

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

In the Matter of	)	
	)	
Applications of Cellco Partnership d/b/a Veri-	)	WT Docket No. 08-95
zon Wireless and Atlantis Holdings LLC	)	
	)	
For Consent to Transfer Control of Licenses,	)	File Nos. 0003463892, <i>et al.</i> , ITC-T/C-
Authorizations, and Spectrum Manager and	)	20080613-00270, <i>et al.</i>
<i>De Facto</i> Transfer Leasing Arrangements	)	

**PETITION TO DISMISS OR DENY of the**

***AD HOC* PUBLIC INTEREST SPECTRUM COALITION**

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Certificate of Service

## Summary

The *Ad Hoc* Public Interest Spectrum Coalition (PISC) respectfully submits this Petition to Dismiss or Deny the above-captioned applications. The applicants have failed to meet their burden of demonstrating how the applications, as filed, serve the public interest. To the contrary, the proposed merger is particularly problematic for consumers as competition amongst facilities-based wireless service providers in many geographic markets is expected to diminish, the availability of services to roamers will be adversely affected, and the post-merger increase in monopsony purchasing power will undermine consumer options in the handset marketplace as well as the open device conditions the Commission adopted as part of the “700 MHz auction.” *See* In re Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Second Report & Order, 22 FCC Rcd 15289 (2007).

***Applicants’ Competitive Analysis is Inadequate and Unpersuasive.*** In separate recent Orders, the Commission has already rejected the efforts of the applicants (including Verizon Wireless) to adopt a nationwide geographic market definition or broaden the scope of the spectrum input market. Even if the Commission were to adopt a nationwide geographic market definition, the proposed merger should be rejected on competition grounds alone because of the recent dramatic trend toward oligopoly in the wireless market. According to the Department of Justice’s merger guidelines, an increase in concentration of more than 50 points in the Herfindahl-Hirschmann Index (HHI) is likely to result in increased anticompetitive effects. Here, the proposed combination will result in an increase of approximately 262 points—more than five times the merger threshold—in an industry that is already “highly concentrated” according to DOJ guidelines. Furthermore, the Applicants have provided no evidence in support of the assertion that there is “robust”

and “well-documented” wireless competition in the affected geographic markets, and the proposed divestiture of some of the markets where Applicants have overlapping spectrum among is insufficient to ensure there is no loss of competition in any of the affected markets.

***Verizon Wireless Must Further Clarify Its Roaming Policies.*** The nonbinding “commitments” proffered by Verizon Wireless regarding roaming arrangements with regional and small wireless providers are ambiguous and perhaps positively unhelpful, specifically on the issues of in-market or home roaming, as well as the possible renewal of existing Alltel roaming agreements beyond the end of their current terms. The Commission should thoroughly review the “specific commitments” made by Verizon Wireless and consider the adoption of merger-specific conditions to ensure that Verizon Wireless does not cut the legs off of rural wireless companies who need strong roaming commitments to ensure their continued survival.

***Fewer Handset Choices for Subscribers across the Entire Wireless Industry.*** While the applicants assert that Alltel subscribers will enjoy access to a broader selection of handsets and other devices as a result of the merger, the market for handsets is national in scope. The increased market power Verizon will enjoy post-merger will significantly increase its monopsony purchasing power in the handset marketplace, with fewer buyers for phone manufacturers and increased ability for Verizon to dictate “take it or leave it” terms to potential vendors. PISC urges the Commission to give serious consideration to the handset exclusivity petition filed by the Rural Cellular Association (RCA) and give little, if any weight, to the Applicants’ claimed benefit of increased handset availability

when such increases are, in fact, attributable to anticompetitive and anti-consumer exclusivity arrangements.

***The Commission Must Take More Aggressive Steps to Address Application and Equipment Competition.*** The Applicants have explicitly cited the expansion of their EVDO technology and the extension of their Open Development Initiative (ODI) to Alltel's customers as justifications for the grant of the applications. To ensure such good-faith representations are not subsequently delayed or abandoned in the face of increased cost, the Commission must mandate the extension of ODI, require that wireless broadband be made available throughout the Alltel footprint within a reasonable time, and ensure that the upgrade of Alltel rural systems to LTE proceeds in parallel with LTE deployment in the more densely populated Verizon and Alltel areas. Finally, the Commission should clarify that the Internet Policy Statement applies to wireless networks as well as wireline networks; that Verizon may not block or degrade content or applications running over its wireless broadband networks; and that parties may bring complaints in the event a wireless carrier does so.

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**PETITION TO DISMISS OR DENY of the  
AD HOC PUBLIC INTEREST SPECTRUM COALITION**

To: The Commission

The Ad Hoc Public Interest Spectrum Coalition (Petitioners or PISC) respectfully submit this Petition to Dismiss or Deny the above-captioned applications. This petition is filed pursuant to Section 309 (d)(1) of the Communications Act of 1934, as amended, and Section 1.939 of the Commission’s rules.<sup>1</sup>

Statement of Interest

The members of PISC, individually and collectively, represent a broad range of consumer interests.<sup>2</sup> Last December, PISC filed a *Petition for Declaratory Ruling* (the “*Text Messaging Petition*”) asking the Commission to declare that text messaging and short codes are Title II common carriers services or are Title I services subject to Section

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<sup>1</sup> On July 24, 2008, the Acting Chief of the Wireless Telecommunications Bureau issued an *Order* (DA 08-1733) extending the pleading cycle in the above-captioned proceeding. Petitions to deny are due August 11, 2008, oppositions are due August 19, 2008 and replies are due August 26, 2008.

<sup>2</sup> The current members of PISC include the Consumer Federation of America, Consumers Union, EDU-CAUSE, Free Press, the New America Foundation, Media Access Project, Public Knowledge, and U.S. PIRG. Further information regarding PISC members is included in Attachment A.

202 non-discrimination. The *Text Messaging Petition*, now pending before the Commission in WT Docket 08-7, details Verizon Wireless' refusal to issue short codes to NARAL Pro-Choice America, an activist group which was seeking to keep its supporters up-to-date via text messages. Verizon Wireless has proffered various arguments in support of its action, including (most relevant here) a claim that there is no need to regulate text messaging (SMS) as common carriage, because

Text messaging plans are available from multiple carriers, including the five carriers that have filed comments in this docket. In the United States, more than 98 percent of the population can choose among three or more wireless carriers, and 94 percent have the choice of four or more.

Reply Comments of Verizon Wireless in WT Docket 08-7, filed April 14, 2008, at 17 (footnotes omitted). The five carriers referred to above as filing comments in WT Docket 08-7 are MetroPCS, T-Mobile, Sprint Nextel, AT&T and Verizon Wireless. Notably, Alltel did not file comments in WT Docket 08-7. On information and belief, Alltel's text-messaging policies are less restrictive than those of Verizon Wireless. If the above-captioned applications are granted, Alltel subscribers would be subject to Verizon Wireless' more restrictive policies on text messaging, limiting their ability to communicate freely via text messaging. Similarly, as discussed below, once the existing roaming agreements between Alltel and small and/or rural carriers expire, Verizon Wireless will be able to subject additional carriers to the unreasonable and discriminatory practices cited in the July 31, 2008 "Petition to Dismiss or Deny" filed by North Dakota Network Co. Petitioners, as representatives of consumers in general, and as representatives of subscribers of Alltel and other regional, small and rural wireless carriers, are "parties in in-

terest” within the meaning of Section 309(d) of the Communications Act of 1934, as amended, and have standing to participate in this proceeding.<sup>3</sup>

### Introduction

Consumers are best served when they can choose from among several providers of wireless services, all competing on the basis of coverage (geographic reach), capacity (sufficient spectrum to serve the voice and non-voice needs of subscribers and roamers), cost, equipment and features. When consumers travel to other parts of the country, they expect that they will be able to make and receive calls automatically through intercarrier roaming agreements.

The proposed merger is particularly problematic for consumers, as it can be expected to reduce the number of facilities-based wireless service providers in many geographic markets, and adversely affect the availability of services to roamers.

The applications, as filed, are not grantable. Applicants have failed to meet their burden of demonstrating, by a preponderance of the evidence, that grant of the applications would serve the public interest.

### Applicants’ Competitive Analysis is Inadequate and Unpersuasive.

In the recent *VZW/RCC Order*<sup>4</sup>, the Commission rejected the efforts of the applicants (including Verizon Wireless) to use “nationwide” as the relevant geographic market for the provision of mobile telephony services (the relevant product market) and, instead,

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<sup>3</sup> Should the Commission conclude that some or all of the Petitioners lack standing, Petitioners respectfully request that this Petition to Deny be considered as an informal objection. *See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70, Memorandum Opinion and Order, FCC 04-255, rel. October 26, 2004, 19 FCC Rcd 21522, at ¶ 46, n. 196 and cases cited therein.

<sup>4</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket 07-208, Memorandum Opinion and Order and Declaratory Ruling (FCC 08-181), \_\_\_ FCC Rcd \_\_\_\_, adopted July 31, 2008, rel. August 1, 2008 (*VZW/RCC Order*).

adopted the same definition of geographic markets used in other recent wireless transaction orders, including the 2007 *AT&T-Dobson Order*: licensing areas referred to as CEAs and CMAs. Similarly the Commission rejected the efforts of the applicants to broaden the scope of the spectrum input market (spectrum “suitable” for the provision of mobile telephony services) beyond 280 megahertz (consisting of 200 megahertz of cellular, broadband PCS, and Specialized Mobile Radio (“SMR”) spectrum, and an additional 80 megahertz of 700 MHz band spectrum).

Even if the Commission were, for the sake of argument, to adopt a nationwide geographic market definition, the proposed merger should be rejected on competition grounds alone. The proposed acquisition of Alltel, the fifth largest wireless carrier, by Verizon Wireless, the second largest wireless carrier, continues the recent industry pattern of consolidation and concentration.

In the *Twelfth CMRS Competition Report*<sup>5</sup> the Commission stated that “[c]oncentration in the U.S. mobile telephone market, as measured by the Herfindahl-Hirschman Index (“HHI”), declined from 2706 at the end of 2005 to 2674 at the end of 2006.” Since the end of 2006, however, concentration has substantially increased as the result of the completed acquisitions, first, of Dobson Communications by AT&T and, second, of Rural Cellular Corporation by Verizon Wireless.

Petitioners have compiled wireless subscriber data from a wide variety of industry sources as of the second quarter 2008. This data is generally consistent with the national subscriber counts from the *Twelfth Report*, but adjusts the data to reflect changes, including mergers, since the end of 2006 (the cutoff date for the *Twelfth Report*). The current

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<sup>5</sup> Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (“*Twelfth CMRS Competition Report*” or “*Twelfth Report*”), FCC 08-28, 23 FCC Rcd 2241, rel. February 4, 2008,

data is summarized in Attachment B. As shown there, if the above-captioned applications are granted, Verizon Wireless will be the largest wireless carrier, with approximately 80 million subscribers. Taking into account the 71 million subscribers served by the second largest carrier, AT&T, the two largest carriers will account for 151 million (or nearly 60 percent of the 262 million) wireless subscribers in the United States. The third and fourth largest carriers, Sprint Nextel and T-Mobile, have about 51.3 and 31.5 million subscribers, respectively. The remaining 32 million subscribers are divided among the more than 145 carriers identifying themselves as “terrestrial mobile wireless carriers” in the Commission’s local competition and broadband data gathering program. *Twelfth Report* at 6.

Although Petitioners have been generally skeptical of the Commission’s reliance on market competition as a substitute for meaningful regulation wireless market, the recent dramatic trend toward oligopoly makes the Commission’s “hands off” policy less tenable than ever.

The Applicants assert that they

have, in the interest of expedited processing, evaluated the effects of the merger on the traditional CMA basis examining 800 MHz cellular, 1.9 GHz PCS, 700 MHz and 800 MHz specialized mobile radio spectrum. In those areas where licensed coverage between the two carriers does overlap, there is robust and well documented competition present.

Exhibit 1, Public Interest Showing, at iii.

But the Applicants have provided no evidence in support of the assertion that there is “robust” and “well-documented” competition in the affected geographic markets. To facilitate Commission review, the Applicants should have presented, as Verizon Wireless has done in prior proceedings, an overlap analysis on a market-by-market basis.<sup>6</sup> The

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<sup>6</sup> Petitioners note, however, that applicants’ overlap analysis is no substitute for the Commission’s own thorough review. In the recent *VZW-RCC* proceeding, the applicants presented a market-by-market overlap

burden of providing evidence that the proposed merger is in the public interest is on the Applicants, and the Applicants' omission of a market by market competition analysis (not to be confused with the market-by-market spectrum license analysis in Applicants' Exhibits 4 and 5) seeks to shift the burden to the Department of Justice, the Commission staff and other parties to this proceeding.

In a July 22<sup>nd</sup> ex parte letter to the Commission Secretary, Verizon Wireless reported that, in the course of negotiations with the Department of Justice, it proposed to divest some of the overlapping spectrum in 85 Cellular Market Areas. The offer, by its terms, is non-binding, and subject to approval by the Department and this Commission. However, the Applicants' willingness, at this early stage of the merger review, to offer to divest some spectrum in so many geographic markets can only be considered a tacit admission that the claims of "robust" and "well-documented" competition throughout the affected CMAs were unsupported.

Some, but not all, of the overlap problems, would be ameliorated if DOJ and the Commission approve the spectrum divestitures described in the Verizon Wireless ex parte letter of July 22, 2008.<sup>7</sup> North and South Dakota are clearly most dramatically affected by the spectrum overlap. Petitioners believe that the proposal to divest all overlapping spectrum in those two states is a step in the right direction.

However, the Commission should not assume that spectrum divestiture, either in the Dakotas or in any of the 85 CMAs on the Verizon Wireless list, will inevitably result

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analysis purporting to show that, following the merger, the number of competitors remaining would range from three to a "large number." However, the Commission approved the market subject to divestiture of overlapping spectrum and operations in several markets, including three markets where the number of fully constructed operators would be reduced from two to one. *VZW-RCC Order, supra*, at ¶ 78

<sup>7</sup> The ongoing consolidation in the wireless market is, in part, a result of the Commission's decision to eliminate the spectrum cap in favor of a case-by-case approach. The Commission should give serious consideration to reinstating a spectrum cap, as urged by the Rural Telecommunications Group in a Petition for Rulemaking filed July 16, 2008.

in “no loss of competition in any of these markets.”<sup>8</sup> The most recent consent decrees involving spectrum divestitures (in the AT&T/Dobson and VZW/RCC proceedings, for example) are expected to result in a spectrum swap between the two largest carriers, AT&T and Verizon Wireless. When any of the national carriers acquires spectrum through merger with a rural or regional carrier and then swaps the overlapping spectrum with another national carrier already operating in the same market, the net result is still a loss of competition.

In many of the geographic areas where Verizon Wireless proposes to divest overlapping spectrum being acquired from Alltel, the four national wireless carriers (AT&T, Verizon Wireless, Sprint Nextel and T-Mobile) already account for the vast majority of wireless subscribers, and there may be only one or two smaller regional or local carriers in operation.

In order to ensure that there will, in fact, be “no loss of competition in any of these markets” the Commission should require, as a condition of approval of any divestitures, that spectrum be divested to a carrier other than one of the national wireless providers and, preferably, to a new entrant to the geographic market in question.

Verizon Wireless has not included, on its list of proposed divestitures, a number of markets where Verizon Wireless holds one cellular license and Alltel holds the other, and where there appear to be few, if any, service providers other than the “Big 4” national carriers in operation. In some of the markets not included on Verizon Wireless’ proposed divestiture list, the combined spectrum holdings will exceed 125 MHz.

The Commission should require Verizon Wireless to justify retention of overlapping spectrum in all markets where both cellular licenses are held by Verizon Wireless

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<sup>8</sup> Verizon Wireless July 22, 2008 *ex parte* letter, at 2.

and Alltel, as well as any markets where the combined CMRS spectrum (cellular, PCS, AWS, ESMR and 700 MHz) equals or exceeds 95 MHz. Those markets include, but are not limited to:

CMA 43 Norfolk, Virginia Beach, Portsmouth VA/NC MSA  
CMA 48 Toledo OH MSA  
CMA 59 Richmond VA MSA  
CMA 64 Grand Rapids MI MSA  
CMA 181 Muskegon MI MSA  
CMA 235 Petersburg-Colonial Heights – Hopewell VA MSA

Before acting upon the applications, the Commission should conduct its own careful review of a complete evidentiary record. Among other things, the Commission should direct require the Applicants to submit a supplemental public interest showing, documenting the extent of existing competition in each of the affected geographic markets and justifying their apparent position that Verizon Wireless needs and should be allowed to retain spectrum in certain overlap markets including, but not limited to, those identified above.

Verizon Wireless Must Further Clarify Its Roaming Policies.

The Applicants claim that the merger will benefit Alltel subscribers through the reduction or elimination of roaming and/or long distance charges when calling anywhere on the Verizon Wireless nationwide network. *See, generally*, Exhibit 1 at 22. However, Alltel subscribers may not perceive much of an advantage, especially when balanced against the probable loss of unique Alltel calling plans, including “MyCircle.” As the Commission noted in the *Twelfth CMRS Competition Report, supra*, at p. 16, n. 24: “All-

tel has a very low roaming rate with Verizon Wireless which allows it to offer customers attractive national rate plans.”

Alltel’s roaming agreements are not limited to its agreement with Verizon Wireless. Alltel has a number of existing CDMA and GSM roaming agreements with other regional carriers and with small or rural wireless carriers. In the Applications, Verizon Wireless committed to honor those agreements for the remainder of the agreements’ terms.

In the July 22, 2008 *ex parte* letter, Verizon Wireless reported that it had received several inquiries it had received about the impact of the transaction on roaming agreements, and offered two specific commitments to regional and small wireless providers regarding roaming agreements:

“First, each such regional, small and/or rural carrier that has a roaming agreement with Alltel will have the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement.

“Second, each such regional, small and/or rural carrier that currently has roaming agreements with both Alltel and Verizon Wireless will have the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.” [Verizon Wireless July 22, 2008 *ex parte* at 2.]

The proffered “commitments” are not only nonbinding, in the sense that they subject to Commission and Department review and approval, but also less all-encompassing than they may appear on first reading. For one thing, the commitments do not explicitly address in-market or home roaming – the primary source of difficulty that smaller carriers are having with Verizon Wireless. Petitioners are aware of concerns expressed by numerous carriers, including regional, small and/or rural carriers, regarding the refusal of

Verizon Wireless to provide automatic roaming to home market carriers. Apparently, Alltel has not invoked the in-market exclusion to the same extent as Verizon Wireless. Verizon Wireless has not affirmatively committed that it will not invoke the in-market exclusion after the merger is consummated.

If the Alltel roaming agreements are either silent or ambiguous with respect to the availability of in-market roaming, then Verizon Wireless may be free to cease providing roaming service to other carriers in any market where the other carriers have spectrum, rendering the “specific commitments” as to rates and choice of agreement meaningless for some small and rural carriers and their customers. We look forward to reviewing the comments of affected carriers on the adequacy of these “specific commitments.”

The “specific commitments” made by Verizon Wireless include a commitment to refrain from exercising a “change of control or termination for convenience provisions.”<sup>9</sup> Verizon Wireless does not indicate whether it intends to interpret its obligations under existing Alltel agreements to include or exclude in-market roaming, nor does it address the possible renewal of existing Alltel roaming agreements beyond the end of their current terms. Under the Commission’s *2007 Roaming Order*<sup>10</sup> wireless carriers are subject to an obligation to provide automatic roaming service in response to a reasonable request and on non-discriminatory terms and conditions.

By committing to honor Alltel’s existing roaming agreements and by making the additional specific commitments in its July 22 ex parte, Verizon Wireless has made roam-

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<sup>9</sup> In a story “VZW could give up 15% of Alltel customers through proposed merger” (posted online on RCR Wireless News at 1:40 pm EDT on July 23, 2008), Reporter Jeffrey Silva quotes Laurie Itkin, Director of Government Affairs for Leap Wireless International, Inc. as saying “many roaming agreements have a 30-day right to termination by either party.”

<sup>10</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265, 22 FCC Rcd 15817, rel. August 16, 2007 (“*2007 Roaming Order*”).

ing an issue in this merger proceeding. At least one petitioner, North Dakota Network Co. (NDNC), has filed a petition to deny the merger on the basis, *inter alia*, that Verizon Wireless “has refused” to enter into an intercarrier roaming agreement with NDNC “at prices that are just, reasonable and non-discriminatory.” The Commission should thoroughly review the allegations in the NDNC petition and take appropriate action. In any event, the Commission may wish to consider the adoption of merger-specific conditions to ensure that Verizon Wireless’ pledge to honor existing roaming agreements is both meaningful and enforceable.<sup>11</sup>

#### Increased Device Availability: A Merger Benefit or an Artifact of Monopsony Power?

Applicants assert that Alltel subscribers will enjoy access to a broader selection of handsets and other devices as the result of the merger. At pp. 20-21, Verizon Wireless asserts that “largely due to economies of scale..., enhanced access to capital, and advanced technological and software capabilities” Verizon Wireless offers over 30 models of phones, vs. 15 models of phones currently offered to Alltel customers. The Applicants assert that the transaction will permit Alltel’s customers to gain access to this wider variety of handsets, as well as broadband data cards and other devices that Verizon Wireless currently offers to its customers.

Unlike the market for wireless services, which the Commission correctly analyzes on a local/regional basis, the market for handsets is national in scope as the result of the

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<sup>11</sup> Regardless of any action the Commission may take with reference to this merger, there remains a need to address the broader industry-wide issues regarding roaming, including elimination or modification of the in-market exclusion. The Commission’s tentative agenda for its August meeting indicates that it may consider a Memorandum Opinion and Order addressing the issues raised in petitions for reconsideration of the 2007 Roaming Order. Those petitions have been pending for nearly a year. Petitioners urge the Commission to address both the issues raised in the petitions for reconsideration and the broader issues related to roaming for “3G” and other broadband services identified in the Further Notice of Proposed Rulemaking portion of the 2007 Roaming Order.

overwhelming prevalence among U.S. carriers of bundling devices with service plans. Petitioners note that the increased market power Verizon will enjoy post-merger will significantly increase its monopsony purchasing power in the handset marketplace.<sup>12</sup> The loss of a major national carrier will mean fewer buyers for phone manufacturers, and an increased ability for those buyers to dictate “take it or leave it” terms to potential vendors. This may result in even fewer choices for subscribers across the entire wireless industry.

The Rural Cellular Association (“RCA”) filed a petition for rulemaking on May 20, 2008, asking the Commission to investigate the agreements between the ‘Big 5’ wireless carriers and equipment manufacturers that give those carriers the exclusive right to market specific devices, and to find those agreements unlawful under Sections 201 and 202 of the Communications Act.

The RCA provides numerous examples of the inability of wireless subscribers served by rural carriers to obtain access to the latest devices. In an appendix to the petition, the RCA identifies eight handsets that are “exclusive” to Alltel and eighteen handsets that are “exclusive” to Verizon Wireless. The RCA asserts that “only commercial exclusivity arrangements are preventing millions of rural residents from reaping the same technological benefits from today’s most innovative and popular handsets.” Consumers should not be deprived of access to the latest devices because they choose to obtain wireless service from a small or rural carrier.

Petitioners urge the Commission to give serious consideration to the RCA handset exclusivity petition. In the interim, the Commission should give little, if any, weight to the Applicants’ claim that the availability of a wider variety of handsets is a benefit to be

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<sup>12</sup> Verizon Wireless’s market share will increase from approximately 26.1% to 31.1% after the acquisition of Alltel’s more than 13 million subscribers. Verizon Wireless’s present HHI of 681 will jump to 967, with a net increase in the market of 261 points. The calculations are described in Attachment B.

attributed to Verizon Wireless' scale economies, access to capital and technological sophistication rather than the result of anticompetitive and anticonsumer exclusivity arrangements.

Expanding Any Device, Any App and Extending Neutrality To EVDO

The end of exclusivity requested by the RCA will facilitate increased carrier competition. But it will not address the loss of application and equipment competition that flows from the loss of a major national carrier. The Commission must take more aggressive steps to ensure that this merger serves the public interest.

The Applicants have explicitly cited the expansion of their EVDO technology and the extension of their Open Development Initiative (ODI) to Alltel's customers and footprint as public interest benefits that justify grant of the applications. Application, Exhibit 1, at 10. The Applicants further claim that the extension of wireless EVDO to rural subscribers of Alltel will substantially expand the availability of wireless broadband to rural areas. The Applicants make the additional claim that the availability and utility of wireless broadband will further improve when Verizon Wireless upgrades to LTE technology beginning in 2010. Application, Exhibit 1, at pp. 11-13.

The Commission must take steps to ensure that Verizon Wireless will honor its promises post-acquisition. While Petitioners recognize that Applicants make these representations in good faith, the sad history of such commitments shows that companies such as Verizon often make commitments in good faith that they subsequently delay or abandon when confronted with the cost of build out or technical difficulties. For these reasons, PISC requests that the Commission make the extension of ODI, the availability of wireless broadband throughout the Alltel footprint within a reasonable time, and the up-

grade of Alltel rural systems to LTE in parallel with more densely populated Verizon Wireless and Alltel areas, rather than upgrading rural areas only after the completion of upgrades in more profitable densely populated urban areas. Finally, the Commission should clarify that the Internet Policy Statement applies to wireless networks as well as wireline networks, that Verizon Wireless may not block or degrade content or applications running over its wireless broadband networks, and that parties may bring complaints in the event Verizon Wireless (or any other wireless carrier) may do so.

1. ODI Condition

Verizon Wireless states in its application that it will extend its ODI rollout to systems it will acquire from Alltel. Certainly PISC applauds this commitment. The Commission, however, should not regard this as a voluntary commitment that Verizon Wireless may withdraw at any time. The loss of national competition in an already concentrated market, as well as the loss of regional competition previously described, make it imperative that the Commission adopt a merger condition that requires Verizon Wireless to support ODI through all its systems. Only such a condition can offset the increase in concentration on which the Commission has hitherto relied to drive wireless networks toward greater openness.

PISC notes several disturbing signs that limit the value of Verizon Wireless' voluntary commitment to ODI, and require that the Commission – if it grants the merger applications – impose a condition requiring Verizon Wireless to meet concrete benchmarks. For example, Verizon Wireless has held only a single developer conference on ODI. In addition, the trade press has quoted Verizon Wireless officials as suggesting that it will have a “two door” policy where favored applications potentially receive special treat-

ment.<sup>13</sup> Given the tremendous fanfare with which Verizon Wireless began its ODI roll out, and its continued insistence that its ODI efforts will comply with the 700 MHz C Block open device conditions, the recent lack of activity to facilitate broad development of open devices under a common standard and simple certification process should raise concerns with the Commission. Given the importance of extending ODI here as both a benefit of the merger and as a necessary offset for the increase in market power over wireless equipment manufacturers, wireless application developers, and developers of wireless content, the Commission must impose a condition that sets real benchmarks for ODI.

PISC therefore recommends that the Commission adopt a merger condition that will require the merged company to apply the same standards as those set forth for its C Block spectrum, specifically the rules set forth in 27 C.F.R. §27.16, to all devices and applications that connect to the merged entity's spectrum. Because Verizon Wireless must already develop a certification process for its C Block spectrum, this will impose little burden on Verizon Wireless. The burden is further minimized because Verizon Wireless has already committed to upgrading the Alltel systems to EVDO and LTE technology. Verizon Wireless has also announced it will integrate its current equipment offerings into Alltel's systems. This planned upgrade will allow Verizon Wireless to implement an open interface in accordance with its C Block requirements and commitments under ODI.

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<sup>13</sup> See Information Week, "Web 2.0 Summit: Verizon Wants '2-Door' Policy For 700 MHz Auction," Richard Martin, Oct. 19, 2007

## 2. Rural Upgrade Condition

As noted above, Verizon Wireless places considerable emphasis on its plan to upgrade Alltel's rural systems to EVDO and, ultimately, LTE. Again, while PISC welcome these commitments, the Commission must put necessary teeth into them to give them meaning. Too often, licensees commit to providing benefits to rural systems, only to fail in the face of increased or unanticipated costs. The Commission should not permit the merger to go forward as a means of bringing wireless broadband to rural America, only to see the Applicants retreat from these commitments when the cost of deployment comes due.

PISC therefore recommends that the Commission adopt similar timelines and benchmarks as it did for the A and B blocks in the recent 700 MHz auction, and with similar penalties. Verizon Wireless should be required to upgrade rural systems in a timely manner over the next ten years, based on geographic footprint rather than on population. In addition, in the event that Verizon Wireless fails to provide adequate upgrades, it should face the same "keep what you use" penalty that 700 MHz A and B block licensees now face.<sup>14</sup> Verizon Wireless is not a new entrant, and the requirement that it meet a real timetable for upgrade – or face the possibility that local carriers interested in providing service would gain access to its spectrum in places where it has not provided real broadband service – will not prevent Verizon Wireless from making the needed investment.

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<sup>14</sup> See *Service Rules for the 698-746, 747-762, and 777-792 MHz Bands, Second Report and Order*, 22 FCC Rcd 15289, 15293-94 (2007).

### 3. Network Neutrality Conditions

In the recent adjudication of the complaint of Free Press against Comcast, the Commission made clear its commitment to maintaining the “neutral” character of the internet and its dedication to preserving its “open and vibrant” nature. *See Internet Policy Statement*, 20 FCC Rcd 14986 (2005). The time has come for the Commission to clarify that the same principles apply in the wireless context as well.

The pending transfer applications provide a suitable venue for the Commission to clarify this policy. As the Applicants themselves observe, the extension of mobile broadband access – particularly to Alltel’s rural customers – constitutes one of the key public interest benefits that justify grant of the Application. Application at pp 11-13. As a majority of the Commission forcefully observed in the resolution of the Comcast Complaint, these internet subscribers deserve to have access to the internet that all users have come to expect – one in which access providers do not block applications or impede access to lawful content. Surely rural customers, for whom wireless broadband may provide the only meaningful or affordable broadband access, deserve the same consideration as wireline subscribers.

The need to promote neutrality in mobile wireless services is further heightened by the increased reliance of minorities on mobile wireless devices in preference to wireline services. As documented by the PEW Project on Internet and the American Life, African American and Hispanic mobile services subscribers are among the heaviest users and most sophisticated users of mobile wireless services.<sup>15</sup> By taking this opportunity to clarify that the *Internet Policy Statement* applies to wireless services, and that parties with

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<sup>15</sup> See John Horrigan, “Mobile Access to Data and Information,” Pew Internet and American Life Project (March 5, 2008), available at: [http://www.pewinternet.org/pdfs/PIP\\_Mobile.Data.Access.pdf](http://www.pewinternet.org/pdfs/PIP_Mobile.Data.Access.pdf) (last accessed August 11, 2008).

evidence of blocking or degrading content may bring complaints, the Commission will fulfill its obligations under Section 1, 303(g), and 309(j)(4)(D) to make the benefits of wireless broadband available to all Americans, particularly minorities and rural Americans.

### **Conclusion**

**WHEREFORE**, the Consumer Federation of America, Consumers Union, the CUWIN Foundation, EDUCAUSE, Free Press, the International Association of Community Wireless Networks, Media Access Project, the New America Foundation, the Open Source Wireless Coalition, Public Knowledge, and U.S. PIRG, filing jointly as the *Ad Hoc* Public Interest Spectrum Consortium (PISC) urge the Commission to grant this Petition and dismiss or deny the above-captioned applications for the transfer of licenses and other authorizations from Atlantis Holdings LLC to Cellco Partnership d/b/a Verizon Wireless.

Respectfully submitted,

*AD HOC* PUBLIC INTEREST SPECTRUM COALITION

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Filed: August 11, 2008

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### **Declaration of Chris Murray**

I, Chris Murray, hereby declare under penalty of perjury as follows:

1. I have read the foregoing "Petition to Deny of the Public Interest Spectrum Coalition."
2. I am a commercial mobile service subscriber. I use the wireless device associated with my account to make and receive local and "long distance" voice calls and also to send and receive text messages when I travel to various locations throughout the United States.
3. I will be directly and adversely affected if the Commission allows the proposed merger of Verizon Wireless and Alltel to proceed, as I will likely face higher airtime rates, particularly when roaming in areas served by small and/or rural carriers. In addition, I expect that I will be subject to more restrictive content-related policies regarding text messaging services and will have fewer choices of handsets and wireless devices as the result of diminished facilities-based competition.
4. Except for those facts of which official notice may be taken, the allegations of fact contained in the petition are true to the best of my personal knowledge.

Dated: August 11, 2008

Signed:

A handwritten signature in black ink, appearing to read "Chris Murray". The signature is written in a cursive, flowing style.

Chris Murray

## Attachment A

### Members of the *Ad Hoc* Public Interest Spectrum Coalition

The Consumer Federation of America is an advocacy, research, education and service organization. As an advocacy group, it works to advance pro-consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. Founded in 1968, its membership includes some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people.

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from non-commercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

The CUWIN Foundation (CUWIN) develops decentralized, community-owned networks that foster democratic cultures and local content. Through advocacy and through its commitment to open source technology, CUWIN supports organic networks that grow to meet the needs of their communities.

EDUCAUSE is a nonprofit association whose mission is to advance higher education by promoting the intelligent use of information technology. Membership is open to institutions of higher education, corporations serving the higher education information technology market, and other related associations and organizations. The current membership comprises more than 2,200 colleges, universities, and educational organizations, including 250 corporations, with more than 17,000 active members.

Free Press is a national nonpartisan organization working to increase informed public participation in crucial media policy debates. Free Press and its members have been involved in a wide range of media and telecommunications policy debates.

The International Association of Community Wireless Networks is organized to: encourage the development of community wireless networks throughout the United States and around the globe; act as a public clearinghouse for information regarding regulatory and legislative activities affecting the design, implementation, and use of wireless networks -- including conducting and supporting research and publication of scientific and educational articles concerning the hardware, software, implementation, and maintenance of wireless networks; and provide a forum for public meetings concerning the application of wireless technologies.

Media Access Project (MAP) is a thirty five year old non-profit tax exempt public interest media and telecommunications law firm which promotes the public's First Amendment right to hear and be heard on the electronic media of today and tomorrow.

The New America Foundation is a nonprofit, post-partisan public policy institute whose purpose is to bring exceptionally promising new voices and new ideas to the fore of our nation's public discourse. New America's Wireless Future Program develops and advocates policy proposals to promote universal, affordable and ubiquitous broadband and improve the public's access to critical wireless communication technologies. It seeks to promote fair and efficient use of the airwaves to unlock the full potential of the wireless age for all Americans.

The Open Source Wireless Coalition (OSWC) is a global partnership of open source wireless integrators, researchers, implementers and companies dedicated to the development of open source, interoperable, low-cost wireless technologies.

Public Knowledge is a Washington, D.C.-based public interest group working to defend citizens' rights in the emerging digital culture. Public Knowledge's primary mission is to promote innovation and the rights of consumers, while working to stop any bad legislation from passing that would slow technology innovation, unduly burden free speech, shrink the public domain, or prevent fair use.

U.S. PIRG, the federation of state Public Interest Research Groups (PIRGs), takes on powerful interests on behalf of the American public, working to win concrete results for our health and our well-being. With a strong network of researchers, advocates, organizers and students in state capitols across the country, U.S. PIRGs stand up to powerful special interests on issues where powerful special interests stand in the way of reform, like product safety, identity theft, political corruption, prescription drugs, and voting rights.

## Attachment B

The following are approximate subscriber totals and market shares based on a variety of company quarterly reports and public news sources. Note: Total subscriber data is from the cellular industry's own website, [www.ctia.org](http://www.ctia.org), currently showing 262.9 million wireless subscribers in the U.S.

	AT&T	VZW	Sprint	T-Mobile	Alltel
Subscribers (in millions)	71.4	68.7	51.9	31.5	~13
Market share	27.1%	26.1%	19.7%	12% (11.98)	5% (4.94)
HHI	734	681	388	144	25
Post merger HHI		967			0

Total HHI pre merger (excluding any company smaller than Alltel from calculation, so skewed low) = 1971

Total HHI post merger (again, without any company smaller than Alltel) = 2233

HHI increase post VZW/Alltel merger = 262

**CERTIFICATE OF SERVICE**

I hereby certify that I am an attorney with the Law Office of Larry A. Blosser, P.A. and that on August 11, 2008, I caused to be sent by electronic mail (e-mail), a copy of the foregoing “Petition to Dismiss or Deny of the *Ad hoc* Public Interest Spectrum Coalition” to the following:

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