

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

In the Matter of)
Applications of)
Wireless Telecommunications, Inc., Debtor-In-) File No. 0003654164
Possession, Assignor and The Vermont Telephone)
Company, Inc., Assignee)
To Assign Broadband Radio Service Licenses)
B227 (Keene NH) and B249 (Lebanon-Claremont)
NH))
and)
Wireless Telecommunications, Inc., Debtor-In-) File No. 0003654174
Possession, Assignor and Clearwire Spectrum)
Holdings, LLC, Assignee)
To Assign Broadband Radio Service Licenses)
B266 (Lynchburg, VA), B342 (Parkersburg WV-)
Marietta OH), B398 (Salisbury MD), and B406)
(Santa Barbara-Santa Maria CA))

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2009

Released: March 16, 2009

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us two applications filed by Wireless Telecommunications, Inc., Debtor-in-Possession ("WTCI") seeking Commission consent to the full assignment of six Broadband Radio Service ("BRS") licenses (collectively, the "Licenses").¹ One application seeks assignment of two of the Licenses to Vermont Telephone Company ("VTel"),² and the other application seeks the assignment of

¹ In 2004, the Commission amended the rules governing the Multipoint Distribution Service ("MDS") in order to encourage the deployment of broadband services by commercial and educational entities. To better reflect the forward-looking vision for these services, the Commission renamed MDS as BRS. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; WT Docket No. 03-66, et al., Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14,165 (2004).

² File No. 0003654164 (filed Nov. 25, 2008) ("VTel Application") seeks the assignment of BRS licenses in the Keene NH (B227) and Lebanon-Claremont NH (B249) Basic Trading Areas ("BTAs") from WTCI to VTel. In a third application, WTCI seeks the assignment of five incumbent BRS licenses from WTCI to VTel: four in Rutland, VT (call signs WLK341, WMH868, WMI343, and WNT0856), and one in Cornwall, VT (call sign WMH308). See File No. 0003130320 (amended Nov. 25, 2008). The assignment application for these incumbent BRS licenses does

(continued...)

the remaining four Licenses to Clearwire Spectrum Holdings, LLC (“Clearwire Holdings”).³ Both applications include a request for waiver of Section 1.2111(c) of the Commission’s Rules to the extent necessary to allow for consummation of the assignment of the Licenses from WTCI to VTel and Clearwire.⁴ 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.⁵ In addition, we grant to WTCI a limited waiver of the full payment provisions of Section 1.2111(c) of the Commission’s Rules, as described herein.⁶

II. BACKGROUND

A. Description of the Applicants

2. As the winning bidder in Auction 6,⁷ WTCI, an eligible small business, chose to finance payment for the Licenses through the Commission’s installment payment program.⁸ On May 16, 2000, certain creditors of WTCI filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Pennsylvania (“Bankruptcy Court”).⁹ Subsequently, WTCI ceased making payments on its installment loans. Its auction debt, which remains

(...continued from previous page)

not involve installment payment debt and is addressed in a separate order released today. See Wireless Telecommunications, Inc., *Memorandum Opinion and Order*, DA 09-603 (rel. Mar. 16, 2009).

³ File No. 0003654174 (filed Nov. 24, 2008) (“Clearwire Application”) seeks the assignment of four BRS licenses from WTCI to Clearwire in the Lynchburg, VA (B266), Parkersburg WV-Marietta OH (B342), Salisbury MD (B398), and Santa Barbara-Santa Maria CA (B406) BTAs.

⁴ 47 C.F.R. § 1.2111(c) (requirements for unjust enrichment payments for assignment or transfer of control of licenses subject to installment payments). The waivers sought in the VTel Application and the Clearwire Application are identical and, therefore, will be referred to jointly simply as the “Waiver Request.” See VTel Application and Clearwire Application, “Request for Waiver of Section 1.2110(c) of the Rules” (“Waiver Request”).

⁵ 47 U.S.C. § 310(d).

⁶ 47 C.F.R. § 1.2111(c).

⁷ Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas; Down Payments Due April 5, 1996, FCC Form 304s/Statements of Intention Due May 10, 1996, *Public Notice*, Release No. 62216 (Mar. 29, 1996). The Commission conditionally granted five of the Licenses to WTCI on August 16, 1996, and the remaining License on July 25, 1997. See “FCC Announces Grant of MDS Authorizations,” *Public Notice*, Report No. D-871 (rel. Aug. 16, 1996); “FCC Announces Grant of MDS Authorizations,” *Public Notice*, Report No. D-941-A (rel. Jul 25, 1997).

⁸ See 47 C.F.R. § 1.2110 (1999). In 1997, the Commission suspended the use of installment payments by small businesses participating in our auction program. See Amendment of Part 1 of the Commission’s Rules – Competitive Bidding, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 397 ¶ 38 (1997).

⁹ Chapter 7 of Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.*, as amended (the “Bankruptcy Code”). See *In re Wireless Telecommunications, Inc. et al.*, Case No. 1-00-02188 (Bankr. M.D. Pa. 1998; filed May 16, 2000). The case was initially filed in the Harrisburg division, but later transferred to the Wilkes-Barre division and re-designated as Case No. 5-02-003994. See *Waiver Request* at n.24 (citing *In re Wireless Telecommunications, Inc. et al.*, Case No. 5-02-003994 (Bankr. M.D. Pa. 1998; Sept. 12, 2000)).

unpaid, became the subject of the bankruptcy proceeding. On July 18, 2003, the Bankruptcy Court entered an order converting the case to a Chapter 11 proceeding, making WTCI a debtor-in-possession.¹⁰

3. VTel, a Vermont corporation, and its wholly-owned wireless subsidiary, VTel Wireless, Inc. (“VTW”), currently hold licenses in the broadband Personal Communications Services (“PCS”), Advanced Wireless Services (“AWS-1”), and the 700 MHz Band.¹¹ According to the VTel Application, VTel’s primary business is telecommunications, serving 14 towns and villages in southern Vermont and, upon grant and consummation of the proposed license assignment, VTel will use the subject spectrum to “provide competitive broadband wireless services primarily to residential and small business customers in rural portions of Vermont and New Hampshire.”¹²

4. Clearwire Holdings is a wholly-owned subsidiary of Clearwire Corporation (“Clearwire”), a Delaware corporation.¹³ Sprint Nextel holds an approximate 50.3 percent interest in Clearwire.¹⁴ According to the Clearwire Application, Clearwire’s principal business activity is the provision of wireless broadband communications services and, upon grant and consummation of the proposed license assignment, Clearwire will use the subject spectrum to “provide competitive broadband wireless services primarily to residential and small business customers.”¹⁵

B. Proposed Transaction

5. In 2005, as part of its bankruptcy proceeding, WTCI entered into an agreement with the Commission to resolve the outstanding installment payment obligations incurred by WTCI with respect to the Licenses (“Settlement Agreement”).¹⁶ The Bankruptcy Court approved the Settlement Agreement on December 6, 2005.¹⁷ Pursuant to the Settlement Agreement, WTCI was permitted to market and assign its interest in the Licenses, and the Commission was allowed a first priority claim, secured by the proceeds of any such assignment, to be paid at closing.¹⁸ WTCI proceeded with a court-supervised auction on July 30, 2007, after which the Bankruptcy Court tentatively found the VTel and Clearwire proposals to be the highest and best offers for the Licenses.¹⁹ The Bankruptcy Court issued a formal order approving the transactions, subject to the Commission’s consent, on August 8, 2007.²⁰ As a result, WTCI is to pay the Commission \$2,689,063.24, an amount sufficient to satisfy the sum of the unpaid principal balance plus all interest and late penalties accrued as of the bankruptcy petition date, as well as an

¹⁰ Waiver Request at 5, citing *In re Wireless Telecommunications, Inc., et al.*, Case No 5-02-003994 (Bankr. M.D. Pa.; July 18, 2003).

¹¹ VTel Application, Public Interest Statement at 2.

¹² *Id.*

¹³ See Clearwire Application, Exhibit A at 2.

¹⁴ See Clearwire Corporation Form 602, File No. 0003694423 (filed Jan. 6, 2009).

¹⁵ *Id.*

¹⁶ Waiver Request at 7. The Master Settlement Agreement was entered into on June 3, 2005, among the FCC, Wireless Telecommunications, Inc., and Leroy A. King, Jr., and Kathy Parks King, as approved by the Bankruptcy Court. See *In re Wireless Telecommunications, Inc.*, Case No. 5-02-003994 (Bankr. M.D. Pa.; Dec. 6, 2005) (Order Approving Settlement with Federal Communications Commission) (“Settlement Agreement”).

¹⁷ Waiver Request at 7, citing *In re Wireless Telecommunications, Inc. et al.*, Case No. 5-02-003994 (Bankr. M.D. Pa.; Dec. 6, 2005) (approving and authorizing terms and conditions of the proposed settlement agreement with the Commission).

¹⁸ Waiver Request at 2-3.

¹⁹ *Id.* at 9.

²⁰ *Id.*, citing *In re Wireless Telecommunications, Inc. et al.*, Case No. 5-02-003994 (Bankr. M.D. Pa.; Aug. 8, 2007).

additional sum of \$386,292.68, which will satisfy a part of the interest accruing after the bankruptcy petition was filed.²¹

6. WTCI, VTel, and Clearwire (collectively, the “Applicants”) assert that the assignment of the Licenses from WTCI to VTel and Clearwire is in the public interest and will not adversely affect competition in the subject markets.²² The Applicants also request that the Commission, as part of its approval of the applications, grant a waiver of Section 1.2111(c) of the Commission’s Rules “to the extent necessary to permit the license assignments.”²³ The Applicants acknowledge that the Commission’s rules require that the outstanding installment loan balance, unpaid interest, and any late fees be paid in full by the licensee prior to assignment of the Licenses to entities that do not meet the eligibility standards for installment payments.²⁴ Therefore, the Applicants seek a waiver of Section 1.2111(c) to the extent that the proceeds from the proposed transactions do not completely satisfy WTCI’s payment obligation to the Commission.²⁵

7. The Bureau placed the VTel and Clearwire Applications on public notice on December 3, 2008.²⁶ No oppositions or other comments were filed in response to the public notice.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

8. Pursuant to Section 310(d) of the Communications Act²⁷ and the Commission’s license assignment and transfer of control proceedings, we must determine whether the Applicants have demonstrated that the proposed assignment would serve the public interest, convenience, and necessity. In applying our public interest test, we must assess whether the proposed assignment complies with the specific provisions of the Communications Act,²⁸ other applicable statutes, and the Commission’s

²¹ Waiver Request at 7. *See also* Settlement Agreement at 5, 9.

²² VTel and WTCI acknowledge that VTel and its wholly-owned subsidiary, VTW, hold broadband PCS, AWS-1, and 700 MHz Bands licenses around the BTAs covered by the VTel Application. VTel Application, Public Interest Statement at 2. VTel argues that the “small amount of overlap” is not anti-competitive. *Id.*

²³ Waiver Request at 1.

²⁴ *Id.* at 10.

²⁵ *Id.* at 1.

²⁶ *See* Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing, *Public Notice*, Report No. 4565 (rel. Dec. 3, 2008).

²⁷ 47 U.S.C. § 310(d).

²⁸ Section 310(d) requires that we consider applications for transfer of control as if the proposed transferee were applying for the licenses directly under Section 308. 47 U.S.C. §§ 308, 310(d). *See, e.g.*, 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, *Memorandum Opinion and Order & Declaratory Ruling*, 23 FCC Rcd 17,444, 17,464 ¶ 26 & n.136 (2008) (“*Verizon-ALLTEL Order*”); Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17,570, 17,579 at ¶ 19 n.69 (2008) (“*Sprint Nextel-Clearwire Order*”); 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 ¶ 12 (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 12,463, 12,476-77 ¶ 26 (2008) (“*Verizon-RCC Order*”); Applications of AT&T Inc. and Dobson Communications

(continued....)

applicable rules and policies.²⁹ If a proposed assignment does 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.³⁰ The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³¹ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.³² If the record presents a substantial and material question of fact whether the application would serve the public interest, convenience and necessity, then we must designate the application for hearing under section 309(e) of the Communications Act.³³

IV. DISCUSSION

A. Qualifications of Applicants

9. In evaluating whether the parties meet the requisite qualifications to hold and assign licenses under Section 310(d) of the Communications Act and the Commission's rules,³⁴ the Commission does not, as a general rule, 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.³⁵ Here, no issues have been raised with respect to the basic

(...continued from previous page)

Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20,295, 20,301 ¶ 10 (2007) (“*AT&T-Dobson Order*”).

²⁹ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,464 ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20,301 ¶ 10.

³⁰ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,464 ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20,301 ¶ 10.

³¹ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,579 at ¶ 19 n.69; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20,301 ¶ 10.

³² See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,464 ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20,301 ¶ 10.

³³ 47 U.S.C. § 309(e). See also *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,464 ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20,301 ¶ 10.

³⁴ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12,477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20,302 ¶ 11; Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11,526, 11,536 ¶ 17 (2006) (“*ALLTEL-Midwest Wireless Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13,967, 13,979 ¶ 24 (2005) (“*Sprint-Nextel Order*”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13,053, 13,063 ¶ 18 (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 21,522, 21,546 ¶ 44 (2004) (“*Cingular-AT&T Wireless Order*”).

³⁵ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,465 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12,477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20,302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11,536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13,979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13,063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,546 ¶ 44. See also Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of*

(continued...)

qualifications of the assignor, WTCI, which was found qualified to hold Commission licenses as recently as September 5, 2008.³⁶ Furthermore, in the companion order being released today, allegations concerning WTCI's qualifications have been rejected, and WTCI was found qualified to be a Commission licensee.³⁷ In the case of Clearwire and VTel, both assignees currently hold Commission licenses, and no issues have been raised with respect to either Clearwire's or VTel's basic qualifications as an assignee. Thus, we find no reason to re-evaluate the qualifications of either Clearwire or VTel at this time.

B. Competitive Analysis

10. Consistent with the Commission's practice when reviewing proposed wireless transactions affecting the mobile telephony/broadband market, we consider the potential competitive harms associated with this assignment application.³⁸ First, we define the relevant product and geographic markets.

11. *Product Market.* In reviewing this proposed spectrum transfer application, we apply the same product market definition for mobile telephony/broadband services as applied by the Commission in recent transactions.³⁹ Although the Commission has determined that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services,⁴⁰ it nevertheless analyzes all of these product markets under the combined market for mobile telephony/broadband services.⁴¹ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission has determined that this approach provides a reasonable assessment of any potential competitive harm resulting from transactions.⁴²

12. *Geographic Market.* The Commission applies the "hypothetical monopolist test" to relevant geographic markets and found that they are local, larger than counties, may encompass multiple counties,

(...continued from previous page)

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.*

³⁶ In September 2008, WTCI entered into a consent decree with the Commission's Enforcement Bureau regarding possible unauthorized transfers of control of Commission authorizations. *See* Wireless Telecommunications, Inc. Licensee of Various Authorizations in the Broadband Radio Service, *Order*, 23 FCC Rcd 13,205 (2008). The Enforcement Bureau found that "[i]n the absence of material new evidence, [we find] no substantial or material questions of fact as to whether WTCI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization." *Id.*

³⁷ *See supra* note 2.

³⁸ *See, e.g.,* 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*, 23 FCC Rcd 12,463, 12,481-83 ¶¶ 31-35 (2008) ("*Verizon-RCC Order*").

³⁹ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,469-70 ¶¶ 45-47; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,586-89 ¶¶ 38-45.

⁴⁰ *See Verizon-ALLTEL Order*, 23 FCC Rcd at 17,470 ¶ 45 n.198; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,586 ¶ 38 n.106; *Verizon-RCC Order*, 23 FCC Rcd at 12,483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20,308 ¶ 21.

⁴¹ *See Verizon-ALLTEL Order*, 23 FCC Rcd at 17,469-70 ¶¶ 45-47; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 ¶ 19 n.69; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20,308 ¶ 21.

⁴² *See Verizon-ALLTEL Order*, 23 FCC Rcd at 17,469-70 ¶¶ 45-47; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 ¶ 19 n.69; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20,308 ¶ 21.

and, depending on the consumer's location, may even include parts of more than one state.⁴³ The Commission uses two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).⁴⁴ Because these two sets of geographic areas come separately from the demand and supply sides – demand in the case of CEAs, supply in the case of CMAs – the Commission finds 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.⁴⁵

13. *Input Market for Spectrum.* Consistent with the Commission's recent wireless transaction orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony/broadband services in the affected markets. In the *Verizon-ALLTEL* and *Sprint Nextel-Clearwire* orders adopted in November 2008, the Commission determined that the input market would vary depending on the “suitable” spectrum available in the particular market affected by the transaction. Specifically, the Commission found that spectrum suitable for the provision of mobile telephony/broadband services includes approximately 280 megahertz of cellular, broadband PCS, Specialized Mobile Radio (“SMR”), and 700 MHz band spectrum that is available for the provision of mobile telephony/broadband services on a nationwide basis,⁴⁶ as well as the 90 megahertz of Advanced Wireless Service spectrum in the 1.7/2.1 GHz band (“AWS-1”) and the 55.5 megahertz of contiguous Broadband Radio Service (“BRS”) spectrum in the 2.5 GHz band to the extent such spectrum also is available for the provision of mobile telephony/broadband services.⁴⁷

14. *Market Participants.* Consistent with the recent wireless transaction orders, when computing initial measures of market concentration, we limit our analysis of this transaction involving mobile telephony/broadband services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, nomadic wireless Voice over Internet Protocol (“VoIP”) providers, mobile virtual network operators (“MVNOs”), and resellers from consideration.⁴⁸ In addition, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, we also consider them to be market participants.⁴⁹

15. *Initial Screen.* When examining the effect of proposed transactions, the Commission applies a two-part initial “screen,” followed by a further case-by-case review of the markets identified by that

⁴³ See *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 ¶ 19 n.69; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 38; *AT&T-Dobson Order*, 22 FCC Rcd at 20,309 ¶ 23.

⁴⁴ See *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,471 n.200; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,591 n.136; *Verizon-RCC Order*, 23 FCC Rcd at 12,484 n.151; *AT&T-Dobson Order*, 22 FCC Rcd at 20,309 ¶ 23; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14,876-77 ¶ 27.

⁴⁵ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,579 ¶ 19 n.69; *Verizon-RCC Order*, 23 FCC Rcd at 12,476-77 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20,309 ¶ 23.

⁴⁶ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,591-92 ¶ 53.

⁴⁷ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,473-74 ¶¶ 53-55; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,591-92 ¶¶ 53-55.

⁴⁸ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 22 FCC Rcd at 17,600 ¶ 75; *AT&T-Dobson Order*, 22 FCC Rcd at 20,316 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11,544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13,070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,563 ¶ 91.

⁴⁹ See *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,481 ¶ 71; *Sprint Nextel-Clearwire Order*, 22 FCC Rcd at 17,600-01 ¶ 75; *AT&T-Dobson Order*, 22 FCC Rcd at 20,316 ¶ 36.

screen. As discussed in previous wireless transaction orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm in today's generally competitive marketplace.⁵⁰ For those markets that are identified by the initial screen, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether the combined firm, or as in this case, the assignee, could likely exercise market power in any particular market.⁵¹

16. The first part of this screen examines changes in the measures of the Herfindahl-Hirschman Index ("HHI") of market concentration in each affected market, which is calculated based on providers' subscriber market shares.⁵² Our initial HHI screen identifies, for further case-by-case analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI.⁵³ Because the instant transaction does not involve a transfer of mobile telephony/ broadband customers, the HHI screen is not implicated. Accordingly, our competitive analysis below involves only the spectrum aggregation portion of the screen.

17. The second part of this screen examines the input market for spectrum available for the provision of mobile telephony/broadband services in each of the affected markets.⁵⁴ This spectrum aggregation screen varies depending on whether, in addition to the 280 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum, there also is AWS-1 and/or BRS spectrum available *locally* in the affected market.⁵⁵ In markets in which neither AWS-1 nor BRS spectrum is available, the spectrum screen identifies for further competitive review each market in which the proposed spectrum aggregation would amount to 95 megahertz or more of spectrum.⁵⁶ In other markets where AWS-1 and/or BRS spectrum is in fact available, the Commission applies a higher spectrum screen.⁵⁷

⁵⁰ See, e.g., *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,481-82 ¶ 75; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,601 ¶ 76; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12,489 ¶ 51; *AT&T-Dobson Order*, 22 FCC Rcd at 20,317 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11,547 n.151; *Sprint-Nextel Order*, 20 FCC Rcd at 13,993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13,073-74 ¶ 48; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,568-69 ¶¶ 106-109.

⁵¹ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,468-69 ¶ 41; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,583 ¶ 24; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12,482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20,307 ¶ 16.

⁵² *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,468-69 ¶ 41; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,601 ¶ 76; *Verizon-RCC Order*, 23 FCC Rcd at 12,482, ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20,306 ¶ 15.

⁵³ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,482-83 ¶ 78; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,601 ¶ 76; *Verizon-RCC Order*, 23 FCC Rcd at 12,489-90 ¶ 52; and *AT&T-Dobson Order*, 22 FCC Rcd 20,317-18 ¶ 40.

⁵⁴ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,468-69 ¶ 41; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,591-92, 17,607 ¶¶ 53-55, 77.

⁵⁵ See *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,468-69 ¶ 41; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,591-92 ¶ 53. For markets in which only cellular, PCS, SMR, and 700 MHz spectrum is available, and neither AWS-1 nor BRS spectrum is available, the Commission applies a 95 megahertz spectrum screen. For markets in which AWS-1 and BRS spectrum is available, the applicable screen is 145 megahertz. For markets in which AWS-1 is available but BRS is not available, the Commission applies a spectrum screen of 125 megahertz. Finally, for markets in which BRS is available but AWS-1 is not available, the Commission applies a spectrum screen of 115 megahertz. *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,477-78 ¶ 64; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,600 ¶ 74.

⁵⁶ *Verizon-ALLTEL Order*, 23 FCC Rcd at 17,477-78 ¶ 64; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,600 ¶ 74.

⁵⁷ See *supra* note 55.

18. For the VTel Application the BRS transition is not complete in the Keene, NH (BTA 227) and Lebanon-Claremont, NH (BTA 249) BTAs. Since the BRS transition is not complete, the BRS spectrum is not included in the spectrum aggregation screen for purposes of analyzing the assignment of these licenses. Consequently, as a result of this application, there would be no change in the amount of spectrum subject to the screen. So the spectrum aggregation screen would not require any further review in this instance.

19. For the Clearwire Application the BRS transition is similarly not complete in the Parkersburg, WV-Marietta, OH (BTA 342) BTA. Thus, the BRS spectrum being assigned is not included in the spectrum aggregation screen for purposes of analyzing the assignment of this license, and the spectrum aggregation screen would not required any further review.

20. For the remaining licenses, the BRS transition is complete in the Lynchburg, VA (BTA 266), Salisbury, MD (BTA 398), and Santa Barbara-Santa Maria, CA (BTA 406) BTAs. So 55.5 megahertz of BRS spectrum is included in the screen. AWS-1 spectrum is also available in the Lynchburg, VA and Santa Barbara-Santa Maria, CA BTAs. Therefore, the trigger in both in the counties that comprise these BTAs is 145 megahertz. By contrast, because AWS-1 spectrum is not available in the Salisbury, MD BTA, the trigger for the counties that comprise this BTA is 115 megahertz.

21. Sprint Nextel holds an approximate 50.3 percent interest in Clearwire Corporation.⁵⁸ Therefore consistent with the *Sprint Nextel-Clearwire Order*, we apply the spectrum aggregation screen to Sprint Nextel.⁵⁹ Specifically, we include spectrum that is deemed suitable for mobile telephony/broadband services in which Sprint Nextel would have a 10 percent or greater interest, including spectrum currently held by or being acquired by Clearwire. The application of our spectrum screen on a county-by-county basis for these BTAs results in the screen not being triggered for Sprint Nextel.⁶⁰

22. First, Sprint Nextel holds 38 to 39 megahertz of spectrum suitable for the provision of mobile telephony/ broadband services on a county-by-county basis in the Lynchburg, VA BTA. As a result of the proposed assignment Sprint Nextel would acquire an additional 55.5 MHz of BRS spectrum. Therefore, post-transaction Sprint Nextel's spectrum aggregation on a county-by-county basis would be 93.5 to 94.5 megahertz, which falls below the 145 megahertz of spectrum threshold that would warrant further competitive analysis.

23. Second, Sprint Nextel holds 58 megahertz of spectrum suitable for the provision of mobile telephony/ broadband services on a county-by-county basis in the Salisbury, MD BTA. As a result of the proposed assignment Sprint Nextel would acquire an additional 55.5 MHz of BRS spectrum. Therefore, post-transaction Sprint Nextel's spectrum aggregation on a county-by-county basis would be 113.5 megahertz, which falls below the 115 megahertz of spectrum threshold that would warrant further competitive analysis.

24. Finally, Sprint Nextel holds 47 megahertz of spectrum suitable for the provision of mobile telephony/ broadband services on a county-by-county basis in the Santa Barbara-Santa Maria, CA BTA. Therefore, post-transaction Sprint Nextel's spectrum aggregation on a county-by-county basis

⁵⁸ See Clearwire Corporation Form 602, File No. 0003694423 (filed Jan. 6, 2009).

⁵⁹ *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17,600 ¶ 77.

⁶⁰ Clearwire is acquiring the BTA license in these markets, and post-transaction they would hold only 55.5 MHz of spectrum deemed suitable for the provision of mobile telephony/broadband services. Therefore, on a county-by-county basis the spectrum screen is not triggered for Clearwire as a result of the application.

would be 102.5 megahertz, which falls below the 145 megahertz of spectrum threshold that would warrant further competitive analysis. Thus, no further competitive review is necessary.

C. Public Interest Benefits

25. The Applicants argue that this transaction will serve the public interest in three principal ways. First, the transaction is in furtherance of the Settlement Agreement between WTCI and the Commission, as well as the VTel/Clearwire Asset Purchase Agreement, both of which were approved by the Bankruptcy Court. Second, both assignees maintain that they are “established and experienced” telecommunications companies whose qualifications are a matter of Commission record. Finally, as discussed above, the Applicants claim that, just as the public interest will be served by grant of a limited waiver of Section 1.2111(c), the transaction as a whole will be in the public interest.⁶¹

26. We agree with the Applicants that the proposed transaction will be in the public interest. Grant of the proposed assignments will both facilitate the successful resolution of WTCI’s bankruptcy proceeding and allow VTel and Clearwire to expand their respective footprints into new markets, including rural areas, and enhance their offerings in those areas in which they already provide service.

D. Request for Waiver

27. We next address the Applicants’ requests for waiver of Section 1.2111(c) of the Commission’s Rules. For the reasons articulated below, we find that the Applicants have satisfied the Commission’s standard for waiver to the extent described herein.⁶² Therefore, we grant WTCI a limited waiver of the full payment provisions of Section 1.2111(c) so that the Applicants may consummate the proposed transaction as set forth in the subject applications.⁶³

28. Section 1.2111(c) of the Commission’s Rules governs the assignment of BRS licenses financed under the Commission’s installment payment program.⁶⁴ The rule is intended to prevent unjust enrichment by requiring the licensee to pay, on or before consummation of the transaction, the entire outstanding installment debt associated with the licenses that it wishes to assign to parties not eligible for the installment payment program. Therefore, absent the grant of a waiver, Section 1.2111(c) requires payment in full of the entire remaining debt, including all of the principal, the accrued interest, and any late fees.⁶⁵

29. As detailed in the applications, the monies that WTCI proposes to pay to the Commission will fully satisfy the outstanding principal obligation it owes for the six Licenses. However, the monies are insufficient to fully pay the accrued interest and any late fees that WTCI owes under Section 1.2111(c). Thus, if we are to approve the assignment of licenses to VTel and Clearwire as described in the subject applications, we must grant WTCI a limited waiver of the full payment provisions in Section 1.2111(c) with respect to a portion of accrued interest and any late fees.⁶⁶

⁶¹ See VTel Application, Public Interest Statement at 2-3; Clearwire Application, Exhibit A at 2.

⁶² 47 C.F.R. § 1.925.

⁶³ 47 C.F.R. § 1.2111(c).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* WTCI raises the possibility that the proposed transaction would fully comply with 47 C.F.R. § 1.2111(c), making waiver of the rule unnecessary, although it provides no basis for this argument. See Waiver Request at n.13. Consistent with the Commission precedent, however, the existence of the Settlement Agreement does not automatically relieve the Applicants of their obligations under the Commission’s rules. See, e.g., Applications for

(continued....)

30. 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

31. We agree with the Applicants that the particular facts and circumstances of the WTCI 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 the Commission's regulatory review and approval, will fail, and the Licenses will remain subject to the continued uncertainties inherent in the bankruptcy process. The Commission has been presented with similar situations in the past. Beginning with the Commission's decision in the *NextWave-Cingular Order*, the Commission or Commission staff has determined in these cases that the grant of a limited waiver to a bankrupt assignor that reaches a negotiated settlement with the U.S. Government serves the public interest.⁶⁸ Specifically, as the Commission concluded in the *NextWave-Cingular Order*, the grant of a limited waiver in these circumstances allows the spectrum in question to be put into immediate use for the benefit of consumers. In this case, in markets where VTel and Clearwire do not currently hold spectrum, the transaction will add a new competitor, and in markets where they are already providing service, grant of the transaction will allow these companies to expand their capacity and service offerings.⁶⁹

32. In addition, as the Commission explained in the *NextWave-Cingular Order*, and Commission staff have repeated in subsequent cases, the grant of a limited waiver of Section 1.2111(c) in order to resolve long-standing bankruptcy litigation is consistent with the Commission's statutory obligations under Section 309(j) of the Communications Act.⁷⁰ Specifically, as the Applicants argue, the

(...continued from previous page)

Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC, WT Docket 03-217, *Memorandum Opinion and Order*, 19 FCC Rcd 2570, 2588-89 ¶¶ 42-43 (Commission found that approval of the transaction required waiver of the unjust enrichment rules) (2004) ("*NextWave-Cingular Order*"). As the Commission stated in *NextWave-Cingular Order*, 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 47 C.F.R. § 1.925 of its rules to determine whether it should grant any necessary waivers. Thus, to the extent the proposed transactions do not fully satisfy all of the remaining installment debt owed by WTCI, if we are to approve the assignment of Licenses to VTel and Clearwire as described in the subject applications, we must grant WTCI a limited waiver of the full payment provisions of 47 C.F.R. § 1.2111(c) pursuant to 47 C.F.R. § 1.925.

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 *NextWave-Cingular Order*, 19 FCC Rcd at 2589 ¶ 44.

⁶⁹ Waiver Request at 16-17.

⁷⁰ 47 U.S.C. § 309(j). See *NextWave-Cingular Order*, 19 FCC Rcd at 2590 ¶ 46. See also Summit Wireless WOW, LLC, Debtor-In-Possession, et al, Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act, *Memorandum Opinion and Order*, 19 FCC Rcd 23,759 (WTB 2004) ("*Summit Wireless Order*"); Communication Ventures, Inc. and WinBeam, Inc. to Assign Broadband Radio Service Licenses B117 (Dubois-Clearfield, PA), B203 (Indiana, PA), and B328 (Oil City-Franklin, PA), *Memorandum Opinion and Order*, 20 FCC Rcd 17,178 (WTB-ASAD 2005) ("*CVI- WinBeam Order*"); Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc., Debtor-in-Possession, to Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 20 FCC

(continued....)

proposed transaction will promote the efficient use of spectrum and the rapid deployment of services for the benefit of the public.⁷¹ Thus, like the Commission's conclusion in the *NextWave-Cingular Order*, the grant of a waiver here would be consistent with the Commission's statutory obligation in Section 309(j)(3)(A)-(B) to promote competition and to speed the deployment of services for the benefit of the public.⁷²

33. Moreover, as the Commission previously found in similar circumstances, the recovery of the monies to the benefit of the U.S. Treasury from a bankrupt assignor, like WTCI, is consistent with the intent of Section 309(j)(3)(C) of the Act, "to recover for the public a portion of the value of the public spectrum resource."⁷³ As the Commission found in the *NextWave-Cingular Order*, continued litigation will only hinder the Commission's ability to recover such value.⁷⁴ The proposed assignment of licenses from WTCI to VTel and Clearwire is an important step in ending the uncertainty surrounding the licenses as a result of the WTCI bankruptcy proceedings. Here, as in previous bankruptcies, it is unclear how long it would take to achieve the recovery of a portion of the value of the public spectrum resource through the bankruptcy process.⁷⁵ We therefore believe that under these particular circumstances, granting a limited waiver to WTCI is entirely consistent with precedent and the Commission's statutory obligations in Section 309(j)(3)(C) of the Communications Act.⁷⁶

34. Additionally, as the Commission determined in *NextWave-Cingular*, approval of the proposed transaction and grant of a limited waiver does not result in any unjust enrichment as contemplated by the Commission's rules.⁷⁷ 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.⁷⁸ We recognize that the acceptance of the monies WTCI will pay results in less than "full payment" under the Commission's rules and would be impermissible absent

(...continued from previous page)

Rcd 10,440 (WTB 2005) ("*UrbanComm-Cellco Order*"); Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc., Debtor-in-Possession, to Cellco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 21 FCC Rcd 15,050 (WTB 2006) ("*UrbanComm-Cellco Order II*").

⁷¹ Waiver Request at 14.

⁷² 47 U.S.C. § 309(j)(3)(A)-(B). See *NextWave-Cingular Order*, 19 FCC Rcd at 2589 ¶ 44; *CVI- WinBeam Order*, 20 FCC Rcd at 17,181-82 ¶ 9; *UrbanComm-Cellco Order*, 20 FCC Rcd at 10,449-50 ¶ 23; *UrbanComm-Cellco Order II*, 21 FCC Rcd at 15,058-59 ¶ 21.

⁷³ 47 U.S.C. § 309(j)(3)(C). See, e.g., *NextWave-Cingular Order*, 19 FCC Rcd at 2589 ¶ 44; *CVI- WinBeam Order*, 20 FCC Rcd at 17,181-82 ¶ 9; *UrbanComm-Cellco Order*, 20 FCC Rcd at 10,449-50 ¶ 23; *UrbanComm-Cellco Order II*, 21 FCC Rcd at 15,058-59 ¶ 21.

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

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

⁷⁶ 47 U.S.C. § 309(j)(3)(C).

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

⁷⁸ 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).

circumstances akin to those the Commission considered in granting limited waivers in the *NextWave-Cingular Order* and other similar cases.⁷⁹

35. In granting this limited waiver, we also follow the precedent set by the Commission in the *NextWave-Cingular Order* and similar orders, and do not reach any determination regarding how long or how much interest or late fees have accrued under Section 1.2111.⁸⁰ Instead, because the Department of Justice executed the Settlement Agreement with WTCI 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 amount WTCI will pay (subject to the Commission's necessary regulatory approvals that we have provided herein),⁸¹ 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 Section 1.2111(c) regarding those obligations. The amount WTCI will pay satisfies all of its principal obligations for the Licenses, and at least a portion of the interest and any late fees owed by WTCI under Section 1.2111.⁸² The grant of a limited waiver of WTCI'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 licenses included in the proposed assignment. As the Commission noted in the *NextWave-Cingular Order*, such action has significant benefits to the public.⁸³

V. CONCLUSION

36. Based upon the record before us, we conclude that the proposed assignment of the Licenses from WTCI to VTel and Clearwire will serve the public interest, convenience, and necessity, and, therefore, meets the requirements of Section 310(d) of the Communications Act.⁸⁴ In addition, for the reasons stated above, we grant WTCI a limited waiver of the full payment provision of Section 1.2111(c) of the Commission's Rules, as described herein.

VI. ORDERING CLAUSES

37. 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), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the requests for waiver of Section 1.2111(c) of the Commission's Rules, 47 C.F.R. § 1.2111(c), contained in the applications seeking approval for the assignment of certain Broadband Radio Service licenses from Wireless

⁷⁹ *NextWave-Cingular Order*, 19 FCC Rcd at 2590 ¶ 46; *Summit Wireless Order*, 19 FCC Rcd at 23,769 ¶ 24; *CVI-WinBeam Order*, 20 FCC Rcd at 17,181-82 ¶¶ 8-10; *UrbanComm-Cellco Order*, 20 FCC Rcd at 10,449-50 ¶¶ 21-24.

⁸⁰ *NextWave-Cingular Order*, 19 FCC Rcd at 2590-91 ¶ 47; *CVI-WinBeam Order*, 20 FCC Rcd at 17,182 ¶ 11; *UrbanComm-Cellco Order*, 20 FCC Rcd at 10,450 ¶ 25.

⁸¹ See Settlement Agreement at 11 ("Department of Justice ('DOJ') on behalf of the United States, grants Debtors debt forgiveness for such amount, including any license installments, interest, or penalties that may otherwise be due under the FCC's regulations.")

⁸² See *id.* at 4-7, including Section 4(a) ("During the marketing period, WTCI may sell the To Be Marketed Licenses for an amount not less than the FCC Claim associated with such licenses....It shall be a condition of any FCC consent to assignment of a To Be Marketed License that the FCC Debt associated with such license shall be paid at closing in accordance with the provisions hereof.")

⁸³ *NextWave-Cingular Order*, 19 FCC Rcd at 2590 ¶ 46.

⁸⁴ 47 U.S.C. § 310(d).

Telecommunications, Inc., Debtor-in-Possession to Vermont Telephone Company, Inc. and Clearwire Spectrum Holdings, LLC (File Nos. 0003654164 and 0003654174 respectively) ARE GRANTED, conditioned upon the Commission's receipt of the monies specified by the Settlement Agreement.

38. IT IS FURTHER 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), and Section 1.948 of the Commission's Rules, 47 C.F.R. § 1.948, that the Broadband Division of the Wireless Telecommunications Bureau SHALL PROCESS the applications seeking approval for the assignment of certain Broadband Radio Service licenses from Wireless Telecommunications, Inc., Debtor-in-Possession to Vermont Telephone Company, Inc. and Clearwire Spectrum Holdings, LLC (File Nos. 0003654164 and 0003654174, respectively) in accordance with this *Memorandum Opinion and Order* and the Commission's Rules.

39. 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

James D. Schlichting
Acting Chief, Wireless Telecommunications Bureau