

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

In re 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

DA 08-1481

WT Docket No. 08-95

Centennial Communications Corp. Petition to Deny

1. Introduction and Summary.

Centennial Communications Corp. (“Centennial”) respectfully petitions the Commission to deny the combined application for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act from Atlantis Holdings LLC to Cellco Partnership d/b/a Verizon Wireless (“Verizon”).¹ Alternatively, the transaction could be permitted to proceed if certain conditions were imposed, in the public interest.²

Centennial is a leading regional wireless and broadband telecommunications service provider serving over a million wireless customers in markets covering more than

¹ See Public Notice, 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, DA 08-1481 (released June 25, 2008).

² In accordance with Section 1.939(d) of the Commission’s rules, 47 C.F.R. § 1.939(d), this Petition to Deny is supported by the attached Declaration of William L. Roughton, Jr., Centennial’s Vice President – Legal & Regulatory Affairs.

13 million points-of-presence in the continental United States and Puerto Rico. In the continental United States, Centennial is a regional wireless service provider in small cities and rural areas in two geographic clusters covering parts of six states in the Midwest (Indiana, Michigan, and Ohio) and Southeast (Louisiana, Mississippi, and Texas). In Centennial's Puerto Rico-based service area, which also includes the U.S. Virgin Islands, Centennial is a facilities-based provider offering both wireless service and, in Puerto Rico, fiber-based broadband services. Centennial provides service in a number of areas where both Verizon and ALLTEL are competitors. Centennial uses CDMA technology for its Puerto Rico-based wireless operations, and GSM technology for its domestic United States wireless operations. Centennial has existing roaming agreements with both ALLTEL and Verizon. Clearly, therefore, Centennial has a direct and material interest in this proceeding.

Centennial is not fundamentally opposed to Verizon acquiring ALLTEL's wireless businesses. Although acquisitions of large carriers such as ALLTEL by existing national carriers may raise concerns, there is clearly substantial competition among the national carriers in those portions of the country where most Americans reside, and in many cases additional competition in areas served by regional carriers such as Centennial and others.

Even so, this transaction highlights certain matters of general and growing concern with respect to the Commission's supervision and, where necessary, regulation, of the wireless industry. Specifically, Verizon's application raises significant going-forward concerns about two topics: data roaming arrangements, and exclusive arrangements between large wireless carriers and handset manufacturers. These matters have become increasingly pressing in the wireless industry, and only become more important as the concentration in the industry increases as a result of transactions such as the one under review. If the Commission is serious about promoting and maintaining competition outside of the nation's urban areas – and Centennial believes that it is – then these two concerns must be addressed. Indeed, given the increasing polarization of the industry into a group of four national carriers joined by a number of smaller, non-national

carriers,³ failure to address these issues would pose a serious threat to the long-term viability of the non-national carriers.

In these circumstances, it is appropriate for the Commission to take action to address them, in two ways. First, Centennial requests that the Commission deal with these issues by imposing conditions, in the public interest, on the specific transaction under review. Second, Centennial requests that the Commission deal with these issues on

³ Publicly available data from the carriers' web sites show that these four carriers actually have substantially higher subscriber counts: Verizon will have nearly 82 million subscribers following the ALLTEL transaction; and as of the second quarter 2008, AT&T announced that it has nearly 73 million; Sprint/Nextel announced approximately 52 million; and T-Mobile approximately 31.5 million. *Verizon Wireless Reports Solid 2Q 2008 Growth of 1.5 Million New Customers* (July 22, 2008) available at <http://news.vzw.com/news/2008/07/pr2008-07-21d.html> (announcing 68.7 million customers, including 66.7 million retail customers under the Verizon wireless brand, and a 1.5 million net customer gain for second quarter 2008); *Verizon Wireless Acquisition of Alltel* (June 5, 2008) available at <http://investor.verizon.com/news/20080605/20080605.pdf>, at slide 19 (foreseeing a gain of 13 million wireless customers from Alltel); AT&T Investor Briefing, No. 261 (July 23, 2008) available at http://www.att.com/Investor/Financial/Earning_Info/docs/2Q_08_IB_FINAL.pdf, at 4; *Sprint Nextel Reports Second Quarter 2008 Results*, News Release, available at http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1184143) at Wireless Results section; *H1/08 Conference Call*, Presentation of Deutsche Telekom including T-Mobile USA subscriber counts (Aug. 7, 2008) available at http://www.download-telekom.de/dt/StaticPage/54/90/96/080807-h1-presentation.pdf_549096.pdf, at slide 12. By contrast, US Cellular (which will be the fifth-largest carrier after taking into account pending and completed transactions), will have approximately 6 million subscribers. There is thus a more than ten-fold size differential between the largest non-national carrier and two largest national carriers, and still a five-fold differential when compared to the smallest national carrier. According to the CTIA, meanwhile, there are close to 263 million current United States wireless subscribers. CTIA Website, available at www.ctia.org (accessed "Estimated Current US Wireless Subscribers" counter at top right hand corner of home page on Aug. 8, 2008). With this clear polarization of the industry, the four national carriers command approximately 90% of the total market and the two largest carriers alone command nearly 60% of the market. The Commission's most recent data (from year-end 2006) show a similar pattern, in which the four national carriers represent 88% of the national market with the largest two representing about 55%. See *Twelfth Report, supra*, page 6 (total subscribers), Table A-4 (subscribers of largest carriers).

an industry-wide basis, in the pending roaming docket⁴ and in response to a recently-filed petition by the Rural Cellular Association.⁵

1. The Commission Should Condition Approval Of The Transaction On Verizon Accepting An Obligation To Provide Automatic Wireless Data Roaming On Reasonable Terms.

The two most dramatic communications revolutions of the last hundred years have been the development of the wireless telephone and the growth of the consumer Internet. Both have become essential to life in modern America.⁶ In these circumstances, it is perfectly natural that consumers increasingly rely on the ability to perform at least basic Internet-related activities – sending and receiving email and accessing the World Wide Web – via their wireless phones. More sophisticated Internet- and data-oriented applications are increasingly available via wireless networks as well.

⁴ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) (“*Automatic Roaming Order*”) at ¶¶ 77-81 (further notice of proposed rulemaking).

⁵ Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, filed May 20, 2008 (“*RCA Handset Petition*”).

⁶ With respect to use of the Internet, according to the Pew Internet and American Life project, overall penetration has reached about 75% of all United States adults. See http://www.pewinternet.org/trends/Internet_Adoption_3.18.08.pdf. That said, the data also show a profound “generational” element to the overall data that confirm the general understanding that young people almost universally use the Internet, indicating that total penetration will only increase over time as the current population ages. Specifically, relying on December 2007 data (the most recent available), Pew found that 92% of Americans aged 18-29 use the Internet. The figures then decline by age group: 85% of those 30-49 use the Internet, 72% of those 50-64, and only 37% of those over 65 – a group whose members were a minimum of 50 years old when the Internet “went commercial” in 1994. A link to the data regarding Internet usage by age is at: <http://www.pewinternet.org/trends.asp>. For a description of the “commercialization” of the Internet in 1994 (which previously had been formally limited to use by non-commercial entities), see http://en.wikipedia.org/wiki/History_of_the_Internet#Opening_the_network_to_commerce. With respect to adoption of wireless services, see *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, Twelfth Report, 23 FCC Rcd 2241 (2008) at Table A-1. Between 1994 and year-end 2006, wireless subscribers grew from approximately 24 million to more than 233 million. The past decade-and-a-half, in short, has seen the simultaneous and near-ubiquitous adoption of these two technologies by American society.

In many cases, however, consumers are denied access to these capabilities – not for any technological reasons, and not because consumers are unwilling to pay for it, but rather, because there is no clear regulatory framework governing roaming obligations for wireless data services akin to that which exists for wireless voice services. As a result, the Commission should condition Verizon’s acquisition of ALLTEL on a commitment by Verizon to enter into data roaming agreements with technically compatible systems on reasonable terms and in a timely manner, parallel to the Commission’s ruling last year confirming the availability of automatic roaming for wireless voice services.⁷

Specifically, the Commission should condition approval of the transaction at issue here on Verizon undertaking an agreement to negotiate data services roaming agreements in a timely manner and on reasonable terms, with technically compatible systems that also have (or establish) automatic voice roaming arrangements with Verizon. At a minimum, because the basic features of email and Internet access are so essential, the Commission should specify that it is unreasonable to refuse to provide such functionalities to roamers from a technically compatible system. As with the already-established automatic roaming requirement, any other specific issues relating to a data roaming agreement can be sorted out on a case-by-case basis.

Centennial believes that the mere establishment of such an obligation will clear away most obstacles to carriers negotiating reasonable agreements, with no further Commission involvement required. However, as with automatic voice roaming, the Commission should make itself available as a forum to mediate and, if need be, adjudicate, any disputes that carriers cannot sort out for themselves.⁸

⁷ 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) (“*Automatic Roaming Order*”). For example, Centennial operates an EV-DO network in Puerto Rico, and has requested a new roaming agreement with Verizon which includes data roaming on Verizon’s EV-DO network. While Verizon has not denied Centennial’s request, it has been pending for a long time without any final resolution.

⁸ See *Automatic Roaming Order* at ¶ 30.

Centennial recognizes that in the *Automatic Roaming Order*, the Commission deferred a decision on, and indeed solicited additional comments with respect to, the question of data roaming obligations.⁹ We submit that the passage of time only confirms the increasingly essential nature of wireless data services to American consumers.¹⁰ Indeed, in Centennial's experience, the ability to offer consumers robust mobile data services is increasingly critical to success in the retail marketplace. Consumers are rapidly insisting on such capabilities from their wireless providers. This creates the same consumer demand for roaming capabilities in connection with data services that exists with respect to voice services.

Unfortunately, the basic market realities that led the Commission to intervene with respect to voice roaming – and adopt the automatic roaming rule for voice and messaging services – apply with full force to data roaming. Specifically, as Centennial pointed out in the voice roaming proceeding, regional and local wireless carriers have no way to provide their customers with out-of-region service other than by entering into roaming relationships with distant, but technically compatible, systems. Moreover, the dependency of regional and smaller carriers on roaming is essentially an artifact of the Commission's geographic and exclusive licensing regime, not the result of unfettered competition or market forces.¹¹ In these circumstances, therefore – as with voice services

⁹ *Id.* at ¶¶ 77-81.

¹⁰ *See* material discussed in note 4, *supra*.

¹¹ *See* Comments of Centennial Communications Corp. in WT Docket No. 05-265 (filed Nov. 28, 2005) at pages 5-12. As we noted, unlike what would occur in a purely competitive marketplace, Centennial cannot put up towers and antennae in locations outside its licensed areas, even if its customers' travel habits would make such actions economically sensible. Instead, because the Commission awards licenses on a geographic basis, to meet its customers' needs for service away from home, Centennial must either (a) buy the rights to an entire spectrum block in areas where its customers travel – which makes no sense if it only wants to accommodate its traveling customers' needs – or (b) negotiate with a technically compatible carrier in those areas (out of, at most, two or three such systems), to allow its customers to roam. This situation embodies an underlying, subtle distortion in the competitive market for wireless services. This distortion does not typically intrude upon retail competition for end users, but it can and does affect wholesale arrangements between carriers, such as roaming. This effect is all the more pronounced because the Commission has pursued policies permitting (if not, indeed, encouraging) the simultaneous development of, on the one hand, national carriers, such as Verizon, AT&T, T-Mobile, and Sprint, and on the other hand, smaller, regional carriers such as
(note continued)...

– regulatory intervention to ensure that American consumers can obtain reliable mobile data service is entirely justified as well.

The fact that the Commission is considering this issue in the roaming docket, *see Automatic Roaming Order* at ¶¶ 77-81, is no bar to using this proceeding to move the ball forward on this issue. The speed of marketplace developments in the wireless industry is such that the Commission must take steps to deal with emerging concerns such as this one when the opportunity arises, even if longer-term consideration is also required.¹² So, the Commission should deal with this issue in the short run by imposing conditions on the transaction under review in this proceeding. It should, in addition, deal with the data roaming issue more broadly by promptly establishing a general data roaming obligation in the ongoing *Automatic Roaming* proceeding.

In this regard, the Commission clearly has the legal authority to impose this requirement. For example, even though wireless data services are information services, Centennial's proposed data roaming condition only applies to systems with automatic voice roaming agreements in place. This reflects the fact that wireless data functionality is essentially a part of – indeed, from the consumer's perspective, adjunct to and nearly inseparable from – basic wireless voice service. Increasingly, consumers do not perceive a relevant distinction between a wireless carrier's voice and data offerings; instead, the services are viewed as part of an integrated package. From this perspective, offering automatic roaming for wireless data services paired with wireless voice service is a part

...(note continued)

Centennial and others. Under such a system, the national carriers will have limited motivation to offer roaming to regional carriers with whom, in the regional carriers' home areas, they also compete. As a result of these marketplace distortions, regulatory intervention to ensure the availability of roaming – whether voice roaming, as already established, or data roaming, which needs to be established – is essential.

¹² For example, even though in April 2001 the Commission was well aware that a thorough review of all aspects of intercarrier compensation was appropriate, that did not prevent the Commission from acting specifically with respect to the issue of intercarrier compensation for ISP-bound calls in light of the fact that some carriers were engaging in severe regulatory arbitrage with respect to such traffic. *See Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (establishing limits on intercarrier compensation for ISP-bound calls).

of providing “just,” “reasonable,” and “non-discriminatory” wireless voice services. Moreover, the Commission has broad authority to impose reasonable obligations and restrictions on wireless carriers’ use of spectrum. This authority is clearly broad enough to allow the modest data roaming obligation Centennial is suggesting. Furthermore, in considering license transfers such as the one at issue here, the Commission has broad authority to consider what “the public interest” requires and to impose conditions to ensure that the public interest is served.¹³

For all these reasons, the Commission should require that Verizon, as a condition of its acquisition of ALLTEL, accept an obligation to negotiate reasonable automatic data roaming arrangements with technically compatible systems, as outlined above. The Commission should also, in the *Automatic Roaming* proceeding, adopt a parallel, industry-wide automatic data roaming obligation, akin to the existing automatic voice roaming obligation.

2. The Commission Should Condition Approval of This Transaction On Certain Limitations on Exclusive Arrangements for Handsets.

The explosive growth of wireless data services is not the only rapid marketplace development calling for Commission action. Even as the technical capabilities of wireless networks increase, consumer perception of what they are purchasing from wireless carriers is increasingly focused on the *handset* – in part as an accessory or fashion item – as well as the technical capabilities of the *network services* being provided.¹⁴ While historically consumers would be primarily concerned about wireless pricing plans, for example, increasingly consumers are choosing among providers based on the particular handsets each provider has available. Unfortunately, this development

¹³ See, e.g., *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) at ¶ 16.

¹⁴ Current projections indicate that wireless network providers will increase their ad spending to \$11.9 billion in 2009, up 8.5% from 2008 despite the economic downturn. But *device manufacturers* are expected to increase their spending by 11.2%, to \$7.4 billion. See K. Maddox, “Many Sectors to Boost Ad Spending,” BtoB Online, July 14, 2008, available at: <http://www.btobonline.com/apps/pbcs.dll/article?AID=/20080714/FREE/148874127/1109/FREE>.

in consumer behavior is occurring just as the largest national providers are achieving a market position that allows them to extract exclusivity arrangements from device manufacturers. This is an extremely troubling development for the large number of wireless providers, such as Centennial, who cannot possibly achieve the sheer size needed to obtain such exclusive arrangements.¹⁵

To deal with the rapidly changing industry situation, Centennial submits that the Commission should condition approval of Verizon's acquisition of ALLTEL on Verizon waiving exclusivity provisions in its agreements with handset manufacturers. Moreover, the Commission should promptly take favorable action with respect to the petition for rulemaking on this issue recently filed by the Rural Cellular Association.¹⁶ As with data roaming, Centennial is concerned that without prompt Commission action on the handset exclusivity issue, the long-term viability of regional and rural carriers could be in jeopardy.

Significant exclusivity provisions in wireless carriers' arrangements with handset manufacturers are a relatively new phenomenon in the industry. Until the last few years, from Centennial's perspective, the balance of bargaining power, so to speak, seemed to favor the handset makers over any particular wireless network provider. As a result, to the extent that a carrier might try to obtain an "exclusive" deal on handsets, the manufacturers could, and did, make relatively modest modifications to an existing phone and treat it as a new model not subject to exclusivity. In contrast, from Centennial's perspective, it appears that some market "tipping point" has been crossed, such that the very largest national carriers (Verizon, AT&T, and Sprint) command a sufficient

¹⁵ See note 3, *supra*, for a discussion of carrier subscriber counts.

¹⁶ *RCA Handset Petition, supra*.

customer base that the handset manufacturers are willing to offer more serious “exclusivity” to those carriers.¹⁷

This reflects, in some respects, the evolution of the wireless market from one in which the key sales point was simply price, and the availability and basic features of the service – a mobile phone that works – into one in which consumers are being wooed on the basis of the “style” or “coolness” of particular phones.¹⁸ Wireless phones have become – among other things – a fashion accessory, and it is understandable that a national carrier such as AT&T would want to distinguish itself by having exclusive rights to the “coolest” phone available, such as the iPhone, and that other national carriers, such as Sprint, would seek to respond by obtaining exclusive rights to an even *cooler* phone available, such as the Instinct. But this is a game in which the overwhelming majority of wireless carriers simply cannot ever play, because it is simply not possible for more than the few very largest carriers to amass a sufficiently large customer base to obtain the leverage needed over handset manufacturers to extract exclusivity arrangements.

There are several reasons that the Commission should be concerned about this situation.

First, there are reasons to be skeptical that the public interest is served at all by permitting wireless carriers to enter into exclusive deals for handsets under any circumstances.¹⁹ Handset manufacturers, left to their own devices, would have no reason to enter into exclusivity arrangements with any carrier. Instead, they will simply want to sell as many handsets as they can. That is why it is only recently, with the increasing market presence of the largest carriers, that meaningful exclusivity arrangements have begun to occur. On the one hand, this development results in peculiar situations of the

¹⁷ As noted above, once pending acquisitions are taken into account, Verizon will have nearly 82 million subscribers, and AT&T and Sprint/Nextel recently announced that they have nearly 73 million and approximately 52 million subscribers, respectively. *See* note 3, *supra*.

¹⁸ Obviously, basic service considerations remain important, as Verizon’s “It’s the network” and AT&T’s “More bars in more places” ad campaigns attest.

¹⁹ *RCA Handset Petition, supra*.

sort identified by the Rural Cellular Association in which, for example, no citizen of Alaska or Vermont could “legally” obtain a wireless service using the iPhone.²⁰ On the other hand, the fact that such exclusive arrangements can be extracted from handset manufacturers indicates, as noted above, that at least the national carriers have crossed some tipping point, in terms of sheer size, that has precipitated a qualitative change in the nature of competition in the marketplace that could reasonably cause the Commission concern.

Second, to the extent that certain wireless data services are only available with, or perform notably better with, certain specific handsets, the same considerations noted above that militate in favor of a wireless data roaming obligation militate against exclusive handset deals. These considerations will become even more important to the extent that industry initiatives leading to more “open” wireless networks take hold.²¹ Being able to use the wireless device of your choice on Verizon’s (or any other carrier’s) network is a hollow victory if you cannot *get* the wireless device of your choice in the first place, due to exclusive arrangements with individual carriers.²²

Centennial submits that the legal authorities discussed above provide the Commission with ample authority to deal with the problem of handset exclusivity. In addition, Centennial notes that in the landline telephone market, the Commission has long

²⁰ *See id.* at 7.

²¹ *See, e.g.*, E. Woyke, “Verizon’s Open Network Strategy,” *Forbes.com*, March 20, 2008, available on-line at: http://www.forbes.com/2008/03/19/verizon-developers-mobile-tech-wire-cx_ew_0320verizon.html.

²² For example, Centennial recognizes that the large national carriers compete with each other, in part, on the basis of having exclusive access to certain handsets. If the Commission believes that there are benefits to this type of competition, then given the clear dividing line between the large national carriers (the smallest, T-Mobile, has more than 25 million subscribers) and the largest non-national carriers (the largest, US Cellular, has less than 6 million), it would be possible to frame a limitation that would allow the largest carriers to have exclusive rights as against each other, even while making handsets available to smaller carriers such as Centennial. In this regard, in connection with landline regulation, the Commission has long drawn regulatory distinctions between the very large carriers (traditionally, the Bell Companies and GTE) and smaller, rural carriers. As the wireless industry appears to be evolving, a similar approach may be necessary here as well.

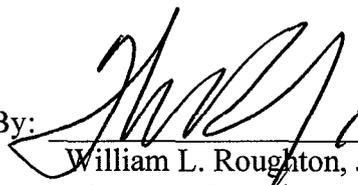
held that consumer telephone equipment is a separate, unregulated market that cannot be tied to a network provider's services. The wireless situation is, at a high level, somewhat different, in that at present there is no standard, Part-68-like interface between the generic "wireless network" and a generic "handset." But precisely because a wireless handset is to some extent integrated into the wireless network as part of the provision of wireless service, the Commission necessarily retains more authority with respect to the terms and conditions associated with the sale of wireless handsets than it has chosen to retain with respect to "plain old telephones" used in "plain old telephone service." In short, there is no basis to think that the Commission lacks authority to impose conditions on the Verizon-ALLTEL transaction to begin to address this issue, and certainly no basis to think that the Commission could not or should not deal with it in an industry-wide manner, as proposed by the Rural Cellular Association.²³

3. Conclusion.

For the reasons described above, the Commission should deny the application to allow Verizon to acquire ALLTEL, unless the conditions described herein are made part of the approval of the transaction.

Respectfully submitted,

CENTENNIAL COMMUNICATIONS CORP.

By: 

William L. Roughton, Jr.
Vice President of Legal and Regulatory Affairs
Centennial Communications Corp.

Dated: August 11, 2008

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RCA Handset Petition, supra.

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Declaration of William L. Roughton, Jr.

I, William L. Roughton, Jr., Vice President of Legal and Regulatory Affairs of Centennial Communications Corp., hereby declare, under penalty of perjury, that the factual allegations in the Centennial Communications Corp. Petition to Deny being filed today in the above-captioned proceeding, are true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

CENTENNIAL COMMUNICATIONS CORP.

By: 

William L. Roughton, Jr.
Vice President of Legal and Regulatory Affairs
Centennial Communications Corp.

Dated: August 11, 2008