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

In the Matter of	**)**	
	)	
Atlantis Holdings LLC,	**)**	**WT Docket No. 08-95**
Assignor/Transferor	**)**	**FCC ULS File Nos. 0003463892, *et al*.**
	)	
And	**)**	
	)	
Cellco Partnership d/b/a Verizon Wireless,	**)**	
Assignee/Transferee	**)**	
	)	
For Commission Consent to The Proposed Transfer Of Licenses And Other Authorizations Held By Subsidiaries and Partnerships of ALLTEL Corporation	**)**	

To: Chief, Wireless Telecommunications Bureau

PETITION TO CONDITION TRANSACTION APPROVAL

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Summary

South Dakota Telecommunications Association ("SDTA"), requests the Commission to place certain conditions on any approval of the captioned transfer of license applications filed by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and Atlantis Holdings LLC ("Atlantis") encompassing licenses and other authorizations held by ALLTEL Corporation subsidiaries and partnerships (collectively "ALLTEL"). Verizon and Alltel are the two dominant wireless carriers in the State of South Dakota. Once merged, they will become a monolith in terms of the amount of spectrum held, and in terms of leverage in roaming negotiations. For these reasons, it is necessary to impose the following conditions on the proposed merger: (1) Require that the ALLTEL cellular properties in South Dakota be divested, where overlapped by Verizon wireless operations; (2) require that the merged entity offer reasonable roaming rates and terms to rural wireless carriers; (3) require that the merged entity offer 3G data and other broadband roaming on reasonable terms to rural wireless carriers, on both a foreign market and on an "in-market" or "home roaming" basis; (4) require that the merged entity take Commission-verified steps to ensure handset access for smaller carriers; and (5) require that the merged entity demonstrate its costs of providing universal service, before any Universal Service funds are disbursed on a post-transaction basis.

If Verizon Wireless is to comply with the requirement to offer reasonable roaming terms, its rate should not stray significantly outside of the national average, or beyond the rate offered to its favored roaming partners; and the Commission should condition any merger approval on requiring Verizon Wireless to provide 3G and other broadband services on an automatic roaming basis to promote truly competitive markets in the provision of such services. Similarly, the Commission should require Verizon Wireless to offer roaming service to a rural carrier within its wireless service area (i.e., "home" or "in-market" roaming), if that carrier has not yet fully deployed its wireless system, or implemented all of the services offered post-merger by Verizon Wireless. The proposed merger represents a unique opportunity to vent some of the pressure which ALLTEL has placed upon the high cost Universal Service Fund ("USF"). The Commission should require the post-merger entity to demonstrate its universal service-related costs.

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PETITION TO CONDITION TRANSACTION APPROVAL

South Dakota Telecommunications Association ("SDTA"), by its attorneys and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, Section 1.939 of the Commission's Rules, and the Commission's *Public Notice*, entitled "Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer of Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request Declaratory Ruling on Foreign Ownership," Mimeo DA 08-1481, released June 25, 2008, hereby requests the Commission to place certain conditions on any approval of the captioned transfer of license applications filed by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and Atlantis Holdings LLC ("Atlantis") encompassing licenses and other authorizations held by ALLTEL Corporation

[1] This file number has been designated the lead application. *See Public Notice*, Mimeo DA 08-1481, released June 25, 2008 at page 2 footnote 3.

subsidiaries and partnerships (collectively "ALLTEL"). These conditions are designed to ensure that the proposed merger of these two telecom giants does not result in an anticompetitive impact on the small telecommunications carriers that serve the primarily rural areas in the State of South Dakota. In support hereof, the following is shown:

I. Standing

1. SDTA represents the interests of 33 independent, cooperative and municipal local exchange carriers ("LECs") in the State of South Dakota. A list of SDTA member carriers is included as Attachment A hereto. All of the SDTA member LECs are "rural telephone companies" as defined in 47 U.S.C. §153(37) and all have been designated as "eligible telecommunications carriers" (or "ETCs") within their established study areas. The SDTA member companies all serve primarily high-cost areas. Most of them hold a direct or indirect interest in spectrum licenses; and have implemented, or are in the process of implementing, wireless service offerings for the rural communities they serve. SDTA's members stand to be aggrieved, and their interests adversely affected, by grant of the captioned applications for four separate and distinct reasons: (a) SDTA member companies compete for local customers with Verizon and/or ALLTEL; (b) upon closing of the proposed transaction, it appears that the combined entity's local customers will have nationwide roaming privileges as Verizon Wireless customers on Verizon's national network;[2] (c) Verizon Wireless will be able to leverage this access to roaming on its national network to increase its local customer base in the State of South Dakota; and (d) Verizon Wireless will thereby gain undue leverage in any intercarrier roaming agreement negotiations with SDTA member companies. Accordingly, the potential economic injury

[2] The parties note that the merger will eliminate roaming costs between ALLTEL and Verizon Wireless. *See* Application Exhibit 1, pp. 25-26.

through loss of revenues to SDTA members is direct, immediate and substantial. Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970); FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1940); NBC v. FCC, 132 F.2d 545, 548-549 (D.C. Cir.) *aff'd* 318 U.S. 239 (1943); Northco Microwave, Inc., 1 F.C.C.2d 350 (1965). As a general matter, a trade association has standing to act on behalf of a member where the association alleges that its member would suffer an injury as a result of the challenged action, and the injury is of a sort that would make out a justiciable case had an association member challenged the action directly. *See* Warth v. Seldin, 422 U.S. 490, 511 (1975); Office of Communication of the United Church of Christ v. FCC, 359 F.2d 999 (D.C. Cir. 1966); In re Applications of KNOX BROADCASTING, INC. For Extension and Modification of Construction Permit for Unbuilt Station WJRZ(AM), Toms River, New Jersey,12 FCC Rcd 3337, 3338 (1997). Therefore, SDTA has standing to file this petition.

II. Any Approval of the Proposed Transaction Must Be Conditioned on Future Fair Dealings With Small Rural Carriers

2. Section 310(d) of the Communications Act of 1934, as amended, requires the Commission to determine whether a proposed transfer of control or assignment of licenses will serve the public interest, convenience and necessity. In making this determination, the Commission is required to "assess whether the proposed transactions comply with specific provisions of the Communications Act, the Commission's rules and federal communications policy."[3] The Commission considers whether a proposed

[3] *See, e.g.*, *ALLTEL-Midwest Order*, 21 FCC Rcd. 11,535 (2006) at Para. No. 16; *SBC-AT&T Order*, 20 FCC Rcd. 18,290 (2005) at Para. No. 16; *Verizon-MCI Order*, 20 FCC Rcd. 18,433 (2005) at Para. No. 20; *Sprint-Nextel Order*, 20 FCC Rcd. 13,967 (2005) at Para. No. 20; *ALLTEL-WWC Order*, 20 FCC Rcd. 13,035 (2005) at Para. No. 17; and *Cingular-AT&T Wireless Order*, 19 FCC Rcd. 21,522 (2004) at Para. No. 20.

transaction "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes."[4] To do this, the Commission employs "a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest."[5]

3. In the merger context, the Commission has explained that mergers "raise competitive concerns when they reduce the availability of choices to the point that the merged firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices."[6] Stated another way, regulatory concerns are triggered by market power, and the analysis of market power begins "by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants."[7] In past merger proceedings, the Commission has consistently defined the relevant market as Cellular Market Areas ("CMAs"), *i.e.*, cellular Metropolitan Statistical Areas and Rural Service Areas;[8] and most recently has held that the 280 MHz of spectrum in the Cellular, Broadband PCS, Specialized Mobile Radio ("SMR") and 700

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4 *Alltel-Midwest Order*, at Para. No. 16; *SBC-AT&T Order*, at Para. No. 16; *Verizon-MCI Order*, at Para. No. 16; *Sprint-Nextel Order* at Para. No. 20.

5 *ALLTEL-Midwest Order*, at Para. No. 16; SBC-AT&T Order, at Para. No. 16; *Verizon-MCI Order*, at Para. No. 16; *Sprint-Nextel Order*, at Para. No. 20; *ALLTEL-WWC Order*, at Para. No. 17; *Cingular-AT&T Wireless Order*, at Para. No. 40.

6 *ALLTEL-Midwest Order*, at Para. No. 22; *Sprint-Nextel Order*, at Para. No. 20; *ALLTEL-WWC Order*, at Para. No. 22; *Cingular-AT&T Wireless Order*, at Para. No. 68.

7 *ALLTEL-Midwest Order*, at Para. No. 25; *Sprint-Nextel Order*, at Para. No. 32; *ALLTEL-WWC Order*, at Para. No. 24; *Cingular-AT&T Wireless Order*, at Para. No. 70.

8 *ALLTEL-Midwest Order*, at Para No. 29; *Sprint-Nextel Order*, at Para. No. 57; *ALLTEL-WWC Order*, at Para. Nos. 44-45; *Cingular-AT&T Wireless Order*, at Para Nos. 104-105. The component parts of the various CMAs are as set forth in the Commission's *Public Notice*, entitled "Cellular MSA/RSA Markets and Counties," Mimeo DA 92-109, 7 FCC Rcd. 742 (1992).

MHz Band constitutes the universe of spectrum available for mobile telephony for purposes of assessing a proposed merger's effect on competition.[9]

4. In this case, Verizon Wireless and Atlantis state that the proposed merger will allow Verizon Wireless to enter eleven (11) new CMAs, and parts of forty-three (43) other CMAs, where ALLTEL is licensed and Verizon Wireless holds no cellular or Broadband PCS spectrum.[10] However, the applicants have not analyzed the proposed merger under the criteria laid down by the Commission. Instead of defining the relevant geographic market area as CMAs, the applicants have argued that the relevant market definition is the nationwide market and have proceeded to analyze the proposed merger under that self-serving standard.[11] While the applicants claim to have also analyzed the proposed merger under the Commission-endorsed CMA market standard, a review of the application reveals that they have rendered only lip service to this claim as the application is devoid of any meaningful analysis based on CMA market definitions.[12]

5. Under the CMA-based standard, the Commission measures effects on competition if, post-merger, the merged entity will hold 95 MHz or more of spectrum;[13] and, as noted previously, measures this against a base of 280 MHz of spectrum deemed available for mobile telephony. The nationwide analysis (and the cryptic CMA analysis) contained in the application does not employ the "280 MHz of spectrum" figure endorsed by the Commission for use in merger analyses. Indeed, the analyses proffered (be they

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9 *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd. 20295 (2007) ("*AT&T-Dobson Order*"), at Para. Nos. 27, 30.

10 Application Exhibit 1, pg. 10.

11 Application Exhibit 1, pp. 29-51.

12 Application Exhibit 1, pp. 31, 46-48.

13 *AT&T-Dobson Order*, at Para. No. 40; *ALLTEL-Midwest Order*, at Para. No. 36; *ALLTEL-WWC Order*, at Para. No. 46; *Cingular-AT&T Wireless Order*, at Para. No. 106.

nationwide or CMA-based) are undercut because the applicants have not limited themselves to the 280 MHz of spectrum available for mobile telephone endorsed by the Commission for use in merger analyses, but have instead performed the analysis on the basis of 646 MHz of available spectrum – a standard which the Commission has never endorsed.[14] This 646 MHz consists of 50 MHz of Cellular spectrum, 120 MHz of Broadband PCS spectrum, Sprint's 10 MHz G Block, 80 MHz of 700 MHz, 20 MHz of enhanced Specialized Mobile Radio ("SMR") spectrum, 186 MHz of Broadband Radio Service/Educational Broadband Service ("BRS/EBS") spectrum, 90 MHz of Advanced Wireless Service 1 ("AWS-1") spectrum, and 90 MHz of Mobile Satellite Service ("MSS") ATC spectrum.

6. In summary, Verizon Wireless and Atlantis have submitted a competitive effects analysis in support of the proposed merger which does not comply with the Commission's previously articulated standards. In its recent decision addressing Verizon's acquisition of Rural Cellular Corporation, the Commission upheld its decision to use the 280 MHz approach, and to apply this approach at the CMA/CEA level.[15] Therefore, the Commission should apply the correct analysis (the 280 MHz-based standard) in determining whether a grant of the applications would serve the public interest, convenience and necessity. As shown in Attachment B hereto, in the state of South Dakota, the merged entity will end up with well over 95 MHz of spectrum in more than half of the counties in the State; and in some cases, this guidepost is greatly

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[14] Application Exhibit 1, pp. 33-42.

[15] *See In the Matter of Applications of Cellco Partnership d/b/a Verizon and Rural Cellular Corporation for Consent to Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, Mimeo No. FCC 08-181, released August 1, 2008 ("*RCC Order*") at Para. Nos. 41, 47. While the Commission decided to consider additional spectrum in any market not eliminated by its competitive effect screen, it did not move away from the 280 MHz standard, due to its belief that it is premature to include AWS and Broadband Radio Service spectrum in the screen. *Id.* at Para. No. 33.

exceeded.[16] Moreover, the Commission can take official notice that Verizon and Alltel would together hold both cellular licenses in each market throughout the State, and are therefore the two dominant wireless carriers in the State of South Dakota.[17] Once merged, they will become a monolith in terms of the amount of spectrum held, and in terms of leverage in roaming negotiations. Their combined market share for existing wireless subscribers in South Dakota must be taken into consideration, not merely the amount of spectrum held. *See RCC Order* at Para. No. 73. For these reasons, it is necessary to impose the following conditions on the proposed merger: (1) Require that the ALLTEL cellular properties in South Dakota be divested, where overlapped by Verizon wireless operations; (2) require that the merged entity offer reasonable roaming rates and terms to rural wireless carriers; (3) require that the merged entity offer 3G data and other broadband roaming on reasonable terms to rural wireless carriers, on both a foreign market and on an "in-market" or "home roaming" basis; (4) require that the merged entity take Commission-verified steps to ensure handset access for smaller carriers; and (5) require that the merged entity demonstrate its costs of providing universal service, before any Universal Service funds are disbursed on a post-transaction basis. Each of the proposed conditions is discussed in greater detail below.

7. The Commission's public interest authority also enables it to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public

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[16] The combined spectrum figures in Attachment B were calculated using only the 280 MHz of spectrum which the Commission has recognized as typically deployed for mobile telephony, as discussed herein.

[17] ALLTEL alone shows nearly complete coverage for the State of South Dakota. *See* http://www.alltel.com/wps/portal/AlltelPublic/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3hnP2. In contrast, AT&T has not yet achieved coverage that can compete with the coverage in South Dakota offered by Verizon Wireless and ALLTEL. *See, e.g.*, Silicon Alley Insider, "AT&T 3G Network Coverage-July 2008) and accompanying map (http://www.alleyinsider.com/att/att-3g-network-map-left#slide_4).

interest is served by the transaction.[18] Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions, not inconsistent with law, which may be necessary to carry out the provisions of the Act.[19] The conditions proposed herein are designed to address market conditions that will be shaped by the proposed transaction, and thus are a permissible exercise of Commission authority. *See* In the Matter of Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees; For Consent To Transfer Control of Licenses and Authorizations, 21 FCC Rcd 7358, 7361 (FCC 2006).

III. Verizon Wireless Should Be Required To Divest ALLTEL's Cellular Properties in the State of South Dakota Where Overlapped by Verizon Wireless Properties

8. As shown in Attachment B hereto, the combined spectrum holdings of Verizon Wireless and ALLTEL exceed the 95 MHz guideline in the majority of South Dakota counties, and are within 3 MHz of this benchmark in the others (not counting AWS licenses). Moreover, as shown in Attachment B, the merged entity will control both cellular licenses throughout South Dakota. Not only does this exceed the Commission's 95 MHz trigger for anticompetitive review discussed above, it creates an untenable

[18] *See, e.g.*, *Sprint-Nextel Order*, 20 FCC Rcd at 13978 P23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 P21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 P43 (conditioning approval on the divestiture of operating units in select markets). *See also Deutsche Telekom-VoiceStream Wireless Order*, 16 FCC Rcd 9779 (2001) (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

[19] 47 U.S.C. § 303(r). *See also Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 P23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 P22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 P43; United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968) (Section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station's primary market); United Video, Inc. v. FCC, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to Section 303(r) authority).

situation. With Verizon Wireless and ALLTEL being the two dominant nationwide/regional wireless carriers in the state, the combination of these entities will lessen competition, and the impact of this lessened competition will be exacerbated by the merged entity's ability to control the lion's share of spectrum in the state. And because cellular is by far the most well-established wireless service, allowing the merger would give Verizon/ALLTEL a combined market share of staggering proportion. Therefore, the parties should be required as a condition of merger approval to divest the ALLTEL cellular properties throughout South Dakota, since there is overlap with Verizon Wireless cellular and other spectrum holdings throughout the state.

9. On July 22, 2008, Verizon Wireless filed an *ex parte* letter with the Commission, indicating that pursuant to discussions with the Department of Justice, it "has offered to accept divestiture requirements in 85 cellular markets." The list of 85 markets includes all of the cellular markets in the State of South Dakota. SDTA is encouraged by Verizon Wireless' divestiture offer, and strongly urges the Commission to accept this offer and incorporate it into the conditions placed on approval of the proposed transaction. In this regard, Verizon Wireless should be required to include in the divestiture the network assets and customers of the divested cellular properties, with appropriate protections to guard against pre-divestiture shifting of customers. *See* *AT&T-Dobson Order*, at Para. No. 88; *RCC Order* at Para. No. 113. From a competitive standpoint the merged entity should have to divest network and customers too. Otherwise, South Dakota will be left with one main provider until additional network buildout can be accomplished by smaller rural carriers.

10. Consistent with the goal of requiring divestiture so as to prevent a lessening of competition, and to further Congress' stated goal of encouraging rural telephone

company participation in the provision or wireless services,[20] the Commission should require that such divestiture be done pursuant to procedures that would ensure a realistic opportunity for rural carriers to acquire the divested operations in and around their telephone service areas. In this regard, the divestiture should be done in reasonably small geographic areas (and in particular, Cellular Market Areas, or "CMAs").

IV. The Commission Should Condition Any Grant on the Provision of 3G and Other Broadband Roaming Service

11. Verizon Wireless should be required to enter into intercarrier roaming agreements with SDTA members and other rural carriers offering wireless services, at prices that are just, reasonable, and non-discriminatory, as required by the Commission's decision in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rule Making*, FCC 07-143, 22 FCC Rcd. 15,817 (rel. August 16, 2007) ("*CMRS Roaming Order*"). This is especially important since, with the acquisition of its largest competitor in the State of South Dakota, and the achievement of largely ubiquitous coverage throughout the state, Verizon Wireless will have little incentive to voluntarily offer fair and reasonable roaming terms.

12. In the *CMRS Roaming Order*, the Commission determined that "automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act."[21] Roaming is deemed to be "a common carrier service because roaming capability gives end users access to a foreign network in order to

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[20] *See* 47 U.S.C. §309(j).

[21] *See*, *CMRS Roaming Order*, at Para. Nos. 1 and 23.

communicate messages of their own choosing."[22] According to the Commission, "when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier's home market, consistent with the protections of Sections 201 and 202 of the Communications Act."[23] Services "covered by the automatic roaming obligation are limited to real-time, two-way switched voice and data services, provided by CMRS carriers, that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls."[24]

13. The most important aspect of any roaming agreement is the roaming rate. If an unfair rate is charged, it is tantamount to preventing the roaming carrier from competing. Based on the record in this proceeding, the prevailing roaming rate nationally is between $0.05 and $0.10 per minute; and Verizon Wireless appears to charge its favored roaming partners a rate in the $0.05 per minute range.[25] It is respectfully submitted that if Verizon Wireless is to comply with the requirement to offer reasonable roaming terms, its rate should not stray significantly outside of the national average, or beyond the rate offered to its favored roaming partners. To this end, the Commission should impose an explicit condition requiring Verizon Wireless to offer to any rural carrier the same rate as is offered its favored roaming partners; and this "most favored nation" status should not be watered down through the imposition of traffic volume or similar requirements. This requirement should stay in effect for at least five years.

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22 *See*, *CMRS Roaming Order*, at Para. Nos. 1 and 25.

23 *See*, *CMRS Roaming Order*, at Para. No. 2.

24 *See*, *CMRS Roaming Order*, at Para. Nos. 1 and 23.

25 *See*, North Dakota Network Co. July 31, 2008 Petition to Dismiss or Deny in WT Docket No. 08-95 at p. 7.

14. While the Commission has declined "to impose a price cap or any other form of rate regulation on the fees carriers pay each other when one carrier's customer roams on another carrier's network," it nevertheless has held that the rates for roamer service are "subject to the statutory requirement that any rates charged be reasonable and non-discriminatory."[26] Section 201(b) of the Communications Act requires that all charges, practices, classifications, and regulations for common carrier service must be just and reasonable; and provides that any charge, practice, classification, and regulation that is unjust and unreasonable is unlawful. Section 202(a) of the Communications Act prohibits unjust or unreasonable discrimination in charges, practices, classifications, and services by common carriers in connection with any "like" communications service; and also prohibits undue or unreasonable preferences or advantages.

15. SDTA recognizes that the provision of 3G and other broadband services on an automatic roaming basis is presently pending before the Commission in the Further Notice of Proposed Rulemaking portion of the *CMRS Roaming Order*. Nevertheless, SDTA respectfully submits that the provision of such 3G and other broadband services (including 3G data) on an automatic roaming basis is of such a critical nature to the development and preservation of competitive markets for the provision of wireless service that the Commission should condition any approval of the instant merger on requiring Verizon Wireless to provide 3G and other broadband services on an automatic roaming basis to promote truly competitive markets in the provision of such services.

16. Verizon Wireless should not be allowed to leverage its national coverage advantage over smaller carriers to suppress competition in the provision of 3G or other broadband services on either a local or a roaming basis. Today, if a South Dakota rural

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[26] *CMRS Roaming Order*, at Para. No. 37.

carrier cannot get a roaming agreement with Verizon, then it can go to ALLTEL (and *vice versa*). Once these giant companies merge, they will have a near monopoly on roaming, with the power to eliminate competition through price increases or by simply not entering into or renewing roaming agreements. In the event this merger is approved, Verizon Wireless will be able to offer 3G and other broadband services in the State of South Dakota over the facilities of ALLTEL, and those South Dakota customers will be able to obtain 3G services anywhere within the Verizon Wireless network. Given these facts, denying 3G voice or data, or other broadband automatic roaming service to SDTA member's customers outside their coverage area will enable Verizon Wireless to leverage regulated facilities used in the provision of local service in the state to capture customers that would otherwise obtain service from a rural wireless carrier. This would be an impermissible use of regulated facilities to lessen or suppress competition in the wireless industry sector. It is vital that the customers of small, rural carriers be able to utilize 3G data and other advanced services when traveling outside of their service provider's coverage area. Otherwise, the wireless marketplace will be whittled down to two or three nationwide carriers, creating an oligopoly with little incentive to provide wireless coverage to truly rural areas.

17. Similarly, the Commission should require Verizon Wireless to offer roaming service to a rural carrier within its wireless service area (i.e., "home" or "in-market" roaming), if that carrier has not yet fully deployed its wireless system, or implemented all of the services offered post-merger by Verizon Wireless. While the Commission has not yet seen fit to make this a regular component of its roaming policies and regulations, it is respectfully submitted that this requirement would be in the public interest in the context of this transaction, since the post-merger entity will be so dominant (especially in several

predominantly rural states such as South Dakota). In summary, any Commission approval of the proposed merger should be conditioned on fair roaming requirements as requested herein.

V. The Commission Should Condition Any Grant on the Elimination of Handset Access Obstacles for Smaller Carriers

18. The Commission must ensure that proactive steps are taken to prevent the post-merger entity from exacerbating an already difficult handset availability situation for small and rural carriers. The typical handset issue occurs where a national carrier like Verizon enters into an exclusivity agreement for a specific handset line or a series of handsets. Available information indicates that in many instances, the big carrier has not consumed the resulting exclusive supply. The result of the exclusivity arrangement is that small and rural carriers are unable to obtain high quality, technologically sophisticated handsets to offer to their customers. Typically, the smaller carriers serve mostly rural areas with great customer service, but limited handset selection and products. SDTA is aware of carriers who are struggling to obtain handsets in models and in quantities necessary to operate their businesses.

VI. The Commission's Consent to the Proposed Transaction Should Incorporate Provisions Regarding Universal Service Fund Eligibility

19. The proposed merger represents a unique factual circumstance for the Commission to consider and, as discussed below, a unique opportunity to vent some of the pressure which ALLTEL has placed upon the high cost Universal Service Fund ("USF"). According to Verizon Wireless, it serves over 67 million customers in the

U.S.[27] Similarly, the Application represents that ALLTEL serves over 13 million customers in the U.S.[28] SDTA member companies are rural local exchange companies and are classified as ETCs under section 214(e) of the Communications Act of 1934, as amended (47 U.S.C. § 151 et seq.), and are eligible for USF receipts to provide wireline-based universal service in low density, high cost areas within the United States. In many instances, ALLTEL or Verizon Wireless, or both, compete in the same service areas of the rural LECs, utilizing some combination of local calling scopes, national toll calling, texting and internet access. However, as the Congressional Budget Office has discussed on the topic of wireless growth demand placed upon the fund, the wireless companies are providing "additional telephone service" rather than "replacement service". Congressional Budget Office, Factors That May Increase Future Spending from the Universal Service Fund at 12 (2006).

20. SDTA respectfully submits that the merged companies' continued eligibility for USF, post-transaction, should be the subject of particular scrutiny, and conditions, if the Commission grants its consent to the proposed merger. This concern arises from the unusual merger confluence of the single largest USF recipient – ALLTEL – with the single largest wireless carrier – Verizon Wireless – neither of which has addressed the transactional effect on USF other than in a footnote. In this respect, the transfer of control application argues that the merger "…will not exacerbate high-cost universal service fund growth by a competitive eligible telecommunications carrier…" because the Commission has already capped such competitive carriers' USF receipts.[29] Application at Ex. 1, p. 8 n. 18, citing High Cost Universal Service Support; Federal-State Joint Board

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[27] Application Exhibit 1, p.2.

[28] Application Exhibit 1, p.4.

[29] Application Exhibit 1, p.8 n. 18.

on Universal Service, Order, WC Docket No. 05-338. CC Docket No. 96-45, FCC 08-122 (May 1, 2008) ("*Interim Cap Order*"). This appears to be the sole reference and analysis, such as it is, concerning the transaction's impact on universal service.

21. But, does the merger proposal require some public policy analysis beyond reliance upon the Joint Board *Interim Cap Order*? We respectfully suggest that the need for this analysis is manifest. For instance, ALLTEL argued, as it was required to do, that the transfer of control with Atlantis Holdings, LLC would serve the public interest. *See* Applications of ALLTEL Corporation and Atlantis Holdings, LLC; Memorandum Opinion and Order, WT Docket No. 07-185, FCC 07-185 (October 26, 2007)("*ALLTEL Merger Order*"), However, the Commission singled out ALLTEL's role in the rapid expansion of the high cost portion of the USF as a matter that negatively affected the public interest:

> ALLTEL is currently the largest beneficiary of competitive ETC funding and accounts for approximately 29 percent of all high cost payments to ETCs. [fn omitted] Given ALLTEL's significant role in the expansion of the high cost fund through ALLTEL's receipt of competitive ETC funding, which forms the basis of the Joint Board's concern, we find that it is in the public interest to immediately address ALLTEL's continued receipt of competitive ETC funding in the context of this transaction. (emphasis supplied) *ALLTEL Merger Order*, para. 9.

The quoted Order goes on to cap ALLTEL's high cost support that it received as a competitive ETC for 2007, on an annualized basis. Id.

22. Although ALLTEL's cap has since been subsumed within the industry-wide cap applicable to competitive ETCs in the Joint Board *Interim Cap Order* (id. n. 21), the proposed transaction provides no comfort that ALLTEL's massive high cost draw will be warranted after the merger. In this respect, Verizon Wireless' "Public Interest Statement" touts an eye-catching $10 billion in transaction-related savings, between the time of the actual merger and the end of the second year of merged operations. Verizon Wireless

also claims that it "…continues to lead the industry in cost efficiency. [fn. omitted]" *See* Application at Ex. 1, pp. ii, 25-27.

23. One is left to wonder, then, as to how such massive claimed efficiencies will affect ALLTEL's operations supporting universal service. Even though ALLTEL is currently eligible to receive capped amounts, is this good public policy for a company that will receive merger related efficiencies larger than many third world nations' GDP? What will ALLTEL's USF-related costs be on a post-merger basis? Indeed, it appears that continued high-cost support may be completely unnecessary, given Verizon Wireless' apparent prior decisions as a competing wireless carrier to refrain from such funding. None of these issues are raised or discussed in the Verizon – ALLTEL merger application; although the unique presence of the largest USF recipient surely deserves a public interest analysis.

24. As in the ALLTEL/Atlantis merger proceeding, the Commission at times finds the public interest important enough to implement emerging policy in the context of a merger. The so-called Identical Support rule is part of the long-term comprehensive USF reform proceeding which is currently before the FCC, but[30] also it is squarely at issue here. With such large costs to the USF from this single company – Alltel --, coupled with promised savings of $10 billion, surely the early introduction of a cost requirement is apt here just as it was a component of the cap mechanism in the ALLTEL/Atlantis merger. SDTA thus respectfully suggests that the proposed combination of these facts warrants a further step.

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[30] *See e.g.*, Interim Cap Order at para. 21.

25. Specifically, SDTA respectfully requests that the Commission condition any approval for the pending transaction, by the following:

> ALLTEL Corporation and its related affiliates, covered in the merger, will not be eligible for federal high cost support, absent a demonstration of universal service related costs, made either before a state commission, or this Commission, as appropriate. This condition shall apply until Verizon Wireless ceases to control these licensees.

WHEREFORE, SDTA requests that this petition be granted; and that the Verizon – Atlantis transfer of licenses applications be conditioned in the manner described above.

Respectfully submitted,

SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

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Filed: August 11, 2008

Attachment A

South Dakota Telecommunications Association Member Carriers

Alliance Communications Cooperative
Armour Independent Telephone (A Golden West Company)
Beresford Municipal Telephone Company
Bridgewater Canistota Telephone (A Golden West Company)
Brookings Municipal Utilities d/b/a Swiftel Communications
Cheyenne River Sioux Tribal Telephone Authority
Faith Municipal Telephone Company
Fort Randall Telephone
Golden West Telecommunications Cooperative
Hills Telephone Company (An Alliance Company)
Interstate Telecommunications Cooperative
James Valley Telecommunications
Kadoka Telephone Co. (A Golden West Company)
Kennebec Telephone Company
Knology (incumbent South Dakota LEC operations)
Long Lines
McCook Cooperative Telephone
Midstate Communications
Mount Rushmore Telephone
RC Communications (A Roberts County Telephone Company)
Roberts County Telephone Cooperative
Santel Communications Cooperative
Sioux Valley Telephone (A Golden West Company)
Splitrock Properties (An Alliance Company)
Stockholm-Strandburg Telephone Co. (An Interstate Company)
Tri-County Telcom, Inc. (A McCook Cooperative Company)
Union Telephone (A Golden West Company)
Valley Telecommunications Cooperative
Venture Communications Cooperative
Vivian Telephone Co. (A Golden West Company)
West River Cooperative Telephone
West River Telecommunications Cooperative
Western Telephone Company

Attachment B

Combined Verizon-Alltel Spectrum Holdings in South Dakota (by County)

1) Minnehaha Co. – 112 megahertz (CMA267 - Sioux Falls)
2) Meade Co. – 114 megahertz (CMA289 – Rapid City)
3) Pennington Co. – 114 megahertz (CMA289 – Rapid City)
4) Butte Co. – 114 megahertz (CMA634 SD1 – Harding RSA)
5) Harding Co. – 114 megahertz (CMA634 SD1 – Harding RSA)
6) Lawrence Co. – 114 megahertz (CMA634 SD1 – Harding RSA)
7) Perkins Co. – 114 megahertz (CMA634 SD1 – Harding RSA)
8) Campbell Co. – 122 megahertz (CMA635 SD2 – Corson RSA)
9) Corson Co. – 122 megahertz (CMA635 SD2 – Corson RSA)
10) Dewey Co. – 122 megahertz (CMA635 SD2 – Corson RSA)
11) Potter Co. – 122 megahertz (CMA635 SD2 – Corson RSA)
12) Walworth Co. – 122 megahertz (CMA635 SD2 – Corson RSA)
13) Ziebach Co. – 122 megahertz (CMA635 SD2 – Corson RSA)
14) Brown Co. – 122 megahertz (CMA636 SD3 – McPherson RSA)
15) Edmunds Co. – 122 megahertz (CMA636 SD3 – McPherson RSA)
16) Faulk Co. – 122 megahertz (CMA636 SD3 – McPherson RSA)
17) McPherson Co. – 122 megahertz (CMA636 SD3 – McPherson RSA)
18) Spink Co. – 122 megahertz (CMA636 SD3 – McPherson RSA)
19) Clark Co. – 132 megahertz (CMA637 SD4 – Marshall RSA) *
20) Codington Co. – 132 megahertz (CMA637 SD4 – Marshall RSA) *
21) Day Co. – 122 megahertz (CMA637 SD4 – Marshall RSA) *
22) Deuel Co. – 132 megahertz (CMA637 SD4 – Marshall RSA) *
23) Grant Co. – 132 megahertz (CMA637 SD4 – Marshall RSA) *
24) Hamlin Co. – 132 megahertz (CMA637 SD4 – Marshall RSA) *
25) Marshall Co. – 122 megahertz (CMA637 SD4 – Marshall RSA) *
26) Roberts Co. – 132 megahertz (CMA637 SD4 – Marshall RSA) *
27) Custer Co. – 102 megahertz (CMA638 SD5 – Custer RSA)
28) Fall River Co. – 102 megahertz (CMA638 SD5 – Custer RSA)
29) Shannon Co. – 102 megahertz (CMA638 SD5 – Custer RSA)
30) Bennett Co. – 102 megahertz (CMA639 SD6 – Haakon RSA)
31) Gregory Co. – 92 megahertz (CMA639 SD6 – Haakon RSA)
32) Haakon Co. – 102 megahertz (CMA639 SD6 – Haakon RSA)
33) Jackson Co. – 102 megahertz (CMA639 SD6 – Haakon RSA)
34) Jones Co. – 92 megahertz (CMA639 SD6 – Haakon RSA)
35) Lyman Co. – 92 megahertz (CMA639 SD6 – Haakon RSA) *
36) Mellette Co. – 92 megahertz (CMA639 SD6 – Haakon RSA) *
37) Stanley Co. – 92 megahertz (CMA639 SD6 – Haakon RSA) *
38) Todd Co. – 92 megahertz (CMA639 SD6 – Haakon RSA) *
39) Tripp Co. – 92 megahertz (CMA639 SD6 – Haakon RSA) *
40) Aurora Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
41) Brule Co. – 92 megahertz (CMA640 SD7 – Sully RSA)

42) Buffalo Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
43) Charles Mix Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
44) Davison Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
45) Douglas Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
46) Hand Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
47) Hughes Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
48) Hyde Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
49) Jerauld Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
50) Sully Co. – 92 megahertz (CMA640 SD7 – Sully RSA)
51) Beadle Co. – 92 megahertz (CMA641 SD8 – Kingsbury RSA)
52) Brookings Co. – 102 megahertz (CMA641 SD8 – Kingsbury RSA)
53) Kingsbury Co. – 92 megahertz (CMA641 SD8 – Kingsbury RSA)
54) Lake Co. – 112 megahertz (CMA641 SD8 – Kingsbury RSA) *
55) Miner Co. – 92 megahertz (CMA641 SD8 – Kingsbury RSA)
56) Moody Co. – 102 megahertz (CMA641 SD8 – Kingsbury RSA)
57) Sanborn Co. – 92 megahertz (CMA641 SD8 – Kingsbury RSA)
58) Bon Homme Co. – 97 megahertz (CMA642 SD9 – Hanson RSA)
59) Clay Co. – 97 megahertz (CMA642 SD9 – Hanson RSA)
60) Hanson Co. – 92 megahertz (CMA642 SD9 – Hanson RSA)
61) Hutchinson Co. – 92 megahertz (CMA642 SD9 – Hanson RSA)
62) Lincoln Co. – 112 megahertz (CMA642 SD9 – Hanson RSA) *
63) McCook Co. – 102 megahertz (CMA642 SD9 – Hanson RSA)
64) Turner Co. – 102 megahertz (CMA642 SD9 – Hanson RSA)
65) Union Co. – 97 megahertz (CMA642 SD9 – Hanson RSA)
66) Yankton Co. – 97 megahertz (CMA642 SD9 – Hanson RSA)

* (A portion of this spectrum is pending non-pro forma assignment or transfer)

The combined companies will exceed the 95-megahertz screening cap by 38.9% (i.e., holding 132 megahertz of CMRS spectrum) in six South Dakota counties; they will exceed the screening cap by 28.4% (i.e., holding 122 megahertz of CMRS spectrum) in thirteen counties; they will exceed the screening cap by 38.9% (i.e., holding 132 megahertz of CMRS spectrum) in one county; they will exceed the cap by 28.4% (i.e., holding 122 megahertz of CMRS spectrum) in five counties; they will exceed the cap by 20% (i.e., holding 114 megahertz of CMRS spectrum) in six counties; they will exceed the cap by 17.9% (i.e., holding 112 megahertz of CMRS spectrum) in three counties; they will exceed the 95 MHz cap by 7.4% (i.e., holding 102 megahertz of CMRS spectrum) in ten counties; and they will exceed the 95% cap by 2.1% (i.e., holding 97 megahertz of CMRS spectrum) in four counties. **The above calculations do not include AWS, BRS or EBS spectrum held or leased by the parties.**

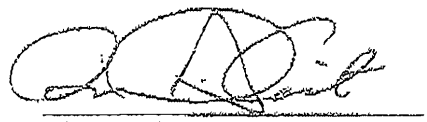
DECLARATION UNDER PENALTY OF PERJURY

I, Richard D. Coit, hereby state the following:

1. I am the Executive Director of the South Dakota Telecommunications Association.

2. I have read the foregoing "Petition to Condition Transaction Approval." With the exception of those facts of which official notice can be taken, all facts set forth therein are true and correct to the best of my knowledge, information and belief.

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



Richard D. Coit

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP and that on August 11, 2008 I caused to be sent by electronic mail (e-mail), a copy of the foregoing **"Petition to Condition Transaction Approval"** to the following:

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