

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

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

**COMMENTS OF
RANDOLPH J. MAY
PRESIDENT
THE FREE STATE FOUNDATION***

These comments are filed in general support of the applications of Verizon Wireless and ALLTEL Corporation to transfer control of their licenses and authorizations to a new merged entity. The proposed transaction appears to offer public interest benefits by combining two mostly complementary wireless networks that largely do not overlap into one facilities-based wireless network with nearly national coverage. As with most telecommunications networks, in light of the economies of scale and scope involved, the combined Verizon-ALLTEL network will allow the merged entity to realize cost savings and efficiencies that the separate companies could not realize. The economies realized should enable the combined entity to invest in building out wireless broadband facilities in more rural areas than would be the case absent the merger.

Across most of the nation, the wireless marketplace is competitive and will remain so after this merger. Indeed, it is because of the existence of such competition that

* These comments express the views of Randolph J. May, President of the Free State Foundation, a n independent, non-profit free market-oriented think tank. They do not necessarily represent the views of the Board of Directors or others associated with FSF.

Verizon-ALLTEL most likely will use the cost savings realized from the merger's synergies to continually upgrade and expand the merged entity's wireless network.¹ It is this ongoing upgrading to next successive generation, higher-bandwidth facilities that allows Verizon and other competitors to offer new, innovative, and increasingly bandwidth-intensive (hogging) applications. Building, maintaining, upgrading, and operating these next-generation networks is an expensive proposition, and the cost savings realized from combinations such as the one proposed should not be minimized.

Not unexpectedly, there is some opposition to the Verizon Wireless-ALLTEL merger, as there is to almost any merger of even semi-significance that must be approved by the Commission. In the interest of availing themselves of the unique leverage presented by a merger review process that has gone awry, the merger's opponents do not even acknowledge in passing, as relevant factors, the type of efficiency and synergy benefits discussed above. In large part, this is because various parties, increasingly over time, have come to see the agency's merger review process as an opportunity-not-to-be-missed to press concerns that, in the interest of sound policy and sound administration, ought to be pressed elsewhere.

The principal contentions of those opposing or wishing to condition this merger fall into the "ought to be pressed elsewhere" category. That is not to say that all the contentions are frivolous or not worthy of being addressed, just that this merger proceeding is not the right place to do so. The two principal contentions are that, upon consummation of the merger, the combined entity will control too much spectrum, and that the merger should be conditioned upon the surviving entity entering into certain

¹ This is not to say that additional facilities-based competition on a nationwide basis is not welcome, if it can be sustained in the marketplace. That is why I filed comments in support of the Sprint Nextel and Clearwire applications to form New Clearwire to build-out a nationwide WiMAX network.

roaming agreements.²

As for competition concerns associated with the amount of spectrum controlled by the merged entity, it has been my consistent view, most recently stated in comments on the Sprint Nextel-Clearwire proposed transaction, that “in the context of ‘mergers’ the FCC largely should defer to the expertise of the antitrust authorities concerning market power concentration issues, including those implicated by spectrum aggregation.”³ The Department of Justice is reviewing the competitive implications of the Verizon-ALLTEL transaction. When spectrum aggregation has been seen to raise competitive concerns, DOJ has not been shy about requiring divestitures of spectrum in particular markets as a condition of approving the transaction.

Indeed, in this instance, evidently as a result of DOJ’s non-shyness in this regard, Verizon Wireless already has committed to divesting overlapping properties in the entire states of North Dakota and South Dakota and overlapping properties in 16 other states. It is possible that before DOJ is finished with its antitrust review, there could be other concentration-reducing divestitures as well in order for the proposed merger to pass antitrust muster. Absent unusual circumstances, in reviewing applications to transfer or assign FCC authorizations, the Commission largely should defer to the expertise of the antitrust authorities with respect to any competitive concerns raised.⁴ In light of the resources in time and money involved, there is no reason for the FCC to duplicate the

² These contentions are made in various forms by at least the following parties in their petitions and comments submitted on August 11, 2008. The Ad Hoc Public Interest Spectrum Coalition; Rural Carriers; Rural Cellular Association; Rural Telecommunications Group, Inc.; and the South Dakota Telecommunications Association.

³ Comments of Randolph J. May, President, The Free State Foundation, Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94, August 4, 2008.

⁴ I have expressed this view many times in various forums. For an example, see Randolph J. May, “Reform the Process,” National Law Journal, May 30, 2005, available at: http://www.freestatefoundation.org/images/Reform_the_Process--NLJ.pdf

effort of DOJ in evaluating the competitive effects of the merger.

As for the roaming issue, Verizon already has committed to adhere to the terms of ALLTEL's roaming agreements, and to allow each carrier that has a roaming agreement with both Verizon and ALLTEL to choose either agreement to govern roaming traffic. But some parties want to use the merger review process to extract more, even though the Commission has a rulemaking proceeding pending to determine the extent of roaming obligations. The Rural Carriers, for example, acknowledge that "the provision of 3G data and voice and other broadband services on an automatic roaming basis is presently pending before the Commission in the Further Notice of Proposed Rulemaking portion of the *CMRS Roaming Order*."⁵ They ask the Commission to prejudge the rulemaking by simply conditioning approval of the merger to achieve the same regulatory result they advocate in the rulemaking proceeding. Somewhat similarly, the Rural Telecommunication Group asks the Commission to reject the merger, or suspend consideration of it, pending completion of the rulemaking.⁶

The Commission should reject the pleas to, in effect, have the merger review proceeding subvert the rulemaking proceeding. The agency's rulemaking is examining the very roaming issues that the objectors want to interject into the merger proceeding.⁷ In the interest of sound administration, and fairness to all industry providers, the Commission should decide the roaming issues in the generic rulemaking proceeding, not this merger proceeding. The same principle applies, of course, to other suggested conditions, such as open access and net neutrality requirements. If they are to be

⁵ Rural Carriers, Petition to Condition Transaction Approval, at 13, August 11, 2008.

⁶ Rural Telecommunications Group, Inc., Petition to Deny, at 22, August 11, 2008.

⁷ Reexamination of Roaming Obligations, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

considered at all, which in my view they should not be, the appropriate venue is a generic rulemaking, not a merger review proceeding in which the only real issue should be whether the applicants are in compliance with existing Communications Act statutory and regulatory requirements.⁸ It is never too late for the Commission to begin to reform its merger review process by refusing to consider implementing conditions in a merger that ought to be considered, if at all, in other venues. The Commission should begin the reform process now.

In light of the foregoing, to the extent the merged entity will be in compliance with existing statutory and regulatory requirements, the Commission should grant the Verizon Wireless and ALLTEL applications.

Respectfully submitted,

Randolph J. May

President
The Free State Foundation
10701 Stapleford Hall Dr.
Potomac, MD 20854
301-299-3182

August 19, 2008

⁸ See Randolph J. May, "Reform the Process," National Law Journal, May 30, 2005; Randolph J. May, "Any Volunteers?" March 6, 2000.