

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

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In the Matter of)	
)	
ATLANTIS HOLDINGS LLC, Transferor,)	
)	
and)	
)	
CELLCO PARTNERSHIP D/B/A)	
VERIZON WIRELESS, Transferee)	WT Docket No. 08-95
)	
for Consent to the Transfer of Control of)	
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	
Communications Act)	
_____)	

REPLY COMMENTS OF T-MOBILE USA, INC.

I. INTRODUCTION AND SUMMARY.

T-Mobile USA, Inc. (“T-Mobile”)¹ urges the Commission to examine closely the impact on wireless customers and roaming competition of the proposed merger between Verizon Wireless and Alltel (the “Applicants”) that is the subject of the above-referenced application (the “Application”).² T-Mobile depends on Alltel’s GSM roaming services in multiple markets to

¹ T-Mobile is one of the major national wireless carriers in the United States, with licenses covering 46 of the top 50 U.S. markets and serving over 31.5 million customers with a network reaching over 275 million people (including roaming and other agreements).

² See FCC Public Notice, *Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and De Facto Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership*, 23 FCC Rcd 10004 (WTB 2008); Public Interest Statement, *Atlantis Holdings LLC, Transferor, and Cellco Partnership d/b/a Verizon Wireless, Transferee for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, WT Docket No. 08-95, Lead File No. 0003463892, (filed June 13, 2008) (“*Public Interest Statement*”). All petitions filed on August 11, 2008, in this proceeding will hereinafter be short cited.

provide its customers with high-quality, reliable wireless services when they travel outside T-Mobile's coverage area. Continued commercially reasonable roaming arrangements with the merged entity are essential for T-Mobile's customers.

As a threshold matter, the Commission should not consider the Application until the Commission either eliminates or revises the "home market exclusion" to the Commission's automatic roaming rule³ as T-Mobile has suggested in its pending petition for reconsideration.⁴ The proposed merger, which will make Verizon Wireless the largest wireless carrier in the United States and the single provider of GSM roaming service in some markets, reinforces the harm to consumers and competition created by the current home market exclusion.

Because the transaction has a potentially anticompetitive impact on the roaming marketplace and thus, by extension, the market for wireless services as a whole, if the Commission proceeds with consideration of the Application, T-Mobile agrees with those parties urging the Commission to impose pro-consumer, pro-competitive conditions on the merger.⁵ The following conditions will help ensure that customers of the merged entity's rural, regional and national wireless competitors will have adequate access to roaming and will continue to enjoy competitive prices and high service quality.

- The Commission should require the merged entity, as well as any successor to the Alltel GSM network, to abide by all terms of Alltel's existing roaming contracts, including those addressing geographic coverage, contract duration, and rates,

³ See 47 C.F.R. §§ 20.3, 20.12(d).

⁴ See Petition for Partial Reconsideration of T-Mobile USA, Inc., WT Docket 05-265 (Oct. 1, 2007).

⁵ See, e.g., Petition to Deny of Denali Spectrum LLC et al. (collectively, the "Roaming Petitioners"), at 16-20; Petition to Deny of Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the Rural Independent Competitive Alliance (RICA), at 6-9; South Dakota Telecom. Ass'n Petition to Condition Transaction Approval, at 3-8, 10-14.

regardless of whether Alltel's roaming partners have spectrum usage rights under the home market exclusion and regardless of whether the other party is a rural, regional or national wireless carrier.

- The Commission should require the merged entity to extend to all carriers that have roaming agreements with both Alltel and Verizon Wireless the option, which Verizon proposes be made available only to "regional, small and rural carriers,"⁶ to select either such agreement to govern roaming arrangements with the merged entity.
- The Commission should require the merged entity to maintain the Alltel GSM network at a level comparable to the level provided to the merged entity's CDMA customers during the term of the roaming agreements to ensure that the merged entity does not permit the network's GSM capabilities to degrade over time, to the detriment of consumers.

In addition, the Commission should make clear that, if it orders any divestitures of Alltel's GSM roaming network, all existing roaming contracts will be assumed, and their rates, terms, and conditions honored, by the purchaser of the divested assets, to avoid disruptions to existing roaming arrangements.

II. BACKGROUND.

As the fourth-largest national wireless carrier, T-Mobile aggressively competes with wireless providers throughout the United States and is making substantial expenditures to expand its facilities-based network to provide consumers with next-generation wireless services.

T-Mobile continues, however, to rely extensively on roaming agreements with other GSM providers to offer its customers full coverage when they travel outside of T-Mobile's coverage

⁶ See Letter from John T. Scott, III, V.P. & Dep. Gen. Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 2 (July 22, 2008) ("*Verizon Wireless July 22 letter*").

area.⁷ Roaming will continue to be a crucial component of T-Mobile's service on an ongoing basis.⁸

Alltel is one of T-Mobile's most important roaming partners, as Alltel provides over 300,000 square miles of GSM coverage in the western United States. T-Mobile and other U.S. and international GSM carriers rely on Alltel's GSM overlay network to provide their customers seamless and affordable roaming coverage in this large swath of territory. Indeed, Alltel's GSM network was built and is operated solely to serve customers of other carriers, and those customers of other carriers have come to rely on these roaming services. A mutually beneficial roaming agreement negotiated between T-Mobile and Alltel over a period of years has allowed T-Mobile to fill in coverage gaps and provide its subscribers with seamless GSM/GPRS wireless services throughout large sections of the United States. T-Mobile's current roaming agreement with Alltel also permits T-Mobile's customers to roam on Alltel's GSM network at reasonable rates, terms and conditions. In some markets, such as South Dakota and North Dakota, Alltel is the only GSM operator providing coverage.

⁷ Roaming occurs when wireless subscribers travel beyond the network coverage of their "home" carrier and utilize the facilities of a "host" carrier to place an outgoing call, receive an incoming call, or continue an in-progress call. See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15819 (2007) ("*2007 Roaming Order*"). The GSM standard is designed to provide efficient and seamless automatic roaming capability so that subscribers need not take any special actions to roam on another carrier's network.

⁸ In fact, on a geographic basis, no U.S. wireless carrier is close to establishing a nationwide footprint using solely its own facilities.

III. THE PROPOSED MERGER SHOULD ONLY BE APPROVED WITH CONDITIONS TO AVOID HARM TO CONSUMERS AND THE COMPETITIVE ROAMING MARKETPLACE.

The record persuasively demonstrates that the Verizon Wireless-Alltel transaction could significantly disrupt wireless roaming arrangements between Alltel and numerous other carriers.⁹ Because the merged entity will be the largest wireless provider in the United States, both in terms of network facilities and retail customers served, it will have both the incentive and the ability to manipulate its roaming arrangements to disadvantage other carriers.

The Commission repeatedly has recognized that roaming arrangements play an important role in providing wireless customers with uninterrupted coverage on a daily basis and in the event of emergencies.¹⁰ A limited number of potential roaming providers are available, however, in any given geographic area. In particular, a carrier's customers can roam only on other carriers' networks that use the same technical standard. As a result, GSM carriers like T-Mobile can enter into roaming arrangements only with other GSM carriers, and there may be only one or two GSM carriers that have facilities in any specific location.¹¹

Alltel and T-Mobile have had a commercially reasonable and mutually beneficial roaming relationship, even in those areas where Alltel currently is T-Mobile's only choice for a

⁹ See, e.g., *OPASTCO & RICA* at 2 (“The loss of ALLTEL Wireless as a roaming partner for rural wireless carriers and the increased market power that the post-merger Verizon Wireless will possess could result in rural wireless carriers paying unjust and unreasonable roaming rates that far exceed the costs incurred by Verizon Wireless in providing the service.”); see, e.g., *Roaming Petitioners* at 5 (noting that “ALLTEL is a vital roaming partner to other CDMA carriers and, to a lesser extent, to GSM carriers, and these carriers will not be able to compete in any market without reasonable roaming options”).

¹⁰ See, e.g., *Automatic Roaming Order*, 22 FCC Rcd at 15828 (concluding that “automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country and reducing inconsistent coverage and service qualities”).

¹¹ In fact, T-Mobile's largest roaming partner is AT&T, which is the largest GSM carrier in the United States.

roaming partner. A merged Alltel and Verizon Wireless, however, will create an entirely different dynamic in the roaming marketplace. Verizon Wireless has the incentive and the ability to undercut Alltel's roaming relationships in order to consolidate its leading position in the wireless industry.

Moreover, the proposed Verizon Wireless-Alltel transaction could disrupt existing wireless roaming arrangements, including the current Alltel-T-Mobile roaming agreement. In T-Mobile's experience, surviving parties to similar large transactions often attempt to interpret the transactions to modify or terminate pre-existing roaming agreements to the detriment of roaming partners' customers.¹² The Applicants also have failed to affirm their continuing support for the ongoing operation of a competitive GSM network necessary to continue roaming arrangements. Taken together, these factors warrant the imposition of conditions on the merger and the Commission's continuing oversight in order to guarantee the continued smooth functioning of Alltel's roaming agreements within the competitive wireless market.

In the Application, Verizon Wireless conveniently ignores its long-term plans for Alltel's GSM network or the potential anticompetitive effects of the transaction on the roaming marketplace. The Commission should address the Application's vagueness on this important issue by adopting targeted conditions on any approval of the Application. Verizon Wireless' general assertion that it will honor the terms of Alltel's existing GSM roaming agreements¹³ does not protect adequately Alltel's GSM roaming partners and their customers, particularly since

¹² In its roaming agreement with Alltel, T-Mobile has private contractual rights that it is entitled to enforce, and Alltel and its successors and assigns have contractual obligations that they are required to honor. However, efforts by the merged entity to modify or alter the roaming agreement can disrupt the provision of roaming service to T-Mobile customers and, therefore, wireless competition.

¹³ See *Public Interest Statement* at ii, 17.

Verizon Wireless's later, more specific assurances were directed pointedly only to rural and regional carriers.¹⁴ As the Roaming Petitioners discuss, the Commission should be concerned about Verizon Wireless's demonstrated pattern of conduct to restrict roaming opportunities for other carriers.¹⁵

Accordingly, the merged entity and any successor owner¹⁶ of the Alltel GSM network should be required to adhere to all terms of existing Alltel roaming contracts, including those concerning geographic coverage, contract duration, and rates, regardless of whether Alltel's roaming partners have "spectrum usage rights" under the home market exclusion.

Moreover, Verizon Wireless has stated that if a "regional, small, and/or rural carrier" has roaming agreements with both Alltel and Verizon Wireless, that carrier will have the option to select either agreement to govern all roaming traffic between it and the merged entity.¹⁷ There is no basis not to extend that voluntary condition to all other carriers that may be roaming partners of the Applicants. Accordingly, the Commission should require the merged entity to allow all carriers that have roaming agreements with both Alltel and Verizon to select either agreement to govern roaming arrangements between them and the merged entity.

The Commission also should require the merged entity to maintain the Alltel GSM network at a level comparable to the level provided to the merged entity's CDMA customers

¹⁴ See *Verizon Wireless July 22 letter* at 2.

¹⁵ See *Roaming Petitioners* at 15.

¹⁶ "Successor" should be construed broadly to include situations after this transaction in which the GSM assets are purchased, there is a transfer of control, or spectrum is leased.

¹⁷ See *Verizon Wireless July 22 letter* at 2.

during the term of the roaming agreements to ensure that the merged entity does not permit the network's capabilities to degrade, harming the customers of its roaming partners.

Several parties have urged the Commission to require the merged entity to divest its GSM roaming network.¹⁸ If the Commission mandates divestitures of Alltel's GSM roaming network, it should require that any existing roaming contracts be assumed by the purchaser of the divested assets.

These conditions are essential to help ensure that the transaction will not disrupt the current roaming marketplace.

IV. THE COMMISSION SHOULD ELIMINATE OR REVISE THE HOME MARKET EXCLUSION BEFORE RULING ON THE VERIZON WIRELESS-ALLTEL MERGER.

Before it rules on the Application, the Commission should eliminate or modify the home market exclusion in its roaming rules to ensure an efficiently functioning and competitive roaming marketplace after the merger.¹⁹ T-Mobile proposed in the roaming docket that the Commission modify the home market exclusion so that it applies only in areas in which the requesting carrier has in place an operating network that can be used to provide commercial mobile radio service ("CMRS").²⁰ This modification would allow all wireless customers to continue to receive wireless service when they travel outside of their home carrier's coverage area and, at the same time, would ensure that a roaming right cannot be converted into a *de facto*

¹⁸ See, e.g., Palmetto Mobilenet Petition to Deny at 24; RTG Petition to Deny at 23.

¹⁹ Under the home market exclusion, a wireless carrier is not obligated to negotiate in good faith just and reasonable roaming agreements with other technologically compatible carriers that have access to spectrum in the same market. See *2007 Roaming Order*, 22 FCC Rcd at 15835-36, 15850-51.

²⁰ See Letter from Kathleen O'Brien Ham, V.P., Fed. Reg. Affairs, T-Mobile USA Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, at 1-2 (Aug. 7, 2008).

resale arrangement. At the very least, the Commission should confirm that voice roaming arrangements within a carrier's "home market" (as defined in the *2007 Roaming Order*) are subject to Sections 201, 202, and 208 of the Communications Act, and that spectrum holdings will only be one of the many factors considered in a complaint proceeding.

The proposed merger reinforces the case for the harm to consumers and competition created by the current home market exclusion, which has been amply demonstrated in the roaming docket.²¹ By virtue of their sheer size and market position, the home market exclusion permits the two largest carriers – Verizon Wireless and AT&T – to deny roaming requests or demand less favorable rates, terms and conditions in large parts of the United States, harming the customers of smaller carriers and placing those carriers at an extreme competitive disadvantage.

V. CONCLUSION

This transaction follows closely on the heels of several recent acquisitions by Verizon Wireless and AT&T of regional and rural carriers, all of which cumulatively have deprived T-Mobile of any choice of roaming partner in many markets.²² This string of acquisitions has resulted in changed circumstances in the roaming marketplace in the past two years, as the largest carriers acquired carriers that were formerly independent roaming partners of T-Mobile. And, while those pre-existing relationships were beneficial to both parties, both AT&T and Verizon Wireless will have the incentive to deny roaming to T-Mobile (notwithstanding the

²¹ See Letter from Gigi Sohn, on behalf of the Public Interest Spectrum Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (Aug. 13, 2008) (demonstrating the consumer harms caused by the home market exclusion).

²² See, e.g., *Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corp.*, WT Docket No. 07-208, FCC 08-181 (Aug. 1, 2008); *AT&T Inc. and Dobson Communications Corp.*, 22 FCC Rcd 20295 (2007).

considerable revenues they derive) simply to damage T-Mobile competitively. The home market exclusion gives them the ability to act on that incentive. The conditions requested above by T-Mobile will help address these important transaction-specific public interest concerns, but broader action needs to be taken in the roaming docket with respect to the home market exclusion as soon as possible. For these reasons, T-Mobile urges the Commission to scrutinize the Application closely and to condition approval of the Application as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2008 a copy of the foregoing **REPLY COMMENTS** was served by electronic mail or U.S. mail upon the following:

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