

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

In re Applications of)	
)	
ATLANTIS HOLDINGS LLC, Transferor,)	
)	
and)	
)	
CELLCO PARTNERSHIP D/B/A)	WT Docket No. 08-95
VERIZON WIRELESS, Transferee)	DA 08-1481
)	
For Consent to Transfer Control of Licensees,)	
Authorizations, and Spectrum Manager and)	
<i>De Facto</i> Transfer Leasing Arrangements)	
)	
File Nos. 0003464996 <i>et al.</i>)	

PETITION TO DENY OF CELLULAR SOUTH, INC.

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SUMMARY

Verizon Wireless disclosed that following its initial talks with the Department of Justice (“DOJ”) it “offered to accept divestiture requirements in 85 cellular markets.” However, the “full extent of the divestitures” is not known since the “specific spectrum, operations and other assets that will be divested in each market” are the subject of Verizon Wireless’ ongoing discussions with the DOJ. The Wireless Telecommunications Bureau correctly held that the divestiture offer did not constitute a major amendment to the merger application. No amendment was filed and no amendment can be filed until the DOJ completes its review and the full extent of the divestitures, if any, are agreed to by the parties or decided by a court. As it stands now, Verizon Wireless will either withdraw or substantially amend the bulk of its 95 individual applications. Consequently, the applications have become “contingent” on the outcome of Verizon Wireless’ discussions with the DOJ. Since no action can be taken until the DOJ review process concludes and the current contingences are resolved, the merger application should be dismissed without prejudice.

If a merger application is considered by the Commission, Verizon Wireless’ entry into rural CMAs must be properly “screened” in order that the competitive harms do not outweigh any competitive benefits. In considering other recent mergers involving wireless carriers the Commission arbitrarily decided that one-third, or 95 MHz, of available spectrum would be an effective “spectrum aggregation screen.” If applied in this instance, however, a 95 MHz screen would allow Verizon Wireless to gain control of all 50 MHz of cellular spectrum in numerous Cellular Market Areas (“CMA”) without each CMA having been scrutinized for competitive harm. The problem with the Commission’s approach is that 700 MHz, cellular, broadband PCS, and SMR spectrum may all be “suitable” for mobile telephony, but the acquisition of a second block of cellular spectrum comes with substantial competitive advantages that currently do not

accompany 700 MHz, broadband PCS or SMR spectrum. “Low-Band” cellular spectrum provides wider coverage, provides better signal penetration in buildings, and suffers less attenuation from variable terrain, trees, foliage, hills, and other obstacles. With wider coverage come lower infrastructure costs in rural areas. Because of superior propagation characteristics, Low-Band spectrum is considered more valuable than High-Band spectrum by the wireless industry. Before the Commission may grant the applications it needs to conduct a hearing to finally assess the state of competition in rural markets or, in the alternative, to consider the anticompetitive effects that are likely to result if Verizon Wireless obtains local cellular monopolies as a result of its merger with ALLTEL.

The proposed ALLTEL – Verizon merger will exacerbate an already serious competitive problem that exists between small and large wireless carriers because the largest wireless carriers frequently demand exclusivity for the sale of innovative wireless handsets from the manufacturers of those handsets. Those exclusive distribution agreements impact the competitive balance between wireless carriers because wireless devices are one of the top criteria used by consumers when selecting a wireless carrier. Exclusive distribution agreements also deny availability of innovative handsets to millions of persons who reside in rural areas that are outside the service area of the carrier that has the benefit of the exclusive agreement.

If the Commission finds that the merger application may be granted with conditions, Cellular South urges the Commission to require Verizon Wireless to negotiate reasonable terms and conditions for automatic roaming and interoperability agreements with other carriers when a reasonable request is received and the carriers are technologically compatible. Given that the proposed transaction will result in essentially one national network that can provide roaming to

CDMA providers, the potential for that single carrier to determine the fate of its competitors is profound. The Commission should impose conditions to preserve a competitive marketplace.

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PETITION TO DENY OF CELLULAR SOUTH, INC.

Cellular South, Inc. (“Cellular South”), by its attorneys and pursuant to § 309(d)(1) of the Communications act of 1934, as amended (“Act”), 47 U.S.C. § 309(d)(1), § 1.939(a)(2) of the Commission’s Rules (“Rules”), 47 C.F.R. § 1.939(a)(2), and the Public Notice, DA 08-1481, 2008 WL 2549846 (June 25, 2008), hereby petitions the Commission to deny the above-captioned applications of Atlantis Holdings, LLC (“Atlantis”) and Cellco Partnership d/b/a/ Verizon Wireless, with its wholly-owned subsidiary AirTouch Cellular (collectively “Verizon Wireless”) for the Commission’s consent to the transfer control of the various radio station authorization and spectrum leases held by ALLTEL Corporation (“ALLTEL”).¹ In support thereof, the following is respectfully submitted:

¹ The deadline to file a petition to deny the subject applications (collectively “Merger Application”) was extended by the Wireless Telecommunications Bureau (“WTB”) to August 11, 2008. *See Applications of Verizon Wireless and Atlantis*, DA 08-1733, 2008 WL 2877487, at *1 (WTB July 24, 2008) (“*Extension Order*”).

STANDING

Although Verizon Wireless and Atlantis Holdings have filed 95 individual applications, their filings comprise a single application for Commission approval of their Agreement and Plan of Merger and for its consent to the transfer of control of the authorizations and spectrum leases held by ALLTEL. Apparently in recognition of the fact that the 95 applications involve essentially the same applicants and the same issues,² the Commission departed from its normal processing procedures for transfer of control applications³ and consolidated the applications for consideration in a single proceeding in WT Docket No. 08-95. For the purposes of recognizing the “parties to the proceeding,”⁴ the 95 consolidated applications should be considered as one.

Cellular South is the nation’s second (after ALLTEL) largest privately-held wireless carrier. It is a regional CDMA carrier serving over 700,000 customers primarily in rural areas. It provides cellular service in nine Cellular Market Areas (“CMAs”) in Mississippi consisting of two Metropolitan Statistical Areas (“MSAs”) and seven Rural Service Areas (“RSAs”). It also provides Personal Communications Services (“PCS”) in twelve Mississippi Basic Trading Areas (“BTAs”). In addition, Cellular South holds authorizations to provide PCS, Advanced Wireless Service (“AWS”) and/or 700 MHz Service in portions of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Tennessee and Virginia.

Cellular South currently directly competes with ALLTEL’s cellular service offerings in the Biloxi-Gulfport (CMA173) and Pascagoula (CMA252) MSAs.⁵ ALLTEL and Cellular South also provide competing cellular services in four RSAs in Mississippi.⁶ At present, Verizon

² *Cf.*, 47 C.F.R. § 1.227(a)(1).

³ *See id.* § 1.948(j).

⁴ Public Notice, DA 08-1481, at 6.

⁵ *See* Merger Application, Ex. 2, at 17, 22.

⁶ The Mississippi RSAs in which ALLTEL and Cellular South offer competing cellular service are:

Wireless holds no cellular spectrum (or 1.9 GHz PCS spectrum) in three of the Mississippi RSAs in which Cellular South provides cellular service.⁷ If the Merger Application is granted, Verizon Wireless will compete directly with Cellular South in those three markets for the first time.⁸

Atlantis and Verizon Wireless claim that “[t]he merger of ALLTEL’s wireless properties into Verizon Wireless will create a stronger and more efficient wireless competitor with greater coverage in an industry where broad coverage has proven to be paramount in attracting customers and driving competition.”⁹ They represent that “[t]he benefit to competition will be especially pronounced in ALLTEL areas not currently served by Verizon Wireless.”¹⁰ If so, the grant of the subject application will cause Cellular South to face a “stronger competitor,” especially in the three Mississippi RSAs in which Verizon Wireless does not compete currently. The increased competition can be expected to cause Cellular South to sustain economic injury that is direct, tangible and immediate.

Cellular South’s status as a direct and current competitor to the merged entity provides it with standing to file a petition to deny the Merger Application under *FCC v. Sanders Brothers*

CMA497 Mississippi 5 – Washington, CMA498 Mississippi 6 – Montgomery, CMA502 Mississippi 10 – Smith, and CMA503 Mississippi 11 – Lamar. See Merger Application, Ex. 2, at 79-81.

⁷ See *id.*, Ex. 1, at 10 n.22 (Mississippi RSAs 5, 10 and 11).

⁸ Cellular South also competes with ALLTEL in: CMA083 Mobile, Alabama ; CMA085 Johnson City – Kingsport – Bristol, Tennessee ; CMA106 Jackson, Mississippi ; CMA127 Pensacola, Florida; CMA139 Montgomery, Alabama ; CMA153 Columbus GA/AL ; CMA246 Dothan, Alabama ; CMA265 Fort Walton Beach, Florida ; CMA283 Panama City, Florida ; CMA310 Alabama 4 – Bibb; CMA311 Alabama 5 – Cleburne; CMA312 Alabama 6 – Washington; CMA313 Alabama 7 – Butler; CMA314 Alabama 8 – Lee; CMA 326 Arkansas 3 – Sharp; CMA327 Arkansas – Clay; CMA328 Arkansas – Cross; CMA335 Arkansas 12 – Ouachita; CMA369 Florida 10 – Walton; CMA376 Georgia 6 – Spalding; CMA379 Georgia 9 – Marion; CMA443 Kentucky 1 – Fulton; CMA455 Louisiana 2 – Morehouse; CMA457 Louisiana 4 – Caldwell; CMA494 Mississippi 2 – Benton; CMA496 Mississippi 4 – Yalobusha; CMA499 Mississippi 7 – Leake; CMA522 Missouri 19 – Stoddard; CMA646 Tennessee 4 – Hamblen; and CMA682 Virginia 2 – Tazewell. See *id.*, Ex. 5, at 8-9, 12, 13, 14, 22, 23, 24, 25-27, 29, 30, 33, 39, 40, 43, 67, 68, 69, 78-79, 80, 86, 125, 143.

⁹ Merger Application, Ex. 1, at 27.

¹⁰ *Id.*

Radio Station, 309 U.S. 470 (1940) and its progeny. See *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002). Consistent with *Sanders Brothers*, the Commission developed a “generous” standing policy in assignment and transfer cases “so as to enable a competitor to bring to the Commission’s attention matters bearing on the public interest because it position qualifies it in a special manner to advance such matters.” *Stoner Broadcasting System, Inc.*, 74 F.C.C. 2d 547, 548 (1979). See *WLVA, Inc. v. FCC*, 459 F.2d 1286, 1298 n.36 (D.C. Cir. 1972) (standing under § 309(d)(1) “liberally conferred” where a competitor alleges economic injury). Under that policy, Cellular South clearly has standing under § 309(d)(1) to petition to deny the Merger Application. See, e.g., *Channel 32 Hispanic Broadcasters, Ltd.*, 15 FCC Rcd 22649, 22651 (2000).

Despite recognizing that the administrative standard for establishing standing under § 309(d)(1) is “less stringent” than the judicial standard for establishing Article III standing to appeal, see *Paxson Management Corp. and Lowell W. Paxson*, 22 FCC Rcd 22224, 22224 n.2 (2007), and that Article III does not apply at all to administrative standing, see *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22554 n.20 (2003), the Commission nevertheless has applied the test for Article III standing to petitioners in transfer of control cases. See, e.g., *Shareholders of Tribune Co.*, 22 FCC Rcd 21266, 21268 (2007).¹¹ If it does so again in this case, the Commission should recognize Cellular South’s Article III standing.

Cellular South is likely to suffer injury-in-fact if it is forced to compete with Verizon Wireless instead of ALLTEL. For example, Verizon Wireless promises to be a stronger competitor post-merger, because it will: (1) offer “much more” seamless wireless coverage

¹¹ To establish Article III standing, a party must allege specific facts showing that: (1) it will suffer injury-in-fact; (2) there is a “causal link” between the proposed transfer and the injury-in-fact; and (3) the injury-in-fact would be prevented if the transfer application is not granted. See *Shareholders of Tribune Co.*, 22 FCC Rcd at 21268.

throughout its entire, nationwide footprint;¹² (2) provide a greater variety of services and content,¹³ and (3) realize “operational synergies driven by reduced capital and operating expense savings” that it values at approximately \$9 billion.¹⁴

The fact that Verizon Wireless promises to be a stronger competitor than ALLTEL obviously establishes a causal link between the proposed merger and the competitive injury-in-fact that Cellular South stands to suffer. It is equally obvious that the injury to Cellular South that would be traceable to the merger would be prevented if the Commission does not grant the Merger Application. The attached declaration of Eric B. Graham attests to the fact that Cellular South has standing as a party in interest under § 309(d)(1) to petition to deny the subject application.

ARGUMENT

I. THE COMMISSION SHOULD DISMISS THE MERGER APPLICATION OR HOLD IT IN ABEYANCE PENDING THE DOJ REVIEW PROCESS

On July 22, 2008, Verizon Wireless notified the Commission of the status of its initial discussions with the Department of Justice (“DOJ”) concerning the “competitive issues” presented by the Merger Application.¹⁵ Verizon Wireless disclosed that following its initial talks with the DOJ it “offered to accept divestiture requirements in 85 cellular markets.”¹⁶ It also revealed its commitment to divesting “overlapping properties comprising the entire states of North Dakota and South Dakota, as well as overlapping properties comprising partial areas with 16 additional states.”¹⁷ However, the “full extent of the divestitures” is not known since the

¹² Merger Application, Ex. 1, at 17.

¹³ *See id.* at 18-25.

¹⁴ *Id.*, at 25.

¹⁵ Letter from John T. Scott, III to Marlene H. Dortch 1 (July 22, 2008) (“Divestiture Offer”).

¹⁶ *Id.*

¹⁷ Divestiture Offer, at 1.

“specific spectrum, operations and other assets that will be divested in each market” are the subject of Verizon Wireless’ ongoing discussions with the DOJ.¹⁸

The WTB correctly held that the Divestiture Offer did not constitute a major amendment to the Merger Application. *See Extension Order*, at 5. No amendment was filed and no amendment can be filed until the DOJ completes its review and the full extent of the divestitures, if any, are agreed to by the parties or decided by a court. As it stands now, Verizon Wireless will either withdraw or substantially amend the bulk of its 95 individual applications. Consequently, the applications have become “contingent” on the outcome of Verizon Wireless’ discussions with the DOJ. Since no action can be taken until the DOJ review process concludes and the current contingencies are resolved, the Merger Application should be dismissed without prejudice to resubmission once Verizon Wireless gets its ducks in order with the DOJ.¹⁹ To process applications that will be dismissed or must go back on public notice is a monumental waste of public and private resources.²⁰

¹⁸ Divestiture Offer, at 1-2.

¹⁹ The Commission had a policy prohibiting “contingent” broadcast applications, because “holding these applications in our pending files does not serve any valid public interest. Moreover, experience has shown that such applications consume appreciable staff time, which could be devoted to processing of other applications. Since many of these applications must be held for long periods of time, it is usually necessary for the applicants to file substantial amendments when the contingencies have finally been resolved.” *Contingent Applications in the Broadcast Services*, 22 Rad. Reg. (P&F) 299, 299 (1961). The same policy considerations apply here.

²⁰ An application subject to § 309(b) of the Communications Act of 1934, as amended (“Act”) cannot be granted earlier than 30 days following public notice of the acceptance for filing of a “substantial amendment.” 47 U.S.C. § 309(b). Clearly, if Verizon Wireless agrees to divest all of the ALLTEL properties in two states, and parts of sixteen other states, it can no longer tout that the grant of the Merger Application will serve the public interest by allowing it to create a truly national facilities-based network by using ALLTEL’s regional operations to fill existing network gaps. *See Merger Application*, Ex. 1, at 9-11. In any event, any amendment that changes the specific spectrum, operations and other assets to be transferred will be a substantial amendment under § 309(b) of the Act.

II. THE COMMISSION CANNOT FIND THAT THE PUBLIC INTEREST WOULD BE SERVED BY GIVING VERIZON WIRELESS CELLULAR MONOPOLIES

Verizon Wireless is the biggest of the so-called “Big 5” wireless carriers. With nearly 69 million subscribers,²¹ Verizon Wireless claims to have “the largest number of retail customers in the industry and is the most profitable wireless company in the U.S.”²² If the Commission consents to the proposed merger, ALLTEL will become an indirect wholly-owned subsidiary of Verizon Wireless. At that point, Verizon Wireless will become the biggest of the “Big 4” wireless carriers.

The competitive effects of the proposed merger are of particular concern to Cellular South because the proposed transaction is intended to serve as Verizon Wireless’ entrée into the rural center of the country where it currently lacks facilities.²³ The transaction is billed as a merger of a “national carrier” (Verizon Wireless) with a “regional carrier” (ALLTEL),²⁴ albeit one that serves over 13 million customers in small and mid-sized cities and rural areas in 34 states and presents a “wireless license footprint” that encompasses 125 MSAs and 265 RSAs.²⁵ At least until Verizon Wireless’ Divestiture Offer, the merger would have enabled Verizon Wireless to enter 11 new RSAs and parts of 43 other RSAs.²⁶ Unless Verizon Wireless’ entry into rural CMAs is properly “screened” by the Commission, the competitive harms caused by such entry will far outweigh its competitive benefits.

The Commission’s “input market for spectrum” includes spectrum in particular bands

²¹ Verizon Wireless ended the second quarter with 68.7 million customers, after attracting 1.5 million new customers during the period. Of its total subscriber base, 66.7 million are retail customers.

²² Verizon Wireless, Facts-at-a-Glance (visited July 24, 2008), <<http://aboutus.vzw.com/atag glance.html>.

²³ See Merger Application, at 9.

²⁴ See *id.*, Ex. 1, at 9.

²⁵ See *id.*, at 4.

²⁶ See *id.*, at 10 & nn. 21, 22.

that is “suitable” for the provision of mobile telephony services. *E.g., AT&T Inc. and Dobson Communications Corp.*, 22 FCC Rcd 20295, 20311 (2007) (“*AT&T-Dobson*”).²⁷ To date, the Commission has found 280 MHz of spectrum suitable for mobile telephony.²⁸

Having identified its input screen for spectrum, the Commission arbitrarily decided that one-third of that spectrum or 95 MHz would be an effective “spectrum aggregation screen.” *AT&T-Dobson*, 22 FCC Rcd at 20313. The Commission mistakenly believes that its 95 MHz screen is sufficient to identify all markets in which spectrum aggregation poses a potential for competitive harm. *See id.* In reality, there is a hole in the screen so large as to allow Verizon Wireless to gain control all 50 MHz of cellular spectrum in a CMA without having been scrutinized by the Commission for competitive harm.

Attached hereto as Exhibit 1 is a table listing the 85 markets in which Verizon Wireless is willing to divest “overlapping properties” ostensibly to gain DOJ approval of the merger. *See Divestiture Offer*, at 1. Exhibit 1 provides the amount of spectrum that would have been attributable to Verizon Wireless post-transaction if the DOJ had not interceded. The Commission will note that in 20 of the 85 markets the spectrum attributable to Verizon Wireless is between 72 MHz and 94 MHz, and thus below the Commission’s 95 MHz screen.²⁹ What

²⁷ The Commission determines “suitability” by examining whether the spectrum is: (1) capable of supporting mobile service given its physical properties and the state of equipment technology; (2) licensed with a mobile allocation and corresponding service rules; and (3) committed to another use that effectively precludes its uses for mobile telephony. *See AT&T-Dobson*, 22 FCC Rcd at 20311.

²⁸ The Commission’s input screen for spectrum is comprised of 80 MHz in the 698-806 MHz frequency band (“700 MHz spectrum”), two 25 MHz blocks (Blocks A and B) of 800 MHz spectrum for cellular service, approximately 25 MHz in the 800 and 900 MHz bands for Specialized Mobile Radio (“SMR”), and 125 MHz in the 1850-1990 MHz frequency band for Broadband PCS. *See AT&T-Dobson*, 22 FCC Rcd at 20311-13.

²⁹ *See infra* Ex. 1 (CMA262 Danville, Virginia; CMA341 California 6 – Mono; CMA 353 Colorado 6 – San Miguel; CMA354 Colorado 7 – Saguache; CMA355 Colorado 8 – Kiowa; CMA356 Colorado 9 – Costilla; CMA378 Georgia 8 – Warren; CMA390 Idaho 3 – Lemhi; CMA429 Kansas 2 – Norton; CMA434 Kansas 7 – Trego; CMA438 Kansas 11 – Hamilton; CMA439 Kansas 12 – Hodgeman; CMA440 Kansas 13 – Edwards; CMA544 Nevada 2 – Lander; CMA547 Nevada 5 – White Pine;

each one of the 20 markets has in common is that the spectrum attributable to Verizon Wireless includes all 50 MHz of cellular spectrum. Irrespective of whether Verizon Wireless stands to control 174 MHz of spectrum (CMA489) or 70 MHz (CMA356), *see infra* Ex. 1, at 1, the DOJ apparently is seeking divestiture if the spectrum includes 50 MHz of cellular spectrum. Unlike the Commission, the DOJ recognizes that Verizon Wireless should not be allowed access to all 50 MHz of that spectrum in one CMA. We turn to the reasons for the DOJ's position next.

A. Low-Band Spectrum Is Superior And Provides A Competitive Advantage

The problem with the Commission's approach is that 700 MHz, cellular, broadband PCS, and SMR spectrum may all be "suitable" for mobile telephony, but the acquisition of a second block of cellular spectrum comes with substantial competitive advantages that currently do not accompany 700 MHz, broadband PCS or SMR spectrum. Whereas 700 MHz spectrum may in the near-term become "ideally suited" in many respects for the provision of mobile services,³⁰ 800 MHz cellular spectrum is ideally suited for mobile telephony in all respects right now.

All wireless spectrum is not equal and should not be treated as fungible by the Commission. Compared to 1.7, 1.9 and 2.1 GHz ("High Band") PCS and AWS spectrum, the propagation characteristics of 700 MHz and 800 MHz ("Low-Band") spectrum provide wider coverage, provide better signal penetration in buildings, and suffer less attenuation from variable terrain, trees, foliage, hills, and other obstacles. And, as the Commission has recognized, with wider coverage comes lower infrastructure costs for the licensee, especially in rural areas.³¹

CMA553 New Mexico 1- San Juan; CMA 557 New Mexico – Grant; CMA677 Utah 5- Daggett; CMA718 Wyoming 1 – Park; CMA722 Wyoming 5 – Converse).

³⁰ *AT&T-Dobson*, 22 FCC Rcd at 20313.

³¹ *Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19126-28 (2004) ("Rural Spectrum Access Order").

Because of its superior propagation characteristics, Low-Band spectrum is considered more valuable than High-Band spectrum by the wireless industry.³²

With the acquisition of cellular spectrum comes a fully developed cellular system, an existing customer base, and all the other benefits that accrued from the competitive “first-mover advantages” that the initial cellular provider enjoyed.³³ For example, Verizon Wireless proposes to acquire cellular systems in six CMAs that compete with Cellular South that have been in operation between ten and eighteen years.³⁴ And as demonstrated in this case, the acquisition of additional cellular spectrum offers the benefits of equipment and network compatibility, expeditious system integration, and expanded network coverage. All these advantages attach to cellular spectrum and not necessarily to “suitable” 700 MHz, SMR, and broadband PCS spectrum.

Cellular South has been providing wireless telecommunications service for twenty years during which time it has become convinced that success in the wireless marketplace, particularly the rural market, depends on having Low-Band spectrum and especially 800 MHz cellular spectrum. In areas where it operates on cellular spectrum, Cellular South’s market share in areas where it operates on cellular spectrum is more than double its market share in areas where it provides PCS over 1.9 GHz spectrum.

The DOJ has recognized that 800 MHz band cellular operations are “more efficient in serving rural areas than 1900 MHz band PCS spectrum” and afford the licensee the competitive advantage of being able to “provide greater depth and breadth of coverage than their competitors,

³² See *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, 15117 (2004).

³³ *2000 Biennial Regulatory Review Spectrum Aggregation Limits for CMRS*, 16 FCC Rcd 22668, 22708 (2001) (“*Spectrum Cap Sunset Order*”).

³⁴ Licenses in the six CMAs were issued initially on the following dates: CMA173 on 11/9/99; CMA252 on 12/3/90; CMA497 on 9/1/98; CMA498 on 10/22/91; CMA502 on 9/6/91; and CMA503 on 12/19/90.

which are operating on PCS spectrum.”³⁵ Rural wireless carriers have made the same point to the Commission in opposition to mergers proposing the consolidation of cellular providers in the same market.³⁶ However, the Commission has not addressed the issue as part of its competitive analysis of a proposed horizontal transaction. It must do so in this case.

B. A Proposed Local Cellular Monopoly Warrants Heightened Scrutiny

The substantial threat to competition posed by common ownership of both cellular licensees in a market has been recognized by the Commission since the dawn of the cellular era.³⁷ The Commission adopted a cellular cross-ownership ban in 1991 in order to “guarantee the competitive nature of the cellular industry.”³⁸ That rule essentially prohibited a cellular licensee from having an ownership interest in the other cellular licensee in the same market.³⁹ The cellular cross-ownership rule remained intact until 2001, when the Commission eliminated the rule in the MSAs based on the belief that cellular carriers in those markets no longer enjoyed “significant first-mover advantages.” *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22670. However, the rule survived in the RSAs because the Commission found that, unlike in urban markets, rural cellular providers enjoy first-mover advantages and “dominate” the CMRS marketplace. *See id.*, at 22708.

In 2001, the Commission saw that potential entry by new competitors was likely to be difficult in the RSAs due to the economics of serving rural areas. *See id.*, at 22709. The Commission examined CMRS market conditions and concluded that a combination of interests

³⁵ Complaint, at 7, *United States v. AT&T Inc.*, No. 1:07-CV-01952 (D.D.C. filed Oct. 30, 2007) (“AT&T DOJ Complaint”).

³⁶ *See AT&T-Dobson*, 22 FCC Rcd at 20326.

³⁷ *See, e.g., Cellular Communications Systems*, 86 FCC Rcd 469, 491-92 (1981).

³⁸ *Amendment of Part 22 of the Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 6 FCC Rcd 6185, 6228 (1991).

³⁹ *See id.* *See also* 47 C.F.R. § 22.902(i)(A)(5) (1992).

in cellular licensees in the RSAs would likely “result in a significant reduction in competition.” *Id.* It decided to continue to forbid one cellular licensee in an RSA from holding an attributable interest in the other cellular licensee. *See id.* The Commission reasoned that “the likelihood of approving a cellular consolidation between two providers in the same market was small and that it would be more efficient and less costly for [it] to maintain a prophylactic rule and to entertain waiver requests for the small subset of transactions in RSAs where competition was more robust.”⁴⁰

In its 2004 *Rural Spectrum Access Order*, the Commission recognized that the cellular cross-ownership rule had served as a safeguard “against the possibility of significant additional consolidation of control over cellular spectrum in rural areas and the attendant serious anticompetitive effects.” 19 FCC Rcd at 19115. Nevertheless, the Commission eliminated the per se cellular cross-ownership restriction in the RSAs in favor of the case-by-case review of cellular transactions. *See id.* To review cross interests of cellular spectrum in rural areas, the Commission imposed a requirement that a cellular licensee must report the acquisition of a non-controlling ownership interest of more than 10 percent in the other cellular licensee. *See id.*, at 19117-18. *See also* 47 C.F.R. § 1.919(c).

Although it lifted the cellular cross-ownership ban, the Commission noted that “a concentration of interests between the two cellular licensees in rural areas would more likely result in a significant reduction in competition than an aggregation of additional CMRS spectrum by such licensees.” *Rural Spectrum Access Order*, 19 FCC Rcd at 19118. The Commission clearly did not envision approving a merger of the two cellular licensees in a CMA:

⁴⁰ *Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19116 (2004) (“*Rural Spectrum Access Order*”). The WTB granted a waiver of the rule to permit ALLTEL to obtain a cross-ownership interest in the Lafayette, Louisiana MSA (CMA174), but the interest was non-controlling. *See CenturyTel Wireless, Inc.*, 18 FCC Rcd 1260, 1265 (WTB 2003).

Although economic theory dictates that there is not a static threshold by which a reduction in competition results in anticompetitive harm, a consolidation in a local cellular market from duopoly to monopoly status provides consumers with less choice and potentially less benefits from competition. *The likelihood of the Commission approving a cellular consolidation between two providers in such conditions remains small.*⁴¹

As late as March 2007, the Commission expressed the view that there was little likelihood that it would approve the consolidation of two cellular providers in the same market. *See E.N.M.R. Telephone Cooperative*, 22 FCC Rcd 4512, 4513-14 n.13 (WTB 2007). It appears from the Merger Application that at some point the Commission began approving the creation of local cellular monopolies. ALLTEL seeks the Commission's consent to transfer control of cellular systems that operate on all 50 MHz of cellular spectrum in one MSA and five RSAs.⁴²

Research shows that ALLTEL's acquisition of local cellular monopolies in the Lincoln Nebraska MSA and three RSAs was not subject to a competitive analysis in any reported decision of the Commission. However, the transfer of control of the cellular system in CMA492 Minnesota 11 – Goodhue was subjected to a case-by-case review in *Midwest Wireless Holdings, L.C.C. and ALLTEL Communications, Inc.*, 21 FCC Rcd 11526,1559-60 (2006) and the transfer of the system in CMA658 Texas 7 – Fanin was reviewed in *Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13098 (2005). In neither case did the Commission note that ALLTEL would control all the cellular spectrum in any part of RSA, much less that ALLTEL would have a cellular monopoly in Minnesota 11⁴³ and in six of the fifteen counties in Texas

⁴¹ *Rural Spectrum Access Order*, 19 FCC Rcd at 19115 n.204 (emphasis added).

⁴² *See* Merger Application, Ex. 4, at 4 (CMA172 Lincoln, Nebraska), 19 (CMA492 Minnesota 11 – Goodhue), 20 (CMA512 Missouri 9 – Bates), 28 (CMA599 Oklahoma 4 – Nowata), 32 (CMA658 Texas 7 – Fannin), 34 (CMA686 Virginia 6 – Highland).

⁴³ *Compare id.* at 19 with *Midwest Wireless*, 21 FCC Rcd at 1559-60. *See infra* Exhibit 2, at 2.

When it decided to maintain the cellular cross-ownership rule in effect for the RSAs in 2001, the Commission promised to reassess the need for the rule in the RSAs as part of its next biennial review in 2002, when it expected to have access to “more comprehensive information regarding the state of competition in rural markets.” *Spectrum Cap Sunset Order*, 16 FCC Rcd at 22708. However, when it finally reassessed the cellular cross-ownership rule in 2004, the Commission simply repealed it “on reconsideration of the *Spectrum Cap Sunset Order*” and on the basis of rulemaking comments. *Rural Spectrum Access Order*, 19 FCC Rcd at 19114. It explicitly found that there was no need for it to make any determination as to the “level of economic competition in rural markets.” *Rural Spectrum Access Order*, 19 FCC Rcd at 19114 & n.200. The Commission represented that it would maintain the protection afforded by the cellular cross-ownership rule during its case-specific review process. *See id.*, at 19116-17. However, the review process in *Midwest Wireless* and *Western Wireless* afforded no such protection.

The DOJ shares Cellular South’s belief that the consolidation of control over cellular spectrum in rural areas will have serious anticompetitive effects. *See AT&T DOJ Complaint*, at 7-8. Inasmuch as the Commission promised to replace the cellular cross-ownership rule with a case-specific review of cross-interests in cellular spectrum in rural areas, *see Rural Spectrum Access Order*, 19 FCC Rcd at 19117, Cellular South respectfully requests the Commission to finally assess the state of competition in rural markets before it acts on the Merger Application or, in the alternative, afford a much higher degree of scrutiny to the anticompetitive effects that are likely to result if Verizon Wireless obtains local cellular monopolies as a result of its merger

⁴⁴ Compare Merger Application, Ex. 4, at 32 with *Western Wireless*, 20 FCC Rcd at 13098. *See infra* Exhibit 2, at 3.

with ALLTEL. The Commission must treat Verizon Wireless' acquisition of a local cellular monopoly as presumptively anticompetitive and place a heavy burden on the applicants to overcome that presumption.

C. Approval Of The Merger Will Create Up To 163 Local Cellular Monopolies

The relevant geographic area for the spectrum aggregation screen are the CMAs since they: (1) are the areas in which the Commission initially granted cellular licenses; and (2) shaped the market by defining the initial areas in which wireless providers had spectrum on which to base service offerings. *See, e.g., AT&T-Dobson*, 22 FCC Rcd at 20309 n. 94. If the Merger Application is approved as filed, Verizon Wireless will control or have an attributable ownership interest in 50 MHz of cellular spectrum in all or parts of 163 CMAs — 53 MSAs and 110 RSAs — around the country. *See infra* Exhibits 1 and 2. Even if it ultimately divests all of ALLTEL's cellular spectrum in the 85 CMAs that are currently subject to divestiture, Verizon Wireless still will have an attributable interest in all the cellular spectrum in 68 CMAs — 42 MSAs and 26 RSAs. *See infra* Exhibit 2.

In the CMAs not subject to divestiture, Verizon Wireless will have a cognizable ownership interest 84 MHz of the Low-Band spectrum or 65 percent of all the allocated cellular and 700 MHz spectrum in 26 CMAs — 15 MSAs and 11 RSAs. *See id.* In the remaining CMAs — 27 MSAs and 15 RSAs — Verizon Wireless will hold an attributable ownership interest in 72 MHz of Low-Band spectrum or 55 percent of all such spectrum. *See infra* Exhibit 2.

Cellular South competes with ALLTEL in eight CMAs in Alabama.⁴⁵ If the Merger Application is granted, Cellular South must compete with Verizon Wireless in five of its local cellular monopolies: CMA139 Montgomery MSA; CMA153 Columbus MSA; CMA310 RSA 4

⁴⁵ *See* Merger Application, Ex. 5, at 14, 22, 25-27.

– Bibb; CMA313 RSA 7 – Butler; and CMA314 RSA 8 – Lee. *See infra* Exhibit 3. In those five cellular monopolies, Verizon Wireless will have the use of either 72 MHz or 84 MHz of Low-Band spectrum. *See id.*

In the Dothan MSA (CMA246), Verizon Wireless will have all 50 MHz of cellular spectrum in two of the three counties in the MSA. *See id.* In those counties, Verizon Wireless will have a total of 127 MHz of spectrum at its disposal, including 72 MHz of Low-Band spectrum. *See infra* Exhibit 3. And in RSA 5 – Cleburne, it will be able to use all of the cellular spectrum in three of the six counties in the RSA. *See id.* Verizon Wireless will have the competitive advantage of operating on all 800 MHz band cellular spectrum in all but one of the eight Alabama CMAs in which it will compete with Cellular South. *See id.*

In the seven Alabama CMAs, as in all the areas where Verizon Wireless is authorized to operate on 50 MHz of cellular spectrum, there will be a “consolidation in a local cellular market from duopoly to monopoly status” with the result that consumers will have “less choice and potentially less benefits from competition.” *Rural Spectrum Access Order*, 19 FCC Rcd at 19115 n.204; *E.N.M.R. Telephone*, 22 FCC Rcd at 4513-14 n.13. If it applies the same competitive standard as employed by the DOJ, the Commission must find that the effect of allowing the consolidation in the local cellular markets proposed by Verizon Wireless will be to substantially lessen competition.

D. The Merger Application Must Be Designated For Hearing

The Commission has concurrent jurisdiction with the DOJ under §§ 7 and 11 of the Clayton Act to disapprove acquisitions of common carriers engaged in radio communications where “the effect of such acquisition may be substantially to lessen competition, or tend to create

a monopoly.”⁴⁶ Assuming that it has the discretion to decide whether to exercise its Clayton Act authority,⁴⁷ the Commission must accommodate the concurrent jurisdiction of the DOJ by deferring to the DOJ’s determination that the effect of a proposed merger may substantially lessen competition or tend to create a monopoly. At this stage of the proceeding, the Commission can only defer to the DOJ’s jurisdiction by applying the same standards employed by the DOJ to determine the competitive impact of the merger in the so-called “overlap markets.” AT&T DOJ Complaint, at 6.

The DOJ has determined that the relevant geographic markets under § 7 of the Clayton Act, where a wireless merger may substantially lessen competition for mobile wireless telecommunications service, will likely be the CMAs in which the transferee will own all or most of the 800 MHz band spectrum. *See id.*, at 7. In those CMAs, the transferee is unlikely to face effective competition because it will be able to provide greater depth and breadth of coverage throughout the CMA than its competitors operating on other spectrum can match. *See id.* Therefore, under what appears to be the DOJ’s spectrum aggregation “screen,” a proposed transaction may substantially lessen competition in a CMA if it will result in a single cellular licensee owning all or most of the 800 MHz band cellular spectrum.

If it is to fulfill its duty under the Clayton Act in a manner that accommodates the concurrent jurisdiction of the DOJ, the Commission must find that the antitrust consequences of the grant of the Merger Application may be to substantially lessen competition potentially in as much as 163 CMAs, and it must weigh the consequences of the possible Clayton Act violations with other public interest factors. *See United States v. FCC*, 652 F.2d at 88. Cellular South

⁴⁶ 15 U.S.C. §§ 18, 21(a). *See* Peter A. Huber et al., *Federal Telecommunications Law* §7.3.1, at 601-02 (2d ed. 1999).

⁴⁷ *See United States v. FCC*, 652 F.2d 72, 82-83 (D.C. Cir. 1980) (en banc).

submits that the likelihood of antitrust violations, as effectively conceded by Verizon Wireless' Divestiture Offer, precludes the Commission from finding that the grant of the Merger Application — or the grant of individual applications that will effectively create a local cellular monopoly — will serve the public interest.

In merger cases that implicate antitrust issues, it is up to the Commission to decide when it has sufficient information to act on the application. *See United States v. FCC*, 652 F.2d at 90. Once it decides to act, however, the Commission must designate the application for a full hearing if it is “for any reason” unable, on the basis of the application, pleadings and officially noticeable matters, to make the requisite finding that the public interest would be served by the grant of the application. *See* 47 U.S.C § 309 (d)(2), (e). *See also Citizens Committee to Save WEFM v. FCC*, 506 F.2d 246, 259 (D.C. Cir. 1974) (en banc). In this case, if it finds that the proposed merger will likely pose significant competitive harms in specific CMAs, the Commission cannot *grant* the transfer of control application that poses those harms subject to the condition that Verizon Wireless divest the transferred license. The imposition of the divestiture condition/remedy constitutes a Commission decision that it is unable to make the requisite finding that the public interest would be served by the transfer of control of the license to Verizon Wireless. If it is unable to make that finding, the Commission must designate the transfer of control application for hearing.

If it finds that the proposed merger will likely cause significant competitive harms, the Commission's only option short of designating the application for hearing is to invite Verizon Wireless to amend the application to mitigate the likely competitive harms or, if necessary, to withdraw the application. To consent to a transfer of control of a license after finding that the transfer would not serve the public interest is both illogical and a violation of § 309 of the Act.

III. EXCLUSIVE HANDSET AGREEMENTS WITH SUPPLIERS LESSEN COMPETITION AND MUST BE PROHIBITED

The proposed Alltel – Verizon merger will exacerbate an already serious competitive problem that exists between small and large wireless carriers because the largest wireless carriers frequently demand exclusivity for the sale of innovative wireless handsets from the manufacturers of those handsets. The two largest carriers use their market power to demand exclusive arrangements for devices that the manufacturers would otherwise sell to smaller carriers. Those exclusive distribution agreements impact the competitive balance between wireless carriers because wireless devices are one of the top criteria used by consumers when selecting a wireless carrier. Exclusive distribution agreements also deny availability of innovative handsets to millions of persons who reside in rural areas that are outside the service area of the carrier that has the benefit of the exclusive agreement.

Several months ago, the Rural Cellular Association (“RCA”), of which Cellular South is a member, petitioned the Commission to investigate the widespread use and anticompetitive effects of exclusivity arrangements between commercial wireless carriers and handset manufacturers, and, as necessary, adopt rules that prohibit such arrangements when contrary to the public interest.⁴⁸ The Commission did not act immediately on the petition and, now, with the unforeseeable, subsequent filing of the Alltel – Verizon Wireless merger proposal, the issue needs to be addressed without delay through a condition attached to grant of the Merger Application, if the Commission decides to allow the merger.

The disappearance of Alltel as the fifth largest wireless carrier, and third largest CDMA carrier, will also have a direct impact on the very limited selection of devices that have been

⁴⁸ *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, filed by RCA, May 20, 2008.

made available to smaller carriers. CDMA handsets are customized through software. Generally, there is a software version for Verizon Wireless, one for Sprint Nextel Corporation (“Sprint”), and one for Alltel and everyone else including smaller carriers (commonly referred to as the “generic” software load). Essentially, carriers such as Cellular South “draft” off of Alltel’s software load. If Alltel is acquired, it is highly questionable that there will be a sufficient market incentive for handset manufacturers to allocate resources to the “generic” software load, and the handset selection for smaller carriers will decrease even further.

Increasing demands for exclusive handset arrangements by the top two carriers (i.e., Verizon Wireless and AT&T Wireless) leave smaller carriers without adequate sources to obtain the selection of innovative handsets that the public demands. The Merger Application brings to the forefront an urgent need for the Commission to act promptly so that exclusive handset agreements do not completely undermine the competitive opportunities of smaller wireless carriers. The Commission has ample authority to condition the grant of an application in order to protect the public interest, and it should do so in this instance before competition is diminished by the merger of two of the three largest CDMA carriers in the United States.⁴⁹

⁴⁹ See *In the Matter of Saskatchewan Telecommunications*, Order, Authorization and Certificate, 22 FCC Rcd. 91 (2007), n.42; see also *In the Matter of News Corp. and the DirecTV Group, Inc., Transferors, and Liberty Media Corp., Transferee*, Memorandum Opinion and Order, FCC 08-66 (rel. Feb. 26, 2008), ¶ 26. The powers provided to the Commission under Sections 4(i) and 303(r) of the Communications Act, as well as its broad ancillary jurisdiction to serve the public interest pursuant to Title I of the Communications Act provide the Commission with authority to review and prohibit anticompetitive practices. In addition, Sections 201(b) and 202(a) of the Communications Act also empower the Commission to take all reasonable and necessary measures to end the anticompetitive practices that are inherent in exclusivity arrangements that discriminate against millions of Americans who are not offered service by the nation’s five largest wireless carriers or are required to sign up for service from the one carrier with exclusive rights to their desired handset, and harm smaller competitors.

IV. AUTOMATIC ROAMING AND INTEROPERABILITY AGREEMENTS ARE INCREASINGLY IMPORTANT TO CONSUMERS AND OTHER CARRIERS

If the Commission finds that the Merger Application may be granted with conditions, Cellular South respectfully urges the Commission to require Verizon Wireless to negotiate reasonable terms and conditions for automatic roaming and interoperability agreements with other carriers when a reasonable request is received and the carriers are technologically compatible. While Cellular South's recent experience in negotiation of such agreements with Verizon Wireless has been encouraging, the agreement now in effect has an expiration date and there is no assurance that another agreement will be reached for a continuation of automatic roaming for voice and data, and an expansion of interoperability functions.⁵⁰ With a shrinking number of national or near-national carriers, the need for assured cooperation by what will become the nation's largest wireless carrier is of paramount importance to a regional carrier such as Cellular South.⁵¹

All wireless providers must offer nationwide access to be competitive in today's industry. It is essential to small and regional carriers that they have roaming agreements for access to nationwide networks. This puts small and regional carriers in the position of depending on larger

⁵⁰ Cellular South is concerned that Verizon Wireless will have less incentive after acquiring the Alltel property in Mississippi to negotiate a reasonable roaming and interoperability agreement because Verizon Wireless will have less need for the superior coverage of Cellular South's network when it can improve upon the coverage of the acquired facilities. Cellular South's need for a roaming and interoperability partner will be unchanged because of the regional nature of its license area.

⁵¹ Regional and small carriers play a very important role in the nation's wireless infrastructure. The location of the carrier's headquarters and critical support team can be extremely helpful when emergency conditions require a rapid response. Cellular South's service was a critical component of the State of Mississippi's response to Hurricane Katrina. State disaster recovery officials and volunteers made effective use of the Cellular South network in the aftermath of the storm, and victims made emergency calls at an unprecedented number. Cellular South experienced a 470% increase in minutes of use on its network during that time, in large part because other carriers' networks were not rebuilt as quickly. Cellular South's wireless network was 60% operational one day after Katrina landed, and service was fully restored in ten days. The service and response by Cellular South was uniquely recognized and commended in a resolution by the Mississippi legislature.

competitors for the nationwide roaming agreements which keep their customers connected when traveling off-network.

Industry consolidation has made it increasingly difficult for smaller carriers to obtain roaming agreements – particularly agreements covering the latest technologies. Although there are four “Tier 1” carriers, Verizon Wireless is the only CDMA provider operating a network that can be considered nearly “nationwide.”⁵² The removal of Alltel as a potential roaming partner will increase reliance upon Verizon Wireless as the primary co-carrier for the voice and data traffic that is originated or terminated on the CDMA systems of smaller carriers.

Given that the proposed transaction will result in essentially one national network that can provide roaming to CDMA providers, the potential for that single carrier to determine the fate of its competitors is profound. As such, it is essential that Verizon Wireless be obligated to negotiate in good faith for automatic roaming agreements (including interoperability) for voice and data services covering both current and future technologies, and to enter into such agreements at just and reasonable rates when there is technological compatibility between wireless carriers.

Automatic roaming alone is not enough to satisfy customers who travel through the service areas of both Verizon Wireless and smaller carriers. Verizon Wireless must be required to provide interoperability as well as automatic roaming for technologically compatible carriers. Interoperability is the concept of making two networks function seamlessly for the customer. When networks are interoperable, connectivity is not interrupted during inter-carrier handoffs and the customer who is roaming on another network does not lose functionality on his or her

⁵² The CDMA network of Sprint does not cover as large of a geographic footprint as the CDMA network of Verizon Wireless.

device. This allows consumers to make full use of their wireless devices not just at home, but also when roaming on another carrier's network.

Interoperability also allows data to be passed back and forth between carriers to enhance the nature of services available to customers of both carriers. An increasingly important benefit of interoperability involves location-based services that can be provided by wireless carriers.⁵³ As wireless networks have become more advanced, many customers have come to rely on location-based services. As more and more customers adopt location-based services, it is important that they are able to depend on these services when roaming. It is precisely at the time when a customer travels outside his or her home carrier's service area that the need for location-based services will be most acute, if not critical. The Commission's help is needed in this matter to assure that Verizon Wireless will be a willing partner to interoperability agreements that will allow customers of both carriers to benefit from the full capabilities of their equipment as they travel throughout the United States. Accordingly, Cellular South asks the Commission to condition any grant of the Merger Application upon a requirement that Verizon Wireless must negotiate in good faith for automatic roaming and interoperability agreements for voice and data services, on reasonable terms and conditions, when so requested and where implementation of such agreements is technically feasible.

CONCLUSION

As shown, the Merger Application should be dismissed without prejudice because Verizon Wireless will either withdraw or substantially amend the bulk of its 95 individual

⁵³ Location-based services offer the customer valuable information for navigation and in locating points of interest. Many such services are applications of "global positioning satellite" services. For example, a customer with an emergency need for medicine or bandages can locate the nearest drug store through a location-based service.

applications to reflect the outcome of its discussions with the DOJ. No amendment has been filed and no amendment can be filed until the DOJ completes its review and the full extent of the divestitures, if any, are agreed to by the parties or decided by a court.

When the Commission has before it a set of applications that accurately reflect the proposed transaction, it should not rely on the 95 MHz “spectrum aggregation screen” that was used in other transactions but would not be an appropriate test in this instance to identify all markets in which spectrum aggregation poses a potential for competitive harm. There is a substantial threat to competition posed by common ownership of both cellular licensees in a market. From Cellular South’s experience, success in the wireless marketplace, particularly the rural market, depends on having Low-Band cellular spectrum. Cellular South respectfully requests the Commission to finally assess the state of competition in rural markets before it acts on the Merger Application or, in the alternative, afford a much higher degree of scrutiny to the anticompetitive effects that are likely to result if Verizon Wireless obtains local cellular monopolies as a result of its merger with ALLTEL. The Commission must treat Verizon Wireless’ acquisition of a local cellular monopoly as presumptively anticompetitive and place a heavy burden on the applicants to overcome that presumption. Before the Commission can grant the Merger Application a hearing will be necessary to determine issues of fact necessary for the Commission to fulfill its obligations under the Clayton Act.

If the proposed merger is permitted to proceed on any terms, Verizon Wireless must be prohibited from participating in exclusive agreements with handset makers for the sale of wireless handsets. The nation’s largest carrier must not be permitted to use its market power to demand exclusive arrangements for devices that impact the competitive balance between wireless carriers and that deny to millions of residents in rural areas not served by Verizon

Wireless the best and most innovative handsets that are produced.

Finally, if the Commission acts to allow the merger to proceed with conditions, Verizon Wireless must be required to negotiate in good faith for automatic roaming agreements (including interoperability) for voice and data services covering both current and future technologies, and to enter into such agreements at just and reasonable rates when there is technological compatibility between wireless carriers. Considering that the proposed transaction will result in essentially one national network that can provide roaming to CDMA providers, the potential for that single carrier to determine the fate of its competitors is profound if it is not obligated to cooperate with other carriers to permit customers to use compatible networks seamlessly.

Respectfully submitted,

CELLULAR SOUTH, INC.

[filed electronically]

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EXHIBIT 1
TOTAL SPECTRUM (MHz) ATTRIBUTABLE TO VERIZON
WIRELESS IN THE 85 MARKETS SUBJECT TO DIVESTITURE

CMA	STATE	MARKET	CL	CW	AWS	700	TOTAL
158	OH	Lima	50	10	20	22	102
221	ND/MN	Fargo-Moorhead	50	50	20	22	142
231	OH	Mansfield	50	10	20	34	114
262	VA	Danville	50		20	22	92
267	SD	Sioux Falls	50	40	20	22	132
268	MT	Billings	50	55		34	139
276	ND	Grand Forks	50	35	20	22	127
289	SD	Rapid City	50	30		34	114
297	MT	Great Falls	50	45		34	129
298	ND	Bismarck	50	40	20	22	132
299	WY	Casper	50	20		34	104
341	CA	RSA 6 – Mono	50	10-20		22	82-92
351	CO	RSA 4 – Park	50	10-20		46	106-116
352	CO	RSA 5 – Elbert	50	20-30		46	116-126
353	CO	RSA 6 – San Miguel	50	0-10		22-34	72-94
354	CO	RSA 7 – Saguache	50	10-20		22	82-92
355	CO	RSA 8 – Kiowa	25-50	10		22	57-82
356	CO	RSA 9 – Costilla	25-50	10-20			35-70
377	GA	RSA 7 – Hancock	50	10	20	22	102
378	GA	RSA 8 – Warren	50	0-10		22	72-82
379	GA	RSA 9 – Marion	50	10	20	22	102
380	GA	RSA 10 – Bleckley	50	0-30	20	22	92-122
382	GA	RSA 12 – Liberty	50	0-40	20	22	92-132
383	GA	RSA 13 – Early	50	0-30	20	22	92-122
389	ID	RSA 2 – Idaho	25-50	10-25		22	57-97
390	ID	RSA 3 – Lemhi	50	0-10		22	72-82
401	IL	RSA 8 – Washington	50	0-20	20	34	104-124
402	IL	RSA 9 – Clay	25-50	0-15	20	34	79-119
428	KS	RSA 1 – Cheyenne	50	0-20		22-34	72-104
429	KS	RSA 2 – Norton	50		22		72
433	KS	RSA 6 – Wallace	50	0-20		22-34	72-104
434	KS	RSA 7 – Trego	50			34	84
438	KS	RSA 11 – Hamilton	50	0-10		34	84-94
439	KS	RSA 12 – Hodgeman	50	0-10		34	84-94
440	KS	RSA 13 – Edwards	50			34	84
482	MN	RSA 1 – Kittson	50	45	20	22	137
488	MN	RSA 7 – Chippewa	50	20-60	20	34	106-164
489	MN	RSA 8 – Lac qui Parle	50	30-70	20	34	134-174
490	MN	RSA 9 – Pipestone	50	20-55	20	22-34	112-159
491	MN	RSA 10 – Le Sueur	50	20-35	20	34	124-139
523	MT	RSA 1 – Lincoln	50	15-45		22	87-117

CMA	STATE	MARKET	CL	CW	AWS	700	TOTAL
524	MT	RSA 2 – Toole	25-50	15-45		22	62-117
526	MT	RSA 4 – Daniels	25-50	25-55	0-20	22	72-147
527	MT	RSA 5 – Mineral	50	45-50		22	117-122
528	MT	RSA 6 – Deer Lodge	50	15-50		22	87-122
529	MT	RSA 7 – Fergus	50	25-55		34	109-139
530	MT	RSA 8 – Beaverhead	50	20-50		34	104-134
531	MT	RSA 9 – Carbon	50	55		34	139
532	MT	RSA 10 – Prairie	50	25-55		22	97-127
544	NV	RSA 2 – Lander	50	10		22	82
547	NV	RSA 5 – White Pine	25-50	20		22	67-92
553	NM	RSA 1 – San Juan	50	0-10		22	72-82
557	NM	RSA 5 – Grant	50	10		34	94
569	NC	RSA 5 – Anson	50	20-40	20	22	112-132
580	ND	RSA 1 – Divide	50	20	20	22	112
581	ND	RSA 2 – Bottineau	50	20-35	20	22	112-127
582	ND	RSA 3 – Barnes	50	35-45	20	22	127-137
583	ND	RSA 4 – McKenzie	50	20-40	0-20	22	92-132
584	ND	RSA 5 – Kidder	50	20-45	20	22	112-137
586	OH	RSA 1 – Sandusky	50	10-25	20	22-34	102-129
587	OH	RSA 3 – Ashtabula	50	10	20	34	114
589	OH	RSA 5 – Hancock	50	10-20	20	22-34	102-124
590	OH	RSA 6 – Morrow	50	10-20	20	22-34	102-124
625	SC	RSA 1 – Oconee	50	30	20	22	122
626	SC	RSA 2 – Laurens	50	0-30	20	22	92-122
627	SC	RSA 3 – Cherokee	50	20-30	20	22	112-122
631	SC	RSA 7 – Calhoun	50	0-20	20	22	92-112
634	SD	RSA 1 – Harding	50	30		34	114
635	SD	RSA 2 – Corson	50	50	20	22	142
636	SD	RSA 3 – McPherson	50	50	20	22	142
637	SD	RSA 4 – Marshall	50	30-50	20	22	122-142
638	SD	RSA 5 – Custer	50	30		22	102
639	SD	RSA 6 – Haakon	50	20-40		22	92-112
640	SD	RSA 7 – Sully	50	20	20	22	112
641	SD	RSA 8 – Kingsbury	50	20-30	20	22	112-122
642	SD	RSA 9 – Hanson	50	25-30	20	22	117-122
675	UT	RSA 3 – Juab	50	20-50		22	92-122
677	UT	RSA 5 – Daggett	25-50	10		34	69-94
678	UT	RSA 6 – Piute	50	10-25		34	94-109
681	VA	RSA 1 – Lee	50	15-40	20	22	107-132
688	VA	RSA 8 – Amelia	50	10-20	20	22	102-112
718	WY	RSA 1 – Park	50	15-20		22	87-92
719	WY	RSA 2 – Sheridan	50	15-30		34	99-114
721	WY	RSA 4 – Niobrara	50	20-35		22	92-107
722	WY	RSA 5 – Converse	50	20		22	92

**MARKETS NOT SUBJECT TO DIVESTITURE IN WHICH VERIZON
WIRELESS WILL CONTROL 50 MHZ OF CELLULAR SPECTRUM**

(In partitioned Cellular Market Areas ("CMAs"), only counties in which Verizon Wireless proposes to control 50 MHz of cellular spectrum are identified by name.)

CMA	STATE	MARKET	COUNTY	LOW-BAND (MHZ)	TOTAL (MHZ)
15	MN	Minneapolis		84	124
16	OH	Cleveland		84	114
26	AZ	Phoenix		72	72
43	NC/VA	Norfolk-Virginia Beach-Portsmouth		72	112
47	NC	Greensboro-Winston Salem-High Point		84	124
48	OH/MI	Toledo		72-84	104-117
52	OH	Akron		84	114
59	VA	Richmond		72	102-112
61	NC	Charlotte-Gastonia-Rock Hill		84	134
64	MI	Grand Rapids		84	119
65	IA/NE	Omaha		72	82
67	SC	Greenville-Spartanburg		72	112
71	NC	Raleigh-Durham		84	134
77	AZ	Tucson		72	82
78	MI	Lansing-East Lansing		84	114
81	TX	El Paso		72	72
85	TN/VA	Johnson City-Kingsport-Bristol		72	107
86	NM	Albuquerque		72	82
87	OH	Canton		84	114
90	SC	Charleston-North Charleston		72	112
94	MI	Saginaw-Bay City-Midland		84	114
95	SC	Columbia		72	112
104	VA	Newport News-Hampton		72	112
108	GA/SC	Augusta		72	92
136	OH	Lorain-Elyria		84	114
139	AL	Montgomery		72	102
149	NC	Fayetteville		72	132
153	GA/AL	Columbus		84	124
155	GA	Savannah		72	92
166	NC	Hickory		72	102
172	NE	Lincoln		72	82
181	MI	Muskegon		84	119
227	SC	Anderson		72	122
235	VA	Petersburg-Colonial Heights-Hopewell		72	112
241	CO	Pueblo		84	104
246	AL	Dothan	Dale	72	127

CMA	STATE	MARKET	COUNTY	LOW-BAND (MHZ)	TOTAL (MHZ)
			Houston	72	127
253	IA/NE	Sioux City		72	117
261	GA	Albany		72	102
264	SC	Florence		72	112
280	NC	Burlington		72	112
283	FL	Panama City		72	112
285	NM	Las Cruces		72	82
310	AL	RSA 4 – Bibb		72	102-107
311	AL	RSA 5 – Cleburne	Chambers	84	104
			Coosa	72	107
			Tallapoosa	72	107
313	AL	RSA 7 – Butler		72	102
314	AL	RSA 8 – Lee		72	92-102
319	AZ	RSA 2 – Coconino		72	82
321	AZ	RSA 4 – Yuma		84	104
322	AZ	RSA 5 – Gila		72	82
323	AZ	RSA 6 – Graham		72	72-82
342	CA	RSA 7-Imperial		84	94
375	GA	RSA 5 – Haralson		84	94-104
376	GA	RSA 6 – Spalding		72-84	102-124
392	ID	RSA 4 – Butte		84	94
393	ID	RSA 6 – Clarke		72	82
419	IA	RSA 8 – Monona		72	92-117
483	MN	RSA 2 – Lake of the Woods	Clearwater	84	144
			Mahnomen	72	142
			Norman	72	147
			Lake of the Woods	72	137
492	MN	RSA 11 – Goodhue		72-84	122-137
512	MO	RSA 9 – Bates	St. Clair	82	124
			Cedar	84	129
546	NV	RSA 4 – Mineral		72	82-92
555	NM	RSA 3 – Catron		72	82
556	NM	RSA 4 – Santa Fe	Los Alamos	72	82
			Santa Fe	72	82
558	NM	RSA 6 – Lincoln	Otero	84	94
			Lincoln	84	94
566	NC	RSA 2 – Yancey	Caldwell	72	82
568	NC	RSA 4 – Henderson	Cleveland	72	122
			Lincoln	72	122
579	NC	RSA 15-Cabarrus		72	112-122
599	OK	RSA 4 – Nowata	Adair	84	114
			Cherokee	84	94
			Delaware	84	124
630	SC	RSA 6 – Clarendon		72	112

CMA	STATE	MARKET	COUNTY	LOW-BAND (MHz)	TOTAL (MHz)
632	SC	RSA 8 – Hampton		72	92-112
633	SC	RSA 9 – Lancaster		72	122
646	TN	RSA 4 – Hamblen		72	102-107
650	TN	RSA 8 – Johnson		72	107
658	TX	RSA 7 – Fannin	Franklin	84	124
			Titus	84	124
			Camp	84	124
			Morris	84	124
			Red River	84	129
			Cass	84	134
676	UT	RSA 4 – Beaver		84	109
684	VA	RSA 4 – Bedford	Bedford	72	112
686	VA	RSA 6 – Highland		72	92-112
689	VA	RSA 9 – Greensville		72	112
720	WY	RSA 3 – Lincoln		72	92

**TOTAL SPECTRUM (MHZ) IN ALABAMA
MARKETS TO BE ACQUIRED BY VERIZON WIRELESS**

CMA	MARKET	COUNTY	CL	CW	AWS	700	TOTAL
139	Montgomery	Autauga	50	10	20	22	102
		Elmore	50	10	20	22	102
		Montgomery	50	10	20	22	102
153	Columbus	Russell AL	50	10	20	34	114
		Chattahoochee GA	50	10	20	34	114
		Muscogee GA	50	10	20	34	114
246	Dothan	Dale	50	35	20	22	127
		Houston	50	35	20	22	127
		Calhoun	25	20	20	22	87
310	RSA 4 – Bibb	Bibb	50	15	20	22	107
		Chilton	50	15	20	22	107
		Dallas	50	10	20	22	102
		Lowndes	50	10	20	22	102
		Perry	50	10	20	22	102
		Wilcox	50	10	20	22	102
311	RSA 5 – Cleburne	Chambers	50		20	34	104
		Clay	25	20	20	22	87
		Cleburne	25	20	20	34	99
		Coosa	50	15	20	22	107
		Randolph	25	20	20	34	99
		Tallapoosa	50	15	20	22	107
312	RSA 6 – Washington	Clarke	25	30	20	22	97
		Conecuh	25	30	20	22	97
		Escambia	25	30	20	22	97
		Monroe	25	30	20	22	97
		Washington	25	30	20	22	97
313	RSA 7 – Butler	Butler	50	10	20	22	102
		Coffee	50	10	20	22	102
		Covington	50	10	20	22	102
		Crenshaw	50	10	20	22	102
		Geneva	50	10	20	22	102
		Pike	50	10	20	22	102
314	RSA 8 – Lee	Barbour	50	10	20	22	102
		Bullock	50	10	20	22	102
		Henry	50	10	20	22	102
		Lee	50		20	22	92
		Macon	50	10	20	22	102

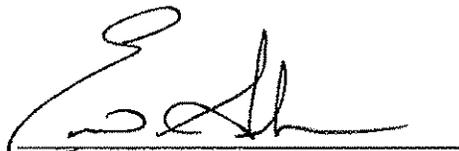
DECLARATION

I, Eric B. Graham, declare and state the following:

1. I am the Director of Government Relations of Cellular South, Inc. ("Cellular South"), a wireless telecommunications carrier that provides cellular and/or Personal Communications Service in portions of Mississippi, Alabama, Florida and Tennessee and holds authorizations to provide services in additional states. Cellular South's address is 1018 Highland Colony Parkway, Suite 300, Ridgeland, MS 39157.

2. I am familiar with the facts alleged by Cellular South in the foregoing petition to deny the applications of Atlantis Holdings LLC and Celco Partnership d/b/a Verizon Wireless ("Verizon Wireless") for the Commission's consent to the transfer of control of the various radio stations authorizations and spectrum leases held by ALLTEL Corporation to Verizon Wireless. All such facts, except for those of which official notice may be taken by the Commission or those based on the representations of the applicants, are true and correct of my own personal knowledge.

3. I certify under penalty of perjury that the foregoing is true and correct. Executed on August 7, 2008.


Eric B. Graham

CERTIFICATE OF SERVICE

I, David L. Nace, hereby certify that on this 11th day of August, 2008, copies of the foregoing PETITION TO DENY were e-mailed, in pdf format, to:

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FCC@BCPIWEB.COM

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Copies of the foregoing PETITION TO DENY were sent by first class United States mail,
postage prepaid, to the following:

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[filed electronically]

David L. Nace