2G licensed facilities and transition them over a 12 to 15 month period after closing.[7] According to the Applicants, the proposed transaction would allow Verizon Wireless to expand its voice and 3G services in CMA558 upon converting the network to 3G Code Division Multiple Access ("CDMA") Evolution Data Optimized ("EVDO").[8]

4. On May 9, 2012, the Commission released a public notice seeking comment on the proposed transaction.[9] In response to the *Comment Public Notice*, MATI, a tribally-owned telecommunications provider operating on the Mescalero Apache reservation, filed a petition to deny.[10] The Applicants filed a joint opposition on June 4, 2012,[11] and MATI filed a reply on June 11, 2012.[12]

5. Pursuant to sections 214 and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment of licenses and authority would serve the public interest, convenience, and necessity.[13] We use here the standard of review and public interest framework that the Commission has applied in evaluating mobile wireless transactions, which most

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[4] *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 Mobile Wireless, including Commercial Mobile Services, WT Docket No. 10-133, *Fifteenth Report*, 26 FCC Rcd 9664, 9696-97, Tables 3-4 (2011).

[5] *See* Applications, Exhibit 1 – Description of Transaction and Public Interest Statement at 2.

[6] *See* File No. ITC-ASG-20120420-00105 (partial assignment from E.N.M.R to Verizon Wireless). Verizon Wireless will provide international service to its new customers pursuant to its existing international section 214 authorizations: File Nos. ITC-214-19920813-00076, ITC-214-19960924-00461, ITC-214-19961008-00504, ITC-214-20001221-00729, ITC-214-20001221-00730, ITC-214-20001221-00731, ITC-214-20001221-00732, ITC-214-20001221-00733, ITC-214-20001221-00734, ITC-214-20001221-00735, ITC-214-20001221-00736, ITC-214-20010504-00279, ITC-214-20040826-00343, ITC-MOD-20070319-00191, and ITC-MOD-20070828-00362. E.N.M.R will retain its existing international 214 authorization and will continue to provide international service to its remaining customers pursuant to that authorization, ITC-214-20030912-00436.

[7] Applications, Exhibit 1 – Description of Transaction and Public Interest Statement at 1.

[8] *Id.*

[9] E.N.M.R. Telephone Cooperative, Its Wholly-Owned Subsidiary Plateau Telecommunications, Incorporated, and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to the Assignment of Cellular, Personal Communications Service, AWS-1, and Related Point-to-Point Microwave Licenses and International Section 214 Authority, ULS File Nos. 0005034870, 0005034877, and 0005063051; File No. ITC-ASG-20120420-00105, *Public Notice*, DA 12-734 (rel. May 9, 2012) (*"Comment Public Notice"*). The *Comment Public Notice* established a pleading cycle for the Applications, with petitions to deny due May 23, 2012, oppositions due June 4, 2012, and replies due June 11, 2012.

[10] Petition to Deny of Mescalero Apache Telecommunications, Inc., filed May 23, 2012 ("MATI Petition to Deny").

[11] Joint Opposition of E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., and Cellco Partnership d/b/a Verizon Wireless to Petition to Deny, filed June 4, 2012 ("Joint Opposition").

[12] Reply of Mescalero Apache Telecommunications, Inc., filed June 11, 2012 ("MATI Reply").

[13] 47 U.S.C. §§ 214, 310(d).

recently was articulated in the Commission's order approving the assignment of licenses from SpectrumCo, LLC and others to Verizon Wireless.[14]

III. DISCUSSION

6. As an initial matter, we note that Verizon Wireless has previously and repeatedly been found qualified to hold Commission licenses.[15] We find that there is no reason to evaluate its basic qualifications further.

7. In our review of transactions, we consider the potential public interest harms, including potential competitive harms, and any potential public interest benefits that may result from the transaction.[16] Our public interest analysis evaluates whether the transaction, on balance, would be in the public interest, and necessarily includes, in this case, an evaluation of the transfer of both spectrum and customers from Plateau to Verizon Wireless.[17]

8. In this Order, as in the Commission's most recent transaction reviews, we evaluate the competitive effects of the proposed transaction using a combined "mobile telephony/broadband services" product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[18] In addition, given the limited local nature of the proposed transaction, and consistent with past transactions, we primarily use CMAs as the local geographic markets in which we analyze the potential competitive harms arising from this transaction.[19] As in the Commission's recent transaction reviews, we evaluate the current spectrum holdings of the acquiring firm that are "suitable" and "available" in the near term for the provision of mobile telephony/broadband services, which the Commission has determined includes cellular, PCS, Specialized Mobile Radio, and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service spectrum where available.[20]

9. The Commission in its recent transaction reviews has applied a two-part initial screen to identify local markets where a proposed transaction is more likely to raise particular competitive

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[14] Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *et al., Memorandum Opinion and Order and Declaratory Ruling*, FCC 12-95, ¶¶ 28-32 (rel. Aug. 23, 2012) ("*Verizon Wireless-SpectrumCo Order*").

[15] *See, e.g.*, Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, *Memorandum Opinion and Order*, 25 FCC Rcd 3763, 3777 ¶ 26 & nn.108-09 (2008).

[16] *See, e.g., Verizon Wireless-SpectrumCo Order* at ¶¶ 48, 95; Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17622-23 ¶ 81 (2011) (*"AT&T-Qualcomm Order"*); Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Memorandum Opinion and Order*, FCC 10-116, 25 FCC Rcd 8704, 8723, 8739 (2011) ("*AT&T/Verizon Wireless-Alltel Order*").

[17] *See, e.g., AT&T/Verizon Wireless-Alltel Order*, 25 FCC Rcd at 8736 ¶ 73; Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 08-181, 23 FCC Rcd 12463, 12480, ¶ 30 (2008); 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, 20301 ¶ 10 (2007).

[18] *See, e.g., Verizon Wireless-SpectrumCo Order* at ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03 ¶¶ 32-33; *AT&T/Verizon Wireless-Alltel Order*, 25 FCC Rcd at 8721 ¶ 35.

[19] *See, e.g., Verizon Wireless-SpectrumCo Order* at ¶ 56; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34.

[20] *See, e.g., Verizon Wireless-SpectrumCo Order* at ¶ 59.

concerns.[21] The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") market concentration and the change in the HHI.[22] The second part of the screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[23] For our analysis of the proposed transaction before us, we apply this two-part initial screen.

10. Application of the initial screen to the proposed transaction results in both the HHI screen and the spectrum screen being triggered for CMA558 New Mexico 6-Lincoln.[24] More specifically with respect to the spectrum screen, we find that it is triggered in one of the counties in CMA558.[25] Therefore, we analyze the effects of a reduction in the number of competitors and of spectrum aggregation in CMA558 that would result from this transaction.

11. In its petition to deny, MATI, a wireline carrier in the area, indicates generally that it aspires to enter this market and provide wireless broadband services to the Mescalero Apache reservation.[26] MATI claims that Verizon Wireless's increasing accumulation of spectrum would adversely affect competition in the area of the Mescalero Apache reservation by raising a significant barrier to entry to potential competitors – such as itself – wishing to serve the reservation's high-cost and sparsely populated areas.[27] MATI asserts that in Otero and Lincoln counties, Verizon Wireless would control 59 megahertz of spectrum below 1 GHz, which, because of signal propagation properties in these spectrum bands, allows for more efficient network deployment.[28] MATI additionally states that existing wireless service coverage in the area of the Mescalero Apache reservation is substantially substandard.[29]

12. The Applicants respond that the proposed transaction presents no harm to competition.[30] They claim that the number of operating wireless providers would not be reduced by this transaction, except in the portion of Lincoln County where Verizon Wireless currently operates and in Otero County where Plateau offers only roaming service.[31] The Applicants claim that notwithstanding the coverage challenges encountered by every wireless provider trying to serve remote areas, Verizon Wireless covers

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[21] *See, e.g.*, *AT&T/Verizon Wireless-Alltel Order*, 25 FCC Rcd at 8720-21 ¶ 32; Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order,* 24 FCC Rcd 13915, 13935 ¶ 43 (2009).

[22] Our initial HHI screen criteria identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. *See, e.g., AT&T/Verizon Wireless-Alltel Order*, 25 FCC Rcd at 8724-25 ¶ 42.

[23] *See, e.g., Verizon Wireless-SpectrumCo Order* at ¶ 59; *AT&T/Verizon Wireless-Alltel Order*, 25 FCC Rcd at 8720-21 ¶ 32.

[24] For CMA558, the post-transaction HHI is [REDACTED] and the change in the HHI is [REDACTED]. *See* Number Resource Utilization Reports ("NRUF Reports"), June 2011; Local Number Portability Reports ("LNP Reports"), June 2011.

[25] Verizon Wireless would hold 145 megahertz of spectrum in Lincoln County, post-transaction.

[26] MATI Petition to Deny at 2, 3.

[27] *Id.* at 2-4; MATI Reply at 2-3.

[28] MATI Petition to Deny at 4.

[29] *Id.* at 2, 3, and 5.

[30] Joint Opposition at 5.

[31] *Id.* at 7.

more of the geography and population on the reservation than any other provider, including Plateau, and 100 percent of Verizon Wireless's coverage is 3G EVDO Rev A.[32]

13. In reply, MATI states that the Applicants ignore MATI's assertions about the lack of wireless coverage on the Mescalero Apache reservation and that the emphasis on Verizon Wireless providing faster service speeds means little to those customers who cannot receive it.[33] MATI argues that the reduction of wireless providers in the area of the Mescalero Apache reservation could harm competition even if Plateau provides only roaming service in Otero County given the potential for Plateau to offer expanded service in the future.[34] MATI also expresses concern that its landline customers may replace such service with Verizon Wireless's wireless service, which would shift maintenance and other operating costs to a smaller base of customers to whom MATI still would be obligated to provide service.[35]

14. We have looked closely at this market and have carefully evaluated the various market characteristics[36] that would allow rival service providers to provide an effective competitive constraint in the market.[37] Our analysis finds post-transaction that Verizon Wireless would not have the incentive or ability to increase the price of or reduce the quality of its service offerings in CMA558. Post-transaction, Verizon Wireless would hold an approximate [REDACTED] percent market share.[38] In addition, post-transaction, there would not be a reduction in the number of competing providers with sufficient network coverage, since Verizon Wireless's population and land area coverage in this CMA fall well below the thresholds that the Commission has previously considered to be sufficient.[39] Further, Verizon Wireless's and Plateau's network overlap in CMA558 is limited in terms of both population and land area coverage.[40] The other service providers in CMA558 currently have market shares ranging from [REDACTED] to [REDACTED] percent,[41] and two of these are nationwide providers that also have sufficient presence in this CMA in terms of both population and land area coverage.[42] Therefore, we find

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[32] *Id.* at 6.

[33] MATI Reply at 1, 6.

[34] *Id.* at 5.

[35] *Id.* at 3.

[36] These factors include but are not limited to demographics, market shares, market coverage, and availability of spectrum within the market to provide mobile telephony/broadband services.

[37] *See, e.g., Verizon Wireless-SpectrumCo Order* at ¶ 72.

[38] Plateau's market share is approximately [REDACTED] percent. NRUF Reports, June 2011; LNP Reports, June 2011.

[39] The Commission has previously used 70 percent population coverage and 50 percent land area coverage as "sufficient." *See AT&T/Verizon Wireless-Alltel Order*, 25 FCC Rcd at 8733 ¶ 65. Verizon Wireless currently covers approximately 30 percent of the population and 23 percent of the land area, and Plateau covers approximately 98 percent of the population and 75 percent of the land area. Mosaik Solutions Data, Oct. 2011, with Census 2010 population and land area data.

[40] Verizon Wireless's network overlaps with Plateau's network at most for 30 percent of the population and 23 percent of the land area. Mosaik Solutions Data, Oct. 2011, with Census 2010 population and land area data. Further, the LNP data show only [REDACTED] substitution between Verizon Wireless and Plateau. *See* LNP Reports, December 2011.

[41] AT&T has an approximate [REDACTED] percent share; Sprint Nextel has an approximate [REDACTED] percent share; T-Mobile has an approximate [REDACTED] percent share, and Leaco Wireless has an approximate [REDACTED] percent share.

that, based on market share and network coverage, it is unlikely that Verizon Wireless would be able to behave in an anticompetitive manner in CMA558 post-transaction.

15. Further as a result of this transaction, the aggregation of spectrum is unlikely to raise rivals' costs or to foreclose entry or expansion in the market. We find that sufficient spectrum is available post-transaction for rival service providers to expand or for potential entry to occur.[43] Current mobile telephony/broadband service providers hold sufficient spectrum throughout the CMA, and in Lincoln County particularly, to expand capacity, and other licensed spectrum in this CMA could be acquired on the secondary market either to expand capacity or to allow for entry by a new facilities-based provider. Further, based on the record in this proceeding – and the Commission's analysis in the *AT&T-Qualcomm Order* – we find that it is prudent to inquire about the potential impact of Verizon Wireless's aggregation of spectrum below 1 GHz.[44] Post-transaction, Verizon Wireless would hold 59 megahertz of spectrum below 1 GHz in four counties (Chaves, Eddy, Lincoln, and Otero). Although the rural nature of these counties could make access to spectrum below 1 GHz particularly important,[45] we find that a sufficient amount of other spectrum below 1 GHz is available post-transaction. Specifically, five licensees each hold 12 megahertz or more of below 1 GHz spectrum.[46]

16. The Applicants state the proposed assignment would serve the public interest because it would enable Verizon Wireless to expand its voice and 3G services in this market upon converting the existing 2G GSM Global System for Mobile Communications ("GSM") Enhanced Data Rates for Global Evolution ("EDGE") network to 3G CDMA EVDO.[47] Also, Verizon Wireless states that the acquired customers also would benefit from Verizon Wireless's planned deployment of 4G Long Term Evolution ("LTE") on its existing 700 MHz C Block spectrum.[48] Further, the Applicants assert that the expansion of 3G services and the deployment of 4G LTE in the market would enable consumers to experience robust and reliable service on their smartphones, tablets, and other mobile devices.[49] We find that, overall, the transaction would serve the public interest, convenience, and necessity and accordingly grant the Applications.[50]

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[42] AT&T and T-Mobile each cover more than 70 percent of the population and 50 percent of the land area. Sprint Nextel covers approximately 50 percent of the population and 20 percent of the land area, and Leaco Wireless covers approximately 24 percent of the population and 22 percent of the land area. Mosaik Solutions Data, Oct. 2011, with Census 2010 population and land area data.

[43] Verizon Wireless would acquire 25 megahertz of cellular spectrum in an additional two counties, as well as a complementary part of the cellular B Block license in Lincoln County. Post-transaction, Verizon Wireless would hold 34 to59 megahertz of spectrum below 1 GHz, which is the same range as pre-transaction.

[44] *See AT&T-Qualcomm Order*, 22 FCC Rcd at 17609-10 ¶ 49.

[45] *See id.*, 22 FCC Rcd at 17608-9 ¶ 46.

[46] Sprint Nextel would hold 18 megahertz of spectrum below 1 GHz. AT&T would hold 31 megahertz of spectrum below 1 GHz. David Miller would hold up to 12 megahertz of spectrum below 1 GHz. Leaco Wireless would hold up to 25 megahertz of spectrum below 1 GHz. PVT Wireless would hold 12-24 megahertz of below 1 GHz spectrum.

[47] Applications, Exhibit 1 – Description of Transaction and Public Interest Statement at 2.

[48] *Id.*

[49] Joint Opposition at 5.

[50] In reaching this determination, we find it unnecessary to address in detail arguments raised in the pleadings concerning standing and allegations of impropriety. The Applicants argue that MATI lacks standing to file its petition to deny (Joint Opposition at 2-5), but as Verizon Wireless covers more of the geography and population on the Mescalero Apache reservation than any other provider (Joint Opposition at 6) and Plateau leases space on three (continued....)

IV. ORDERING CLAUSES

17. Accordingly, having reviewed the applications, the petition to deny, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the applications for the assignment of Cellular, PCS, AWS-1, and point-to-point microwave licenses and international section 214 authority from E.N.M.R. and Plateau to Verizon Wireless are GRANTED.

18. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the petition to deny the applications for the assignment of Cellular, PCS, AWS-1, and point-to-point microwave licenses from E.N.M.R. and Plateau to Verizon Wireless is DENIED for the reasons stated herein.

19. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. 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.

20. This action is taken under delegated authority pursuant to sections 0.51, 0.131, 0.261, and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.131, 0.261, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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of MATI's towers (MATI Reply at 3), MATI has standing under our precedent. *See* AB Fillins, *Order on Reconsideration*, 15 FCC Rcd 5285, 5286 ¶ 3 (2000). MATI alleges in its petition that Verizon Wireless has acted improperly in the Mobility Fund proceeding (MATI Petition to Deny at 5), but such allegations have no bearing upon our review of the Applications and would be more appropriately raised elsewhere (*e.g.*, in that proceeding).