

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
ATLANTIS HOLDINGS, LLC (Transferor))
VERIZON WIRELESS (Transferee)) WT Docket No. 08-95
)
Application for Consent to Transfer Licenses,) File Nos. 0003463892, *et al.*
Spectrum Manager and *De Facto* Transfer)
Leasing Arrangements, and Authorizations,)
and Request for Declaratory Ruling on Foreign)
Ownership)

To: The Commission, *en banc*

PETITION TO DENY

RITTER COMMUNICATIONS, INC. (“Ritter”) and CENTRAL ARKANSAS RURAL CELLULAR LIMITED PARTNERSHIP (“CARCLP”) (collectively “Arkansas Limited Partners”), by their attorney, respectfully petition the Federal Communications Commission, as hereinafter set forth, to deny the captioned applications, as presented, as contrary to public interest, convenience and necessity. In support of their petition, Arkansas Limited Partners respectfully show:

Introduction and Background

In the captioned proceeding, Cellco Partnership d/b/a Verizon Wireless and its wholly-owned subsidiary AirTouch Cellular (collectively “VZW”) and Atlantis Holdings, LLC (“Atlantis”) seek Commission approval for the transfer of control of various radio station licenses and other authorizations held by subsidiaries of Alltel Corporation and partnerships in which Alltel Corporation directly or indirectly holds controlling interests or non-controlling general partner-

ship interests (collectively hereinafter “Alltel”). The transfer of control of Alltel from Atlantis to VZW would be effected pursuant to an Agreement and Plan of Merger dated June 5, 2008, entered into by and between VZW, Abraham Merger Corporation (a newly-formed subsidiary of AirTouch Cellular), Atlantis and Alltel Corporation.¹

The acquisition of Alltel by Atlantis was only very recently approved by the Commission in the first instance, *i.e.*, on October 26, 2007.² Thus, barely six months after its acquisition of Alltel was initially approved, Atlantis has entered into what can only be characterized as a contract to “flip” Alltel to VZW for an undisclosed profit. Given the complexity of the proposed acquisition by VZW, it is obvious that negotiations between Atlantis and VZW relating to the acquisition likely commenced long before the June 5th Agreement, perhaps immediately after – or even before – the Commission’s approval of Atlantis’ acquisition of Alltel.

In consenting to the Alltel acquisition by Atlantis, the Commission explicitly found and relied upon the public interest benefits alleged by the parties to justify Commission approval of the acquisition:

the proposed transaction would serve the public interest, because ALLTEL would be able to improve service to consumers, especially in unserved and underserved rural areas; invest in the deployment of advanced services; and expand its network through the purchase of additional spectrum.³

Stated another way, Atlantis represented to the Commission as a material inducement for its approval of the Alltel acquisition that the public interest would benefit in three ways if private equity investors were allowed to take Alltel private: (1) rural areas would get improved service; (2) advanced services would be deployed in rural areas; and (3) additional spectrum would be

¹ Form 601, Exhibit 1, p. 5, File No. 0003463892.

² Applications of Alltel Corporation, Transferor, and Atlantis Holdings, LLC, Transferee, for Consent to Transfer of Control of Licenses, Leases and Authorizations (*Memorandum Opinion and Order*), 22 FCC Rcd 19,517 (FCC 2007) (the “Atlantis Acquisition Order”).

³ *Id.* at ¶7, citing Application, Exhibit 1, at pp. 6-8. (*Citation omitted).

acquired for deployment of additional services to rural areas. Nonetheless, Atlantis has done none of those things; instead, the ink was hardly dry on the Commission's approval before Atlantis agreed to "flip" Alltel to VZW for an undisclosed but presumably substantial profit.

Identity and Interest of Petitioner

Ritter holds partnership interests in four Alltel partnerships, control of which is subject to transfer in this proceeding. Ritter is a limited partner in Northwest Arkansas RSA Limited Partnership (Station KNKN580, File No. 0003464840), Alltel Northern Arkansas RSA Ltd Partnership (Station KNKQ363, File No. 0003465007), and in Arkansas RSA #2 (Searcy County) Cellular Limited Partnership (Station KNKQ404, File No. 0003465098). In addition, Ritter indirectly holds (through a general and limited partnership interest in CARCLP) a limited partnership interest in Alltel Central Arkansas Cellular L.P. (Station KNKN502, File No. 0003464389). A total of six other Arkansas entities also hold limited partnership interests indirectly in Station KNKN502 through CARCLP, and are represented by the Arkansas Limited Partners herein.

The proposed transaction would take value out of these partnerships in the form of (undisclosed) profits pocketed by Atlantis. The proposed transaction would do so in lieu of using that value to support investments in providing advanced services in the rural areas served by the partnerships, and to otherwise improve service in rural areas, as Atlantis promised it would do. Accordingly, the proposed transaction directly threatens to devalue the partnership interests held by the Arkansas Limited Partners, and thus they are parties in interest to this proceeding.

Grounds for Denial

The circumstances of Alltel's acquisition by Atlantis and subsequent proposed sale to VZW on their face raise substantial and material questions of fact as to whether Atlantis has trafficked in the Alltel licenses and other authorizations, and whether Atlantis lacked candor or

made misrepresentations to the Commission to induce its approval of the Alltel acquisition. Pursuant to Section 309(e) of the Communications Act, 47 U.S.C. §309(e), the Commission is therefore required to designate the captioned applications for an evidentiary hearing to resolve these issues of fact prior to passing upon the merits of the applications.

Additionally, and independently of the Commission's resolution of the trafficking and misrepresentation/lack of candor issues, the transaction should be rejected in its present form as contrary to the public interest, convenience and necessity. Atlantis promised that rural areas such as those served by the partnerships in which the Arkansas Limited Partners hold partnership interests would benefit in various important ways as a result of Atlantis' acquisition of Alltel. Rather than provide the promised benefits, Atlantis proposes to simply cash out and take its profits out of Alltel and pocket them.

Such perversion of the public interest should not be countenanced by the Commission. Instead, it should reject the transaction as proposed and require that Atlantis demonstrate that any future sales transaction does not result in any profits to Atlantis. Adopting such a policy in this case is an appropriate and necessary corollary to the Commission's "anti-greenmail" rule prohibiting parties from using litigation in application proceedings to profit.⁴ So, here, if Atlantis is ultimately permitted to "flip" Alltel to VZW or any other party, it should not be permitted to extract any profit from Alltel as a result of doing so.

1. The Proposed Transaction Raises the Issue of Whether Atlantis Has Improperly Trafficked in Alltel's Licenses and Other Authorizations

The offense of trafficking is explicitly defined in the Commission's rules in relevant part as "obtaining . . . an authorization for the principal purpose of . . . profitable resale of the au-

⁴ 47 C.F.R. §1.935 ("Agreements to dismiss applications, amendments or pleadings").

thorization rather than for the provision of telecommunications services to the public”.⁵ It is hard to imagine a more classic situation where trafficking is likely to have occurred than presented in the instant case.

As noted above, the ink was barely dry on the Commission’s approval of the Alltel acquisition before Atlantis was back before the Commission attempting to “flip” Alltel to VZW. The Arkansas Limited Partners understand that private equity investors such as Atlantis do not intend to hold properties for the long term, and that typically they have an approximate five to seven year “exit” plan in mind when they acquire a property. In order to “dress up” the acquired assets for an eventual profitable re-sale or public offering, however, they also typically institute changes in corporate operations to improve or enhance revenues and ultimate valuation, such as cutting operating costs, reducing employee counts, buying and/or selling assets strategically, etc. Atlantis did none of this; indeed, when the Alltel acquisition by Atlantis was consummated, Alltel in its partnership meetings expressly stated to Ritter and the other limited partners that the pre-existing management team would be staying in place and that there would be no noticeable changes in Alltel operation of the partnerships.

Most telling, however, is simply the timing of the relevant transactions. As a practical matter, negotiations concerning a transaction as complex as the one involved in this proceeding most likely would have commenced very soon after – if not actually *before* – Commission approval of the Alltel acquisition by Atlantis in late 2007. The fact that Atlantis switched so rapidly from the mode of acquiring Alltel to the mode of selling Alltel raises the overwhelming inference that Atlantis acquired Alltel principally for the purpose of a profitable resale to VZW, rather than for the purpose of providing service to the public. This strong inference of improper

⁵ 47 C.F.R. §1.948(h)(i)(1).

conduct is corroborated by Atlantis' utter failure during the same time to take any of the steps to reform company operations normally associated with acquisitions by private equity investors.

In circumstances where trafficking is suggested, the rules allow the Commission to require the parties to submit evidence demonstrating that they have not trafficked.⁶ However, such a limited investigation of the issue obviously would be wholly inadequate in this case, because there would be no discovery permitted of any adverse information that is solely in the possession of Atlantis or Alltel, and no opportunity to cross-examine declarants.⁷ Accordingly, the proper procedure to be employed to ferret out the truth in this case is set forth in Section 309(e) of the Communications Act, 47 U.S.C. §309(e), *viz.*, to “designate the application for hearing”.

2. The Proposed Transaction Raises the Issue of Whether Atlantis Lacked Candor and Made Misrepresentations to the Commission to Obtain Approval of the Alltel Acquisition

Similarly, Section 1.17 of the rules, 47 C.F.R. §1.17, expressly prohibits parties to a transfer of control application proceeding, including the acquisition of Alltel's control by Atlantis, from “intentionally provid[ing] material factual information that is incorrect” or from “intentionally omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading”. Both misrepresentations and lack of candor prohibited by Section 1.17 have long been recognized as “represent[ing] deceit” that “differ only in form” and “equate to fraud”.⁸ Such misconduct involves “serious breaches of trust” that goes to the core of the applicants' character qualifications to be a licensee.⁹

⁶ 47 C.F.R. §1.948(h)(i)(2).

⁷ For similar reasons, the approach taken by the Commission in the XM/Sirius merger proceeding would not afford sufficient due process to the Arkansas Limited Partners in this case. In the XM/Sirius merger, the Enforcement Bureau conducted its own investigation into violations by the parties of Commission rules, and entered into consent decrees in order to resolve those violations and eliminate those factual issues from having to be considered as part of the merger proceedings. In this case, however, the Arkansas Limited Partners are entitled to represent their own interests in adversary proceedings and the Enforcement Bureau is not authorized to act as their proxy in doing so.

⁸ *Character Qualifications Policy Statement*, 102 FCC 2d 1179, at ¶35 (FCC 1986) (subsequent history omitted) (internal quotation marks omitted), citing *Fox River Broadcasting Company, Inc.*, 93 FCC 2d 127, 129 (1983) and

In approving Alltel's acquisition by Atlantis, the Commission cited and relied upon the benefits to rural areas promised by Atlantis as a result of the acquisition. But Atlantis has never made any attempt to follow through on these promised benefits; instead, it has simply negotiated a deal to "flip" Alltel to VZW. For all of the same reasons that the circumstances unambiguously raise the inference of trafficking by Atlantis, they likewise raise the inference that Atlantis never had any intention of providing the benefits to rural areas that it promised as an inducement for Commission consent to the acquisition in the first place.

Stated differently, the inference is overwhelming that Atlantis lacked candor in its statements concerning the benefits to the public of the its acquisition of Alltel, and otherwise misrepresented material facts to the Commission concerning the benefits of the Alltel acquisition, given the timing of the events which have followed on the heels of the Alltel acquisition. Accordingly, there is a substantial and material question of fact concerning the basic qualifications of Atlantis to be a licensee, by reason of potential fraud on the Commission during the Alltel acquisition proceeding. Accordingly, an evidentiary hearing likewise is required pursuant to Section 309(e) in order to resolve that material question of fact, prior to a Commission ruling on the transfer of control applications.

3. Allowing Atlantis to Profit from Flipping Alltel to VZW Would Be Contrary To the Public Interest, Convenience and Necessity

Finally, regardless of the Commission's ultimate disposition of the trafficking and lack of candor/misrepresentation issues, the Commission should reject the proposed transaction in its

Leflore Broadcasting Company, Inc. v. FCC, 636 F.2d 454, 461-462 (D.C. Cir. 1980). See also *In re Application of Telephone and Data Systems, Inc. (Memorandum Opinion and Order and Hearing Designation Order)*, 9 FCC Rcd 938 (FCC 1994) at ¶1 ("By ensuring that our licensees are fully qualified, our action will promote full and fair competition to the benefit of the Nation's economy") (cellular application designated for hearing pursuant to Section 309(e) because of issue of applicant's character qualifications).

⁹ *Id.* at ¶¶60-61

present form because Atlantis stands to pocket undisclosed, but presumably substantial, profits from “flipping” Alltel to VZW. These profits are financial resources that the public interest requires be invested in improving service in rural areas such as served by the partnerships in which the Arkansas Limited Partners have invested, as Atlantis represented to the Commission would be done. Regardless of other questionable circumstances surrounding the proposed sale, as discussed above, the Commission is obligated by the public interest to hold Atlantis’ feet to the fire and not let it deplete the rural areas of valuable resources needed to serve the public.

The situation here is analogous to the Commission’s policy prohibiting “greenmail” in settling application proceedings. *See* Section 1.935 of the rules, 47 C.F.R. §1.935. The Commission does not allow parties to extract “profits” from an applicant when settling protests against the application; instead the protesting parties are only allowed to recover their “legitimate and prudent” costs in conducting the litigation against the applicant. *Id.* The parties also are required to make an adequate demonstration to the Commission that they are in fact only recovering legitimate and prudent costs as part of their settlement of application litigation. *Id.*

A similar policy should be applied in the circumstances of this case. The transaction as presented in this proceeding should be rejected as contrary to the public interest, convenience and necessity, because Atlantis stands to profit from “flipping” Alltel to VZW rather than providing service to the rural public with the Alltel-held licenses and other authorizations. If the Commission ultimately does allow Atlantis to “flip” Alltel to VZW or anyone else, it therefore should require Atlantis to fully demonstrate that it is not profiting from the sale at the expense of the rural areas that Alltel currently serves.

Relief Requested

For the reasons stated above, the Commission should reject the captioned transfer of control applications at the threshold because it would be contrary to the public interest in the circumstances presented for Atlantis to profit from the proposed sale of Alltel to VZW. The application papers therefore are deficient and should be summarily dismissed, because they fail to demonstrate that Atlantis will not profit from the proposed sale to VZW. Additionally, should the parties elect to proceed with the transaction after such dismissal, the Commission is obligated by the public interest standard and its rules and precedents to designate the applications for evidentiary hearing to determine whether Atlantis unlawfully trafficked in Alltel's licenses and authorization, and whether Atlantis made misrepresentations to the Commission and otherwise lacked candor in its representations to the Commission in the application papers seeking Commission approval for the acquisition of Alltel by Atlantis. These substantial and material questions of fact must be resolved pursuant to Section 309(e) before the Commission can pass on the merits of the applications pending before it in this proceeding.

Respectfully submitted,

s/Kenneth E. Hardman

Kenneth E. Hardman

*Attorney for Ritter Communications, Inc.
and Central Arkansas Rural Cellular
Limited Partnership*

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August 11, 2008

Attachment A

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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Leasing Arrangements, and Authorizations,)	
and Request for Declaratory Ruling on Foreign)	
Ownership)	

To: The Commission, *en banc*

DECLARATION OF CLINTON N. ORR

CLINTON N. ORR hereby states as follows:

I am the Controller of Ritter Communications, Inc. (the "Company") and am authorized by the Company to submit this declaration in support of the annexed Petition to Deny by the Company and other joint petitioners (the "Petition").

I am a Certified Public Accountant with 25 years of accounting experience; and I have been employed by the Company in this capacity for 16 years. My responsibilities for the Company have included accounting for and participating in the management of its cellular partnership interests in various forms since 1992. I am directly involved in partnership meetings and proceedings, budgets and related managerial activities, and I am the primary financial contract and administrator for the Company's direct and indirect cellular limited partnership interests.

Attachment A

I have read the Petition and know the contents thereof. Except for matters of which official notice may be taken, as to which I believe them to be true, and except for matters verified in the Declaration of John R. Tisdale annexed to the Petition, the statements of fact contained in the Petition are true and correct of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11 day of August, 2008.



Clinton N. Orr

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To: The Commission, *en banc*

DECLARATION OF JOHN R. TISDALE

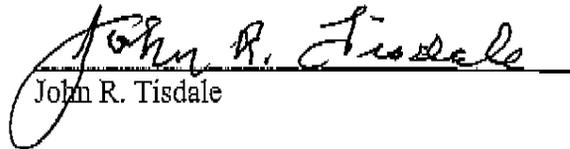
JOHN R. TISDALE hereby states as follows:

I am an Attorney At Law and a partner in the law firm of Wright Lindsey & Jennings, LLP with offices at 200 West Capitol, Suite 2300, Little Rock, Arkansas. I have been a member of the Arkansas bar and a practicing attorney since 1975, and during the last 20 years my practice has primarily involved taxation, mergers and acquisitions, and corporate law. During this period I have had substantial responsibility, most commonly as lead counsel, for representing clients in a number of transactions in which private equity investors were acquiring businesses. As a result of my professional experience, I believe I am familiar with characteristic behavior of private equity investors in the course of acquiring, operating and disposing of assets over time.

Attachment B
Page 2 of 3

I have read the foregoing Petition to Deny by Ritter Communications, Inc. and other joint petitioners (the "Petition"), and know the contents thereof. Except for matters of which official notice may be taken, as to which I believe them to be true, the statements of fact contained in the Petition with respect to customary behavior by private equity investors (Section 1 of the argument, "trafficking," second full paragraph) are true and correct based on my own knowledge of and experience with private equity investors.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of August, 2008.


John R. Tisdale

Wright, Lindsey & Jennings LLP

JOHN R. TISDALE

Practice Areas: Taxation (including tax-exempt financing, corporate and partnership issues), corporate law, health law, municipal finance, and real estate.

Admitted to Practice: Arkansas 1975; United States District Courts for the Eastern and Western Districts of Arkansas; United States Court of Appeals for the Eighth Circuit; United States Tax Court.

Present Position: Partner. Retirement Plan Administrative Committee.

Born: Little Rock, Arkansas.

Education: Rhodes College (B.A. 1968, with honors); Washington University (J.D. 1975), Managing Editor, Washington University Law Quarterly (1974-75).

Professional Affiliations: American Bar Association (Taxation and Business Law Sections); Arkansas Bar Association; Pulaski County Bar Association; National Association of Bond Lawyers; Fellow, Arkansas Bar Foundation.

Civic Activities: Our House (Board of Directors 1998-2006); Chancellor, Episcopal Diocese of Arkansas; Coach, Junior Deputy Baseball.

Related Professional Experience: Moderator for various American Institute of Certified Public Accountants continuing professional education seminars, addressing tax problems of individuals and partnership taxation; Advisor, Tobacco Settlement Task Force - Arkansas House of Representatives, 1999.

Honors: *The Best Lawyers in America* (2001-2008); *Chambers USA, America's Leading Lawyers* (2004-2007); *Mid-South Super Lawyers* (Tax 2006-2007).



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Ownership)	

Certificate of Service

I hereby certify that I have this 11th day of August, 2008, served the foregoing Petition to Deny upon the applicants in the captioned proceeding by causing true copies thereof to be mailed to their contact representatives, first class postage prepaid, and addressed as shown on the following list:

Kathleen Q. Abernathy, Esq.
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Contact Representative for Transferor

Alltel Communications, LLC
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One Allied Drive, B1F02-D
Little Rock, AR 72202
Contact Representative for Licensee

Nancy J. Victory, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Contact Representative for Transferee

s/Kenneth E. Hardman
Kenneth E. Hardman