

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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

PETITION TO DENY

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August 11, 2008

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PETITION TO DENY

I. INTRODUCTION & SUMMARY

Petitioners file this Petition to Deny the above-referenced application (the “Application”)¹ for transfer of control of certain Commission licenses and authorizations. Petitioners are wireless carriers and licensees that depend upon the availability of roaming services to attract and serve their subscribers and, accordingly, are parties in interest to an application that threatens the availability, price, and quality of such services.²

¹ See *Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and De Facto Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, Pleading Cycle Established*, Public Notice, DA 08-1481, WT Docket No. 08-95 (rel. June 25, 2008); *Applications of Atlantis Holdings LLC, Transferor, and Cellco Partnership d/b/a Verizon Wireless, Transferee for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, WT Docket No. 08-95, Lead File No. 0003463892, Public Interest Statement (filed June 13, 2008) (“*Public Interest Statement*”).

² 47 C.F.R. § 1.939.

The proposed acquisition of ALLTEL Corporation (“ALLTEL”) by Cellco Partnership d/b/a Verizon Wireless (“Verizon” or “Verizon Wireless”) from Atlantis Holdings LLC (“Atlantis” and, together with Verizon Wireless, the “Applicants”) will adversely affect competition in the market for roaming services throughout the United States. Because of fundamental deficiencies in the public policies surrounding the right to and regulation of roaming services, Verizon Wireless’ proposed acquisition of a major supplier of both CDMA and GSM roaming services cannot meet the requirements of Section 310 of the Communications Act.³

The proposed acquisition diminishes the ability of small, regional and new wireless carriers to obtain automatic roaming for data services or within their home markets as they build out their networks. The availability of these critical roaming services is currently left to private negotiations in the marketplace without any meaningful regulatory backstop. ALLTEL is a major supplier of both CDMA and GSM roaming and has been much more amenable to reaching reasonable agreements than Verizon Wireless. The result of this merger will be to replace an independent and significant provider of roaming services with an entity that will have significantly less incentive to enter reasonable roaming agreements and every incentive to undermine competitors by either refusing to provide automatic home and data roaming outright, or to impose unreasonable fees and conditions. In the absence of Commission action, Verizon Wireless will have virtually unfettered discretion to act on these incentives.

The merger’s harm is exacerbated by the FCC’s exclusion of home market roaming and omission of data roaming from the requirement that carriers provide automatic roaming on a common carrier basis. This leaves carriers requiring roaming services completely dependent

³ 47 U.S.C. §310.

upon competitive pressures to supply them. These competitive pressures are rapidly declining as the number of major carriers that can provide widespread roaming dwindles. The proposed transaction would make matters materially worse, highlighting the need to adopt a regulatory backstop that would require Verizon Wireless -- through general regulations, specific conditions, or both -- to make automatic roaming available on reasonable terms in a roaming customer's home market and in connection with data services.

The elimination of ALLTEL as an independent provider of roaming services coupled with the lack of roaming obligations undermines the Applicants' attempt to justify the license transfers as in the public interest. The combination of deficient regulations and the proposed merger harms the public interest by limiting the competitive potential of smaller carriers and by raising an entry barrier to new licensees. Given the critical importance of roaming and the reduction in its availability on a competitive basis caused by the merger, it is imperative that effective remediation is undertaken before the merger is approved. Unless and until the Commission determines that the common carrier right to automatic roaming includes both data roaming and home market roaming, generally in the existing docket⁴ or specifically as to the merged entity, it cannot find that the proposed transaction is in the public interest. Without taking these steps, the Commission cannot make the requisite public interest finding and must designate the Application for hearing pursuant to Section 309(e).⁵

⁴ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007) ("Roaming Order" or "Roaming Further Notice" as appropriate).

⁵ 47 U.S.C. § 309(e).

II. THE PROPOSED MERGER THREATENS THE EXISTING WORKABLY COMPETITIVE STRUCTURE OF THE WIRELESS INDUSTRY.

The proposed merger occurs in the context of increasing concentration in the mobile wireless industry, resulting from a series of acquisitions of second and third tier carriers by Verizon Wireless and AT&T.⁶ The two largest wireless carriers also have been very successful in the two most recent major spectrum auctions, securing significant rights to frequencies in the 700 MHz and 1.7/2.1 GHz bands.⁷ The combination of these events has created a threat, for the first time since the licensing of broadband PCS spectrum more than a decade ago, to the wireless industry's generally workably competitive structure.⁸

The consequences of the loss of a workably competitive wireless industry would be very severe. Today, more than 260 million U.S. subscribers depend on competition to provide them with well-priced, high-quality, widely available wireless service. The Commission depends

⁶ See *Applications of AT&T INC. and Dobson Communications Corporation, For Consent to Transfer Control of Licenses and Authorizations*, Mem. Op. and Order, 22 FCC Rcd 20295 (2007) (“AT&T/Dobson Order”); *In the Matter of Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations*, Mem. Op. and Order, 23 FCC Rcd 2234 (2008); *AT&T Inc. and Verizon Wireless Seek FCC Consent to Assign and Transfer Control of Licenses, Spectrum Leasing Arrangement, and Related Authorizations*, Public Notice, 23 FCC Rcd 5841 (2008); *Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations*, Public Notice, 22 FCC Rcd 18356 (2007).

⁷ Verizon and AT&T submitted successful bids amounting to \$9.4 billion and \$6.6 billion, respectively, in the 700 MHz auction (Auction 73), see *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572 (2008), and \$2.8 billion and \$1.3 billion, respectively, in the AWS-1 auction (Auction 66). See *Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66*, Public Notice, 21 FCC Rcd 10521 (2006).

⁸ See *Ex Parte* Letter of James H. Barker, Counsel for Leap Wireless International, Inc., to Marlene H. Dortch, FCC, WT Docket No. 05-265, at 4 (filed May 22, 2008) (“Automatic roaming is especially important in light of increasing spectrum consolidation that has occurred since the removal of spectrum caps in 2003.”).

upon competition rather than active regulation to achieve the Communications Act's statutory mandates for the wireless industry. Just as important, today's workably competitive environment ensures continuing innovation and improvement in the mobile wireless industry. To lose the consumer benefits identifiable today or the stimulus for innovation provided by today's workably competitive marketplace should be unacceptable.

The merger of the fifth-largest U.S. carrier -- the largest non-national carrier -- into the second-largest carrier harms existing wireless competition in the local geographic markets in which these two carriers operate.⁹ However, the harm to competition goes well beyond the geographic markets in which ALLTEL and Verizon Wireless overlap, because ALLTEL is a vital roaming partner to other CDMA carriers and, to a lesser extent, to GSM carriers, and these carriers will not be able to compete in any market without reasonable roaming options. Moreover, the harm carries over into competition on other platforms, as the merged entity will have both the ability and the incentive to raise the costs of competitors in the wireless, wireline, and video marketplaces. The merger also harms potential competition in the sense that it eliminates the largest regional carrier and, in the process, eliminates the possibility that ALLTEL one day would join with other incumbents and new licensees to form a new national carrier.

The loss of existing competition, the loss of a potential path to a new national carrier and concomitant reduced concentration in the industry, and the associated risks to a workably competitive industry structure and industry dynamism -- without more -- warrant a very close and skeptical review of the proposed merger.

⁹ This is true at the retail level, where many consumers will have one fewer choice for mobile wireless service. It is considerably worse at the wholesale level, where other carriers will have one fewer choice for roaming partners *and* the merged entity will have increased leverage and increased incentives to engage in anti-competitive behavior vis-à-vis its competitors.

III. THE ELIMINATION OF ALLTEL AS A SOURCE FOR ROAMING SERVICE PRECLUDES APPROVAL OF THE TRANSFER APPLICATION UNLESS DEFICIENCIES IN ROAMING REQUIREMENTS ARE CORRECTED.

The reduction of competition for roaming service associated with the elimination of an independent ALLTEL makes the proposed merger untenable in light of the present legal and regulatory requirements governing the roaming market.

The market for wireless roaming services is more concentrated than the market for retail wireless service. The retail wireless market in urban and suburban areas has been workably competitive for many years, something that has remained true even in the face of the steady consolidation of recent years. There has been little need or justification for regulatory intervention because competitive pressures have seen to the welfare of the great majority of retail customers. Competition in the wholesale roaming market, on the other hand, has been more suspect. First and most important, because of the incompatibility of air interface technologies, there obviously are fewer alternatives available for a carrier requiring CDMA or GSM compatibility.¹⁰ Second, as alternatives have decreased, carriers seeking roaming services have experienced increasing anticompetitive behavior in the form of refusals to deal and their functional equivalents.¹¹ As Commissioner Adelstein has observed:

I have been increasingly concerned about the competitiveness of the CMRS wholesale market as compared to five years ago. Concerns about roaming have become more

¹⁰ See *Roaming Order* at 15886 (Statement of Commissioner Jonathan S. Adelstein, approving in part, concurring in part) (“A critical distinction between the wholesale and retail market is that the network technology of a carrier interested in roaming even further limits the choice of potential roaming partners in a given market.”).

¹¹ See, e.g., *AT&T/Dobson Order* ¶¶ 60-61; *Roaming Order* ¶ 28; *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers/Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047 ¶¶ 13-17 (2005) (“2005 *Roaming NPRM*”);

widespread and more vocal over the past several years. Whether in the context of recent mergers or other rulemakings, the Commission is hearing regularly from small and mid-size carriers who are becoming increasingly frustrated with their ability to negotiate automatic roaming agreements Not surprisingly, consolidation in the wireless industry over the past few years has only served to amplify the existing concerns about the current state of roaming practices.¹²

These factors led the Commission to initiate the 2005 rulemaking addressing whether and in what circumstances automatic roaming should be legally required.¹³ Ultimately, the Commission recognized that competitive forces alone were not likely to produce acceptable outcomes and that a measure of legal compulsion would be required.¹⁴

The Commission's establishment of the roaming rulemaking docket confirms the importance to competition of automatic roaming service. However, the Application in this proceeding demonstrates it independently.

In order to compete effectively, carriers must be able to provide national coverage, a point the Application itself repeatedly emphasizes.¹⁵ In effect, the Application correctly states that the ability to compete effectively in the market for mobile telephone and broadband service depends upon the ability to offer national coverage. For any carrier without a national footprint, this requires the ability to secure automatic roaming service on reasonable terms and conditions.

¹² See *Roaming Order* at 15886 (Statement of Commissioner Jonathan S. Adelstein, approving in part, concurring in part).

¹³ See *2005 Roaming NPRM* ¶¶ 13-16.

¹⁴ See *Roaming Order* ¶¶ 23-29.

¹⁵ *Public Interest Statement* at i, iii, 29, 31 (“[T]he market for mobile telephone service is, in fact, increasingly national in scope.”); 32 (“[B]ecause of the demand for national coverage, approximately 87 percent of the nation’s mobile customers subscribe to a national carrier or an affiliate of a national carrier.”).

Throughout the Application, the Applicants assert that the existence of smaller carriers or new licensees ensures that the merger will not disadvantage consumers.¹⁶ But, as the Application implicitly reveals, the ability of these smaller carriers and new licensees to compete effectively depends upon their ability to offer the consuming public nationwide coverage.¹⁷ And that, in turn, depends upon their ability to secure automatic roaming.

The very severe deficiencies in the Commission's roaming regulatory regime make it impossible to find the proposed transaction in the public interest. The requisite public interest finding requires that there be enough competition, post-merger, to protect consumers. The Commission cannot have sufficient confidence that the post-merger marketplace will be competitive enough to permit the transaction.

The obstacles to the requisite public interest finding are the Commission's introduction of a home market exception to automatic roaming and its reticence, at least until now, to require automatic roaming for data services.¹⁸ Both of these omissions to wireless carriers' automatic roaming obligations should be corrected. The record before the Commission is complete. The home market exception is the subject of numerous petitions for reconsideration filed eleven months ago.¹⁹ The data roaming issue was commented on by parties in response to the

¹⁶ *Id.* at 29-40, 49

¹⁷ *Id.* at 29. (“[T]he wireless business today is increasingly national in scope with four major national providers competing vigorously through pricing plans and service offerings that are national in scope.”)

¹⁸ *See Roaming Order* ¶¶ 48-50, 56.

¹⁹ Four of the five petitions for reconsideration seek reversal of the home market exception without qualification, *see* Petition for Reconsideration of Leap Wireless International, Inc., WT Dkt. No. 05-265 (filed Oct. 1, 2007); Petition for Reconsideration of MetroPCS Communications, Inc., WT Dkt. No. 05-265 (filed Oct. 1, 2007); Petition for Reconsideration of T-Mobile USA, Inc., WT Dkt. No. 05-265 (filed Oct. 1, 2007); Petition for Reconsideration of

Commission's 2005 *Roaming NPRM*, and has been fully submitted for eight months pursuant to the *Roaming Further Notice*.

The substantive reasons for these required changes to the Commission's regulations are reflected in the record. In summary, the home market exception is both counterproductive and unworkable. It is counterproductive because it inhibits rather than encourages small, rural, and mid-sized carriers, as well as potential new entrants, from purchasing additional spectrum, constructing new networks, and expanding their footprints, and, in the process, insulates carriers with strong market positions from competition. The current lack of an obligation to provide automatic home roaming on a nondiscriminatory basis is also unworkable. This was apparent to the Commission when it initiated the reexamination of roaming regulation in 2005,²⁰ an insight unaccountably overlooked in the *Roaming Order* even though the intervening AWS-1 auction made any attempt to administer a home market exception even more complicated. The exclusion of data roaming services is just as unsustainable. Broadband wireless services, carrying voice as one application among many, are superseding traditional voice-only wireless services. There is no justification for omitting state-of-the-art services from the automatic roaming requirement.

Even prior to the announcement of the Verizon Wireless-ALLTEL merger, it was evident that considerations of consumer welfare demanded amendment of the roaming regulations. As Commissioner Copps observed when the *Roaming Order* was adopted, "This is an important dollars and cents issue for consumers. After all, it is consumers who pay the price at the end of

SpectrumCo LLC, WT Dkt. No. 05-265 (filed Oct. 1, 2007) ("*SpectrumCo Petition*"), and one seeks reversal with qualifications, *see* Petition for Reconsideration of Sprint Nextel Corp., WT Dkt. No. 05-265 (filed Oct. 1, 2007).

²⁰ *See 2005 Roaming NPRM* ¶ 35. ("We seek comment on how an exception that permits carriers to deny roaming agreements to "in-market" competitors could be administered, given the different geographic scope of cellular, broadband PCS, and SMR licenses.")

the day when their carriers accept inflated roaming rates or cannot reach a roaming agreement at all.”²¹ Approval of Verizon Wireless’ acquisition of ALLTEL without adopting curative regulations or imposing conditions designed to mitigate Verizon Wireless’ ability to raise rivals’ costs through unreasonable denials of automatic home and data roaming aggravates the concerns raised by Commissioner Copps.

IV. ROAMING PROVIDES AN OPPORTUNITY FOR THE MERGED ENTITY TO ENGAGE IN STRATEGIC, ANTI-COMPETITIVE BEHAVIOR TO THE DETRIMENT OF COMPETITION AND CONSUMERS.

Home and data roaming are critical inputs to a carrier’s ability to provide retail wireless service on a competitive basis. The two key dimensions to roaming are the extent of coverage and the costs, as the Application demonstrates. The Applicants themselves identify two “public interest benefits” that are directly applicable to the roaming discussion: (1) nationwide coverage and (2) reduced roaming costs. The identification of these two “benefits” is a recognition that these two factors are critical to the ability of wireless carriers to compete in the retail marketplace. These “benefits” also directly increase Verizon Wireless’ ability and incentive to harm competitors. As Verizon Wireless acknowledges, the newly combined entity will have a decreased need for roaming services from other carriers and, as a result, will have even more leverage over carriers that seek to roam on its network. This increased ability to engage in strategic, anti-competitive behavior will manifest itself most notably in the two areas where the Commission’s recent actions leave smaller providers and new entrants most vulnerable: home roaming and data roaming.

²¹ See *Roaming Order* at 15884 (Statement of Commissioner Michael J. Copps, approving in part, concurring in part).

For example, if an insurgent provider holds or acquires spectrum rights for a particular area, dominant competitors have increased incentives to raise the provider's costs and degrade the quality of its service by either denying access to roaming or charging unreasonably high rates for roaming.

The problem is particularly acute in two situations: when the costs to dominant competitors of refusing to deal fairly are reduced, and when the gains of refusing to deal fairly are increased. Since the merged entity that would result from this transaction would not need to engage other carriers for roaming services as much as it does now, its incentives to negotiate and trade fairly with other providers and new entrants that need roaming services will diminish correspondingly. At the same time, the merged entity would have more to gain, and increased incentives, from discriminating against carriers with nationwide aspirations and against licensees with which Verizon competes across multiple platforms.

The consequence of this new reality is apparent from the Applicants' own arguments. Specifically, as the Applicants correctly note, roaming costs are variable costs, and any adjustments upward or downward should produce corresponding changes in prices to consumers.²² Leveraging its new market position to raise rivals' roaming costs will force rivals to raise their prices, reducing their ability to compete effectively. At the same time, this will create a situation where there is more room for a carrier with high market share, such as the new entity, to raise its prices without risk of losing customers. In the end, competition and consumers will be harmed.

²² See *Applications of Atlantis Holdings LLC, Transferor, and Cellco Partnership d/b/a Verizon Wireless, Transferee for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, Declaration of Dennis Carlton, Allan Shampine, and Hal Sider (Exhibit 3) at 5, 11.

The harmful consequences of this situation become even more apparent in the context of data roaming, where the merged entity will be able to use its market position to hinder the deployment of wireless broadband services, contrary to Commission policy. Encouraging the deployment of wireless broadband services continues to be an important public policy objective, and is reaffirmed by recent spectrum management decisions -- the AWS-1 band plan²³ and the 700 MHz band plan²⁴ -- as well as by the FCC's proposed allocation of the AWS-3 spectrum.²⁵ But access to spectrum is not enough to promote and encourage competition and the deployment of new services. The Commission has always coupled access to spectrum with access to the truly critical services that incumbents provide each other, most notably roaming. In 1996, the Commission's roaming rights were expanded to include the newly minted licensees because the Commission recognized that a carrier building out its network to compete with other carriers would be the party most in need of roaming, but the party least likely to acquire roaming from its

²³ See *Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058 (2005).

²⁴ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, Declaratory Ruling on Reporting Requirement Under Commission's Part 1 Anti-Collusion Rule*, Second Report and Order, 22 FCC Rcd 15289 (2007).

²⁵ See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, Further Notice of Proposed Rulemaking, 23 FCC Rcd 9859 (2008).

competitors.²⁶ The Commission reaffirmed this concern in 2000²⁷ and 2005²⁸ when it sought comment on whether to apply the roaming right to both manual and automatic roaming.²⁹ There can be little doubt that the same considerations apply today. Both new licensees and existing carriers seeking to expand their networks continue to need roaming services if they are to attract and retain subscribers and deploy new services.

This reasoning continues to be compelling for wireless broadband services. The merged entity would be able to leverage its market position to raise barriers to the deployment of new wireless broadband networks. These barriers would take the form of excessive roaming prices, unreasonable terms and conditions, or outright refusals to offer data roaming, and they would *discourage* the deployment of wireless broadband networks. Without the assurance that data roaming services will be available on reasonable terms, the effective competition from smaller firms on which the Application relies becomes much less probable. In the absence of that assurance, the large investments required for improved data networks and services take on a very unattractive risk profile.

²⁶ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 ¶ 2 (1996).

²⁷ See *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, 15 FCC Rcd 21628 ¶ 5 (2000).

²⁸ See *2005 Roaming NPRM* ¶ 5.

²⁹ This concern for new entrants was strangely and conspicuously absent from the Commission's latest Order. For this reason, among others, SpectrumCo filed a Petition for Reconsideration of the *Roaming Order*. See *SpectrumCo Petition* at 8-9. Specifically, SpectrumCo explained that the Commission's "home roaming" exception effectively reverses previous Commission policy with regard to new entry, and should be revoked. The success of new potential entrants depends upon having access to a service -- roaming -- that can only be provided by the very companies who stand to gain the most from the failure of new entry.

The Commission should not allow the Application to proceed unless and until these concerns are adequately addressed, in the roaming docket through the elimination of the home roaming exception and inclusion of data roaming in the automatic roaming right, or, if there is any uncertainty about the accomplishment of a comprehensive solution to the roaming issue or any uncertainty about the effectiveness of this solution to the enlarged Verizon Wireless, in the merger docket through the imposition of relevant conditions on approval.

V. VERIZON WIRELESS' ROAMING RECORD IS INFERIOR TO ALLTEL'S IN IMPORTANT WAYS.

In previous transactions, the Commission has decided that divestitures of spectrum rights were sufficient to allay any competitive fears.³⁰ Even if that was sufficient in previous transactions, it would not be sufficient here because of the central role that ALLTEL plays in the roaming marketplace and because of Verizon Wireless' markedly inferior record with regard to roaming. In other words, even in areas where the transaction does not result in one fewer competitor, the mere replacement of ALLTEL by Verizon Wireless will result in harm to competition and consumers.

While there are examples of Verizon Wireless' refusal to offer in-market or data roaming on appropriate terms and conditions, or at all, the important point is that this merger will increase its ability and incentive to use roaming to reduce competition from smaller carriers, new carriers, and cross-platform competitors, ultimately to the disadvantage of all wireless subscribers.

ALLTEL generally has a good relationship with many other carriers, because it needs roaming services from other carriers as much as other carriers need roaming services from

³⁰ See, e.g., *AT&T/Dobson Order* ¶ 65. Verizon Wireless also suggested that divestiture of relevant spectrum assets is sufficient to address any concerns. Comments of Verizon Wireless, WT Docket No. 05-265, at 12-14 (filed Nov. 28, 2005).

ALLTEL. This leads to a good dynamic, where ALLTEL has generally treated other carriers fairly, and in the general case has come to terms that are reasonable. In addition, in weighing the benefits of roaming revenues against the cost of facilitating more competition, ALLTEL's non-dominant market position caused it to count the benefits of accommodating roaming as more significant than the potential for competition.

Verizon Wireless, on the other hand, has much less need for roaming services from other carriers, and the consequence is that it has significant leverage in roaming negotiations with smaller carriers. Not surprisingly, in some cases this leads to situations where smaller carriers have to pay higher prices to roam on Verizon Wireless' network than they do on ALLTEL's network. This outcome corresponds to theory. As an increasingly dominant firm, Verizon Wireless' self-interested calculation about accommodating roaming is different from ALLTEL's. As a result of its size, Verizon Wireless has a greater incentive to impose unreasonable conditions on roaming, or deny it altogether, to discourage competition.

These differences are even more pronounced in the areas where the Commission's regulations provide the least protection -- home roaming and data roaming. Historically, Verizon Wireless has enforced a very constricted policy with respect to the availability of home roaming, and a very expansive policy with respect to its charges for home roaming. Since the *Roaming Order*, its policies have gotten worse. Verizon Wireless has taken advantage of the home roaming exception to continue its practices of refusing to permit home roaming in some circumstances and charging much higher rates for it in others. Verizon Wireless also refuses in some instances to make data roaming available at all; in other instances, it imposes such high costs for data roaming that make such agreements very difficult to perform for smaller carriers.

The replacement of Verizon Wireless for ALLTEL increases the risk of competitive harm in yet another way: Verizon, unlike ALLTEL, provides wireline voice, video, and broadband services -- the so-called triple play -- and has strong incentives to impose unreasonable roaming conditions to disadvantage wireless providers that offer triple play services in competition with Verizon. Companies offering bundles covering all of its lines of business constitute a significant menace from Verizon's perspective. These companies, similar to potential wireless entrants with national aspirations, pose a disproportionate challenge to dominant incumbents' businesses. This influences the balance of risks and rewards attributable to the withholding of critical inputs, increasing the possibility that they will be withheld.

VI. THE COMMISSION SHOULD IMPOSE ROAMING-RELATED CONDITIONS ON THE TRANSFER.

The proposed transaction will give the post-merger Verizon Wireless significant leverage in roaming negotiations with other carriers, leverage that it could easily use to foist anti-competitive terms onto its competitors. Verizon Wireless has attempted to elide this obvious fact by committing to honor existing contracts -- hardly a concession -- and more recently by making "specific commitments" to "regional and small wireless providers."³¹ The "specific commitments" exercise, first and foremost, should be understood as Verizon Wireless' acknowledgement of the obvious point that the proposed merger seriously damages the roaming services market. Although the problem is acknowledged, it is not cured. An undertaking to permit small and rural wireless carriers with existing ALLTEL and Verizon contracts to select between Verizon Wireless and ALLTEL roaming contracts may be valuable, but it is too limited. It demonstrates that Verizon Wireless' roaming contracts tend to be inferior to ALLTEL's. An

³¹ See *Ex Parte* Letter of John T. Scott, Verizon Wireless, to Marlene Dortch, FCC, WT Docket No. 08-95, at 2 (filed July 22, 2008) ("*VZW Ex Parte*").

undertaking to refrain from triggering termination clauses also may be valuable, but much larger issues remain. For example, there is no commitment with respect to contract extensions. Nor is there any commitment with respect to contracts for data roaming services. If a competitive marketplace existed, these kinds of issues would not be the source of anxiety. But they are, because if the merger is approved competition for roaming services will be greatly diminished.

The concerns raised in this pleading will come to the fore, at the latest, when carriers have to negotiate *new* roaming agreements. That necessity will arise at the end of the contract terms *for the services covered by the contracts*.³² It is very likely to arise sooner, in fact imminently, as carriers add new 3G and 4G capabilities and they attempt to offer subscribers more than conventional interconnected voice services and data services. Reliance on a promise to observe existing contracts is not nearly enough. Appropriate regulatory protections must be put in place to ensure that the enlarged Verizon Wireless does not leverage its increasingly dominant market position to the detriment of competition and consumers. Specifically, the Commission should refrain from approving the transfer of ALLTEL to Verizon Wireless until such time as it resolves the outstanding issues in the roaming docket by removing the home roaming exception and clarifying that the automatic roaming right includes data roaming. The Commission has often said that it prefers to proceed by general rulemaking when asked to address issues that are implicated by a transaction but also affect the industry-at-large,³³ and the opportunity is available here for prompt Commission action in a general rulemaking proceeding

³² Some contracts, it should be noted, are on a month-to-month basis today.

³³ See, e.g., *AT&T/Dobson Order* ¶ 67; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Mem. Op. and Order, 20 FCC Rcd 18290 ¶ 55 (2005) (noting that concerns about special access inputs were more appropriately resolved in a rulemaking of general applicability).

before it comes to a decision on this transaction. This is the obvious course, and it should be pursued.

If the Commission fails to take such action, however, the harms from this merger require that the combined entity, at a minimum, provide automatic home and data roaming as a common carrier service without regard for the requestor's spectrum usage rights. Such conditions may also be appropriate if there is any uncertainty about the effectiveness of a comprehensive solution to the roaming issue as to the enlarged Verizon Wireless. Although ALLTEL's roaming offerings are not beyond criticism, the Commission also should require that Verizon Wireless allow providers to extend existing roaming contracts they have with ALLTEL (or which ALLTEL inherited from predecessor providers, such as Western Wireless)³⁴ for at least five years from the date of the merger closing or the expiration of the agreement, whichever is longer.³⁵

Additionally, Verizon Wireless should be required to expand the scope of its July 22, 2008, commitment, so that it applies to all wireless providers not affiliated with an incumbent local exchange carrier ("ILEC"), even if they do not currently have roaming agreement with either ALLTEL or Verizon Wireless. In its July 22, 2008 letter, Verizon Wireless stated that "each regional, small and/or rural carrier that currently has roaming agreements with both

³⁴ Various providers have roaming contracts with ALLTEL's predecessors, such as Western Wireless, which ALLTEL has honored. All discussions in this pleading regarding extending or choosing existing ALLTEL agreements refers both to agreements made with ALLTEL and agreements made with ALLTEL predecessors which ALLTEL has continued to honor.

³⁵ Extending existing contracts to address potential competitive concerns is a condition that the Commission has imposed on past transactions. *See, e.g., AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, Appendix F (2007) (requiring, inter alia, that AT&T/BellSouth permit requesting carriers to extend existing interconnection agreements for up to three years).

ALLTEL and Verizon Wireless will have the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.”³⁶ Verizon Wireless should likewise be required to allow any non-ILEC affiliated wireless carrier to adopt either a Verizon Wireless or ALLTEL agreement, including such agreements as may be extended, whether or not they currently have an agreement with either ALLTEL and/or Verizon Wireless.³⁷ This option should be available for any market served by Verizon Wireless, and not just markets acquired from ALLTEL.

Conditioning the merger on the availability of automatic home roaming will ensure that the combined entity does not leverage its market position to raise rivals’ costs or deny them service. Such assurances are critical for smaller carriers and potential new entrants because of marketplace realities. Consumers increasingly expect nationwide service from their CMRS providers,³⁸ but neither smaller carriers nor new entrants can be expected to build out nationwide networks without utilizing roaming agreements as they acquire spectrum assets, build out their networks, and attract growing customer bases.

Requiring the combined entity to provide data roaming subject to the automatic roaming right similarly enhances the public interest. Commission policy has always favored taking steps that would ensure the widespread deployment of new technologies, especially broadband.³⁹ This

³⁶ *VZW Ex Parte* at 2.

³⁷ These conditions are similar to those adopted as part of the AT&T/BellSouth merger order. Those conditions required AT&T to make any BellSouth or AT&T interconnection agreement available for adoption and to extend current interconnection agreements for 3 years. *See AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5809-10.

³⁸ *See Roaming Order* ¶ 3.

³⁹ *See Section IV, infra.*

proposed condition will further the Commission's goal of increased broadband deployment by ensuring that the merged entity does not leverage its market position to raise barriers to expansion for smaller providers and barriers to entry to new licensees that want to provide 3G and 4G services.

Requiring Verizon Wireless to allow providers to extend ALLTEL's agreements and to adopt existing ALLTEL agreements also furthers the public interest. The conditions will mitigate the adverse effect of replacing ALLTEL with the more hostile Verizon Wireless. By allowing carriers to simply adopt existing ALLTEL agreements, Verizon Wireless will have less ability to engage in protracted or unreasonable negotiations. It is not the case that ALLTEL uniformly has better (or even acceptable) approaches to roaming. However, allowing carriers to choose ALLTEL agreements will ensure that where ALLTEL has better practices in terms of providing data and home roaming they are not eliminated as a result of merger.

Imposing these conditions on this transaction would be entirely consistent with Commission practice. First, these conditions are "transaction-specific" inasmuch as they relate to issues that take on added importance in light of how the transaction will increase the concentration of spectrum rights and marketplace power in the combined entity. These conditions are also "transaction-specific" because of the central role that ALLTEL has in providing roaming services to so many other carriers. Even if one does not agree that these issues are "transaction-specific," the proposed conditions are consistent with Commission practice of using transaction proceedings to further important policy-related goals that are relevant to the transaction. For example, in the recent ALLTEL-Atlantis proceeding, the transfer included several conditions that related to issues being handled in industry-wide rulemaking,

such as USF payments and E911 deployment.⁴⁰ In this case, the merger of Verizon Wireless and ALLTEL will have a significant effect on the ability of other carriers to secure roaming on just and reasonable terms. The Commission can potentially mitigate this harm by adopting the proposed conditions.

⁴⁰ *Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent to Transfer Control of Licenses, Leases and Authorizations*, Mem. Op. and Order, 22 FCC Rcd 19517 ¶¶ 9, 12 (2007).

VII. CONCLUSION

For the foregoing reasons, the members of the Petitioners respectfully request that the Commission refrain from approving the transaction until it adequately resolves these issues in full in the roaming proceeding, or impose the above-mentioned conditions on the proposed transaction. Failing that, the Commission cannot make the requisite public interest finding and must designate the Application for hearing.

Respectfully Submitted,

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August 11, 2008

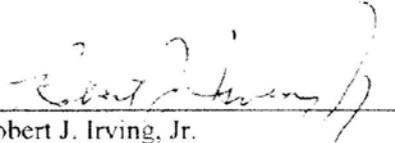
BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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

DECLARATION OF ROBERT J. IRVING, JR.

1. My name is Robert J. Irving, Jr. My business address is 10307 Pacific Center Court, San Diego, CA 92121. I am the Senior Vice President and General Counsel of Cricket Communications, Inc. and Leap Wireless International, Inc.
2. I am responsible for the management of the Legal Department of Leap and Cricket, and through the department, for the negotiation and execution of roaming agreement with other carriers. I am generally familiar with the terms and conditions of the roaming agreements to which Cricket is a party. In addition, I have overseen the development and advocacy of the policy positions of Leap and Cricket with respect to the regulation of roaming relationships in the telecommunications marketplace.
3. I have read the foregoing Petition to Deny. The facts set forth herein are consistent with my experience in negotiating and performing roaming agreements with Verizon Wireless, Alltel, and others, and I believe them to be true and correct.

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

A handwritten signature in black ink, appearing to read "Robert J. Irving, Jr.", written over a horizontal line.

Robert J. Irving, Jr.
Senior Vice-President & General Counsel
Cricket Communications, Inc.
Leap Wireless International, Inc.

Certificate of Service

I, Daniel K. Alvarez, hereby certify that on this 11th day of August, 2008, I caused true and correct copies of the foregoing Joint Opposition to Petitions to Deny and Reply to Comments to be served by first class U.S. mail, postage prepaid (except where otherwise indicated), addressed to:

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* Via Electronic Mail

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