Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
ATLANTIS HOLDINGS, LLC, Transferor,	)	WT Docket No. 08-95
	)	
and	)	
	)	
CELLCO PARTNERSHIP D/B/A	)	
VERIZON WIRELESS, Transferee	)	
	)	
For Consent to the Transfer of Control of	)	File Nos. 0003463892, *et. al.*
Commission Licenses and Authorizations	)	
Pursuant to Sections 214 and 310(d) of the	)	
Communications Act	)	

PETITION TO DENY

The National Telecommunications Cooperative Association (NTCA), pursuant to 47 CFR § 1.939 and the Federal Communications Commission's (Commission's) Public Notice released June 25, 2008,[1] hereby petitions the Commission to deny the above referenced applications. In the alternative NTCA requests that the Commission impose significant conditions on the transfer to protect rural consumers and the wireless carriers that serve them.

I. STATEMENT OF INTEREST AND INTRODUCTION

NTCA is a trade association representing rural telecommunications providers. Today, NTCA represents 584 full service rural exchange carriers, about half of whom provide wireless service in their rural communities or hold wireless licenses. Some of

[1] *Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and* De Facto *Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership*, Public Notice, WT Docket No. 08-95, DA 08-1481 (released June 25, 2008) ("Public Notice).

NTCA's members compete with the parties to the proposed merger, others have mutually beneficial working relationships. All of NTCA's wireless members depend on the availability of spectrum, equipment, universal service support and roaming service to provide service.

II. THE PROPOSED MERGER SHOULD BE DENIED

The Commission should deny the proposed merger. It concentrates too much spectrum in the hands of one provider and will harm competition and competitive opportunities for small players in the wireless marketplace.

A. The Concentration of Spectrum Would Harm Competition

The proposed acquisition of ALLTEL Corporation (ALLTEL) by Cellco Partnership d/b/a/ Verizon Wireless (Verizon) would result in Verizon holding vast amounts of spectrum in many markets throughout the country and would have an anticompetitive effect on the wireless market. The ever growing large carriers such as Verizon have great market power that is exerted to the detriment of small, rural carriers and their subscribers.

In analyzing the proposed merger, the Commission must apply a public interest test under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the Act). In performing its public interest analysis, the Commission employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits. Under this test, the parties seeking approval bear the burden of proving that the proposed transaction will serve the public interest.[2]

Verizon and ALLTEL assert that the proposed merger will serve the public interest because ALLTEL's customers would have "the benefits of a seamless national network; award winning Verizon Wireless-quality services; and rapid access to broadband services."[3]

However, these purported benefits to ALLTEL's customers that may result from the proposed transaction are outweighed by the harm to the public. The wireless industry is dominated by large carriers that keep getting larger. Since 2001, more than a dozen mergers or acquisitions took place – several involved small and medium sized carriers who were acquired by larger carriers. The spectrum concentration, while perhaps justifiable on a case-by-case basis, is culminating in ways that are disastrous to rural consumers. Larger carriers have the ability and incentive to use their market power as described below to the detriment of small carriers and their subscribers. Increasing competitive pressures are pushing small carriers out of the market.[4] As large carriers get larger, more small and rural carriers will feel the pressure to sell off their wireless assets, resulting in reduced consumer choice and diversity.

Many rural communities must rely on small carriers for wireless service. Rural carriers are typically the only ones willing to serve sparsely populated areas outside of the

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[2] *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations,* File Nos. 0003092368, *et. al*, WT Docket No. 07-153, Memorandum Opinion and Order, FCC 07-196 at para. 10 (rel. Nov. 19, 2007).

[3] Summary, Description of Transaction, Public Interest Showing and Related Requests and Demonstrations, (filed June 13, 2008).

[4] *See, In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impost a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Petition for Rulemaking at pp 10-11 (filed July 16, 2008).

towns and away from the main highways. The loss of the rural carriers means that rural consumers will be unable to receive wireless service where they live and where they work. The loss of rural wireless carriers is the loss of rural wireless service.

B. The Merger Would Hurt Smaller Carriers Who Depend on Roaming

Rural wireless consumers depend on roaming in order to offer the same ubiquitous, consistent service that customers of large carriers enjoy. Small and rural operators must be able to secure fair and reasonable roaming agreements in order to remain competitive. If a rural carrier does not have sufficient roaming partners, or if the roaming costs are too high, the rural carrier will be unable to offer a nationwide calling plan and will not attract or retain customers. The proposed merger will diminish the number of partners available for roaming and place much of the control over roaming availability and rates in the hands of one party.

Currently, the various wireless carriers depend on each other and roaming agreements to provide their seamless, nationwide networks. Many rural carriers have roaming agreements with ALLTEL; the largest nationwide operators also depend on ALLTEL. ALLTEL must similarly rely on the other carriers for its operations. If Verizon acquires ALLTEL that precarious balance shifts; all other carriers will be forced to depend on Verizon for nationwide access, but Verizon will not be dependent on other carriers. Bargaining power would be heavily skewed in Verizon's favor. Verizon would have little incentive to enter into roaming agreements that are fair and reasonable and every competitive reason not to.[5]

III. ANY MERGER BETWEEN THE APPLICANTS MUST BE CONDITIONED ON RESTRICTIONS THAT SUFFICIENTLY PROTECT RURAL CARRIERS AND CONSUMERS

The proposed merger, if approved, would place a significant amount of spectrum and market power into the hands of a single, nationwide carrier. Service to many rural communities will remain viable only if the Commission places significant restrictions and conditions on the transfers.

A. The Commission Must Address Roaming Issues

As is discussed in this petition Section I(B) i*nfra*, the Commission has an obligation to protect rural consumers and carriers from potential abuse of market power by an expanded Verizon in roaming negotiations.

It is NTCA's position that the Commission should address industry-wide outstanding roaming issues. Currently, there is a home-market roaming exclusion to roaming and no requirement that carriers enter into automatic data roaming. The home-market roaming exclusion enables large incumbents to stifle competition. Rather than encourage wireless licensees to build out facilities, the home-market exclusion discourages new entrants. New entrants need roaming partners in their markets to attract customers while they build out their networks. Automatic data roaming must similarly be mandated. Mobile data services are the future of wireless deployment. Wireless

[5] Verizon's recent statements that it will honor ALLTEL's existing roaming agreements do not address how roaming agreements will be handled upon termination and do not make any commitments about data roaming. The statements also make no assertions that Verizon will continue operating and maintaining ALLTEL's GSM network.

broadband deployment is predicated on the availability of a network similar to the one available for voice. Automatic data roaming must be available.

However, if no action is taken on the outstanding roaming issues as they apply to the entire wireless industry, it is essential that the Commission protect the public interest in the merger, placing additional roaming requirements on Verizon. At a minimum, Verizon should be required to provide automatic roaming to all requesting parties, regardless of the requesting party's spectrum rights. Verizon should also be required to provide automatic voice AND data roaming to all requesting parties.

B. Verizon Should be Required to Divest Excessive Spectrum

A newly merged Verizon would hold vast amounts of spectrum in many markets. Verizon has agreed to divest spectrum holdings in several cellular markets, but additional conditions are necessary. The FCC should require Verizon to divest all excessive and overlapping spectrum. The Commission must protect consumers in the divestiture by requiring that the party that acquires the divested spectrum not be another nationwide provider.

Congress directed the Commission to avoid excessive concentrations of spectrum in Section 309(j) of the Act in recognition of the fact that the public benefits from competition and multiple providers of wireless service. The Commission has previously recognized this important public policy objective and conditioned the grant of the transfers of control of licenses upon the completion of divestitures in certain markets where the company would hold more than a competitive share of spectrum. The Verizon merger should be likewise conditioned.

It is essential that the Commission ensure that any spectrum divested because of the Verizon merger not end up in the hands of other nationwide providers. The spectrum should not move from one nationwide carrier with too much spectrum to another nationwide carrier with too much spectrum. The divestiture requirement is rendered meaningless if nationwide providers who are required to divest spectrum are permitted to simply acquire additional spectrum upon another company's divestiture. The spectrum restriction benefits competition and the public only if the additional spectrum is made available to carriers who need it – namely, small and rural carriers or new entrants.

C. An ALLTEL-Verizon Merger Should be Conditioned on Verizon Foregoing the Universal Service Support Currently Received by ALLTEL

With the acquisition of ALLTEL, Verizon will be the single largest provider of wireless service in the United States. Verizon is offering $28 billion dollars to acquire ALLTEL and is expected to realize $100 billion in annual revenues. Verizon provides service in the most profitable urban centers and can not claim that it needs federal support to serve non-urban markets.

ALLTEL is the single largest recipient of CETC high-cost universal service support. That high-cost support flows to ALLTEL based on a public interest test as it applied to ALLTEL as a separate entity. Verizon is not a similarly situated provider of wireless service and is not in need of universal service support to offer comparable service at a comparable price.[6] Denying Verizon ALLTEL's high-cost universal service support will have a negligible effect on Verizon's operations, as it amounts to only 1.14%

[6] The USF restriction would only apply to Verizon, not to companies that acquire divested spectrum. Each company's support determination should be based on its own needs and unique situation.

of the price Verizon is offering to acquire ALLTEL. However, it would save the fund $320 million annually, benefiting the public and helping to stabilize the fund during a period of comprehensive reform.

D. The Commission Should Protect Consumers from Anticompetitive Practices Involving Handsets

Verizon should be prohibited from using its market power to dominate the handset market. The merger of Verizon and ALLTEL will result in the largest wireless carrier in the country with the ability to hinder competition at the equipment level. Large carriers enter exclusive contract arrangements with handset manufacturers, leaving small and rural carriers at a significant competitive disadvantage and rural consumers technologically behind their urban counterparts.

The handset issue becomes more pronounced as commercial wireless service moves to 3G and 4G and consumers expect broadband mobility. Verizon-only handsets are not available to rural Americans outside of Verizon service territory. Rural consumers do not have access to the same technology and features that their urban counterparts enjoy. The Commission should use this opportunity to prohibit excusive contracts between Verizon and handset manufacturers.

IV. CONCLUSION

For the above stated reasons the Commission should deny the applications at issue. If the Commission determines that grant of the applications is in the public interest, it should impose conditions on Verizon that will protect rural consumers and the wireless carriers who serve them. Specifically, Verizon should be required to: (1) provide automatic roaming to all requesting parties, regardless of the requesting party's spectrum rights and automatic voice and data roaming to all requesting parties; (2) divest excessive and overlapping spectrum; (3) forgo the high-cost universal service support currently received by ALLTEL; and (4) not enter into exclusive contracts with handset manufacturers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

By: /s/ Daniel Mitchell
Daniel Mitchell

By: /s/ Jill Canfield
Jill Canfield

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

August 11th, 2008

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the Petition to Deny Applications of the National Telecommunications Cooperative Association in WT Docket No. 08-95, DA 08-1481, was served on this 11th day of August 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Kevin.Martin@fcc.gov

Commissioner Deborah Taylor Tate
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Deborah.Tate@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Jonathan.Adelstein@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

Jodie May (via email)
Competition Policy Division, Wireline
Competition Bureau
Federal Communications Commission
Jodie.May@fcc.gov

David Krech (via email)
Policy Division, International Bureau
Federal Communications Commission
David.Krech@fcc.gov

Linda Ray (via email)
Broadband Division
Federal Communications Commission
Linda.Ray@fcc.gov

Jim Bird (via email)
Office of General Counsel
Federal Communications Commission
Jim.Bird@fcc.gov

John T. Scott, III
Deputy Gen. Counsel (via email)
Verizon Wireless
1300 I Street, NW
Suite 400 West
Washington, D.C. 20005
John.scott@verizonwireless.com

Kathleen Q. Abernathy (via email)
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Ave., NW
Washington, D.C. 20036
kabernathy@akingump.com

Glenn S. Rabin (via email)
Alltel Communications
601 Pennsylvania Ave., NW, Suite 720
Washington, D.C. 20004
Glenn.s.rabin@alltel.com

Cheryl A. Tritt (via email)
Morrison Foerster
2000 Pennsylvania Ave., NW, Suite 5500
Washington, D.C. 20006-1888
ctritt@mofo.com

Nancy J. Victory
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006
nvictory@wileyrein.com

/s/ Adrienne L. Rolls
Adrienne L. Rolls