

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

**FILED/ACCEPTED**  
**AUG 15 2008**  
Federal Communications Commission  
Office of the Secretary

In the Matter of ) WT Docket No. 07-208  
)  
Applications of Cellco Partnership d/b/a )  
Verizon Wireless and Rural Cellular ) File Nos. 0003155487, *et al.*, ITC-T/C-  
Corporation ) 20070904-00358  
)  
)  
For Consent To Transfer Control of Licenses, )  
Authorizations, and Spectrum Manager Leases )  
)  
and )  
) File Nos. ISP-PDR-20070928-00011,  
) ISP-PDR-20070928-00012  
)  
Petitions for Declaratory Ruling that the )  
Transaction Is Consistent with Section )  
310(b)(4) of the Communications Act )

To: The Secretary  
Office of the Secretary  
Federal Communications Commission

**PETITION FOR RECONSIDERATION**

Chatham Avalon Park Community Council ("Petitioner" or "CAPCC"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby petitions for reconsideration of the Commission's order granting the above-referenced applications (collectively, the "Merger Applications") for Commission authority for the transfer of control of the licenses, authorizations, and spectrum manager leasing arrangements held by Rural Cellular Corporation ("RCC") to Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless").<sup>1</sup> Petitioner objects to the special treatment afforded to Verizon Wireless' showing regarding its compliance with the

<sup>1</sup> See *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Opinion and Order, FCC 08-181 ¶ 33 (rel. Aug. 1, 2008) [hereinafter, "*Verizon Wireless-RCC Order*"].

No. of Copies rec'd 0 + 11  
List ABCDE

**ORIGINAL**

foreign ownership restrictions of Section 310(b) of the Communications Act. Not only has Verizon Wireless been permitted to ignore years of precedent regarding how the citizenship of a telecommunications carrier's owners can be established, Verizon Wireless has been permitted to flout established policy at the same time the Commission has denied similar relief to small and disadvantaged businesses. The Commission must address this disparity in treatment on reconsideration.

CAPCC is a community based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of telecommunications services, some of which are offered by Verizon Wireless. Our group has a long and proud history of advocating for our local citizens and we have a special interest in promoting the growth and economic development of the African-American and small business communities. In a separate proceeding, Petitioner has petitioned to deny the pending applications for consent to the transfer of control of ALLTEL Wireless and its affiliates ("ALLTEL") to Verizon Wireless and its affiliates now before the FCC.<sup>2</sup> Petitioner and its members are disserved by the increasing consolidation in the telecommunications industry that threatens to produce fewer competitive services at higher consumer prices. While Petitioner is concerned about industry consolidation in general, in light of its interest in economic development and business activity, Petitioner is particularly concerned when large entities have access to sources of capital that are unavailable to smaller businesses and socially disadvantaged businesses that seek to compete with them.

---

<sup>2</sup> See 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, *Public Notice*, FCC WT Docket No. 08-95, DA 08-1481 (rel. June 25, 2008).

In the *Verizon-RCC Order*, the Commission, contrary to its precedent and without supporting analysis, permitted Verizon Wireless to demonstrate its foreign ownership qualifications under Section 310(b)(4) of the Communications Act using registered and beneficial owners' street addresses of record, an approach that the Commission has expressly, definitively, and consistently rejected for everyone but Verizon Wireless. The Verizon Wireless approach uses a substantively different and far more liberal standard for what constitutes foreign ownership under Section 310(b) of the Communications Act than that which the Commission imposes on socially disadvantaged businesses and other small business applicants. Instead of making this new standard available to all applicants generally, including socially disadvantaged businesses, the Commission has made this a special policy applying only to Verizon Wireless because of its "special circumstances."<sup>3</sup>

Although Verizon Wireless proffered registered address information in the Merger Applications to meet its Section 310(b)(4) obligations, the Merger Applications did not expressly request that its interpretation of Section 310(b) would apply to Verizon Wireless alone. Petitioner submits that this result – a "special" interpretation of Section 310(b) for Verizon Wireless – could not reasonably have been anticipated in view of the Commission's recent affirmation of its longstanding policy and the Commission's categorical rejection, just months ago, of any liberalization of its foreign ownership policies, even for the supposedly core objective of promoting participation in media and telecommunications by socially disadvantaged businesses.<sup>4</sup> For that reason and for the additional reason that the public interest would be served

---

<sup>3</sup> See *Verizon-RCC Order*, *supra* at ¶ 149 (presumption of citizenship from shareholder address "reasonable in the special circumstances of the companies concerned").

<sup>4</sup> See *In re Promoting Diversification of Ownership in the Broad. Servs.*, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, 23 FCC Rcd 5922 (rel. March 5, 2008), *recon. pending*.

by addressing the related Section 310(b) issues in a unified fashion, Petitioner submits that this Petition for Reconsideration meets the requirements of the Commission's rules without regard to any participation by Petitioner in the initial phase of this proceeding.

Petitioner does not object to liberalizing the Commission's interpretation of Section 310(b). It does object, however, to a special rule that helps only corporate behemoths like Verizon Wireless, particularly when the Commission has just denied any such relief to small and socially disadvantaged businesses. These small businesses could provide a spur for enhanced service to Petitioner's members and their communities. The ability of a company like Verizon Wireless to obtain authorization for its foreign investment without meeting the same requirements that would be applicable to a smaller business or a socially disadvantaged business exacerbates the disadvantages that already exist in the marketplace for socially disadvantaged businesses seeking capital for media and telecommunications investments. Consequently, it is important to Petitioner that the Commission ensure that there are no short cuts available to larger companies that are not also available to socially disadvantaged businesses.

For the reasons set forth in its Petition to Deny filed August 11, 2008, in WT Docket No. 08-95 and File No. ISP-PDF-20080613-00012, a copy of which is attached hereto and which is hereby incorporated herein, Petitioner submits that the Commission lacks a reasonable basis to adopt a special interpretation of Section 310(b) that applies only to Verizon Wireless. Consequently, on reconsideration the Commission therefore must either (1) obtain from Verizon Wireless a statistically valid sample survey establishing the citizenship of the shareholders of Verizon Wireless's constituent partners and demonstrating eligibility for a Section 310(b)(4) public interest determination based upon the multilevel analysis that the Commission requires from other applicants or (2) expressly acknowledge that socially disadvantaged businesses

likewise may use Verizon Wireless's "registered address" standard as the sole test for determining the citizenship of their potential investors under Section 310(b) for all services.

Respectfully submitted,

**CHATHAM AVALON PARK  
COMMUNITY COUNCIL**

By: 

Aaron Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Washington, D.C. 20036  
(202) 293-0011

August 15, 2008

Exhibit 1

PETITION TO DENY OF CHATHAM AVALON PARK  
COMMUNITY COUNCIL

Applications of  
Cellco Partnership d/b/a Verizon Wireless and  
Atlantis Holdings, LLC  
for Transfer of Control and  
Petition for Declaratory Order under Section 310(b)(4),  
WT Docket No. 08-95  
File No. ISP-PDF-20080613-00012

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
)  
Applications of Cellco Partnership d/b/a ) WT Docket No. 08-95  
Verizon Wireless and Atlantis Holdings, )  
LLC )  
)  
For Consent to Transfer Control of ) File Nos. 0003463892, *et al.*, ITC-T/C-  
Licenses, Authorizations, Spectrum ) 20080613-00270, *et al.*  
Manager and *De Facto* Transfer Leasing )  
Arrangements )  
)  
and )  
)  
Petition for Declaratory Ruling that the ) File No. ISP-PDF-20080613-00012  
Transaction is Consistent with Section )  
310(b)(4) of the Communications Act )

To: The Secretary  
Office of the Secretary  
Federal Communications Commission

**FILED/ACCEPTED**  
**AUG 11 2008**  
Federal Communications Commission  
Office of the Secretary

**PETITION TO DENY**

**CHATHAM AVALON PARK  
COMMUNITY COUNCIL**  
8441 South Cottage Grove  
Chicago, Illinois 60619

*By*

Vernon Ford, Jr., Esq.  
3234 W. Washington St.  
Chicago, Illinois 60624

*Of Counsel*

Aaron Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Washington, D.C. 20036  
(202) 293-0011

August 11, 2008

**STAMP & RETURN**

## SUMMARY

The Petitioner, a community based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of the applicants' telecommunications services, opposes the transfer of control of ALLTEL Wireless and its affiliates to Cellco Partnership d/b/a Verizon Wireless. The Merger Applications raise substantial issues under the Commission's guidelines for wireless concentration and its foreign ownership policies, and the proposed transaction would continue a dangerous trend towards consolidation of telecommunications ownership.

The Commission should not grant the Merger Applications unless the Commission (1) requires the merged ALLTEL-Verizon entity (a) to divest, at a minimum, (i) all of the markets in those four states where Verizon Wireless would have spectrum holdings in excess of 115 MHz following consummation of the transaction, and (ii) at least 30 MHz of spectrum in each of those markets (such that post-transaction holdings would not exceed 95 MHz) to ensure that the new competitor will have adequate spectrum to compete; and (b) for the purpose of encouraging investment and participation in the telecommunications industry by heretofore excluded parties, to grant a right of first negotiation for the acquisition of these businesses or assets to companies owned or controlled by members of minority or socially disadvantaged groups; and (2) either (a) obtains from Verizon Wireless a statistically valid sample survey establishing the citizenship of the shareholders of Verizon Wireless's constituent partners and demonstrating eligibility for a Section 310(b)(4) public interest determination or (b) expressly determines that socially disadvantaged businesses likewise may use Verizon Wireless's "registered address" standard as the sole test for determining the citizenship of their potential investors under Section 310(b).

**TABLE OF CONTENTS**

	<b>Page</b>
SUMMARY .....	i
I. Introduction.....	2
II. The Merger Applications Should Not Be Granted Until Spectrum Overlap Issues Are Resolved.....	4
A. The Merger Applications Ask the Commission to Approve a Substantial Amount of Spectrum Overlap in Areas Where There Is Relatively Little Wireless Competition. ....	5
B. The Commission Should Continue to Apply the Screening Principles It Has Used in Other Cases. ....	6
III. The Commission Should Require Divestiture in Those Areas Where the Spectrum Overlap Is Greatest. ....	10
A. The Commission Has the Authority to Require Divestiture.....	10
B. Divestiture Would Aid in Addressing the Lack of Diversity in Ownership of Telecommunications Services Providers. ....	12
C. Application of Relevant Competition Analysis Demonstrates that Divestiture Is Necessary. ....	15
IV. The FCC Must Condition Any Grant of the Merger Applications .....	18
V. Verizon Wireless Has Failed to Establish That Its Foreign Ownership Permits a Public Interest Determination Under Section 310(b)(4) of the Communications Act. ....	22
VI. Conclusion .....	33

**EXHIBITS**

- Exhibit 1: Affidavit of Kevin O. Tate, President, Chatham Avalon Park Community Council
- Exhibit 2: Verizon Wireless Letter dated April 8, 2008, in Docket No. 07-208
- Exhibit 3: Areas with 95 MHz or Greater Overlap

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**

Washington, DC 20554

In the Matter of )  
)  
Applications of Cellco Partnership d/b/a ) WT Docket No. 08-95  
Verizon Wireless and Atlantis Holdings, )  
LLC )  
)  
For Consent to Transfer Control of ) File Nos. 0003463892, *et al.*, ITC-T/C-  
Licenses, Authorizations, Spectrum ) 20080613-00270, *et al.*  
Manager and *De Facto* Transfer Leasing )  
Arrangements )  
)  
and )  
)  
Petition for Declaratory Ruling that the ) File No. ISP-PDF-20080613-00012  
Transaction is Consistent with Section )  
310(b)(4) of the Communications Act )

To: The Secretary  
Office of the Secretary  
Federal Communications Commission

**PETITION TO DENY**

Chatham Avalon Park Community Council, by its attorneys, hereby petitions to deny the above-referenced applications (collectively, the “Merger Applications”), which request Commission authority for the transfer of control of ALLTEL Wireless and its affiliates (“ALLTEL”) to Cellco Partnership and its affiliates (collectively, “Verizon Wireless”).<sup>1</sup> As detailed below, the Merger Applications raise substantial issues under the Commission’s guidelines for wireless concentration and under the foreign ownership rules. Furthermore, the

---

<sup>1</sup> See 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, *Public Notice*, FCC WT Docket No. 08-95, DA 08-1481 (rel. June 25, 2008).

merger applicants continue a dangerous trend towards consolidation of telecommunications ownership. Unless these issues are fully addressed, the Commission should not grant the Merger Applications unless it imposes appropriate divestiture conditions as set forth herein.

## **I. Introduction**

Chatham Avalon Park Community Council ("Petitioner") is a community based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of telecommunications services, some of which are offered by the applicants now before the FCC.<sup>2</sup> Petitioner and its members are disserved by the increasing consolidation in the telecommunications industry that threatens to produce fewer competitive services at higher consumer prices. As a result, the Petitioner herein and its members have a real financial stake in the FCC's review of Verizon Wireless's proposal to acquire ALLTEL, and they believe that the public interest will be best served only by a conditional grant as set forth in this Petition.

The Merger Applications raise two issues that must be addressed by the FCC. First, the proposed merger, if consummated without any divestitures of overlapping operations, would result in Verizon Wireless's holding spectrum in excess of the Commission's initial screen level of 95 MHz in more than 300 market areas, and spectrum that exceeds that level by at least 20 MHz in more than 100 market areas. Many of these overlap areas are in parts of the country where there is little or no competition to ALLTEL and Verizon Wireless today, and so grant of the Merger Applications without divestiture would mean that consumers in those areas would be deprived of the opportunity for a real choice among carriers. The absence of effective choice among carriers is reflected not only in the terms and conditions of service, but in the absence of

---

<sup>2</sup> See Affidavit of Mr. Keith O. Tate, President, Chatham Avalon Park Community Council, attached hereto as Exhibit 1.

carrier involvement with the communities they purport to serve and the dearth of carrier customer service centers in many segments of those communities. Indeed, Verizon now has acknowledged that it will be required to divest a substantial portion of ALLTEL's assets before the Merger Applications can be granted.

Divestiture also would provide an opportunity to enhance the diversity of ownership of telecommunications service providers. This is significant because there is little diversity in these businesses today. As a result, carriers often ignore the opportunities to draw from employment pools, financial services, and service providers from the areas and demographic groups they are licensed to serve.

Second, to demonstrate compliance with the foreign ownership limitations in Section 310(b), Verizon Wireless employs an analysis of the stock ownership of its constituent partners that is based on the addresses of the owners, not the actual citizenship status of the owners as defined in current Commission policies. This analysis does not comport with existing Commission precedent for parties other than Verizon Wireless and creates a different substantive standard for what constitutes foreign ownership under Section 310(b) from that which the Commission would apply to Verizon Wireless's competitors. To the extent that the Commission permits Verizon Wireless to comply with Section 310(b) using the approach Verizon Wireless proffers in this proceeding, it should permit other applicants, particularly socially disadvantaged businesses that would benefit from increased access to capital, to employ the same analytic framework in all services, including broadcast. As explained below, there is no rational justification for a special liberalized interpretation of Section 310(b) that applies only to Verizon Wireless, especially when the Commission has categorically rejected any change in policy or

interpretation of Section 310(b) to assist socially disadvantaged businesses seeking access to capital.

All of these issues are substantial and critical to the question of whether the proposed transaction is in the public interest. Petitioner submits that the Commission cannot grant Verizon Wireless's requested Section 310(b)(4) determination using a special definition of "foreign ownership" that applies only to Verizon Wireless, nor can it grant the Merger Applications without requiring divestiture of operations where there is a substantial spectrum overlap.

## **II. The Merger Applications Should Not Be Granted Until Spectrum Overlap Issues Are Resolved.**

The Merger Applications frankly acknowledge what is made obvious by the exhibit detailing all of the licenses that would be held by Verizon Wireless following grant of the applications: The merged company would hold more than 95 MHz of spectrum – and therefore would exceed the Commission's initial screen – in literally hundreds of areas across the country, most of them concentrated in rural communities.<sup>3</sup> Verizon Wireless argues that the Commission should address this issue not by remedying these substantial overlaps, but by changing the Commission's processing principles.<sup>4</sup> Such a change would be convenient for Verizon Wireless, but would not serve the public interest. Rather, Verizon Wireless should be held to the principles the Commission has used repeatedly, including as recently as earlier this month, for analyzing wireless merger proposals, and should be required to divest a portion of its holdings where the spectrum overlap has a significant potential to damage or limit competition.

---

<sup>3</sup> Merger Applications, Exhibit 1 at 41; *see also id.*, Exhibit 3 (listing combined spectrum holdings for Verizon Wireless and ALLTEL by CMA).

<sup>4</sup> *Id.*, Exhibit 1 at 41.

**A. The Merger Applications Ask the Commission to Approve a Substantial Amount of Spectrum Overlap in Areas Where There Is Relatively Little Wireless Competition.**

There can be no dispute that the Merger Applications ask for Commission approval of substantial areas of spectrum overlap that exceed the levels relevant to the Commission's initial screening process. While the Merger Applications focus on the 50 or so CMAs where Verizon Wireless says it would have coverage for the first time, in truth there are many more markets where the proposed transaction would cause significant overlap.<sup>5</sup> These are the areas where the Commission should focus its attention.

Review of the Merger Applications shows that there are more than 330 market areas in which the merged entity's spectrum holdings would exceed 95 MHz, or roughly 19 percent of all the markets listed in the Merger Applications.<sup>6</sup> These markets are in more than 20 states, but are concentrated in Minnesota, Montana, North Dakota, South Dakota and Texas.

About one-third of the CMAs with 95 MHz or higher overlap, or about 6 percent of those listed in the Merger Applications, have overlapping holdings that would exceed 115 MHz following the proposed transaction. All but thirteen of these market areas are in Minnesota, Montana, North Dakota and South Dakota. In some cases, the overlap that would result from the proposed transaction would be as great as 144 MHz, or close to 50 MHz above the initial screen level.

The locations of the CMAs with the greatest overlap is particularly significant for two reasons. First, they consist largely of places where wireless competition is less robust than more

---

<sup>5</sup> *Id.*, Exhibit 1 at 10. As the Merger Applications disclose, there actually are only eleven CMAs where Verizon Wireless has no spectrum at all, but the public interest statement also includes 43 CMAs where Verizon Wireless has no cellular or PCS spectrum. *Id.*

<sup>6</sup> An excerpt from Exhibit 4 to the Merger Applications, showing the relevant CMAs, is attached hereto as Exhibit 3.

densely populated parts of the country. This conclusion is borne out by review of Exhibit 5 to the Merger Applications, which shows that many CMAs with overlap of 115 MHz or more have fewer competitors today than the average market.<sup>7</sup>

Second, because so many of the overlap areas are concentrated in a few states, the concentration of spectrum in the hands of a single provider will make it harder for a competitor that does not have the same spectrum resources to compete over a wide area. It is one thing for a provider to have significantly more spectrum than its competitors in a single CMA, or in a few scattered across a region. It is a much different proposition when that advantage is extended over much of four states. Consequently, the location of the affected markets exacerbates the impact of the excess spectrum overlap.

**B. The Commission Should Continue to Apply the Screening Principles It Has Used in Other Cases.**

Verizon Wireless devotes much of its discussion in the public interest statement to its claim that the Commission should discard its current screening principles as outdated. This argument depends, however, on the Commission deciding to modify those principles to include spectrum that is not deployed and even spectrum that has not been designated for auction, and does not explain how the facts could have changed sufficiently to justify a modification of a screening process that was used most recently earlier this month.<sup>8</sup>

---

<sup>7</sup> Compare Exhibit 3 with Merger Application, Exhibit 5. Verizon Wireless includes significant amounts of spectrum that are not in use today in its analysis, even though the licensees for that spectrum do not provide current competition.

<sup>8</sup> See *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Opinion and Order, FCC 08-181 ¶ 33 (rel. Aug. 1, 2008) [hereinafter, "*Verizon Wireless-RCC Order*"]. In re *Applications of AT&T Inc. and Dobson Commc'ns. Corp.*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20318 ¶40 (rel. Nov. 15, 2007) [hereinafter "*AT&T-Dobson Order*"].

The premise of the Verizon Wireless argument is that there are massive amounts of spectrum now available for competitors and that the availability of this spectrum will constrain any one provider from acting in an anticompetitive level, even with spectrum holdings that far exceed the 95 MHz threshold.<sup>9</sup> To bolster this argument, Verizon Wireless points to the existence of the “new” Clearwire venture and to the Commission’s ongoing spectrum auctions, among other things.<sup>10</sup>

The first flaw in this argument is that much of the spectrum that Verizon Wireless wants to add to the Commission’s analysis specifically was excluded in the recent *Verizon Wireless-RCC Order* and *AT&T-Dobson Order* for reasons that remain valid today. As the Commission explained in the *AT&T-Dobson Order*:

The AWS-1 spectrum is not generally available for mobile use as yet due to the ongoing clearance of governmental and non-governmental incumbent users. Moreover, the clearance process has no single timetable. Rather, different pieces of the band are on different clearance schedules, with some extending beyond another two years. Therefore, we cannot find that the AWS-1 spectrum capacity will be available on a nationwide basis soon enough to be treated as a factor affecting current behavior in every market.

Similarly, the availability of BRS spectrum for new mobile uses depends on the ongoing transition process. This process, while well advanced, is not complete, and is by its nature local. As a result, progress will differ significantly from market to market. Thus in the case of this spectrum, too, we cannot find that it will be available on a nationwide basis soon enough to be treated as a factor affecting current behavior nationwide.<sup>11</sup>

This analysis was affirmed in the *Verizon Wireless-RCC Order*, in which the Commission determined that it should “analyze the input market for spectrum based on the approach that we established in the *AT&T-Dobson Order*.”<sup>12</sup>

---

<sup>9</sup> Merger Applications, Exhibit 1 at 41-42.

<sup>10</sup> See *id.*, Exhibit 1 at 42, 44.

<sup>11</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20315 [¶ 33-34] (footnotes omitted).

<sup>12</sup> *Verizon Wireless-RCC Order*, ¶ 43.

The Merger Applications claim that BRS spectrum should be included in the analysis because Clearwire and Sprint have aggressive deployment plans.<sup>13</sup> This argument misses the point, which is that there is significant difficulty in making spectrum available on a nationwide basis. In fact, as the Merger Applications acknowledge, even Clearwire expects not to reach about one third of the population when its deployment is complete.<sup>14</sup>

Verizon Wireless continues to make the same error when it discusses AWS-1 spectrum. Announcements of some deployment of service using AWS-1 spectrum do not translate to a service that is "available on a nationwide basis," and therefore there is no reason to revisit an analysis of spectrum availability that was completed only a few months ago. Moreover, much of both the AWS-1 and BRS spectrum will not be used for mobile telephony, as the Commission explained in the *Verizon Wireless-RCC Order*, so there is no good reason to count it towards the mobile service threshold.<sup>15</sup>

Given these facts, there is no basis to revisit the Commission's recent conclusions about either the BRS or AWS-1 blocks. And, once these two sources of spectrum are eliminated from the analysis, it is apparent that there is no reason to change the current screen.<sup>16</sup>

---

<sup>13</sup> Merger Applications, Exhibit 1 at 35-36.

<sup>14</sup> *Id.*

<sup>15</sup> *Verizon Wireless-RCC Order*, ¶ 44 (noting that much of the ASW-1 and BRS "spectrum is committed to another use that effectively precludes its use for mobile telephony, and it was often unclear whether it will be available for mobile use in the sufficiently near-term").

<sup>16</sup> The Merger Applications also argue for the inclusion of various types of satellite spectrum, based on services that have yet to be deployed and that, in the case of Globalstar, appear to be focused on a small number of communities; for inclusion of the as-yet-unauctioned 2175-2195 MHz band; and for consideration of MVNOs in the competitive analysis. Merger Applications, Exhibit 1 at 37-40. As the Commission concluded in the *Verizon Wireless-RCC Order*, these proposals do not merit consideration. *Verizon Wireless-RCC Order*, ¶¶ 49-50. The satellite services are not yet available and it is not apparent how much spectrum actually will be devoted to these services, while the Commission has yet even to set the rules for the 2175-2195 MHz band. MVNOs, as resellers, simply are not relevant to an analysis of spectrum holdings because

Even if there were some reason to consider this spectrum, the Merger Applications do not fully acknowledge that much of the "new" spectrum actually will be under the control of existing market participants. The Clearwire service will be affiliated with Sprint, and much of the AWS spectrum went to existing providers.<sup>17</sup> As a consequence, this new spectrum will not serve to create a more competitive market, but will instead simply reinforce the strength of existing, larger market participants.

Moreover, the broad strokes of the Verizon Wireless analysis do not account appropriately for the potential impact of the merger in rural areas where competition is not as robust. Again, while Verizon Wireless claims that Clearwire "plans to serve a substantial portion of the U.S. population by the end of 2009," it does not recognize that entry into smaller, more rural markets is almost certainly on a much slower schedule.<sup>18</sup> In fact, because the costs of entering those markets are relatively high compared to the potential revenues, competitors' incentives to deploy the full range of their services in rural areas are not likely to be improved meaningfully, even if a combined Verizon Wireless-ALLTEL raises prices or reduces the quality of the service it offers.

This, of course, is the point of the initial screen. The screen allows the Commission to concentrate its efforts on markets where there may be a risk to competition. Given the wide divergence of competitive conditions in markets across the country, it continues to be appropriate

---

they have only the most limited ability to affect pricing, given that they must purchase their underlying service from the spectrum holders.

<sup>17</sup> Ironically, the Merger Applications cite this fact when attempting to argue that the new spectrum will be deployed rapidly. Merger Applications, Exhibit 1 at 49.

<sup>18</sup> The Merger Applications note that the Clearwire service is expected to be available to 60 to 80 million POPs within 18 months, which still will leave as much as 80 percent of the population without service. *Id.*

to maintain a screen that is fine enough to ensure that all markets where there could be competitive risk are analyzed, and the current screen meets that standard.

Verizon Wireless now appears to have acknowledged that its initial efforts to change the way that wireless spectrum overlap is evaluated were misguided. In a letter to the Commission dated July 22, 2008, Verizon Wireless has committed to divestitures in “85 cellular markets,” including all of the ALLTEL markets in North and South Dakota.<sup>19</sup> Indeed, although the list attached to the July 22 letter is organized differently than Exhibit 4 to the Merger Applications, it appears that many, and perhaps all, of the markets identified in this petition as having the greatest overlap are included in Verizon Wireless divestiture proposal.

**III. The Commission Should Require Divestiture in Those Areas Where the Spectrum Overlap Is Greatest.**

**A. The Commission Has the Authority to Require Divestiture.**

Section 310(d) of the Communications Act prohibits the transfer of control of any corporation holding a Commission license except upon a finding by the Commission that the transfer would serve the public interest, convenience and necessity.<sup>20</sup> As part of its mandate to grant transfer applications only where they would serve the public interest, the Commission also has broad authority to grant such applications only where the parties thereto agree to certain conditions. In past cases, the Commission has conditioned its approval of license transfers

---

<sup>19</sup> See Letter from John T. Scott, III, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95, dated July 22, 2008, at 1 (the “Verizon Wireless Divestiture Letter”).

<sup>20</sup> 47 U.S.C. § 310(d) (2008).

related to mergers on the divestiture of various assets held by one of the parties to the applications.<sup>21</sup>

The Commission is, in its review of this proposed Verizon Wireless-ALLTEL transaction, “empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create.”<sup>22</sup> In the instant case, approval of the merger would result in the continued rapid consolidation of the telephone industry. With each such step towards consolidation, it becomes more and more difficult for small business, and particularly those owned by minorities and other socially disadvantaged individuals, to gain entry into the telecommunications industry. Increasing consolidation also harms consumers generally. Recent Congressional hearings have, for example, confirmed that government agencies have requested, and in some cases have received, telephone records from telephone companies in potential violation of the Communications Act’s privacy protections.<sup>23</sup> Regardless of whether any violation of the Communications Act, other laws, or consumers’ expectation of privacy occurred in this specific instance, increased consolidation serves only to make any such violations easier, and undermines the confidence of consumers that any violations will be disclosed.

In a market with only a very small number of competitors, those competitors may be less likely to resist overly intrusive government requests for information for fear of retribution. In a

---

<sup>21</sup> See, e.g., *In re Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion & Order, FCC 03-210, 17 FCC Rcd 23246, ¶ 4 (rel. Nov. 14, 2002).

<sup>22</sup> See *In re Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and authorizations*, Memorandum Opinion & Order, FCC 05-138, 20 FCC Rcd 1305, 13112, ¶ 160 (rel. Jul. 19, 2005).

<sup>23</sup> See John Eggerton, “Copps Calls for Telco Inquiry,” *Broadcasting & Cable* (May 16, 2006); 47 U.S.C. § 222.

market with vibrant competition, including many diverse participants, those participants will be better able to police the actions of their competitors. In addition, the increased likelihood that at least one competitor would resist any overly intrusive request for information could help to prevent any such attempts. The simple fact of increased competition in the marketplace may help to assuage consumers' fears that privacy violations would be unreported by their communications providers.

Under Sections 214(a) and 310(d) of the Communications Act, "[a]pplicants bear the burden of demonstrating that the proposed transaction is in the public interest," taking into consideration the "broad aims of the Communications Act."<sup>24</sup>

In order to find that a merger is in the public interest, we must ... be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition – *i.e.*, enhancing the market power, slowing the decline of market power, or impairing this Commission's ability properly to establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation – are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the applications must be denied.<sup>25</sup>

Absent appropriate divestitures, the proposed Verizon Wireless acquisition of ALLTEL does not meet this burden.

**B. Divestiture Would Aid in Addressing the Lack of Diversity in Ownership of Telecommunications Services Providers.**

As the Commission is well aware, the telecommunications industry has historically suffered from a severe lack of minority-owned businesses, and that continues to this day. Due in

---

<sup>24</sup> In re *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, FCC 97-286, 12 FCC Rcd 19985, 19987, ¶ 2 (rel. Aug. 14, 1997).

<sup>25</sup> *Id.*

part to the significant advantages in capital and experience enjoyed by incumbent licensees, *businesses with substantial ownership held by minorities or members of other socially-disadvantaged groups* face great and often insurmountable obstacles in entering the telecommunications business.

At the same time, the Commission has a compelling interest in furthering diversity among its licensees, and the instant applications present a unique opportunity to increase diversity of telecommunications ownership. In fact, this may be one of the last opportunities for the Commission to take such action. Instead of simply approving a transaction that further consolidates the telecommunications industry, the Commission should use this opportunity to further diversity by conditioning its consent to the requested transfer on the divestiture of certain businesses or assets, with a right of first negotiation to acquire those assets awarded to entities in which substantial ownership interests are held by minorities or members of other socially disadvantaged groups.

Diversity in ownership in the telecommunications industry has long been a public policy goal of both the Commission and of Congress. Section 257 of the Telecommunications Act of 1996, as well as Sections 309(i) and 309(j) of the Communications Act, for example, require the Commission to take specific steps to further this goal by eliminating market entry barriers, granting preferences to applicants that would increase diversification of ownership, and by devising competitive bidding systems to “avoid[] excessive concentration of licenses and ... disseminate[e] licenses among a wide variety of applicants.”<sup>26</sup> The Commission has consistently recognized that discrimination in the capital markets has handicapped minority entrepreneurs

---

<sup>26</sup> 47 U.S.C. § 309(j)(3)(B) (2008); *see also* 47 U.S.C. §§ 257, 309(i)(3) (2008).

attempting to enter the rapidly consolidating telecommunications industry.<sup>27</sup> Indeed, it is well established that minorities face widespread discrimination in the capital markets.<sup>28</sup> Due in part to this historic discrimination, and the extremely high costs of entry into the telecommunications industry, there now exists a marked lack of minority ownership in the industry at all levels.

In recognition of Congressional directives and its compelling interest in avoiding a system of racial exclusion, the Commission has taken a number of steps to attempt to increase minority ownership in the telecommunications industry and rectify discrimination in the capital markets. The Commission has awarded bidding credits for auctions of spectrum to smaller businesses qualifying as designated entities.<sup>29</sup> In 2003, the Commission established the "Advisory Committee for Diversity in the Digital Age," charged with making recommendations to the Commission designed to enhance the ability of minorities and women to participate in telecommunications industries.<sup>30</sup> Despite these and other efforts, however, the level of minority and socially disadvantaged ownership in the telecommunications industries remains far too low.

The Commission has a compelling interest in ending such practices and expanding ownership opportunities before the era of consolidation ends. The telecommunications industry

---

<sup>27</sup> See, e.g., William D. Bradford, *Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes* (2000); Ivy Planning Group, LLC, *Whose Spectrum is it Anyway? Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing [1950 to Present]* (2000).

<sup>28</sup> See, e.g., *Proposed Reforms to Affirmative Action in Federal Procurement*, 61 Fed. Reg. 26042, 26052 (Dep't of Justice, May 23, 1996) (DOJ proposal citing studies and Congressional hearings documenting that "widespread discrimination, especially in access to financial credit, has been an impediment to the ability of minority-owned business to have an equal chance at developing in our economy").

<sup>29</sup> See 47 C.F.R. § 1.2110.

<sup>30</sup> See *Chairman Powell Announces Intention to Form a Federal Advisory Committee to assist the Federal Communications Commission in Addressing Diversity Issues*, Public Notice (rel. May 19, 2003); see also *Advisory Committee for Diversity in the Digital Age* at <http://www.fcc.gov/diversityFAC> (last visited Jul. 18, 2000).

is extremely capital intensive. Only well-financed companies win FCC auctions or acquire FCC-regulated businesses. *Minority-owned businesses, therefore, are at a distinct disadvantage* because discrimination hinders their ability to raise capital and thus establishes a significant barrier to entry. The Commission's regulatory policies passively support this discrimination and continue to hinder socially disadvantaged entrepreneurs' ability to enter the telecommunications industry. For example, the Commission awards most of its auctionable spectrum to the highest bidder, and it approves applications to transfer licenses to other well-financed entities. Nevertheless, the Commission also has the authority, and in this case is presented with the unique opportunity, to effectively help combat such discrimination and encourage diversity of ownership in the telecommunications industry.

**C. Application of Relevant Competition Analysis Demonstrates that Divestiture Is Necessary.**

While the Merger Applications focus on the few places where Verizon Wireless would have new coverage, the Commission has to weigh whatever benefits might come from the extension of the company's coverage against the harms that would accrue in the hundreds of places where Verizon Wireless would exceed 95 MHz of total spectrum. This analysis tips heavily towards requiring divestiture, particularly in the north-central markets where the overlap is greatest.

One of the arguments the Merger Applications make in favor of authorizing the transaction is that the Commission has found that anticompetitive action is constrained not just by the presence of competitors in a specific area, but by the presence of competitors nearby.<sup>31</sup> This claim may make sense in the context of a merger that creates small pockets of concentration spread across the country, but it simply does not apply here. In this case, the markets with

---

<sup>31</sup> Merger Applications, Exhibit 1 at 47-48.

significant concentration are themselves concentrated in a four-state region of the country, with nearly all of the markets with the greatest post-transaction spectrum holdings located in those four states.<sup>32</sup> In addition, as the Commission notes in the *Verizon Wireless-RCC Order*, in practical terms the existence of a larger, even nationwide marketing or pricing area does not change that customers purchase their service where they actually are located, not in a national market. As the Commission explained, the appropriate geographic market “is the area within which a consumer is most likely to shop for mobile telephony service.”<sup>33</sup>

These markets are rural and that means, as noted above, they also are the markets where competition from other providers is least likely to be a significant factor.<sup>34</sup> That means that, after the merger, consumers in those markets would have a much greater likelihood of facing the potential harms of insufficient competition, and in fact, already may be suffering from some of those effects.

The effects of insufficient competition are reflected in more than just prices, although it is likely that these markets will not gain the full benefits of price competition that are available elsewhere. It is even more likely, though, that the lack of competition will be reflected in service quality, expenditures on infrastructure and the availability of advanced services. Simply put, if there is little competition, there is little reason for a service provider to spend the money necessary to make high quality, advanced services available in a market. While Verizon Wireless argues that mobile services constitute a national market, in practice that is true only as to pricing. Infrastructure and service quality necessarily are much more significant at a local

---

<sup>32</sup> As described above, all but thirteen of the areas with the greatest overlap are in Minnesota, Montana, North Dakota and South Dakota.

<sup>33</sup> *Verizon Wireless-RCC Order*, ¶ 41.

<sup>34</sup> *See id.*, ¶ 78-79.