

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

In re Applications of)	
)	
ATLANTIS HOLDINGS LLC, Transferor,)	WT Docket No. 08-95
)	
and)	DA 08-1481
)	
CELLCO PARTNERSHIP D/B/A)	File Nos. 0003463892, <i>et al.</i>
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
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

I. INTRODUCTION & STATEMENT OF INTEREST

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and the Rural Independent Competitive Alliance (“RICA”) hereby submit a Petition to Deny in response to the application¹ of Cellco Partnership d/b/a Verizon Wireless (hereinafter “Verizon Wireless”) and Atlantis Holdings LLC (hereinafter “ALLTEL Wireless”) for FCC consent to transfer control 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, WT Docket No. 08-95, Public Notice, DA 08-1481 (rel. Jun. 25, 2008) (Public Notice); 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, (fil. Jun. 13, 2008).*

licenses, spectrum manager and de facto transfer leases, and authorizations, and a request for a declaratory ruling on foreign ownership. OPASTCO is a national trade association representing over 600 small incumbent local exchange carriers (“ILECs”) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 5.5 million customers. Almost all of OPASTCO’s members are rural telephone companies as defined in 47 U.S.C. §153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. RICA is a national association of nearly 80 competitive local exchange carriers (“CLECs”) that are affiliated with rural ILECS and provide facilities based service in rural areas. In particular, a significant percentage of OPASTCO’s and RICA’s members are, or are affiliated with, small, rural wireless carriers that depend upon affordable access to spectrum, roaming services, and handsets to serve their subscribers. As such, OPASTCO and RICA are, through their members, real parties in interest in the above-captioned proceeding.²

The proposed merger of Verizon Wireless and ALLTEL wireless is not in the public interest, and should be denied. The loss of ALLTEL Wireless as a roaming partner for rural wireless carriers and the increased market power that the post-merger Verizon Wireless will possess could result in rural wireless carriers paying unjust and unreasonable roaming rates that far exceed the costs incurred by Verizon Wireless in providing the service. These higher roaming rates will almost certainly need to be passed on to rural subscribers.

Should the Commission decide to approve the merger, conditions should be imposed upon Verizon Wireless to protect the subscribers of rural wireless carriers.

² 47 C.F.R. § 1.939.

Rural wireless carriers should have access to the combined Verizon Wireless/ALLTEL Wireless network, for the purposes of both voice and data roaming, on the same terms and conditions as larger wireless carriers. In addition, the Commission should require that the post-merger Verizon Wireless divest excessive spectrum holdings to rural wireless carriers. The Commission should also require the post-merger entity to end its use of exclusive agreements with handset manufacturers. Finally, the Commission should delay action on the proposed merger until pending issues such as the in-market exception to the automatic roaming rule and data roaming are addressed.

II. THE PROPOSED MERGER OF VERIZON WIRELESS AND ALLTEL WIRELESS WILL RESULT IN SUBSTANTIAL HARM TO THE SUBSCRIBERS OF SMALL, RURAL WIRELESS CARRIERS AND SHOULD THEREFORE BE DENIED

The proposed merger of Verizon Wireless and ALLTEL Wireless would create the nation's largest wireless carrier with the market power to charge small, rural wireless carriers unjust and unreasonable roaming rates that far exceed the merged entity's costs. The loss of ALLTEL Wireless as a roaming partner for rural wireless carriers, coupled with the significant market power that the post-merger Verizon Wireless would possess, has the potential to significantly harm rural wireless carriers and their rural subscribers. Therefore, the proposed Verizon Wireless/ALLTEL Wireless merger is not in the public interest, and should be denied.

In August 2007, the Commission recognized the importance of roaming, stating that it, "...benefits mobile telephony subscribers by promoting seamless CMRS service around the country, and reducing inconsistent coverage and service qualities."³ This is

³ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265, 22 FCC Rcd 15817, 15828, ¶ 27 (2007).

particularly true for rural consumers, who often leave the relatively small coverage area of the rural wireless carrier they subscribe to. Roaming, both for voice and data, is crucial to ensuring that the customers of small wireless providers can receive mobile wireless services that are reasonably comparable to those provided by the large super-regional and nationwide carriers. In order to provide customers with seamless mobile wireless services at affordable rates, small, rural carriers must be able to enter into just and reasonable, cost-based roaming agreements with large wireless carriers. Otherwise, many rural consumers would be forced to subscribe to two mobile wireless services – one for their local community where often large wireless carriers do not provide robust, if any, service, and another for traveling outside that area.

As the Commission recognized in the AT&T Wireless/Cingular Wireless merger proceeding:

Consumers would be harmed if, as a result of the merger, Cingular's roaming partners pay higher roaming rates that are passed on to their customers, or the roaming partners' customers are no longer able to obtain roaming services in certain markets and they cannot replace that loss with equivalent or superior alternatives.⁴

This same concern exists today, perhaps even more so. There has been substantial consolidation in the mobile wireless industry in recent years, with AT&T's merger with Dobson Cellular⁵ and the pending merger of Rural Cellular Corporation and

⁴ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for consent to transfer control of licenses and authorizations, file nos. 0001656065, et al.*, WT Docket No. 04-70, *applications of subsidiaries of T-Mobile USA, Inc. and subsidiaries of Cingular Wireless Corporation for consent to assignment and long-term de facto lease of licenses, file nos. 0001771442, 0001757186, and 0001757204*, WT Docket No. 04-254, *applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC for consent to assignment of licenses file nos. 0001808915, 0001810164, 0001810683, and 50013CWAA04*, WT Docket No. 04-323, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21588, ¶ 172 (2004) (AT&T Wireless /Cingular Wireless Order).

⁵ *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

Verizon Wireless⁶ as recent examples. This consolidation has left rural carriers with far fewer roaming partners. In fact, as the Commission itself has recognized,⁷ industry consolidation has reduced the number of nationwide Code Division Multiple Access (“CDMA”) (Verizon Wireless and Sprint) and Global System for Mobile Communications (“GSM”) (AT&T and T-Mobile) carriers to two each. And, as the Commission knows, the technical inability of carriers utilizing one technology to roam on the networks of carriers utilizing the other⁸ further reduces the number of available roaming partners for rural wireless carriers. Approval of the proposed Verizon Wireless/ALLTEL Wireless merger would only exacerbate this situation.

If the proposed Verizon Wireless/ALLTEL Wireless merger is approved, customers of small, rural wireless carriers could be denied the benefits of seamless mobile wireless services, or could be charged much higher rates for roaming. This is because the proposed merger will eliminate ALLTEL Wireless as a roaming partner for rural wireless carriers in the numerous rural service areas where ALLTEL Wireless currently provides service. This will be true for rural wireless carriers using both CDMA and GSM technology, as ALLTEL Wireless operates a GSM network for roamers in addition to its CDMA network.⁹ In the aftermath of the merger, with a major competitor eliminated, those wireless carriers that remain will be in a position to charge rural

Order, 22 FCC Rcd 20295 (2007) (AT&T/Dobson Order).

⁶ *Verizon Wireless and Rural Cellular Corp. seek consent to transfer control of licenses, spectrum manager leases, and authorizations*, WT Docket No. 07-208, Public Notice, 22 FCC Rcd 18356 (2007).

⁷ *See*, AT&T Wireless/Cingular Wireless Order, 19 FCC Rcd 21554-21555, ¶ 64.

⁸ *Id.*, 19 FCC Rcd 21589, ¶ 175.

⁹ *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, Exhibit 1/Public Interest Statement (fil. Jun. 13, 2008), p. 5.

wireless carriers far higher roaming rates. These higher roaming rates will, of course, almost certainly need to be passed on to the subscribers of rural wireless carriers.

In addition, a post-merger Verizon Wireless will have less of a need to roam on the networks of rural wireless carriers in areas where ALLTEL Wireless currently provides service. In fact, Verizon Wireless and ALLTEL Wireless cite the decrease in roaming costs as one of the benefits of the merger.¹⁰ This will further increase the leverage that the post-merger Verizon Wireless has over rural wireless carriers that seek to negotiate roaming agreements. Ultimately, rural wireless carriers may be forced to pay significantly higher roaming rates to Verizon Wireless for rural subscribers to enjoy the benefits of seamless mobile wireless services.

Despite assertions that the proposed merger will benefit rural consumers, Verizon Wireless and ALLTEL Wireless have not demonstrated that Commission approval of their application is in the public interest. Because of the potential harm to small, rural wireless carriers and their subscribers, the Verizon Wireless/ALLTEL Wireless merger should be denied.

III. IF THE PROPOSED VERIZON WIRELESS/ALLTEL WIRELESS MERGER IS APPROVED DESPITE THE POTENTIAL HARM TO SMALL, RURAL WIRELESS CARRIERS AND THEIR SUBSCRIBERS, SUBSTANTIAL CONDITIONS SHOULD BE IMPOSED UPON THE POST-MERGER ENTITY

As noted above, approval of the proposed Verizon Wireless/ALLTEL Wireless merger could potentially result in significant harm to small, rural wireless carriers and their subscribers. Therefore, should the Commission decide to approve the merger despite the substantial risks, conditions should be imposed upon the post-merger Verizon

¹⁰ *Id.*, p. 25.

Wireless to protect rural consumers. The imposition of conditions in this instance would be consistent with Commission action in prior merger approvals.¹¹

First, the Commission should ensure that the post-merger Verizon Wireless is not able to exert its increased market power by imposing upon its roaming partners unjust and unreasonable, non-cost based roaming rates that will ultimately harm the subscribers of rural wireless carriers. As an initial matter, the Commission should require that Verizon Wireless honor all of ALLTEL Wireless's existing roaming agreements. More importantly, however, the Commission should require that upon expiration of these agreements, the post-merger Verizon Wireless offer rural wireless carriers voice and data roaming agreements at just and reasonable rates that are based upon the costs that Verizon Wireless incurs when carriers roam on their network. More specifically, going forward, small, rural wireless carriers should have access to the combined Verizon Wireless/ALLTEL Wireless network, for the purposes of both voice and data roaming, on the same terms and conditions as larger wireless carriers. This obligation should apply regardless of whether the rural wireless carrier requesting automatic roaming holds wireless license or spectrum usage rights in the same geographic area.

In addition, the Commission should require that the post-merger Verizon Wireless divest, to rural carriers, its spectrum holdings in any county in which the combined Verizon Wireless/ALLTEL Wireless would possess more than 110 MHz of licensed spectrum.¹² As noted above, consolidation in the mobile wireless industry has reduced the number of roaming partners available to small, rural wireless carriers. This

¹¹ AT&T Wireless /Cingular Wireless Order, 19 FCC Rcd 21619-21625, ¶¶ 251-267; AT&T/Dobson Order, 22 FCC Rcd 20335-20340, ¶¶ 85-102.

¹² This would be consistent with a recent Petition for Rulemaking filed by the Rural Telecommunications Group (RTG). *See, Rural Telecommunications Group, Inc. Petition for Rulemaking to impose a spectrum aggregation limit on all commercial terrestrial wireless spectrum below 2.3 GHz* (fil. Jul. 16, 2008).

consolidation has also resulted in the concentration of spectrum largely among a few large, nationwide wireless carriers. Compounding this, the recent 700 MHz auction¹³ and the AWS-1 auction of 2006¹⁴ provided the nation's largest wireless carriers with even more spectrum. As a result, the ability of these carriers to charge rural wireless carriers roaming rates on their networks that far exceed the costs they incur in providing such service has grown significantly. Placing spectrum in the hands of rural wireless carriers would be consistent with Section 309(j) of the Communications Act.¹⁵ In addition, it would ensure that spectrum will be used by carriers with a proven track record of providing high-quality service to rural consumers and avoid placing even more spectrum in the hands of carriers that are not nearly as committed to building-out their networks in high-cost rural areas.

The Commission should also condition approval of the proposed Verizon Wireless/ALLTEL Wireless merger upon a commitment by the post-merger entity to end its use of exclusive agreements with mobile wireless handset manufacturers. As the Rural Cellular Association noted in its recent Petition for Rulemaking,¹⁶ these agreements between carriers such as Verizon Wireless and handset manufacturers deny rural consumers the benefits of new and innovative mobile wireless handsets. By preventing rural wireless carriers from making these innovative devices available to consumers, large, nationwide carriers are able to impede competition and the availability of next-generation wireless services in rural areas.

¹³ Auction No. 73.

¹⁴ Auction No. 66.

¹⁵ Section 309(j) of the Communications Act directs the Commission to ensure that, "...new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies...." 47 U.S.C. § 309(j)(3)(B).

¹⁶ *Rural Cellular Association Petition for Rulemaking regarding exclusivity arrangements between commercial wireless carriers and handset manufacturers* (fil. May 20, 2008).

Finally, the Commission should delay action on the proposed Verizon Wireless/ALLTEL Wireless merger until pending issues such as the in-market exception to the automatic roaming rule and the obligations of carriers to offer data roaming are addressed. In October 2007, five petitions for reconsideration were filed requesting that the Commission reconsider its August 2007 Automatic Roaming Order which included an in-market exception to the common carrier obligation to offer automatic roaming at just and reasonable rates. These petitions are still outstanding, and as OPASTCO and RTG noted in supportive comments, this in-market exception, "...[reduces] competition and thus undermine[s] the FCC's objective to promote ubiquitous communications service, protect life and promote public safety."¹⁷ In addition, the Commission has yet to address whether wireless carriers' common carrier obligations extend to data roaming. The market for mobile data and broadband services in rural areas is growing rapidly. The inability of rural wireless carriers to enter into data roaming agreements at just and reasonable rates could prevent rural consumers from having affordable access to these important services. The ultimate resolution of this and the in-market voice roaming issue will bear strongly on whether a combined Verizon Wireless/ALLTEL Wireless will be able to exert its market power to the detriment of rural consumers. Thus, the Commission should delay consideration of the proposed Verizon Wireless/ALLTEL Wireless merger until these important issues are addressed.

IV. CONCLUSION

The proposed Verizon Wireless/ALLTEL Wireless merger is not in the public interest and should be denied, as it will lead to higher roaming rates for the subscribers of

¹⁷ Comments of OPASTCO and RTG, WT Docket No. 05-265 (fil. Nov. 6, 2007), p. 7.

rural wireless carriers. Should the Commission approve the merger, substantial conditions should be imposed to protect these rural consumers.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

Brian Ford
Regulatory Counsel

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

**THE RURAL INDEPENDENT COMPETITIVE
ALLIANCE**

By: /s/ Stephen G. Kraskin
Stephen G. Kraskin
Its Attorney
2154 Wisconsin Ave., N.W.
Washington, D.C. 20007
(202) 333-1770

August 11, 2008

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the Petition to Deny of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Independent Competitive Alliance was sent on this, the 11th day of August, 2008 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

By: /s/ Brian J. Ford
Brian J. Ford

SERVICE LIST
WT Docket No. 08-95
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File Nos. 0003463892, et al.

Erin McGrath
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
erin.mcgrath@fcc.gov

Michael Samscock
Verizon Wireless
1300 Eye St, NW
Suite 400 West
Washington DC 20005

Susan Singer
Spectrum and Competition Policy
Division
Wireless Telecommunications Bureau
Federal Communications Commission
susan.singer@fcc.gov

Clyde Bode
Atlantis Holdings LLC
301 Commerce St
Suite 300
Fort Worth, TX 76102

Linda Ray
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
linda.ray@fcc.gov

Barbara Kasoff
President
Women Impacting Public Policy
1615 L St, NW
Suite 650
Washington DC 20036

David Krech
Policy Division
International Bureau
Federal Communications Commission
david.krech@fcc.gov

Barry Kennedy
President, The State Chamber
1320 Lincoln Mall
PO Box 95128
Lincoln, NE 68509

Jodie May
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
jodie.may@fcc.gov

Jon Wooster
President, US Cattleman's Association
PO 339
San Lucas, CA 93954

Jim Bird
Office of General Counsel
Federal Communications Commission
jim.bird@fcc.gov

Hector Barreto
Chairman
The Latino Coalition
3255 Wilshire Blvd
Suite 1850
Los Angeles, CA 90010

Victor Capellan
President
Dominican American National
Roundtable
1050 17th St, NW
Suite 600
Washington, DC 20036

John Prendergast
North Dakota Network Co
3615 N Broadway
PO Box 2027
Minot, ND 58702-2027

Albert Zapanta
President and CEO
US-Mexican Chamber of Commerce
1300 Pennsylvania Ave, NW
Suite G-00003
Washington, DC 20004

Leslie Sanchez
Jose Nino
Co-Chair
Hispanic Alliance for Prosperity Institute
807 Brazo, Suite 316
Austin, TX 78701

Richard Studley
President and CEO
Michigan Chamber of Commerce
600 S. Walnut St
Lansing, MI 48933-2200

Robert K. Johnson
President
Consumers for Competitive Choice
PO Box 320
Greenwood, IN 46163

Harry Alford
President and CEO
National Black Chamber of Commerce
1350 Connecticut Ave NW
Suite 405
Washington, DC 20036

Traci McClellan
Executor Director
National Indian Council of Aging
10501 Montgomery Blvd, NE
Suite 210
Albuquerque, NW 87111

Jennifer Simpson
Senior Director
Telecom and Technology Policy
ASPD
1629 K St, NW
Suite 503
Washington, DC 20006

Wayne T. Brough
Chief Economist and VP for Research
Freedom Works
601 Pennsylvania Ave, NW
North Building, Suite 700
Washington, DC 20004

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

John T. Scott, III
Vice President and Deputy Gen. Counsel
Verizon Wireless
1300 I Street, NW
Suite 400 West
Washington, DC 20005
john.scott@verizonwireless.com

Kathleen Q. Abernathy
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
kabernathy@akingump.com

Glenn S. Rabin, Vice President
Federal Regulatory Counsel
Alltel Communications
601 Pennsylvania Avenue, NW
Suite 720
Washington, DC 20004
glenn.s.rabin@alltel.com

Cheryl A. Tritt
Morrison Foerster
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006-1888
ctritt@mof.com

Best Copy and Printing, Inc.
fcc@bcpiweb.com